

# Protection of Freedoms Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 146 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

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

In my view the provisions of the Protection of Freedoms Bill are compatible with the Convention rights.

# Protection of Freedoms Bill

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Provide for the destruction, retention, use and other regulation of certain evidential material; to impose consent and other requirements in relation to certain processing of biometric information relating to children; to provide for a code of practice about surveillance camera systems and for the appointment and role of the Surveillance Camera Commissioner; to provide for judicial approval in relation to certain authorisations and notices under the Regulation of Investigatory Powers Act 2000; to provide for the repeal or rewriting of powers of entry and associated powers and for codes of practice and other safeguards in relation to such powers; to make provision about vehicles left on land; to provide for a maximum detention period of 14 days for terrorist suspects; to replace certain stop and search powers and to provide for a related code of practice; to amend the Safeguarding Vulnerable Groups Act 2006; to make provision about criminal records; to disregard convictions and cautions for certain abolished offences; to make provision about the release and publication of datasets held by public authorities and to make other provision about freedom of information and the Information Commissioner; to repeal certain enactments; and for connected purposes.

**B**E 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**

REGULATION OF BIOMETRIC DATA

**CHAPTER 1**

DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

*Destruction rule for fingerprints and DNA profiles subject to PACE*

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**1 Destruction of fingerprints and DNA profiles**

After section 63C of the Police and Criminal Evidence Act 1984 insert—

**“63D Destruction of fingerprints and DNA profiles**

- (1) This section applies to—  
(a) fingerprints—

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- (i) taken from a person under any power conferred by this Part of this Act, or
- (ii) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police, and 5
- (b) a DNA profile derived from a DNA sample taken as mentioned in paragraph (a)(i) or (ii).
- (2) Fingerprints and DNA profiles to which this section applies (“section 63D material”) must be destroyed if it appears to the responsible chief officer of police that— 10
  - (a) the taking of the fingerprint or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful, or
  - (b) the fingerprint was taken, or, in the case of a DNA profile, was derived from a sample taken, from a person in connection with that person’s arrest and the arrest was unlawful or based on mistaken identity. 15
- (3) In any other case, section 63D material must be destroyed unless it is retained under any power conferred by sections 63E to 63N (including those sections as applied by section 63O). 20
- (4) Section 63D material which ceases to be retained under a power mentioned in subsection (3) may continue to be retained under any other such power which applies to it.
- (5) Nothing in this section prevents a speculative search, in relation to section 63D material, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.” 25

*Modification of rule for particular circumstances*

## 2 Material retained pending investigation or proceedings

After section 63D of the Police and Criminal Evidence Act 1984 (for which see section 1) insert— 30

### “63E Retention of section 63D material pending investigation or proceedings

- (1) This section applies to section 63D material taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence in which it is suspected that the person to whom the material relates has been involved. 35
- (2) The material may be retained until the conclusion of the investigation of the offence or, where the investigation gives rise to proceedings against the person for the offence, until the conclusion of those proceedings.” 40

## 3 Persons arrested for or charged with a qualifying offence

After section 63E of the Police and Criminal Evidence Act 1984 (for which see

section 2) insert –

**"63F Retention of section 63D material: persons arrested for or charged with a qualifying offence**

- (1) This section applies to section 63D material which –
  - (a) relates to a person who is arrested for, or charged with, a qualifying offence but is not convicted of that offence, and 5
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) If the person has previously been convicted of a recordable offence which is not an excluded offence, or is so convicted before the material is required to be destroyed by virtue of this section, the material may be retained indefinitely. 10
- (3) Otherwise, material falling within subsection (4) or (5) may be retained until the end of the retention period specified in subsection (6). 15
- (4) Material falls within this subsection if it –
  - (a) relates to a person who is charged with a qualifying offence but is not convicted of that offence, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence. 20
- (5) Material falls within this subsection if –
  - (a) it relates to a person who is arrested for a qualifying offence but is not charged with that offence,
  - (b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, and 25
  - (c) any prescribed circumstances apply.
- (6) The retention period is –
  - (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and 30
  - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken). 35
- (7) The responsible chief officer of police or a specified chief officer of police may apply to a District Judge (Magistrates' Courts) for an order extending the retention period.
- (8) An application for an order under subsection (7) must be made within the period of 3 months ending on the last day of the retention period. 40
- (9) An order under subsection (7) may extend the retention period by a period which –
  - (a) begins with the end of the retention period, and
  - (b) ends with the end of the period of 2 years beginning with the end of the retention period. 45

- (10) The following persons may appeal to the Crown Court against an order under subsection (7), or a refusal to make such an order –
- (a) the responsible chief officer of police;
  - (b) a specified chief officer of police;
  - (c) the person from whom the material was taken. 5
- (11) Circumstances prescribed under subsection (5)(c) must include the fact that the Commissioner for the Retention and Use of Biometric Material has consented to the retention of the material concerned.
- (12) An order prescribing circumstances of the kind mentioned in subsection (11) may, in particular, make provision about – 10
- (a) the procedure to be followed in relation to any decision of the Commissioner,
  - (b) an appeal against such a decision.
- (13) In this section – 15
- “excluded offence”, in relation to a person, means a recordable offence –
  - (a) which – 20
    - (i) is not a qualifying offence,
    - (ii) is the only recordable offence of which the person has been convicted, and
    - (iii) was committed when the person was aged under 18, and
  - (b) for which the person was not given a relevant custodial sentence of 5 years or more,
- “prescribed” means prescribed by order made by the Secretary of State, 25
- “relevant custodial sentence” has the meaning given by section 63J(6),
- “a specified chief officer of police” means – 30
- (a) the chief officer of the police force of the area in which the person from whom the material was taken resides, or
  - (b) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer’s police area.
- (14) An order of the Secretary of State under this section – 35
- (a) is to be made by statutory instrument,
  - (b) may include transitional, transitory or saving provision.
- (15) A statutory instrument containing an order under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.” 40

#### **4 Persons arrested for or charged with a minor offence**

After section 63F of the Police and Criminal Evidence Act 1984 (for which see

section 3) insert –

**"63G Retention of section 63D material: persons arrested for or charged with a minor offence**

- (1) This section applies to section 63D material which –
  - (a) relates to a person who –
    - (i) is arrested for or charged with a recordable offence other than a qualifying offence, 5
    - (ii) if arrested for or charged with more than one offence arising out of a single course of action, is not also arrested for or charged with a qualifying offence, and 10
    - (iii) is not convicted of the offence or offences in respect of which the person is arrested or charged, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence or offences in respect of which the person is arrested or charged. 15
- (2) If the person has previously been convicted of a recordable offence which is not an excluded offence, the material may be retained indefinitely.
- (3) In this section “excluded offence” has the meaning given by section 63F(13).” 20

**5 Persons convicted of a recordable offence**

After section 63G of the Police and Criminal Evidence Act 1984 (for which see section 4) insert –

**"63H Retention of section 63D material: persons convicted of a recordable offence** 25

- (1) This section applies, subject to subsection (3), to –
  - (a) section 63D material which –
    - (i) relates to a person who is convicted of a recordable offence, and 30
    - (ii) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, or
  - (b) material taken under section 61(6) or 63(3B) which relates to a person who is convicted of a recordable offence. 35
- (2) The material may be retained indefinitely.
- (3) This section does not apply to section 63D material to which section 63J applies.”

**6 Persons convicted of an offence outside England and Wales**

After section 63H of the Police and Criminal Evidence Act 1984 (for which see 40

section 5) insert—

**"63I Retention of material: persons convicted of an offence outside England and Wales**

- (1) This section applies to material falling within subsection (2) relating to a person who is convicted of an offence under the law of any country or territory outside England and Wales. 5
- (2) Material falls within this subsection if it is—
- (a) fingerprints taken from the person under section 61(6D) (power to take fingerprints without consent in relation to offences outside England and Wales), or 10
- (b) a DNA profile derived from a DNA sample taken from the person under section 62(2A) or 63(3E) (powers to take intimate and non-intimate samples in relation to offences outside England and Wales).
- (3) The material may be retained indefinitely.” 15

**7 Persons under 18 convicted of first minor offence**

After section 63I of the Police and Criminal Evidence Act 1984 (for which see section 6) insert—

**"63J Retention of section 63D material: exception for persons under 18 convicted of first minor offence** 20

- (1) This section applies to section 63D material which—
- (a) relates to a person who—
- (i) is convicted of a recordable offence other than a qualifying offence,
- (ii) has not previously been convicted of a recordable offence, and 25
- (iii) is aged under 18 at the time of the offence, and
- (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence. 30
- (2) Where the person is given a relevant custodial sentence of less than 5 years in respect of the offence, the material may be retained until the end of the period consisting of the term of the sentence plus 5 years.
- (3) Where the person is given a relevant custodial sentence of 5 years or more in respect of the offence, the material may be retained indefinitely. 35
- (4) Where the person is given a sentence other than a relevant custodial sentence in respect of the offence, the material may be retained until—
- (a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and 40
- (b) in the case of a DNA profile, the end of the period of 5 years beginning with—
- (i) the date on which the DNA sample from which the profile was derived was taken, or 45

- (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.
  - (5) But if, before the end of the period within which material may be retained by virtue of this section, the person is again convicted of a recordable offence, the material may be retained indefinitely. 5
  - (6) In this section, “relevant custodial sentence” means any of the following—
    - (a) a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000; 10
    - (b) a sentence of a period of detention and training (excluding any period of supervision) which a person is liable to serve under an order under section 211 of the Armed Forces Act 2006 or a secure training order.”
- 8 **Persons given a penalty notice** 15

After section 63J of the Police and Criminal Evidence Act 1984 (for which see section 7) insert—

**"63K Retention of section 63D material: persons given a penalty notice**

  - (1) This section applies to section 63D material which—
    - (a) relates to a person who is given a penalty notice under section 2 of the Criminal Justice and Police Act 2001, and 20
    - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.
  - (2) The material may be retained— 25
    - (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
    - (b) in the case of a DNA profile, for a period of 2 years beginning with—
      - (i) the date on which the DNA sample from which the profile was derived was taken, or 30
      - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.”
- 9 **Material retained for purposes of national security** 35

After section 63K of the Police and Criminal Evidence Act 1984 (for which see section 8) insert—

**"63L Retention of section 63D material for purposes of national security**

  - (1) Section 63D material may be retained for as long as a national security determination made by the responsible chief officer of police has effect in relation to it. 40
  - (2) A national security determination is made if the responsible chief officer of police determines that it is necessary for any section 63D material to be retained for the purposes of national security.

- (3) A national security determination –
  - (a) must be made in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which it is made, and
  - (c) may be renewed.”

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## 10 Material given voluntarily

After section 63L of the Police and Criminal Evidence Act 1984 (for which see section 9) insert –

### "63M Retention of section 63D material given voluntarily

- (1) This section applies to the following section 63D material –
  - (a) fingerprints taken with the consent of the person from whom they were taken, and
  - (b) a DNA profile derived from a DNA sample taken with the consent of the person from whom the sample was taken.
- (2) Material to which this section applies may be retained until it has fulfilled the purpose for which it was taken or derived.
- (3) Material to which this section applies which relates to –
  - (a) a person who is convicted of a recordable offence, or
  - (b) a person who has previously been convicted of a recordable offence (other than a person who has only one exempt conviction),
 may be retained indefinitely.
- (4) For the purposes of subsection (3)(b), a conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person is aged under 18.”

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## 11 Material retained with consent

After section 63M of the Police and Criminal Evidence Act 1984 (for which see section 10) insert –

### "63N Retention of section 63D material with consent

- (1) This section applies to the following material –
  - (a) fingerprints (other than fingerprints taken under section 61(6A)) to which section 63D applies, and
  - (b) a DNA profile to which section 63D applies.
- (2) If the person to whom the material relates consents to material to which this section applies being retained, the material may be retained for as long as that person consents to it being retained.
- (3) Consent given under this section –
  - (a) must be in writing, and
  - (b) can be withdrawn at any time.”

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## 12 Material obtained for one purpose and used for another

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After section 63N of the Police and Criminal Evidence Act 1984 (for which see



section 11) insert –

**"63O Section 63D material obtained for one purpose and used for another**

- (1) Subsection (2) applies if section 63D material which is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence leads to the person to whom the material relates being arrested for or charged with, or convicted of, an offence other than the offence under investigation. 5
- (2) Sections 63E to 63N and sections 63P and 63S have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence in respect of which the person is arrested or charged." 10

**13 Destruction of copies**

After section 63O of the Police and Criminal Evidence Act 1984 (for which see section 12) insert – 15

**"63P Destruction of copies of section 63D material**

- (1) If fingerprints are required by section 63D to be destroyed, any copies of the fingerprints held by the police must also be destroyed.
- (2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the police except in a form which does not include information which identifies the person to whom the DNA profile relates." 20

*Destruction rules for samples and impressions of footwear subject to PACE*

**14 Destruction of samples**

After section 63P of the Police and Criminal Evidence Act 1984 (for which see section 13) insert – 25

**"63Q Destruction of samples**

- (1) This section applies to samples –
  - (a) taken from a person under any power conferred by this Part of this Act, or 30
  - (b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.
- (2) Samples to which this section applies must be destroyed if it appears to the responsible chief officer of police that – 35
  - (a) the taking of the samples was unlawful, or
  - (b) the samples were taken from a person in connection with that person's arrest and the arrest was unlawful or based on mistaken identity.
- (3) Subject to this, the rule in subsection (4) or (as the case may be) (5) applies. 40

- 
- (4) A DNA sample to which this section applies must be destroyed –
- (a) as soon as a DNA profile has been derived from the sample, or
  - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.
- (5) Any other sample to which this section applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken. 5
- (6) Nothing in this section prevents a speculative search, in relation to samples to which this section applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.” 10
- 15 Destruction of impressions of footwear**
- After section 63Q of the Police and Criminal Evidence Act 1984 (for which see section 14) insert –
- “63R Destruction of impressions of footwear** 15
- (1) This section applies to impressions of footwear –
- (a) taken from a person under any power conferred by this Part of this Act, or
  - (b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police. 20
- (2) Impressions of footwear to which this section applies must be destroyed unless they are retained under subsection (3).
- (3) Impressions of footwear may be retained for as long as is necessary for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.” 25
- Supplementary provision for material subject to PACE*
- 16 Use of retained material**
- After section 63R of the Police and Criminal Evidence Act 1984 (for which see section 15) insert – 30
- “63S Use of retained material**
- (1) Any material to which section 63D, 63Q or 63R applies must not be used other than –
- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation, 35
  - (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
  - (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Material which is required by section 63D, 63Q or 63R to be destroyed must not at any time after it is required to be destroyed be used – 40
- (a) in evidence against the person to whom the material relates, or

- (b) for the purposes of the investigation of any offence.
- (3) In this section –
  - (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person, 5
  - (b) the reference to crime includes a reference to any conduct which –
    - (i) constitutes one or more criminal offences (whether under the law of England and Wales or of any country or territory outside England and Wales), or 10
    - (ii) is, or corresponds to, any conduct which, if it all took place in England and Wales, would constitute one or more criminal offences, and
  - (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside England and Wales of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside England and Wales.” 15

## 17 Exclusions for certain regimes

After section 63S of the Police and Criminal Evidence Act 1984 (for which see section 16) insert – 20

### "63T Exclusions for certain regimes

- (1) Sections 63D to 63S do not apply to material to which paragraphs 20A to 20I of Schedule 8 to the Terrorism Act 2000 (destruction, retention and use of material taken from terrorist suspects) apply. 25
- (2) Any reference in those sections to a person being arrested for, or charged with, an offence does not include a reference to a person –
  - (a) being arrested under section 41 of the Terrorism Act 2000, or
  - (b) being charged with an offence following an arrest under that section. 30
- (3) Nothing in sections 63D to 63S affects any power conferred by –
  - (a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971 (power to take reasonable steps to identify a person detained), or
  - (b) section 20 of the Immigration and Asylum Act 1999 (disclosure of police information to the Secretary of State for use for immigration purposes).” 35

## 18 Interpretation and minor amendments of PACE

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 65(1) (interpretation of Part 5) – 40
  - (a) after the definition of “appropriate consent” insert –
    - ““DNA profile” means any information derived from a DNA sample;
    - “DNA sample” means any material that has come from a human body and consists of or includes human cells;”, 45

- (b) after the definition of “registered health care professional” insert –
- ““the responsible chief officer of police”, in relation to the taking or deriving of section 63D material or the taking of samples to which section 63Q applies, means the chief officer of police for the police area –
- (a) in which the material concerned was taken or derived, or
- (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;
- “section 63D material” means fingerprints or DNA profiles to which section 63D applies;”, and
- (c) after the definition of “terrorism” insert –
- ““terrorist investigation” has the meaning given by section 32 of that Act;”.
- (3) After section 65(2) (meaning of references to a sample’s proving insufficient) insert –
- “(2A) In subsection (2), the reference to the destruction of a sample does not include a reference to the destruction of a sample under section 63Q (requirement to destroy samples).
- (2B) Any reference in sections 63F, 63G, 63O or 63T to a person being charged with an offence includes a reference to a person being informed that the person will be reported for an offence.”
- (4) In section 65A(2) (list of “qualifying offences” for purposes of Part 5), in paragraph (j) (offences under the Theft Act 1968), for “section 9” substitute “section 8, 9”.
- (5) After section 65A insert –
- “65B “Persons convicted of an offence”**
- (1) For the purposes of this Part, any reference to a person who is convicted of an offence includes a reference to –
- (a) a person who has been given a caution in respect of the offence which, at the time of the caution, the person has admitted, or
- (b) a person who has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence.
- (2) This Part, so far as it relates to persons convicted of an offence, has effect despite anything in the Rehabilitation of Offenders Act 1974.
- (3) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 82 of the Protection of Freedoms Act 2011.
- (4) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under sections 63F, 63G and 63M whether the person has been convicted of only one offence.”

*Amendments of regimes other than PACE*

**19 Amendments of regimes other than PACE**

Schedule 1 (which amends regimes other than the regime in the Police and Criminal Evidence Act 1984 amended by sections 1 to 18) has effect.

*National security determinations* 5

**20 National security: appointment of Commissioner**

- (1) The Secretary of State must appoint a Commissioner to be known as the Commissioner for the Retention and Use of Biometric Material (referred to in this section and sections 21 and 22 as “the Commissioner”).
- (2) It is the function of the Commissioner to keep under review – 10
  - (a) every national security determination made or renewed under –
    - (i) section 63L of the Police and Criminal Evidence Act 1984 (section 63D material retained for purposes of national security),
    - (ii) paragraph 20E of Schedule 8 to the Terrorism Act 2000 (paragraph 20A material retained for purposes of national security), 15
    - (iii) section 18B of the Counter-Terrorism Act 2008 (section 18 material retained for purposes of national security),
    - (iv) section 18G of the Criminal Procedure (Scotland) Act 1995 (certain material retained for purposes of national security), and 20
    - (v) paragraph 7 of Schedule 1 to this Act (material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989 retained for purposes of national security),
  - (b) the uses to which material retained pursuant to a national security determination is being put. 25
- (3) It is the duty of every person who makes or renews a national security determination under a provision mentioned in subsection (2)(a) to –
  - (a) send to the Commissioner a copy of the determination or renewed determination, and the reasons for making or renewing the determination, within 28 days of making or renewing it, and 30
  - (b) disclose or provide to the Commissioner such documents and information as the Commissioner may require for the purpose of carrying out the Commissioner’s functions.
- (4) If, on reviewing a national security determination made or renewed under a provision mentioned in subsection (2)(a), the Commissioner concludes that it is not necessary for any material retained pursuant to the determination to be so retained, the Commissioner may order the destruction of the material if the condition in subsection (5) is met. 35
- (5) The condition is that the material retained pursuant to the national security determination is not otherwise capable of being lawfully retained. 40
- (6) *The Commissioner is to hold office in accordance with the terms of the Commissioner’s appointment; and the Secretary of State may pay in respect of the Commissioner any expenses, remuneration or allowances that the Secretary of State may determine.*

- (7) *The Secretary of State may, after consultation with the Commissioner, provide the Commissioner with –*
- (a) *such staff, and*
  - (b) *such accommodation, equipment and other facilities,*
- as the Secretary of State considers necessary for the carrying out of the Commissioner’s functions.* 5

## 21 Reports by Commissioner

- (1) The Commissioner must make a report to the Secretary of State about the carrying out of the Commissioner’s functions as soon as reasonably practicable after the end of – 10
- (a) the period of 9 months beginning when this section comes into force, and
  - (b) every subsequent 12 month period.
- (2) The Commissioner may also, at any time, make such report to the Secretary of State on any matter relating to the carrying out of those functions as the Commissioner considers appropriate. 15
- (3) The Secretary of State may at any time require the Commissioner to report on any matter relating to the retention or use of biometric material by a law enforcement authority for the purposes of national security.
- (4) On receiving a report from the Commissioner under this section, the Secretary of State must – 20
- (a) publish the report, and
  - (b) lay a copy of the published report before Parliament.
- (5) The Secretary of State may, after consultation with the Commissioner, exclude from publication any part of a report under this section if, in the opinion of the Secretary of State, the publication of that part would be contrary to the public interest or prejudicial to national security. 25
- (6) In this section “law enforcement authority” has the meaning given by section 18E(1) of the Counter-Terrorism Act 2008.

## 22 Guidance on making a national security determination 30

- (1) The Secretary of State must give guidance about making or renewing national security determinations under a provision mentioned in section 20(2)(a).
- (2) Any person authorised to make or renew any such national security determination must have regard to any guidance given under this section.
- (3) The Secretary of State may give different guidance for different purposes. 35
- (4) In the course of preparing the guidance, or revising guidance already given, the Secretary of State must consult the Commissioner and the Lord Advocate.
- (5) Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay before Parliament – 40
- (a) the proposed guidance or proposed revisions, and
  - (b) a draft of an order providing for the guidance, or revisions to the guidance, to come into force.

- (6) The Secretary of State must make the order, and issue the guidance or (as the case may be) make the revisions to the guidance, if the draft of the order is approved by a resolution of each House of Parliament.
- (7) Guidance, or revisions to guidance, come into force in accordance with an order under this section. 5
- (8) Such an order –
  - (a) is to be a statutory instrument, and
  - (b) may contain transitional, transitory or saving provision.
- (9) The Secretary of State must publish any guidance given or revised under this section. 10

*Other provisions*

**23 Inclusion of DNA profiles on National DNA Database**

After section 63A of the Police and Criminal Evidence Act 1984 insert –

**“63AA Inclusion of DNA profiles on National DNA Database**

- (1) This section applies to a DNA profile which is derived from a DNA sample and which is retained under any power conferred by any of sections 63E to 63K (including those sections as applied by section 63O). 15
- (2) A DNA profile to which this section applies must be recorded on the National DNA Database.”

**24 National DNA Database Strategy Board** 20

After section 63AA of the Police and Criminal Evidence Act 1984 (for which see section 23) insert –

**“63AB National DNA Database Strategy Board**

- (1) The Secretary of State must make arrangements for a National DNA Database Strategy Board to oversee the operation of the National DNA Database. 25
- (2) The National DNA Database Strategy Board must issue guidance about the destruction of DNA profiles which are, or may be, retained under this Part of this Act.
- (3) A chief officer of a police force in England and Wales must act in accordance with guidance issued under this section. 30
- (4) The Secretary of State must publish the governance rules of the National DNA Database Strategy Board and lay a copy of the rules before Parliament.
- (5) The National DNA Database Strategy Board must make an annual report to the Secretary of State about the exercise of its functions. 35
- (6) The Secretary of State must publish the report and lay a copy of the published report before Parliament.
- (7) The Secretary of State may exclude from publication any part of the report if, in the opinion of the Secretary of State, the publication of that 40

part would be contrary to the public interest or prejudicial to national security.”

## **25 Material taken before commencement**

- (1) The Secretary of State must by order make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Chapter. 5
- (2) The Secretary of State must, in particular, provide for the destruction or retention of PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before the commencement day in connection with the investigation of an offence. 10
- (3) Such provision must, in particular, ensure –
  - (a) in the case of material taken or derived 3 years or more before the commencement day from a person who –
    - (i) was arrested for, or charged with, the offence, and
    - (ii) has not been convicted of the offence, 15
 the destruction of the material on the coming into force of the order if the offence was a qualifying offence,
  - (b) in the case of material taken or derived less than 3 years before the commencement day from a person who –
    - (i) was arrested for, or charged with, the offence, and 20
    - (ii) has not been convicted of the offence,
 the destruction of the material within the period of 3 years beginning with the day on which the material was taken or derived if the offence was a qualifying offence, and
  - (c) in the case of material taken or derived before the commencement day from a person who –
    - (i) was arrested for, or charged with, the offence, and
    - (ii) has not been convicted of the offence, 25
 the destruction of the material on the coming into force of the order if the offence was an offence other than a qualifying offence. 30
- (4) An order under this section may, in particular, provide for exceptions to provision of the kind mentioned in subsection (3).
- (5) Subsection (6) applies if an order under section 113(1) of the Police and Criminal Evidence Act 1984 (application of that Act to Armed Forces) makes provision equivalent to sections 63D to 63T of that Act. 35
- (6) The power to make an order under section 113(1) of the Act of 1984 includes the power to make provision of the kind that may be made by an order under this section; and the duties which apply to the Secretary of State under this section in relation to an order under this section apply accordingly in relation to an order under section 113(1) of that Act. 40
- (7) An order under this section is to be made by statutory instrument.
- (8) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section –



“the commencement day” means the day on which section 1 comes into force,

“PACE material” means material that would have been material to which section 63D or 63Q of the Police and Criminal Evidence Act 1984 applied if those provisions had been in force when it was taken or derived.

5

## CHAPTER 2

### PROTECTION OF BIOMETRIC INFORMATION OF CHILDREN IN SCHOOLS ETC.

#### 26 Requirement for consent before processing biometric information

- (1) Subsection (2) applies in relation to any processing of a child’s biometric information by or on behalf of the relevant authority of –
  - (a) a school,
  - (b) a 16 to 19 Academy, or
  - (c) a further education institution.10
- (2) The relevant authority must ensure that a child’s biometric information is not processed unless –
  - (a) each parent of the child consents to the information being processed, or
  - (b) such consent is not required in one or more cases and is given in any other case.15
- (3) See section 27 for further provision about consent (including when consent is not required). 20
- (4) But if, at any time, the child –
  - (a) refuses to participate in, or continue to participate in, anything that involves the processing of the child’s biometric information, or
  - (b) otherwise objects to the processing of that information,the relevant authority must ensure that the information is not processed, irrespective of any consent given by a parent of the child under subsection (2). 25
- (5) Subsection (6) applies in relation to any child whose biometric information, by virtue of this section, may not be processed.
- (6) The relevant authority must ensure that reasonable alternative means are available by which the child may do, or be subject to, anything which the child would have been able to do, or be subject to, had the child’s biometric information been processed. 30

#### 27 Exceptions and further provision about consent

- (1) For the purposes of section 26(2), the consent of a parent is not required if the relevant authority is satisfied that –
    - (a) the parent cannot be found,
    - (b) the parent lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent,
    - (c) the welfare of the child requires that the parent is not contacted, or
    - (d) it is otherwise not reasonably practicable to obtain the consent of the parent.35
- 40

- (2) Consent under section 26(2) may be withdrawn at any time.
- (3) Consent under section 26(2) must be given, and (if withdrawn) withdrawn, in writing.
- (4) Section 26 and this section are in addition to the requirements of the Data Protection Act 1998. 5

## 28 Interpretation: Chapter 2

- (1) In this Chapter –
- “biometric information” is to be read in accordance with subsections (2) and (3), 10
  - “child” means a person under the age of 18, 10
  - “further education institution” means an institution within the further education sector (within the meaning given by section 91(3)(a) to (c) of the Further and Higher Education Act 1992),
  - “parent” is to be read in accordance with subsections (4) to (7),
  - “parental responsibility” is to be read in accordance with the Children Act 1989, 15
  - “processing” has the meaning given by section 1(1) of the Data Protection Act 1998,
  - “proprietor”, in relation to a school or 16 to 19 Academy, has the meaning given by section 579(1) of the Education Act 1996, subject to the modification in subsection (8), 20
  - “relevant authority” means –
    - (a) in relation to a school, the proprietor of the school,
    - (b) in relation to a 16 to 19 Academy, the proprietor of the Academy, 25
    - (c) in relation to a further education institution, the governing body of the institution (within the meaning given by paragraphs (a), (c) and (d) of the definition of “governing body” in section 90(1) of the Further and Higher Education Act 1992),
  - “school” has the meaning given by section 4 of the Education Act 1996, subject to the modification in subsection (9), 30
  - “16 to 19 Academy” has the meaning given by section 1B of the Academies Act 2010.”
- (2) “Biometric information” means information about a person’s physical or behavioural characteristics or features which – 35
- (a) is capable of being used in order to identify the person, and
  - (b) is obtained for the purpose of being so used.
- (3) Biometric information may, in particular, include –
- (a) information about the skin pattern and other physical characteristics or features of a person’s fingers or palms, 40
  - (b) information about the features of an iris or any other part of the eye, and
  - (c) information about a person’s voice or handwriting.
- (4) “Parent” means a parent of the child and any individual who is not a parent of the child but who has parental responsibility for the child. 45

- (5) In a case where the relevant authority is satisfied that, by virtue of section 27(1), the consent of no parent is required, “parent” is to be read as including each individual who has care of the child but this is subject to subsections (6) and (7).
- (6) In a case to which subsection (5) applies where the child is looked after by a local authority (within the meaning given by section 22(1) of the Children Act 1989), “parent” is to be read as meaning the local authority looking after the child. 5
- (7) In a case to which subsection (5) applies where the child is not looked after by a local authority (within the meaning given by section 22(1) of the Children Act 1989) but a voluntary organisation has provided accommodation for the child in accordance with section 59(1) of that Act by – 10
- (a) placing the child with a foster parent, or
- (b) maintaining the child in a children’s home,
- “parent” is to be read as meaning the voluntary organisation that so placed or maintains the child. 15
- (8) A reference to the proprietor of a school is to be read, in relation to a pupil referral unit for which there is a management committee established by virtue of paragraph 15 of Schedule 1 to the Education Act 1996, as a reference to that committee; and for this purpose “pupil referral unit” has the meaning given by section 19(2) of that Act. 20
- (9) A reference to a school is to be read as if it included a reference to any independent educational institution (within the meaning given by section 92 of the Education and Skills Act 2008).

