

SERIOUS ORGANISED CRIME AND POLICE ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Designated persons

274. **Part 1** of Schedule 8 amends Schedule 4 to the 2002 Act and lists new powers that can be conferred on designated persons by chief officers. The new powers for community support officers include a power to direct traffic and place traffic signs on roads, a power to deal with begging, a power to search detained persons for items that could cause injury or assist escape, a power to enforce certain licensing offences, a power to enter certain premises to enforce licensing offences, a power to enforce byelaws, a power to search persons for alcohol and tobacco in certain circumstances and a power to deal with possession of controlled drugs. They will increase the powers available to community support officers to deal with community safety issues and anti-social behaviour offences.
275. **Paragraph 2** inserts a new paragraph 1A into Schedule 4 to the 2002 Act. The purpose of paragraph 1A is to enable chief officers of police to designate community support officers with the power to require a name and address without also conferring on them the power to detain. If a designation applies this paragraph to a community support officer then he or she may require the name and address of a person who has committed a relevant offence in the relevant police area or a relevant licensing offence within or outside of the relevant police area. The relevant police area is the police area in which a community support officer's designation applies. **Sub-paragraph (5)** of paragraph 1A makes it an offence to fail to comply with a requirement to give name and address and a person guilty of such an offence shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. The terms "relevant offence", "relevant licensing offence" and "relevant byelaw" have the meaning given in paragraph 2 of the 2002 Act. Paragraph 1A(2) allows for a community support officer's designation to specify that he or she has the power to require a name and address only for certain relevant offences or relevant licensing offences. This means that chief officers will not have to designate a community support officer with the power to a require name and address for all relevant offences and relevant licensing offences. Paragraph 1A(4) specifies that a community support officer may enforce a relevant byelaw only within the place which the byelaw relates to.
276. **Paragraph 3** amends paragraph 2 of Schedule 4 to the 2002 Act. This paragraph of the 2002 Act applies if a community support officer's designation specifies that it applies to him or her. **Paragraph 3(3)(a)** of Schedule 8 provides that if a person fails to comply with a requirement under Paragraph 1A(3) or if a person gives a name and address which the community support officer has reasonable grounds for suspecting is false or inaccurate, the community support officer can detain the other person for up to 30 minutes, pending the arrival of a constable. The detained person may choose, if asked,

to accompany the community support officer to a police station rather than wait. Any person who fails to comply with the request to give his name and address or who makes off while being detained or being accompanied to the police station is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

277. *Paragraph 3(2)* provides that a community support officer may only be designated with the power in paragraph 2 of Schedule 4 to the 2002 Act if his or her designation also applies paragraph 1A to him or her.
278. *Paragraph 3* also enables chief officers to confer on community support officers powers to deal with begging. Under section 3 of the Vagrancy Act 1824 it is an offence to beg in any public place, or to encourage a child to beg. Under section 4 of that Act it is an offence, for a person who has already been convicted of an offence under section 3, to sleep in certain unoccupied premises or in the open air without being able to give a valid reason for doing so, to show wounds or deformities to aid begging and to collect money for charitable purposes under false pretence. *Sub-paragraph (7)* makes offences under sections 3 and 4 of the Vagrancy Act 1824 into relevant offences. *Sub-paragraph (4)* inserts paragraph 2(3B) into Schedule 4 to the 2002 Act. This enables CSOs to be designated with the powers to require a person to stop committing an offence under sections 3 and 4 of the Vagrancy Act 1824 and, if a person refuses to comply with this requirement to detain that person. *Sub-paragraph (5)* allows a person who has been thus detained to elect to be accompanied to a police station instead of waiting for a constable to arrive. *Sub-paragraph (6)* makes it an offence to make off while subject to a requirement to wait if a community support officer has required a person to stop committing an offence under sections 3 and 4 of the Vagrancy Act 1824, that person has failed to do so and has been required to wait by the community support officer accordingly. A person committing this offence shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. Paragraph 3 also adds to the powers of community support officers to deal with licensing offences. *Paragraph 3(8)* inserts paragraph 2(6A) into Schedule 4 to the 2002 Act which specifies the offences under the Licensing Act 2003 that constitute relevant licensing offences. Community support officers may exercise their powers with regard to licensing offences in any police area, not just the relevant police area.
279. *Paragraph 3(3)* limits the powers of community support officers with regard to the offences under paragraph 3(8) of this Schedule that are most likely to be committed by licence holders. Where a community support officer has reason to believe that the offences of sale of alcohol to a person who is drunk, sale of alcohol to children or allowing the consumption of alcohol by children have been committed by a person on licensed premises the community support officer will have the power to require the person's name and address but will not have the power to detain the person if the requirement is not met or a false or inaccurate answer is given. The limited power for community support officers to enter licensed premises in paragraph 9 of Schedule 8 will facilitate the use of these alcohol-related powers.
280. *Paragraph 3* also provides for community support officers to be able to enforce byelaws. *Sub-paragraph (7)* has the effect that offences under relevant byelaws constitute relevant offences. *Sub-paragraph (8)* inserts new sub-paragraphs (6B), (6C), (6D), (6E) and (6F) into paragraph 2 of Schedule 4 to the 2002 Act. Sub-paragraph (6B) defines a relevant byelaw as a byelaw that has been made by a relevant body and which has been agreed between the chief officer of the police force and the relevant byelaw-making body. Sub-paragraph (6E) sets out a list of relevant byelaw-making bodies and also provides that this list may be added to by order. Sub-paragraph (6F) provides that an order may specify that relevant byelaws may be agreed between the chief officer of a police force and the Secretary of State, rather than between the chief officer of a police force and a relevant byelaw-making body. Sub-paragraphs (6C) and (6D) provide for the publication of a list of relevant byelaws by chief officers and the amendment of that list. *Paragraph 3(4)* inserts a new paragraph 2(3A) into Schedule 4 to the 2002 Act to

