

Anti-terrorism, Crime and Security

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, Her Majesty's Treasury, the Department of Trade and Industry, the Department for Transport, Local Government and the Regions, and the Foreign and Commonwealth Office, will be published as Bill 49 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Blunkett has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Anti-terrorism, Crime and Security Bill are compatible with the Convention rights.

Anti-terrorism, Crime and Security

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A
B I L L

TO

Amend the Terrorism Act 2000; to make further provision about terrorism and security; to provide for the freezing of assets; to make provision about immigration and asylum; to amend or extend the criminal law and powers for preventing crime and enforcing that law; to make provision about the control of pathogens and toxins; to provide for the retention of communications data; to provide for implementation of Title VI of the Treaty on European Union; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

TERRORIST PROPERTY

1 Forfeiture of terrorist cash

- (1) Schedule 1 (which makes provision for enabling cash which—
(a) is intended to be used for the purposes of terrorism, 5
(b) consists of resources of an organisation which is a proscribed organisation, or
(c) is, or represents, property obtained through terrorism,
to be forfeited in civil proceedings before a magistrates' court or (in Scotland) the sheriff) is to have effect. 10
- (2) The powers conferred by Schedule 1 are exercisable in relation to any cash whether or not any proceedings have been brought for an offence in connection with the cash.
- (3) Expressions used in this section have the same meaning as in Schedule 1.
- (4) Sections 24 to 31 of the Terrorism Act 2000 (c. 11) (seizure of terrorist cash) are to cease to have effect. 15
- (5) An order under section 123 bringing Schedule 1 into force may make any modifications of any code of practice then in operation under Schedule 14 to

the Terrorism Act 2000 (exercise of officers' powers) which the Secretary of State thinks necessary or expedient.

2 Amendments relating to section 1

- (1) In Schedule 2 to the Access to Justice Act 1999 (c. 22) (services excluded from the Community Legal Service), paragraph 2 (exclusion of advocacy: exceptions) is amended as follows. 5
- (2) In paragraph 2(2) (Crown Court), after paragraph (c) insert—
 “or
 (d) which relate to an order under paragraph 6 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001”, 10
 and omit the “or” at the end of paragraph (b).
- (3) In paragraph 2(3) (magistrates' courts), in paragraph (j), after “1998” insert—
 “or
 (k) for an order or direction under paragraph 3, 5, 6 or 9 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001”, 15
 and omit the “or” at the end of paragraph (i).
- (4) Schedule 14 to the Terrorism Act 2000 (c. 11) (exercise of officers' powers) is amended as follows.
- (5) In paragraph 1— 20
 (a) in paragraph (a), for “section 24” substitute “the terrorist cash provisions”, and
 (b) after paragraph (b) insert—
 “and “the terrorist cash provisions” means Schedule 1 to the
 Anti-terrorism, Crime and Security Act 2001”. 25
- (6) In paragraphs 2, 3 and 6(1), at the end insert “or the terrorist cash provisions”.
- (7) In paragraph 5, after “Act” insert “or the terrorist cash provisions”.
- (8) In Part I of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I.1981/228 (N.I.8)) (proceedings for which legal aid may be given under Part II of the Order), in paragraph 3 (courts of summary jurisdiction) after sub-paragraph (h) insert— 30
 “(i) proceedings under paragraphs 3, 5, 6 and 9 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001”.

3 Terrorist property: amendments

Schedule 2 contains amendments to the Terrorism Act 2000. 35

PART 2

FREEZING ORDERS

Orders

4 Power to make order

- (1) The Treasury may make a freezing order if the following two conditions are satisfied. 5
- (2) The first condition is that the Treasury reasonably believe that –
 - (a) action to the detriment of the United Kingdom’s economy (or part of it) has been or is likely to be taken by a person or persons, or
 - (b) action constituting a threat to the life or property of one or more nationals of the United Kingdom or residents of the United Kingdom has been or is likely to be taken by a person or persons. 10
- (3) If one person is believed to have taken or to be likely to take the action the second condition is that the person is –
 - (a) the government of a country or territory outside the United Kingdom, or
 - (b) a resident of a country or territory outside the United Kingdom. 15
- (4) If two or more persons are believed to have taken or to be likely to take the action the second condition is that each of them falls within paragraph (a) or (b) of subsection (3); and different persons may fall within different paragraphs. 20

5 Contents of order

- (1) A freezing order is an order which prohibits persons from making funds available to or for the benefit of a person or persons specified in the order.
- (2) The order must provide that these are the persons who are prohibited –
 - (a) all persons in the United Kingdom, and
 - (b) all persons elsewhere who are nationals of the United Kingdom or are bodies incorporated under the law of any part of the United Kingdom or are Scottish partnerships. 25
- (3) The order may specify the following (and only the following) as the person or persons to whom or for whose benefit funds are not to be made available –
 - (a) the person or persons reasonably believed by the Treasury to have taken or to be likely to take the action referred to in section 4;
 - (b) any person the Treasury reasonably believe has provided or is likely to provide assistance (directly or indirectly) to that person or any of those persons. 30
- (4) A person may be specified under subsection (3) by –
 - (a) being named in the order, or
 - (b) falling within a description of persons set out in the order.
- (5) The description must be such that a reasonable person would know whether he fell within it. 40

(6) Funds are financial assets and economic benefits of any kind.

6 Contents: further provisions

Schedule 3 contains further provisions about the contents of freezing orders.

7 Review of order

The Treasury must keep a freezing order under review. 5

8 Duration of order

A freezing order ceases to have effect at the end of the period of 2 years starting with the day on which it is made.

Interpretation

9 Nationals and residents 10

- (1) A national of the United Kingdom is an individual who is –
- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or 15
 - (c) a British protected person within the meaning of that Act.
- (2) A resident of the United Kingdom is –
- (a) an individual who is ordinarily resident in the United Kingdom,
 - (b) a body incorporated under the law of any part of the United Kingdom, or 20
 - (c) a Scottish partnership.
- (3) A resident of a country or territory outside the United Kingdom is –
- (a) an individual who is ordinarily resident in such a country or territory, or
 - (b) a body incorporated under the law of such a country or territory. 25
- (4) For the purposes of subsection (3)(b) a branch situated in a country or territory outside the United Kingdom of –
- (a) a body incorporated under the law of any part of the United Kingdom, or
 - (b) a Scottish partnership, 30
- is to be treated as a body incorporated under the law of the country or territory where the branch is situated.
- (5) This section applies for the purposes of this Part.

Orders: procedure etc.

10 Procedure for making freezing orders 35

- (1) A power to make a freezing order is exercisable by statutory instrument.

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- (2) A freezing order –
- (a) must be laid before Parliament after being made;
 - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order). 5
- (3) The relevant period is a period of 28 days starting with the day on which the order is made.
- (4) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days. 10
- (5) If the Treasury propose to make a freezing order in the belief that the condition in section 4(2)(b) is satisfied, they must not make the order unless they consult the Secretary of State.
- 11 Procedure for making certain amending orders 15**
- (1) This section applies if –
- (a) a freezing order is made specifying by description (rather than by name) the person or persons to whom or for whose benefit funds are not to be made available,
 - (b) it is proposed to make a further order which amends the freezing order only so as to make it specify by name the person or persons (or any of the persons) to whom or for whose benefit funds are not to be made available, and 20
 - (c) the further order states that the Treasury believe that the person or persons named fall within the description contained in the freezing order. 25
- (2) This section also applies if –
- (a) a freezing order is made specifying by name the person or persons to whom or for whose benefit funds are not to be made available,
 - (b) it is proposed to make a further order which amends the freezing order only so as to make it specify by name a further person or further persons to whom or for whose benefit funds are not to be made available, and 30
 - (c) the further order states that the Treasury believe that the further person or persons fall within the same description as the person or persons specified in the freezing order. 35
- (3) This section also applies if –
- (a) a freezing order is made, and
 - (b) it is proposed to make a further order which amends the freezing order only so as to make it specify (whether by name or description) fewer persons to whom or for whose benefit funds are not to be made available. 40
- (4) If this section applies, a statutory instrument containing the further order is subject to annulment in pursuance of a resolution of either House of Parliament. 45

12 Procedure for revoking orders

A statutory instrument containing an order revoking a freezing order (without re-enacting it) is subject to annulment in pursuance of a resolution of either House of Parliament.

13 De-hybridisation

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If apart from this section an order under this Part would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

14 Orders: supplementary

- (1) Where this Part confers a power to make provision, different provision may be made for different purposes. 10
- (2) An order under this Part may include supplementary, incidental, saving or transitional provisions.
- (3) Nothing in this Part affects the generality of subsection (2).

Miscellaneous

15

15 The Crown

- (1) A freezing order binds the Crown, subject to the following provisions of this section.
- (2) No contravention by the Crown of a provision of a freezing order makes the Crown criminally liable; but the High Court or in Scotland the Court of Session may, on the application of a person appearing to the Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention. 20
- (3) Nothing in this section affects Her Majesty in her private capacity; and this is to be construed as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (meaning of Her Majesty in her private capacity) were contained in this Act. 25

16 Repeals

- (1) These provisions shall cease to have effect –
 - (a) section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964 (c. 60) (Treasury’s power to prohibit action on certain orders as to gold etc); 30
 - (b) section 55 of the Finance Act 1968 (c. 44) (meaning of security in section 2 of 1964 Act).
- (2) Subsection (1) does not affect a reference which –
 - (a) is to a provision referred to in that subsection, and 35
 - (b) is contained in a provision made under an Act.

PART 3

DISCLOSURE OF INFORMATION

17 Extension of existing disclosure powers

- (1) This section applies to the provisions listed in Schedule 4, so far as they authorise the disclosure of information. 5
- (2) Each of the provisions to which this section applies shall have effect, in relation to the disclosure of information by or on behalf of a public authority, as if the purposes for which the disclosure of information is authorised by that provision included each of the following—
 - (a) the purposes of any criminal investigation whatever which is being or may be carried out, whether in the United Kingdom or elsewhere; 10
 - (b) the purposes of any criminal proceedings whatever which have been or may be initiated, whether in the United Kingdom or elsewhere;
 - (c) the purposes of the initiation or bringing to an end of any such investigation or proceedings; 15
 - (d) the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.
- (3) The Treasury may by order made by statutory instrument add any provision contained in any subordinate legislation to the provisions to which this section applies. 20
- (4) A statutory instrument containing an order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Nothing in this section shall be taken to prejudice any power to disclose information which exists apart from this section. 25
- (6) The information that may be disclosed by virtue of this section includes information obtained before the commencement of this section.

18 Restriction on disclosure of information for overseas purposes

- (1) Subject to subsections (2) and (3), the Secretary of State may give a direction which—
 - (a) specifies any overseas proceedings or any description of overseas proceedings; and 30
 - (b) prohibits the making of any relevant disclosure for the purposes of those proceedings or, as the case may be, of proceedings of that description. 35
- (2) In subsection (1) the reference, in relation to a direction, to a relevant disclosure is a reference to a disclosure authorised by any of the provisions to which section 17 applies which—
 - (a) is made for a purpose mentioned in subsection (2)(a) to (d) of that section; and 40
 - (b) is a disclosure of any such information as is described in the direction.
- (3) The Secretary of State shall not give a direction under this section unless it appears to him that the overseas proceedings in question, or that overseas proceedings of the description in question, relate or would relate—

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- (a) to a matter in respect of which it would be more appropriate for any jurisdiction or investigation to be exercised or carried out by a court or other authority of the United Kingdom, or of a particular part of the United Kingdom;
- (b) to a matter in respect of which it would be more appropriate for any jurisdiction or investigation to be exercised or carried out by a court or other authority of a third country; or 5
- (c) to a matter that would fall within paragraph (a) or (b)–
- (i) if it were appropriate for there to be any exercise of jurisdiction or investigation at all; and 10
- (ii) if (where one does not exist) a court or other authority with the necessary jurisdiction or functions existed in the United Kingdom, in the part of the United Kingdom in question or, as the case may be, in the third country in question.
- (4) A direction under this section shall not have the effect of prohibiting– 15
- (a) the making of any disclosure by a Minister of the Crown or by the Treasury; or
- (b) the making of any disclosure in pursuance of a Community obligation.
- (5) A direction under this section–
- (a) may prohibit the making of disclosures absolutely or in such cases, or subject to such conditions as to consent or otherwise, as may be specified in it; and 20
- (b) must be published or otherwise issued by the Secretary of State in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it. 25
- (6) A person who, knowing of any direction under this section, discloses any information in contravention of that direction shall be guilty of an offence and liable–
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; 30
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.
- (7) The following are overseas proceedings for the purposes of this section–
- (a) criminal proceedings which are taking place, or will or may take place, in a country or territory outside the United Kingdom; 35
- (b) a criminal investigation which is being, or will or may be, conducted by an authority of any such country or territory.
- (8) References in this section, in relation to any proceedings or investigation, to a third country are references to any country or territory outside the United Kingdom which is not the country or territory where the proceedings are taking place, or will or may take place or, as the case may be, is not the country or territory of the authority which is conducting the investigation, or which will or may conduct it. 40
- (9) In this section “court” includes a tribunal of any description. 45

19 Disclosure of information held by revenue departments

- (1) This section applies to information which is held by or on behalf of the Commissioners of Inland Revenue or by or on behalf of the Commissioners of Customs and Excise, including information obtained before the coming into force of this section. 5
- (2) No obligation of secrecy imposed by statute or otherwise prevents the disclosure, in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made –
 - (a) for the purpose of facilitating the carrying out by any of the intelligence services of any of that service’s functions; 10
 - (b) for the purposes of any criminal investigation whatever which is being or may be carried out, whether in the United Kingdom or elsewhere;
 - (c) for the purposes of any criminal proceedings whatever which have been or may be initiated, whether in the United Kingdom or elsewhere;
 - (d) for the purposes of the initiation or bringing to an end of any such investigation or proceedings; or 15
 - (e) for the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.
- (3) Information to which this section applies shall not be disclosed by virtue of this section except by the Commissioners by or on whose behalf it is held or with their authority. 20
- (4) Information obtained by means of a disclosure authorised by subsection (2) shall not be further disclosed except –
 - (a) for a purpose mentioned in that subsection; and
 - (b) with the consent of the Commissioners by whom or with whose authority it was initially disclosed; 25and information so obtained otherwise than by or on behalf of any of the intelligence services shall not be further disclosed (with or without such consent) to any of those services, or to any person acting on behalf of any of those services, except for a purpose mentioned in paragraphs (b) to (e) of that subsection. 30
- (5) A consent for the purposes of subsection (4) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.
- (6) Nothing in this section authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act 1998 (c. 29). 35
- (7) References in this section to information which is held on behalf of the Commissioners of Inland Revenue or of the Commissioners of Customs and Excise include references to information which –
 - (a) is held by a person who provides services to the Commissioners of Inland Revenue or, as the case may be, to the Commissioners of Customs and Excise; and
 - (b) is held by that person in connection with the provision of those services. 40
- (8) In this section “intelligence service” has the same meaning as in the Regulation of Investigatory Powers Act 2000 (c. 23). 45

- (9) Nothing in this section shall be taken to prejudice any power to disclose information which exists apart from this section.

20 Interpretation of Part 3

- (1) In this Part—
- “criminal investigation” means an investigation of any criminal conduct, including an investigation of alleged or suspected criminal conduct and an investigation of whether criminal conduct has taken place; 5
 - “information” includes—
 - (a) documents; and
 - (b) in relation to a disclosure authorised by a provision to which section 17 applies, anything that falls to be treated as information for the purposes of that provision; 10
 - “public authority” has the same meaning as in section 6 of the Human Rights Act 1998 (c. 42); and
 - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30). 15
- (2) Proceedings outside the United Kingdom shall not be taken to be criminal proceedings for the purposes of this Part unless the conduct with which the defendant in those proceedings is charged is criminal conduct or conduct which, to a substantial extent, consists of criminal conduct. 20
- (3) In this section—
- “conduct” includes acts, omissions and statements; and
 - “criminal conduct” means any conduct which—
 - (a) constitutes one or more criminal offences under the law of a part of the United Kingdom; or 25
 - (b) is, or corresponds to, conduct which, if it all took place in a particular part of the United Kingdom, would constitute one or more offences under the law of that part of the United Kingdom.

PART 4 30

IMMIGRATION AND ASYLUM

Suspected international terrorists

21 Suspected international terrorist: certification

- (1) The Secretary of State may issue a certificate under this section in respect of a person if the Secretary of State— 35
- (a) believes that the person’s presence in the United Kingdom is a risk to national security, and
 - (b) suspects that the person is an international terrorist.
- (2) In subsection (1)(b) “international terrorist” means a person who— 40
- (a) is or has been concerned in the commission, preparation or instigation of acts of international terrorism,
 - (b) is a member of or belongs to an international terrorist group, or

- (c) has links with a person who is a member of or belongs to an international terrorist group.
- (3) A group is an international terrorist group for the purposes of subsection (2)(b) and (c) if—
 - (a) it is subject to the control or influence of persons outside the United Kingdom, and
 - (b) the Secretary of State suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism.
- (4) In this Part—
 - “terrorism” has the meaning given by section 1 of the Terrorism Act 2000 (c. 11),
 - “international terrorism” does not include terrorism concerned only with the affairs of a part of the United Kingdom, and
 - “suspected international terrorist” means a person certified under subsection (1).
- (5) Where the Secretary of State issues a certificate under subsection (1) he shall as soon as is reasonably practicable—
 - (a) take reasonable steps to notify the person certified, and
 - (b) send a copy of the certificate to the Special Immigration Appeals Commission.
- (6) The Secretary of State may revoke a certificate issued under subsection (1).

22 Deportation, removal, &c.

- (1) An action of a kind specified in subsection (2) may be taken in respect of a suspected international terrorist despite the fact that (whether temporarily or indefinitely) the action cannot result in his removal from the United Kingdom because of—
 - (a) a point of law which wholly or partly relates to an international agreement, or
 - (b) a practical consideration.
- (2) The actions mentioned in subsection (1) are—
 - (a) refusing leave to enter or remain in the United Kingdom in accordance with provision made by or by virtue of any of sections 3 to 3B of the Immigration Act 1971 (c. 77) (control of entry to United Kingdom),
 - (b) varying a limited leave to enter or remain in the United Kingdom in accordance with provision made by or by virtue of any of those sections,
 - (c) recommending deportation in accordance with section 3(6) of that Act (recommendation by court),
 - (d) taking a decision to make a deportation order under section 5(1) of that Act (deportation by Secretary of State),
 - (e) making a deportation order under section 5(1) of that Act,
 - (f) refusing to revoke a deportation order,
 - (g) cancelling leave to enter the United Kingdom in accordance with paragraph 2A of Schedule 2 to that Act (person arriving with continuous leave),

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- (h) giving directions for a person’s removal from the United Kingdom under any of paragraphs 8 to 10 or 12 to 14 of Schedule 2 to that Act (control of entry to United Kingdom),
 - (i) giving directions for a person’s removal from the United Kingdom under section 10 of the Immigration and Asylum Act 1999 (c. 33) (person unlawfully in United Kingdom), and 5
 - (j) giving notice to a person in accordance with regulations under paragraph 1 of Schedule 4 to that Act of a decision to make a deportation order against him.
- (3) Action of a kind specified in subsection (2) which has effect in respect of a suspected international terrorist at the time of his certification under section 21 shall be treated as taken again (in reliance on subsection (1) above) immediately after certification. 10
- 23 Detention**
- (1) A suspected international terrorist may be detained under a provision specified in subsection (2) despite the fact that his removal or departure from the United Kingdom is prevented (whether temporarily or indefinitely) by – 15
 - (a) a point of law which wholly or partly relates to an international agreement, or
 - (b) a practical consideration. 20
 - (2) The provisions mentioned in subsection (1) are –
 - (a) paragraph 16 of Schedule 2 to the Immigration Act 1971 (c. 77) (detention of persons liable to examination or removal), and
 - (b) paragraph 2 of Schedule 3 to that Act (detention pending deportation).
- 24 Bail** 25
- (1) A suspected international terrorist who is detained under a provision of the Immigration Act 1971 may be released on bail.
 - (2) For the purpose of subsection (1) the following provisions of Schedule 2 to the Immigration Act 1971 (control on entry) shall apply with the modifications specified in Schedule 3 to the Special Immigration Appeals Commission Act 1997 (c. 68) (bail to be determined by Special Immigration Appeals Commission) and with any other necessary modifications – 30
 - (a) paragraph 22(1A), (2) and (3) (release),
 - (b) paragraph 23 (forfeiture),
 - (c) paragraph 24 (arrest), and 35
 - (d) paragraph 30(1) (requirement of Secretary of State’s consent).
 - (3) Rules of procedure under the Special Immigration Appeals Commission Act 1997 –
 - (a) may make provision in relation to release on bail by virtue of this section, and 40
 - (b) subject to provision made by virtue of paragraph (a), shall apply in relation to release on bail by virtue of this section as they apply in relation to release on bail by virtue of that Act subject to any modification which the Commission considers necessary.

25 Certification: appeal

- (1) A suspected international terrorist may appeal to the Special Immigration Appeals Commission against his certification under section 21.
- (2) On an appeal the Commission must cancel the certificate if –
 - (a) it does not agree with the belief or suspicion referred to in section 21(1)(a) or (b), or 5
 - (b) it considers that for some other reason the certificate should not have been issued.
- (3) If the Commission determines not to cancel a certificate it must dismiss the appeal. 10
- (4) Where a certificate is cancelled under subsection (2) it shall be treated as never having been issued.
- (5) An appeal against certification may not be commenced after the period of three months beginning with the date on which the certificate is issued.