## PART 2

### REGULATION OF SURVEILLANCE 25

#### CHAPTER 1

##### REGULATION OF CCTV AND OTHER SURVEILLANCE CAMERA TECHNOLOGY

###### *Code of practice*

### 29 Code of practice for surveillance camera systems

- (1) The Secretary of State must prepare a code of practice containing guidance about surveillance camera systems. 30
- (2) Such a code must contain guidance about one or more of the following –
- (a) the development or use of surveillance camera systems,
- (b) the use or processing of images or other information obtained by virtue of such systems. 35
- (3) Such a code may, in particular, include provision about –
- (a) considerations as to whether to use surveillance camera systems,
- (b) types of systems or apparatus,
- (c) technical standards for systems or apparatus,
- (d) locations for systems or apparatus, 40
- (e) the publication of information about systems or apparatus,

- (f) standards applicable to persons using or maintaining systems or apparatus,
  - (g) standards applicable to persons using or processing information obtained by virtue of systems,
  - (h) access to, or disclosure of, information so obtained, 5
  - (i) procedures for complaints or consultation.
- (4) Such a code –
- (a) need not contain provision about every type of surveillance camera system,
  - (b) may make different provision for different purposes. 10
- (5) In the course of preparing such a code, the Secretary of State must consult –
- (a) such persons appearing to the Secretary of State to be representative of the views of persons who are, or are likely to be, subject to the duty under section 33(1) (duty to have regard to the code) as the Secretary of State considers appropriate, 15
  - (b) the Association of Chief Police Officers,
  - (c) the Information Commissioner,
  - (d) the Chief Surveillance Commissioner,
  - (e) the Surveillance Camera Commissioner,
  - (f) the Welsh Ministers, and 20
  - (g) such other persons as the Secretary of State considers appropriate.
- (6) In this Chapter “surveillance camera systems” means –
- (a) closed circuit television or automatic number plate recognition systems,
  - (b) any other systems for recording or viewing visual images of objects or events for surveillance purposes, 25
  - (c) any systems for storing, receiving, transmitting, processing or checking images or information obtained by systems falling within paragraph (a) or (b), or
  - (d) any other systems associated with, or otherwise connected with, systems falling within paragraph (a), (b) or (c). 30
- (7) In this section –
- “the Chief Surveillance Commissioner” means the Chief Commissioner appointed under section 91(1) of the Police Act 1997,
  - “processing” has the meaning given by section 1(1) of the Data Protection Act 1998. 35

*Procedural requirements*

### 30 Issuing of code

- (1) The Secretary of State must lay before Parliament –
- (a) a code of practice prepared under section 29, and 40
  - (b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.

- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 29 if –
  - (a) the draft of the order is not so approved, and 5
  - (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section.
- (6) Such an order –
  - (a) is to be a statutory instrument, and 10
  - (b) may contain transitional, transitory or saving provision.
- (7) If a draft of an instrument containing an order under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument. 15

### **31 Alteration or replacement of code**

- (1) The Secretary of State –
  - (a) must keep the surveillance camera code under review, and
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code, the Secretary of State must consult the persons mentioned in section 29(5). 20
- (3) The Secretary of State must lay before Parliament an alteration or a replacement code prepared under this section.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the alteration or the replacement code, the Secretary of State must not issue the alteration or code. 25
- (5) If no such resolution is made within that period, the Secretary of State must issue the alteration or replacement code.
- (6) The alteration or replacement code –
  - (a) comes into force when issued, and 30
  - (b) may include transitional, transitory or saving provision.
- (7) Subsection (4) does not prevent the Secretary of State from laying a new alteration or replacement code before Parliament.
- (8) In this section “the 40-day period” means the period of 40 days beginning with the day on which the replacement code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the two days on which it is laid). 35
- (9) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. 40
- (10) In this Chapter “the surveillance camera code” means the code of practice issued under section 30(2) (as altered or replaced from time to time).

### **32 Publication of code**

- (1) The Secretary of State must publish the code issued under section 30(2).
- (2) The Secretary of State must publish any replacement code issued under section 31(5).
- (3) The Secretary of State must publish— 5
  - (a) any alteration issued under section 31(5), or
  - (b) the code or replacement code as altered by it.

#### *Enforcement and Commissioner*

### **33 Effect of code**

- (1) A relevant authority must have regard to the surveillance camera code when exercising any functions to which the code relates. 10
- (2) A failure on the part of any person to act in accordance with any provision of the surveillance camera code does not of itself make that person liable to criminal or civil proceedings.
- (3) The surveillance camera code is admissible in evidence in any such proceedings. 15
- (4) A court or tribunal may, in particular, take into account a failure by a relevant authority to have regard to the surveillance camera code in determining a question in any such proceedings.
- (5) In this section “relevant authority” means— 20
  - (a) a local authority within the meaning of the Local Government Act 1972,
  - (b) the Greater London Authority,
  - (c) the Common Council of the City of London in its capacity as a local authority,
  - (d) the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in their capacity as a local authority, 25
  - (e) the Council of the Isles of Scilly,
  - (f) a parish meeting constituted under section 13 of the Local Government Act 1972,
  - (g) a police and crime commissioner, 30
  - (h) the Mayor’s Office for Policing and Crime,
  - (i) the Common Council of the City of London in its capacity as a police authority,
  - (j) any chief officer of a police force in England and Wales,
  - (k) any person specified or described by the Secretary of State in an order made by statutory instrument. 35
- (6) An order under subsection (5) may, in particular —
  - (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions, 40
  - (b) contain transitional, transitory or saving provision.
- (7) So far as an order under subsection (5) contains a restriction of the kind mentioned in subsection (6)(a) in relation to a person, the duty in subsection (1)

applies only to the person in that capacity or (as the case may be) only in relation to those functions.

- (8) Before making an order under subsection (5) in relation to any person or description of persons, the Secretary of State must consult –
- (a) such persons appearing to the Secretary of State to be representative of the views of the person or persons in relation to whom the order may be made as the Secretary of State considers appropriate, 5
  - (b) the Association of Chief Police Officers,
  - (c) the Information Commissioner,
  - (d) the Chief Surveillance Commissioner, 10
  - (e) the Surveillance Camera Commissioner,
  - (f) the Welsh Ministers, and
  - (g) such other persons as the Secretary of State considers appropriate.
- (9) No instrument containing an order under subsection (5) is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament. 15
- (10) If a draft of an instrument containing an order under subsection (5) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument. 20

### 34 Commissioner in relation to code

- (1) The Secretary of State must appoint a person as the Surveillance Camera Commissioner (in this Chapter “the Commissioner”).
- (2) The Commissioner is to have the following functions –
- (a) encouraging compliance with the surveillance camera code, 25
  - (b) reviewing the operation of the code, and
  - (c) providing advice about the code (including changes to it or breaches of it).
- (3) *The Commissioner is to hold office in accordance with the terms of the Commissioner’s appointment; and the Secretary of State may pay in respect of the Commissioner any expenses, remuneration or allowances that the Secretary of State may determine.* 30
- (4) *The Secretary of State may, after consultation with the Commissioner, provide the Commissioner with –*
- (a) *such staff, and*
  - (b) *such accommodation, equipment and other facilities,* 35
- as the Secretary of State considers necessary for the carrying out of the Commissioner’s functions.*

### 35 Reports by Commissioner

- (1) As soon as reasonably practicable after the end of each reporting period –
- (a) the Commissioner must – 40
    - (i) prepare a report about the exercise by the Commissioner during that period of the functions of the Commissioner, and
    - (ii) give a copy of the report to the Secretary of State,

- (b) the Secretary of State must lay a copy of the report before Parliament, and
  - (c) the Commissioner must publish the report.
- (2) The reporting periods are –
- (a) the period – 5
    - (i) beginning with the surveillance camera code first coming into force or the making of the first appointment as Commissioner (whichever is the later), and
    - (ii) ending with the next 31 March or, if the period ending with that date is 6 months or less, ending with the next 31 March after that date, and 10
  - (b) each succeeding period of 12 months.

### *Interpretation*

## 36 Interpretation: Chapter 1

- In this Chapter – 15
- “the Commissioner” has the meaning given by section 34(1),
  - “surveillance camera code” has the meaning given by section 31(10),
  - “surveillance camera systems” has the meaning given by section 29(6).

## CHAPTER 2

### SAFEGUARDS FOR CERTAIN SURVEILLANCE UNDER RIPA 20

## 37 Judicial approval for obtaining or disclosing communications data

After section 23 of the Regulation of Investigatory Powers Act 2000 (form and duration of authorisations and notices for obtaining and disclosing communications data) insert –

- "23A Authorisations requiring judicial approval 25**
- (1) This section applies where a relevant person has –
    - (a) granted or renewed an authorisation under section 22(3), (3B) or (3F), or
    - (b) given or renewed a notice under section 22(4).
  - (2) The authorisation or notice is not to take effect until such time (if any) as the relevant judicial authority has made an order approving the grant or renewal of the authorisation or (as the case may be) the giving or renewal of the notice. 30
  - (3) The relevant judicial authority may give approval under this section to the granting or renewal of an authorisation under section 22(3), (3B) or (3F) if, and only if, the relevant judicial authority is satisfied that – 35
    - (a) at the time of the grant or renewal –
      - (i) there were reasonable grounds for believing that the requirements of section 22(1) and (5) were satisfied in relation to the authorisation, and 40



- (ii) the relevant conditions were satisfied in relation to the authorisation, and
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 22(1) and (5) are satisfied in relation to the authorisation. 5
- (4) The relevant judicial authority may give approval under this section to the giving or renewal of a notice under section 22(4) if, and only if, the relevant judicial authority is satisfied that –
  - (a) at the time of the giving or renewal of the notice – 10
    - (i) there were reasonable grounds for believing that the requirements of section 22(1) and (5) were satisfied in relation to the notice, and
    - (ii) the relevant conditions were satisfied in relation to the notice, and 15
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 22(1) and (5) are satisfied in relation to the notice.
- (5) For the purposes of subsections (3) and (4) the relevant conditions are – 20
  - (a) in relation to any grant, giving or renewal by an individual holding an office, rank or position in a local authority in England, Wales or Scotland, that –
    - (i) the individual was a designated person for the purposes of this Chapter, 25
    - (ii) the grant, giving or renewal was not in breach of any restrictions imposed by virtue of section 25(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,
  - (b) in relation to a grant, giving or renewal, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that – 30
    - (i) the individual was a designated person for the purposes of this Chapter, 35
    - (ii) the grant, giving or renewal was not in breach of any restrictions imposed by virtue of section 25(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and
  - (c) in relation to any other grant, giving or renewal by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied. 40
- (6) In this section –
  - “local authority in England” means – 45
    - (a) a district or county council in England,
    - (b) a London borough council,
    - (c) the Common Council of the City of London in its capacity as a local authority, or
    - (d) the Council of the Isles of Scilly,

- “local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994,
- “local authority in Wales” means any county council or county borough council in Wales,
- “Northern Ireland excepted or reserved matter” means an 5  
 excepted or reserved matter (within the meaning of section 4(1) of the Northern Ireland Act 1998),
- “Northern Ireland transferred matter” means a transferred matter (within the meaning of section 4(1) of the Act of 1998),
- “relevant judicial authority” means – 10
- (a) in relation to England and Wales, a justice of the peace,
  - (b) in relation to Scotland, a sheriff, and
  - (c) in relation to Northern Ireland, a district judge (magistrates’ courts) in Northern Ireland,
- “relevant person” means – 15
- (a) an individual holding –
    - (i) an office, rank or position in a local authority in England or Wales, or
    - (ii) an office, rank or position in a local authority in Scotland (other than an office, rank or position in a fire and rescue authority), 20
  - (b) also, in relation to a grant, giving or renewal for any purpose relating to a Northern Ireland excepted or reserved matter, an individual holding an office, rank or position in a district council in Northern Ireland, and 25
  - (c) also, in relation to any grant, giving or renewal of a description that may be prescribed for the purposes of this subsection by an order made by the Secretary of State or every grant, giving or renewal if so prescribed, a person of a description so prescribed. 30
- (7) No order of the Secretary of State –
- (a) may be made under subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;
  - (b) may be made under this section so far as it makes provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly because it deals with a Northern Ireland transferred matter. 35
- 23B Procedure for judicial approval** 40
- (1) The public authority with which the relevant person holds an office, rank or position may apply to the relevant judicial authority for an order under section 23A approving the grant or renewal of an authorisation or (as the case may be) the giving or renewal of a notice.
  - (2) The applicant is not required to give notice of the application to – 45
    - (a) any person to whom the authorisation or notice which is the subject of the application relates, or
    - (b) such a person’s legal representatives.

- (3) Where, on an application under section 23A, the relevant judicial authority refuses to approve the grant or renewal of the authorisation concerned or (as the case may be) the giving or renewal of the notice concerned, the relevant judicial authority may make an order quashing the authorisation or notice. 5
- (4) In this section “relevant judicial authority” and “relevant person” have the same meaning as in section 23A.”

### 38 Judicial approval for directed surveillance and covert human intelligence sources

- (1) After section 32 of the Regulation of Investigatory Powers Act 2000 (authorisation of surveillance and human intelligence sources: intrusive surveillance) insert— 10

*“Authorisations requiring judicial approval*

#### 32A Authorisations requiring judicial approval

- (1) This section applies where a relevant person has granted an authorisation under section 28 or 29. 15
- (2) The authorisation is not to take effect until such time (if any) as the relevant judicial authority has made an order approving the grant of the authorisation.
- (3) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 28 if, and only if, the relevant judicial authority is satisfied that— 20
- (a) at the time of the grant—
- (i) there were reasonable grounds for believing that the requirements of section 28(2) were satisfied in relation to the authorisation, and 25
- (ii) the relevant conditions were satisfied in relation to the authorisation, and
- (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 28(2) are satisfied in relation to the authorisation. 30
- (4) For the purposes of subsection (3) the relevant conditions are—
- (a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that— 35
- (i) the individual was a designated person for the purposes of section 28,
- (ii) the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and
- (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, 40
- (b) in relation to a grant, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that— 45

- 
- (i) the individual was a designated person for the purposes of section 28,
      - (ii) the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and
      - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and
    - (c) in relation to any other grant by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.
- (5) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 29 if, and only if, the relevant judicial authority is satisfied that—
- (a) at the time of the grant—
    - (i) there were reasonable grounds for believing that the requirements of section 29(2), and any requirements imposed by virtue of section 29(7)(b), were satisfied in relation to the authorisation, and
    - (ii) the relevant conditions were satisfied in relation to the authorisation, and
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 29(2), and any requirements imposed by virtue of section 29(7)(b), are satisfied in relation to the authorisation.
- (6) For the purposes of subsection (5) the relevant conditions are—
- (a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that—
    - (i) the individual was a designated person for the purposes of section 29,
    - (ii) the grant of the authorisation was not in breach of any prohibition imposed by virtue of section 29(7)(a) or any restriction imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,
  - (b) in relation to a grant, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that—
    - (i) the individual was a designated person for the purposes of section 29,
    - (ii) the grant of the authorisation was not in breach of any prohibition imposed by virtue of section 29(7)(a) or any restriction imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,
  - (c) in relation to any other grant by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.
- (7) In this section—
- “local authority in England” means—

- (a) a district or county council in England,
  - (b) a London borough council,
  - (c) the Common Council of the City of London in its capacity as a local authority, or
  - (d) the Council of the Isles of Scilly, 5
- “local authority in Wales” means any county council or county borough council in Wales,
- “Northern Ireland excepted or reserved matter” means an excepted or reserved matter (within the meaning of section 4(1) of the Northern Ireland Act 1998), 10
- “Northern Ireland transferred matter” means a transferred matter (within the meaning of section 4(1) of the Act of 1998),
- “relevant judicial authority” means –
- (a) in relation to England and Wales, a justice of the peace,
  - (b) in relation to Scotland, a sheriff, and 15
  - (c) in relation to Northern Ireland, a district judge (magistrates’ courts) in Northern Ireland,
- “relevant person” means –
- (a) an individual holding an office, rank or position in a local authority in England or Wales, 20
  - (b) also, in relation to a grant for any purpose relating to a Northern Ireland excepted or reserved matter, an individual holding an office, rank or position in a district council in Northern Ireland, and
  - (c) also, in relation to any grant of a description that may be prescribed for the purposes of this subsection by an order made by the Secretary of State or every grant if so prescribed, a person of a description so prescribed. 25
- (8) No order of the Secretary of State –
- (a) may be made under subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House; 30
  - (b) may be made under this section so far as it makes provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament; 35
  - (c) may be made under this section so far as it makes provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly because it deals with a Northern Ireland transferred matter. 40

### **32B Procedure for judicial approval**

- (1) The public authority with which the relevant person holds an office, rank or position may apply to the relevant judicial authority for an order under section 32A approving the grant of an authorisation. 45
- (2) The applicant is not required to give notice of the application to –
  - (a) any person to whom the authorisation relates, or
  - (b) such a person’s legal representatives.

- (3) Where, on an application under section 32A, the relevant judicial authority refuses to approve the grant of the authorisation concerned, the relevant judicial authority may make an order quashing the authorisation.
- (4) In this section “relevant judicial authority” and “relevant person” have the same meaning as in section 32A.” 5
- (2) In section 43 of that Act (general rules about grant, renewal and duration of authorisations) –
- (a) after subsection (6) insert –
- “(6A) The relevant judicial authority (within the meaning given by subsection (7) of section 32A) shall not make an order under that section approving the renewal of an authorisation for the conduct or the use of a covert human intelligence source unless the relevant judicial authority – 10
- (a) is satisfied that a review has been carried out of the matters mentioned in subsection (7) below, and 15
- (b) has, for the purpose of deciding whether to make the order, considered the results of that review.”, and
- (b) in subsection (7) for “subsection (6)” substitute “subsections (6) and (6A)”. 20

### PART 3

#### PROTECTION OF PROPERTY FROM DISPROPORTIONATE ENFORCEMENT ACTION

#### CHAPTER 1

#### POWERS OF ENTRY

*Repealing, adding safeguards or rewriting powers of entry* 25

#### **39 Repealing etc. unnecessary or inappropriate powers of entry**

- (1) The appropriate national authority may by order repeal any power of entry or associated power which the appropriate national authority considers to be unnecessary or inappropriate.
- (2) Schedule 2 (which contains repeals etc. of certain powers of entry) has effect. 30

#### **40 Adding safeguards to powers of entry**

- (1) The appropriate national authority may by order provide for safeguards in relation to any power of entry or associated power.
- (2) Such safeguards may, in particular, include – 35
- (a) restrictions as to the premises over which the power may be exercised,
- (b) restrictions as to the times at which the power may be exercised,
- (c) restrictions as to the number or description of persons who may exercise the power,
- (d) a requirement for a judicial or other authorisation before the power may be exercised, 40

- (e) a requirement to give notice within a particular period before the power may be exercised,
- (f) other conditions which must be met before the power may be exercised,
- (g) modifications of existing conditions which must be met before the power may be exercised, 5
- (h) other restrictions on the circumstances in which the power may be exercised,
- (i) new obligations on the person exercising the power which must be met before, during or after its exercise,
- (j) modifications of existing obligations which must be met by the person exercising the power before, during or after its exercise, 10
- (k) restrictions on any power to use force, or any other power, which may be exercised in connection with the power of entry or associated power.

#### **41 Rewriting powers of entry**

- (1) The appropriate national authority may by order rewrite, with or without modifications – 15
  - (a) powers of entry, associated powers or any aspects of any such powers, or
  - (b) enactments relating to, or connected with, any such powers or aspects.
- (2) The power under subsection (1) to rewrite a power of entry or associated power includes, in particular, the power to remove an aspect of such a power without replacing it. 20
- (3) But no order under this section may alter the effect of –
  - (a) a power of entry,
  - (b) any associated power connected with it, or 25
  - (c) any safeguard relating to, but not forming part of, the power of entry or associated power,unless, on and after the changes made by the order, the safeguards in relation to the power of entry and associated powers connected with it, taken together, provide a greater level of protection than any safeguards applicable immediately before the changes. 30

#### **42 Duty to review certain existing powers of entry**

- (1) Each Minister of the Crown who is a member of the Cabinet must, within the relevant period –
  - (a) review relevant powers of entry, and relevant associated powers, for which the Minister is responsible with a view to deciding whether to make an order under section 39(1), 40 or 41 in relation to any of them, 35
  - (b) prepare a report of that review, and
  - (c) lay a copy of the report before Parliament.
- (2) A failure by a Minister of the Crown to comply with a duty under subsection (1) in relation to a power of entry or associated power does not affect the validity of the power. 40
- (3) In this section –
  - “relevant associated power” means any associated power in a public general Act or a statutory instrument made under such an Act, 45

“the relevant period” means the period of two years beginning with the day on which this Act is passed,

“relevant power of entry” means any power of entry in a public general Act or a statutory instrument made under such an Act.

- 43 Consultation requirements before modifying powers of entry** 5
- Before making an order under section 39(1), 40 or 41 in relation to a power of entry or associated power, the appropriate national authority must consult –
- (a) such persons appearing to the appropriate national authority to be representative of the views of persons entitled to exercise the power of entry or associated power as the appropriate national authority considers appropriate, and 10
  - (b) such other persons as the appropriate national authority considers appropriate.
- 44 Procedural and supplementary provisions**
- (1) An order under section 39(1), 40 or 41 – 15
    - (a) is to be made by statutory instrument,
    - (b) may modify any enactment,
    - (c) may include such incidental, consequential, supplementary, transitory, transitional or saving provision as the appropriate national authority considers appropriate (including provision modifying any enactment). 20
  - (2) Subject to subsection (4), no instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
  - (3) If a draft of an instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument. 25
  - (4) An instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament. 30
  - (5) In subsection (4) “primary legislation” means – 35
    - (a) a public general Act,
    - (b) an Act of the Scottish Parliament,
    - (c) a Measure or Act of the National Assembly for Wales, and
    - (d) Northern Ireland legislation.
  - (6) Subject to subsection (7), no instrument containing an order of the Welsh Ministers under section 39(1), 40 or 41 is to be made unless a draft of it has been laid before, and approved by a resolution of, the National Assembly for Wales.
  - (7) An instrument containing an order of the Welsh Ministers under section 39(1), 40 or 41 is subject to annulment in pursuance of a resolution of the National Assembly for Wales if it neither amends nor repeals any of the following – 40
    - (a) any provision of a public general Act,
    - (b) any provision of a Measure or Act of the National Assembly for Wales.



#### 45 Devolution: Scotland and Northern Ireland

- (1) An order under section 39(1), 40 or 41 may not make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament.
- (2) An order under section 39(1), 40 or 41 may not make provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly because it deals with a transferred matter. 5
- (3) In subsection (2) “transferred matter” has the meaning given by section 4(1) of the Northern Ireland Act 1998. 10

#### 46 Sections 39 to 46: interpretation

In sections 39 to 45 and this section –

“appropriate national authority” means –

- (a) in relation to the making of any provision which would be within the legislative competence of the National Assembly for Wales, the Welsh Ministers, 15
- (b) in any other case, a Minister of the Crown,

“associated power” means any power which –

- (a) is contained in an enactment,
- (b) is connected with a power of entry, and 20
- (c) is a power –
  - (i) to do anything on, or in relation to, the land or other premises entered in pursuance of the power of entry,
  - (ii) to do anything in relation to any person, or anything, found on the land or other premises entered in pursuance of the power of entry, or 25
  - (iii) otherwise to do anything in connection with the power of entry,

and includes any safeguard which forms part of the associated power;

“enactment” includes – 30

- (a) an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978),
- (b) an enactment comprised in, or in an instrument made under –
  - (i) an Act of the Scottish Parliament,
  - (ii) Northern Ireland legislation, or 35
  - (iii) a Measure or Act of the National Assembly for Wales,

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975,

“modify” includes amend or repeal (and “modifications” is to be read accordingly), 40

“off-shore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971 (see section 12 of that Act),

“power of entry” means a power (however expressed) in any enactment to enter land or other premises; and includes any safeguard which forms part of the power, 45

“premises” includes any place and, in particular, includes –

- (a) any vehicle, vessel, aircraft or hovercraft,

- (b) any off-shore installation,
  - (c) any renewable energy installation,
  - (d) any tent or movable structure,
- “renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (see section 104 of that Act), 5
- “repeal” includes revoke.

*Codes of practice in relation to powers of entry*

**47 Code of practice in relation to non-devolved powers of entry**

- (1) The Secretary of State must prepare a code of practice containing guidance about the exercise of powers of entry and associated powers. 10
- (2) Such a code may, in particular, include provision about –
  - (a) considerations before exercising, or when exercising, the powers,
  - (b) considerations after exercising the powers (such as the retention of records, or the publication of information, about the exercise of the powers). 15
- (3) Such a code –
  - (a) must not contain provision about devolved powers of entry and devolved associated powers,
  - (b) need not contain provision about every other type of power of entry or associated power, 20
  - (c) may make different provision for different purposes.
- (4) In the course of preparing such a code in relation to any powers, the Secretary of State must consult –
  - (a) the Lord Advocate,
  - (b) such persons appearing to the Secretary of State to be representative of the views of persons entitled to exercise the powers concerned as the Secretary of State considers appropriate, and 25
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) In this section “devolved powers of entry and devolved associated powers” means powers of entry and associated powers – 30
  - (a) in relation to which the Welsh Ministers may issue a code under Schedule 3,
  - (b) which, if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament, or
  - (c) which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of that Assembly because it deals with a transferred matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998). 35

**48 Issuing of code**

- (1) The Secretary of State must lay before Parliament – 40
  - (a) a code of practice prepared under section 47, and
  - (b) a draft of an order providing for the code to come into force.

- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 47 if – 5
  - (a) the draft of the order is not so approved, and
  - (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section. 10
- (6) Such an order –
  - (a) is to be a statutory instrument, and
  - (b) may contain transitional, transitory or saving provision.
- (7) If a draft of an instrument containing an order under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument. 15

#### **49 Alteration or replacement of code**

- (1) The Secretary of State –
  - (a) must keep the powers of entry code under review, and 20
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code in relation to any powers, the Secretary of State must consult –
  - (a) the Lord Advocate,
  - (b) such persons appearing to the Secretary of State to be representative of the views of persons entitled to exercise the powers concerned as the Secretary of State considers appropriate, and 25
  - (c) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must lay before Parliament an alteration or a replacement code prepared under this section. 30
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the alteration or the replacement code, the Secretary of State must not issue the alteration or code.
- (5) If no such resolution is made within that period, the Secretary of State must issue the alteration or replacement code. 35
- (6) The alteration or replacement code –
  - (a) comes into force when issued, and
  - (b) may include transitional, transitory or saving provision.
- (7) Subsection (4) does not prevent the Secretary of State from laying a new alteration or replacement code before Parliament. 40
- (8) In this section “the 40-day period” means the period of 40 days beginning with the day on which the replacement code is laid before Parliament (or, if it is not

laid before each House of Parliament on the same day, the later of the two days on which it is laid).

- (9) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. 5
- (10) In this section “the powers of entry code” means the code of practice issued under section 48(2) (as altered or replaced from time to time).

## **50 Publication of code**

- (1) The Secretary of State must publish the code issued under section 48(2).
- (2) The Secretary of State must publish any replacement code issued under section 49(5). 10
- (3) The Secretary of State must publish—
- (a) any alteration issued under section 49(5), or
  - (b) the code or replacement code as altered by it.

## **51 Effect of code** 15

- (1) A relevant person must have regard to the powers of entry code when exercising any functions to which the code relates.
- (2) A failure on the part of any person to act in accordance with any provision of the powers of entry code does not of itself make that person liable to criminal or civil proceedings. 20
- (3) The powers of entry code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a relevant person to have regard to the powers of entry code in determining a question in any such proceedings.
- (5) In this section “relevant person” means any person specified or described by the Secretary of State in an order made by statutory instrument. 25
- (6) An order under subsection (5) may, in particular —
- (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions, 30
  - (b) contain transitional, transitory or saving provision.
- (7) So far as an order under subsection (5) contains a restriction of the kind mentioned in subsection (6)(a) in relation to a person, the duty in subsection (1) applies only to the person in that capacity or (as the case may be) only in relation to those functions. 35
- (8) Before making an order under subsection (5) in relation to any person or description of persons, the Secretary of State must consult such persons appearing to the Secretary of State to be representative of the views of the person or persons in relation to whom the order may be made as the Secretary of State considers appropriate. 40
- (9) An instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.

**52 Sections 47 to 51: interpretation**

In sections 47 to 51 –

“power of entry” and “associated power” have the meaning given by section 46,

“the powers of entry code” has the meaning given by section 49(10). 5

**53 Corresponding code in relation to Welsh devolved powers of entry**

Schedule 3 (which confers a power on the Welsh Ministers to issue a code of practice about Welsh devolved powers of entry and associated powers) has effect.

**CHAPTER 2**

10

**VEHICLES LEFT ON LAND**

*Offence of immobilising etc. vehicles*

**54 Offence of immobilising etc. vehicles**

- (1) A person commits an offence who, without lawful authority –
  - (a) immobilises a motor vehicle by the attachment to the vehicle, or a part of it, of an immobilising device, or 15
  - (b) moves, or restricts the movement of, such a vehicle by any means, intending to prevent or inhibit the removal of the vehicle by a person otherwise entitled to remove it.
- (2) The express or implied consent (whether or not legally binding) of a person otherwise entitled to remove the vehicle to the immobilisation, movement or restriction concerned is not lawful authority for the purposes of subsection (1). 20
- (3) Subsection (2) does not apply where –
  - (a) there is express or implied consent by the driver of the vehicle to restricting its movement by a fixed barrier, and 25
  - (b) the barrier was present (whether or not lowered into place or otherwise restricting movement) when the vehicle was parked.
- (4) A person who is entitled to remove a vehicle cannot commit an offence under this section in relation to that vehicle.
- (5) A person guilty of an offence under this section is liable – 30
  - (a) on conviction on indictment, to a fine,
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) In this section “motor vehicle” means a mechanically propelled vehicle or a vehicle designed or adapted for towing by a mechanically propelled vehicle. 35

*Alternative remedies in relation to vehicles left on land*

**55 Extension of powers to remove vehicles from land**

- (1) Section 99 of the Road Traffic Regulation Act 1984 (removal of vehicles illegally, obstructively or dangerously parked, or abandoned or broken down) is amended as follows. 5
- (2) In subsection (1) –
- (a) in paragraph (a), after “road” insert “or other land”,
  - (b) in paragraph (b) –
    - (i) after “road”, where it appears for the first time, insert “or other land”, and 10
    - (ii) after “road”, where it appears for the second time, insert “or land concerned”,
  - (c) in paragraph (c) for “, or on any land in the open air,” substitute “or other land”, and
  - (d) at the end insert “or other land”. 15
- (3) In subsection (2) –
- (a) in paragraph (a), after “road”, where it appears for the third time, insert “or on land other than a road”, and
  - (b) after paragraph (a), insert –
    - “(aa) may provide, in the case of a vehicle which may be removed from land other than a road, for the moving of the vehicle from one position on such land to another position on such land or on any road;”. 20

**56 Recovery of unpaid parking charges**

Schedule 4 (which makes provision for the recovery of unpaid parking charges from the keeper of a vehicle in cases where it is not known who was driving the vehicle when the charges were incurred) has effect. 25

**PART 4**

COUNTER-TERRORISM POWERS

*Pre-charge detention of terrorist suspects* 30

**57 Permanent reduction of maximum detention period to 14 days**

- (1) In paragraph 36(3)(b)(ii) of Schedule 8 to the Terrorism Act 2000 (maximum period of pre-charge detention for terrorist suspects) for “28 days” substitute “14 days”.
- (2) Omit section 25 of the Terrorism Act 2006 (which provides for the 28 day limit in paragraph 36(3)(b)(ii) of Schedule 8 to the Act of 2000 to be 14 days subject to a power to raise it to 28 days). 35

*Stop and search powers: general*

**58 Repeal of existing stop and search powers**

Omit sections 44 to 47 of the Terrorism Act 2000 (power to stop and search).

**59 Replacement powers to stop and search persons and vehicles**

- (1) Omit section 43(3) of the Terrorism Act 2000 (requirement for searches of persons to be carried out by some-one of the same sex). 5
- (2) After section 43(4) of that Act insert –
  - “(4A) Subsection (4B) applies if a constable, in exercising the power under subsection (1) to stop a person whom the constable reasonably suspects to be a terrorist, stops a vehicle (see section 116(2)). 10
  - (4B) The constable –
    - (a) may search the vehicle and anything in or on it to discover whether there is anything which may constitute evidence that the person concerned is a terrorist, and
    - (b) may seize and retain anything which the constable – 15
      - (i) discovers in the course of such a search, and
      - (ii) reasonably suspects may constitute evidence that the person is a terrorist.
  - (4C) Nothing in subsection (4B) confers a power to search any person but the power to search in that subsection is in addition to the power in subsection (1) to search a person whom the constable reasonably suspects to be a terrorist.” 20
- (3) After section 43 of that Act insert –

**“43A Search of vehicles**

  - (1) Subsection (2) applies if a constable reasonably suspects that a vehicle is being used for the purposes of terrorism. 25
  - (2) The constable may stop and search –
    - (a) the vehicle;
    - (b) the driver of the vehicle;
    - (c) a passenger in the vehicle; 30
    - (d) anything in or on the vehicle or carried by the driver or a passenger;to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism.
  - (3) A constable may seize and retain anything which the constable – 35
    - (a) discovers in the course of a search under this section, and
    - (b) reasonably suspects may constitute evidence that the vehicle is being used for the purposes of terrorism.
  - (4) A person who has the powers of a constable in one Part of the United Kingdom may exercise a power under this section in any Part of the United Kingdom. 40

- (5) In this section “driver”, in relation to an aircraft, hovercraft or vessel, means the captain, pilot or other person with control of the aircraft, hovercraft or vessel or any member of its crew and, in relation to a train, includes any member of its crew.”

**60 Replacement powers to stop and search in specified locations** 5

- (1) After section 43A of the Terrorism Act 2000 (for which see section 59(3)) insert –

**“43B Searches in specified areas or places**

- (1) A senior police officer may give an authorisation under subsection (2) or (3) in relation to a specified area or place if the officer – 10
- (a) reasonably suspects that an act of terrorism will take place; and
  - (b) considers that –
    - (i) the authorisation is necessary to prevent such an act;
    - (ii) the specified area or place is no greater than is necessary to prevent such an act; and 15
    - (iii) the duration of the authorisation is no longer than is necessary to prevent such an act.
- (2) An authorisation under this subsection authorises any constable in uniform to stop a vehicle in the specified area or place and to search – 20
- (a) the vehicle;
  - (b) the driver of the vehicle;
  - (c) a passenger in the vehicle;
  - (d) anything in or on the vehicle or carried by the driver or a passenger.
- (3) An authorisation under this subsection authorises any constable in uniform to stop a pedestrian in the specified area or place and to search – 25
- (a) the pedestrian;
  - (b) anything carried by the pedestrian.
- (4) A constable in uniform may exercise the power conferred by an authorisation under subsection (2) or (3) only for the purpose of discovering whether there is anything which may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b). 30 35
- (5) But the power conferred by such an authorisation may be exercised whether or not the constable reasonably suspects that there is such evidence.
- (6) A constable may seize and retain anything which the constable – 40
- (a) discovers in the course of a search under such an authorisation; and
  - (b) reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b). 45



- (7) Schedule 6B (which makes supplementary provision about authorisations under this section) has effect.
- (8) In this section –  
“driver” has the meaning given by section 43A(5);  
“senior police officer” has the same meaning as in Schedule 6B (see paragraph 14(1) and (2) of that Schedule);  
“specified” means specified in an authorisation.” 5
- (2) Schedule 5 (which inserts a new Schedule making supplementary provision about powers to stop and search in specified locations into the Terrorism Act 2000) has effect. 10

## 61 Code of practice

After section 43B of the Terrorism Act 2000 (for which see section 60) insert –

### “43C Code of practice relating to sections 43 to 43B

- (1) The Secretary of State must prepare a code of practice containing guidance about – 15  
(a) the exercise of the powers conferred by sections 43 and 43A,  
(b) the exercise of the powers to give an authorisation under section 43B(2) or (3),  
(c) the exercise of the powers conferred by such an authorisation and section 43B(6), and 20  
(d) such other matters in connection with the exercise of any of the powers mentioned in paragraphs (a) to (c) as the Secretary of State considers appropriate.
- (2) Such a code may make different provision for different purposes.
- (3) In the course of preparing such a code, the Secretary of State must consult the Lord Advocate and such other persons as the Secretary of State considers appropriate. 25

### 43D Issuing of code

- (1) The Secretary of State must lay before Parliament – 30  
(a) a code of practice prepared under section 43C, and  
(b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved. 35
- (4) The Secretary of State must prepare another code of practice under section 43C if –  
(a) the draft of the order is not so approved, and  
(b) the Secretary of State considers that there is no realistic prospect that it will be so approved. 40
- (5) A code comes into force in accordance with an order under this section.

**43E Alteration or replacement of code**

- (1) The Secretary of State –
  - (a) must keep the search powers code under review, and
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code, the Secretary of State must consult the Lord Advocate and such other persons as the Secretary of State considers appropriate. 5
- (3) Section 43D (other than subsection (4)) applies to an alteration or a replacement code prepared under this section as it applies to a code prepared under section 43C. 10
- (4) In this section “the search powers code” means the code of practice issued under section 43D(2) (as altered or replaced from time to time).

**43F Publication of code**

- (1) The Secretary of State must publish the code (and any replacement code) issued under section 43D(2). 15
- (2) The Secretary of State must publish –
  - (a) any alteration issued under section 43D(2), or
  - (b) the code or replacement code as altered by it.

**43G Effect of code**

- (1) A constable must have regard to the search powers code when exercising any powers to which the code relates. 20
- (2) A failure on the part of a constable to act in accordance with any provision of the search powers code does not of itself make that person liable to criminal or civil proceedings.
- (3) The search powers code is admissible in evidence in any such proceedings. 25
- (4) A court or tribunal may, in particular, take into account a failure by a constable to have regard to the search powers code in determining a question in any such proceedings.
- (5) The references in this section to a constable include, in relation to any functions exercisable by a person by virtue of paragraph 15 of Schedule 4 to the Police Reform Act 2002 or paragraph 16 of Schedule 2A to the Police (Northern Ireland) Act 2003 (search powers in specified areas or places for community support officers), references to that person. 30
- (6) In this section “the search powers code” means the code of practice issued under section 43D(2) (as altered or replaced from time to time).” 35

*Stop and search powers: Northern Ireland***62 Stop and search powers in relation to Northern Ireland**

- Schedule 6 (which makes amendments relating to stop and search powers in Northern Ireland) has effect. 40

## PART 5

### SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

#### CHAPTER 1

##### SAFEGUARDING OF VULNERABLE GROUPS

###### *Restrictions on scope of regulation* 5

#### **63 Restriction of scope of regulated activities: children**

- (1) Parts 1 and 3 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to children and the period condition) are amended as follows.
- (2) In paragraph 1(1)(b) (frequency and period condition for regulated activity), at the beginning, insert “except in the case of activities falling within sub-paragraph (1A),”.
- (3) After paragraph 1(1) insert—
  - “(1A) The following activities fall within this sub-paragraph—
    - (a) relevant personal care, and
    - (b) health care provided by, or under the direction or supervision of, a health care professional.
  - (1B) In this Part of this Schedule “relevant personal care” means—
    - (a) physical assistance given to a child in connection with—
      - (i) eating or drinking (other than the administration of parenteral nutrition) where the assistance is given for reasons other than age,
      - (ii) the administration of parenteral nutrition,
      - (iii) toileting (including in relation to the process of menstruation),
      - (iv) washing or bathing, or
      - (v) dressing,
    - (b) the prompting, together with supervision, of a child (for reasons other than age) in relation to eating or drinking (other than the administration of parenteral nutrition) where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision, or
    - (c) the prompting, together with supervision, of a child in relation to the performance of any of the activities listed in paragraph (a)(ii) to (v) where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision.
  - (1C) In this Part of this Schedule—
    - “health care” includes all forms of health care provided for children, whether relating to physical or mental health and also includes palliative care for children and procedures that

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- are similar to forms of medical or surgical care but are not provided for children in connection with a medical condition,
- “health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.”
- (4) In paragraph 1(2)(c) (work activities at certain establishments to be regulated activity) for “any form of work (whether or not for gain)” substitute “any work falling within sub-paragraph (2A) or (2B)”.
- (5) After paragraph 1(2) insert—
- “(2A) Work falls within this sub-paragraph if it is any form of work for gain, other than any such work which—
- (a) is undertaken in pursuance of a contract for the provision of occasional or temporary services, and
- (b) is not an activity mentioned in paragraph 2(1) (disregarding paragraph 2(3A) and (3B)(b)).
- (2B) Work falls within this sub-paragraph if it is any form of work which is not for gain, other than—
- (a) any such work which—
- (i) is carried out on a temporary or occasional basis, and
- (ii) is not an activity mentioned in paragraph 2(1) (disregarding paragraph 2(3A) and (3B)(b)), or
- (b) any such work which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children”.
- (6) Also in paragraph 1—
- (a) in sub-paragraph (7) (meaning of “acting as a child minder”) for “section 79A of that Act” substitute “section 19 of the Children and Families (Wales) Measure 2010”,
- (b) omit sub-paragraph (8) (exercise of functions of certain persons to be regulated activity),
- (c) in sub-paragraph (9) (exercise of functions of persons mentioned in paragraph 4(1) to be regulated activity) for “a person mentioned in paragraph 4(1)” substitute “the Children’s Commissioner for Wales or the deputy Children’s Commissioner for Wales”,
- (d) in sub-paragraph (9B) (exercise of certain inspection etc. functions to be regulated activity)—
- (i) omit paragraph (a),
- (ii) in paragraph (b) for “section 79U(3) of the Children Act 1989” substitute “section 41 or 42 of the Children and Families (Wales) Measure 2010”,
- (iii) in paragraph (c) after “taken” insert “in relation to Wales” and for “that Act” substitute “the Children Act 1989”,
- (iv) in paragraph (d) after “inspection”, where it first appears, insert “in Wales”,
- (v) in paragraph (e) after “taken” insert “in relation to Wales”,
- (vi) in paragraph (f) omit “18B or”,
- (vii) in paragraph (h), after “inspection”, where it first appears, insert “in Wales”,

- (viii) in paragraph (m) omit “48 or”,
- (ix) in paragraph (n) after “inspection” insert “in Wales”, and
- (x) omit paragraphs (p) to (t),
- (e) in sub-paragraph (10) (inspectors) omit paragraphs (a), (ba), (d) and (e),
- (f) omit sub-paragraph (12A) (accessing certain databases to be regulated activity), 5
- (g) omit sub-paragraph (13A) (exercise of certain functions of Care Quality Commission to be regulated activity),
- (h) in sub-paragraph (14) (day to day management or supervision of a person carrying out regulated activity to be regulated activity) for “(8), (9C), (11) or (13A)” substitute “(9C) or (11)”, and 10
- (i) after sub-paragraph (14) insert –
  - “(15) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person who would be carrying out an activity mentioned in sub-paragraph (1) or (2) but for the exclusion for supervised activity in paragraph 2(3A) or (3B)(b) or sub-paragraph (2B)(b) is a regulated activity relating to children.” 15
- (7) In paragraph 2 (activities referred to in paragraph 1(1)) –
  - (a) in sub-paragraph (1) omit paragraph (d) (treatment and therapy provided for a child), 20
  - (b) in sub-paragraph (2) –
    - (i) for “, (c) and (d)” substitute “and (c)”, and
    - (ii) omit paragraph (d), and
  - (c) after sub-paragraph (3) insert – 25
    - “(3A) Sub-paragraph (1)(a) does not include any form of teaching, training or instruction of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.
    - (3B) Sub-paragraph (1)(b) – 30
      - (a) does not include any health care provided otherwise than by (or under the direction or supervision of) a health care professional, and
      - (b) does not, except in the case of relevant personal care or of health care provided by (or under the direction or supervision of) a health care professional, include any form of care for or supervision of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children. 35
    - (3C) Sub-paragraph (1)(c) does not include any legal advice.” 40
- (8) In paragraph 3(1) (list of establishments referred to in paragraph 1(2) and (9C)) omit paragraph (c).
- (9) Omit paragraph 4 (list of persons referred to in paragraph 1(9)).
- (10) Before paragraph 6 (exceptions), and after the italic cross-heading before it, 45

insert –

“5A (1) Subject as follows, an activity is not a regulated activity relating to children if it is an activity which –

(a) relates to a child who has attained the age of 16 but not 18, and

(b) is not –

(i) relevant personal care, or

(ii) health care provided by, or under the direction or supervision of, a health care professional.

(2) Sub-paragraph (1) does not apply in relation to an activity which –

(a) relates to a child who has attained the age of 16 but not 18,

(b) would otherwise be a regulated activity relating to children by virtue of paragraph 1(1) or (2), and

(c) is carried out in an establishment mentioned in paragraph 3(1)(e) or (f).

(3) Sub-paragraph (1) does not apply in relation to an activity which –

(a) relates to a child who has attained the age of 16 but not 18, and

(b) would otherwise be a regulated activity relating to children by virtue of paragraph 1(5).

(4) Sub-paragraph (1) does not apply in relation to any activity of a prescribed description.”

(11) In paragraph 10(2) (the period condition) for “, (c) or (d)” substitute “or (c)”.

#### **64 Restriction of definition of vulnerable adults**

(1) Omit section 59 of the Safeguarding Vulnerable Groups Act 2006 (definition of vulnerable adults).

(2) In section 60(1) of that Act (interpretation of Act) –

(a) after “In this Act –” insert –

““adult” means a person who has attained the age of 18;”,  
and

(b) in the definition of “vulnerable adult”, for the words “must be construed in accordance with section 59” substitute “means any adult to whom an activity falling within any paragraph of paragraph 7(1) of Schedule 4 is provided”.

#### **65 Restriction of scope of regulated activities: vulnerable adults**

(1) Parts 2 and 3 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to vulnerable adults and the period condition) are amended as follows.

(2) For paragraph 7(1) to (3) (main activities which are regulated activity) substitute –

“(1) Each of the following is a regulated activity relating to vulnerable adults –

- (a) the provision to an adult of health care by, or under the direction or supervision of, a health care professional,
  - (b) the provision to an adult of relevant personal care,
  - (c) the provision by a social care worker of relevant social work or community care services to an adult who is a client or potential client, 5
  - (d) the provision of assistance in relation to general household matters to an adult who is in need of it by reason of age, illness or disability,
  - (e) the provision to an adult who is in need of them by reason of age, illness or disability of any services for the purpose of enabling the adult to live, or continue to live, in accommodation independently, 10
  - (f) any relevant assistance in the conduct of an adult's own affairs, 15
  - (g) any form of training, teaching or instruction which relates to an adult's health, care or financial affairs and is provided to an adult who needs it by reason of age, illness or disability,
  - (h) any form of assistance, advice or guidance which relates to an adult's health or care and is provided to an adult who needs it by reason of age, illness or disability, 20
  - (i) the conveying by persons of a prescribed description in such circumstances as may be prescribed of adults who need to be conveyed by reason of age, illness or disability,
  - (j) such activities – 25
    - (i) involving, or connected with, the provision of health care or relevant personal care to adults, and
    - (ii) not falling within any of the above paragraphs, as are of a prescribed description.
- (2) Health care includes all forms of health care provided for individuals, whether relating to physical or mental health and also includes palliative care and procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition. 30
- (3) A health care professional is a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002. 35
- (3A) Relevant personal care means – 40
- (a) physical assistance, given to a person who is in need of it by reason of age, illness or disability, in connection with – 40
    - (i) eating or drinking (including the administration of parenteral nutrition),
    - (ii) toileting (including in relation to the process of menstruation), 45
    - (iii) washing or bathing,
    - (iv) dressing,
    - (v) oral care, or
    - (vi) the care of skin, hair or nails (other than nail care provided by a chiropodist or podiatrist), or 50

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- (b) the prompting, together with supervision, of a person who is in need of it by reason of age, illness or disability in relation to the performance of any of the activities listed in paragraph (a) where the person is unable to make a decision in relation to performing such an activity without such prompting and supervision. 5
- (3B) Relevant social work has the meaning given by section 55(4) of the Care Standards Act 2000 and social care worker means a person who is a social care worker by virtue of section 55(2)(a) of that Act.
- (3C) Community care services has the meaning given by section 46(3) of the National Health Service and Community Care Act 1990. 10
- (3D) Assistance in relation to general household matters is day to day assistance in relation to the management of cash, the paying of bills, shopping and other financial matters on behalf of the person concerned. 15
- (3E) Relevant assistance in the conduct of a person’s own affairs is anything done on behalf of the person by virtue of –
- (a) a lasting power of attorney created in respect of the person in accordance with section 9 of the Mental Capacity Act 2005,
  - (b) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the person which is –
    - (i) registered in accordance with that Schedule, or
    - (ii) the subject of an application to be so registered,
  - (c) an order made under section 16 of that Act by the Court of Protection in relation to the making of decisions on the person’s behalf, 25
  - (d) the appointment of an independent mental health advocate or (as the case may be) an independent mental capacity advocate in respect of the person in pursuance of arrangements under section 130A of the Mental Health Act 1983 or section 35 of the Mental Capacity Act 2005, or 30
  - (e) the provision of independent advocacy services (within the meaning of section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006) in respect of the person.” 35
- (3) Omit paragraph 7(4) (certain activities in care homes to be regulated activity).
- (4) In paragraph 7(5) (day to day management or supervision of certain activities to be regulated activity) omit “or (4)”.
- (5) In paragraph 7(7)(f) (inspection functions) omit “English local authority social services or”. 40
- (6) Omit paragraph 7(8A) (certain functions of Care Quality Commission to be regulated activity).
- (7) In paragraph 7(9) (functions of certain persons to be regulated activity) for “a person mentioned in paragraph 8(1)” substitute “the Commissioner for older people in Wales or the deputy Commissioner for older people in Wales”. 45
- (8) Omit paragraph 8 (the persons referred to in paragraph 7(9) whose functions are to be regulated activity).



- (9) In paragraph 10(2) (the period condition) –
  - (a) omit “or 7(1)(a), (b), (c), (d) or (g)”, and
  - (b) in paragraph (b), omit “or vulnerable adults (as the case may be)”.

## 66 Alteration of test for barring decisions

- (1) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (automatic inclusion of person to whom paragraph applies in children’s barred list) substitute –
  - “(2) If the Secretary of State has reason to believe that –
    - (a) this paragraph might apply to a person, and
    - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children,  
the Secretary of State must refer the matter to ISA.
  - (3) If (whether or not on a reference under sub-paragraph (2)) ISA –
    - (a) is satisfied that this paragraph applies to a person, and
    - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,  
it must include the person in the children’s barred list.”
- (2) For sub-paragraphs (2) to (4) of paragraph 2 of that Schedule to that Act (inclusion of person to whom paragraph applies in children’s barred list with right to make representation afterwards) substitute –
  - “(2) If the Secretary of State has reason to believe that –
    - (a) this paragraph might apply to a person, and
    - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children,  
the Secretary of State must refer the matter to ISA.
  - (3) Sub-paragraph (4) applies if (whether or not on a reference under sub-paragraph (2)) it appears to ISA that –
    - (a) this paragraph applies to a person, and
    - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children.
  - (4) ISA must give the person the opportunity to make representations as to why the person should not be included in the children’s barred list.
  - (5) Sub-paragraph (6) applies if –
    - (a) the person does not make representations before the end of any time prescribed for the purpose, or
    - (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).
  - (6) If ISA –
    - (a) is satisfied that this paragraph applies to the person, and
    - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,  
it must include the person in the list.

- (7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.
- (8) If ISA—
- (a) is satisfied that this paragraph applies to the person,
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and 5
  - (c) is satisfied that it is appropriate to include the person in the children’s barred list,
- it must include the person in the list.” 10
- (3) In paragraph 3 of that Schedule to that Act (inclusion in children’s barred list on behaviour grounds)—
- (a) in sub-paragraph (1)(a) for the words from “has” to “conduct,” substitute “—
    - (i) has (at any time) engaged in relevant conduct, and 15
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children,”
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert— 20
    - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,” and
  - (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.
- (4) In paragraph 5 of that Schedule to that Act (inclusion in children’s barred list because of risk of harm)— 25
- (a) in sub-paragraph (1)(a) for “falls within sub-paragraph (4)” substitute “—
    - (i) falls within sub-paragraph (4), and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children,” 30
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
    - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,” and 35
  - (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.
- (5) For sub-paragraphs (2) and (3) of paragraph 7 of that Schedule to that Act (automatic inclusion of person to whom paragraph applies in adults’ barred list) substitute— 40
- “(2) If the Secretary of State has reason to believe that—
- (a) this paragraph might apply to a person, and
  - (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,
- the Secretary of State must refer the matter to ISA. 45
- (3) If (whether or not on a reference under sub-paragraph (2)) ISA—
- (a) is satisfied that this paragraph applies to a person, and

- (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,  
it must include the person in the adults’ barred list.”
- (6) For sub-paragraphs (2) to (4) of paragraph 8 of that Schedule to that Act (inclusion of person to whom paragraph applies in adults’ barred list with right to make representation afterwards) substitute –
  - “(2) If the Secretary of State has reason to believe that –
    - (a) this paragraph might apply to a person, and
    - (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,the Secretary of State must refer the matter to ISA.
  - (3) Sub-paragraph (4) applies if (whether or not on a reference under sub-paragraph (2)) it appears to ISA that –
    - (a) this paragraph applies to a person, and
    - (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.
  - (4) ISA must give the person the opportunity to make representations as to why the person should not be included in the adults’ barred list.
  - (5) Sub-paragraph (6) applies if –
    - (a) the person does not make representations before the end of any time prescribed for the purpose, or
    - (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).
  - (6) If ISA –
    - (a) is satisfied that this paragraph applies to the person, and
    - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,it must include the person in the list.
  - (7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.
  - (8) If ISA –
    - (a) is satisfied that this paragraph applies to the person,
    - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and
    - (c) is satisfied that it is appropriate to include the person in the adults’ barred list,it must include the person in the list.”
- (7) In paragraph 9 of that Schedule to that Act (inclusion in adults’ barred list on behaviour grounds) –
  - (a) in sub-paragraph (1)(a) for the words from “has” to “conduct,” substitute “ –
    - (i) has (at any time) engaged in relevant conduct, and

- (ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,”
- (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert – 5
  - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,” and
- (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.
- (8) In paragraph 11 of that Schedule to that Act (inclusion in adults’ barred list because of risk of harm) – 10
  - (a) in sub-paragraph (1)(a) for “falls within sub-paragraph (4)” substitute “–
    - (i) falls within sub-paragraph (4), and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,” 15
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert – 20
    - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,” and
  - (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.