26 Certification: review

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- (1) The Special Immigration Appeals Commission must review each certificate issued under section 21 –
 - (a) in a case where an appeal is brought under section 25, as soon as is reasonably practicable after the expiry of the period of six months beginning with the date on which the appeal is finally determined, and 20
 - (b) in a case where no appeal is brought, as soon as is reasonably practicable after the expiry of the period of six months beginning with the date on which the certificate is issued.
- (2) The Commission must review each certificate issued under section 21 as soon as is reasonably practicable after the expiry of the period of six months beginning with the date on which a review under subsection (1) or this subsection is finally determined. 25
- (3) The Commission may review a certificate during a period mentioned in subsection (1) or (2) if –
 - (a) the person certified applies for a review, and 30
 - (b) the Commission considers that a review should be held because of a change in circumstance.
- (4) On a review the Commission –
 - (a) must cancel the certificate if it does not agree with the belief or suspicion referred to in section 21(1)(a) or (b), and 35
 - (b) otherwise, may not make any order (save as to leave to appeal).
- (5) A certificate cancelled by order of the Commission under subsection (4) ceases to have effect at the end of the day on which the order is made.
- (6) Where the Commission reviews a certificate under subsection (3), the period for determining the next review of the certificate under subsection (2) shall begin with the date of the final determination of the review under subsection (3). 40

27 Appeal and review: supplementary

- (1) The following provisions of the Special Immigration Appeals Commission Act 1997 (c. 68) shall apply in relation to an appeal or review under section 25 or 26 as they apply in relation to an appeal under section 2 of that Act –
 - (a) section 6 (person to represent appellant’s interests), 5
 - (b) section 7 (further appeal on point of law), and
 - (c) section 7A (pending appeal).
- (2) The reference in subsection (1) to an appeal or review does not include a reference to a decision made or action taken on or in connection with –
 - (a) an application under section 26(3)(a) of this Act, or 10
 - (b) subsection (8) below.
- (3) Subsection (4) applies where –
 - (a) a further appeal is brought by virtue of subsection (1)(b) in connection with an appeal or review, and
 - (b) the Secretary of State notifies the Commission that in his opinion the further appeal is confined to calling into question one or more derogation matters within the meaning of section 30 of this Act. 15
- (4) For the purpose of the application of section 26(1) and (2) of this Act the determination by the Commission of the appeal or review in connection with which the further appeal is brought shall be treated as a final determination. 20
- (5) Rules under section 5 or 8 of the Special Immigration Appeals Commission Act 1997 (general procedure; and leave to appeal) may make provision about an appeal, review or application under section 25 or 26 of this Act.
- (6) Subject to any provision made by virtue of subsection (5), rules under section 5 or 8 of that Act shall apply in relation to an appeal, review or application under section 25 or 26 of this Act with any modification which the Commission considers necessary. 25
- (7) Subsection (8) applies where the Commission considers that an appeal or review under section 25 or 26 which relates to a person’s certification under section 21 is likely to raise an issue which is also likely to be raised in other proceedings before the Commission which relate to the same person. 30
- (8) The Commission shall so far as is reasonably practicable –
 - (a) deal with the two sets of proceedings together, and
 - (b) avoid or minimise delay to either set of proceedings as a result of compliance with paragraph (a). 35
- (9) Cancellation by the Commission of a certificate issued under section 21 shall not prevent the Secretary of State from issuing another certificate, whether on the grounds of a change of circumstance or otherwise.
- (10) The reference in section 81 of the Immigration and Asylum Act 1999 (c. 33) (grants to voluntary organisations) to persons who have rights of appeal under that Act shall be treated as including a reference to suspected international terrorists. 40

28 Duration of sections 21 to 23

- (1) Sections 21 to 23 shall, subject to the following provisions of this section, expire at the end of the period of 15 months beginning with the day on which this Act is passed.
- (2) The Secretary of State may by order – 5
 - (a) repeal sections 21 to 23;
 - (b) revive those sections for a period not exceeding one year;
 - (c) provide that those sections shall not expire in accordance with subsection (1) or an order under paragraph (b) or this paragraph, but shall continue in force for a period not exceeding one year. 10
- (3) An order under subsection (2) –
 - (a) must be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) An order may be made without compliance with subsection (3)(b) if it contains a declaration by the Secretary of State that by reason of urgency it is necessary to make the order without laying a draft before Parliament; in which case the order – 15
 - (a) must be laid before Parliament, and
 - (b) shall cease to have effect at the end of the period specified in subsection (5) unless the order is approved during that period by resolution of each House of Parliament. 20
- (5) The period referred to in subsection (4)(b) is the period of 40 days –
 - (a) beginning with the day on which the order is made, and
 - (b) ignoring any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. 25
- (6) The fact that an order ceases to have effect by virtue of subsection (4) –
 - (a) shall not affect the lawfulness of anything done before the order ceases to have effect, and 30
 - (b) shall not prevent the making of a new order.

29 Exclusion of legal proceedings

- (1) No court or tribunal may, except as provided by a provision of this Part, entertain proceedings for questioning –
 - (a) a decision or action of the Secretary of State in connection with certification under section 21 or a provision of sections 21 to 31, or 35
 - (b) a decision or action of the Special Immigration Appeals Commission taken by virtue of or in connection with a provision of sections 21 to 27.
- (2) No court or tribunal other than the Special Immigration Appeals Commission may entertain proceedings for questioning an action of the Secretary of State taken in reliance on section 22 or 23. 40
- (3) A certificate of the Secretary of State that specified action is taken in reliance on section 22 or 23 shall be conclusive of the matter certified.

30 Legal proceedings: derogation

- (1) In this section “derogation matter” means –
- (a) a derogation by the United Kingdom from Article 5(1) of the Convention on Human Rights which relates to the detention of a person where there is an intention to remove or deport him from the United Kingdom, or 5
 - (b) the designation under section 14(1) of the Human Rights Act 1998 (c. 42) of a derogation within paragraph (a) above.
- (2) Except as provided by this section, no court or tribunal may entertain proceedings if or in so far as they call a derogation matter into question. 10
- (3) The Special Immigration Appeals Commission may entertain proceedings which call a derogation matter into question; and the Commission –
- (a) is the appropriate tribunal for the purpose of section 7 of the Human Rights Act 1998 in relation to proceedings all or part of which call a derogation matter into question; and 15
 - (b) may hear proceedings which could, but for subsection (2), be brought in the High Court or the Court of Session.
- (4) In relation to proceedings brought by virtue of subsection (3) –
- (a) section 6 of the Special Immigration Appeals Commission Act 1997 (c. 68) (person to represent appellant’s interests) shall apply with the reference to the appellant being treated as a reference to any party to the proceedings, 20
 - (b) rules under section 5 or 8 of that Act (general procedure; and leave to appeal) shall apply with any modification which the Commission considers necessary, and 25
 - (c) in the case of proceedings brought by virtue of subsection (3)(b), the Commission may do anything which the High Court may do (in the case of proceedings which could have been brought in that court) or which the Court of Session may do (in the case of proceedings which could have been brought in that court). 30
- (5) The Commission’s power to award costs (or, in Scotland, expenses) by virtue of subsection (4)(c) may be exercised only in relation to such part of proceedings before it as calls a derogation matter into question.
- (6) In relation to proceedings brought by virtue of subsection (3)(a) or (b) –
- (a) an appeal may be brought to the appropriate appeal court (within the meaning of section 7 of the Special Immigration Appeals Commission Act 1997) with the leave of the Commission or, if that leave is refused, with the leave of the appropriate appeal court, and 35
 - (b) the appropriate appeal court may consider and do only those things which it could consider and do in an appeal brought from the High Court or the Court of Session in proceedings for judicial review. 40
- (7) In relation to proceedings which are entertained by the Commission under subsection (3) but are not brought by virtue of subsection (3)(a) or (b), subsection (5) shall apply in so far as the proceedings call a derogation matter into question. 45
- (8) In this section “the Convention on Human Rights” has the meaning given to “the Convention” by section 21(1) of the Human Rights Act 1998.

31 Interpretation

A reference in section 22, 23 or 24 to a provision of the Immigration Act 1971 (c. 77) includes a reference to that provision as applied by –

- (a) another provision of that Act, or
- (b) another Act.

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32 Channel Islands and Isle of Man

Her Majesty may by Order in Council direct that sections 21 to 31 shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

Refugee Convention

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33 Certificate that Convention does not apply

(1) This section applies to an asylum appeal before the Special Immigration Appeals Commission where the Secretary of State issues a certificate that –

- (a) the appellant is not entitled to the protection of Article 33(1) of the Refugee Convention because Article 1(F) or 33(2) applies to him (whether or not he would be entitled to protection if that Article did not apply), and
- (b) the removal of the appellant from the United Kingdom would be conducive to the public good.

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(2) In this section –

“asylum appeal” means an appeal under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) in which the appellant makes a claim for asylum (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33)), and
“the Refugee Convention” has the meaning given by that section.

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(3) Where this section applies the Commission must begin its substantive deliberations on the asylum appeal by considering the statements in the Secretary of State’s certificate.

(4) If the Commission agrees with those statements it must dismiss such part of the asylum appeal as amounts to a claim for asylum (before considering any other aspect of the case).

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(5) If the Commission does not agree with those statements it must quash the decision or action against which the asylum appeal is brought.

(6) Where a decision or action is quashed under subsection (5) –

- (a) the quashing shall not prejudice any later decision or action, whether taken on the grounds of a change of circumstance or otherwise, and
- (b) the claim for asylum made in the course of the asylum appeal shall be treated for the purposes of section 15 of the Immigration and Asylum Act 1999 (interim protection from removal) as undecided until it has been determined whether to take a new decision or action of the kind quashed.

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(7) The Secretary of State may revoke a certificate issued under subsection (1).

(8) No court may entertain proceedings for questioning –

- (a) a decision or action of the Secretary of State in connection with certification under subsection (1),
 - (b) a decision of the Secretary of State in connection with a claim for asylum (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33)) in a case in respect of which he issues a certificate under subsection (1) above, 5
 - (c) a decision or action of the Secretary of State taken as a consequence of the dismissal of all or part of an asylum appeal in pursuance of subsection (4), or
 - (d) a decision of the Special Immigration Appeals Commission on or in connection with an asylum appeal to which this section applies. 10
- (9) Subsection (8) shall not prevent an appeal under section 7 of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeal on point of law).
- (10) Her Majesty may by Order in Council direct that this section shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man. 15

34 Construction

- (1) Articles 1(F) and 33(2) of the Refugee Convention (exclusions: war criminals, national security, &c.) shall not be taken to require consideration of the gravity of— 20
- (a) events or fear by virtue of which Article 1(A) would or might apply to a person if Article 1(F) did not apply, or
 - (b) a threat by reason of which Article 33(1) would or might apply to a person if Article 33(2) did not apply.
- (2) In this section “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to the Convention. 25

Fingerprints

35 Destruction of fingerprints

- (1) In section 143 of the Immigration and Asylum Act 1999 (destruction of fingerprints)— 30
- (a) subsections (3) to (8) (requirement to destroy fingerprints on resolution of asylum and immigration cases) shall cease to have effect,
 - (b) in subsection (9) (dependants) after “F” insert “(within the meaning of section 141(7))”, and 35
 - (c) subsection (14) (interpretation) shall cease to have effect.
- (2) Subsection (1)—
- (a) shall have effect in relation to fingerprints whether taken before or after the coming into force of this section, and
 - (b) in relation to fingerprints which before the coming into force of this section were required by section 143 to be destroyed, shall be treated as having had effect before the requirement arose. 40

PART 5

RACE AND RELIGION

36 Meaning of racial hatred

In section 17 of the Public Order Act 1986 (c. 64) (racial hatred defined by reference to a group of persons in Great Britain) omit the words “in Great Britain”. 5

37 Meaning of fear and hatred

In Article 8 of the Public Order (Northern Ireland) Order 1987 (S.I. 1987/463 (N.I. 7)) in the definition of fear and the definition of hatred (fear and hatred defined by reference to a group of persons in Northern Ireland) omit the words “in Northern Ireland”. 10

38 Religious hatred offences

- (1) Part 3 of the Public Order Act 1986 (racial hatred offences) is amended as set out in subsections (2) to (6).
- (2) For the heading substitute “RACIAL OR RELIGIOUS HATRED”. 15
- (3) After section 17 insert –

“Meaning of “religious hatred”

17A Meaning of “religious hatred”

In this Part “religious hatred” means hatred against a group of persons defined by reference to religious belief or lack of religious belief.” 20

- (4) In the following provisions for “racial hatred” substitute “racial or religious hatred” –
 - (a) the cross-heading preceding section 18;
 - (b) section 18(1) and (5) (use of words or behaviour or display of written material); 25
 - (c) section 19(1) and (2) (publishing or distributing written material);
 - (d) section 20(1) and (2) (public performance of play);
 - (e) section 21(1) and (3) (distributing, showing or playing a recording);
 - (f) section 22(1), (3), (4), (5) and (6) (broadcasting or including programme in cable programme service); 30
 - (g) section 23(1) and (3) (possession of racially inflammatory material).
- (5) In the sidenote to section 23 and the preceding cross-heading for “racially inflammatory” substitute “inflammatory”.
- (6) In section 29 (interpretation) after the definition of “recording” insert –

““religious hatred” has the meaning given by section 17A;”.

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- (7) In section 24(2) of the Police and Criminal Evidence Act 1984 (c. 60) (arrestable offences) in paragraph (i) (offences under section 19 of the Public Order Act 1986) for “racial hatred” substitute “racial or religious hatred”.

39 Religiously aggravated offences

- (1) Part 2 of the Crime and Disorder Act 1998 (c. 37) is amended as set out in subsections (2) to (6).
- (2) In the cross-heading preceding section 28 for “Racially-aggravated” substitute “Racially or religiously aggravated”. 5
- (3) In section 28 (meaning of racially aggravated) –
- (a) in the sidenote and subsection (1) for “racially aggravated” substitute “racially or religiously aggravated”;
 - (b) in subsections (1) and (2) for “racial group” substitute “racial or religious group”; 10
 - (c) in subsection (3) for the words from “on” to the end of the subsection substitute “on any other factor not mentioned in that paragraph.”
- (4) In section 28 after subsection (4) insert –
- “(5) In this section “religious group” means a group of persons defined by reference to religious belief or lack of religious belief.” 15
- (5) In each of the provisions listed in subsection (6) –
- (a) in the sidenote for “Racially-aggravated” substitute “Racially or religiously aggravated”;
 - (b) in subsection (1) for “racially aggravated” substitute “racially or religiously aggravated”. 20
- (6) The provisions are –
- (a) section 29 (assaults);
 - (b) section 30 (criminal damage);
 - (c) section 31 (public order offences);
 - (d) section 32 (harassment etc.). 25
- (7) In section 153 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (increase in sentences for racial aggravation) –
- (a) in the sidenote for “racial aggravation” substitute “racial or religious aggravation”;
 - (b) in subsection (1) for the words from “racially-aggravated assaults” to the end of the subsection substitute “racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc.”; 30
 - (c) in subsections (2) and (3) for “racially aggravated” substitute “racially or religiously aggravated”.
- (8) In section 24(2) of the Police and Criminal Evidence Act 1984 (c. 60) (arrestable offences) in paragraph (p) (offences falling within section 32(1)(a) of the Crime and Disorder Act 1998) for “racially-aggravated” substitute “racially or religiously aggravated”. 35

40 Racial or religious hatred offences: penalties

- In section 27(3) of the Public Order Act 1986 (c. 64) (penalties for racial or religious hatred offences) for “two years” substitute “seven years”. 40

41 Hatred and fear offences: penalties

In Article 16(1) of the Public Order (Northern Ireland) Order 1987 (S.I. 1987/463 (N.I. 7)) (penalties for offences involving stirring up hatred or arousing fear) for “2 years” substitute “7 years”.

42 Saving

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This Part does not apply to anything done before it comes into force.

PART 6

WEAPONS OF MASS DESTRUCTION

Amendment of the Biological Weapons Act 1974 and the Chemical Weapons Act 1996

43 Transfers of biological agents and toxins

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In section 1 of the Biological Weapons Act 1974 (c. 6) (restriction on development etc. of certain biological agents and toxins and of biological weapons), after subsection (1) insert –

“(1A) A person shall not –

(a) transfer any biological agent or toxin to another person or enter into an agreement to do so, or

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(b) make arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so,

if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other peaceful purposes and he knows or has reason to believe that that is the case.”

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44 Extraterritorial application of biological weapons offences

After section 1 of the Biological Weapons Act 1974 insert –

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“1A Extraterritorial application of section 1

(1) Section 1 applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

(2) Proceedings for an offence committed under section 1 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.

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(3) Her Majesty may by Order in Council extend the application of section 1, so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony.

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(4) In this section “United Kingdom person” means a United Kingdom national, a Scottish partnership or a body incorporated under the law of a part of the United Kingdom .

- (5) For this purpose a United Kingdom national is an individual who is –
- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
 - (c) a British protected person within the meaning of that Act.
- (6) Nothing in this section affects any criminal liability arising otherwise than under this section.” 5
- 45 Customs and Excise prosecutions for biological weapons offences**
- Before section 2 of the Biological Weapons Act 1974 (c. 6) insert – 10
- “1B Customs and Excise prosecutions**
- (1) Proceedings for a biological weapons offence may be instituted by order of the Commissioners of Customs and Excise if it appears to them that the offence has involved either –
- (a) the movement of any thing mentioned in section 1(1)(a) or (b) above into or out of any country or territory; or
 - (b) any proposal or attempt to move any such thing into or out of any country or territory.
- (2) In this section “biological weapons offence” means an offence under section 1 of this Act or section 50 of the Anti-Terrorism, Crime and Security Act 2001 (including an offence of aiding, abetting, counselling, procuring or inciting the commission of, or attempting or conspiring to commit, such an offence). 20
- (3) Any proceedings for an offence which are instituted under subsection (1) above shall be commenced in the name of an officer, but may be continued by another officer. 25
- (4) Where the Commissioners of Customs and Excise investigate, or propose to investigate, any matter with a view to determining –
- (a) whether there are grounds for believing that a biological weapons offence has been committed, or
 - (b) whether a person should be prosecuted for such an offence,
- that matter shall be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979. 30
- (5) Nothing in this section affects any power of any person (including any officer) apart from this section. 35
- (6) In this section “officer” means a person commissioned by the Commissioners of Customs and Excise.
- (7) This section does not apply to proceedings in Scotland.”
- 46 Customs and Excise prosecutions for chemical weapons offences**
- Before section 31 of the Chemical Weapons Act 1996 (c. 6) insert – 40

“30A Customs and Excise prosecutions

- (1) Proceedings for a chemical weapons offence may be instituted by order of the Commissioners of Customs and Excise if it appears to them that the offence has involved either –
- (a) the movement of any chemical weapon into or out of any country or territory; or
 - (b) any proposal or attempt to move any chemical weapon into or out of any country or territory.
- (2) In this section “chemical weapons offence” means an offence under section 2 above or section 50 of the Anti-Terrorism Act 2001 (including an offence of aiding, abetting, counselling, procuring or inciting the commission of, or attempting or conspiring to commit, such an offence).
- (3) Any proceedings for an offence which are instituted under subsection (1) shall be commenced in the name of an officer, but may be continued by another officer.
- (4) Where the Commissioners of Customs and Excise investigate, or propose to investigate, any matter with a view to determining –
- (a) whether there are grounds for believing that a chemical weapons offence has been committed, or
 - (b) whether a person should be prosecuted for such an offence,
- that matter shall be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979.
- (5) Nothing in this section affects any power of any person (including any officer) apart from this section.
- (6) In this section “officer” means a person commissioned by the Commissioners of Customs and Excise.
- (7) This section does not apply to proceedings in Scotland.”

Nuclear weapons

47 Use etc. of nuclear weapons

- (1) A person who –
- (a) knowingly causes a nuclear weapon explosion;
 - (b) develops or produces, or participates in the development or production of, a nuclear weapon;
 - (c) has a nuclear weapon in his possession;
 - (d) participates in the transfer of a nuclear weapon; or
 - (e) engages in military preparations, or in preparations of a military nature, intending to use, or threaten to use, a nuclear weapon,
- is guilty of an offence.
- (2) Subsection (1) has effect subject to the exceptions and defences in sections 48 and 49.
- (3) For the purposes of subsection (1)(b) a person participates in the development or production of a nuclear weapon if he does any act which –

-
- (a) facilitates the development by another of the capability to produce or use a nuclear weapon, or
- (b) facilitates the making by another of a nuclear weapon, knowing or having reason to believe that his act has (or will have) that effect.
- (4) For the purposes of subsection (1)(d) a person participates in the transfer of a nuclear weapon if – 5
- (a) he buys or otherwise acquires it or agrees with another to do so;
- (b) he sells or otherwise disposes of it or agrees with another to do so; or
- (c) he makes arrangements under which another person either acquires or disposes of it or agrees with a third person to do so. 10
- (5) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.
- (6) In this section “nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon.
- (7) This section applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person. 15
- (8) Paragraph (a) of subsection (1) shall cease to have effect on the coming into force of the Nuclear Explosions (Prohibition and Inspections) Act 1998 (c. 7).
- 48 Exceptions**
- (1) Nothing in section 47 applies – 20
- (a) to an act which is authorised under subsection (2); or
- (b) to an act done in the course of an armed conflict.
- (2) The Secretary of State may –
- (a) authorise any act which would otherwise contravene section 47 in such manner and on such terms as he thinks fit; and 25
- (b) withdraw or vary any authorisation given under this subsection.
- (3) Any question arising in proceedings for an offence under section 47 as to whether anything was done in the course of an armed conflict shall be determined by the Secretary of State.
- (4) A certificate purporting to set out any such determination and to be signed by the Secretary of State shall be received in evidence in any such proceedings and shall be presumed to be so signed unless the contrary is shown. 30
- 49 Defences**
- (1) In proceedings for an offence under 47(1)(c) or (d) relating to an object it is a defence for the accused to show that he did not know and had no reason to believe that the object was a nuclear weapon. 35
- (2) But he shall be taken to have shown that fact if –
- (a) sufficient evidence is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (3) In proceedings for such an offence it is also a defence for the accused to show that he knew or believed that the object was a nuclear weapon but, as soon as reasonably practicable after he first knew or believed that fact, he took all 40

reasonable steps to inform the Secretary of State or a constable of his knowledge or belief.

Assisting or inducing weapons-related acts overseas

50 Assisting or inducing certain weapons-related acts overseas

- (1) A person who aids, abets, counsels or procures, or incites, a person who is not a United Kingdom person to do a relevant act outside the United Kingdom is guilty of an offence. 5
- (2) For this purpose a relevant act is an act that, if done by a United Kingdom person, would contravene any of the following provisions –
 - (a) section 1 of the Biological Weapons Act 1974 (offences relating to biological agents and toxins); 10
 - (b) section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons); or
 - (c) section 47 above (offences relating to nuclear weapons).
- (3) Nothing in this section applies to an act mentioned in subsection (1) which –
 - (a) relates to a relevant act which would contravene section 47; and
 - (b) is authorised by the Secretary of State;and section 48(2) applies for the purpose of authorising acts that would otherwise constitute an offence under this section. 15
- (4) A person accused of an offence under this section in relation to a relevant act which would contravene a provision mentioned in subsection (2) may raise any defence which would be open to a person accused of the corresponding offence ancillary to an offence under that provision. 20
- (5) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for life. 25
- (6) This section applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.
- (7) Nothing in this section prejudices any criminal liability existing apart from this section.

Supplemental provisions relating to sections 47 and 50 30

51 Extraterritorial application

- (1) Proceedings for an offence committed under section 47 or 50 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any part of the United Kingdom.
- (2) Her Majesty may by Order in Council extend the application of section 47 or 50, so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony. 35

52 Powers of entry

- (1) If – 40

- (a) a justice of the peace is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under section 47 or 50 is to be found on any premises; or
- (b) in Scotland a justice (within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995 (c. 46)) is satisfied by evidence on oath as mentioned in paragraph (a) above, 5
- he may issue a warrant authorising a constable or an authorised officer to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.
- (2) The powers of a person who enters the premises under the authority of the warrant include power – 10
- (a) to take with him such other persons and such equipment as appear to him to be necessary;
- (b) to inspect, seize and retain any substance, equipment or document found on the premises; 15
- (c) to require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form –
- (i) in which he can read and copy it; or
- (ii) from which it can readily be produced in a form in which he can read and copy it; 20
- (d) to copy any document which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under section 47 or 50.
- (3) A constable who enters premises under the authority of a warrant or by virtue of subsection (2)(a) may – 25
- (a) give such assistance as an authorised officer may request for the purpose of facilitating the exercise of any power under this section; and
- (b) search or cause to be searched any person on the premises who the constable has reasonable cause to believe may have in his possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under section 47 or 50. 30
- (4) No constable shall search a person of the opposite sex.
- (5) The powers conferred by a warrant under this section shall only be exercisable, if the warrant so provides, in the presence of a constable. 35
- (6) A person who –
- (a) wilfully obstructs an authorised officer in the exercise of a power conferred by a warrant under this section; or
- (b) fails without reasonable excuse to comply with a reasonable request made by an authorised officer or a constable for the purpose of facilitating the exercise of such a power, 40
- is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and 45
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine (or both).

- (8) In this section “authorised officer” means an authorised officer of the Secretary of State.

53 Customs and Excise prosecutions

- (1) Proceedings for a nuclear weapons offence may be instituted by order of the Commissioners of Customs and Excise if it appears to them that the offence has involved either – 5
- (a) the movement of a nuclear weapon into or out of any country or territory; or
 - (b) any proposal or attempt to move a nuclear weapon into or out of any country or territory. 10
- (2) In this section “nuclear weapons offence” means an offence under section 47 or 50 (including an offence of aiding, abetting, counselling, procuring or inciting the commission of, or attempting or conspiring to commit, such an offence).
- (3) Any proceedings for an offence which are instituted under subsection (1) shall be commenced in the name of an officer, but may be continued by another officer. 15
- (4) Where the Commissioners of Customs and Excise investigate, or propose to investigate, any matter with a view to determining – 20
- (a) whether there are grounds for believing that a nuclear weapons offence has been committed, or
 - (b) whether a person should be prosecuted for such an offence, that matter shall be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979 (c. 2).
- (5) Nothing in this section affects any powers of any person (including any officer) apart from this section. 25
- (6) In this section “officer” means a person commissioned by the Commissioners of Customs and Excise.
- (7) This section does not apply to proceedings in Scotland.