*Abolition of other areas of regulation*

- 67 **Abolition of controlled activity** 25  
 Omit sections 21 to 23 of the Safeguarding Vulnerable Groups Act 2006 (controlled activity).
- 68 **Abolition of monitoring**  
 Omit sections 24 to 27 of the Safeguarding Vulnerable Groups Act 2006 (monitoring). 30

*Main amendments relating to new arrangements*

- 69 **Information for purposes of making barring decisions**  
 (1) In paragraph 19 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (information required by ISA about persons to whom grounds for barring apply) – 35
  - (a) in sub-paragraph (1) –
    - (i) in paragraph (a) after “applies” insert “or appears to apply”,
    - (ii) in paragraph (b) for “apply” substitute “applies or appears to apply”, and
    - (iii) omit paragraph (d), 40
  - (b) in sub-paragraphs (2) and (3) for “thinks might” substitute “reasonably believes to”, and

- (c) in sub-paragraph (6) –
    - (i) omit the words from “which” to “it is”, and
    - (ii) omit “or paragraph 20(2)”.
- (2) In paragraph 20 of that Schedule to that Act (provision of information by Secretary of State to ISA) for sub-paragraph (2) substitute – 5
  - “(2) Where the Secretary of State is under a duty under paragraph 1, 2, 7 or 8 to refer a matter to ISA, the Secretary of State must provide to ISA any prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997) of a prescribed description which has been made available to the Secretary of State for the purposes of Part 5 of that Act.” 10
- 70 Review of barring decisions**
  - After paragraph 18 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (power to apply for review of a person’s inclusion in a barred list) insert –
    - “18A(1) Sub-paragraph (2) applies if a person’s inclusion in a barred list is not subject to – 15
      - (a) a review under paragraph 18, or
      - (b) an application under that paragraph, which has not yet been determined.
    - (2) ISA may, at any time, review the person’s inclusion in the list. 20
    - (3) On any such review, ISA may remove the person from the list if, and only if, it is satisfied that, in the light of –
      - (a) information which it did not have at the time of the person’s inclusion in the list,
      - (b) any change of circumstances relating to the person concerned, or 25
      - (c) any error by ISA,it is not appropriate for the person to be included in the list.”
- 71 Information about barring decisions**
  - (1) For sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 (provision of vetting information and information about cessation of monitoring) substitute – 30
    - “30A Provision of barring information on request**
      - (1) The Secretary of State must provide a person (A) with the information mentioned in subsection (3) in relation to another (B) if – 35
        - (a) A makes an application for the information and pays any fee payable in respect of the application,
        - (b) the application contains the appropriate declaration, and
        - (c) the Secretary of State has no reason to believe that the declaration is false. 40
      - (2) The appropriate declaration is a declaration by A –
        - (a) that A falls within column 1 of the table in Schedule 7 in relation to B,

- (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
  - (c) that B has consented to the provision of the information to A.
  - (3) The information is – 5
    - (a) if A’s declaration states that column 2 of the relevant entry refers to children, whether B is barred from regulated activity relating to children, and
    - (b) if A’s declaration states that column 2 of the relevant entry refers to vulnerable adults, whether B is barred from regulated activity relating to vulnerable adults. 10
  - (4) If B consents to the provision of information to A in relation to an application under this section, the consent also has effect in relation to any subsequent such application by A.
  - (5) The Secretary of State may prescribe any fee payable in respect of an application under this section. 15
  - (6) Fees received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
  - (7) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application). 20
- 30B Provision of barring information on registration**
- (1) The Secretary of State must establish and maintain a register for the purposes of this section.
  - (2) The Secretary of State must register a person (A) in relation to another (B) if – 25
    - (a) A makes an application to be registered in relation to B and pays any fee payable in respect of the application,
    - (b) the application contains the appropriate declaration, and
    - (c) the Secretary of State has no reason to believe that the declaration is false. 30
  - (3) The appropriate declaration is a declaration by A –
    - (a) that A falls within column 1 of the table in Schedule 7 in relation to B,
    - (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and 35
    - (c) that B has consented to the application.
  - (4) A’s application and registration relate –
    - (a) if A’s declaration states that column 2 of the relevant entry refers to children, to regulated activity relating to children; 40
    - (b) if A’s declaration states that column 2 of the relevant entry refers to vulnerable adults, to regulated activity relating to vulnerable adults.
  - (5) The Secretary of State must notify A if B is barred from regulated activity to which A’s registration relates. 45

- (6) The requirement under subsection (5) is satisfied if notification is sent to any address recorded against A’s name in the register.
- (7) If B consents to the provision of information to A under section 30A, the consent also has effect as consent to any application by A to be registered in relation to B under this section. 5
- (8) The Secretary of State may prescribe any fee payable in respect of an application under this section.
- (9) Fees received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
- (10) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application).” 10
- (2) In section 33 of that Act (cessation of registration) –
  - (a) in subsection (1) for “32” substitute “30B”,
  - (b) in subsection (2) for “(6)” substitute “(5)”, and 15
  - (c) after subsection (3) insert –
    - “(3A) Circumstances prescribed by virtue of subsection (3) may, in particular, include that –
      - (a) the Secretary of State has asked the registered person (A) to make a renewed declaration within the prescribed period in relation to the person (B) in relation to whom A is registered, and 20
      - (b) either –
        - (i) A has failed to make the declaration within that period, or 25
        - (ii) A has made the declaration within that period but the Secretary of State has reason to believe that it is false.
    - (3B) A renewed declaration is a declaration by A –
      - (a) that A falls within column 1 of the table in Schedule 7 in relation to B, 30
      - (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
      - (c) that B consents to the registration of A in relation to B. 35
    - (3C) If B consents to the provision of information to A under section 30A, the consent also has effect as consent to the registration of A in relation to B.
    - (3D) Section 34 applies in relation to the making of a declaration in response to a request from the Secretary of State of the kind mentioned in subsection (3A)(a) as it applies in relation to the making of a declaration in an application made for the purposes of section 30B.” 40
  - (3) In section 34 of that Act (declarations under sections 30 and 32) –
    - (a) in the heading for “30 and 32” substitute “30A and 30B”, and 45
    - (b) in subsection (1) for “30 or 32” substitute “30A or 30B”.

- (4) Omit entry 19 in the table in paragraph 1 of Schedule 7 to that Act (power to add entries to the table).
- (5) In paragraph 2 of Schedule 7 to that Act (power to amend entries in the table) for the words from “any” to the end substitute “this Schedule”.
- (6) After paragraph 3(1) of Schedule 7 to that Act (barring information where certain activities carried on for the purposes of the armed forces of the Crown) insert – 5
- “(1A) Where sub-paragraph (1)(b) applies, in each of entries 1 and 5 in the table, the reference to regulated activity relating to children includes activity engaged in outside England and Wales that, if in England or Wales, would be regulated activity relating to children.” 10

## 72 Duty to check whether person barred

After section 34 of the Safeguarding Vulnerable Groups Act 2006 (declarations relating to the provision of barring information) insert –

- “34ZADuty to check whether person barred” 15**
- (1) A regulated activity provider who is considering whether to permit an individual (B) to engage in regulated activity relating to children or vulnerable adults must ascertain that B is not barred from the activity concerned before permitting B to engage in it.
- (2) A personnel supplier who – 20
- (a) is considering whether to supply an individual (B) to another (P), and
- (b) knows, or has reason to believe, that P will make arrangements for B (if supplied) to engage in regulated activity relating to children or vulnerable adults, 25
- must ascertain that B is not barred from the activity concerned before supplying B to P.
- (3) A person is, in particular, to be treated as having met the duty in subsection (1) or (2) if condition 1, 2 or 3 is met.
- (4) Condition 1 is that the person has, within the prescribed period, been informed under section 30A that B is not barred from the activity concerned. 30
- (5) Condition 2 is that –
- (a) the person has, within the prescribed period, checked a relevant enhanced criminal record certificate of B which has been obtained within that period, and 35
- (b) the certificate does not show that B is barred from the activity concerned.
- (6) Condition 3 is that –
- (a) the person has, within the prescribed period, checked – 40
- (i) a relevant enhanced criminal record certificate of B, and
- (ii) up-date information given, within that period, under section 116A of the Police Act 1997 in relation to the certificate,



- (b) the certificate does not show that B is barred from the activity concerned, and
    - (c) the up-date information is not advice to request B to apply for a new enhanced criminal record certificate.
  - (7) The Secretary of State may by regulations provide for – 5
    - (a) the duty under subsection (1) not to apply in relation to persons of a prescribed description,
    - (b) the duty under subsection (2) not to apply in relation to persons of a prescribed description.
  - (8) In this section – 10
    - “enhanced criminal record certificate” means an enhanced criminal record certificate issued under section 113B of the Police Act 1997,
    - “relevant enhanced criminal record certificate” means –
      - (a) in the case of regulated activity relating to children, an enhanced criminal record certificate which includes, by virtue of section 113BA of the Police Act 1997, suitability information relating to children, and 15
      - (b) in the case of regulated activity relating to vulnerable adults, an enhanced criminal record certificate which includes, by virtue of section 113BB of that Act, suitability information relating to vulnerable adults.” 20
- 73 Restrictions on duplication with Scottish and Northern Ireland barred lists**
- (1) Before paragraph 6 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (restriction on inclusion in children’s barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert – 25
    - “5A (1) ISA must not include a person in the children’s barred list if ISA knows that the person is included in a corresponding list.
    - (2) ISA must remove a person from the children’s barred list if ISA knows that the person is included in a corresponding list. 30
    - (3) A corresponding list is a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children’s barred list.”
  - (2) In paragraph 6(1)(a) of that Schedule to that Act – 35
    - (a) after “if” insert “ISA knows that”,
    - (b) after “authority” insert “ –
      - (i) ”, and
    - (c) for the words from “(whether” to “list)” substitute “, and
      - (ii) has decided not to include the person in the list”. 40
  - (3) Before paragraph 12 of that Schedule to that Act (restriction on inclusion in adults’ barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert –
    - “11A(1) ISA must not include a person in the adults’ barred list if ISA knows that the person is included in a corresponding list. 45

- (2) ISA must remove a person from the adults’ barred list if ISA knows that the person is included in a corresponding list.
- (3) A corresponding list is a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults’ barred list.” 5
- (4) In paragraph 12(1)(a) of that Schedule to that Act –
- (a) after “if” insert “ISA knows that”,
- (b) after “authority” insert “ –  
 (i) ”, and
- (c) for the words from “(whether” to “list)” substitute “, and 10  
 (ii) has decided not to include the person in the list”.

*Other amendments*

**74 Professional bodies**

- (1) In section 41 of the Safeguarding Vulnerable Groups Act 2006 (registers: duty to refer) – 15
- (a) in subsection (1) –
- (i) for “must” substitute “may”, and
- (ii) omit “prescribed”,
- (b) in subsection (4) – 20
- (i) in paragraph (a), for “engaged or may engage” substitute “or has been, or might in future, be engaged”,
- (ii) also in paragraph (a), omit “or controlled activity”, and
- (iii) in paragraph (b) for “, 2, 7 or 8” substitute “or 7”,
- (c) in subsection (5) omit “prescribed”, and 25
- (d) in the heading for “duty” substitute “power”.
- (2) Omit paragraph 9(2)(a) of Schedule 5 to the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (S.I. 2009/1182) (which, if section 44(1) of the Act of 2006 were to come into force, would insert subsections (4A) to (4C) into section 41 of the Act of 2006). 30
- (3) In section 43 of the Act of 2006 (registers: notice of barring etc.) for subsections (1) to (5) substitute –
- “(1) Subsection (2) applies if –
- (a) ISA knows or thinks that a person (A) appears on a relevant register, and 35
- (b) either –
- (i) A is included in a barred list, or
- (ii) ISA is aware that A is subject to a relevant disqualification. 40
- (2) ISA must –
- (a) notify the keeper of the register of the circumstances mentioned in subsection (1)(b)(i) or (as the case may be) (ii), and

- (b) in the case where A is included in a barred list, provide the keeper of the register with such of the information on which ISA relied in including A in the list as ISA considers –
    - (i) to be relevant to the exercise of any function of the keeper, and 5
    - (ii) otherwise appropriate to provide.
- (3) Subsection (4) applies if the keeper of a relevant register applies to ISA to ascertain in relation to a person (A) whether –
  - (a) A is included in a barred list, or
  - (b) ISA is aware that A is subject to a relevant disqualification. 10
- (4) ISA must notify the keeper of the register as to whether the circumstances are as mentioned in subsection (3)(a) or (as the case may be) (b).
- (5) ISA may (whether on an application by the keeper or otherwise) provide to the keeper of a relevant register such relevant information as ISA considers appropriate in relation to a person who is barred from regulated activity relating to children or vulnerable adults. 15
- (5A) Subsection (5B) applies if –
  - (a) a keeper of a register has applied to the Secretary of State to be notified in relation to a person (A) if –
    - (i) A is included in a barred list, or
    - (ii) the Secretary of State is aware that A is subject to a relevant disqualification, and
  - (b) the application has not been withdrawn. 20
- (5B) The Secretary of State must notify the keeper of the register if the circumstances are, or become, as mentioned in subsection (5A)(a)(i) or (as the case may be) (ii). 25
- (5C) For the purposes of subsection (5A)(b) an application is withdrawn if –
  - (a) the keeper of the register notifies the Secretary of State that the keeper no longer wishes to be notified if the circumstances are, or become, as mentioned in subsection (5A)(a)(i) or (as the case may be) (ii) in relation to A, or
  - (b) the Secretary of State cancels the application on either of the following grounds –
    - (i) that the keeper has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the keeper still wishes to be notified if the circumstances are, or become, as mentioned in subsection (5A)(a)(i) or (as the case may be) (ii), or 35
    - (ii) that A neither appears in the register nor is being considered for inclusion in the register. 40
- (5D) A keeper of a relevant register may apply for information under this section, or to be notified under this section, in relation to a person (A) only if –
  - (a) A appears in the register, or
  - (b) A is being considered for inclusion in the register. 45

(5E)	The duties in subsections (2), (4) and (5B) do not apply if ISA or (as the case may be) the Secretary of State is satisfied that the keeper of the register already has the information concerned.	
(5F)	The Secretary of State may determine the form, manner and contents of an application for the purposes of this section.	5
(5G)	In this section relevant information is information –	
(a)	which –	
(i)	relates to the protection of children or vulnerable adults in general, or of any child or vulnerable adult in particular, and	10
(ii)	is relevant to the exercise of any function of the keeper of the register, but	
(b)	which is not –	
(i)	information that the circumstances are as mentioned in subsection (1)(b)(i) or (ii) in relation to the person,	15
(ii)	any information provided under subsection (2)(b), or	
(iii)	information falling within paragraph 19(5) of Schedule 3.	
(5H)	The Secretary of State may by order amend subsection (5G).”	
(4)	In section 43(6)(a) of the Act of 2006 (meaning of “relevant register”) omit “of entry 1 or 8”.	20
(5)	In the heading of section 43 of that Act for “notice of barring and cessation of monitoring” substitute “provision of barring information to keepers of registers”.	
(6)	Omit section 44 of that Act (registers: power to apply for vetting information).	25
<b>75</b>	<b>Supervisory authorities</b>	
(1)	In section 45 of the Safeguarding Vulnerable Groups Act 2006 (duty of supervisory authorities to refer) –	
(a)	in subsection (1) –	
(i)	for “must” substitute “may”, and	30
(ii)	omit “prescribed”,	
(b)	in subsection (4) –	
(i)	in paragraph (a), for “engaged or may engage” substitute “or has been, or might in future, be engaged”,	
(ii)	also in paragraph (a), omit “or controlled activity”, and	35
(iii)	in paragraph (b) for “, 2, 7 or 8” substitute “or 7”,	
(c)	in subsection (5) omit “prescribed”,	
(d)	omit subsection (6), and	
(e)	in the heading for “duty” substitute “power”.	
(2)	In section 47 of that Act (supervisory authorities: power to apply for vetting information) –	40
(a)	in the heading for “vetting” substitute “certain barring”,	
(b)	in subsection (1) for “the Secretary of State”, in both places where it occurs, substitute “ISA”,	
(c)	in subsection (2) omit paragraphs (b) to (e),	45

- (d) in subsection (3) omit paragraphs (b) to (e),
  - (e) omit subsection (5), and
  - (f) in subsection (7) for “prescribe” substitute “determine”.
- (3) In section 48 of that Act (supervisory authorities: notification of barring etc. in respect of children) – 5
- (a) in subsection (1) –
    - (i) for “This section” substitute “Subsection (2)”,
    - (ii) in paragraph (a) omit “newly”,
    - (iii) at the end of paragraph (a) insert “or”,
    - (iv) in paragraph (b) for “becomes” substitute “is”, and 10
    - (v) omit paragraph (c) and the word “or” before it,
  - (b) in subsection (2) for “, (b) or (c)” substitute “or (b)”,
  - (c) after subsection (2) insert –
    - “(2A) The duty in subsection (2) does not apply in relation to an interested supervisory authority if the Secretary of State is satisfied that the authority already has the information concerned.”, 15
  - (d) in subsection (3)(a) for the words from “if” to “occurs” substitute “of any circumstance mentioned in subsection (1)”,
  - (e) in subsection (5) – 20
    - (i) after “withdrawn if” insert “ –
      - (a) ”, 25
    - (ii) for the words from “if”, where it appears for the second time, to “occurs” substitute “of any circumstance mentioned in subsection (1)”, and
    - (iii) at the end insert “, or
      - (b) the Secretary of State cancels the application on either of the following grounds –
        - (i) that the supervisory authority has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the supervisory authority still wishes to be notified of any circumstance mentioned in subsection (1) in relation to the person, or 30
        - (ii) that the notification is not required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).”, and 35
  - (f) in subsection (8) for “prescribe” substitute “determine”.
- (4) In section 49 of that Act (supervisory authorities: notification of barring etc. in respect of vulnerable adults) – 40
- (a) in subsection (1) –
    - (i) for “This section” substitute “Subsection (2)”,
    - (ii) in paragraph (a) omit “newly”,
    - (iii) at the end of paragraph (a) insert “or”, 45
    - (iv) in paragraph (b) for “becomes” substitute “is”, and
    - (v) omit paragraph (c) and the word “or” before it,
  - (b) in subsection (2) for “, (b) or (c)” substitute “or (b)”,

- (c) after subsection (2) insert –
- “(2A) The duty in subsection (2) does not apply in relation to an interested supervisory authority if the Secretary of State is satisfied that the authority already has the information concerned.”, 5
- (d) in subsection (3)(a) for the words from “if” to “occurs” substitute “of any circumstance mentioned in subsection (1)”,
- (e) in subsection (5) –
- (i) after “withdrawn if” insert “ – (a) ”, 10
- (ii) for the words from “if”, where it appears for the second time, to “occurs” substitute “of any circumstance mentioned in subsection (1)”, and
- (iii) at the end insert “, or
- (b) the Secretary of State cancels the application on either of the following grounds – 15
- (i) that the supervisory authority has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the supervisory authority still wishes to be notified of any circumstance mentioned in subsection (1) in relation to the person, or 20
- (ii) that the notification is not required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).”, and 25
- (f) in subsection (8) for “prescribe” substitute “determine”.
- (5) In section 50 of that Act (provision of information to supervisory authorities) –
- (a) in subsection (2) for “must” substitute “may (whether on an application by the authority or otherwise)”, 30
- (b) in subsection (3) –
- (i) in paragraph (b), after “the authority” insert “which is mentioned in section 45(7)”, and
- (ii) for the words from “or information” to “occurred” substitute “of any circumstance mentioned in section 48(1) or 49(1)”, and 35
- (c) after subsection (3) insert –
- “(4) A supervisory authority may apply to ISA under this section only if the information is required in connection with the exercise of a function of the supervisory authority which is mentioned in section 45(7). 40
- (5) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section.”

## 76 Minor amendments

- (1) In the Policing and Crime Act 2009 omit –
- (a) section 87(2) (which, if commenced, would insert sections 34A to 34C into the Safeguarding Vulnerable Groups Act 2006 in connection with the notification of proposals to include persons in barred lists), and 45

- (b) section 89(6) (which, if commenced, would amend the power of the Secretary of State in the Act of 2006 to examine records of convictions or cautions in connection with barring decisions).
- (2) In section 39 of the Safeguarding Vulnerable Groups Act 2006 (duty of local authorities to refer) – 5
  - (a) in subsection (1) –
    - (i) for “must” substitute “may”, and
    - (ii) omit “prescribed”,
  - (b) in subsection (4) – 10
    - (i) in paragraph (a), for “engaged or may engage” substitute “or has been, or might in future, be engaged”,
    - (ii) also in paragraph (a), omit “or controlled activity”, and
    - (iii) in paragraph (b) for “, 2, 7 or 8” substitute “or 7”,
  - (c) in subsection (5) omit “prescribed”, and
  - (d) in the heading for “duty” substitute “power”. 15
- (3) In section 50A(1) of the Act of 2006 (power for ISA to provide information to the police for use for certain purposes), after paragraph (b), insert –
  - “(c) the appointment of persons who are under the direction and control of the chief officer”.

## CHAPTER 2

20

### CRIMINAL RECORDS

#### *Safeguards in relation to certificates*

#### **77 Restriction on information provided to registered persons**

Omit –

- (a) section 113A(4) of the Police Act 1997 (requirement to send copy of criminal record certificate to registered person), and 25
- (b) section 113B(5) and (6) of that Act (requirement to give relevant information and copy of enhanced criminal record certificate to registered person).

#### **78 Minimum age for applicants for certificates or to be registered**

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- (1) In sections 112(1), 113A(1), 113B(1), 114(1) and 116(1) of the Police Act 1997 (applications for certificates), before the word “and” at the end of paragraph (a), insert –
  - “(aa) is aged 16 or over at the time of making the application.”.
- (2) In section 120(4) of that Act (registered persons) – 35
  - (a) in paragraph (b) –
    - (i) after “person” insert “who is”, and
    - (ii) after “enactment” insert “and who, in the case of an individual, is aged 18 or over”, and
  - (b) in paragraph (c) after “individual” insert “aged 18 or over”. 40

## 79 Enhanced criminal record certificates: additional safeguards

- (1) In subsection (4) of section 113B of the Police Act 1997 (enhanced criminal record certificates: requests by the Secretary of State to chief officers for information) –
- (a) for “the chief officer of every relevant police force” substitute “any relevant chief officer”, 5
  - (b) omit “, in the chief officer’s opinion”,
  - (c) in paragraph (a), for “might” substitute “the chief officer reasonably believes to”, and
  - (d) in paragraph (b), at the beginning insert “in the chief officer’s opinion,”. 10
- (2) After subsection (4) of that section of that Act insert –
- “(4A) In exercising functions under subsection (4) a relevant chief officer must have regard to any guidance for the time being published by the Secretary of State.”
- (3) In subsection (9) of that section of that Act – 15
- (a) before the definition of “relevant police force” insert –
    - “relevant chief officer” means any chief officer of a police force who is identified by the Secretary of State for the purposes of making a request under subsection (4).”,
    - and
  - (b) omit the definition of “relevant police force”. 20
- (4) After section 117(2) of that Act (disputes about accuracy of certificates) insert –
- “(2A) An application under this section may, in particular, request a review of any information contained in a certificate by virtue of section 113B(4). 25
- (2B) The Secretary of State, on receiving such a request, must ask such chief officer of a police force as the Secretary of State considers appropriate to review whether the information concerned might be relevant for the purpose in respect of which it was requested.
- (2C) Subsections (10) and (11) of section 113B apply for the purposes of subsection (2B) as they apply for the purposes of that section.” 30

### *Up-dating and content of certificates*

## 80 Up-dating certificates

After section 116 of the Police Act 1997 (enhanced criminal record certificates: judicial appointments and Crown employment) insert – 35

### “116A Up-dating certificates

- (1) The Secretary of State must, on the request of a relevant person and subject to subsection (2), give up-date information to that person about –
- (a) a criminal conviction certificate, 40
  - (b) a criminal record certificate, or
  - (c) an enhanced criminal record certificate, which is subject to up-date arrangements.



- (2) The Secretary of State may impose conditions about –
  - (a) the information to be supplied in connection with such a request for the purpose of enabling the Secretary of State to decide whether the person is a relevant person,
  - (b) any other information to be supplied in connection with such a request. 5
- (3) For the purposes of subsection (1) a certificate is subject to up-date arrangements if condition A or B is met.
- (4) Condition A is that –
  - (a) the individual who applied for the certificate made an application at the same time to the Secretary of State for the certificate to be subject to up-date arrangements, 10
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Secretary of State has granted the application for the certificate to be subject to up-date arrangements, and 15
  - (d) the period of 12 months beginning with the date on which the grant comes into force has not expired.
- (5) Condition B is that –
  - (a) the individual whose certificate it is has made an application to the Secretary of State to renew or (as the case may be) further renew unexpired up-date arrangements in relation to the certificate, 20
  - (b) the individual has paid in the prescribed manner any prescribed fee, 25
  - (c) the Secretary of State has granted the application,
  - (d) the grant has come into force on the expiry of the previous up-date arrangements, and
  - (e) the period of 12 months beginning with the date on which the grant has come into force has not expired. 30
- (6) The Secretary of State must not grant an application as mentioned in subsection (4)(c) or (5)(c) unless any fee prescribed under subsection (4)(b) or (as the case may be) (5)(b) has been paid in the manner so prescribed.
- (7) In this section “up-date information” means – 35
  - (a) in relation to a criminal conviction certificate or a criminal record certificate –
    - (i) information that there is no information recorded in central records which would be included in a new certificate but is not included in the current certificate, or 40
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate,
  - (b) in relation to an enhanced criminal record certificate which includes suitability information relating to children or vulnerable adults – 45
    - (i) information that there is no information recorded in central records, no information of the kind mentioned in section 113B(4), and no information of the kind mentioned in section 113BA(2) or (as the case may be)

- 113BB(2), which would be included in a new certificate but is not included in the current certificate, or
- (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and 5
- (c) in relation to any other enhanced criminal record certificate –
- (i) information that there is no information recorded in central records, nor any information of the kind mentioned in section 113B(4), which would be included in a new certificate but is not included in the current certificate, or 10
- (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate.
- (8) In this section –
- “central records” has the same meaning as in section 113A, 15
- “criminal record certificate” includes a certificate under section 114,
- “enhanced criminal record certificate” includes a certificate under section 116,
- “exempted question” has the same meaning as in section 113A, 20
- “relevant person” means –
- (a) in relation to a criminal conviction certificate –
- (i) the individual whose certificate it is, or
- (ii) any person authorised by the individual,
- (b) in relation to a criminal record certificate – 25
- (i) the individual whose certificate it is, or
- (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question, and
- (c) in relation to an enhanced criminal record certificate – 30
- (i) the individual whose certificate it is, or
- (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question asked for a purpose prescribed under section 113B(2)(b).” 35

## 81 Criminal conviction certificates: conditional cautions

In section 112(2) of the Police Act 1997 (contents of a criminal conviction certificate) –

- (a) in paragraph (a) after “conviction” insert “or conditional caution”, and
- (b) in paragraph (b) for “is no such conviction” substitute “are no such convictions and conditional cautions”. 40

## CHAPTER 3

### DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

#### *General*

#### **82 Power of Secretary of State to disregard convictions or cautions**

- (1) A person who has been convicted of, or cautioned for, an offence under – 5
- (a) section 12 of the Sexual Offences Act 1956 (buggery),
  - (b) section 13 of that Act (gross indecency between men), or
  - (c) section 61 of the Offences against the Person Act 1861 or section 11 of the Criminal Law Amendment Act 1885 (corresponding earlier offences), 10
- may apply to the Secretary of State for the conviction or caution to become a disregarded conviction or caution.
- (2) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.
- (3) Condition A is that the Secretary of State decides that it appears that – 15
- (a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over, and
  - (b) any such conduct now would not be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory).
- (4) Condition B is that – 20
- (a) the Secretary of State has given notice of the decision to the applicant under section 84(4)(b), and
  - (b) the period of 14 days beginning with the day on which the notice was given has ended.
- (5) Sections 85 to 88 explain the effect of a conviction or caution becoming a disregarded conviction or caution. 25

#### **83 Applications to the Secretary of State**

- (1) An application under section 82 must be in writing.
- (2) It must state – 30
- (a) the name, address and date of birth of the applicant,
  - (b) the name and address of the applicant at the time of the conviction or caution,
  - (c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number, and 35
  - (d) such other information as the Secretary of State may require.
- (3) It may include representations by the applicant or written evidence about the matters mentioned in condition A in section 82.

#### **84 Procedure for decisions by the Secretary of State**

- (1) In considering whether to make a decision of the kind mentioned in condition A in section 82, the Secretary of State must, in particular, consider –
- (a) any representations or evidence included in the application, and
  - (b) any available record of the investigation of the offence and of any proceedings relating to it that the Secretary of State considers to be relevant. 5
- (2) The Secretary of State may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 82.
- (3) Subsection (4) applies if the Secretary of State – 10
- (a) decides that it appears as mentioned in condition A in section 82, or
  - (b) makes a different decision in relation to the matters mentioned in that condition.
- (4) The Secretary of State must – 15
- (a) record the decision in writing, and
  - (b) give notice of it to the applicant.

#### *Effect of disregard*

#### **85 Effect of disregard on police and other records**

- (1) The Secretary of State must by notice direct the relevant data controller to delete details, contained in relevant official records, of a disregarded conviction or caution. 20
- (2) A notice under subsection (1) may be given at any time after condition A in section 82 is met but no deletion may have effect before condition B in that section is met.
- (3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable. 25
- (4) Having done so, the relevant data controller must give notice to the person who has the disregarded conviction or caution that the details of it have been deleted.
- (5) In this section – 30
- “delete”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction or caution concerned –
    - (a) the fact that it is a disregarded conviction or caution, and
    - (b) the effect of it being such a conviction or caution,
  - “the names database” means the names database held by the National Policing Improvement Agency for the use of constables, 35
  - “official records” means records containing information about persons convicted of, or cautioned for, offences and kept by any court, police force, government department or local or other public authority in England and Wales for the purposes of its functions, 40
  - “prescribed” means prescribed by order of the Secretary of State,
  - “relevant data controller” means –

- (a) in relation to the names database, any chief officer of police of a police force in England and Wales who is a data controller in relation to the details concerned,
  - (b) in relation to other relevant official records, such person as may be prescribed, 5
- “relevant official records” means –
- (a) the names database, and
  - (b) such other official records as may be prescribed.
- (6) An order under this section –
- (a) may make different provision for different purposes, 10
  - (b) is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

## 86 Effect of disregard for disclosure and other purposes

- (1) A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not – 15
- (a) committed the offence,
  - (b) been charged with, or prosecuted for, the offence,
  - (c) been convicted of the offence,
  - (d) been sentenced for the offence, or
  - (e) been cautioned for the offence. 20
- (2) In particular –
- (a) no evidence is to be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that the person has done, or undergone, anything within subsection (1)(a) to (e), and 25
  - (b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person’s past which cannot be answered without acknowledging or referring to the conviction or caution or any circumstances ancillary to it.
- (3) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person – 30
- (a) the question is to be treated as not relating to any disregarded conviction or caution, or any circumstances ancillary to it (and the answer to the question may be framed accordingly), and 35
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or caution or any circumstances ancillary to it in answering the question.
- (4) Any obligation imposed on any person by any enactment or rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or caution or any circumstances ancillary to it. 40
- (5) A disregarded conviction or caution, or any circumstances ancillary to it, is not a proper ground for – 45
- (a) dismissing or excluding a person from any office, profession, occupation or employment, or

- (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (6) This section is subject to section 87 but otherwise applies despite any enactment or rule of law to the contrary.
- (7) See also section 88 (meaning of “proceedings before a judicial authority” and “circumstances ancillary to a conviction or caution”). 5
- 87 Saving for Royal pardons etc.**
- Nothing in section 86 affects any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence. 10
- 88 Section 86: supplementary**
- (1) In section 86 “proceedings before a judicial authority” includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power – 15
- (a) by virtue of any enactment, law, custom or practice,
  - (b) under the rules governing any association, institution, profession, occupation or employment, or
  - (c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement,
- to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question. 20
- (2) For the purposes of section 86, circumstances ancillary to a conviction are any circumstances of – 25
- (a) the offence which was the subject of the conviction;
  - (b) the conduct constituting the offence;
  - (c) any process or proceedings preliminary to the conviction;
  - (d) any sentence imposed in respect of the conviction;
  - (e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or any such sentence; 30
  - (f) anything done in pursuance of, or undergone in compliance with, any such sentence.
- (3) For the purposes of section 86, circumstances ancillary to a caution are any circumstances of – 35
- (a) the offence which was the subject of the caution;
  - (b) the conduct constituting the offence;
  - (c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);
  - (d) any proceedings for the offence which take place before the caution is given; 40
  - (e) anything which happens after the caution is given for the purpose of bringing any such proceedings to an end;
  - (f) any judicial review proceedings relating to the caution;

- (g) in the case of a warning under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18), anything done in pursuance of, or undergone in compliance with, a requirement to participate in a rehabilitation programme under section 66(2) of that Act.