54 Offences

- (1) A person who knowingly or recklessly makes a false or misleading statement for the purpose of obtaining (or opposing the variation or withdrawal) of authorisation for the purposes of section 47 or 50 is guilty of an offence. 30
- (2) A person guilty of an offence under subsection (1) is liable – 35
- (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both).
- (3) Where an offence under section 47, 50 or subsection (1) above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of – 40
- (a) a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (4) In subsection (3) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

55 Consent to prosecutions 5

Proceedings for an offence under section 47 or 50 shall not be instituted –

- (a) in England and Wales, except by or with the consent of the Attorney General;
- (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland. 10

56 Interpretation of Part 6

- (1) In this Part “United Kingdom person” means a United Kingdom national, a Scottish partnership or a body incorporated under the law of a part of the United Kingdom.
- (2) For this purpose a United Kingdom national is an individual who is – 15
- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
- (c) a British protected person within the meaning of that Act. 20

Extension of Part 6 to dependencies

57 Power to extend Part 6 to dependencies

Her Majesty may by Order in Council direct that any of the provisions of this Part shall extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands, the Isle of Man or to any British overseas territory. 25

PART 7

SECURITY OF PATHOGENS AND TOXINS

58 Pathogens and toxins in relation to which requirements under Part 7 apply

- (1) Schedule 5 (which lists the pathogens and toxins in relation to which the requirements of this Part apply) has effect. 30
- (2) The Secretary of State may by order modify any provision of Schedule 5 (including the notes).
- (3) The Secretary of State may not add any pathogen or toxin to that Schedule unless he is satisfied that the pathogen or toxin is capable of endangering life or causing serious harm to human health. 35
- (4) In this Part “dangerous substance” means –
- (a) anything which consists of or includes a substance for the time being mentioned in Schedule 5; or

- (b) anything which is infected with or otherwise carries any such substance.

59 Duty to notify Secretary of State before keeping or using any dangerous substance

- (1) The occupier of any premises must give a notice to the Secretary of State before any dangerous substance is kept or used there. 5
- (2) Subsection (1) does not apply to premises in respect of which a notice has previously been given under that subsection (unless it has been withdrawn).
- (3) The occupier of any premises in respect of which a notice has been given may withdraw the notice if no dangerous substance is kept or used there. 10
- (4) A notice under this section must –
 - (a) identify the premises in which the substance is kept or used;
 - (b) identify any building or site of which the premises form part; and
 - (c) contain such other particulars (if any) as may be prescribed.
- (5) The occupier of any premises in which any dangerous substance is kept or used on the day on which this section comes into force must give a notice under this section before the end of the period of one month beginning with that day. 15
- (6) Where –
 - (a) a substance which is kept or used in any premises becomes a dangerous substance by virtue of a modification of Schedule 5, but
 - (b) no other dangerous substance is kept or used there,the occupier of the premises must give a notice under this section before the end of the period of one month beginning with the day on which that modification comes into force. 20

60 Power to require information about security of dangerous substances 25

- (1) A constable may give to the occupier of any relevant premises a notice requiring him to give the chief officer of police such information as is specified or described in the notice by a time so specified and in a form and manner so specified.
- (2) The required information must relate to the measures taken (whether by the occupier or any other person) to ensure the security of any dangerous substance kept or used in the premises. 30
- (3) In this Part references to measures taken to ensure the security of any dangerous substance kept or used in any relevant premises include –
 - (a) measures taken to ensure the security of any building or site of which the premises form part; and
 - (b) measures taken for the purpose of ensuring access to the substance is given only to those whose activities require access and only in circumstances that ensure the security of the substance. 35
- (4) In this Part “relevant premises” means any premises in which any dangerous substance is kept or used. 40

61 Power to require information about persons with access to dangerous substances

- (1) A police officer of at least the rank of inspector may give to the occupier of any relevant premises a notice requiring him to give the chief officer of police a list of – 5
- (a) each person who has access to any dangerous substance kept or used there;
 - (b) each person who, in such circumstances as are specified or described in the notice, has access to such part of the premises (if any) as may be so specified or described; 10
 - (c) each person who, in such circumstances as are specified or described in the notice, has access to the premises; and
 - (d) each person who, in such circumstances as are specified or described in the notice, has access to any building or site of which the premises form part. 15
- (2) A list under subsection (1) must be given before the end of the period of one month beginning with the day on which the notice is given.
- (3) Where a list under subsection (1) is given, the occupier of the premises for the time being –
- (a) must secure that only the persons mentioned in the list are given the access identified in the list relating to them; but 20
 - (b) may give a supplementary list to the chief officer of police of other persons to whom it is proposed to give access.
- (4) Where a supplementary list is given under subsection (3)(b), the occupier of the premises for the time being must secure that persons mentioned in that list do not have the proposed access relating to them until the end of the period of 30 days beginning with the day on which that list is given. 25
- (5) The chief officer of police may direct that a person may have such access before the end of that period.
- (6) The Secretary of State may by order modify the period mentioned in subsection (4). 30
- (7) Any list under this section must –
- (a) identify the access which the person has, or is proposed to have;
 - (b) state the full name of that person, his date of birth, his address and his nationality; and 35
 - (c) contain such other matters (if any) as may be prescribed.

62 Duty to comply with security directions

- (1) A constable may give directions to the occupier of any relevant premises requiring him to take such measures to ensure the security of any dangerous substance kept or used there as are specified or described in the directions by a time so specified. 40
- (2) The directions may –
- (a) specify or describe the substances in relation to the security of which the measures relate; and

- (b) require the occupier to give a notice to the chief officer of police before any other dangerous substance specified or described in the directions is kept or used in the premises.

63 Duty to dispose of dangerous substances

- (1) Where the Secretary of State has reasonable grounds for believing that adequate measures to ensure the security of any dangerous substance kept or used in any relevant premises are not being taken and are unlikely to be taken, he may give a direction to the occupier of the premises requiring him to dispose of the substance. 5
- (2) The direction must – 10
 - (a) specify the manner in which, and time by which, the dangerous substance must be disposed of; or
 - (b) require the occupier to produce the dangerous substance to a person specified or described in the notice in a manner and by a time so specified for him to dispose of. 15

64 Denial of access to dangerous substances

- (1) The Secretary of State may give directions to the occupier of any relevant premises requiring him to secure that the person identified in the directions –
 - (a) is not to have access to any dangerous substance kept or used there;
 - (b) is not to have, in such circumstances (if any) as may be specified or described in the directions, access to such part (if any) of the premises as may be so specified or described; 20
 - (c) is not to have, in such circumstances (if any) as may be specified or described in the directions, access to the premises; and
 - (d) is not to have, in such circumstances (if any) as may be specified or described in the directions, access to any building or site of which the premises form part. 25
- (2) The directions must be given under the hand of the Secretary of State.
- (3) The Secretary of State may not give the directions unless he believes that they are necessary in the interests of national security. 30

65 Powers of entry

- (1) A constable may, on giving notice under this section, enter any relevant premises, or any building or site of which the premises form part, at a reasonable time for the purpose of assessing the measures taken to ensure the security of any dangerous substance kept or used in the premises. 35
- (2) The notice must be given to the occupier of the premises, or (as the case may be) the occupier of the building or site of which the premises form part, at least 2 working days before the proposed entry.
- (3) The notice must set out the purpose mentioned in subsection (1).
- (4) A constable who has entered any premises, building or site by virtue of subsection (1) may for the purpose mentioned in that subsection – 40
 - (a) search the premises, building or site;

- (b) require any person who appears to the constable to be in charge of the premises, building or site to facilitate any such inspection; and
 - (c) require any such person to answer any question.
- (5) The powers of a constable under this section include power to take with him such other persons as appear to him to be necessary. 5

66 Search warrants

- (1) If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing –
- (a) that a dangerous substance is kept or used in any premises but that no notice under section 59 is in force in respect of the premises, or 10
 - (b) that the occupier of any relevant premises is failing to comply with any direction given to him under section 62 or 63,
- and that any of the conditions mentioned in subsection (3) apply, he may issue a warrant authorising a constable to enter the premises, if necessary by force, and to search them. 15
- (2) A constable may seize and retain anything which he believes is or contains a dangerous substance.
- (3) The conditions mentioned in subsection (1) are –
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises; 20
 - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to any substance which may be a dangerous substance;
 - (c) that entry to the premises will not be granted unless a warrant is produced; 25
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (4) In the application of subsection (1) to Scotland the reference to a justice of the peace is to a justice within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995 (c. 46). 30

67 Offences

- (1) An occupier who fails without reasonable excuse to comply with any duty or direction imposed on him by or under this Part is guilty of an offence. 35
- (2) A person who, in giving any information to a person exercising functions under this Part, knowingly or recklessly makes a statement which is false or misleading in a material particular is guilty of an offence.
- (3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine (or both); and 40
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

68 Offences: bodies corporate

- (1) If an offence under this Part committed by a body corporate is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) any officer, or 5
 - (b) any other employee of the body corporate who is in charge of any relevant premises or the access to any dangerous substance kept or used there,
he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly. 10
- (2) In this section “officer”, in relation to a body corporate, means –
 - (a) any director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity.
- (3) Where the affairs of a body corporate are managed by its members, this section applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 15

69 Offences: partnerships and unincorporated associations

- (1) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of any of its members). 20
- (2) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.
- (3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate. 25
- (4) In proceedings for an offence brought against the partnership or association –
 - (a) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43) (procedure) apply as they do in relation to a body corporate;
 - (b) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (procedure) apply as they do in relation to a body corporate; 30
 - (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (procedure) apply as they do in relation to a body corporate. 35
- (5) If an offence under this Part committed by a partnership is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a partner or a person purporting to act as a partner, or
 - (b) any employee of the partnership who is in charge of any relevant premises or the access to any dangerous substance kept or used there,
he, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly. 40
- (6) If an offence under this Part committed by an unincorporated association is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of – 45

- (a) any officer, or
 - (b) any employee of the association who is in charge of any relevant premises or the access to any dangerous substance kept or used there, he, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly. 5
- (7) In subsection (6) “officer”, in relation to any association, means –
- (a) any officer of the association or any member of its governing body; or
 - (b) any person purporting to act in such a capacity.

70 Denial of access to dangerous substances: appeals

- (1) There shall be a commission, to be known as the Pathogens Access Appeal Commission. 10
- (2) Any person aggrieved by directions given under section 64 may appeal to the Commission.
- (3) The Commission must allow an appeal if it considers that the decision to give the directions was flawed when considered in the light of the principles applicable on an application for judicial review. 15
- (4) A party to any appeal under this section which the Commission has determined may bring a further appeal on a question of law to –
- (a) the Court of Appeal, if the first appeal was heard in England and Wales;
 - (b) the Court of Session, if the first appeal was heard in Scotland; or 20
 - (c) the Court of Appeal in Northern Ireland, if the first appeal was heard in Northern Ireland.
- (5) An appeal under subsection (4) may be brought only with the permission of –
- (a) the Commission; or
 - (b) where the Commission refuses permission, the court to which the appeal would be brought. 25
- (6) Schedule 6 (constitution of the Commission and procedure) has effect.

71 Other appeals

- (1) Any person who is required to do any act in response to –
- (a) any notice under section 60, or 30
 - (b) any directions under section 62 or 63,
- may appeal to a magistrates’ court against the requirement on the ground that, having regard to all the circumstances of the case, it is unreasonable to be required to do that act.
- (2) An appeal may not be brought after the end of the period of one month beginning with the day on which the notice or directions were given. 35
- (3) If the magistrates’ court allows the appeal, it may –
- (a) direct that the required act need not be done; or
 - (b) make such modification of the requirement as it considers appropriate.
- (4) An appeal shall lie to the Crown Court against any decision of the magistrates’ court. 40
- (5) In the application of this section to Scotland –

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- (a) references to a magistrates’ court are to the sheriff; and
(b) the reference to the Crown Court is to the High Court of Justiciary.
- (6) In the application of this section to Northern Ireland references to a magistrates’ court are to a court of summary jurisdiction.
- 72 Giving of directions or notices** 5
- Any direction or notice under this Part may be given by post.
- 73 Orders and regulations**
- (1) The power to make an order or regulations under this Part is exercisable by statutory instrument.
- (2) A statutory instrument containing an order under section 58 shall not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament. 10
- (3) A statutory instrument containing –
(a) an order under section 61, or
(b) regulations under section 59 or 61 or Schedule 5, 15
shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 74 Interpretation**
- (1) In this Part –
- “chief officer of police” means – 20
(a) in relation to any premises in Great Britain, the chief officer of police for the area in which the premises are situated; and
(b) in relation to any premises in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland;
- “dangerous substance” has the meaning given in section 58; 25
“direction” means a direction in writing;
“notice” means a notice in writing;
“occupier” includes a partnership or unincorporated association and, in relation to premises that are unoccupied, means any person entitled to occupy the premises; 30
“prescribed” means prescribed in regulations made by the Secretary of State; and
“relevant premises” has the meaning given in section 60.
- (2) In this Part references to measures taken to ensure the security of any dangerous substance are to be construed in accordance with section 60. 35
- 75 Power to extend Part 7 to animal or plant pathogens, pests or toxic chemicals**
- (1) The Secretary of State may, in relation to anything to which this section applies, make an order applying, or making provision corresponding to, any provision of this Part, with or without modifications.
- (2) This section applies to – 40

- (a) toxic chemicals (within the meaning of the Chemical Weapons Act 1996 (c. 6));
 - (b) animal pathogens;
 - (c) plant pathogens; and
 - (d) pests. 5
- (3) The power under this section may be exercised in relation to any chemical only if the Secretary of State is satisfied that the chemical is capable of endangering life or causing serious harm to human health.
- (4) The power under this section may be exercised in relation to any pathogen or pest only if the Secretary of State is satisfied that there is a risk that the pathogen or pest is of a description that could be used to cause— 10
- (a) widespread damage to property;
 - (b) significant disruption to the public; or
 - (c) significant alarm to the public.
- (5) An order under this section may — 15
- (a) provide for any reference in the order to an instrument or other document to take effect as a reference to that instrument or document as revised or re-issued from time to time;
 - (b) make different provision for different purposes; and
 - (c) make such incidental, supplementary and transitional provision as the Secretary of State thinks fit. 20
- (6) A statutory instrument containing an order under this section shall not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

PART 8

25

SECURITY OF NUCLEAR INDUSTRY

76 Atomic Energy Authority special constables

- (1) Section 3 of the Special Constables Act 1923 (c. 11) shall have effect as if all nuclear sites that are not for the time being designated under subsection (2) were premises under the control of the United Kingdom Atomic Energy Authority. 30
- (2) The Secretary of State may by order made by statutory instrument designate any nuclear sites which appear to him to be used wholly or mainly for defence purposes as premises to which subsection (1) does not apply.
- (3) An AEA constable shall have the powers and privileges (and be liable to the duties and responsibilities) of a constable anywhere within 5 kilometres of the limits of the nuclear sites to which subsection (1) applies. 35
- (4) An AEA constable shall have the powers and privileges (and be liable to the duties and responsibilities) of a constable anywhere it appears to him expedient to go — 40
- (a) in order to safeguard any nuclear material which is being carried (or being trans-shipped or stored incidentally to its carriage) before its delivery at its final destination; or

- (b) in order to pursue, arrest, place in the custody of the police, or take to any premises within which the constable was appointed to act, a person who the constable reasonably believes has (or has attempted to) unlawfully remove or interfere with any nuclear material being safeguarded by the constable. 5
- (5) An AEA constable shall have the powers and privileges (and be liable to the duties and responsibilities) of a constable at any place at which he reasonably believes a particular consignment of nuclear material will be trans-shipped or stored incidentally to its carriage, in order to ensure the security of the nuclear material on its arrival at that place. 10
- (6) This section has effect in United Kingdom waters adjacent to Great Britain as it applies in Great Britain.
- (7) In this section –
“AEA constable” means a person appointed on the nomination of the United Kingdom Atomic Energy Authority to be a special constable under section 3 of the Special Constables Act 1923 (c. 11); 15
“nuclear material” means –
(a) any fissile material in the form of uranium metal, alloy or chemical compound, or of plutonium metal, alloy or chemical compound; or 20
(b) any other fissile material which may be prescribed by regulations made by the Secretary of State;
“nuclear site” means premises in respect of which a nuclear site licence (within the meaning of the Nuclear Installations Act 1965 (c. 57)) is for the time being in force; and 25
“United Kingdom waters” means waters within the seaward limits of the territorial sea.
- (8) An order under subsection (2) shall be laid before Parliament after being made.
- (9) The power to make regulations under subsection (7) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 30

77 Regulation of security of civil nuclear industry

- (1) The Secretary of State may make regulations for the purpose of ensuring the security of –
(a) nuclear sites and other nuclear premises; 35
(b) nuclear material used or stored on nuclear sites or other nuclear premises and equipment or software used or stored on such sites or premises in connection with activities involving nuclear material;
(c) other radioactive material used or stored on nuclear sites and equipment or software used or stored on nuclear sites in connection with activities involving other radioactive material; 40
(d) sensitive nuclear information which is in the possession or control of anyone who is (or is expected to be) involved in activities on, or in relation to, any nuclear site or other nuclear premises;
(e) nuclear material which is being (or is expected to be) – 45
(i) transported within the United Kingdom or its territorial sea;

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- (ii) transported (outside the United Kingdom and its territorial sea) to or from any nuclear site or other nuclear premises in the United Kingdom; or
 - (iii) carried on board a United Kingdom ship;
 - (f) information relating to the security of anything mentioned in paragraphs (a) to (e). 5
 - (2) The regulations may, in particular –
 - (a) require a person to produce for the approval of the Secretary of State a plan for ensuring the security of anything mentioned in subsection (1) and to comply with the plan as approved by the Secretary of State; 10
 - (b) require compliance with any directions given by the Secretary of State;
 - (c) impose requirements in relation to any activities by reference to the approval of the Secretary of State;
 - (d) create summary offences or offences triable either way;
 - (e) make provision for the purposes mentioned in subsection (1) corresponding to any provision which may be made for the general purposes of Part 1 of the Health and Safety at Work etc. Act 1974 (c. 37) by virtue of section 15(2), (3)(c) and (4) to (8) of that Act (health and safety regulations); 15
 - (f) make provision corresponding to any provision which may be made by virtue of section 43(2) to (5), (8) and (9) of that Act (fees), in connection with the performance by or on behalf of the Secretary of State or any other specified body or person of functions under the regulations; and 20
 - (g) apply (with or without modifications), or make provision corresponding to, any provision contained in sections 19 to 42 and 44 to 47 of that Act. 25
 - (3) An offence under the regulations may be made punishable –
 - (a) in the case of an offence triable either way, with imprisonment for a term not exceeding two years or a fine not exceeding the statutory maximum (or both); or 30
 - (b) in the case of a summary offence, with imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale (or both).
 - (4) The regulations may make –
 - (a) provision applying to acts done outside the United Kingdom by United Kingdom persons; 35
 - (b) different provision for different purposes; and
 - (c) such incidental, supplementary and transitional provision as the Secretary of State considers appropriate.
 - (5) Before making the regulations the Secretary of State shall consult – 40
 - (a) the Health and Safety Commission; and
 - (b) such other persons as he considers appropriate.
 - (6) The power to make the regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 45
 - (7) In this section –
 - “nuclear material” and “nuclear site” have the same meaning as in section 76;

“other nuclear premises” means premises other than a nuclear site on which nuclear material is used or stored;	
“sensitive nuclear information” means –	
(a) information relating to, or capable of use in connection with, any treatment of uranium that increases the proportion of the isotope 235 contained in the uranium; or	5
(b) information relating to activities carried out on or in relation to nuclear sites or other nuclear premises which appears to the Secretary of State to be information which needs to be protected in the interests of national security;	10
“United Kingdom ship” means a ship registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c. 21)	
(8) <i>Any sums received by virtue of provision made under subsection (2)(f) shall be paid into the Consolidated Fund.</i>	
78 Repeals relating to security of civil nuclear installations	15
(1) In Schedule 1 to the Nuclear Installations Act 1965 (c. 57) (security provisions applicable by order under section 2 of that Act), paragraphs 5 and 6 shall cease to have effect.	
(2) In section 19(1) of the Atomic Energy Authority Act 1971 (c. 11) (application of certain security provisions to designated companies), for “Paragraphs 4 to 6” and “they apply” substitute respectively “Paragraph 4” and “it applies”	20
79 Prohibition of disclosures in relation to nuclear security	
(1) A person is guilty of an offence if he discloses any information or thing the disclosure of which might prejudice the security of any nuclear site or of any nuclear material –	25
(a) with the intention of prejudicing that security; or	
(b) being reckless as to whether the disclosure might prejudice that security.	
(2) The reference in subsection (1) to nuclear material is a reference to –	30
(a) nuclear material which is being held on any nuclear site, or	
(b) nuclear material anywhere in the world which is being transported to or from a nuclear site or carried on board a British ship, (including nuclear material which is expected to be so held, transported or carried).	
(3) A person guilty of an offence under subsection (1) is liable –	35
(a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both); and	
(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).	
(4) In this section –	40
“British ship” means a ship (including a ship belonging to Her Majesty) which is registered in the United Kingdom;	
“disclose” and “disclosure”, in relation to a thing, include parting with possession of it;	
“nuclear material” has the same meaning as in section 76; and	45

“nuclear site” means a site in the United Kingdom (including a site occupied by or on behalf of the Crown) which is (or is expected to be) used for any purpose mentioned in section 1(1) of the Nuclear Installations Act 1965 (c. 57).

- (5) This section applies to acts done outside the United Kingdom by a United Kingdom person. 5
- (6) Proceedings for an offence committed outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (7) Nothing in this section affects any criminal liability arising otherwise than under this section. 10

80 Prohibition of disclosures of uranium enrichment technology

- (1) This section applies to –
- (a) any information about the enrichment of uranium; or
 - (b) any information or thing which is, or is likely to be, used in connection with the enrichment of uranium; 15
- and for this purpose “the enrichment of uranium” means any treatment of uranium that increases the proportion of the isotope 235 contained in the uranium.
- (2) The Secretary of State may make regulations prohibiting the disclosure of information or things to which this section applies. 20
- (3) A person who contravenes a prohibition is guilty of an offence and liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both); and
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both). 25
- (4) The regulations may, in particular, provide for –
- (a) a prohibition to apply, or not to apply –
 - (i) to such information or things; and
 - (ii) in such cases or circumstances, 30
 as may be prescribed;
 - (b) the authorisation by the Secretary of State of disclosures that would otherwise be prohibited; and
 - (c) defences to an offence under subsection (3) relating to any prohibition.
- (5) The regulations may – 35
- (a) provide for any prohibition to apply to acts done outside the United Kingdom by United Kingdom persons;
 - (b) make different provision for different purposes; and
 - (c) make such incidental, supplementary and transitional provision as the Secretary of State thinks fit. 40
- (6) The power to make the regulations is exercisable by statutory instrument.
- (7) The regulations shall not be made unless a draft of the regulations has been laid before and approved by each House of Parliament.
- (8) In this section –

“disclosure”, in relation to a thing, includes parting with possession of it;
“information” includes software; and
“prescribed” means specified or described in the regulations.

81 Part 8: supplementary

- (1) Proceedings for an offence under section 79 or 80 shall not be instituted – 5
 - (a) in England and Wales, except by or with the consent of the Attorney General; or
 - (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.
- (2) In this Part “United Kingdom person” means a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom. 10
- (3) For this purpose a United Kingdom national is an individual who is – 15
 - (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
 - (c) a British protected person within the meaning of that Act.

PART 9

AVIATION SECURITY 20

82 Arrest without warrant

- (1) At the end of section 24(2) of the Police and Criminal Evidence Act 1984 (c. 60) (arrest without warrant: particular offences) insert – 25
 - “(u) an offence under section 21C(1) or 21D(1) of the Aviation Security Act 1982 (c. 36) (unauthorised presence in restricted zone or on aircraft);
 - (v) an offence under section 39(1) of the Civil Aviation Act 1982 (c. 16) (trespass on aerodrome).”
- (2) At the end of Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12) (arrest without warrant: particular offences)) insert – 30
 - “(j) an offence under section 21C(1) or 21D(1) of the Aviation Security Act 1982 (unauthorised presence in restricted zone or on aircraft);
 - (k) an offence under section 39(1) of the Civil Aviation Act 1982 35 (trespass on aerodrome).”
- (3) Where, in Scotland, a constable has reasonable grounds for suspecting that a person has committed –
 - (a) an offence under section 21C(1) or 21D(1) of the Aviation Security Act 1982 (unauthorised presence in restricted zone or on aircraft); 40
 - (b) an offence under section 39(1) of the Civil Aviation Act 1982 (trespass on aerodrome),he may arrest that person without warrant.

- (4) This section shall have effect in relation to an offence committed or alleged to have been committed after the end of the period of two months beginning with the day on which this Act is passed.

83 Trespass on aerodrome: penalty

- (1) In section 39(1) of the Civil Aviation Act 1982 (c. 16) (trespass on aerodrome) for “level 1 on the standard scale” substitute “level 3 on the standard scale”. 5
- (2) This section shall have effect in relation to an offence committed after the end of the period of two months beginning with the day on which this Act is passed.

84 Removal of intruder

- (1) At the end of section 21C of the Aviation Security Act 1982 (c. 36) (unauthorised presence in aerodrome) add – 10
- “(4) A constable, the manager of an aerodrome or a person acting on his behalf may use reasonable force to remove a person who fails to comply with a request under subsection (1)(b) above.” 15
- (2) At the end of section 21D of that Act (unauthorised presence on aircraft) add –
- “(3) A constable, the operator of an aircraft or a person acting on his behalf may use reasonable force to remove a person who fails to comply with a request under subsection (1)(b) above.”

85 Aviation security services

After section 20 of the Aviation Security Act 1982 (security directions: inspection) insert – 20

“20A Aviation security services: approved providers

- (1) In this section “aviation security service” means a process or activity carried out for the purpose of – 25
- (a) complying with a requirement of a direction under any of sections 12 to 14, or
- (b) facilitating a person’s compliance with a requirement of a direction under any of those sections.
- (2) Regulations may provide for the Secretary of State to maintain a list of persons who are approved by him for the provision of a particular aviation security service. 30
- (3) The regulations may –
- (a) prohibit the provision of an aviation security service by a person who is not listed in respect of that service; 35
- (b) prohibit the use or engagement for the provision of an aviation security service of a person who is not listed in respect of that service;
- (c) create a criminal offence;
- (d) make provision about application for inclusion in the list (including provision about fees); 40

- (e) make provision about the duration and renewal of entries on the list (including provision about fees);
 - (f) make provision about training or qualifications which persons who apply to be listed or who are listed are required to undergo or possess; 5
 - (g) make provision about removal from the list (which may include provision for appeal);
 - (h) make provision about the inspection of activities carried out by listed persons;
 - (i) confer functions on the Secretary of State or on a specified person; 10
 - (j) confer jurisdiction on a court.
- (4) Regulations under subsection (3)(c) –
- (a) may not provide for a penalty on summary conviction greater than a fine not exceeding the statutory maximum, 15
 - (b) may not provide for a penalty of imprisonment on conviction on indictment greater than imprisonment for a term not exceeding two years (whether or not accompanied by a fine), and
 - (c) may create a criminal offence of purporting, with intent to deceive, to do something as a listed person or of doing something, with intent to deceive, which purports to be done by a listed person. 20
- (5) A direction under any of sections 12 to 14 may –
- (a) include a requirement to use a listed person for the provision of an aviation security service; 25
 - (b) provide for all or part of the direction not to apply or to apply with modified effect where a listed person provides an aviation security service.
- (6) Regulations under this section – 30
- (a) may make different provision for different cases,
 - (b) may include incidental, supplemental or transitional provision,
 - (c) shall be made by the Secretary of State by statutory instrument,
 - (d) shall not be made unless the Secretary of State has consulted organisations appearing to him to represent persons affected by the regulations, and 35
 - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

86 Detention of aircraft

- (1) After section 20A of the Aviation Security Act 1982 (c. 36) (aviation security services) (inserted by section 85)) insert – 40

“Detention of aircraft

20B Detention direction

- (1) An authorised person may give a detention direction in respect of an aircraft if he is of the opinion that – 45

-
- (a) a person has failed to comply or is likely to fail to comply with a requirement of a direction under section 12 or 14 of this Act in respect of the aircraft,
- (b) a person has failed to comply with a requirement of an enforcement notice in respect of the aircraft, 5
- (c) a threat has been made to commit an act of violence against the aircraft or against any person or property on board the aircraft, or
- (d) an act of violence is likely to be committed against the aircraft or against any person or property on board the aircraft. 10
- (2) A detention direction in respect of an aircraft –
- (a) shall be given in writing to the operator of the aircraft, and
- (b) shall require him to take steps to ensure that the aircraft does not fly while the direction is in force.
- (3) An authorised person who has given a detention direction in respect of an aircraft may do anything which he considers necessary or expedient for the purpose of ensuring that the aircraft does not fly while the direction is in force; in particular, the authorised person may – 15
- (a) enter the aircraft;
- (b) arrange for another person to enter the aircraft; 20
- (c) arrange for a person or thing to be removed from the aircraft;
- (d) use reasonable force;
- (e) authorise the use of reasonable force by another person.
- (4) The operator of an aircraft in respect of which a detention direction is given may object to the direction in writing to the Secretary of State. 25
- (5) On receipt of an objection to a detention direction under subsection (4) the Secretary of State shall –
- (a) consider the objection,
- (b) allow the person making the objection and the authorised person who gave the direction an opportunity to make written or oral representations to the Secretary of State or to a person appointed by him, 30
- (c) confirm, vary or cancel the direction, and
- (d) give notice of his decision in writing to the person who made the objection and to the authorised person who gave the direction. 35
- (6) A detention direction in respect of an aircraft shall continue in force until –
- (a) an authorised person cancels it by notice in writing to the operator of the aircraft, or 40
- (b) the Secretary of State cancels it under subsection (5)(c).
- (7) A person commits an offence if –
- (a) without reasonable excuse he fails to comply with a requirement of a detention direction, or
- (b) he intentionally obstructs a person acting in accordance with subsection (3). 45

-
- (8) A person who is guilty of an offence under subsection (7) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding two years or to both. 5
- (9) A detention direction may be given in respect of—
- (a) any aircraft in the United Kingdom, and
 - (b) any aircraft registered or operating in the United Kingdom.
- (10) A detention direction may be given in respect of a class of aircraft; and for that purpose— 10
- (a) a reference to “the aircraft” in subsection (1) shall be treated as a reference to all or any of the aircraft within the class, and
 - (b) subsections (2) to (9) shall apply as if the direction were given in respect of each aircraft within the class.” 15
- (2) In section 23 of the Aviation Security Act 1982 (c. 36) (annual report)—
- (a) in subsection (1) after “enforcement notices” insert “and detention directions”, and
 - (b) in subsection (2) for “and enforcement notices” substitute “, enforcement notices and detention directions”. 20
- (3) At the end of section 24 of that Act add—
- “(9) Subsections (6) to (8) above shall apply to a detention direction as they apply to an enforcement notice.”
- 87 Air cargo agent: documents**
- After section 21F of the Aviation Security Act 1982 (air cargo agents) insert— 25
- “21FA Air cargo agents: documents**
- (1) A person commits an offence if with intent to deceive he issues a document which purports to be issued by a person on a list of approved air cargo agents maintained under section 21F(2)(a) of this Act.
 - (2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.” 30
- PART 10**
- POLICE POWERS 35
- Identification*
- 88 Fingerprinting of terrorist suspects**
- (1) Schedule 8 to the Terrorism Act 2000 (c. 11) (persons detained under terrorism provisions) is amended as follows.

- (2) In paragraph 10, at the beginning of sub-paragraph (6) (grounds on which officer may authorise fingerprinting or taking of sample), insert “Subject to sub-paragraph (6A)”;
- and after that sub-paragraph insert –
- “(6A) An officer may also give an authorisation under sub-paragraph (4)(a) for the taking of fingerprints if –
- 5
- (a) he is satisfied that the fingerprints of the detained person will facilitate the ascertainment of that person’s identity; and
- (b) that person has refused to identify himself or the officer has reasonable grounds for suspecting that that person is not who he claims to be.
- 10
- (6B) In this paragraph references to ascertaining a person’s identity include references to showing that he is not a particular person.”
- (3) In paragraph 20(2), for the subsection (2) substituted by way of modification of section 18 of the Criminal Procedure (Scotland) Act 1995 (c. 46) substitute –
- “(2) Subject to subsection (2A), a constable may take from a detained person or require a detained person to provide relevant physical data only if –
- 15
- (a) in the case of a person detained under section 41 of the Terrorism Act 2000, he reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 40(1)(a) of that Act and he reasonably believes that the relevant physical data will tend to confirm or disprove his involvement; or
- 20
- (b) in any case, he is satisfied that it is necessary to do so in order to assist in determining whether the person falls within section 40(1)(b).
- 25
- (2A) A constable may also take fingerprints from a detained person or require him to provide them if –
- (a) he is satisfied that the fingerprints of that person will facilitate the ascertainment of that person’s identity; and
- 30
- (b) that person has refused to identify himself or the constable has reasonable grounds for suspecting that that person is not who he claims to be.
- 35
- (2B) In this section references to ascertaining a person’s identity include references to showing that he is not a particular person.”
- (4) For paragraph 20(3) substitute –
- “(3) Subsections (3) to (5) shall not apply, but any relevant physical data or sample taken in pursuance of section 18 as applied by this paragraph may be retained but shall not be used by any person except for the purposes of a terrorist investigation or for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.
- 40
- 45
- (4) In this paragraph –
- (a) a reference to crime includes a reference to any conduct which –

- (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
 - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences; and
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.”

89 Searches, examinations and fingerprinting: England and Wales

- (1) After section 54 of the Police and Criminal Evidence Act 1984 (c. 60) (searches of detained persons) insert –

“54A Searches and examination to ascertain identity

- (1) If an officer of at least the rank of inspector authorises it, a person who is detained in a police station may be searched or examined, or both –
- (a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or
 - (b) for the purpose of facilitating the ascertainment of his identity.
- (2) An officer may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if –
- (a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or
 - (b) it is not practicable to obtain such consent.
- (3) An officer may only give an authorisation under subsection (1) in a case in which subsection (2) does not apply if –
- (a) the person in question has refused to identify himself; or
 - (b) the officer has reasonable grounds for suspecting that that person is not who he claims to be.
- (4) An officer may give an authorisation under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (5) Any identifying mark found on a search or examination under this section may be photographed –
- (a) with the appropriate consent; or
 - (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.
- (6) Where a search or examination may be carried out under this section, or a photograph may be taken under this section, the only persons entitled to carry out the search or examination, or to take the photograph, are –
- (a) constables; and

-
- (b) persons who (without being constables) are designated for the purposes of this section by the chief officer of police for the police area in which the police station in question is situated; and section 117 (use of force) applies to the exercise by a person falling within paragraph (b) of the powers conferred by the preceding provisions of this section as it applies to the exercise of those powers by a constable. 5
- (7) A person may not under this section carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex. 10
- (8) An intimate search may not be carried out under this section.
- (9) A photograph taken under this section –
- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and 15
- (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.
- (10) In subsection (9) –
- (a) the reference to crime includes a reference to any conduct which – 20
- (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
- (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences; 25
- and
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom. 30
- (11) In this section –
- (a) references to ascertaining a person’s identity include references to showing that he is not a particular person; and 35
- (b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.
- (12) In this section ‘mark’ includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any person’s case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.” 40
- (2) In section 61(4) of that Act (grounds on which fingerprinting of person detained at a police station may be authorised) – 45
- (a) in paragraph (b), after “his involvement” insert “or will facilitate the ascertainment of his identity (within the meaning of section 54A), or both”;

- (b) after that paragraph insert –
“but an authorisation shall not be given for the purpose only of facilitating the ascertainment of that person’s identity except where he has refused to identify himself or the officer has reasonable grounds for suspecting that he is not who he claims to be.” 5

90 Searches, examinations and fingerprinting: Northern Ireland

- (1) After Article 55 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (searches of detained persons) insert –

“55A Searches and examination to ascertain identity 10

- (1) If an officer of at least the rank of inspector authorises it, a person who is detained in a police station may be searched or examined, or both –
(a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or 15
(b) for the purpose of facilitating the ascertainment of his identity.
- (2) An officer may only give an authorisation under paragraph (1) for the purpose mentioned in sub-paragraph (a) of that paragraph if –
(a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; 20
or
(b) it is not practicable to obtain such consent.
- (3) An officer may only give an authorisation under paragraph (1) in a case in which paragraph (2) does not apply if –
(a) the person in question has refused to identify himself; or 25
(b) the officer has reasonable grounds for suspecting that that person is not who he claims to be.
- (4) An officer may give an authorisation under paragraph (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable. 30
- (5) Any identifying mark found on a search or examination under this Article may be photographed –
(a) with the appropriate consent; or
(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it. 35
- (6) Where a search or examination may be carried out under this Article, or a photograph may be taken under this Article, the only persons entitled to carry out the search or examination, or to take the photograph, are –
(a) constables; and 40
(b) persons who (without being constables) are designated for the purposes of this Article by the Chief Constable;

and Article 88 (use of force) applies to the exercise by a person falling within sub-paragraph (b) of the powers conferred by the preceding

- provisions of this Article as it applies to the exercise of those powers by a constable.
- (7) A person may not under this Article carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex. 5
- (8) An intimate search may not be carried out under this Article.
- (9) A photograph taken under this Article –
- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and 10
 - (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.
- (10) In paragraph (9) –
- (a) the reference to crime includes a reference to any conduct which – 15
 - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
 - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences; 20
 - and
 - (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom. 25
- (11) In this Article –
- (a) references to ascertaining a person’s identity include references to showing that he is not a particular person; and 30
 - (b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.
- (12) In this Article ‘mark’ includes features and injuries; and a mark is an identifying mark for the purposes of this Article if its existence in any person’s case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.” 35
- (2) In Article 61(4) of that Order (grounds on which fingerprinting of person detained at a police station may be authorised) – 40
- (a) in sub-paragraph (b), after “his involvement” insert “or will facilitate the ascertainment of his identity (within the meaning of Article 55A), or both”; and
 - (b) after that sub-paragraph insert – 45
 - “but an authorisation shall not be given for the purpose only of facilitating the ascertainment of that person’s identity except where he has refused to identify himself or the officer has

reasonable grounds for suspecting that he is not who he claims to be.”

91 Photographing of suspects etc.: England and Wales

After section 64 of the Police and Criminal Evidence Act 1984 (c. 60) insert –

“64A Photographing of suspects etc. 5

- (1) A person who is detained at a police station may be photographed –
 - (a) with the appropriate consent; or
 - (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

- (2) A person proposing to take a photograph of any person under this section –
 - (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and 10
 - (b) if the requirement is not complied with, may remove the item or substance himself. 15

- (3) Where a photograph may be taken under this section, the only persons entitled to take the photograph are –
 - (a) constables; and
 - (b) persons who (without being constables) are designated for the purposes of this section by the chief officer of police for the police area in which the police station in question is situated; 20and section 117 (use of force) applies to the exercise by a person falling within paragraph (b) of the powers conferred by the preceding provisions of this section as it applies to the exercise of those powers by a constable. 25

- (4) A photograph taken under this section –
 - (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and 30
 - (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

- (5) In subsection (4) –
 - (a) the reference to crime includes a reference to any conduct which – 35
 - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
 - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences; 40
 - and
 - (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution 45

brought in respect of any crime in a country or territory outside the United Kingdom.

- (6) References in this section to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.” 5

92 Photographing of suspects etc.: Northern Ireland

After Article 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) insert—

“64A Photographing of suspects etc. 10

- (1) A person who is detained at a police station may be photographed—
 (a) with the appropriate consent; or
 (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.
- (2) A person proposing to take a photograph of any person under this Article— 15
 (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
 (b) if the requirement is not complied with, may remove the item or substance himself. 20
- (3) Where a photograph may be taken under this Article, the only persons entitled to take the photograph are—
 (a) constables; and
 (b) persons who (without being constables) are designated for the purposes of this Article by the Chief Constable; 25
 and Article 88 (use of force) applies to the exercise by a person falling within sub-paragraph (b) of the powers conferred by the preceding provisions of this Article as it applies to the exercise of those powers by a constable. 30
- (4) A photograph taken under this Article—
 (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and
 (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related. 35
- (5) In paragraph (4)—
 (a) the reference to crime includes a reference to any conduct which—
 (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or 40
 (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences; 45

- and
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom. 5
- (6) References in this Article to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.” 10

93 Powers to require removal of disguises: Great Britain

- (1) After section 60 of the Criminal Justice and Public Order Act 1994 (c. 33) insert—

“60AA Powers to require removal of disguises

- (1) Where— 15
- (a) an authorisation under section 60 is for the time being in force in relation to any locality for any period, or
- (b) an authorisation under subsection (3) that the powers conferred by subsection (2) shall be exercisable at any place in a locality is in force for any period, 20
- those powers shall be exercisable at any place in that locality at any time in that period.
- (2) This subsection confers power on any constable in uniform—
- (a) to require any person to remove any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity; 25
- (b) to seize any item which the constable reasonably believes any person intends to wear wholly or mainly for that purpose.
- (3) If a police officer of or above the rank of inspector reasonably believes— 30
- (a) that activities may take place in any locality in his police area that are likely (if they take place) to involve the commission of offences, and
- (b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection, 35
- he may give an authorisation that the powers conferred by this section shall be exercisable at any place within that locality for a specified period not exceeding twenty-four hours.
- (4) If it appears to an officer of or above the rank of superintendent that it is expedient to do so, having regard to offences which— 40
- (a) have been committed in connection with the activities in respect of which the authorisation was given, or
- (b) are reasonably suspected to have been so committed,
- he may direct that the authorisation shall continue in force for a further twenty-four hours. 45

-
- (5) If an inspector gives an authorisation under subsection (3), he must, as soon as it is practicable to do so, cause an officer of or above the rank of superintendent to be informed.
- (6) Any authorisation under this section –
- (a) shall be in writing and signed by the officer giving it; and 5
 - (b) shall specify –
 - (i) the grounds on which it is given;
 - (ii) the locality in which the powers conferred by this section are exercisable;
 - (iii) the period during which those powers are exercisable; 10
 and a direction under subsection (4) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.
- (7) A person who fails to remove an item worn by him when required to do so by a constable in the exercise of his power under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale or both. 15
- (8) The preceding provisions of this section, so far as they relate to an authorisation by a member of the British Transport Police Force (including one who for the time being has the same powers and privileges as a member of a police force for a police area), shall have effect as if references to a locality or to a locality in his police area were references to any locality in or in the vicinity of any policed premises, or to the whole or any part of any such premises. 20
- (9) In this section ‘British Transport Police Force’ and ‘policed premises’ each has the same meaning as in section 60. 25
- (10) The powers conferred by this section are in addition to, and not in derogation of, any power otherwise conferred.”
- (2) In section 60A(1) of that Act (retention of things seized under section 60), after “section 60” insert “or 60AA”. 30
- (3) In section 60B of that Act (offence under section 60(8) to be an arrestable offence in Scotland), after “60(8)” insert “or 60AA(7)”. 35
- (4) In section 24(2) of the Police and Criminal Evidence Act 1984 (c. 60) (arrestable offences), in paragraph (o), for “section 60(8)(b)” substitute “section 60AA(7)”. 35

94 Powers to require removal of disguises: Northern Ireland

- (1) In Part 5 of the Public Order (Northern Ireland) Order 1987 (S.I. 1987/463 (N.I. 7)), before Article 24 insert –

“Temporary powers to deal with activities in a locality

23A Powers to require removal of disguises

40

- (1) Where –

- (a) an authorisation under paragraph (3) that the powers conferred by paragraph (2) shall be exercisable at any place in a locality is in force for any period, or
- (b) an authorisation under Article 23B is for the time being in force in relation to any locality for any period, 5
- those powers shall be exercisable at any place in that locality at any time in that period.
- (2) This paragraph confers power on any constable in uniform –
- (a) to require any person to remove any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity; 10
- (b) to seize any item which the constable reasonably believes any person intends to wear wholly or mainly for that purpose.
- (3) If a police officer of or above the rank of inspector reasonably believes – 15
- (a) that activities may take place in any locality that are likely (if they take place) to involve the commission of offences, and
- (b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this paragraph,
- he may give an authorisation that the powers conferred by this Article shall be exercisable at any place within that locality for a specified period not exceeding twenty-four hours. 20
- (4) If it appears to an officer of or above the rank of superintendent that it is expedient to do so, having regard to offences which –
- (a) have been committed in connection with the activities in respect of which the authorisation was given, or 25
- (b) are reasonably suspected to have been so committed,
- he may direct that the authorisation shall continue in force for a further twenty-four hours.
- (5) If an officer below the rank of superintendent gives an authorisation under paragraph (3), he must, as soon as it is practicable to do so, cause an officer of or above that rank to be informed. 30
- (6) Any authorisation under this Article –
- (a) shall be in writing and signed by the officer giving it; and
- (b) shall specify – 35
- (i) the grounds on which it is given;
- (ii) the locality in which the powers conferred by this Article are exercisable;
- (iii) the period during which those powers are exercisable;
- and a direction under paragraph (4) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so. 40
- (7) A person who fails to remove an item worn by him when required to do so by a constable in the exercise of his power under this Article shall be liable, on summary conviction, to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale or both. 45

- (8) The powers conferred by this Article are in addition to, and not in derogation of, any power otherwise conferred.”
- (2) In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (arrestable offences), after sub-paragraph (i) insert—
- “(j) Article 23A(7) of the Public Order (Northern Ireland) Order 1987 (S.I. 1987/463 (N.I. 7)) (failing to comply to requirement to remove disguise).”