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*Appeals and other supplementary provision*

**89 Appeal against refusal to disregard convictions or cautions**

- (1) The applicant may appeal to the High Court if –
- (a) the Secretary of State makes a decision of the kind mentioned in section 84(3)(b), and
  - (b) the High Court gives permission for an appeal against the decision.
- (2) On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Secretary of State.
- (3) If the High Court decides that it appears as mentioned in condition A in section 82, it must make an order to that effect.
- (4) Otherwise it must dismiss the appeal.
- (5) A conviction or caution to which an order under subsection (3) relates becomes a disregarded conviction or caution when the period of 14 days beginning with the day on which the order was made has ended.
- (6) There is no appeal from a decision of the High Court under this section.

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**90 Advisers**

- (1) The Secretary of State may appoint persons to advise whether, in any case referred to them by the Secretary of State, the Secretary of State should decide as mentioned in condition A in section 82.
- (2) The Secretary of State may disclose to a person so appointed such information (including anything within section 84(1)(a) or (b)) as the Secretary of State considers relevant to the provision of such advice.
- (3) *The Secretary of State may pay expenses and allowances to a person so appointed.*

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**91 Interpretation: Chapter 3**

- (1) In this Chapter –
- “caution” means –
- (a) a caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, that person has admitted, or
  - (b) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18),
- “conviction” includes –
- (a) a finding that a person is guilty of an offence in respect of conduct which was the subject of service disciplinary proceedings,

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- (b) a conviction in respect of which an order has been made discharging the person concerned absolutely or conditionally, and
- (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that a person has committed an offence or done the act or made the omission charged,
- “disregarded caution” is a caution which has become a disregarded caution by virtue of this Chapter,
- “disregarded conviction” is a conviction which has become a disregarded conviction by virtue of this Chapter,
- “document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include providing or producing a copy of the information in legible form,
- “information” includes documents,
- “notice” means notice in writing,
- “official records” has the meaning given by section 85(5),
- “sentence” includes –
- (a) any punishment awarded, and
- (b) any order made by virtue of Schedule 5A to the Army Act 1955, Schedule 5A to the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957,
- in respect of a finding that a person is guilty of an offence in respect of conduct which was the subject of service disciplinary proceedings,
- “service disciplinary proceedings” means any proceedings (whether in England and Wales or elsewhere) –
- (a) under the Naval Discipline Act 1866, the Army Act 1881, the Air Force Act 1917, the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under the enactment concerned to award a punishment in respect of an offence), or
- (b) before a Standing Civilian Court established under the Armed Forces Act 1976.
- (2) Paragraph (b) of the definition of “conviction” applies despite the following (which deem a conviction of a person discharged not to be a conviction) –
- (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000, and
- (b) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.
- (3) The references in section 82(1) to offences under particular provisions are to be read as including references to offences under –
- (a) section 45 of the Naval Discipline Act 1866,
- (b) section 41 of the Army Act 1881,
- (c) section 41 of the Air Force Act 1917,
- (d) section 70 of the Army Act 1955,
- (e) section 70 of the Air Force Act 1955, or
- (f) section 42 of the Naval Discipline Act 1957,
- which are such offences by virtue of those provisions.



- (4) The reference in section 82(3)(b) to an offence under section 71 of the Sexual Offences Act 2003 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of the Act of 2003.
- (5) In this Chapter a reference to an offence includes— 5
- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
- (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
- (6) In the case of an attempt, conspiracy or incitement, the references in this Chapter to the conduct constituting the offence are references to the conduct to which the attempt, conspiracy or incitement related (whether or not that conduct occurred). 10

## PART 6

### FREEDOM OF INFORMATION AND DATA PROTECTION 15

#### *Publication of certain datasets*

#### **92 Release and publication of datasets held by public authorities**

- (1) The Freedom of Information Act 2000 is amended as follows.
- (2) In section 11 (means by which communication to be made)— 20
- (a) after subsection (1) insert—
- “(1A) Where—
- (a) an applicant makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the public authority, and
- (b) on making the request for information, the applicant expresses a preference for communication by means of the provision to the applicant of a copy of the information in electronic form, 25
- the public authority must, so far as reasonably practicable, provide the information to the applicant in an electronic form which is capable of re-use.” 30
- (b) In subsection (4), for “subsection (1)” substitute “subsections (1) and (1A)”.
- (c) After subsection (4) insert— 35
- “(5) In this Act “dataset” means information comprising a collection of information held in electronic form where all or most of the information in the collection—
- (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority, 40
- (b) is factual information which—

- (i) is not the product of analysis or interpretation other than calculation, and
- (ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and 5
- (c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.”
- (3) After section 11 (means by which communication to be made) insert – 10
- “11A Release of datasets for re-use**
- (1) This section applies where –
- (a) a person makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the authority, 15
- (b) any of the dataset or part of a dataset so requested is a relevant copyright work,
- (c) the public authority is the only owner of the relevant copyright work, and
- (d) the public authority is communicating the relevant copyright work to the applicant in accordance with this Act. 20
- (2) When communicating the relevant copyright work to the applicant, the public authority must make the relevant copyright work available for re-use by the applicant in accordance with the terms of the specified licence. 25
- (3) In this section –
- “copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);
- “copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act); 30
- “Crown copyright” has the meaning given by Part 1 of the Act of 1988 (see section 163 of that Act);
- “Crown database right” means a database right which subsists in a database of which Her Majesty is the maker (within the meaning given by regulation 14 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032); 35
- “database” has the meaning given by section 3A of the Act of 1988;
- “database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032); 40
- “owner”, in relation to a relevant copyright work, means –
- (a) the copyright owner, or
- (b) the owner of the database right in a database;
- “Parliamentary copyright” has the meaning given by Part 1 of the Act of 1988 (see sections 165 to 167 of that Act); 45
- “relevant copyright work” means –
- (a) a copyright work,
- (b) a work in which Parliamentary copyright subsists, or

- (c) a database subject to a database right,  
but excludes a work in which Crown copyright subsists or a  
database in which Crown database right subsists;  
“the specified licence” is the licence specified by the Secretary of  
State in a code of practice issued under section 45, and the  
Secretary of State may specify different licences for different  
purposes.” 5
- (4) In section 19 (publication schemes) –
- (a) after subsection (2) insert –
- “(2A) A publication scheme must, in particular, include a requirement  
for the public authority concerned – 10
- (a) to publish –
- (i) any dataset held by the authority in relation to  
which a person makes a request for information  
to the authority, and 15
- (ii) any up-dated version held by the authority of  
such a dataset,  
unless the authority is satisfied that it is not appropriate  
for the dataset to be published,
- (b) where reasonably practicable, to publish any dataset the  
authority publishes by virtue of paragraph (a) in an  
electronic form which is capable of re-use, 20
- (c) where any information in a dataset published by virtue  
of paragraph (a) is a relevant copyright work in relation  
to which the authority is the only owner, to make the  
information available for re-use in accordance with the  
terms of the specified licence.” 25
- (b) after subsection (7) insert –
- “(8) In this section –
- “copyright owner” has the meaning given by Part 1 of the  
Copyright, Designs and Patents Act 1988 (see section  
173 of that Act); 30
- “copyright work” has the meaning given by Part 1 of the  
Act of 1988 (see section 1(2) of that Act);
- “Crown copyright” has the meaning given by Part 1 of the  
Act of 1988 (see section 163 of that Act); 35
- “Crown database right” means a database right which  
subsists in a database of which Her Majesty is the maker  
(within the meaning given by regulation 14 of the  
Copyright and Rights in Databases Regulations 1997  
(S.I. 1997/3032); 40
- “database” has the meaning given by section 3A of the Act  
of 1988;
- “database right” has the same meaning as in Part 3 of the  
Copyright and Rights in Databases Regulations 1997  
(S.I. 1997/3032); 45
- “owner”, in relation to a relevant copyright work, means –
- (a) the copyright owner, or
- (b) the owner of the database right in a database;

- “Parliamentary copyright” has the meaning given by Part 1 of the Act of 1988 (see sections 165 to 167 of that Act);  
“relevant copyright work” means –
- (a) a copyright work,
  - (b) a work in which Parliamentary copyright subsists, or
  - (c) a database subject to a database right, but excludes a work in which Crown copyright subsists or a database in which Crown database right subsists.”
- “the specified licence” has the meaning given by section 11A(3).”
- (5) In section 45 (issue of code of practice) –
- (a) in subsection (2), after paragraph (d) (and before the word “and” at the end of the paragraph), insert –
    - “(da) the disclosure by public authorities of datasets held by them,”
  - (b) after subsection (2) insert –
    - “(2A) Provision of the kind mentioned in subsection (2)(da) may, in particular, include provision relating to –
      - (a) the giving of permission for datasets to be re-used,
      - (b) the disclosure of datasets in an electronic form which is capable of re-use,
      - (c) the making of datasets available for re-use in accordance with the terms of a licence,
      - (d) other matters relating to the making of datasets available for re-use,
      - (e) standards applicable to public authorities in connection with the disclosure of datasets.”, and
    - (c) in subsection (3) for “The code” substitute “Any code under this section”.
- (6) In section 84 (interpretation), after the definition of “the Commissioner”, insert –
- ““dataset” has the meaning given by section 11(5);”.

*Other amendments relating to freedom of information*

- 93 Meaning of “publicly-owned company”**
- (1) Section 6 of the Freedom of Information Act 2000 (publicly-owned companies) is amended as follows.
- (2) In subsection (1) –
- (a) omit “or” at the end of paragraph (a),
  - (b) in paragraph (b) for the words from “any public authority” to “particular information” substitute “the wider public sector”, and
  - (c) after paragraph (b) insert “, or
    - (c) it is wholly owned by the Crown and the wider public sector.”

- (3) For subsection (2) substitute –
- “(2) For the purposes of this section –
- (a) a company is wholly owned by the Crown if, and only if, every member is a person falling within sub-paragraph (i) or (ii) –
    - (i) a Minister of the Crown, government department or company wholly owned by the Crown, or 5
    - (ii) a person acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown,
  - (b) a company is wholly owned by the wider public sector if, and only if, every member is a person falling within sub-paragraph (i) or (ii) – 10
    - (i) a relevant public authority or a company wholly owned by the wider public sector, or
    - (ii) a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector, and 15
  - (c) a company is wholly owned by the Crown and the wider public sector if, and only if, condition A, B or C is met.
- (2A) In subsection (2)(c) – 20
- (a) condition A is met if –
    - (i) at least one member is a person falling within subsection (2)(a)(i) or (ii),
    - (ii) at least one member is a person falling within subsection (2)(b)(i) or (ii), and 25
    - (iii) every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),
  - (b) condition B is met if –
    - (i) at least one member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii), 30
    - (ii) at least one member is a company wholly owned by the Crown and the wider public sector, and
    - (iii) every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii) or a company wholly owned by the Crown and the wider public sector, and 35
  - (c) condition C is met if every member is a company wholly owned by the Crown and the wider public sector.”
- (4) In subsection (3), at the end, insert –
- ““relevant public authority” means any public authority listed in Schedule 1 other than – 40
- (a) a government department, or
  - (b) any authority which is listed only in relation to particular information”.

#### 94 Extension of certain provisions to Northern Ireland bodies

- (1) Omit – 45
- (a) section 80A of the Freedom of Information Act 2000 (which modifies, in relation to information held by Northern Ireland bodies, certain provisions of the Act relating to historical records etc.), and

- (b) paragraph 6 of Schedule 7 to the Constitutional Reform and Governance Act 2010 (which inserts section 80A into the Act of 2000).
- (2) The power of the Secretary of State under section 46(2) to (5) of the Act of 2010 to make transitional, transitory or saving provision in connection with the coming into force of paragraph 4 of Schedule 7 to that Act includes power to make such provision in connection with the coming into force of that paragraph of that Schedule as it has effect by virtue of this section. 5

*The Information Commissioner*

**95 Appointment and tenure of Information Commissioner**

- (1) After paragraph 2(3) of Schedule 5 to the Data Protection Act 1998 (removal of the Information Commissioner from office) insert – 10
- “(3A) No motion is to be made in either House of Parliament for such an Address unless a Minister of the Crown has presented a report to that House stating that the Minister is satisfied that one or more of the following grounds is made out – 15
- (a) the Commissioner has failed to discharge the functions of the office for a continuous period of at least 3 months,
- (b) the Commissioner has failed to comply with the terms of appointment,
- (c) the Commissioner has been convicted of a criminal offence, 20
- (d) the Commissioner is an undischarged bankrupt or the Commissioner’s estate has been sequestrated in Scotland and the Commissioner has not been discharged,
- (e) the Commissioner has made an arrangement or composition contract with, or has granted a trust deed for, the Commissioner’s creditors, 25
- (f) the Commissioner is otherwise unfit to hold the office or unable to carry out its functions.
- (3B) No recommendation may be made to Her Majesty for the appointment of a person as the Commissioner unless the person concerned has been selected on merit on the basis of fair and open competition. 30
- (3C) A person appointed as the Commissioner may not be appointed again for a further term of office.”
- (2) Omit paragraph 2(4) and (5) of that Schedule to that Act (termination of term of office on attaining 65 years of age etc. and eligibility for re-appointment). 35
- (3) In the italic heading to paragraph 2 of that Schedule to that Act, after “office” insert “and appointment”.
- (4) Omit section 18(5) to (7) of the Freedom of Information Act 2000 (spent provisions about period of office of Data Protection Commissioner as first Information Commissioner and application of paragraph 2(4)(b) and (5) of Schedule 5 to the Act of 1998 to that person). 40

**96 Alteration of role of Secretary of State in relation to guidance powers**

- (1) For section 41C(7) of the Data Protection Act 1998 (code of practice about

assessment notices: requirement for approval of Secretary of State) substitute –

“(7) The Commissioner must consult the Secretary of State before issuing the code (or an altered or replacement code).”

(2) In section 52B of that Act (data-sharing code: approval by the Secretary of State) – 5

(a) for subsections (1) to (3) substitute –

“(1) When a code is prepared under section 52A, the Commissioner must –

(a) consult the Secretary of State, and 10

(b) submit the final version of the code to the Secretary of State.

(2) The Secretary of State must lay the code before Parliament.”, and

(b) in subsection (6) for the words from the beginning to “the Commissioner” substitute “Where such a resolution is passed, the Commissioner”. 15

(3) For section 55C(5) of that Act (guidance about monetary penalty notices: requirement for approval of Secretary of State) substitute –

“(5) The Commissioner must consult the Secretary of State before issuing any guidance under this section.” 20

## 97 Removal of Secretary of State consent for fee-charging powers etc.

(1) In section 51 of the Data Protection Act 1998 (general duties of the Information Commissioner) –

(a) in subsection (8) (power to charge fees, with the consent of the Secretary of State, in relation to any Part 6 services) – 25

(i) omit “with the consent of the Secretary of State”, and

(ii) before “services” insert “relevant”, and

(b) after subsection (8) insert –

“(8A) In subsection (8) “relevant services” means – 30

(a) the provision to the same person of more than one copy of any published material where each of the copies of the material is either provided on paper, a portable disk which stores the material electronically or a similar medium, 35

(b) the provision of training, or

(c) the provision of conferences.

(8B) The Secretary of State may by order amend subsection (8A).”

(2) In section 67(5)(a) of that Act (orders under the Act subject to negative procedure) after “51(3)” insert “or (8B)”. 40

(3) In section 47 of the Freedom of Information Act 2000 (general functions of the Information Commissioner) –

(a) in subsection (4) (power to charge fees, with the consent of the Secretary of State, in relation to services provided under that section) –

- (i) omit “with the consent of the Secretary of State”, and  
(ii) before “services” insert “relevant”, and  
(b) after subsection (4) insert –
- “(4A) In subsection (4) “relevant services” means –
- (a) the provision to the same person of more than one copy of any published material where each of the copies of the material is either provided on paper, a portable disk which stores the material electronically or a similar medium, 5  
(b) the provision of training, or 10  
(c) the provision of conferences.
- (4B) The Secretary of State may by order amend subsection (4A).  
(4C) An order under subsection (4B) may include such transitional or saving provision as the Secretary of State considers appropriate. 15  
(4D) The Secretary of State must consult the Commissioner before making an order under subsection (4B).”
- (4) In section 82(3)(a) of that Act (orders under the Act subject to negative procedure) after “4(1)” insert “or 47(4B)”.
- 98 Removal of Secretary of State approval for staff numbers, terms etc.** 20
- (1) Paragraph 4 of Schedule 5 to the Data Protection Act 1998 (appointment of officers and staff of the Information Commissioner) is amended as follows.  
(2) After sub-paragraph (4) insert –
- “(4A) In making appointments under this paragraph, the Commissioner must have regard to the principle of selection on merit on the basis of fair and open competition.” 25
- (3) Omit sub-paragraph (5) (approval of Secretary of State required for number, and terms and conditions, of persons to be appointed).
- PART 7**
- MISCELLANEOUS AND GENERAL 30
- Miscellaneous repeals of enactments*
- 99 Repeal of provisions for conducting certain fraud cases without jury**
- Omit section 43 of the Criminal Justice Act 2003 (applications by prosecution for certain fraud cases to be conducted without a jury).
- 100 Removal of restrictions on times for marriage or civil partnership** 35
- (1) In the Marriage Act 1949 –  
(a) omit section 4 (solemnization of marriages to take place at any time between 8 a.m. and 6 p.m.), and



- (b) omit section 75(1)(a) (offence of solemnizing a marriage outside the permitted hours).
- (2) In section 16(4) of the Marriage (Registrar General’s Licence) Act 1970 (disapplication of certain provisions of the Act of 1949) for “sections 75(1)(a) and” substitute “section”. 5
- (3) In section 17(2) of the Civil Partnership Act 2004 (registration as civil partners under the standard procedure to take place on any day in the applicable period between 8 a.m. and 6 p.m.) –
  - (a) for “on any day in” substitute “at any time during”, and
  - (b) omit “between 8 o’clock in the morning and 6 o’clock in the evening”. 10
- (4) Omit section 31(2)(ab) of that Act (offence of officiating at the signing of a civil partnership schedule outside the permitted hours).

*General*

**101 Consequential amendments, repeals and revocations**

- (1) Schedule 7 (consequential amendments) has effect. 15
- (2) The provisions listed in Schedule 8 are repealed or (as the case may be) revoked to the extent specified.
- (3) The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (4) The power to make an order under subsection (3) – 20
  - (a) is exercisable by statutory instrument,
  - (b) includes power to make transitional, transitory or saving provision,
  - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including any Act passed in the same Session as this Act). 25
- (5) Subject to subsection (6), a statutory instrument containing an order under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing an order under this section which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament. 30
- (7) In this section –
  - “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation,
  - “primary legislation” means – 35
    - (a) a public general Act,
    - (b) an Act of the Scottish Parliament,
    - (c) a Measure or Act of the National Assembly for Wales, and
    - (d) Northern Ireland legislation.

**102 Transitional, transitory or saving provision**

The Secretary of State may by order made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act (other than Chapter 1 of Part 1).

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**103 Financial provisions**

- (1) *There is to be paid out of money provided by Parliament –*
  - (a) *any expenditure incurred by a Minister of the Crown by virtue of this Act, and*
  - (b) *any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided.*
- (2) *There is to be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act.*

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**104 Channel Islands and Isle of Man**

Her Majesty may by Order in Council provide for Chapters 1 and 2 of Part 5 (and Parts 5 and 6 of Schedules 7 and 8) to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.

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**105 Extent**

- (1) The following provisions extend to England and Wales only –
  - (a) sections 1 to 18, 23 and 24,
  - (b) Chapter 2 of Part 1,
  - (c) Chapter 1 of Part 2,
  - (d) Chapter 2 of Part 3,
  - (e) Part 5,
  - (f) sections 99 and 100,
  - (g) Parts 3 and 5 to 8 of Schedule 7 (subject to subsection (7)(i)),
  - (h) Parts 3, 5, 6, 9 and 10 of Schedule 8 (subject to subsection (7)(i)), and
  - (i) any provision which extends to England and Wales only by virtue of subsection (5) or (6).
- (2) Part 2 of Schedule 1 extends to England and Wales and Northern Ireland only.
- (3) Parts 4 and 5 of Schedule 1 extend to Scotland only.
- (4) Part 6 of Schedule 1, section 62 and Schedule 6 extend to Northern Ireland only.
- (5) The following provisions have the extent provided for in those provisions –
  - (a) Schedule 2 (see each paragraph), and
  - (b) Part 2 of Schedule 8 (see the notes to that Part).
- (6) The amendments, repeals and revocations made by Parts 1 and 4 of Schedules 7 and 8 have the same extent as the enactment amended, repealed or revoked.
- (7) The following provisions extend to England and Wales, Scotland and Northern Ireland –
  - (a) sections 19 to 22 (excluding Parts 2 and 4 to 6 of Schedule 1) and 25,
  - (b) Chapter 2 of Part 2,
  - (c) Chapter 1 of Part 3 (excluding Schedule 2),

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- (d) Part 4 (excluding section 62 and Schedule 6),
  - (e) Part 6,
  - (f) sections 101 to 104 (excluding Schedules 7 and 8), this section and sections 106 and 107,
  - (g) Part 2 of Schedule 7, 5
  - (h) Parts 7 and 8 of Schedule 8,
  - (i) the repeal of section 330(5)(b) of the Criminal Justice Act 2003 in Part 8 of Schedule 7 and Part 9 of Schedule 8, and
  - (j) any provision which extends to England and Wales, Scotland and Northern Ireland by virtue of subsection (5) or (6). 10
- (8) Sections 104 and 107 (and this section and section 106 so far as relating to those sections) also extend to the Channel Islands and the Isle of Man.

### 106 Commencement

- (1) Subject as follows, this Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes. 15
- (2) The provisions mentioned in subsection (3) come into force on such day as the Welsh Ministers may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) The provisions are – 20
- (a) Chapter 2 of Part 1 so far as relating to schools in Wales and further education institutions in Wales,
  - (b) sections 39(1), 40, 41 and 43 to 46 so far as they confer functions on the Welsh Ministers,
  - (c) section 53 and Schedule 3, and 25
  - (d) section 56 and Schedule 4 so far as relating to land in Wales.
- (4) 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 –
- (a) section 39(2) and Schedule 2, and
  - (b) Part 2 of Schedule 8 (and section 101(2) so far as relating to that Part of that Schedule). 30
- (5) The following provisions come into force on the day on which this Act is passed –
- (a) section 99, Part 8 of Schedule 7 and Part 9 of Schedule 8 (and section 101(1) and (2) so far as relating to those Parts of those Schedules), and 35
  - (b) sections 101(3) to (7) and 102 to 105, this section and section 107.

### 107 Short title

This Act may be cited as the Protection of Freedoms Act 2011.

## SCHEDULES

### SCHEDULE 1

Section 19

#### AMENDMENTS OF REGIMES OTHER THAN PACE

##### PART 1

#### MATERIAL SUBJECT TO THE TERRORISM ACT 2000 5

- 1 (1) Schedule 8 to the Terrorism Act 2000 (treatment of persons detained under section 41 or Schedule 7 of that Act) is amended as follows.
- (2) Omit paragraph 14 (retention of material: England and Wales and Northern Ireland).
- (3) In paragraph 20 (retention of material: Scotland) – 10
  - (a) in sub-paragraph (3), omit the words from “but” to the end of the sub-paragraph, and
  - (b) omit sub-paragraph (4).
- (4) After paragraph 20 insert –  
*“Destruction and retention of fingerprints and samples etc: United Kingdom 15*
  - 20A (1) This paragraph applies to –
    - (a) fingerprints taken under paragraph 10,
    - (b) a DNA profile derived from a DNA sample taken under paragraph 10 or 12,
    - (c) relevant physical data taken or provided by virtue of paragraph 20, and 20
    - (d) a DNA profile derived from a DNA sample taken by virtue of paragraph 20.
  - (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 20A material”) must be destroyed if it appears to the responsible chief officer of police that – 25
    - (a) the taking or providing of the material or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful, or 30
    - (b) the material was taken or provided, or (in the case of a DNA profile) was derived from a sample taken, from a person in connection with that person’s arrest under section 41 and the arrest was unlawful or based on mistaken identity. 35

- (3) In any other case, paragraph 20A material must be destroyed unless it is retained under any power conferred by paragraphs 20B to 20E.
- (4) Paragraph 20A material which ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other such power which applies to it. 5
- (5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 20A material, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable. 10
- (6) For the purposes of sub-paragraph (5), “a relevant search” is a search carried out for the purpose of checking the material against—
- (a) other fingerprints or samples taken under paragraph 10 or 12 or a DNA profile derived from such a sample, 15
  - (b) any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995,
  - (c) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003, 20
  - (d) material to which section 18 of the Counter-Terrorism Act 2008 applies,
  - (e) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), and 25
  - (f) any of the fingerprints, samples and information mentioned in Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples). 30
- 20B (1) This paragraph applies to paragraph 20A material relating to a person who is detained under section 41.
- (2) In the case of a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or an offence in Scotland which is punishable by imprisonment, or is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely. 35  
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- (3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in sub-paragraph (4).
- (4) The retention period is—
- (a) in the case of fingerprints or relevant physical data, the period of 3 years beginning with the date on which the fingerprints or relevant physical data were taken or provided, and 45

- 
- (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken). 5
- (5) The responsible chief officer of police or a specified chief officer of police may apply to a relevant court for an order extending the retention period.
- (6) An application for an order under sub-paragraph (5) must be made within the period of 3 months ending on the last day of the retention period. 10
- (7) An order under sub-paragraph (5) may extend the retention period by a period which—
- (a) begins with the date on which the material would otherwise be required to be destroyed under this paragraph, and 15
- (b) ends with the end of the period of 2 years beginning with that date.
- (8) The following persons may appeal to the relevant appeal court against an order under sub-paragraph (5), or a refusal to make such an order— 20
- (a) the responsible chief officer of police;
- (b) a specified chief officer of police;
- (c) the person from whom the material was taken.
- (9) In Scotland— 25
- (a) an application for an order under sub-paragraph (5) is to be made by summary application;
- (b) an appeal against an order under sub-paragraph (5), or a refusal to make such an order, must be made within 21 days of the relevant court’s decision, and the relevant appeal court’s decision on any such appeal is final. 30
- (10) In this paragraph—
- “relevant court” means—
- (a) in England and Wales, a District Judge (Magistrates’ Courts), 35
- (b) in Scotland, the sheriff—
- (i) in whose sheriffdom the person to whom the material relates resides,
- (ii) in whose sheriffdom that person is believed by the applicant to be, or 40
- (iii) to whose sheriffdom that person is believed by the applicant to be intending to come; and
- (c) in Northern Ireland, a district judge (magistrates’ court) in Northern Ireland;
- “the relevant appeal court” means— 45
- (a) in England and Wales, the Crown Court,
- (b) in Scotland, the sheriff principal, and

- (c) in Northern Ireland, the County Court in Northern Ireland;
- “a specified chief officer of police” means –
- (a) in England and Wales and Northern Ireland –
    - (i) the chief officer of the police force of the area in which the person from whom the material was taken resides, or 5
    - (ii) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer’s police area, and 10
  - (b) in Scotland –
    - (i) the chief constable of the police force in the area in which the person who provided the material, or from whom it was taken, resides, or 15
    - (ii) a chief constable who believes that the person is in, or is intending to come to, the area of the chief constable’s police force.
- 20C (1) This paragraph applies to paragraph 20A material relating to a person who is detained under Schedule 7. 20
- (2) In the case of a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or an offence in Scotland which is punishable by imprisonment, or is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely. 25
- (3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in sub-paragraph (4).
- (4) The retention period is – 30
- (a) in the case of fingerprints or relevant physical data, the period of 6 months beginning with the date on which the fingerprints or relevant physical data were taken or provided, and
  - (b) in the case of a DNA profile, the period of 6 months beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken). 35
- 20D (1) For the purposes of paragraphs 20B and 20C, a person is to be treated as having been convicted of an offence if – 40
- (a) the person has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
  - (b) the person has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence, 45
  - (c) the person, in relation to an offence in Scotland punishable by imprisonment, has accepted or has been deemed to accept –

- 
- (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,
  - (ii) a compensation offer under section 302A of that Act,
  - (iii) a combined offer under section 302B of that Act, or
  - (iv) a work offer under section 303ZA of that Act, 5
  - (d) the person, having been given a fixed penalty notice under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 in connection with an offence in Scotland punishable by imprisonment, has paid – 10
    - (i) the fixed penalty, or
    - (ii) (as the case may be) the sum which the person is liable to pay by virtue of section 131(5) of that Act, or
  - (e) the person, in relation to an offence in Scotland punishable by imprisonment, has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995. 15
- (2) Paragraphs 20B and 20C and this paragraph, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974. 20
- (3) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 82 of the Protection of Freedoms Act 2011.
- (4) For the purposes of paragraphs 20B and 20C – 25
- (a) a person has no previous convictions if the person has not previously been convicted –
    - (i) in England and Wales or Northern Ireland of a recordable offence, or
    - (ii) in Scotland of an offence which is punishable by imprisonment, and 30
  - (b) if the person has previously been convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was aged under 18. 35
- (5) In sub-paragraph (4), “qualifying offence” has –
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and 40
  - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)). 45
- (6) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under paragraph 20B or 20C whether the person has been convicted of only one offence. 50