Powers of stop, search and seizure in Northern Ireland

95 Power to stop and search in anticipation of violence 10

In the Public Order (Northern Ireland) Order 1987, after Article 23A (which is inserted by section 94) insert—

“23B Powers to stop and search in anticipation of violence

- (1) If a police officer of or above the rank of inspector reasonably believes— 15
- (a) that incidents involving serious violence may take place in any locality, and that it is expedient to give an authorisation under this Article to prevent or control their occurrence, or
- (b) that persons are carrying dangerous instruments or offensive weapons in any locality without good reason, 20
- he may give an authorisation that the powers conferred by this Article are to be exercisable at any place within that locality for a specified period not exceeding twenty-four hours.
- (2) This Article confers power on any constable in uniform— 25
- (a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments;
- (b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments;
- and a constable may in the exercise of those powers stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or dangerous instruments. 30
- (3) If it appears to an officer of or above the rank of superintendent that it is expedient to do so, having regard to offences which— 35
- (a) have been committed in connection with the activities in respect of which the authorisation was given, or
- (b) are reasonably suspected to have been so committed,
- he may direct that the authorisation shall continue in force for a further twenty-four hours.
- (4) If an officer below the rank of superintendent gives an authorisation under paragraph (1) he must, as soon as it is practicable to do so, cause an officer of or above that rank to be informed. 40

- (5) If in the course of a search under this Article a constable discovers a dangerous instrument or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it.
- (6) This Article applies (with the necessary modifications) to ships, aircraft and hovercraft as it applies to vehicles. 5
- (7) A person who fails to stop or (as the case may be) fails to stop a vehicle when required to do so by a constable in the exercise of his powers under this Article shall be liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale or both. 10
- (8) Any authorisation under this Article—
(a) shall be in writing and signed by the officer giving it; and
(b) shall specify—
(i) the grounds on which it is given;
(ii) the locality in which the powers conferred by this Article are exercisable; 15
(iii) the period during which those powers are exercisable;
and a direction under paragraph (3) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so. 20
- (9) Where a vehicle is stopped by a constable under this Article the driver shall be entitled to obtain a written statement that the vehicle was stopped under the powers conferred by this Article if he applies for such a statement not later than the end of the period of 12 months from the day on which the vehicle was stopped. 25
- (10) A person who is searched by a constable under this Article shall be entitled to obtain a written statement that he was searched under the powers conferred by this Article if he applies for such a statement not later than the end of the period of 12 months from the day on which he was searched. 30
- (11) The powers conferred by this Article are in addition to, and not in derogation of, any power otherwise conferred.
- (12) For the purposes of this Article, a person carries a dangerous instrument or an offensive weapon if he has it in his possession.
- (13) In this Article— 35
‘caravan’ has the meaning given by section 25(1) of the Caravans Act (Northern Ireland) 1963 (N.I. c. 17);
‘dangerous instrument’ means an instrument which has a blade or is sharply pointed;
‘offensive weapon’ has the meaning given by Article 22(1); 40
‘vehicle’ includes a caravan.”

96 Seized articles

In the Public Order (Northern Ireland) Order 1987 (S.I. 1987/463 (N.I. 7)), after Article 23B insert—

“23C Retention and disposal of things seized under Article 23A and 23B

- (1) Anything seized by a constable under Article 23A or 23B may be retained in accordance with regulations made by the Secretary of State under this Article.
- (2) The Secretary of State may make regulations regulating the retention and safe keeping, and the disposal and destruction in prescribed circumstances, of such things. 5
- (3) Regulations made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.” 10

*MoD and transport police***97 Jurisdiction of MoD police**

- (1) Section 2 of the Ministry of Defence Police Act 1987 (c. 4) (jurisdiction of members of the Ministry of Defence Police) is amended as follows. 15
- (2) In subsection (2) (places where members of Ministry of Defence Police have powers and privileges of constables), omit paragraph (d) (which is superseded by the amendment made by subsection (4) of this section).
- (3) In subsection (3) (circumstances in which members of Ministry of Defence Police have powers and privileges of constables in places in United Kingdom not mentioned in subsection (2)), after paragraph (b) insert – 20
- “(ba) in connection with offences against persons within paragraph (b) above, with the incitement of such persons to commit offences and with offences under the Prevention of Corruption Acts 1889 to 1916 in relation to such persons;” 25
- (4) After that subsection insert –
- “(3A) Where a member of the Ministry of Defence Police has been requested by a constable of – 30
- (a) the police force for any police area;
- (b) the Police Service of Northern Ireland;
- (c) the British Transport Police Force; or
- (d) the United Kingdom Atomic Energy Authority Constabulary,
- to assist him in the execution of his duties in relation to a particular incident, investigation or operation, members of the Ministry of Defence Police shall have the powers and privileges of constables for the purposes of that incident, investigation or operation but subject to subsection (3B) below. 35
- (3B) Members of the Ministry of Defence Police have the powers and privileges of constables for the purposes of an incident, investigation or operation by virtue of subsection (3A) above – 40
- (a) if the request was made under paragraph (a) of that subsection by a constable of the police force for a police area, only in that police area;
- (b) if it was made under paragraph (b) of that subsection, only in Northern Ireland; 45

- (c) if it was made under paragraph (c) of that subsection, only to the extent that those powers and privileges would in the circumstances be exercisable for those purposes by a constable of the British Transport Police Force by virtue of subsection (1A) or, in Scotland, subsection (4) of section 53 of the British Transport Commission Act 1949 (c. xxix); or 5
 - (d) if it was made under paragraph (d) of that subsection, only to the extent that those powers and privileges would in the circumstances be exercisable for those purposes by a constable of the United Kingdom Atomic Energy Authority Constabulary. 10
 - (3C) Members of the Ministry of Defence Police shall have in any police area the same powers and privileges as constables of the police force for that police area, and in Northern Ireland the same powers and privileges as constables of the Police Service of Northern Ireland, – 15
 - (a) in relation to persons whom they suspect on reasonable grounds of having committed, being in the course of committing or being about to commit an offence; or
 - (b) if they believe on reasonable grounds that they need those powers and privileges in order to save life or to prevent or minimise personal injury. 20
 - (3D) But members of the Ministry of Defence Police have powers and privileges by virtue of subsection (3C) above only if –
 - (a) they are in uniform or have with them documentary evidence that they are members of the Ministry of Defence Police; and 25
 - (b) they believe on reasonable grounds that a power of a constable which they would not have apart from that subsection ought to be exercised and that, if it cannot be exercised until they secure the attendance of or a request under subsection (3A) above by a constable who has it, the purpose for which they believe it ought to be exercised will be frustrated or seriously prejudiced.” 30
 - (5) In subsection (4) (territorial waters) –
 - (a) for “to (3)” substitute “to (3D)”, and
 - (b) for “subsections (1) and (3)” substitute “those subsections”.
 - (6) In subsection (5) – 35
 - (a) after the definition of “appropriate Gazette” insert –
““British Transport Police Force” means the constables appointed under section 53 of the British Transport Commission Act 1949;”, and
 - (b) after the definition of “service authorities” insert – 40
““United Kingdom Atomic Energy Authority Constabulary” means the special constables appointed under section 3 of the Special Constables Act 1923 (c. 11) on the nomination of the United Kingdom Atomic Energy Authority;”.
- 98 Provision of assistance by MoD police 45**
- After section 2 of the Ministry of Defence Police Act 1987 (c. 4) insert –

“2A Provision of assistance to other forces

- (1) The Chief Constable of the Ministry of Defence Police may, on the application of the chief officer of any relevant force, provide constables or other assistance for the purpose of enabling that force to meet any special demand on its resources. 5
- (2) Where a member of the Ministry of Defence Police is provided for the assistance of a relevant force under this section –
- (a) he shall be under the direction and control of the chief officer of that force; and
 - (b) he shall have the same powers and privileges as a member of that force. 10
- (3) Constables are not to be regarded as provided for the assistance of a relevant force under this section in a case where assistance is provided under section 2 above.
- (4) In this section – 15
- “British Transport Police Force” has the same meaning as in section 2 above;
 - “chief officer” means –
 - (a) the chief officer of the police force for any police area;
 - (b) the Chief Constable of the Police Service of Northern Ireland; 20
 - (c) the Chief Constable of the British Transport Police Force; or
 - (d) the Chief Constable of the United Kingdom Atomic Energy Authority Constabulary; 25
 - “relevant force” means –
 - (a) the police force for any police area;
 - (b) the Police Service of Northern Ireland;
 - (c) the British Transport Police Force; or
 - (d) the United Kingdom Atomic Energy Authority Constabulary; and 30
 - “United Kingdom Atomic Energy Authority Constabulary” has the same meaning as in section 2 above.”

99 Jurisdiction of transport police

- (1) Where a member of the British Transport Police Force has been requested by a constable of – 35
- (a) the police force for any police area,
 - (b) the Ministry of Defence Police, or
 - (c) the United Kingdom Atomic Energy Authority Constabulary,
- (“the requesting force”) to assist him in the execution of his duties in relation to a particular incident, investigation or operation, members of the British Transport Police Force have for the purposes of that incident, investigation or operation the same powers and privileges as constables of the requesting force. 40
- (2) Members of the British Transport Police Force have in any police area the same powers and privileges as constables of the police force for that police area – 45

- (a) in relation to persons whom they suspect on reasonable grounds of having committed, being in the course of committing or being about to commit an offence, or
 - (b) if they believe on reasonable grounds that they need those powers and privileges in order to save life or to prevent or minimise personal injury. 5
- (3) But members of the British Transport Police Force have powers and privileges by virtue of subsection (2) only if—
 - (a) they are in uniform or have with them documentary evidence that they are members of that Force, and 10
 - (b) they believe on reasonable grounds that a power of a constable which they would not have apart from that subsection ought to be exercised and that, if it cannot be exercised until they secure the attendance of or a request under subsection (1) by a constable who has it, the purpose for which they believe it ought to be exercised will be frustrated or seriously prejudiced. 15
- (4) In this section—
 - “British Transport Police Force” means the constables appointed under section 53 of the British Transport Commission Act 1949 (c. xxix), and
 - “United Kingdom Atomic Energy Authority Constabulary” means the special constables appointed under section 3 of the Special Constables Act 1923 (c. 11) on the nomination of the United Kingdom Atomic Energy Authority. 20

100 Further provisions about transport police and MoD police

- Schedule 7 contains amendments relating to the British Transport Police Force and the Ministry of Defence Police. 25

PART 11

RETENTION OF COMMUNICATIONS DATA

101 Codes and agreements about the retention of communications data

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice relating to the retention by communications providers of communications data obtained by or held by them. 30
- (2) The Secretary of State may enter into such agreements as he considers appropriate with any communications provider about the practice to be followed by that provider in relation to the retention of communications data obtained by or held by that provider. 35
- (3) Before issuing or revising a code of practice under this section the Secretary of State shall consult with the communications providers to whom the code will apply or, as the case may be, who will be affected by the revisions, or with the persons appearing to him to represent those providers. 40
- (4) Where the Secretary of State issues or revises a code of practice under this section, he shall publish the code or, as the case may be, the revised code in such manner as he considers appropriate for bringing it to the attention of the communications providers to whom it applies.

- (5) A code of practice or agreement under this section may contain any such provision as appears to the Secretary of State to be necessary –
- (a) for the purpose of safeguarding national security; or
 - (b) for the purposes of the prevention or detection of crime or the prosecution of offenders. 5
- (6) A failure by any person to comply with a code of practice or agreement under this section shall not of itself render him liable to any criminal or civil proceedings.
- (7) A code of practice or agreement under this section shall be admissible in evidence in any legal proceedings in which the question arises whether or not the retention of any communications data is justified on the grounds that a failure to retain the data would be likely to prejudice national security, the prevention or detection of crime or the prosecution of offenders. 10

102 Directions about retention of communications data

- (1) If, after reviewing the operation of any requirements contained in the code of practice and any agreements under section 101, it appears to the Secretary of State that it is necessary to do so, he may by order made by statutory instrument authorise the giving of directions under this section. 15
- (2) Where any order under this section is in force, the Secretary of State may give such directions as he considers appropriate about the retention of communications data –
- (a) to communications providers generally;
 - (b) to communications providers of a description specified in the direction; or
 - (c) to any particular communications providers or provider. 25
- (3) An order under this section must specify the maximum period for which a communications provider may be required to retain communications data by any direction given under this section while the order is in force.
- (4) Before giving a direction under this section the Secretary of State shall consult –
- (a) with the communications provider or providers to whom it will apply; or
 - (b) except in the case of a direction confined to a particular provider, with the persons appearing to the Secretary of State to represent the providers to whom it will apply. 30
- (5) A direction under this section must be given or published in such manner as the Secretary of State considers appropriate for bringing it to the attention of the communications providers or provider to whom it applies. 35
- (6) It shall be the duty of a communications provider to comply with any direction under this section that applies to him. 40
- (7) The duty imposed by subsection (6) shall be enforceable by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36), or for any other appropriate relief.

- (8) The Secretary of State shall not make an order under this section unless a draft of it has been laid before Parliament and approved by a resolution of each House.

103 Lapsing of powers in section 102

- (1) Section 102 shall cease to have effect at the end of the initial period unless an order authorising the giving of directions is made under that section before the end of that period. 5
- (2) Subject to subsection (3), the initial period is the period of two years beginning with the day on which this Act is passed.
- (3) The Secretary of State may by order made by statutory instrument extend, or (on one or more occasions) further extend the initial period. 10
- (4) An order under subsection (3) –
- (a) must be made before the time when the initial period would end but for the making of the order; and
 - (b) shall have the effect of extending, or further extending, that period for the period of two years beginning with that time. 15
- (5) The Secretary of State shall not make an order under subsection (3) unless a draft of it has been laid before Parliament and approved by a resolution of each House.

104 Arrangements for payments 20

- (1) It shall be the duty of the Secretary of State to ensure that such arrangements are in force as he thinks appropriate for authorising or requiring, in such cases as he thinks fit, the making to communications providers of appropriate contributions towards the costs incurred by them –
- (a) in complying with the provisions of any code of practice, agreement or direction under this Part, or 25
 - (b) as a consequence of the retention of any communications data in accordance with any such provisions.
- (2) *For the purpose of complying with his duty under this section, the Secretary of State may make arrangements for the payments to be made out of money provided by Parliament.* 30

105 Interpretation of Part 11

- (1) In this Part –
- “communications data” has the same meaning as in Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23); 35
 - “communications provider” means a person who provides a postal service or a telecommunications service;
 - “legal proceedings”, “postal service” and “telecommunications service” each has the same meaning as in that Act;
- and any reference in this Part to the prevention or detection of crime shall be construed as if contained in Chapter 2 of Part 1 of that Act. 40
- (2) References in this Part, in relation to any code of practice, agreement or direction, to the retention by a communications provider of any

communications data include references to the retention of any data obtained by that provider before the time when the code was issued, the agreement made or the direction given, and to data already held by that provider at that time.

PART 12

5

BRIBERY AND CORRUPTION

106 Bribery and corruption: foreign officers etc.

- (1) For the purposes of any common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom. 10
- (2) In section 1 of the Prevention of Corruption Act 1906 (c. 34) (corrupt transactions with agents) insert this subsection after subsection (3)–
 - “(4) For the purposes of this Act it is immaterial if–
 - (a) the principal’s affairs or business have no connection with the United Kingdom and are conducted in a country or territory outside the United Kingdom; 15
 - (b) the agent’s functions have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom.” 20
- (3) In section 7 of the Public Bodies Corrupt Practices Act 1889 (c. 69) (interpretation relating to corruption in office) in the definition of “public body” for “but does not include any public body as above defined existing elsewhere than in the United Kingdom” substitute “and includes any body which exists in a country or territory outside the United Kingdom and is equivalent to any body described above”. 25
- (4) In section 4(2) of the Prevention of Corruption Act 1916 (c. 64) (in the 1889 and 1916 Acts public body includes local and public authorities of all descriptions) after “descriptions” insert “(including authorities existing in a country or territory outside the United Kingdom)”. 30

107 Bribery and corruption committed outside the UK

- (1) This section applies if–
 - (a) a national of the United Kingdom or a body incorporated under the law of any part of the United Kingdom does anything in a country or territory outside the United Kingdom, and 35
 - (b) the act would, if done in the United Kingdom, constitute a corruption offence (as defined below).
- (2) In such a case–
 - (a) the act constitutes the offence concerned, and
 - (b) proceedings for the offence may be taken in the United Kingdom. 40
- (3) These are corruption offences –
 - (a) any common law offence of bribery;

- (b) the offences under section 1 of the Public Bodies Corrupt Practices Act 1889 (c. 69) (corruption in office);
 - (c) the first two offences under section 1 of the Prevention of Corruption Act 1906 (c. 34) (bribes obtained by or given to agents).
- (4) A national of the United Kingdom is an individual who is – 5
- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or
 - (c) a British protected person within the meaning of that Act. 10

108 Presumption of corruption not to apply

Section 2 of the Prevention of Corruption Act 1916 (c. 64) (presumption of corruption in certain cases) is not to apply in relation to anything which would not be an offence apart from section 106 or section 107.

PART 13 15

MISCELLANEOUS

Third pillar of the European Union

109 Implementation of the third pillar

- (1) An authorised Minister may by regulations make provision –
- (a) for the purpose of implementing any obligation of the United Kingdom created or arising by or under the third pillar (whether before or after the passing of this Act), or enabling any such obligation to be implemented, 20
 - (b) for the purpose of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the third pillar to be exercised, or 25
 - (c) for the purpose of dealing with matters arising out of or related to any such obligation or rights.
- (2) “The third pillar” means –
- (a) Title VI of the Treaty on European Union signed at Maastricht on 7th February 1992, together with the other provisions of the Treaty so far as they relate to that Title, 30
 - (b) the Protocol integrating the Schengen acquis into the framework of the European Union, so far as it relates to that Title, and
 - (c) agreements referred to in Article 24 of the Treaty, so far as they cover matters falling under that Title. 35
- (3) In subsection (2) a reference to a provision of the Treaty on European Union includes a reference to that provision as amended by any provision of –
- (a) the Treaty signed at Amsterdam on 2nd October 1997, or
 - (b) the Treaty signed at Nice on 26th February 2001. 40
- (4) The provision that may be made under subsection (1) includes, subject to subsection (5), any such provision (of any such extent) as might be made by Act of Parliament.

- (5) The powers conferred by subsection (1) do not include power –
- (a) to make any provision imposing or increasing taxation,
 - (b) to make any provision taking effect from a date earlier than that of the making of the instrument containing the provision,
 - (c) to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for a court or tribunal, or 5
 - (d) to create, except in accordance with subsection (7), a criminal offence which is punishable –
 - (i) on conviction on indictment, with imprisonment for more than two years, 10
 - (ii) on summary conviction, with imprisonment for more than three months,
 - (iii) on summary conviction, with a fine (not calculated on a daily basis) of more than level 5 on the standard scale or (for an offence triable either way) more than the statutory maximum, or 15
 - (iv) on summary conviction, with a fine of more than £100 a day.
- (6) Subsection (5)(c) does not preclude the modification of a power to legislate conferred otherwise than under subsection (1), or the extension of any such power to purposes of the like nature as those for which it was conferred, and a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of subsection (5)(c). 20
- (7) Subsection (5)(d) does not preclude the creation of an offence punishable on conviction on indictment with imprisonment for a term of any length if – 25
- (a) the offence is one for which a term of that length, a term of at least that length, or a term within a range of lengths including that length, is required for the offence by an obligation created or arising by or under the third pillar,
 - (b) the offence, if committed in particular circumstances, would be an offence falling within paragraph (a), or 30
 - (c) the offence is not committed in the United Kingdom but would, if committed in the United Kingdom, or a part of the United Kingdom, be punishable on conviction on indictment with imprisonment for a term of that length. 35

110 Third pillar: supplemental

- (1) “Authorised Minister” in section 109(1) has the meaning given by subsections (2) and (3).
- (2) The Scottish Ministers are authorised Ministers for any purpose for which powers under section 109(1) are exercisable within devolved competence (within the meaning of the Scotland Act 1998 (c. 46)). 40
- (3) For any other purpose, the following are authorised Ministers –
 - (a) the Secretary of State,
 - (b) the Lord Chancellor,
 - (c) the Treasury, 45
 - (d) the National Assembly for Wales, if designated under subsection (4),

- (e) the First Minister and deputy First Minister acting jointly, a Northern Ireland Minister or a Northern Ireland department, if the Ministers are, or the Minister or the department is, designated under subsection (4).
- (4) A designation under this subsection may be made by Order in Council in relation to any matter or for any purpose, and is subject to any restriction or condition specified in the Order. 5
- (5) An Order in Council under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The power to make regulations under section 109(1) –
(a) in the case of the First Minister and deputy First Minister acting jointly, a Northern Ireland Minister or a Northern Ireland Department, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I.1979/1573 (N.I. 12)), 10
(b) in any other case, is exercisable by statutory instrument.
- (7) No regulations may be made under section 109(1) unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament. 15
- (8) Subsection (7) has effect, so far as it relates to the exercise of powers under section 109(1) by the Scottish Ministers, as if the reference to each House of Parliament were a reference to the Scottish Parliament. 20
- (9) Subsection (7) does not apply to a statutory instrument containing regulations made by the National Assembly for Wales unless the statutory instrument contains regulations –
(a) made by the Secretary of State, the Lord Chancellor or the Treasury (whether or not jointly with the Assembly), 25
(b) relating to an English border area, or
(c) relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales);
and in this subsection expressions used in the Government of Wales Act 1998 (c. 38) have the same meaning as in that Act. 30
- (10) Subsection (7) has effect, so far as it relates to the exercise of powers under section 109(1) by the First Minister and deputy First Minister acting jointly, a Northern Ireland Minister or a Northern Ireland department, as if the reference to each House of Parliament were a reference to the Northern Ireland Assembly. 35

Dangerous substances

111 Use of noxious substances to cause harm and intimidate

- (1) A person who takes any action which –
(a) involves the use of a noxious substance or other noxious thing; 40
(b) has an effect falling within subsection (2); and
(c) is designed to influence the government or to intimidate the public or a section of the public,
is guilty of an offence.