- (7) Nothing in paragraph 20B or 20C prevents the start of a new retention period in relation to paragraph 20A material if a person is detained again under section 41 or (as the case may be) Schedule 7 when an existing retention period (whether or not extended) is still in force in relation to that material. 5
- 20E (1) Paragraph 20A material may be retained for as long as a national security determination made by the responsible chief officer of police has effect in relation to it.
- (2) A national security determination is made if the responsible chief officer of police determines that it is necessary for any paragraph 20A material to be retained for the purposes of national security. 10
- (3) A national security determination –
- (a) must be made in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which the determination is made, and 15
  - (c) may be renewed.
- 20F (1) If fingerprints or relevant physical data are required by paragraph 20A to be destroyed, any copies of the fingerprints or relevant physical data held by a police force must also be destroyed.
- (2) If a DNA profile is required by that paragraph to be destroyed, no copy may be retained by a police force except in a form which does not include information which identifies the person to whom the DNA profile relates. 20
- 20G (1) This paragraph applies to –
- (a) samples taken under paragraph 10 or 12, or 25
  - (b) samples taken by virtue of paragraph 20.
- (2) Samples to which this paragraph applies must be destroyed if it appears to the responsible chief officer of police that –
- (a) the taking of the sample was unlawful, or
  - (b) the sample was taken from a person in connection with that person’s arrest under section 41 and the arrest was unlawful or based on mistaken identity. 30
- (3) Subject to this, the rule in sub-paragraph (4) or (as the case may be) (5) applies.
- (4) A DNA sample to which this paragraph applies must be destroyed – 35
- (a) as soon as a DNA profile has been derived from the sample, or
  - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken. 40
- (5) Any other sample to which this paragraph applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- (6) Nothing in this section prevents a relevant search, in relation to samples to which this paragraph applies, from being carried out within such time as may reasonably be required for the search if 45

- the responsible chief officer of police considers the search to be desirable.
- (7) In sub-paragraph (6) “a relevant search” has the meaning given by paragraph 20A(6).
- 20H (1) Any material to which paragraph 20A or 20G applies must not be used other than— 5
- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation,
  - (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or 10
  - (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Material which is required by paragraph 20A or 20G to be destroyed must not at any time after it is required to be destroyed be used— 15
- (a) in evidence against the person to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (3) In this paragraph— 20
- (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
  - (b) the reference to crime includes a reference to any conduct which— 25
    - (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 30
  - (c) 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. 35
- (4) Sub-paragraphs (1) and (3) do not form part of the law of Scotland.
- 20I In paragraphs 20A to 20H— 40
- “DNA profile” means any information derived from a DNA sample;
  - “DNA sample” means any material that has come from a human body and consists of or includes human cells;
  - “fingerprints” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984 (Part 5 definitions); 45
  - “paragraph 20A material” has the meaning given by paragraph 20A(2);

- “police force” means any of the following –
- (a) the metropolitan police force;
  - (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London); 5
  - (c) the City of London police force;
  - (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
  - (e) the Scottish Police Services Authority;
  - (f) the Police Service of Northern Ireland; 10
  - (g) the Police Service of Northern Ireland Reserve;
  - (h) the Ministry of Defence Police;
  - (i) the Royal Navy Police;
  - (j) the Royal Military Police;
  - (k) the Royal Air Force Police; 15
  - (l) the British Transport Police;
- “recordable offence” has –
- (a) in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and 20
  - (b) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989;
- “relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995; 25
- “responsible chief officer of police” means, in relation to fingerprints or samples taken in England or Wales, or a DNA profile derived from a sample so taken, the chief officer of police for the police area –
- (a) in which the material concerned was taken, or 30
  - (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;
- “responsible chief officer of police” means, in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken or provided, the chief constable of the police force for the area –
- (a) in which the material concerned was taken or provided, or 35
  - (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken; 40
- “responsible chief officer of police” means, in relation to fingerprints or samples taken in Northern Ireland, or a DNA profile derived from a sample so taken, the Chief Constable of the Police Service of Northern Ireland.” 45

- (5) In paragraph 11(1)(a), for “paragraph 14(4)” substitute “paragraph 20H”.
- (6) In paragraph 15(1) for “paragraphs 10 to 14” substitute “paragraphs 10 to 13”.

(7) After paragraph 15(1) insert –

“(1A) In the application of section 65(2A) of the Police and Criminal Evidence Act 1984 for the purposes of sub-paragraph (1) of this paragraph, the reference to the destruction of a sample under section 63Q of that Act is a reference to the destruction of a sample under paragraph 20G of this Schedule.” 5

(8) In paragraph 15(2) for “paragraphs 10 to 14” substitute “paragraphs 10 to 13”.

## PART 2

MATERIAL SUBJECT TO THE INTERNATIONAL CRIMINAL COURT ACT 2001 10

2 In Schedule 4 of the International Criminal Court Act 2001 (taking of fingerprints or non-intimate samples) for paragraph 8 substitute –

“8 (1) This paragraph applies to the following material –  
 (a) fingerprints and samples taken under this Schedule, and  
 (b) DNA profiles derived from such samples. 15

(2) The material must be destroyed –  
 (a) before the end of the period of 6 months beginning with the date on which the material was transmitted to the ICC (see paragraph 6(2)), or  
 (b) if later, as soon as it has fulfilled the purpose for which it was taken or derived. 20

(3) If fingerprints are required to be destroyed by virtue of sub-paragraph (2), any copies of the fingerprints held by the police must also be destroyed.

(4) If a DNA profile is required to be destroyed by virtue of sub-paragraph (2), no copy may be retained by the police except in a form which does not include information from which the person to whom the DNA profile relates can be identified. 25

(5) In this paragraph –  
 “DNA profile” means any information derived from a DNA sample;  
 “DNA sample” means any material that has come from a human body and consists of or includes human cells.” 30

## PART 3

MATERIAL SUBJECT TO SECTION 18 OF THE COUNTER-TERRORISM ACT 2008 35

3 The Counter-Terrorism Act 2008 is amended as follows.

4 For section 18 (material not subject to existing statutory restrictions) substitute –

**“18 Destruction of material not subject to existing statutory restrictions**

(1) This section applies to fingerprints, DNA samples and DNA profiles that – 40

- 
- (a) are held by a law enforcement authority under the law of England and Wales or Northern Ireland, and
- (b) are not held subject to existing statutory restrictions.
- (2) Material to which this section applies (“section 18 material”) must be destroyed if it appears to the responsible officer that the condition in subsection (3) is not met. 5
- (3) The condition is that the material has been –
- (a) obtained by the law enforcement authority pursuant to an authorisation under Part 3 of the Police Act 1997 (authorisation of action in respect of property), 10
- (b) obtained by the law enforcement authority in the course of surveillance, or use of a covert human intelligence source, authorised under Part 2 of the Regulation of Investigatory Powers Act 2000,
- (c) supplied to the law enforcement authority by another law enforcement authority, or 15
- (d) otherwise lawfully obtained or acquired by the law enforcement authority for any of the purposes mentioned in section 18D(1).
- (4) In any other case, section 18 material must be destroyed unless it is retained by the law enforcement authority under any power conferred by section 18A or 18B, but this is subject to subsection (5). 20
- (5) A DNA sample to which this section applies must be destroyed –
- (a) as soon as a DNA profile has been derived from the sample, or 25
- (b) if sooner, before the end of the period of 6 months beginning with the date on which it was taken.
- (6) Section 18 material which ceases to be retained under a power mentioned in subsection (4) may continue to be retained under any other such power which applies to it. 30
- (7) Nothing in this section prevents section 18 material from being checked against other fingerprints, DNA samples or DNA profiles held by a law enforcement authority within such time as may reasonably be required for the check, if the responsible officer considers the check to be desirable. 35
- (8) For the purposes of subsection (1), the following are “existing statutory restrictions” –
- (a) sections 63A and 63D to 63T of the Police and Criminal Evidence Act 1984;
- (b) Articles 63A and 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)); 40
- (c) paragraphs 20(3) or 20A to 20I of Schedule 8 to the Terrorism Act 2000;
- (d) section 2(2) of the Security Service Act 1989;
- (e) section 1(2) of the Intelligence Services Act 1994. 45

### **18A Retention of material: general**

- (1) Section 18 material which is not a DNA sample and relates to a person who has no previous convictions or only one exempt conviction may be retained by the law enforcement authority until the end of the retention period specified in subsection (2). 5
- (2) The retention period is—
- (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and
  - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken). 10
- (3) Section 18 material which is not a DNA sample and relates to a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or is so convicted before the material is required to be destroyed by virtue of this section, may be retained indefinitely. 15

### **18B Retention for purposes of national security**

- (1) Section 18 material which is not a DNA sample may be retained for as long as a national security determination made by the responsible officer has effect in relation to it. 20
- (2) A national security determination is made if the responsible officer determines that it is necessary for any such section 18 material to be retained for the purposes of national security. 25
- (3) A national security determination—
- (a) must be made in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which the determination is made, and
  - (c) may be renewed. 30

### **18C Destruction of copies**

- (1) If fingerprints are required by section 18 to be destroyed, any copies of the fingerprints held by the law enforcement authority concerned must also be destroyed.
- (2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the law enforcement authority concerned except in a form which does not include information which identifies the person to whom the DNA profile relates. 35

### **18D Use of retained material**

- (1) Section 18 material must not be used other than— 40
- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation,
  - (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or 45

- (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Material which is required by section 18 to be destroyed must not at any time after it is required to be destroyed be used –
  - (a) in evidence against the person to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (3) In this section –
  - (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
  - (b) 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
    - (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
  - (c) 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.
- 18E Sections 18 to 18E: supplementary provisions**
- (1) In sections 18 to 18D and this section –
  - “DNA profile” means any information derived from a DNA sample;
  - “DNA sample” means any material that has come from a human body and consists of or includes human cells;
  - “fingerprints” means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of a person’s fingers or either of a person’s palms;
  - “law enforcement authority” means –
    - (a) a police force,
    - (b) the Serious Organised Crime Agency,
    - (c) the Commissioners for Her Majesty’s Revenue and Customs, or
    - (d) a person formed or existing under the law of a country or territory outside the United Kingdom so far as exercising functions which –
      - (i) correspond to those of a police force, or
      - (ii) otherwise involve the investigation or prosecution of offences;
  - “police force” means any of the following –
    - (a) the metropolitan police force;

- 
- (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
  - (c) the City of London police force;
  - (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967; 5
  - (e) the Police Service of Northern Ireland;
  - (f) the Police Service of Northern Ireland Reserve;
  - (g) the Ministry of Defence Police;
  - (h) the Royal Navy Police; 10
  - (i) the Royal Military Police;
  - (j) the Royal Air Force Police;
  - (k) the British Transport Police;
- “recordable offence” has –
- (a) in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and 15
  - (b) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)); 20
- “the responsible officer” means –
- (a) in relation to material obtained or acquired by a police force in England and Wales, the chief officer of the police force; 25
  - (b) in relation to material obtained or acquired by the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland;
  - (c) in relation to material obtained or acquired by the Ministry of Defence Police, the Chief Constable of the Ministry of Defence Police; 30
  - (d) in relation to material obtained or acquired by the Royal Navy Police, the Royal Military Police or the Royal Air Force Police, the Provost Marshal for the police force which obtained or acquired the material; 35
  - (e) in relation to material obtained or acquired by the British Transport Police, the Chief Constable of the British Transport Police;
  - (f) in relation to material obtained or acquired by the Serious Organised Crime Agency, the Director General of the Serious Organised Crime Agency; 40
  - (g) in relation to material obtained or acquired by the Commissioners for Her Majesty’s Revenue and Customs, any of those Commissioners; 45
  - (h) in relation to any other material, such person as the Secretary of State may by order specify;
- “section 18 material” has the meaning given by section 18(2);
- “terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000. 50



- (2) An order under subsection (1) is subject to negative resolution procedure.
- (3) For the purposes of section 18A, a person is to be treated as having been convicted of an offence if the person –
- (a) has been given a caution in respect of the offence which, at the time of the caution, the person has admitted, or
  - (b) has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence.
- (4) Sections 18A and this section, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (5) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 82 of the Protection of Freedoms Act 2011.
- (6) For the purposes of section 18A –
- (a) a person has no previous convictions if the person has not previously been convicted in England and Wales or Northern Ireland of a recordable offence, and
  - (b) if the person has been previously so convicted of a recordable offence, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was aged under 18.
- (7) In subsection (6), “qualifying offence” has –
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and
  - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (8) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under section 18A whether the person has been convicted of only one offence.”

## PART 4

## MATERIAL SUBJECT TO THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

- 5 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 18(3), for “18F” substitute “18G”.
- (3) After section 18F insert –
- “18G Retention of samples etc: national security**
- (1) This section applies to –
- (a) relevant physical data taken from or provided by a person under section 18(2) (including any taken or provided by

- virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000),
- (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A) (including any taken by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000), 5
  - (c) any relevant physical data, sample or information derived from a sample taken from, or provided by, a person under section 19AA(3),
  - (d) any relevant physical data, sample or information derived from a sample which is held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003, and 10
  - (e) any relevant physical data, sample or information derived from a sample taken from a person –
    - (i) by virtue of any power of search, 15
    - (ii) by virtue of any power to take possession of evidence where there is immediate danger of its being lost or destroyed, or
    - (iii) under the authority of a warrant.
- (2) The relevant physical data, sample or information derived from a sample may be retained for so long as a national security determination made by the relevant chief constable has effect in relation to it. 20
- (3) A national security determination is made if the relevant chief constable determines that is necessary for the relevant physical data, sample or information derived from a sample to be retained for the purposes of national security. 25
- (4) A national security determination –
- (a) must be made in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which the determination is made, and 30
  - (c) may be renewed.
- (5) Any relevant physical data, sample or information derived from a sample which is retained in pursuance of a national security determination must be destroyed as soon as possible after the determination ceases to have effect (except where its retention is permitted by any other enactment). 35
- (6) In this section, “the relevant chief constable” means the chief constable of the police force of which the constable who took the relevant physical data, or to whom it was provided, or who took or directed the taking of the sample, was a member.” 40
- (4) In section 19C –
- (a) in subsection (1), at the end of both paragraph (a) and paragraph (b) insert “(including any taken or provided by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000)”, 45
  - (b) in subsection (2) –
    - (i) omit the word “or” at the end of paragraph (a), and
    - (ii) after paragraph (b) insert –
      - “(c) in the interests of national security, or

- (d) for the purposes of a terrorist investigation.”,
- (c) after subsection (2) insert –
- “(2A) Despite subsection (2), the relevant physical data, sample or information derived from a sample may not be used for the purposes mentioned in paragraphs (a) and (b) of that subsection if its retention is lawful only by virtue of a national security determination made under section 18G.”, and
- (d) in subsection (6) –
- (i) omit the word “and” at the end of paragraph (b), and
- (ii) after paragraph (c) insert “, and
- “(d) “terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.”

## PART 5

## MATERIAL SUBJECT TO THE CRIMINAL JUSTICE (SCOTLAND) ACT 2003

- 6 (1) Section 56 of the Criminal Justice (Scotland) Act 2003 (asp 7) (retaining sample or relevant physical data where given voluntarily) is amended as follows. 15
- (2) In subsection (2) –
- (a) omit the word “or” at the end of paragraph (a), and
- (b) after paragraph (b) insert – 20
- “(c) in the interests of national security, or
- (d) for the purposes of a terrorist investigation.”
- (3) In subsection (8) –
- (a) omit the word “and” at the end of the definition of “sample”, and
- (b) after the definition of “relevant physical data” insert “; and 25
- “terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.”

## PART 6

## MATERIAL SUBJECT TO THE POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989 30

- 7 (1) This paragraph applies to the following material –
- (a) a DNA profile to which Article 64 of the 1989 Order (destruction of fingerprints and samples) applies, or
- (b) fingerprints to which Article 64 of the 1989 Order applies, other than fingerprints taken under Article 61(6A) of that Order. 35
- (2) If the Chief Constable of the Police Service of Northern Ireland determines that it is necessary for any material to which this paragraph applies to be retained for the purposes of national security –
- (a) the material is not required to be destroyed in accordance with Article 64 of the 1989 Order, and
- (b) Article 64(3AB) of that Order does not apply to the material, 40
- for as long as the determination has effect.

- (3) A determination under sub-paragraph (2) (“a national security determination”) –
- (a) must be made in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which the material would (but for this paragraph) first become liable for destruction under the 1989 Order, and
  - (c) may be renewed.
- (4) Material retained under this paragraph must not be used other than –
- (a) in the interests of national security, or
  - (b) for the purposes of a terrorist investigation.
- (5) This paragraph has effect despite any provision to the contrary in the 1989 Order.
- (6) The reference in sub-paragraph (4) to using material includes a reference to allowing any check to be made against it and to disclosing it to any person.
- (7) In this paragraph –
- “the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));
  - “DNA profile” means any information derived from a DNA sample;
  - “DNA sample” means any material that has come from a human body and consists of or includes human cells;
  - “terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.

## SCHEDULE 2

Section 39(2)

## REPEALS ETC. OF POWERS OF ENTRY

## PART 1

## WATER AND ENVIRONMENT

*Public Health (Control of Disease) Act 1984*

- 1 (1) Omit section 50 of the Public Health (Control of Disease) Act 1984 (power in relation to England and Wales to enter and inspect canal boats).
- (2) This paragraph extends to England and Wales only.

*Merchant Shipping Act 1995*

- 2 (1) Omit section 258(4) of the Merchant Shipping Act 1995 (power of surveyor of ships etc. to enter premises to determine whether provisions or water intended for UK ships, including government ships, would be in accordance with safety regulations).
- (2) Sub-paragraph (1) does not apply to section 258(4) of the Act of 1995 so far as it applies for the purposes of section 256A of that Act (extension of power of entry to any member of the staff of the Scottish Administration authorised by the Scottish Ministers).

- (3) This paragraph extends to England and Wales, Scotland and Northern Ireland.

*Environment Act 1995*

- 3 (1) Section 108(15) of the Environment Act 1995 (powers of entry etc. of persons authorised by enforcing authorities: interpretation) is amended as follows. 5
- (2) After the definition of “authorised person” insert –  
““domestic property” has the meaning given by section 75(5)(a) of the Environmental Protection Act 1990;”.
- (3) After the definition of “enforcing authority” insert –  
““English waste collection authority” has the same meaning as in section 45A of the Environmental Protection Act 1990;”.
- (4) In the definition of “pollution control functions” in relation to a waste collection authority after “means” insert “–  
(a) in relation to an English waste collection authority, the functions conferred or imposed on it by or under Part 2 of the Environmental Protection Act 1990 (other than sections 45, 45A and 46 of that Act so far as relating to the collection of household waste from domestic property); and  
(b) in relation to any other waste collection authority;”.
- (5) This paragraph extends to England and Wales only. 10  
15  
20

PART 2

AGRICULTURE

*Dairy Herd Conversion Premium Regulations 1973 (S.I. 1973/1642)*

- 4 (1) Omit regulation 5 of the Dairy Herd Conversion Premium Regulations 1973 (power of authorised officer to enter land to inspect livestock in respect of which a premium has been applied for etc.). 25
- (2) Also –  
(a) in regulation 2(1) of those Regulations omit the definition of “authorised officer”, and  
(b) in regulation 7 of those Regulations, omit sub-paragraph (b) and the word “or” before it. 30
- (3) This paragraph extends to England and Wales only.

*Milk (Cessation of Production) Act 1985*

- 5 (1) Omit section 2(1) of the Milk (Cessation of Production) Act 1985 (powers of entry in connection with compensation payments). 35
- (2) Also, in section 3(1) of that Act, omit paragraph (b) and the word “or” before it.
- (3) This paragraph extends to England and Wales only.

*Cereals Co-responsibility Levy Regulations 1988 (S.I. 1988/1001)*

- 6 (1) Omit regulation 8 of the Cereals Co-responsibility Levy Regulations 1988 (power of authorised officer to enter premises used in relation to cereals).
- (2) Also –
- (a) in regulation 9 of those Regulations omit “or 8”, and 5
- (b) in regulation 11(d) of those Regulations for “regulations 7 or 8” substitute “regulation 7”.
- (3) This paragraph extends to England and Wales only.

*Oilseeds Producers (Support System) Regulations 1992 (S.I. 1992/695)*

- 7 (1) Omit regulation 5 of the Oilseeds Producers (Support System) Regulations 1992 (power of authorised officer to enter and inspect oilseeds producers’ premises). 10
- (2) Also –
- (a) in regulation 2(1) of those Regulations omit the definitions of “authorised officer”, “oilseeds” and “specified control measure”, and 15
- (b) omit regulations 6, 9 and 10 of those Regulations.
- (3) This paragraph extends to England and Wales only.

*Older Cattle (Disposal) (England) Regulations 2005 (S.I. 2005/3522)*

- 8 (1) Omit regulation 5 of the Older Cattle (Disposal) (England) Regulations 2005 (power of inspector to enter premises for the purposes of ensuring that regulations are being complied with). 20
- (2) This paragraph extends to England and Wales, Scotland and Northern Ireland.

*Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006 (S.I. 2006/2821)* 25

- 9 (1) Omit regulation 6 of the Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006 (power of inspector to enter a turkey holding or slaughterhouse for purposes relating to salmonella).
- (2) This paragraph extends to England and Wales, Scotland and Northern Ireland. 30

## PART 3

## MISCELLANEOUS

*Distribution of German Enemy Property (No 1) Order 1950 (S.I. 1950/1642)*

- 10 (1) Omit article 22 of the Distribution of German Enemy Property (No 1) Order 1950 (power of constable to enter premises under warrant to search for and seize German enemy property). 35
- (2) This paragraph extends to England and Wales, Scotland and Northern Ireland.

*Hypnotism Act 1952*

11 (1) Omit section 4 of the Hypnotism Act 1952 (constable’s power to enter premises where entertainment is held if there is reasonable cause to believe that there is a contravention of the Act).

(2) This paragraph extends to England and Wales only. 5

*Landlord and Tenant Act 1985*

12 (1) Omit section 8(2) of the Landlord and Tenant Act 1985 (power of landlord to enter premises to view their state and condition).

(2) This paragraph extends to England and Wales only.

*Gas Appliances (Safety) Regulations 1995 (S.I. 1995/1629)* 10

13 (1) Omit regulation 24(6) of the Gas Appliances (Safety) Regulations 1995 (power of authorised officer to enter premises for the purposes of surveillance of manufacturer’s compliance with requirements).

(2) This paragraph extends to England and Wales, Scotland and Northern Ireland. 15

*Cross-border Railway Services (Working Time) Regulations 2008 (2008/1660)*

14 (1) Omit paragraph 2(2)(a), (b) and (c) of Schedule 2 to the Cross-border Railway Services (Working Time) Regulations 2008 (power of Office of Rail Regulation’s inspector to enter premises for the purpose of carrying the regulations into effect). 20

(2) This paragraph extends to England and Wales and Scotland only.

*Payment Services Regulations 2009 (S.I. 2009/209)*

15 (1) Omit regulation 83 of the Payment Services Regulations 2009 (power of an officer of the Financial Services Authority to enter premises used in relation to payment services). 25

(2) This paragraph extends to England and Wales, Scotland and Northern Ireland.

SCHEDULE 3

Section 53

CORRESPONDING CODE OF PRACTICE FOR WELSH DEVOLVED POWERS OF ENTRY

*Code of practice* 30

1 (1) The Welsh Ministers may prepare a code of practice containing guidance about the exercise of –

- (a) powers of entry, or
- (b) associated powers,

in relation to matters within the legislative competence of the National Assembly for Wales. 35

- 
- (2) Such a code may, in particular, include provision about—
- (a) considerations before exercising, or when exercising, any such powers,
  - (b) considerations after exercising any such powers (such as the retention of records, or the publication of information, about the exercise of any such powers). 5
- (3) Such a code—
- (a) need not contain provision about every type of power of entry or associated power,
  - (b) may make different provision for different purposes. 10
- (4) In the course of preparing such a code in relation to any powers, the Welsh Ministers must consult—
- (a) such persons appearing to the Welsh Ministers to be representative of the views of persons entitled to exercise the powers concerned as the Welsh Ministers consider appropriate, and 15
  - (b) such other persons as the Welsh Ministers consider appropriate.

*Issuing of code*

- 2 (1) The Welsh Ministers must lay before the National Assembly for Wales—
- (a) any code of practice prepared under paragraph 1, and
  - (b) a draft of any order providing for the code to come into force. 20
- (2) The Welsh Ministers may make the order and issue the code if the draft of the order is approved by a resolution of the National Assembly for Wales.
- (3) The Welsh Ministers must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Welsh Ministers may prepare another code of practice under paragraph 1 if the draft of the order is not so approved. 25
- (5) A code comes into force in accordance with an order under this paragraph.
- (6) Such an order—
- (a) is to be a statutory instrument, and
  - (b) may contain transitional, transitory or saving provision. 30

*Alteration or replacement of code*

- 3 (1) The Welsh Ministers—
- (a) must keep the devolved powers of entry code under review, and
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code in relation to any powers, the Welsh Ministers must consult— 35
- (a) such persons appearing to the Welsh Ministers to be representative of the views of persons entitled to exercise the powers concerned as the Welsh Ministers consider appropriate, and
  - (b) such other persons as the Welsh Ministers consider appropriate. 40
- (3) The Welsh Ministers must lay before the National Assembly for Wales an alteration or a replacement code prepared under this paragraph.



- (4) If, within the 40-day period, the National Assembly for Wales resolves not to approve the alteration or the replacement code, the Welsh Ministers must not issue the alteration or code.
- (5) If no such resolution is made within that period, the Welsh Ministers must issue the alteration or replacement code. 5
- (6) The alteration or replacement code –
  - (a) comes into force when issued, and
  - (b) may include transitional, transitory or saving provision.
- (7) Sub-paragraph (4) does not prevent the Welsh Ministers from laying a new alteration or replacement code before the National Assembly for Wales. 10
- (8) In this paragraph “the 40-day period” means the period of 40 days beginning with the day on which the replacement code is laid before the National Assembly for Wales.
- (9) In calculating the 40-day period, no account is to be taken of –
  - (a) any period during which the National Assembly for Wales is dissolved, and
  - (b) any period of more than four days during which the National Assembly for Wales is in recess. 15
- (10) In this paragraph “the devolved powers of entry code” means any code of practice issued under paragraph 2(2) (as altered or replaced from time to time). 20

*Publication of code*

- 4 (1) The Welsh Ministers must publish any code issued under paragraph 2(2).
- (2) The Welsh Ministers must publish any replacement code issued under paragraph 3(5). 25
- (3) The Welsh Ministers must publish –
  - (a) any alteration issued under paragraph 3(5), or
  - (b) the code or replacement code as altered by it.

*Effect of code*

- 5 (1) A relevant person must have regard to the devolved powers of entry code when exercising any functions to which the code relates. 30
- (2) A failure on the part of any person to act in accordance with any provision of the devolved powers of entry code does not of itself make that person liable to criminal or civil proceedings.
- (3) The devolved powers of entry code is admissible in evidence in any such proceedings. 35
- (4) A court or tribunal may, in particular, take into account a failure by a relevant person to have regard to the devolved powers of entry code in determining a question in any such proceedings.
- (5) In this paragraph “relevant person” means any person specified or described by the Welsh Ministers in an order made by statutory instrument. 40

- (6) An order under sub-paragraph (5) may, in particular –
- (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions,
  - (b) contain transitional, transitory or saving provision. 5
- (7) So far as an order under sub-paragraph (5) contains a restriction of the kind mentioned in sub-paragraph (6)(a) in relation to a person, the duty in sub-paragraph (1) applies only to the person in that capacity or (as the case may be) only in relation to those functions.
- (8) Before making an order under sub-paragraph (5) in relation to any person or description of persons, the Welsh Ministers must consult such persons appearing to the Welsh Ministers to be representative of the views of the person or persons in relation to whom the order may be made as the Welsh Ministers consider appropriate. 10
- (9) An instrument containing an order under sub-paragraph (5) is subject to annulment in pursuance of a resolution of the National Assembly for Wales. 15

*Interpretation*

- 6 In this Schedule –
- “the devolved powers of entry code” has the meaning given by paragraph 3(10), 20
  - “power of entry” and “associated power” have the meaning given by section 46.

## SCHEDULE 4

Section 56

## RECOVERY OF UNPAID PARKING CHARGES

*Introductory* 25

- 1 (1) This Schedule applies where –
- (a) the driver of a vehicle is required by a relevant contract to pay parking charges in respect of the parking of the vehicle on relevant land; and
  - (b) those charges have not been paid or have only been partly paid. 30
- (2) It is immaterial for the purposes of this Schedule whether or not the vehicle was permitted to be parked (or to remain parked) on the land.
- 2 In this Schedule –
- “the appropriate national authority” means –
  - (a) in relation to relevant land in England, the Secretary of State; 35
  - and
  - (b) in relation to relevant land in Wales, the Welsh Ministers;
  - “the creditor” means a person who is for the time being entitled to claim unpaid parking charges from the driver of the vehicle;
  - “current address for service” has the meaning given by paragraph 5(3) (for the driver) or paragraph 7(5) (for the keeper); 40

- “driver” includes, where more than one person is engaged in the driving of the vehicle, any person so engaged;
- “keeper” means the person by whom the vehicle is kept at the time the vehicle was parked, which in the case of a registered vehicle is to be presumed, unless the contrary is proved, to be the registered keeper; 5
- “parking charge” means a fee or charge (however described) required to be paid by the driver of the vehicle under the terms of the relevant contract in respect of the parking of the vehicle on the land;
- “registered keeper”, in relation to a registered vehicle, means the person in whose name the vehicle is registered; 10
- “registered vehicle” means a vehicle which is for the time being registered under the Vehicle Excise and Registration Act 1994;
- “relevant contract” means a contract (including a contract arising only when the vehicle was parked on the land) between the driver and a person who is – 15
- (a) the owner or occupier of the land; or
  - (b) authorised, under or by virtue of arrangements made by the owner or occupier of the land, to enter into a contract with the driver requiring the payment of parking charges in respect of the parking of the vehicle on the land; 20
- “relevant land” has the meaning given by paragraph 3;
- “unpaid parking charges” means parking charges which have not been paid or, where they have been paid in part, the part that has not been paid;
- “vehicle” means a mechanically-propelled vehicle or a vehicle designed or adapted for towing by a mechanically-propelled vehicle. 25
- 3 (1) In this Schedule “relevant land” means any land (including land above or below ground level) other than –
- (a) a highway maintainable at the public expense (within the meaning of section 329(1) of the Highways Act 1980); 30
  - (b) a parking place which is provided or controlled by a traffic authority;
  - (c) any land (not falling within paragraph (a) or (b)) on which the parking of a vehicle is subject to statutory control.
- (2) In sub-paragraph (1)(b) –
- “parking place” has the meaning given by section 32(4)(b) of the Road Traffic Regulation Act 1984; 35
- “traffic authority” means each of the following –
- (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) Transport for London; 40
  - (d) the Common Council of the City of London;
  - (e) the council of a county, county borough, London borough or district;
  - (f) a parish or community council;
  - (g) the Council of the Isles of Scilly. 45
- (3) For the purposes of sub-paragraph (1)(c) the parking of a vehicle on land is “subject to statutory control” if any statutory provision imposes a liability (whether criminal or civil, and whether in the form of a fee or charge or a

penalty of any kind) in respect of the parking on that land of vehicles generally or of vehicles of a description that includes the vehicle in question.

- (4) In sub-paragraph (3) “statutory provision” means any provision (apart from this Schedule) contained in—
- (a) any Act (including a local or private Act), whenever passed; or
  - (b) any subordinate legislation, whenever made,
- and for this purpose “subordinate legislation” means an Order in Council or any order, regulations, byelaws or other legislative instrument.

*Right to claim unpaid parking charges from keeper of vehicle*

- 4 (1) The creditor has the right to claim payment of any unpaid parking charges from the keeper of the vehicle. 10
- (2) That right applies only if—
- (a) the conditions in paragraphs 5 and 6 are met; and
  - (b) in the case of a registered vehicle, the condition in paragraph 7 is also met. 15
- (3) That right may not be exercised in relation to a vehicle if, at the beginning of the period of parking to which the unpaid parking charges relate, the vehicle is a stolen vehicle.
- (4) The vehicle is to be presumed not to be a stolen vehicle at that time, unless the contrary is proved. 20
- (5) For the purposes of sub-paragraphs (3) and (4), a vehicle is a stolen vehicle at that time only if—
- (a) the vehicle has been stolen, and has not been recovered before that time; and
  - (b) any requirements that apply for the purposes of this sub-paragraph have been complied with by that time. 25
- (6) The requirements that apply for the purposes of sub-paragraph (5) are the same as those (if any) that apply for the purposes of section 31B(4)(c) of the Vehicle Excise and Registration Act 1994, as prescribed in regulations under section 31B(6) of that Act (persons to whom, the times at which and the manner in which the theft of a vehicle is to be notified). 30
- (7) The maximum sum which may be claimed from the keeper by virtue of the right conferred by this paragraph is the amount specified in the notice to the driver under paragraph 6(2)(d), less any payments towards the unpaid parking charges which are received after the notice is given. 35
- (8) Nothing in this paragraph affects any other remedy the creditor may have against the keeper of the vehicle or any other person in respect of any unpaid parking charges (but this is not to be read as permitting double recovery).

*Conditions that must be met for purposes of paragraph 4*

- 5 (1) The first condition is that the creditor— 40
- (a) has the right to enforce against the driver of the vehicle the terms of the relevant contract which require the unpaid parking charges to be paid; but

- (b) is unable to enforce those terms against the driver because the creditor does not know both the name of the driver and a current address for service for the driver.
- (2) The first condition continues to apply unless and until the unpaid parking charges are paid. 5
- (3) In this paragraph “current address for service” means an address at which documents relating to civil proceedings against the driver to enforce payment under the relevant contract could properly be served under Civil Procedure Rules.
- 6 (1) The second condition is that – 10
- (a) a notice that contains the information specified in sub-paragraph (2) (a “notice to the driver”) has been given to the driver by or on behalf of the creditor; and
- (b) at least 28 days have elapsed beginning with the day on which the notice was so given. 15
- (2) The notice must –
- (a) state that by virtue of a contract the driver is required to pay parking charges in respect of the parking of the vehicle on the land on such day or days as the notice may specify;
- (b) describe the circumstances in which the contract was formed, the terms which require the driver to pay those charges and the facts that make them payable; 20
- (c) state that the parking charges in question have not been paid (or paid in full);
- (d) state the total amount of unpaid parking charges due from the driver (as at such time as may be specified in the notice, which must be no later than the time specified under paragraph (g)); 25
- (e) inform the driver of any discount offered for prompt payment and any arrangements for the resolution of disputes or complaints that are made available to the driver; 30
- (f) specify how and to whom payment may be made;
- (g) state the time and date on which the notice was issued.
- (3) A notice to the driver must be given before the vehicle is removed from the land in question (and while it is stationary) by affixing it to the vehicle or by handing it to a person appearing to be in charge of the vehicle. 35
- (4) A notice to the driver may relate to charges incurred over a period of more than one day; but the same notice may not deal with unpaid parking charges relating to more than one period of parking.
- 7 (1) The third condition applies only to registered vehicles.
- (2) The third condition is that – 40
- (a) the creditor (or a person acting for or on behalf of the creditor) has applied to the Secretary of State for the name and address of the registered keeper of the vehicle to be provided to the applicant by virtue of regulations made under section 22(1)(c) of the Vehicle Excise and Registration Act 1994, 45
- (b) the Secretary of State has provided that information to the applicant, and

- (c) the day on which a claim for payment by the registered keeper of the unpaid parking charges is first made by virtue of the right conferred by paragraph 4 is within the period of 60 days beginning with the day on which that information was provided by the Secretary of State. 5
- (3) Information provided by the Secretary of State as mentioned in sub-paragraph (2) may be used for the purposes of any claim by virtue of the right conferred by paragraph 4 for payment of unpaid parking charges which is made by the same creditor in relation to a period of parking by the same vehicle (subject to the limitation in sub-paragraph (2)(c)). 10
- (4) For the purposes of sub-paragraph (2)(c), a claim is “first made” on the day when the creditor gives to the registered keeper a written demand for payment of the unpaid parking charges (which may be given by handing it to the keeper or by leaving it at or sending it by post to a current address for service for the keeper). 15
- (5) In this paragraph “current address for service” means an address at which documents relating to civil proceedings against the keeper to enforce the right conferred by paragraph 4 could properly be served under Civil Procedure Rules.
- Application to Crown vehicles etc* 20
- 8 (1) The provisions of this Schedule apply to—
- (a) vehicles in the public service of the Crown that are required to be registered under the Vehicle Excise and Registration Act 1994 (other than a vehicle exempted by sub-paragraph (2)), and
- (b) any person in the public service of the Crown who is the keeper of a vehicle falling within paragraph (a). 25
- (2) But this Schedule does not apply in relation to a vehicle that—
- (a) at the relevant time is used or appropriated for use for naval, military or air force purposes, or
- (b) belongs to any visiting forces (within the meaning of the Visiting Forces Act 1952) or is at the relevant time used or appropriated for use by such forces. 30
- Power to amend Schedule*
- 9 (1) The appropriate national authority may by order made by statutory instrument amend this Schedule for the purpose of— 35
- (a) adding to, removing or amending the exceptions for the time being mentioned in paragraph 3(1);
- (b) amending the definition of “traffic authority” in paragraph 3(2);
- (c) amending or removing the exception in paragraph 4(3) or adding further exceptions applying to the right conferred by paragraph 4; 40
- (d) adding to, removing or amending the conditions to which that right is for the time being subject.
- (2) The power to amend this Schedule for a purpose falling within sub-paragraph (1)(d) includes power to amend the requirements for the time being mentioned in paragraph 6(2) (whether by adding to, removing or altering any of those requirements). 45

- (3) An order under this paragraph may –
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision and savings;
  - (c) make different provision for different cases, areas or purposes.
- (4) A statutory instrument containing an order under this paragraph – 5
  - (a) in the case of an order of the Secretary of State, is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament;
  - (b) in the case of an order of the Welsh Ministers, is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales. 10

## SCHEDULE 5

Section 60(2)

### REPLACEMENT POWERS TO STOP AND SEARCH: SUPPLEMENTARY PROVISIONS

After Schedule 6A to the Terrorism Act 2000 insert –

“SCHEDULE 6B 15

#### SEARCHES IN SPECIFIED AREAS OR PLACES: SUPPLEMENTARY

##### *Extent of search powers: supplementary*

- 1 A constable exercising the power conferred by an authorisation under section 43B may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves. 20
- 2 (1) Sub-paragraph (2) applies if a constable proposes to search a person or vehicle by virtue of section 43B(2) or (3).  
(2) The constable may detain the person or vehicle for such time as is reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped. 25

##### *Requirements as to writing*

- 3 A senior police officer who gives an authorisation under section 43B orally must confirm it in writing as soon as reasonably practicable. 30
- 4 (1) Where –
  - (a) a vehicle or pedestrian is stopped by virtue of section 43B(2) or (3), and
  - (b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that the pedestrian was stopped, by virtue of section 43B(2) or (as the case may be) (3), 35the written statement must be provided.

- (2) An application under sub-paragraph (1) must be made within the period of 12 months beginning with the date on which the vehicle or pedestrian was stopped.

*Duration of authorisations*

- 5 (1) An authorisation under section 43B has effect during the period – 5  
 (a) beginning at the time when the authorisation is given, and  
 (b) ending with the specified date or at the specified time.
- (2) This paragraph is subject as follows.
- 6 The specified date or time must not occur after the end of the 10  
 period of 14 days beginning with the day on which the  
 authorisation is given.
- 7 (1) The senior police officer who gives an authorisation must inform 15  
 the Secretary of State of it as soon as reasonably practicable.
- (2) An authorisation ceases to have effect at the end of the period of 48 hours beginning with the time when it is given unless it is confirmed by the Secretary of State before the end of that period.
- (3) An authorisation ceasing to have effect by virtue of sub-paragraph (2) does not affect the lawfulness of anything done in reliance on it before the end of the period concerned.
- (4) When confirming an authorisation, the Secretary of State may – 20  
 (a) substitute an earlier date or time for the specified date or time;  
 (b) substitute a more restricted area or place for the specified area or place.
- 8 The Secretary of State may cancel an authorisation with effect from 25  
 a time identified by the Secretary of State.
- 9 (1) A senior police officer may –  
 (a) cancel an authorisation with effect from a time identified 30  
 by the officer concerned;  
 (b) substitute an earlier date or time for the specified date or time;  
 (c) substitute a more restricted area or place for the specified area or place.
- (2) Any such cancellation or substitution in relation to an 35  
 authorisation confirmed by the Secretary of State under paragraph 7 does not require confirmation by the Secretary of State.
- 10 An authorisation given by a member of the Civil Nuclear 40  
 Constabulary does not have effect except in relation to times when the specified area or place is a place where members of that Constabulary have the powers and privileges of a constable.
- 11 The existence, expiry or cancellation of an authorisation does not prevent the giving of a new authorisation.



*Specified areas or places*

- 12 (1) An authorisation given by a senior police officer who is not a member of the British Transport Police Force, the Ministry of Defence Police or the Civil Nuclear Constabulary may specify an area or place together with— 5
- (a) the internal waters adjacent to that area or place; or
  - (b) a specified area of those internal waters.
- (2) In sub-paragraph (1) “internal waters” means waters in the United Kingdom that are not comprised in any police area.
- 13 Where an authorisation specifies more than one area or place— 10
- (a) the power of a senior police officer under paragraph 5(1)(b) to specify a date or time includes a power to specify different dates or times for different areas or places (and the other references in this Schedule to the specified date or time are to be read accordingly), and 15
  - (b) the power of the Secretary of State under paragraph 7(4)(b), and of a senior police officer under paragraph 9(1)(c), includes a power to remove areas or places from the authorisation.

*Interpretation* 20

- 14 (1) In this Schedule—
- “driver” has the meaning given by section 43A(5);
  - “senior police officer” means—
- (a) in relation to an authorisation where the specified area or place is the whole or part of a police area outside Northern Ireland, other than of a police area mentioned in paragraph (b) or (c), a police officer for the area who is of at least the rank of assistant chief constable; 25
  - (b) in relation to an authorisation where the specified area or place is the whole or part of the metropolitan police district, a police officer for the district who is of at least the rank of commander of the metropolitan police; 30
  - (c) in relation to an authorisation where the specified area or place is the whole or part of the City of London, a police officer for the City who is of at least the rank of commander in the City of London police force; 35
  - (d) in relation to an authorisation where the specified area or place is the whole or part of Northern Ireland, a member of the Police Service of Northern Ireland who is of at least the rank of assistant chief constable; 40
- “specified” means specified in an authorisation.
- (2) References in this Schedule to a senior police officer are to be read as including— 45
- (a) in relation to an authorisation where the specified area or place is the whole or part of a police area outside Northern

- Ireland and is in a place described in section 34(1A), a member of the British Transport Police Force who is of at least the rank of assistant chief constable;
- (b) in relation to an authorisation where the specified area or place is a place to which section 2(2) of the Ministry of Defence Police Act 1987 applies, a member of the Ministry of Defence Police who is of at least the rank of assistant chief constable; 5
- (c) in relation to an authorisation where the specified area or place is a place in which members of the Civil Nuclear Constabulary have the powers and privileges of a constable, a member of that Constabulary who is of at least the rank of assistant chief constable; 10
- but such references are not to be read as including a member of the British Transport Police Force, the Ministry of Defence Police or the Civil Nuclear Constabulary in any other case.” 15

## SCHEDULE 6

Section 62

## STOP AND SEARCH POWERS: NORTHERN IRELAND

- 1 (1) Paragraph 4 of Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 (stopping and searching persons in relation to unlawful munitions and wireless apparatus) is amended as follows. 20
- (2) In sub-paragraph (1) (power to stop and search without reasonable suspicion) for “An officer” substitute “A member of Her Majesty’s forces who is on duty”.
- (3) In sub-paragraph (2) – 25
- (a) for “officer”, in the first place where it appears, substitute “member of Her Majesty’s forces who is on duty”, and
- (b) for “officer”, in the second place where it appears, substitute “member concerned”.
- (4) After sub-paragraph (3) insert – 30
- “(4) A constable may search a person (whether or not that person is in a public place) whom the constable reasonably suspects to have munitions unlawfully with him or to have wireless apparatus with him.”
- (5) In the italic cross-heading before paragraph 4, at the end, insert “: general”. 35
- 2 After paragraph 4 of that Schedule to that Act insert –
- “*Stopping and searching persons in specified locations*
- “4A (1) A senior officer may give an authorisation under this paragraph in relation to a specified area or place if the officer – 40
- (a) reasonably suspects (whether in relation to a particular case, a description of case or generally) that the safety of any person might be endangered by the use of munitions or wireless apparatus, and

- (b) considers that—
- (i) the authorisation is necessary to prevent such danger,
  - (ii) the specified area or place is no greater than is necessary to prevent such danger, and 5
  - (iii) the duration of the authorisation is no longer than is necessary to prevent such danger.
- (2) An authorisation under this paragraph authorises any constable to stop a person in the specified area or place and to search that person. 10
- (3) A constable may exercise the power conferred by an authorisation under this paragraph only for the purpose of ascertaining whether the person has munitions unlawfully with that person or wireless apparatus with that person.
- (4) But the power conferred by such an authorisation may be exercised whether or not the constable reasonably suspects that there are such munitions or wireless apparatus. 15
- (5) A constable exercising the power conferred by an authorisation under this paragraph may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves. 20
- (6) Where a constable proposes to search a person by virtue of an authorisation under this paragraph, the constable may detain the person for such time as is reasonably required to permit the search to be carried out at or near the place where the person is stopped. 25
- (7) A senior officer who gives an authorisation under this paragraph orally must confirm it in writing as soon as reasonably practicable.
- (8) In this paragraph and paragraphs 4B to 4I—  
“senior officer” means an officer of the Police Service of Northern Ireland of at least the rank of assistant chief constable, 30  
“specified” means specified in an authorisation.
- 4B (1) An authorisation under paragraph 4A has effect during the period—  
(a) beginning at the time when the authorisation is given, and 35  
(b) ending with the specified date or at the specified time.
- (2) This paragraph is subject as follows.
- 4C The specified date or time must not occur after the end of the period of 14 days beginning with the day on which the authorisation is given. 40
- 4D (1) The senior officer who gives an authorisation must inform the Secretary of State of it as soon as reasonably practicable.
- (2) An authorisation ceases to have effect at the end of the period of 48 hours beginning with the time when it is given unless it is confirmed by the Secretary of State before the end of that period. 45

- (3) An authorisation ceasing to have effect by virtue of sub-paragraph (2) does not affect the lawfulness of anything done in reliance on it before the end of the period concerned.
- (4) When confirming an authorisation, the Secretary of State may –
- (a) substitute an earlier date or time for the specified date or time; 5
  - (b) substitute a more restricted area or place for the specified area or place.
- 4E The Secretary of State may cancel an authorisation with effect from a time identified by the Secretary of State. 10
- 4F (1) A senior officer may –
- (a) cancel an authorisation with effect from a time identified by the officer concerned;
  - (b) substitute an earlier date or time for the specified date or time; 15
  - (c) substitute a more restricted area or place for the specified area or place.
- (2) Any such cancellation or substitution in relation to an authorisation confirmed by the Secretary of State under paragraph 4D does not require confirmation by the Secretary of State. 20
- 4G The existence, expiry or cancellation of an authorisation does not prevent the giving of a new authorisation.
- 4H (1) An authorisation under paragraph 4A given by a senior officer may specify –
- (a) the whole or part of Northern Ireland, 25
  - (b) the internal waters or any part of them, or
  - (c) any combination of anything falling within paragraph (a) and anything falling within paragraph (b).
- (2) In sub-paragraph (1)(b) “internal waters” means waters in the United Kingdom which are adjacent to Northern Ireland. 30
- (3) Where an authorisation specifies more than one area or place –
- (a) the power of a senior officer under paragraph 4B(1)(b) to specify a date or time includes a power to specify different dates or times for different areas or places (and the other references in this Schedule to the specified date or time are to be read accordingly), and 35
  - (b) the power of the Secretary of State under paragraph 4D(4)(b), and of a senior officer under paragraph 4F(1)(c), includes a power to remove areas or places from the authorisation. 40
- 4I (1) Sub-paragraph (2) applies if any decision of –
- (a) a senior officer to give, vary or cancel an authorisation under paragraph 4A, or
  - (b) the Secretary of State to confirm, vary or cancel such an authorisation, 45
- is challenged on judicial review or in any other legal proceedings.

- (2) The Secretary of State may issue a certificate that—
- (a) the interests of national security are relevant to the decision, and
  - (b) the decision was justified.
- (3) The Secretary of State must notify the person making the challenge (“the claimant”) if the Secretary of State intends to rely on a certificate under this paragraph. 5
- (4) Where the claimant is notified of the Secretary of State’s intention to rely on a certificate under this paragraph—
- (a) the claimant may appeal against the certificate to the Tribunal established under section 91 of the Northern Ireland Act 1998, and 10
  - (b) sections 90(3) and (4), 91(2) to (9) and 92 of that Act (effect of appeal, procedure and further appeal) apply but subject to sub-paragraph (5). 15
- (5) In its application by virtue of sub-paragraph (4)(b), section 90(3) of the Act of 1998 is to be read as if for the words from “subsection” to “that purpose,” there were substituted “paragraph 4I(4)(a) of Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 the Tribunal determines that—
- (a) the interests of national security are relevant to the decision to which the certificate relates, and 20
  - (b) the decision was justified,”.
- (6) Rules made under section 91 or 92 of the Act of 1998 which are in force immediately before this paragraph comes into force have effect in relation to a certificate under this paragraph—
- (a) with any necessary modifications, and 25
  - (b) subject to any later rules made by virtue of sub-paragraph (4)(b).”
- 3 In paragraph 9(1) of that Schedule to that Act (offence of failing to stop when required to do so) after “paragraph 4” insert “or by virtue of paragraph 4A”. 30

## SCHEDULE 7

Section 101(1)

### CONSEQUENTIAL AMENDMENTS

#### PART 1

#### DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC. 35

##### *Police and Criminal Evidence Act 1984*

- 1 (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 63 (non-intimate samples), in subsection (3A)(c)(i) (as amended by section 2 of the Crime and Security Act 2010), for “64ZA” substitute “63Q”.
  - (3) Omit section 64 (as not substituted by section 14(1) of the Crime and Security Act 2010) (destruction of fingerprints and samples). 40

*Crime and Security Act 2010*

- 2 (1) The Crime and Security Act 2010 is amended as follows.
- (2) Omit sections 14, 16 to 21 and 23 (retention, destruction and use of fingerprints and samples etc.).
- (3) In section 22 (destruction of material taken before commencement) – 5
- (a) in subsection (1)(a), for “each of sections 14, 15 and 17 to 21” substitute “section 15”, and
- (b) omit subsection (2).
- (4) In section 58 (extent) omit subsections (4) and (6) to (8).

PART 2 10

SAFEGUARDS FOR CERTAIN SURVEILLANCE UNDER RIPA

*Regulation of Investigatory Powers Act 2000*

- 3 The Regulation of Investigatory Powers Act 2000 is amended as follows.
- 4 In section 22(6) (duty of postal or telecommunications operator to comply with notice to obtain and disclose communications data) after “shall” insert 15  
 “, subject to section 23A,”.
- 5 After section 23(2) (form and duration of authorisations and notices relating to communications data) insert –
- “(2A) The words in paragraph (a) of subsections (1) and (2) from “or” to the 20  
 end of the paragraph do not apply in relation to –
- (a) an authorisation under section 22(3), (3B) or (3F) to which section 23A applies, or
- (b) a notice under section 22(4) to which section 23A applies.”
- 6 (1) Section 43 (general rules about grant, renewal and duration of authorisations relating to surveillance and human intelligence sources) is 25  
 amended as follows.
- (2) After subsection (1) insert –
- “(1A) Subsection (1)(a) does not apply in relation to an authorisation under section 28 or 29 to which section 32A applies.”
- (3) In subsection (9)(c) after “section” insert “32A or”. 30
- 7 (1) Section 57 (Interception of Communications Commissioner) is amended as follows.
- (2) In subsection (2) for “subsection (4)” substitute “subsections (4) and (4A)”.
- (3) After subsection (4) insert –
- “(4A) It shall not be the function of the Interception of Communications 35  
 Commissioner to keep under review the exercise by the relevant judicial authority (within the meaning of section 23A) of functions under that section or section 23B.”

- 8 After section 62(2) (functions of Chief Surveillance Commissioner) insert –  
“(2A) It shall not by virtue of this section be the function of the Chief Surveillance Commissioner to keep under review the exercise by a judicial authority of functions under section 32A or 32B.”
- 9 (1) Section 65 (the Tribunal) is amended as follows. 5  
(2) In subsection (7) after “but” insert “, subject to subsection (7ZA),”.  
(3) After subsection (7) insert –  
“(7ZA) The exception in subsection (7) so far as conduct is authorised by, or takes place with the permission of, a judicial authority does not include conduct authorised by an approval given under section 23A or 32A.” 10
- 10 In section 67(7) (powers of the Tribunal), at the end of paragraph (a) (and before “and”), insert –  
“(aa) an order quashing an order under section 23A or 32A by the relevant judicial authority (within the meaning of that section);” 15
- 11 In section 71(2) (issue and revision of codes of practice) after “Commissioners” insert “or the relevant judicial authority (within the meaning of section 23A or 32A)”.
- 12 After section 77 (Ministerial expenditure etc.) insert – 20  
**“77A Procedure for order of sheriff under section 23A or 32A: Scotland**  
(1) The Secretary of State may by order make further provision about the procedure and practice to be followed in relation to an application to the sheriff for an order under section 23A or 32A.  
(2) Such an order may, in particular, provide – 25  
(a) for the manner in which, and time within which, an application may be made,  
(b) that the sheriff is to determine an application –  
(i) in chambers,  
(ii) in the absence of the person to whom the authorisation or notice which is the subject of the application relates, 30  
(c) that any hearing is to be held in private,  
(d) that notice of an order given is not to be given to –  
(i) the person to whom the authorisation or notice which is the subject of the order relates, or 35  
(ii) such a person’s legal representatives.  
(3) The Court of Session’s power under section 32 of the Sheriff Courts (Scotland) Act 1971 to regulate and prescribe the procedure and practice to be followed in relation to an application to the sheriff for an order under section 23A or 32A is subject to, but is not otherwise constrained by, sections 23B and 32B and any order made under this section.” 40
- 13 In section 78(3)(a) (exceptions to negative procedure for statutory instruments) – 45

- (a) after “22(9),” insert “23A(6),” and
- (b) after “30(7),” insert “32A(7),”.

### PART 3

#### VEHICLES LEFT ON LAND

- Road Traffic Regulation Act 1984* 5
- 14 (1) Section 102 of the Road Traffic Regulation Act 1984 (charges for removal, storage and disposal of vehicles) is amended as follows.
- (2) In subsection (1)(b) for “, or from land in the open air,” substitute “or other land”.
- (3) In subsection (8), in the definition of “appropriate authority”, in paragraph (b), for “land in the open air” substitute “other land”. 10
- Airports Act 1986*
- 15 (1) Section 66 of the Airports Act 1986 (functions of operators of designated airports as respects abandoned vehicles) is amended as follows.
- (2) In subsection (2)(a) for the words from “from roads if” to “abandoned” substitute “illegally, obstructively or dangerously parked, or abandoned or broken down”. 15
- (3) In subsection (3) –
- (a) omit paragraph (b) (but not the word “or” at the end of the paragraph), and 20
  - (b) in paragraph (c), for “any of those sections” substitute “that section”.
- (4) In the heading, after “abandoned vehicles” insert “etc.”.
- Private Security Industry Act 2001*
- 16 (1) The Private Security Industry Act 2001 is amended as follows.
- (2) In section 3(2) (conduct subject to a licence) – 25
- (a) after paragraph (h) insert “or”, and
  - (b) omit paragraph (j) and the word “or” before it.
- (3) In section 4A(2) (licensable conduct) –
- (a) omit paragraph (a),
  - (b) omit paragraph (b) and the word “or” at the end of the paragraph, and 30
  - (c) in paragraph (c), omit “other”.
- (4) Omit section 6 (offence of using unlicensed wheel-clampers).
- (5) Omit section 22A (charges for vehicle release: appeals).
- (6) In section 24(4) (orders and regulations) omit the words from “(except” to “or 22A)”. 35
- (7) In section 25(1) (interpretation) omit the definition of “motor vehicle”.
- (8) In Schedule 2 (activities liable to control) omit the following –



- (a) paragraph 3,
- (b) paragraph 3A,
- (c) paragraph 9, and
- (d) paragraph 9A.

PART 4

5

COUNTER-TERRORISM POWERS

*Police and Criminal Evidence Act 1984*

- 17 After section 66(2) of the Police and Criminal Evidence Act 1984 (codes of practice in relation to statutory search powers etc.) insert –

“(3) Nothing in this section requires the Secretary of State to issue a code of practice in relation to any matter falling within the code of practice issued under section 43D(2) of the Terrorism Act 2000 (as that code is altered or replaced from time to time) (code of practice in relation to terrorism powers to search persons and vehicles and to stop and search in specified locations).”

*Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))*

- 18 In Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (codes of practice in relation to statutory search powers etc.) –

- (a) the existing provisions become paragraph (1), and
- (b) after that paragraph insert –

“(2) Nothing in this Article requires the issuing of a code of practice in relation to any matter falling within the code of practice issued under section 43D(2) of the Terrorism Act 2000 (as that code is altered or replaced from time to time) (code of practice in relation to terrorism powers to search persons and vehicles and to stop and search in specified locations).”

*Terrorism Act 2000*

- 19 The Terrorism Act 2000 is amended as follows.

- 20 In the italic cross-heading before section 40, after “Suspected terrorists” insert “, vehicles and acts of terrorism”.

- 21 (1) Section 123 (orders and regulations) is amended as follows.

- (2) In subsection (4), after paragraph (aa), insert –  
“(ab) section 43D;”.

- (3) In subsection (5), after “paragraph (aa)” insert “, (ab)”. 35

- 22 (1) Schedule 8 (detention) is amended as follows.