- (2) Action falls within this subsection if it –
- (a) involves serious violence against a person;
 - (b) involves serious damage to property;
 - (c) endangers human life or creates a serious risk to the health or safety of the public or a section of the public; or
 - (d) is likely to induce in members of the public the fear that the action is likely to endanger their lives or create a serious risk to their health or safety;
- but any effect on the person taking the action is to be disregarded. 5
- (3) A person who –
- (a) makes a threat that he or another will take any action falling within subsection (1); and
 - (b) intends thereby to induce in any person the fear that the threat will be carried out,
- is guilty of an offence. 10
- (4) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both); and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine (or both). 15
- (5) In this section –
- “person” includes a person outside the United Kingdom;
 - “property” means tangible property (whether real or personal) anywhere in the world;
 - “the public” includes the public of a country other than the United Kingdom; and
 - “the government” means the government of the United Kingdom, a part of the United Kingdom or of a country other than the United Kingdom. 25

112 Hoaxes and threats involving noxious substances or things

- (1) A person is guilty of an offence if he –
- (a) places any substance or other thing in any place whatever; or
 - (b) sends any substance or other thing from one place to another (by post, rail or any other means whatever);
- with the intention of inducing in any person a belief that it is likely to be (or contain) a noxious substance or other noxious thing and thereby endanger human life or create a serious risk to human health. 30
- (2) A person is guilty of an offence if he communicates any information which he knows or believes to be false with the intention of inducing in any person a belief that a noxious substance or other noxious thing is or will be present in any place whatever and thereby likely to endanger human life or create a serious risk to human health. 35
- (3) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both); and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both). 40
- 45

113 Sections 111 and 112: supplementary

- (1) For the purposes of sections 111 and 112 “substance” includes any biological agent and any other natural or artificial substance (whatever its form, origin or method of production).
- (2) For a person to be guilty of an offence under section 111(3) or 112 it is not necessary for him to have any particular person in mind as the person in whom he intends to induce the belief in question. 5

Intelligence Services Act 1994

114 Amendments of Intelligence Services Act 1994

- (1) In section 7 of the Intelligence Services Act 1994 (c. 13) (authorisation of acts outside the British Islands), in subsection (3) – 10
 - (a) in paragraphs (a) and (b)(i), after “the Intelligence Service” insert, in each case, “or GCHQ”; and
 - (b) in paragraph (c), after “2(2)(a)” insert “or 4(2)(a)”.
- (2) After subsection (8) of that section insert – 15
 - “(9) For the purposes of this section the reference in subsection (1) to an act done outside the British Islands includes a reference to any act which –
 - (a) is done in the British Islands; but
 - (b) is or is intended to be done in relation to apparatus that is believed to be outside the British Islands, or in relation to anything appearing to originate from such apparatus; 20and in this subsection ‘apparatus’ has the same meaning as in the Regulation of Investigatory Powers Act 2000 (c. 23).”
- (3) In section 11(1A) of that Act (prevention and detection of crime to have the same meaning as in Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000), for the words from “for the purposes of this Act” to the end of the subsection substitute – 25
 - “(a) for the purposes of section 3 above, as it applies for the purposes of Chapter 1 of Part 1 of that Act; and
 - (b) for the other purposes of this Act, as it applies for the purposes of the provisions of that Act not contained in that Chapter.” 30

Terrorism Act 2000

115 Information about acts of terrorism

- (1) The Terrorism Act 2000 (c. 11) is amended as follows.
- (2) After section 38 insert – 35

“38A Information about acts of terrorism

- (1) This section applies where a person has information which he knows or believes might be of material assistance –
 - (a) in preventing the commission by another person of an act of terrorism, or 40

- (b) in securing the apprehension, prosecution or conviction of another person, in the United Kingdom, for an offence involving the commission, preparation or instigation of an act of terrorism.
- (2) The person commits an offence if he does not disclose the information as soon as reasonably practicable in accordance with subsection (3). 5
- (3) Disclosure is in accordance with this subsection if it is made—
- (a) in England and Wales, to a constable,
- (b) in Scotland, to a constable or a procurator fiscal, or
- (c) in Northern Ireland, to a constable or a member of Her Majesty’s forces. 10
- (4) It is a defence for a person charged with an offence under subsection (2) to prove that he had a reasonable excuse for not making the disclosure.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine or to both, or 15
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum or to both.
- (6) Proceedings for an offence under this section may be taken, and the offence may for the purposes of those proceedings be treated as having been committed, in any place where the person to be charged is or has at any time been since he first knew or believed that the information might be of material assistance as mentioned in subsection (1).” 20
- (3) In section 39(3) (disclosure of information etc.), after “21” insert “or 38A”. 25

116 Port and airport controls for domestic travel

- (1) Schedule 7 to the Terrorism Act 2000 (c. 11) (port and border controls) is amended as follows.
- (2) In paragraph 2(2)(b), at the end insert “or his travelling by air within Great Britain or within Northern Ireland.” 30
- (3) In paragraph 2(3), for “in Great Britain or Northern Ireland.” substitute “at any place in Great Britain or Northern Ireland (whether from within or outside Great Britain or Northern Ireland).”
- (4) For paragraph 9(2) substitute—
- “(2) This paragraph applies to— 35
- (a) goods which have arrived in or are about to leave Great Britain or Northern Ireland on a ship or vehicle, and
- (b) goods which have arrived at or are about to leave any place in Great Britain or Northern Ireland on an aircraft (whether the place they have come from or are going to is within or outside Great Britain or Northern Ireland).” 40

117 Passenger information

- (1) Paragraph 17 of Schedule 7 to the Terrorism Act 2000 (c. 11) (port and border controls: passenger information) is amended as follows.
- (2) For sub-paragraph (1) substitute –
 - “(1) This paragraph applies to a ship or aircraft which – 5
 - (a) arrives or is expected to arrive in any place in the United Kingdom (whether from another place in the United Kingdom or from outside the United Kingdom), or
 - (b) leaves or is expected to leave the United Kingdom.”
- (3) In sub-paragraph (4) – 10
 - (a) omit the “or” at the end of paragraph (b), and
 - (b) after paragraph (c) add –
 - “, or
 - (d) to goods.”

118 Weapons training for terrorists

15

- (1) In section 54(1) and (2) of the Terrorism Act 2000 (weapons training for terrorists), after paragraph (a) insert –
 - “(aa) radioactive material or weapons designed or adapted for the discharge of any radioactive material,”.
- (2) In section 55 of that Act (definitions) – 20
 - (a) for the definition of “biological weapon” substitute –
 - ““biological weapon” means a biological agent or toxin (within the meaning of the Biological Weapons Act 1974) in a form capable of use for hostile purposes or anything to which section 1(1)(b) of that Act applies,”;25
 - (b) after the definition of “chemical weapon” insert –
 - ““radioactive material” means radioactive material capable of endangering life or causing harm to human health,”; and
 - (c) the definition of “nuclear weapon” shall cease to have effect.

119 Crown Court judges: Northern Ireland

30

- (1) The Terrorism Act 2000 is amended as follows.
- (2) In paragraph 18 of Schedule 5 (terrorist investigations: application to Northern Ireland) –
 - (a) omit paragraph (e);
 - (b) in paragraph (g) for “county court judge” substitute “Crown Court judge”. 35
- (3) In paragraph 3(c) of Schedule 6 (persons by whom financial information orders may be made) for “county court judge” substitute “Crown Court judge”.
- (4) In paragraph 20 of that Schedule (powers of Secretary of State), in sub-paragraphs (2) and (3)(a) for “county court judge” substitute “Crown Court judge”. 40

PART 14

SUPPLEMENTAL

120 Consequential and supplementary provision

- (1) A Minister of the Crown may by order make such incidental, consequential, transitional or supplemental provision as he thinks necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision. 5
- (2) An order under this section may, in particular, make provision—
- (a) for applying (with or without modifications) or amending, repealing or revoking any provision of or made under an Act passed before this Act or in the same Session, 10
 - (b) for making savings, or additional savings, from the effect of any repeal or revocation made by or under this Act.
- (3) Amendments made under this section are in addition, and without prejudice, to those made by or under any other provision of this Act. 15
- (4) No other provision of this Act restricts the powers conferred by this section.
- (5) An order under this section may make different provision for different purposes.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (7) In this Part, “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26).

121 Repeals and revocation 25

The enactments mentioned in Schedule 8 are repealed or revoked to the extent specified in the second column of that Schedule.

122 Expenses

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown by virtue of this Act, and 30
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

123 Commencement

- (1) Except as provided in subsections (2) and (3), this Act comes into force on such day as the Secretary of State may appoint by order. 35
- (2) The following provisions come into force on the day on which this Act is passed—
- (a) Parts 2 to 5,
 - (b) Part 7,
 - (c) Part 8, except section 78, 40

- (d) Part 9, except sections 84 and 87,
- (e) sections 88 to 92,
- (f) sections 94 to 96,
- (g) Part 11,
- (h) Part 13, except section 119, 5
- (i) this Part, except section 121 and Schedule 8 so far as they relate to the entries –
 - (i) in Part 1 of Schedule 8,
 - (ii) in Part 5 of Schedule 8, in respect of the Nuclear Installations Act 1965, 10
 - (iii) in Part 7 of Schedule 8, in respect of Schedule 5 to the Terrorism Act 2000.
- (3) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed – 15
 - (a) section 84,
 - (b) section 87.
- (4) Different days may be appointed for different provisions and for different purposes.
- (5) An order under this section – 20
 - (a) must be made by statutory instrument, and
 - (b) may contain incidental, supplemental, consequential or transitional provision.

124 Extent

- (1) The following provisions do not extend to Scotland – 25
 - (a) Part 5,
 - (b) Part 12.
- (2) The following provisions do not extend to Northern Ireland –
 - (a) section 76,
 - (b) section 99.
- (3) Except as provided in subsections (1) and (2), an amendment, repeal or revocation in this Act has the same extent as the enactment amended, repealed or revoked. 30

125 Short title

This Act may be cited as the Anti-terrorism, Crime and Security Act 2001.

SCHEDULES

SCHEDULE 1

Section 1

FORFEITURE OF TERRORIST CASH

PART 1

INTRODUCTORY

5

Terrorist cash

- 1 (1) This Schedule applies to cash (“terrorist cash”) which—
- (a) is within subsection (1)(a) or (b) of section 1, or
 - (b) is property earmarked as terrorist property.
- (2) “Cash” means—
- (a) coins and notes in any currency,
 - (b) postal orders,
 - (c) cheques of any kind, including travellers’ cheques,
 - (d) bankers’ drafts,
 - (e) bearer bonds and bearer shares,
- found at any place in the United Kingdom. 15
- (3) Cash also includes any kind of monetary instrument which is found at any place in the United Kingdom, if the instrument is specified by the Secretary of State by order.
- (4) The power to make an order under sub-paragraph (3) is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament. 20

PART 2

SEIZURE AND DETENTION

Seizure of cash

25

- 2 (1) An authorised officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.
- (2) An authorised officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part. 30

Detention of seized cash

- 3 (1) While the authorised officer continues to have reasonable grounds for his suspicion, cash seized under this Schedule may be detained initially for a period of 48 hours.
- (2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court or (in Scotland) the sheriff; but the order may not authorise the detention of any of the cash –
 - (a) beyond the end of the period of three months beginning with the date of the order, and
 - (b) in the case of any further order under this paragraph, beyond the end of the period of two years beginning with the date of the first order.
- (3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under sub-paragraph (2) extending the period.
- (4) An order under sub-paragraph (2) must provide for notice to be given to persons affected by it.
- (5) An application for an order under sub-paragraph (2) –
 - (a) in relation to England and Wales and Northern Ireland, may be made by the Commissioners of Customs and Excise or an authorised officer,
 - (b) in relation to Scotland, may be made by a procurator fiscal,and the court, sheriff or justice may make the order if satisfied, in relation to any cash to be further detained, that one of the following conditions is met.
- (6) The first condition is that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either –
 - (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
 - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (7) The second condition is that there are reasonable grounds for suspecting that the cash consists of resources of an organisation which is a proscribed organisation and that either –
 - (a) its continued detention is justified while investigation is made into whether or not it consists of such resources or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
 - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (8) The third condition is that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either –
 - (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or

- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

Payment of detained cash into an account

- 4 (1) If cash is detained under this Schedule for more than 48 hours, it is to be held in an interest-bearing account and the interest accruing on it is to be added to it on its forfeiture or release. 5
- (2) In the case of cash seized under paragraph 2(2), the authorised officer must, on paying it into the account, release so much of the cash then held in the account as is not attributable to terrorist cash.
- (3) Sub-paragraph (1) does not apply if the cash is required as evidence of an offence or evidence in proceedings under this Schedule. 10

Release of detained cash

- 5 (1) This paragraph applies while any cash is detained under this Schedule.
- (2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the cash if satisfied, on an application by the person from whom it was seized, that the conditions in paragraph 3 for the detention of cash are no longer met in relation to the cash to be released. 15
- (3) A authorised officer or (in Scotland) a procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified. 20
- (4) But cash is not to be released –
- (a) if an application for its forfeiture under paragraph 6, or for its release under paragraph 9, is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded, 25
- (b) if (in the United Kingdom or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded.

PART 3 30

FORFEITURE

Forfeiture

- 6 (1) While cash is detained under this Schedule, an application for the forfeiture of the whole or any part of it may be made –
- (a) to a magistrates' court by the Commissioners of Customs and Excise or an authorised officer, 35
- (b) (in Scotland) to the sheriff by the Scottish Ministers.
- (2) The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part is terrorist cash.
- (3) In the case of property earmarked as terrorist property which belongs to joint tenants one of whom is an excepted joint owner, the order may not apply to so much of it as the court or sheriff thinks is attributable to the excepted joint owner's share. 40

- (4) An excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not (as against him) be earmarked; and references to his share of the earmarked property are to so much of the property as would have been his if the joint tenancy had been severed.

Appeal against forfeiture 5

- 7 (1) Any party to proceedings in which an order is made under paragraph 6 (“a forfeiture order”) who is aggrieved by the order may appeal –
- (a) in relation to England and Wales, to the Crown Court,
 - (b) in relation to Scotland, to the Court of Session,
 - (c) in relation to Northern Ireland, to a county court. 10
- (2) An appeal under sub-paragraph (1) must be made –
- (a) within the period of 30 days beginning with the date on which the order is made, or
 - (b) if sub-paragraph (6) applies, before the end of the period of 30 days beginning with the date on which the order under section 3(3)(b) of the Terrorism Act 2000 (c. 11) referred to in that sub-paragraph comes into force. 15
- (3) The appeal is to be by way of a rehearing.
- (4) The court hearing the appeal may make any order it thinks appropriate.
- (5) If the court upholds the appeal, it may order the release of the cash. 20
- (6) Where a successful application for a forfeiture order relies (wholly or partly) on the fact that an organisation is proscribed, this sub-paragraph applies if –
- (a) a deproscription appeal under section 5 of the Terrorism Act 2000 is allowed in respect of the organisation,
 - (b) an order is made under section 3(3)(b) of that Act in respect of the organisation in accordance with an order of the Proscribed Organisations Appeal Commission under section 5(4) of that Act (and, if the order is made in reliance on section 123(5) of that Act, a resolution is passed by each House of Parliament under section 123(5)(b)), and 25
 - (c) the forfeited cash was seized under this Schedule on or after the date of the refusal to deproscribe against which the appeal under section 5 of that Act was brought. 30

Application of forfeited cash

- 8 (1) *Cash forfeited under this Schedule, and any accrued interest on it –* 35
- (a) *if forfeited by a magistrates’ court in England and Wales or Northern Ireland, is to be paid into the Consolidated Fund,*
 - (b) *if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.*
- (2) But it is not to be paid in – 40
- (a) before the end of the period within which an appeal under paragraph 7 may be made, or
 - (b) if a person appeals under that paragraph, before the appeal is determined or otherwise disposed of.

PART 4

MISCELLANEOUS

Victims

- 9 (1) A person who claims that any cash detained under this Schedule, or any part of it, belongs to him may apply to a magistrates' court or (in Scotland) the sheriff for the cash or part to be released to him under this section. 5
- (2) The application may be made in the course of proceedings under paragraph 3 or 6 or at any other time.
- (3) If it appears to the court or sheriff concerned that –
- (a) the applicant was deprived of the cash claimed, or of property which it represents, by criminal conduct, 10
- (b) the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and nor did it then represent such property, and
- (c) the cash claimed belongs to him, 15
- the court or sheriff may order the cash to be released to the applicant.

Compensation

- 10 (1) If no forfeiture order is made in respect of any cash detained under this Schedule, the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court or (in Scotland) the sheriff for compensation. 20
- (2) If, for any period after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the court or sheriff may order an amount of compensation to be paid to the applicant.
- (3) The amount of compensation to be paid under sub-paragraph (2) is the amount the court or sheriff thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account. 25
- (4) If the court or sheriff is satisfied that, taking account of any interest to be paid under this Schedule or any amount to be paid under sub-paragraph (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court or sheriff may order compensation (or additional compensation) to be paid to him. 30
- (5) The amount of compensation to be paid under sub-paragraph (4) is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances. 35
- (6) *If the cash was seized by a customs officer, the compensation is to be paid by the Commissioners of Customs and Excise.*
- (7) *If the cash was seized by a constable, the compensation is to be paid as follows –*
- (a) *in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met,* 40
- (b) *in the case of a constable of a police force in Scotland, it is to be paid by the police authority or joint police board for the police area for which that force is maintained,*

- (c) *in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), it is to be paid out of money provided by the Chief Constable.*
- (8) *If the cash was seized by an immigration officer, the compensation is to be paid by the Secretary of State.* 5
- (9) *If a forfeiture order is made in respect only of a part of any cash detained under this Schedule, this paragraph has effect in relation to the other part.*
- (10) *This paragraph does not apply if the court or sheriff makes an order under paragraph 9.*

PART 5

10

PROPERTY EARMARKED AS TERRORIST PROPERTY

Property obtained through terrorism

- 11 (1) *A person obtains property through terrorism if he obtains property by or in return for acts of terrorism, or acts carried out for the purposes of terrorism.*
- (2) *In deciding whether any property was obtained through terrorism—* 15
 - (a) *it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the acts,*
 - (b) *it is not necessary to show that the act was of a particular kind if it is shown that the property was obtained through acts of one of a number of kinds, each of which would have been an act of terrorism, or an act carried out for the purposes of terrorism.* 20

Property earmarked as terrorist property

- 12 (1) *Property obtained through terrorism is earmarked as terrorist property.*
- (2) *But if property obtained through terrorism has been disposed of (since it was so obtained), it is earmarked as terrorist property only if it is held by a person into whose hands it may be followed.* 25
- (3) *Property may be followed into the hands of a person obtaining it on a disposal by—*
 - (a) *the person who obtained the property through terrorism, or* 30
 - (b) *a person into whose hands it may (by virtue of this sub-paragraph) be followed.*

Tracing property

- 13 (1) *Where property obtained through terrorism (“the original property”) is or has been earmarked as terrorist property, property which represents the original property is also earmarked.* 35
- (2) *If a person enters into a transaction by which—*
 - (a) *he disposes of the original property or of property which (by virtue of this Part) represents the original property, and*
 - (b) *he obtains other property in place of it,* 40*the other property represents the original property.*

- (3) If a person disposes of property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

Mixing property

- 14 (1) Sub-paragraph (2) applies if a person’s property which is earmarked as terrorist property is mixed with other property (whether his property or another’s). 5
- (2) The portion of the mixed property which is attributable to the property earmarked as terrorist property represents the property obtained through terrorism. 10
- (3) Property earmarked as terrorist property is mixed with other property if (for example) it is used –
- (a) to increase funds held in a bank account,
 - (b) in part payment for the acquisition of an asset,
 - (c) for the restoration or improvement of land, 15
 - (d) by a person holding a leasehold interest in the property to acquire the freehold.

Accruing profits

- 15 (1) This paragraph applies where a person who has property earmarked as terrorist property obtains further property consisting of profits accruing in respect of the earmarked property. 20
- (2) The further property is to be treated as representing the property obtained through terrorism.

General exceptions

- 16 (1) If – 25
- (a) a person disposes of property earmarked as terrorist property, and
 - (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was earmarked,
- the property may not be followed into that person’s hands and, accordingly, it ceases to be earmarked. 30
- (2) If –
- (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant, 35
 - (b) the claimant’s claim is based on the defendant’s criminal conduct, and
 - (c) apart from this sub-paragraph, the sum received, or the property obtained, by the claimant would be earmarked as terrorist property,
- the property ceases to be earmarked. 40
- In relation to Scotland, “claimant” and “defendant” are to be read as “pursuer” and “defender”; and, in relation to Northern Ireland, “claimant” is to be read as “plaintiff”.
- (3) If –

- (a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)), section 249 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and 5
- (b) apart from this sub-paragraph, the sum received would be earmarked as terrorist property,
the property ceases to be earmarked.
- (4) If –
- (a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969 (c.16 (NI)) or section 148(2) of the Powers of Criminal Courts (Sentencing) Act 2000 or a person otherwise obtains any property in pursuance of such an order, and 10
- (b) apart from this sub-paragraph, the sum received, or the property obtained, would be earmarked as terrorist property,
the property ceases to be earmarked. 15
- (5) If –
- (a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000 (c. 8) (restitution orders), an amount is paid to or distributed among any persons in accordance with the court’s directions, and 20
- (b) apart from this sub-paragraph, the sum received by them would be earmarked as terrorist property,
the property ceases to be earmarked. 25
- (6) If –
- (a) in pursuance of a requirement of the Financial Services Authority under section 384(5) of the Financial Services and Markets Act 2000 (c. 8) (power of authority to require restitution), an amount is paid to or distributed among any persons, and 30
- (b) apart from this sub-paragraph, the sum received by them would be earmarked as terrorist property,
the property ceases to be earmarked.
- (7) Where –
- (a) a person enters into a transaction to which paragraph 13(2) applies, and 35
- (b) the disposal is one to which sub-paragraph (1) applies,
this paragraph does not affect the question whether (by virtue of paragraph 13(2)) any property obtained on the transaction in place of the property disposed of is earmarked. 40

PART 6

INTERPRETATION

Property

- 17 (1) Property is all property wherever situated and includes –
- (a) money, 45
- (b) all forms of property, real or personal, heritable or moveable,

- (c) things in action and other intangible or incorporeal property.
- (2) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
- (3) In relation to land, it is a reference to any interest which he holds in the land.
- (4) In relation to property other than land, it is a reference – 5
- (a) to the property (if it belongs to him), or
- (b) to any other interest which he holds in the property.

Obtaining and disposing of property

- 18 (1) References to a person disposing of his property include a reference – 10
- (a) to his disposing of a part of it, or
- (b) to his granting an interest in it,
- (or to both); and references to the property disposed of are to any property obtained on the disposal.
- (2) If a person grants an interest in property of his which is earmarked as terrorist property, the question whether the interest is also earmarked is to be determined in the same manner as it is on any other disposal of earmarked property. 15
- (3) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.
- (4) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other. 20
- (5) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

General interpretation 25

- 19 (1) In this Schedule –
- “authorised officer” means a constable, a customs officer or an immigration officer,
- “cash” has the meaning given by paragraph 1,
- “constable”, in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), 30
- “criminal conduct” means conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there,
- “customs officer” means an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2), 35
- “forfeiture order” has the meaning given by paragraph 7,
- “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 (c. 77), 40
- “interest”, in relation to land –
- (a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power,

- (b) in the case of land in Scotland, means any estate, interest, servitude or other heritable right in or over land, including a heritable security,
“interest”, in relation to property other than land, includes any right (including a right to possession of the property), 5
“part”, in relation to property, includes a portion,
“property obtained through terrorism” has the meaning given by paragraph 11,
“property earmarked as terrorist property” is to be read in accordance with Part 5, 10
“proscribed organisation” has the same meaning as in the Terrorism Act 2000 (c. 11),
“terrorism” has the same meaning as in the Terrorism Act 2000,
“terrorist cash” has the meaning given by paragraph 1,
“value” means market value. 15
- (2) Paragraphs 17 and 18 and the following provisions apply for the purposes of this Schedule.
- (3) For the purpose of deciding whether or not property was earmarked as terrorist property at any time (including times before commencement), it is to be assumed that this Schedule was in force at that and any other relevant time. 20
- (4) References to anything done or intended to be done for the purposes of terrorism include anything done or intended to be done for the benefit of a proscribed organisation.
- (5) An organisation’s resources include any cash which is applied or made available, or is to be applied or made available, for use by the organisation. 25
- (6) Proceedings against any person for an offence are concluded when –
(a) the person is convicted or acquitted,
(b) the prosecution is discontinued or, in Scotland, the trial diet is deserted simpliciter, or 30
(c) the jury is discharged without a finding.

SCHEDULE 2

Section 3

TERRORIST PROPERTY: AMENDMENTS

PART 1

ACCOUNT MONITORING ORDERS

35

- 1 (1) The Terrorism Act 2000 is amended as follows.
(2) The following section is inserted after section 38 –

“38A Account monitoring orders

Schedule 6A (account monitoring orders) shall have effect.”

- (3) The following Schedule is inserted after Schedule 6 – 40

“SCHEDULE 6A

ACCOUNT MONITORING ORDERS

Introduction

- | | | |
|---|--------------------------------------------------------------------|----|
| 1 | (1) This paragraph applies for the purposes of this Schedule. | |
| | (2) A judge is – | 5 |
| | (a) a Circuit judge, in England and Wales; | |
| | (b) the sheriff, in Scotland; | |
| | (c) a Crown Court judge, in Northern Ireland. | |
| | (3) The court is – | |
| | (a) the Crown Court, in England and Wales or Northern Ireland; | 10 |
| | (b) the sheriff, in Scotland. | |
| | (4) An appropriate officer is – | |
| | (a) a police officer, in England and Wales or Northern Ireland; | |
| | (b) the procurator fiscal, in Scotland. | 15 |
| | (5) “Financial institution” has the same meaning as in Schedule 6. | |

Account monitoring orders

- | | | |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 2 | (1) A judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that – | |
| | (a) the order is sought for the purposes of a terrorist investigation, | 20 |
| | (b) the tracing of terrorist property is desirable for the purposes of the investigation, and | |
| | (c) the order will enhance the effectiveness of the investigation. | 25 |
| | (2) The application for an account monitoring order must state that the order is sought against the financial institution specified in the application in relation to information which – | |
| | (a) relates to an account or accounts held at the institution by the person specified in the application (whether solely or jointly with another), and | 30 |
| | (b) is of the description so specified. | |
| | (3) The application for an account monitoring order may specify information relating to – | |
| | (a) all accounts held by the person specified in the application for the order at the financial institution so specified, | 35 |
| | (b) a particular description, or particular descriptions, of accounts so held, or | |
| | (c) a particular account, or particular accounts, so held. | |
| | (4) An account monitoring order is an order that the financial institution specified in the application for the order must – | 40 |
| | (a) for the period specified in the order, | |
| | (b) in the manner so specified, | |

- (c) at or by the time or times so specified, and
 - (d) at the place or places so specified,
- provide information of the description specified in the application to an appropriate officer.
- (5) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

5

Applications

- 3 (1) An application for an account monitoring order may be made ex parte to a judge in chambers.
- (2) The description of information specified in an application for an account monitoring order may be varied by the person who made the application.
- (3) If the application was made by a police officer, the description of information specified in it may be varied by a different police officer.

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Discharge or variation

- 4 (1) An application to discharge or vary an account monitoring order may be made to the court by –
- (a) the person who applied for the order;
 - (b) any person affected by the order.
- (2) If the application for the account monitoring order was made by a police officer, an application to discharge or vary the order may be made by a different police officer.
- (3) The court –
- (a) may discharge the order;
 - (b) may vary the order.

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Rules of court

- 5 (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.
- (2) In Scotland, rules of court shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46), be made by Act of Adjournal.

30

Effect of orders

- 6 (1) In England and Wales and Northern Ireland, an account monitoring order has effect as if it were an order of the court.
- (2) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

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Statements

- 7 (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.
- (2) But sub-paragraph (1) does not apply – 5
- (a) in the case of proceedings for contempt of court;
- (b) in the case of proceedings under section 23 where the financial institution has been convicted of an offence under any of sections 15 to 18;
- (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in sub-paragraph (1). 10
- (3) A statement may not be used by virtue of sub-paragraph (2)(c) against a financial institution unless – 15
- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,
- by or on behalf of the financial institution in the proceedings arising out of the prosecution.”

PART 2

RESTRAINT ORDERS 20

- 2 (1) Part 1 of Schedule 4 to the Terrorism Act 2000 (c. 11) (forfeiture orders under section 23 of that Act: England and Wales) is amended as follows.
- (2) In paragraph 5 (restraint orders) for sub-paragraph (2) substitute – 25
- “(2) The High Court may also make a restraint order under this paragraph where –
- (a) a criminal investigation has been started in England and Wales with regard to an offence under any of sections 15 to 18,
- (b) an application for a restraint order is made to the High Court by the person who the High Court is satisfied will have the conduct of any proceedings for the offence, and 30
- (c) it appears to the High Court that a forfeiture order may be made in any proceedings for the offence.”
- (3) In paragraph 5(3) for “the proceedings” substitute “any proceedings”.
- (4) In paragraph 5 after sub-paragraph (5) insert – 35
- “(6) In this paragraph “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.”
- (5) For paragraph 6(3) substitute – 40
- “(3) A restraint order made under paragraph 5(1) shall in particular be discharged on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.

-
- (4) A restraint order made under paragraph 5(2) shall in particular be discharged on an application under sub-paragraph (2) –
- (a) if no proceedings in respect of offences under any of sections 15 to 18 are instituted within such time as the High Court considers reasonable, and 5
 - (b) if all proceedings in respect of offences under any of sections 15 to 18 have been concluded.”
- (6) In paragraph 8(3) for “the proposed proceedings” substitute “any proceedings for an offence under any of sections 15 to 18”.
- (7) In paragraph 9(1) (compensation where restraint order discharged) for “paragraph 6(3)(a)” substitute “paragraph 6(4)(a)”. 10
- 3 (1) Part 2 of Schedule 4 to the Terrorism Act 2000 (c. 11) (forfeiture orders under section 23 of that Act: Scotland) is amended as follows.
- (2) In paragraph 18 (restraint orders) for sub-paragraph (2) substitute –
- “(2) The Court of Session may also make a restraint order on such an application where – 15
- (a) a criminal investigation has been instituted in Scotland with regard to an offence under any of sections 15 to 18, and
 - (b) it appears to the Court of Session that a forfeiture order may be made in any proceedings for the offence.” 20
- (3) In paragraph 18(3) for “the proceedings” substitute “any proceedings”.
- (4) In paragraph 18 after sub-paragraph (5) insert –
- “(6) In this paragraph “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.” 25
- (5) In paragraph 19(3) for “the proceedings” substitute “proceedings”.
- 4 (1) Part 3 of Schedule 4 to the Terrorism Act 2000 (forfeiture orders under section 23 of that Act: Northern Ireland) is amended as follows. 30
- (2) In paragraph 33 (restraint orders) for sub-paragraph (2) substitute –
- “(2) The High Court may also make a restraint order under this paragraph where –
- (a) a criminal investigation has been started in Northern Ireland with regard to an offence under any of sections 15 to 18, 35
 - (b) an application for a restraint order is made to the High Court by the person who the High Court is satisfied will have the conduct of any proceedings for the offence, and
 - (c) it appears to the High Court that a forfeiture order may be made in any proceedings for the offence.” 40
- (3) In paragraph 33(3) for “the proceedings” substitute “any proceedings”.
- (4) In paragraph 33 after sub-paragraph (5) insert –
- “(6) In this paragraph “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.” 45

- (5) For paragraph 34(3) substitute—
- “(3) A restraint order made under paragraph 33(1) shall in particular be discharged on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.
- (4) A restraint order made under paragraph 33(2) shall in particular be discharged on an application under sub-paragraph (2)—
- (a) if no proceedings in respect of offences under any of sections 15 to 18 are instituted within such time as the High Court considers reasonable, and
- (b) if all proceedings in respect of offences under any of sections 15 to 18 have been concluded.”
- (6) In paragraph 38(4), in the definition of “prosecutor”, for “the proposed proceedings” substitute “any proceedings for an offence under any of sections 15 to 18”.
- (7) In paragraph 39(1) (compensation where restraint order discharged) for “paragraph 34(3)(a)” substitute “paragraph 34(4)(a)”.

PART 3

DISCLOSURE OF INFORMATION

- 5 (1) The Terrorism Act 2000 (c. 11) is amended as follows.
- (2) The following sections are inserted after section 21—
- “21A Failure to disclose: regulated sector**
- (1) A person commits an offence if each of the following three conditions is satisfied.
- (2) The first condition is that he—
- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,
- that another person has committed an offence under any of sections 15 to 18.
- (3) The second condition is that the information or other matter—
- (a) on which his knowledge or suspicion is based, or
- (b) which gives reasonable grounds for such knowledge or suspicion,
- came to him in the course of a business in the regulated sector.
- (4) The third condition is that he does not disclose the information or other matter to a constable or a nominated officer as soon as is practicable after it comes to him.
- (5) But a person does not commit an offence under this section if—
- (a) he has a reasonable excuse for not disclosing the information or other matter;
- (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

- (6) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned –
- (a) issued by a supervisory authority or any other appropriate body, 5
 - (b) approved by the Treasury, and
 - (c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (7) A disclosure to a nominated officer is a disclosure which – 10
- (a) is made to a person nominated by the alleged offender’s employer to receive disclosures under this section, and
 - (b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose. 15
- (8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him –
- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
 - (b) by (or by a representative of) a person seeking legal advice from the adviser, or 20
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.
- (9) But subsection (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose. 25
- (10) Schedule 3A has effect for the purpose of determining what is –
- (a) a business in the regulated sector;
 - (b) a supervisory authority.
- (11) For the purposes of subsection (2) a person is to be taken to have committed an offence there mentioned if – 30
- (a) he has taken an action or been in possession of a thing, and
 - (b) he would have committed the offence if he had been in the United Kingdom at the time when he took the action or was in possession of the thing. 35
- (12) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both. 40
- (13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

- (14) The reference to a constable includes a reference to a person authorised for the purposes of this section by the Director General of the National Criminal Intelligence Service.

21B Protected disclosures

- (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed). 5
- (2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of a business in the regulated sector. 10
- (3) The second condition is that the information or other matter –
- (a) causes the discloser to know or suspect, or
 - (b) gives him reasonable grounds for knowing or suspecting, that another person has committed an offence under any of sections 15 to 18. 15
- (4) The third condition is that the disclosure is made to a constable or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.
- (5) A disclosure to a nominated officer is a disclosure which –
- (a) is made to a person nominated by the discloser’s employer to receive disclosures under this section, and 20
 - (b) is made in the course of the discloser’s employment and in accordance with the procedure established by the employer for the purpose.
- (6) The reference to a business in the regulated sector must be construed in accordance with Schedule 3A. 25
- (7) The reference to a constable includes a reference to a person authorised for the purposes of this section by the Director General of the National Criminal Intelligence Service.”
- (3) In section 19 after subsection (1) insert – 30
- “(1A) But this section does not apply if the information came to the person in the course of a business in the regulated sector.”
- (4) In section 19 after subsection (7) insert –
- “(7A) The reference to a business in the regulated sector must be construed in accordance with Schedule 3A. 35
- (7B) The reference to a constable includes a reference to a person authorised for the purposes of this section by the Director General of the National Criminal Intelligence Service.”
- (5) In section 20 after subsection (4) insert –
- “(5) References to a constable include references to a person authorised for the purposes of this section by the Director General of the National Criminal Intelligence Service.” 40
- (6) The following Schedule is inserted after Schedule 3 –

“SCHEDULE 3A

REGULATED SECTOR AND SUPERVISORY AUTHORITIES

PART 1

REGULATED SECTOR

<i>Business in the regulated sector</i>	5
1 (1) A business is in the regulated sector to the extent that it engages in any of the following activities –	
(a) accepting deposits by a person with permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits (including, in the case of a building society, the raising of money from members of the society by the issue of shares);	10
(b) the business of the National Savings Bank;	
(c) business carried on by a credit union;	
(d) any home-regulated activity carried on by a European institution in respect of which the establishment conditions in paragraph 13 of Schedule 3 to the Financial Services and Markets Act 2000, or the service conditions in paragraph 14 of that Schedule, are satisfied;	15
(e) any activity carried on for the purpose of raising money authorised to be raised under the National Loans Act 1968 (c. 13) under the auspices of the Director of Savings;	20
(f) the activity of operating a bureau de change, transmitting money (or any representation of monetary value) by any means or cashing cheques which are made payable to customers;	25
(g) any activity falling within sub-paragraph (2);	
(h) any of the activities in points 1 to 12 or 14 of Annex 1 to the Banking Consolidation Directive, ignoring an activity described in any of paragraphs (a) to (g) above;	30
(i) business which consists of effecting or carrying out contracts of long term insurance by a person who has received official authorisation pursuant to Article 6 or 27 of the First Life Directive.	
(2) An activity falls within this sub-paragraph if it constitutes any of the following kinds of regulated activity in the United Kingdom –	35
(a) dealing in investments as principal or as agent;	
(b) arranging deals in investments;	
(c) managing investments;	
(d) safeguarding and administering investments;	40
(e) sending dematerialised instructions;	
(f) establishing (and taking other steps in relation to) collective investment schemes;	
(g) advising on investments.	
(3) Paragraphs (a) and (i) of sub-paragraph (1) and sub-paragraph (2) must be read with section 22 of the Financial Services and Markets	45

-
- Act 2000, any relevant order under that section and Schedule 2 to that Act.
- 2 (1) This paragraph has effect for the purposes of paragraph 1.
- (2) “Building society” has the meaning given by the Building Societies Act 1986. 5
- (3) “Credit union” has the meaning given by the Credit Unions Act 1979 (c. 34) or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)).
- (4) “European institution” means an EEA firm of the kind mentioned in paragraph 5(b) or (c) of Schedule 3 to the Financial Services and Markets Act 2000 (c. 8) which qualifies for authorisation for the purposes of that Act under paragraph 12 of that Schedule. 10
- (5) “Home-regulated activity” in relation to a European institution, means an activity –
- (a) which is specified in Annex 1 to the Banking Consolidation Directive and in respect of which a supervisory authority in the home State of the institution has regulatory functions, and 15
- (b) if the institution is an EEA firm of the kind mentioned in paragraph 5(c) of Schedule 3 to the Financial Services and Markets Act 2000, which the institution carries on in its home State. 20
- (6) “Home State”, in relation to a person incorporated in or formed under the law of another member State, means that State.
- (7) The Banking Consolidation Directive is the Directive of the European Parliament and Council relating to the taking up and pursuit of the business of credit institutions (No. 2000/12 EC). 25
- (8) The First Life Directive is the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No. 79/267/EEC). 30

Excluded activities

- 3 A business is not in the regulated sector to the extent that it engages in any of the following activities –
- (a) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act 1965 (c. 12) by a society registered under that Act; 35
- (b) the acceptance of deposits from the public within the limit set by section 7(3) of that Act by such a society;
- (c) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (N.I. c. 24) by a society registered under that Act; 40
- (d) activities carried on by the Bank of England;
- (e) any activity in respect of which an exemption order under section 38 of the Financial Services and Markets Act 2000 has effect if it is carried on by a person who is for the time 45

being specified in the order or falls within a class of persons so specified .

PART 2

SUPERVISORY AUTHORITIES

- 4 (1) Each of the following is a supervisory authority – 5
- (a) the Bank of England;
 - (b) the Financial Services Authority;
 - (c) the Council of Lloyd’s;
 - (d) the Director General of Fair Trading;
 - (e) a body which is a designated professional body for the purposes of Part 20 of the Financial Services and Markets Act 2000 (c. 8). 10
- (2) The Secretary of State is also a supervisory authority in the exercise, in relation to a person carrying on a business in the regulated sector, of his functions under the enactments relating to companies or insolvency or under the Financial Services and Markets Act 2000. 15
- (3) The Treasury are also a supervisory authority in the exercise, in relation to a person carrying on a business in the regulated sector, of their functions under the enactments relating to companies or insolvency or under the Financial Services and Markets Act 2000. 20

PART 3

POWER TO AMEND

- 5 (1) The Treasury may by order amend Part 1 or 2 of this Schedule.
- (2) An order under sub-paragraph (1) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.” 25

PART 4

FINANCIAL INFORMATION ORDERS

- 6 (1) Paragraph 1 of Schedule 6 to the Terrorism Act 2000 (c. 11) (financial information orders) is amended as follows. 30
- (2) In sub-paragraph (1) after “financial institution” insert “to which the order applies”.
- (3) After sub-paragraph (1) insert – 35
- “(1A) The order may provide that it applies to –
 - (a) all financial institutions,
 - (b) a particular description, or particular descriptions, of financial institutions, or
 - (c) a particular financial institution or particular financial institutions.” 40

SCHEDULE 3

FREEZING ORDERS

Interpretation

- 1 References in this Schedule to a person specified in a freezing order as a person to whom or for whose benefit funds are not to be made available are to be read in accordance with section 5(4). 5

Funds

- 2 A freezing order may include provision that funds include gold, cash, deposits, securities (such as stocks, shares and debentures) and such other matters as the order may specify. 10

Making funds available

- 3 (1) A freezing order must include provision as to the meaning (in relation to funds) of making available to or for the benefit of a person.
- (2) In particular, an order may provide that the expression includes –
- (a) allowing a person to withdraw from an account; 15
 - (b) honouring a cheque payable to a person;
 - (c) crediting a person's account with interest;
 - (d) releasing documents of title (such as share certificates) held on a person's behalf;
 - (e) making available the proceeds of realisation of a person's property; 20
 - (f) making a payment to or for a person's benefit (for instance, under a contract or as a gift or under any enactment such as the enactments relating to social security);
 - (g) such other acts as the order may specify.

Licences 25

- 4 (1) A freezing order must include –
- (a) provision for the granting of licences authorising funds to be made available;
 - (b) provision that a prohibition under the order is not to apply if funds are made available in accordance with a licence. 30
- (2) In particular, an order may provide –
- (a) that a licence may be granted generally or to a specified person or persons or description of persons;
 - (b) that a licence may authorise funds to be made available to or for the benefit of persons generally or a specified person or persons or description of persons; 35
 - (c) that a licence may authorise funds to be made available generally or for specified purposes;
 - (d) that a licence may be granted in relation to funds generally or to funds of a specified description; 40
 - (e) for a licence to be granted in pursuance of an application or without an application being made;

- (f) for the form and manner in which applications for licences are to be made;
- (g) for licences to be granted by the Treasury or a person authorised by the Treasury;
- (h) for the form in which licences are to be granted; 5
- (i) for licences to be granted subject to conditions;
- (j) for licences to be of a defined or indefinite duration;
- (k) for the charging of a fee to cover the administrative costs of granting a licence;
- (l) for the variation and revocation of licences. 10

Information and documents

- 5 (1) A freezing order may include provision that a person—
- (a) must provide information if required to do so and it is reasonably needed for the purpose of ascertaining whether an offence under the order has been committed; 15
 - (b) must produce a document if required to do so and it is reasonably needed for that purpose.
- (2) In particular, an order may include—
- (a) provision that a requirement to provide information or to produce a document may be made by the Treasury or a person authorised by the Treasury; 20
 - (b) provision that information must be provided, and a document must be produced, within a reasonable period specified in the order and at a place specified by the person requiring it;
 - (c) provision that the provision of information is not to be taken to breach any restriction on the disclosure of information (however imposed); 25
 - (d) provision restricting the use to which information or a document may be put and the circumstances in which it may be disclosed;
 - (e) provision that a requirement to provide information or produce a document does not apply to privileged information or a privileged document; 30
 - (f) provision that information is privileged if the person would be entitled to refuse to provide it on grounds of legal professional privilege in proceedings in the High Court or (in Scotland) on grounds of confidentiality of communications in proceedings in the Court of Session; 35
 - (g) provision that a document is privileged if the person would be entitled to refuse to produce it on grounds of legal professional privilege in proceedings in the High Court or (in Scotland) on grounds of confidentiality of communications in proceedings in the Court of Session; 40
 - (h) provision that information or a document held with the intention of furthering a criminal purpose is not privileged.

Disclosure of information

- 6 (1) A freezing order may include provision requiring a person to disclose information as mentioned below if the following three conditions are satisfied.
- (2) The first condition is that the person required to disclose is specified or falls within a description specified in the order. 5
- (3) The second condition is that the person required to disclose knows or suspects, or has grounds for knowing or suspecting, that a person specified in the freezing order as a person to whom or for whose benefit funds are not to be made available— 10
- (a) is a customer of his or has been a customer of his at any time since the freezing order came into force, or
- (b) is a person with whom he has dealings in the course of his business or has had such dealings at any time since the freezing order came into force. 15
- (4) The third condition is that the information—
- (a) on which the knowledge or suspicion of the person required to disclose is based, or
- (b) which gives grounds for his knowledge or suspicion, came to him in the course of a business in the regulated sector. 20
- (5) The freezing order may require the person required to disclose to make a disclosure to the Treasury of that information as soon as is practicable after it comes to him.
- (6) The freezing order may include—
- (a) provision that Schedule 3A to the Terrorism Act 2000 (c. 11) is to have effect for the purpose of determining what is a business in the regulated sector; 25
- (b) provision that the disclosure of information is not to be taken to breach any restriction on the disclosure of information (however imposed); 30
- (c) provision restricting the use to which information may be put and the circumstances in which it may be disclosed by the Treasury;
- (d) provision that the requirement to disclose information does not apply to privileged information;
- (e) provision that information is privileged if the person would be entitled to refuse to disclose it on grounds of legal professional privilege in proceedings in the High Court or (in Scotland) on grounds of confidentiality of communications in proceedings in the Court of Session; 35
- (f) provision that information held with the intention of furthering a criminal purpose is not privileged. 40

Offences

- 7 (1) A freezing order may include any of the provisions set out in this paragraph.
- (2) A person commits an offence if he fails to comply with a prohibition imposed by the order. 45

- (3) A person commits an offence if he engages in an activity knowing or intending that it will enable or facilitate the commission by another person of an offence under a provision included under sub-paragraph (2).
- (4) A person commits an offence if—
- (a) he fails without reasonable excuse to provide information, or to produce a document, in response to a requirement made under the order; 5
 - (b) he provides information, or produces a document, which he knows is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order; 10
 - (c) he recklessly provides information, or produces a document, which is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order;
 - (d) he fails without reasonable excuse to disclose information as required by a provision included under paragraph 6. 15
- (5) A person does not commit an offence under a provision included under sub-paragraph (2) or (3) if he proves that he did not know and had no reason to suppose that the person to whom or for whose benefit funds were made available, or were to be made available, was the person (or one of the persons) specified in the freezing order as a person to whom or for whose benefit funds are not to be made available. 20
- (6) A person guilty of an offence under a provision included under sub-paragraph (2) or (3) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both; 25
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (7) A person guilty of an offence under a provision included under sub-paragraph (4) is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both. 30

Offences: procedure

- 8 (1) A freezing order may include any of the provisions set out in this paragraph.
- (2) Proceedings for an offence under the order are not to be instituted in England and Wales except by or with the consent of the Treasury or the Director of Public Prosecutions. 35
- (3) Proceedings for an offence under the order are not to be instituted in Northern Ireland except by or with the consent of the Treasury or the Director of Public Prosecutions for Northern Ireland.
- (4) Despite anything in section 127(1) of the Magistrates' Courts Act 1980 (c. 43) (information to be laid within 6 months of offence) an information relating to an offence under the order which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time in the period of one year starting with the date of the commission of the offence. 40
- (5) In Scotland summary proceedings for an offence under the order may be commenced at any time in the period of one year starting with the date of the commission of the offence. 45

- (6) In its application to an offence under the order Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (time limit within which complaint charging offence must be made) is to have effect as if the reference to six months were a reference to twelve months. 5

Offences by bodies corporate etc.

- 9 (1) A freezing order may include any of the provisions set out in this paragraph.
- (2) If an offence under the order –
- (a) is committed by a body corporate, and
 - (b) is proved to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on his part,
- he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly. 10
- (3) These are officers of a body corporate –
- (a) a director, manager, secretary or other similar officer of the body;
 - (b) any person purporting to act in any such capacity. 15
- (4) If the affairs of a body corporate are managed by its members sub-paragraph (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were an officer of the body.
- (5) If an offence under the order –
- (a) is committed by a Scottish partnership, and
 - (b) is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on his part,
- he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly. 20
25

Compensation

- 10 (1) A freezing order may include provision for the award of compensation to or on behalf of a person on the grounds that he has suffered loss as a result of –
- (a) the order;
 - (b) the fact that a licence has not been granted under the order;
 - (c) the fact that a licence under the order has been granted on particular terms rather than others;
 - (d) the fact that a licence under the order has been varied or revoked. 30
- (2) In particular, the order may include –
- (a) provision about the person who may make a claim for an award;
 - (b) provision about the person to whom a claim for an award is to be made (which may be provision that it is to be made to the High Court or, in Scotland, the Court of Session); 35
 - (c) provision about the procedure for making and deciding a claim;
 - (d) provision that no compensation is to be awarded unless the claimant has behaved reasonably (which may include provision requiring him to mitigate his loss, for instance by applying for a licence); 40
 - (e) provision that compensation must be awarded in specified circumstances or may be awarded in specified circumstances (which

- may include provision that the circumstances involve negligence or other fault);
- (f) provision about the amount that may be awarded;
- (g) provision about who is to pay any compensation awarded (which may include provision that it is to be paid or reimbursed by the Treasury); 5
- (h) provision about how compensation is to be paid (which may include provision for payment to a person other than the claimant).

Treasury's duty to give reasons

- 11 A freezing order must include provision that if – 10
- (a) a person is specified in the order as a person to whom or for whose benefit funds are not to be made available, and
 - (b) he makes a written request to the Treasury to give him the reason why he is so specified,
- as soon as is practicable the Treasury must give the person the reason in writing. 15

SCHEDULE 4

Section 17.

EXTENSION OF EXISTING DISCLOSURE POWERS

PART 1

ENACTMENTS TO WHICH SECTION 17 APPLIES 20

Agricultural Marketing Act 1958 (c. 47)

- 1 Section 47(2) of the Agricultural Marketing Act 1958.