- (2) In paragraph 36, in sub-paragraph (1A), for the words from “is” to the end of the sub-paragraph substitute “a judicial authority”.

- (3) In paragraph 36 omit –

- (a) sub-paragraph (1B), 40

	(b) in sub-paragraph (3AA), the words “or senior judge” in both places where they appear,	
	(c) in sub-paragraph (4), the words from “but” onwards,	
	(d) in sub-paragraph (5), the words “or senior judge”, and	
	(e) sub-paragraph (7).	5
	(4) In paragraph 37(2) omit “or senior judge”.	
<i>Regulation of Investigatory Powers Act 2000</i>		
23	In paragraph 6(3) of Schedule 2 to the Regulation of Investigatory Powers Act 2000 (general requirements relating to the appropriate permission) –	
	(a) in paragraph (a) for “section 44” substitute “section 43B”,	10
	(b) in paragraph (b) –	
	(i) at the beginning insert “section 44 of the Terrorism Act 2000 or”, and	
	(ii) for “of section 44” substitute “of section 43B”, and	
	(c) after “mentioned in” insert “paragraph 14(1) and (2) of Schedule 6B to that Act of 2000 (see the definition of “senior police officer”),”.	15
<i>Criminal Justice and Police Act 2001</i>		
24	In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure to which section 50 of that Act applies), after paragraph 69 and the italic cross-heading relating to the Terrorism Act 2000, insert –	20
	“69A The power of seizure conferred by section 43(4B)(b) of the Terrorism Act 2000 (seizure on the occasion of a search of a vehicle in relation to a person suspected of being a terrorist).	
	69B The power of seizure conferred by section 43A(3) of the Terrorism Act 2000 (seizure on the occasion of a search of a vehicle suspected of being used for the purposes of terrorism).”	25
25	In Part 2 of that Schedule to that Act (powers of seizure to which section 51 of that Act applies) after paragraph 82 insert –	
	“82A The power of seizure conferred by section 43A(3) of the Terrorism Act 2000 (seizure on the occasion of a search of a vehicle suspected of being used for the purposes of terrorism).”.	30
<i>Police Reform Act 2002</i>		
26	In paragraph 15(1) of Schedule 4 to the Police Reform Act 2002 (powers of stop and search for community support officers) –	
	(a) in paragraph (a) –	35
	(i) for “section 44(1)(a) and (d) and (2)(b) and 45(2)” substitute “section 43B(2)(a) and (d), (3)(b) and (6)”,	
	(ii) in sub-paragraph (iv) for “any article” substitute “anything which is”, and	
	(iii) also in sub-paragraph (iv), for “section 44(1) or (2) of that Act” substitute “section 43B(2) or (3) of that Act and which he reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as	40

- the case may be) that the person concerned is a person falling within section 40(1)(b) of that Act”, and
- (b) in paragraph (b) for “subsections (1) and (4) of section 45 of” substitute “subsections (4) and (5) of section 43B of, and paragraphs 1 and 2 of Schedule 6B to,”.

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*Police (Northern Ireland) Act 2003*

27 In paragraph 16 of Schedule 2A to the Police (Northern Ireland) Act 2003 (powers of stop and search for community support officers) –

- (a) in sub-paragraph (1) –
- (i) for “sections 44(1)(a) and (d) and (2)(b) and 45(2)” substitute “section 43B(2)(a) and (d), (3)(b) and (6)”,
- (ii) in paragraph (d) for “any article” substitute “anything which is”, and
- (iii) also in paragraph (d), for “section 44(1) or (2) of that Act” substitute “section 43B(2) or (3) of that Act and which he reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b) of that Act”, and
- (b) in sub-paragraph (2) for “subsections (1) and (4) of section 45 of” substitute “subsections (4) and (5) of section 43B of, and paragraphs 1 and 2 of Schedule 6B to,”.

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*Counter-Terrorism Act 2008*

28 In section 1(1) of the Counter-Terrorism Act 2008 (power to remove documents for examination), after paragraph (b), insert –

- “(ba) section 43(4B) of that Act (search of vehicle in relation to suspected terrorist);
- (bb) section 43A of that Act (search of vehicle suspected of being used for the purposes of terrorism);”.

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PART 5

30

SAFEGUARDING OF VULNERABLE GROUPS

*Police Act 1997*

29 The Police Act 1997 is amended as follows.

30 In section 113BA(2) (suitability information relating to children) omit paragraphs (b) to (d).

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31 In section 113BB(2) (suitability information relating to vulnerable adults) omit paragraphs (b) to (d).

*Safeguarding Vulnerable Groups Act 2006*

32 The Safeguarding Vulnerable Groups Act 2006 is amended as follows.

33 In section 4(1) (appeals) –

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- (a) omit paragraph (a),

	(b) in paragraph (b) –	
	(i) after “paragraph” insert “2,”	
	(ii) after “5,” insert “8,” and	
	(iii) for “that Schedule” substitute “Schedule 3”, and	
	(c) in paragraph (c) for “or 18” substitute “, 18 or 18A”.	5
34	In section 5(4) (regulated activity) –	
	(a) omit “section 10(3);” and	
	(b) omit “paragraph 4 of Schedule 6”.	
35	In section 6(8) (regulated activity providers) –	
	(a) in paragraph (a), for “paragraph 4(1)(a), (b), (g), (h), (i), (j) or (m) or 8(1)(a), (d) or (e)” substitute “paragraph 1(9) or 7(9)”,	10
	(b) omit paragraph (c), and	
	(c) in paragraph (d) –	
	(i) for “paragraph (a), (b) or (f) of section 59(10)” substitute “paragraph 7(3E)(a) or (b) of Schedule 4”, and	15
	(ii) for “mentioned in that paragraph” substitute “exercisable by virtue of that position”.	
36	In section 7(5) (barred person not to engage in regulated activity) omit paragraphs (b) and (c).	
37	Omit section 8 (person not to engage in regulated activity unless subject to monitoring).	20
38	In section 9(5) (use of barred person for regulated activity) omit paragraphs (b) and (c).	
39	Omit section 10 (use of person not subject to monitoring for regulated activity).	25
40	Omit section 11 and Schedule 5 (regulated activity provider: failure to check).	
41	Omit section 12 and Schedule 6 (personnel suppliers: failure to check).	
42	Omit section 13 (educational establishments: check on members of governing body).	30
43	Omit section 14 (office holders: offences).	
44	Omit section 15 (sections 13 and 14: checks).	
45	Omit section 16 (exception to requirement to make monitoring check).	
46	Omit section 17 (NHS employment).	
47	(1) Section 18 (offences: companies etc.) is amended as follows.	35
	(2) In subsection (1) –	
	(a) omit “, 10, 11, 23, 27”, and	
	(b) omit “or Schedule 6”.	
	(3) In subsection (2) –	
	(a) omit “, 10, 11, 23, 27”, and	40
	(b) omit “or Schedule 6”.	

- 48 (1) Section 19 (offences: other persons) is amended as follows.
- (2) Omit subsection (1).
  - (3) Omit subsections (3) and (4).
  - (4) Omit subsections (6) and (7).
  - (5) In subsection (8) – 5
    - (a) for “subsections (2)(b) and (3)(b)” substitute “subsection (2)(b)”, and
    - (b) omit paragraphs (b) and (c).
  - (6) Omit subsection (9).
- 49 In section 20 (section 19: exclusions and defences) omit subsections (2) to (7).
- 50 In section 35 (regulated activity providers: duty to refer) – 10
  - (a) in subsection (1), omit paragraph (b), and
  - (b) omit subsection (6).
- 51 (1) Section 36 (personnel suppliers: duty to refer) is amended as follows.
- (2) In subsection (1) omit “or controlled activity”.
  - (3) In subsection (3)(a) omit “or controlled”. 15
- 52 (1) Section 37 (regulated activity providers: duty to provide information on request etc.) is amended as follows.
- (2) In subsection (2) – 20
    - (a) omit paragraph (b), and
    - (b) in paragraph (d), omit “or controlled”.
  - (3) In subsection (4) omit “or controlled”.
  - (4) In subsection (5) omit “or controlled”.
- 53 In section 41(7) (registers: duty to refer), in the table, in column 1 of entry 3 for “Either of” substitute “Any of”.
- 54 In section 51(5) (Crown application) omit paragraph (b). 25
- 55 (1) Section 54 (devolution: alignment) is amended as follows.
- (2) In subsection (2) omit paragraph (a).
  - (3) In subsection (3) omit paragraph (b) (but not the word “or” at the end of it).
  - (4) In subsection (4) omit paragraph (b) (but not the word “or” at the end of it).
  - (5) Omit subsection (5). 30
- 56 (1) Section 56 (devolution: Wales) is amended as follows.
- (2) Omit subsection (1).
  - (3) In subsection (2) – 35
    - (a) omit paragraphs (a) and (c), and
    - (b) in paragraphs (d) and (e), omit “or (8)”.
  - (4) In subsection (3) –
    - (a) omit paragraphs (b) to (f),

- 
- (b) after paragraph (f) insert –  
     “(fa) section 34ZA(7),”,
  - (c) omit paragraph (j),
  - (d) in paragraph (l) for “41(1), (5) or (8)” substitute “41(8)”,
  - (e) omit paragraph (n), 5
  - (f) in paragraph (r) for “7(1)(f)” substitute “7(1)(i) or (j)”, and
  - (g) omit paragraphs (s) and (t).
- 57 In section 57(1)(c) (damages) omit “prescribed”.
- 58 (1) Section 60 (interpretation) is amended as follows.
- (2) In subsection (1), in paragraph (b) of the definition of “personnel supplier”, 10  
 omit “or controlled”.
  - (3) Omit subsection (3).
- 59 In section 61(3) (orders and regulations) –
- (a) omit paragraphs (b) to (e),
  - (b) at the end of paragraph (h) insert “or”, and 15
  - (c) omit paragraph (j) and the word “or” before it.
- 60 In paragraph 25(1) of Schedule 3 (duty of court to inform certain persons that ISA will include them in a barred list) for “will” substitute “may”.
- 61 (1) Schedule 7 (vetting information) is amended as follows.
- (2) In paragraph 1 – 20
    - (a) for “sections 30 and 32” substitute “sections 30A and 30B”, and
    - (b) omit entries 3, 4, 7, 8 and 17 in the table.
  - (3) Omit paragraph 3(3).
  - (4) In the heading to the Schedule for “VETTING INFORMATION” substitute 25  
 “BARRING INFORMATION”.
- 62 In Schedule 8 (transitional provisions) omit paragraph 5.

## PART 6

### CRIMINAL RECORDS

#### *Police Act 1997*

- 63 The Police Act 1997 is amended as follows. 30
- 64 (1) Section 117 (disputes about accuracy of certificates) is amended as follows.
- (2) In the title, for “accuracy of certificates” substitute “certificates and up-date information”.
  - (3) After subsection (1) insert – 35  
     “(1A) Where a person believes that the wrong up-date information has  
     been given under section 116A in relation to the person’s certificate,  
     the person may make an application in writing to the Secretary of  
     State for corrected up-date information.”
  - (4) In subsection (2) –

- (a) after “inaccurate” insert “, or that the wrong up-date information has been given,”, and
  - (b) after “new certificate” insert “or (as the case may be) corrected up-date information”.
- (5) After subsection (2C) (for which see section 79(4) above) insert – 5
  - “(2D) In this section –
    - “corrected up-date information”, in relation to a certificate, means information which includes –
      - (a) information that the wrong up-date information was given in relation to the certificate on a particular date, and 10
      - (b) new up-date information in relation to the certificate, “up-date information” has the same meaning as in section 116A.”
- 65 In section 118(1) (evidence of identity), after “consider” insert “an application as mentioned in section 116A(4)(a) or (5)(a) or”. 15
- 66 (1) Section 119 (sources of information) is amended as follows.
  - (2) In subsection (1B), for the words from “determining” to the end substitute “deciding whether to make a request to that chief officer under section 113B(4)”. 20
  - (3) In subsection (4), at the end of paragraph (a), after “registration;” insert –
    - “(aa) any application as mentioned in section 116A(4)(a) or (5)(a);”.
  - (4) In subsection (8), at the end of paragraph (a), insert –
    - “(aa) under this Part in relation to any request under section 116A(1);”. 25
- 67 (1) Section 119B (independent monitor) is amended as follows.
  - (2) Omit subsection (5)(a).
  - (3) In subsection (5)(c), omit the words from “or disclosed” to the end.
- 68 After section 122(1) (code of practice) insert –
  - “(1A) The reference in subsection (1) to the use of information provided to registered persons under this Part includes a reference to the use of information provided in accordance with section 116A(1) to relevant persons (within the meaning of that section) who are not registered persons under this Part.” 30
- 69 Omit section 122(3A)(a) (power of Secretary of State to refuse to issue certificate where failure to comply with code of practice by, or in connection with, registered person). 35
- 70 After section 124A(6) (offences relating to disclosure of information obtained in connection with delegated function) insert –
  - “(6A) For the purposes of this section the reference to an applicant includes a person who makes a request under section 116A(1).” 40

- 71 After section 125B(2) (form of applications) insert –
- “(3) In this section “application” includes a request under section 116A(1).”
- 72 In section 126(1) (interpretation of Part 5), in the definition of “certificate”, after “application” insert “but does not include any documents issued in response to a request under section 116A(1) or an application as mentioned in section 116A(4)(a) or (5)(a)”. 5

*Safeguarding Vulnerable Groups Act 2006*

- 73 (1) Paragraph 19 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (barred lists: information) is amended as follows. 10
- (2) In sub-paragraph (1)(c) for “chief officer of a relevant police force” substitute “relevant chief officer”.
- (3) In sub-paragraph (3) after “which the” insert “relevant”.
- (4) In sub-paragraph (5) for “chief officer of the relevant police force” substitute “relevant chief officer”. 15
- (5) In sub-paragraph (7) for the definition of “relevant police force” substitute –  
““the relevant chief officer” means any chief officer of a police force who is identified by the Secretary of State for the purposes of this paragraph;”.
- (6) After sub-paragraph (7) insert – 20  
“(7A) Subsections (10) and (11) of section 113B of the Police Act 1997 apply for the purposes of the definition of “the relevant chief officer” as they apply for the purposes of that section.”
- (7) In sub-paragraph (8) for “which forces are relevant police forces” substitute “who is the relevant chief officer”. 25

## PART 7

## DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

*Rehabilitation of Offenders Act 1974*

- 74 (1) Section 1 of the Rehabilitation of Offenders Act 1974 (rehabilitated persons and spent convictions) is amended as follows. 30
- (2) In subsection (1) for “subsection (2)” substitute “subsections (2), (5) and (6)”.
- (3) After subsection (4) insert –
- “(5) This Act does not apply to any disregarded conviction or caution within the meaning of Chapter 3 of Part 5 of the Protection of Freedoms Act 2011. 35
- (6) Accordingly, references in this Act to a conviction or caution do not include references to any such disregarded conviction or caution.”



*Police Act 1997*

- 75 In section 113A(6) of the Police Act 1997 (criminal record certificates), in paragraph (b) of the definition of “relevant matter”, after “that Act” insert “but excluding a disregarded caution within the meaning of Chapter 3 of Part 5 of the Protection of Freedoms Act 2011”.

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PART 8

REPEAL OF PROVISIONS FOR CONDUCTING CERTAIN FRAUD CASES WITHOUT JURY

*Criminal Justice Act 2003*

- 76 (1) The Criminal Justice Act 2003 is amended as follows.
- (2) In section 45 (procedure for applications for cases to be conducted without a jury) –
- (a) in the heading, for “sections 43 and” substitute “section”,
  - (b) in subsection (1), omit paragraph (a) and the word “and” at the end of the paragraph, and
  - (c) in subsections (5) and (9), omit the words “43 or”.
- (3) In section 46(7) (discharge of jury because of jury tampering) omit “43 or”.
- (4) In section 48(1) (further provision about trials without a jury) omit “43,”.
- (5) Omit section 330(5)(b) (procedure for order bringing section 43 into force).

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SCHEDULE 8

Section 101(2)

REPEALS AND REVOCATIONS

20

PART 1

DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

<i>Short title</i>	<i>Extent of repeal</i>	
Police and Criminal Evidence Act 1984	Section 64.	25
Criminal Justice Act 1988	Section 148.	
Criminal Justice and Public Order Act 1994	Section 57.	
Criminal Procedure (Scotland) Act 1995	In section 19C –	30
	(a) in subsection (2), the word “or” at the end of paragraph (a), and	
	(b) in subsection (6), the word “and” at the end of paragraph (b).	

<i>Short title</i>	<i>Extent of repeal</i>	
Terrorism Act 2000	In Schedule 8 – (a) paragraph 14, (b) in paragraph 20, in sub-paragraph (3), the words from “but” to the end of the sub-paragraph, and (c) paragraph 20(4)	5
Police Act 1996	In Part 2 of Schedule 7, paragraph 37.	
Criminal Justice and Police Act 2001	Section 82. Section 84.	10
Criminal Justice (Scotland) Act 2003 (asp 7)	In section 56 – (a) in subsection (2), the word “or” at the end of paragraph (a), and (b) in subsection (8), the word “and” at the end of the definition of “sample”.	15
Serious Organised Crime and Police Act 2005	Section 117(6) to (10). Section 118(4).	
Counter-Terrorism Act 2008	Section 10(4) and (6)(d). Section 14(4) to (6). Section 16. Section 17.	20
Crime and Security Act 2010	Section 14. Sections 16 to 21. Section 22(2). Section 23. Section 58(4) and (6) to (8).	25

PART 2

POWERS OF ENTRY

<i>Short title</i>	<i>Extent of repeal or revocation</i>	
Distribution of German Enemy Property (No 1) Order 1950 (S.I. 1950/1642)	Article 22.	30
Hypnotism Act 1952	Section 4.	
Dairy Herd Conversion Premium Regulations 1973 (S.I. 1973/1642)	In regulation 2(1), the definition of “authorised officer”. Regulation 5. Regulation 7(b) and the word “or” before it.	35
Public Health (Control of Disease) Act 1984	Section 50.	
Milk (Cessation of Production) Act 1985	Section 2(1). Section 3(1)(b) and the word “or” before it.	40
Landlord and Tenant Act 1985	Section 8(2).	
Cereals Co-responsibility Levy Regulations 1988 (S.I. 1988/ 1001)	Regulation 8.	45

<i>Short title</i>	<i>Extent of repeal or revocation</i>	
Cereals Co-responsibility Levy Regulations 1988 (S.I. 1988/1001) – <i>cont.</i>	In regulation 9, the words “or 8”.	
Oilseeds Producers (Support System) Regulations 1992 (S.I. 1992/695)	In regulation 2(1), the definitions of “authorised officer”, “oilseeds” and “specified control measure”. Regulations 5, 6, 9 and 10.	5
Merchant Shipping Act 1995	Section 258(4).	
Gas Appliances (Safety) Regulations 1995 (S.I. 1995/1629)	Regulation 24(6).	10
Older Cattle (Disposal) (England) Regulations 2005 (S.I. 2005/3522)	Regulation 5.	15
Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006 (S.I. 2006/2821)	Regulation 6.	20
Health and Social Care Act 2008	In Schedule 11, paragraph 9.	
Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660)	In Schedule 2, paragraph 2(2)(a), (b) and (c).	
Payment Services Regulations 2009 (S.I. 2009/209)	Regulation 83.	25
1	The repeals and revocations in the following provisions extend to England and Wales only –	
	(a) the Hypnotism Act 1952,	
	(b) the Dairy Herd Conversion Premium Regulations 1973,	30
	(c) the Public Health (Control of Disease) Act 1984,	
	(d) the Landlord and Tenant Act 1985,	
	(e) the Cereals Co-responsibility Levy Regulations 1988,	
	(f) the Oilseeds Producers (Support System) Regulations 1992, and	
	(g) the Health and Social Care Act 2008.	35
2	The revocations in the Cross-border Railway Services (Working Time) Regulations 2008 extend to England and Wales and Scotland only.	
3	The repeals and revocations in the following provisions extend to England and Wales, Scotland and Northern Ireland –	
	(a) the Distribution of German Enemy Property (No 1) Order 1950,	40
	(b) the Merchant Shipping Act 1995,	
	(c) the Gas Appliances (Safety) Regulations 1995,	
	(d) the Older Cattle (Disposal) (England) Regulations 2005,	
	(e) the Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006, and	45
	(f) the Payment Services Regulations 2009.	

- 4 The repeal of section 258(4) of the Merchant Shipping Act 1995 is subject to paragraph 2(2) of Schedule 2 to this Act.

## PART 3

## VEHICLES LEFT ON LAND

<i>Short title</i>	<i>Extent of repeal or revocation</i>	<i>5</i>
Airports Act 1986	In section 66(3), paragraph (b) (but not the word “or” at the end of the paragraph).	
Private Security Industry Act 2001	In section 3(2), paragraph (j) and the word “or” before the paragraph. In section 4A(2) – (a) paragraph (a), (b) paragraph (b) and the word “or” at the end of the paragraph, and (c) in paragraph (c), the word “other”.	10
	Section 6. Section 22A. In section 24(4), the words from “(except” to “or 22A)”.	15
	In section 25(1), the definition of “motor vehicle”.	20
	In Schedule 2, paragraphs 3, 3A, 9 and 9A (and the italic cross-headings before them).	
Serious Organised Crime and Police Act 2005	In Schedule 15, paragraph 14(a).	
Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2005 (S.I. 2005/224)	The whole instrument.	25
Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2006 (S.I. 2006/1831)	Articles 3 and 4.	30
Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2007 (S.I. 2007/2201)	Articles 3 and 4.	35
Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2009 (S.I. 2009/3043)	Articles 3 and 4.	40
Crime and Security Act 2010	Section 42(3). Section 44. In Schedule 1, paragraphs 3(5) and 7.	

PART 4

COUNTER-TERRORISM POWERS

<i>Short title</i>	<i>Extent of repeal or revocation</i>	
Terrorism Act 2000	Section 43(3). Sections 44 to 47 (including the italic cross-heading before section 44). In Schedule 8—	5
	(a) paragraph 36(1B),	
	(b) in paragraph 36(3AA), the words “or senior judge” in both places where they appear,	10
	(c) in paragraph 36(4), the words from “but” onwards,	
	(d) in paragraph 36(5), the words “or senior judge”,	15
	(e) paragraph 36(7), and	
	(f) in paragraph 37(2), the words “or senior judge”.	
Anti-terrorism, Crime and Security Act 2001	In Schedule 7, paragraph 31.	20
Railways and Transport Safety Act 2003	In Schedule 5, in paragraph 4(2)(k), the word “44”.	
Energy Act 2004	Section 57.	
The British Transport Police (Transitional and Consequential Provisions) Order 2004 (S.I.2004/1573)	In article 12(6), sub-paragraph (c) (but not the word “and” at the end of the sub-paragraph).	25
Terrorism Act 2006	Section 23(8) to (10). Section 25. Section 30.	30

PART 5

SAFEGUARDING OF VULNERABLE GROUPS

<i>Short title</i>	<i>Extent of repeal or revocation</i>	
Police Act 1997	Section 113BA(2)(b) to (d). Section 113BB(2)(b) to (d).	35
Safeguarding Vulnerable Groups Act 2006	Section 4(1)(a). In section 5(4)—	
	(a) the words “section 10(3);”, and	
	(b) the words “paragraph 4 of Schedule 6”.	40
	Section 6(8)(c).	
	Section 7(5)(b) and (c).	
	Section 8.	
	Section 9(5)(b) and (c).	
	Sections 10 to 17.	

<i>Short title</i>	<i>Extent of repeal or revocation</i>	
Safeguarding Vulnerable Groups Act 2006 – <i>cont.</i>	In section 18(1) and (2) –	
	(a) the words “, 10, 11, 23, 27”, and	
	(b) the words “or Schedule 6”.	
	In section 19 –	5
	(a) subsections (1), (3), (4), (6) and (7),	
	(b) subsection (8)(b) and (c), and	
	(c) subsection (9).	
	Section 20(2) to (7).	
	Sections 21 to 27.	10
	In section 35 –	
	(a) subsection (1)(b), and	
	(b) subsection (6).	
	In section 36 –	
	(a) in subsection (1), the words “or controlled activity”, and	15
(b) in subsection (3)(a), the words “or controlled”.		
In section 37 –		
(a) subsection (2)(b),	20	
(b) in subsection (2)(d), the words “or controlled”,		
(c) in subsections (4) and (5), the words “or controlled”.		
In section 39 –	25	
(a) in subsections (1) and (5), the word “prescribed”, and		
(b) in subsection (4)(a), the words “or controlled activity”.		
In section 41 –	30	
(a) in subsections (1) and (5), the word “prescribed”, and		
(b) in subsection (4)(a), the words “or controlled activity”.		
In section 43(6)(a), the words “of entry 1 or 8”.	35	
Section 44.		
In section 45 –		
(a) in subsections (1) and (5), the word “prescribed”,		
(b) in subsection (4)(a), the words “or controlled activity”, and	40	
(c) subsection (6).		
In section 47 –		
(a) subsection (2)(b) to (e),		
(b) subsection (3)(b) to (e), and	45	
(c) subsection (5).		
In section 48(1) –		
(a) in paragraph (a), the word “newly”, and		
(b) paragraph (c) and the word “or” before it.	50	



<i>Short title</i>	<i>Extent of repeal or revocation</i>	
Safeguarding Vulnerable Groups Act 2006 – <i>cont.</i>	In Schedule 4–	
	(a) paragraph 1(8),	
	(b) paragraph 1(9B)(a),	
	(c) in paragraph 1(9B)(f), the words “18B or”,	5
	(d) in paragraph 1(9B)(m), the words “48 or”,	
	(e) paragraph 1(9B)(p) to (t),	
	(f) paragraph 1(10)(a), (ba), (d) and (e),	10
	(g) paragraph 1(12A),	
	(h) paragraph 1(13A),	
	(i) paragraph 2(1)(d) and (2)(d),	
	(j) paragraph 3(1)(c),	
	(k) paragraph 4 (including the italic cross-heading before it),	15
	(l) paragraph 7(4),	
	(m) in paragraph 7(5), the words “or (4)”,	
	(n) in paragraph 7(7)(f), the words “English local authority social services or”,	20
(o) paragraph 7(8A),		
(p) paragraph 8, and		
(q) in paragraph 10(2), the words “or 7(1)(a), (b), (c), (d) or (g)” and, in paragraph (b), the words “or vulnerable adults (as the case may be)”.	25	
	Schedules 5 and 6.	
	In Schedule 7–	
	(a) in paragraph 1, entries 3, 4, 7, 8, 17 and 19 in the table, and	30
	(b) paragraph 3(3).	
	In Schedule 8, paragraph 5 (including the italic cross-heading before it).	
Health and Social Care Act 2008	In Schedule 5, paragraphs 92 and 93.	
Education and Skills Act 2008	Section 147(8).	35
	In Schedule 1, paragraphs 41(3) and 89 (including the italic cross-heading before paragraph 89).	
The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912)	In Schedule 1, paragraph 21.	40
Health Act 2009	In Schedule 1, paragraphs 14 and 15. In Schedule 12, paragraph 43.	



<i>Short title</i>	<i>Extent of repeal or revocation</i>
Policing and Crime Act 2009	In section 81(3)(m) – (a) in sub-paragraph (i), the words “, 6, 15, 25”, (b) sub-paragraph (v), and (c) sub-paragraph (vi) (but not the word “and” at the end of it). Sections 82 to 87. Section 89. In Part 8 of Schedule 8, the entry relating to the Safeguarding Vulnerable Groups Act 2006.
	5
The Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009 (S.I. 2009/203)	Articles 12 to 15.
	15
The Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (S.I. 2009/1182)	Article 1(6)(e). In Schedule 5, paragraph 9 (and the heading before it).
	20
The Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 (S.I. 2009/2610)	Article 26. Part 8. Articles 28, 29 and 30(a).
	25
The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813)	Article 19(3), (4) and (5).
	30
The Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution and Miscellaneous Provisions) Order 2010 (S.I. 2010/1154)	Article 3(5) to (7). Article 5. Article 7(4). Articles 8 and 11.
	35
The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158)	In Schedule 2, paragraph 62 (and the heading before it).
	40

PART 6

CRIMINAL RECORDS

<i>Short title</i>	<i>Extent of repeal</i>
Police Act 1997	Section 113A(4).





# Protection of Freedoms Bill

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## B I L L

To provide for the destruction, retention, use and other regulation of certain evidential material; to impose consent and other requirements in relation to certain processing of biometric information relating to children; to provide for a code of practice about surveillance camera systems and for the appointment and role of the Surveillance Camera Commissioner; to provide for judicial approval in relation to certain authorisations and notices under the Regulation of Investigatory Powers Act 2000; to provide for the repeal or rewriting of powers of entry and associated powers and for codes of practice and other safeguards in relation to such powers; to make provision about vehicles left on land; to provide for a maximum detention period of 14 days for terrorist suspects; to replace certain stop and search powers and to provide for a related code of practice; to amend the Safeguarding Vulnerable Groups Act 2006; to make provision about criminal records; to disregard convictions and cautions for certain abolished offences; to make provision about the release and publication of datasets held by public authorities and to make other provision about freedom of information and the Information Commissioner; to repeal certain enactments; and for connected purposes.

*Presented by Secretary Theresa May,  
supported by  
The Prime Minister,  
The Deputy Prime Minister,  
Secretary Philip Hammond,  
Mr Secretary Lansley, Secretary Michael Gove,  
Secretary Kenneth Clarke and James Brokenshire.*

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*Ordered, by The House of Commons,  
to be Printed, 11 February 2011.*

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