Harbours Act 1964 (c. 40)

- 2 Section 46(1) of the Harbours Act 1964.

Cereals Marketing Act 1965 (c. 14) 25

- 3 Section 17(2) of the Cereals Marketing Act 1965.

Agriculture Act 1967 (c. 22)

- 4 Section 24(1) of the Agriculture Act 1967.

Trade Descriptions Act 1968 (c. 29)

- 5 Section 28(5A) of the Trade Descriptions Act 1968. 30

Sea Fish Industry Act 1970 (c. 11)

- 6 Section 14(2) of the Sea Fish Industry Act 1970.

National Savings Bank Act 1971 (c. 29)

7 Section 12(2) of the National Savings Bank Act 1971.

Employment Agencies Act 1973 (c. 35)

8 Section 9(4) of the Employment Agencies Act 1973.

Fair Trading Act 1973 (c. 41)

5

9 Section 133(3) of the Fair Trading Act 1973 so far only as it relates to information obtained under or by virtue of any provision of Part 3 of that Act (protection of consumers).

Prices Act 1974 (c. 24)

10 Paragraph 12(2) of the Schedule to the Prices Act 1974.

10

Consumer Credit Act 1974 (c. 39)

11 Section 174(3) of the Consumer Credit Act 1974.

Health and Safety at Work etc. Act 1974 (c. 37)

12 Section 28(7) of the Health and Safety at Work etc. Act 1974.

Sex Discrimination Act 1975 (c. 65)

15

13 Section 61(1) of the Sex Discrimination Act 1975.

Race Relations Act 1976 (c. 74)

14 Section 52(1) of the Race Relations Act 1976.

Energy Act 1976 (c. 76)

15 Paragraph 7 of Schedule 2 to the Energy Act 1976.

20

National Health Service Act 1977 (c. 49)

16 Paragraph 5 of Schedule 11 to the National Health Service Act 1977.

Estate Agents Act 1979 (c. 38)

17 Section 10(3) of the Estate Agents Act 1979.

Public Passenger Vehicles Act 1981 (c. 14)

25

18 Section 54(8) of the Public Passenger Vehicles Act 1981.

Fisheries Act 1981 (c. 29)

19 Section 12(2) of the Fisheries Act 1981.

Merchant Shipping (Liner Conferences) Act 1982 (c. 37)

20 Section 10(2) of the Merchant Shipping (Liner Conferences) Act 1982.

Civil Aviation Act 1982 (c. 16)

21 Section 23(4) of the Civil Aviation Act 1982.

Diseases of Fish Act 1983 (c. 30)

5

22 Section 9(1) of the Diseases of Fish Act 1983.

Telecommunications Act 1984 (c. 12)

23 Section 101(2) of the Telecommunications Act 1984.

Companies Act 1985 (c. 6)

24 Section 449(1) of the Companies Act 1985.

10

Airports Act 1986 (c. 31)

25 Section 74(2) of the Airports Act 1986.

Legal Aid (Scotland) Act 1986 (c. 47)

26 Section 34(2) of the Legal Aid (Scotland) Act 1986.

Consumer Protection Act 1987 (c. 43)

15

27 Section 38(2) of the Consumer Protection Act 1987.

Companies Act 1989 (c. 40)

28 Section 87(1) of the Companies Act 1989.

Broadcasting Act 1990 (c. 42)

29 Section 197(2) of the Broadcasting Act 1990.

20

Property Misdescriptions Act 1991 (c. 29)

30 Paragraph 7(1) of the Schedule to the Property Misdescriptions Act 1991.

Water Industry Act 1991 (c. 56)

31 Section 206(3) of the Water Industry Act 1991.

Water Resources Act 1991 (c. 57)

25

32 Section 204(2) of the Water Resources Act 1991.

Timeshare Act 1992 (c. 35)

33 Paragraph 5(1) of Schedule 2 to the Timeshare Act 1992.

Railways Act 1993 (c. 43)

34 Section 145(2) of the Railways Act 1993.

Coal Industry Act 1994 (c. 21)

5

35 Section 59(2) of the Coal Industry Act 1994.

Shipping and Trading Interests (Protection) Act 1995 (c. 22)

36 Section 3(4) of the Shipping and Trading Interests (Protection) Act 1995.

Pensions Act 1995 (c. 26)

37 (1) Section 105(2) of the Pensions Act 1995.

10

(2) Section 108(2) of that Act.

Goods Vehicles (Licensing of Operators) Act 1995 (c. 23)

38 Section 35(4) of the Goods Vehicles (Licensing of Operators) Act 1995.

Chemical Weapons Act 1996 (c. 6)

39 Section 32(2) of the Chemical Weapons Act 1996.

15

Bank of England Act 1998 (c. 11)

40 (1) Paragraph 5 of Schedule 7 to the Bank of England Act 1998.

(2) Paragraph 2 of Schedule 8 to that Act.

Audit Commission Act 1998 (c. 18)

41 Section 49(1) of the Audit Commission Act 1998.

20

Data Protection Act 1998 (c. 29)

42 Section 59(1) of the Data Protection Act 1998.

Police (Northern Ireland) Act 1998 (c. 32)

43 Section 63(1) of the Police (Northern Ireland) Act 1998.

Landmines Act 1998 (c. 33)

25

44 Section 19(2) of the Landmines Act 1998.

Health Act 1999 (c. 8)

45 Section 24 of the Health Act 1999.

Disability Rights Commission Act 1999 (c. 17)

- 46 Paragraph 22(2)(f) of Schedule 3 to the Disability Rights Commission Act 1999.

Access to Justice Act 1999 (c. 22)

- 47 Section 20(2) of the Access to Justice Act 1999. 5

Nuclear Safeguards Act 2000 (c. 5)

- 48 Section 6(2) of the Nuclear Safeguards Act 2000.

Finance Act 2000 (c. 21)

- 49 Paragraph 34(3) of Schedule 22 to the Finance Act 2000.

Local Government Act 2000 (c. 22)

- 50 Section 63(1) of the Local Government Act 2000. 10

Postal Services Act 2000 (c. 26)

- 51 Paragraph 3(1) of Schedule 7 to the Postal Services Act 2000.

Utilities Act 2000 (c. 27)

- 52 Section 105(4) of the Utilities Act 2000. 15

Transport Act 2000 (c. 38)

- 53 (1) Section 143(5)(b) of the Transport Act 2000.
(2) Paragraph 13(3) of Schedule 10 to that Act.

PART 2

NORTHERN IRELAND LEGISLATION TO WHICH SECTION 17 APPLIES 20

Transport Act (Northern Ireland) 1967 (c. 37 (N.I.))

- 54 Section 36(1) of the Transport Act (Northern Ireland) 1967.

Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15))

- 55 Article 61(1) of the Sex Discrimination (Northern Ireland) Order 1976.

Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)) 25

- 56 Article 30(6) of the Health and Safety at Work (Northern Ireland) Order 1978.

<i>Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8))</i>		
57	Article 24(1) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.	
<i>Agricultural Marketing (Northern Ireland) Order 1982 (S.I. 1982/1080 (N.I. 12))</i>		
58	Article 29(3) of the Agricultural Marketing (Northern Ireland) Order 1982.	5
<i>Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))</i>		
59	Article 442(1) of the Companies (Northern Ireland) Order 1986.	
<i>Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987 (N.I. 20))</i>		
60	Article 29(2) of the Consumer Protection (Northern Ireland) Order 1987.	
<i>Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))</i>		10
61	Article 61(2) of the Electricity (Northern Ireland) Order 1992.	
<i>Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1))</i>		
62	Article 49(2) of the Airports (Northern Ireland) Order 1994.	
<i>Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))</i>		
63	(1) Article 103(2) of the Pensions (Northern Ireland) Order 1995. (2) Article 106(2) of that Order.	15
<i>Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))</i>		
64	Article 44(3) of the Gas (Northern Ireland) Order 1996.	
<i>Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6))</i>		
65	Article 50(1) of the Race Relations (Northern Ireland) Order 1997.	20
<i>Fair Employment and Treatment (Northern Ireland) Order 1998 (S.I. 1998/3162 (N.I. 21))</i>		
66	Article 18(1) of the Fair Employment and Treatment (Northern Ireland) Order 1998.	

SCHEDULE 5

Section 58

PATHOGENS AND TOXINS

25

VIRUSES

Chikungunya virus
 Congo-crimean haemorrhagic fever virus
 Dengue fever virus

Eastern equine encephalitis virus	
Ebola virus	
Hantaan virus	
Japanese encephalitis virus	
Junin virus	5
Lassa fever virus	
Lymphocytic choriomeningitis virus	
Machupo virus	
Marburg virus	
Monkey pox virus	10
Rift Valley fever virus	
Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus)	
Variola virus	
Venezuelan equine encephalitis virus	15
Western equine encephalitis virus	
White pox	
Yellow fever virus	

RICKETTSIAE

Coxiella burnetii	20
Bartonella quintana (Rochalimea quintana, Rickettsia quintana)	
Rickettsia prowazeki	
Rickettsia rickettsii	

BACTERIA

Bacillus anthracis	25
Brucella abortus	
Brucella melitensis	
Brucella suis	
Chlamydia psittaci	
Clostridium botulinum	30
Francisella tularensis	
Burkholderia mallei (Pseudomonas mallei)	
Burkholderia pseudomallei (Pseudomonas pseudomallei)	
Salmonella typhi	
Shigella dysenteriae	35
Vibrio cholerae	
Yersinia pestis	

TOXINS

Botulinum toxins	
Clostridium perfringens toxins	40
Conotoxin	
Ricin	
Saxitoxin	
Shiga toxin	

Staphylococcus aureus toxins	
Tetrodotoxin	
Verotoxin	
Microcystin (Cyanginosin)	
Aflatoxins	5

Notes

- 1 Any reference in this Schedule to a micro-organism includes –
- (a) any genetic material containing any nucleic acid sequence associated with the pathogenicity of the micro-organism; and
 - (b) any genetically modified organism containing any such sequence.
- 2 Any reference in this Schedule to –
- (a) a biological agent does not include an agent in the form of a vaccine;
 - (b) a toxin does not include any immunotoxin (but does include subunits of a toxin); and
 - (c) a botulinum toxin does not include a botulinum toxin which satisfies prescribed conditions.

SCHEDULE 6

Section 70

THE PATHOGENS ACCESS APPEAL COMMISSION

<i>Constitution and administration</i>	20
1 (1) The Commission shall consist of members appointed by the Lord Chancellor.	
(2) The Lord Chancellor shall appoint one of the members as chairman.	
(3) A member shall hold and vacate office in accordance with the terms of his appointment.	25
(4) A member may resign at any time by notice in writing to the Lord Chancellor.	
2 The Lord Chancellor may appoint officers and servants for the Commission.	
3 The Lord Chancellor –	
(a) may pay sums by way of remuneration, allowances, pensions and gratuities to or in respect of members, officers and servants;	30
(b) may pay compensation to a person who ceases to be a member of the Commission if the Lord Chancellor thinks it appropriate because of special circumstances; and	
(c) may pay sums in respect of expenses of the Commission.	35

Procedure

- 4 (1) The Commission shall sit at such times and in such places as the Lord Chancellor may direct.

- (2) The Commission may sit in two or more divisions.
- (3) At each sitting of the Commission –
- (a) three members shall attend;
 - (b) one of the members shall be a person who holds or has held high judicial office (within the meaning of the Appellate Jurisdiction Act 1876 (c. 59)); and
 - (c) the chairman or another member nominated by him shall preside and report the Commission’s decision.
- 5 (1) The Lord Chancellor may make rules –
- (a) regulating the exercise of the right of appeal to the Commission; 10
 - (b) prescribing practice and procedure to be followed in relation to proceedings before the Commission;
 - (c) providing for proceedings before the Commission to be determined without an oral hearing in specified circumstances;
 - (d) making provision about evidence in proceedings before the Commission (including provision about the burden of proof and admissibility of evidence); 15
 - (e) making provision about proof of the Commission’s decisions.
- (2) In making the rules the Lord Chancellor shall, in particular, have regard to the need to secure – 20
- (a) that decisions which are the subject of appeals are properly reviewed; and
 - (b) that information is not disclosed contrary to the public interest.
- (3) The rules may, in particular –
- (a) provide for full particulars of the reasons for denial of access to be withheld from the applicant and from any person representing him; 25
 - (b) enable the Commission to exclude persons (including representatives) from all or part of proceedings;
 - (c) enable the Commission to provide a summary of evidence taken in the absence of a person excluded by virtue of paragraph (b); 30
 - (d) permit preliminary or incidental functions to be discharged by a single member;
 - (e) permit proceedings for permission to appeal under section 70(5) to be determined by a single member;
 - (f) make provision about the functions of persons appointed under paragraph 6; 35
 - (g) make different provision for different parties or descriptions of party.
- (4) Rules under this paragraph –
- (a) shall be made by statutory instrument; and 40
 - (b) shall not be made unless a draft of them has been laid before and approved by resolution of each House of Parliament.
- (5) In this paragraph a reference to proceedings before the Commission includes a reference to proceedings arising out of proceedings before the Commission. 45
- 6 (1) The relevant law officer may appoint a person to represent the interests of an organisation or other applicant in proceedings in relation to which an order has been made by virtue of paragraph 5(3)(b).

- (2) The relevant law officer is –
- (a) in relation to proceedings in England and Wales, the Attorney General;
 - (b) in relation to proceedings in Scotland, the Advocate General for Scotland; and
 - (c) in relation to proceedings in Northern Ireland; the Attorney General for Northern Ireland.
- (3) A person appointed under this paragraph must –
- (a) have a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990 (c. 41) (qualification for legal appointments);
 - (b) be an advocate or a solicitor who has rights of audience in the Court of Session or the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980 (c. 46); or
 - (c) be a member of the Bar of Northern Ireland.
- (4) A person appointed under this paragraph shall not be responsible to the applicant whose interests he is appointed to represent.
- (5) In paragraph 5 of this Schedule a reference to a representative does not include a reference to a person appointed under this paragraph.

SCHEDULE 7

Section 100

20

TRANSPORT POLICE AND MOD POLICE: FURTHER PROVISIONS

Firearms Act 1968 (c. 27)

- 1 The Firearms Act 1968 has effect subject to the following amendments.
- 2 In section 54 (Crown servants etc.), after subsection (3) insert –
- “(3A) An appropriately authorised person who is either a member of the British Transport Police Force or an associated civilian employee does not commit any offence under this Act by reason of having in his possession, or purchasing or acquiring, for use by that Force anything which is –
- (a) a prohibited weapon by virtue of paragraph (b) of section 5(1) of this Act; or
 - (b) ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in that paragraph.
- (3B) In subsection (3A) of this section –
- (a) “appropriately authorised” means authorised in writing by the Chief Constable of the British Transport Police Force or, if he is not available, by a member of that Force who is of at least the rank of assistant chief constable; and
 - (b) “associated civilian employee” means a person employed by the Strategic Rail Authority who is under the direction and control of the Chief Constable of the British Transport Police Force.”
- 3 In section 57(4), after the definition of “Article 7 authority” insert –

““British Transport Police Force” means the constables appointed under section 53 of the British Transport Commission Act 1949 (c. xxix);”.

Police and Criminal Evidence Act 1984 (c. 60)

- 4 The Police and Criminal Evidence Act 1984 has effect subject to the following amendments. 5
- 5 In section 35 (designated police stations), after subsection (2) insert –
- “(2A) The Chief Constable of the British Transport Police Force may designate police stations which (in addition to those designated under subsection (1) above) may be used for the purpose of detaining arrested persons.” 10
- 6 (1) Section 36 (custody officers at designated police stations) is amended as follows.
- (2) In subsection (2), for “a designated police station” substitute “a police station designated under section 35(1) above”. 15
- (3) After that subsection insert –
- “(2A) A custody officer for a police station designated under section 35(2A) above shall be appointed –
- (a) by the Chief Constable of the British Transport Police Force; or 20
- (b) by such other member of that Force as that Chief Constable may direct.”
- 7 In section 118(1), after the definition of “arrestable offence” insert –
- ““British Transport Police Force” means the constables appointed under section 53 of the British Transport Commission Act 1949;”. 25

Criminal Justice and Public Order Act 1994 (c. 33)

- 8 The Criminal Justice and Public Order Act 1994 has effect subject to the following amendments.
- 9 (1) Section 60 (powers to stop and search) is amended as follows.
- (2) After subsection (9) insert – 30
- “(9A) The preceding provisions of this section, so far as they relate to an authorisation by a member of the British Transport Police Force (including one who for the time being has the same powers and privileges as a member of a police force for a police area), shall have effect as if the references to a locality in his police area were references to any locality in or in the vicinity of any policed premises, or to the whole or any part of any such premises.” 35
- (3) In subsection (11), before the definition of “dangerous instruments” insert –
- ““British Transport Police Force” means the constables appointed under section 53 of the British Transport Commission Act 1949 and “policed premises” has the meaning given by section 53(3) of that Act;”. 40

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- 10 In section 136(1) and (2) (cross-border enforcement: execution of warrants), after “country of execution” insert “, or by a constable appointed under section 53 of the British Transport Commission Act 1949 (c. xxix),”.
- 11 In section 137 (cross-border powers of arrest), after subsection (2) insert –
- “(2A) The powers conferred by subsections (1) and (2) may be exercised in England and Wales and Scotland by a constable appointed under section 53 of the British Transport Commission Act 1949.” 5
- 12 In section 140 (reciprocal powers of arrest), after subsection (6) insert –
- “(6A) The references in subsections (1) and (2) to a constable of a police force in Scotland, and the references in subsections (3) and (4) to a constable of a police force in England and Wales, include a constable appointed under section 53 of the British Transport Commission Act 1949.” 10
- Police Act 1996 (c. 16)*
- 13 The Police Act 1996 has effect subject to the following amendments. 15
- 14 In section 23 (collaboration agreements between police forces), after subsection (7) insert –
- “(7A) For the purposes of this section –
- (a) the British Transport Police Force shall be treated as if it were a police force, 20
- (b) the Chief Constable of that Force shall be treated as if he were the chief officer of police of that Force,
- (c) “police functions” shall include the functions of the British Transport Police Force, and
- (d) the British Transport Police Committee shall be treated as if it were the police authority maintaining that Force for the purposes of subsections (1), (2) and (7) and the Strategic Rail Authority shall be so treated for the purposes of subsection (3).” 25
- 15 In section 24 (aid of one police force by another), after subsection (4) insert – 30
- “(4A) This section shall apply in relation to the Strategic Rail Authority, the British Transport Police Force and the Chief Constable of that Force as it applies to a police authority, a police force and a chief officer of police respectively, and accordingly the reference in subsection (3) to section 10(1) shall be construed, in a case where constables are provided by that Chief Constable, as including a reference to the scheme made under section 132 of the Railways Act 1993 (c. 43).” 35
- 16 In section 25 (provision of special services), after subsection (1) insert –
- “(1A) The Chief Constable of the British Transport Police Force may provide special police services at the request of any person, subject to the payment to the Strategic Rail Authority of charges on such scales as may be determined by that Authority.” 40
- 17 In section 30 (jurisdiction of constables), after subsection (3) insert –

- “(3A) A member of the British Transport Police Force who is for the time being required by virtue of section 23 or 24 to serve with a police force maintained by a police authority shall have all the powers and privileges of a member of that police force.”
- 18 In section 90(4) (impersonation etc.), before the word “and” at the end of paragraph (a) insert—
“(aa) “member of a police force” includes a member of the British Transport Police Force;”
- 19 In section 91(2) (causing disaffection), after “applies to” insert “members of the British Transport Police Force and”.
- 20 In section 101(1), before the definition of “chief officer of police” insert—
““British Transport Police Force” means the constables appointed under section 53 of the British Transport Commission Act 1949 (c. xxix);”.
- Terrorism Act 2000 (c. 11)*
- 21 The Terrorism Act 2000 has effect subject to the following amendments.
- 22 (1) Section 34 (power of superintendent for police area to designate cordoned area in the police area) is amended as follows.
- (2) In subsection (1), for “subsection (2)” substitute “subsections (1A), (1B) and (2)”.
- (3) After that subsection insert—
- “(1A) A designation under section 33 may be made in relation to an area (outside Northern Ireland) which is in, on or in the vicinity of any policed premises (within the meaning of section 53(3) of the British Transport Commission Act 1949) by a member of the British Transport Police Force who is of at least the rank of superintendent.
- (1B) A designation under section 33 may be made by a member of the Ministry of Defence Police who is of at least the rank of superintendent in relation to an area outside or in Northern Ireland—
- (a) if it is a place to which subsection (2) of section 2 of the Ministry of Defence Police Act 1987 (c. 4) applies,
- (b) if a request has been made under paragraph (a), (b) or (d) of subsection (3A) of that section in relation to a terrorist investigation and it is a place where he has the powers and privileges of a constable by virtue of that subsection as a result of the request, or
- (c) if a request has been made under paragraph (c) of that subsection in relation to a terrorist investigation and it is a place in, on or in the vicinity of policed premises (within the meaning of section 53(3) of the British Transport Commission Act 1949).
- (1C) But a designation under section 33 may not be made by—
- (a) a member of the British Transport Police Force, or
- (b) a member of the Ministry of Defence Police,
- in any other case.”

SCHEDULE 8

Section 121

REPEALS AND REVOCATION

PART 1

TERRORIST PROPERTY

<i>Short Title and Chapter</i>	<i>Extent of Repeal</i>	
Access to Justice Act 1999 (c. 22)	In Schedule 2, in paragraph 2(2), the “or” at the end of paragraph (b), and in paragraph 2(3) the “or” at the end of paragraph (i).	5
Terrorism Act 2000 (c. 11)	Sections 24 to 31. In section 122, the entries for “Authorised officer” and “Cash”.	10

PART 2

FREEZING ORDERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Emergency Laws (Re-enactments and Repeals) Act 1964 (c. 60)	Section 2. In section 7(1) the words “, and any general direction given under section 2 of this Act,”. In section 14(1) and (2) the words “or direction” and “, section 2”.	15
Finance Act 1968 (c. 44)	Section 55.	20

These repeals have effect subject to section 16(2).

PART 3

IMMIGRATION AND ASYLUM

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Immigration and Asylum Act 1999 (c. 33)	In section 143, subsections (3) to (8) and (14).	25

PART 4

RACE AND RELIGION

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Public Order Act 1986 (c. 64)	In section 17 the words “in Great Britain”.	30
Public Order (Northern Ireland) Order 1987 (S.I. 1987/463 (N.I. 7))	In Article 8 in the definition of fear and the definition of hatred the words “in Northern Ireland”.	

This repeal and this revocation have effect subject to section 42.

PART 5

CIVIL NUCLEAR SECURITY

Nuclear Installations Act 1965 (c. 57)	In Schedule 1, paragraphs 5 and 6.	5
Atomic Energy Authority (Special Constables) Act 1976 (c. 23).	Section 3. In section 4(2), the definitions of “specified body corporate” and “designated company”.	

PART 6

POLICE POWERS

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<i>Short title and chapter</i>	<i>Extent of repeal</i>	
British Transport Commission Act 1962 (c. xlii)	Section 43(3).	
Ministry of Defence Police Act 1987 (c. 4)	In section 2, subsection (2)(d), in subsection (3), the words “, but only” and, in subsection (4), the words “as they have effect in the United Kingdom”.	15
Criminal Justice and Public Order Act 1994 (c. 33)	In section 60, subsection (4A) and, in subsection (8), paragraph (b) and the word “or” immediately preceding it.	20
Crime and Disorder Act 1998 (c. 37)	Section 25(1).	

PART 7

MISCELLANEOUS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Terrorism Act 2000 (c. 11)	In section 55, the definition of “nuclear weapon”. In Schedule 5, paragraph 18(e). In Schedule 7, in paragraph 17(4) the “or” at the end of paragraph (b).	25 30