provide that where a CSO has been designated with the power to enforce a relevant byelaw by requiring a name and address under paragraph 1A(3), if that byelaw allows a constable to enforce it by removing a person from a certain place, then the CSO will have the power of a constable to enforce the byelaw in that way.

281. *Paragraph 4* inserts a new paragraph 2A into Schedule 4 to the 2002 Act. Where the powers in this paragraph are specified in a community support officer's designation, it gives him a limited power to search persons detained under paragraph 2(3) or (3B) of Schedule 4 to the 2002 Act for any item that could be used to injure himself or others if the community support officer believes the person could be dangerous. It also gives community support officers a power to search a detained person for anything that could be used to assist escape. Under *sub-paragraph (3)* a community support officer is required to inform a person from whom he has seized any item where he can make inquiries about its recovery and to comply with the instructions of a constable about what to do with any seized item. This limited search power will help to increase the safety of community support officers when exercising the power of detention.
282. *Paragraph 5* makes an amendment consequential on the insertion of paragraph 1A into Schedule 4 to the 2002 Act.
283. *Paragraphs 6 and 10* insert new paragraphs 3A and 11B into Schedule 4 to the 2002 Act. Where the powers in these paragraphs are specified in a community support officer's designation it gives the community support officer powers to direct traffic and to require the name and address of a person who fails to comply with directions. Community support officers can already be designated with the power under paragraph 12 of Schedule 4 to the 2002 Act to control traffic for the purposes of escorting a load of exceptional dimensions. Where designated, the powers in *paragraph 10* of this Schedule enable community support officers to direct traffic in other situations, based on the powers constables have under sections 35 and 37 of the Road Traffic Act 1988. This will allow community support officers to direct a person driving a vehicle to stop or follow a line of traffic and also to direct pedestrians. Community support officers will also have the power to direct traffic for the purposes of conducting a traffic survey. Where designated, the powers in *paragraph 6* of this Schedule enable a community support officer to require either a driver or a pedestrian to give their name and address under paragraph 3A(1) on failure to follow the directions of a community support officer or a police officer. If a person refuses to give their name and address, or gives an answer which a community support officer has reasonable grounds for suspecting to be false or inaccurate, then the community support officer can detain the person for 30 minutes until the arrival of a constable or, if the person elects on being offered, can accompany the person to a police station. A community support officer may only detain a person if he or she has been designated with the powers under paragraph 2 of the 2002 Act. A community support officer will only be able to exercise the powers set out in paragraphs 6 and 10 of this Schedule within his own police force area. Community support officers may not be designated with powers under new paragraph 11B of Schedule 4 to the 2002 Act unless they are also designated with powers under new paragraph 3A. These powers will enable community support officers to assist with traffic management at public events, road traffic accidents and other incidents where traffic diversions are necessary.
284. *Paragraph 7* makes minor adjustments to paragraph 4 of Schedule 4 to the 2002 Act in the light of the insertion into that Schedule of paragraph 1A. *Paragraph 8* extends the powers of community support officers with regards to alcohol, tobacco and controlled drugs. It inserts a new paragraph 7A into Schedule 4 to the 2002 Act. Where a community support officer has imposed a requirement on a person under paragraph 5 or 6 of Schedule 4 to the 2002 Act, the community support officer reasonably believes that the person is in possession of alcohol and that person fails to surrender it then new paragraph 7A gives the community support officer the power to search the person for alcohol and seize and dispose of any alcohol found. Paragraph 7A gives community support officers a similar power with regard to tobacco where a community support

officer has sought to seize tobacco from a person aged under 16 under paragraph 7 of Schedule 4 to the 2002 Act. The new paragraph also provides that it is an offence to fail to consent to be searched, and that community support officers must inform persons that they propose to search that it is an offence to refuse. A person guilty of this offence shall be liable, on summary conviction, to fine not exceeding level 3 on the standard scale. A community support officer may require the name and address of a person refusing to be searched; sub-paragraphs (3), (4) and (5) of paragraph 2 of Schedule 4 to the 2002 Act apply if a person refuses to comply with this requirement or gives a false or inaccurate name and address and if a community support officer's designation applies paragraph 2 to him or her. Paragraph 7A(4) provides for certain limitations on the powers of community support officers to search for alcohol and tobacco.

285. Paragraph 3(2) of Schedule 4 to the 2002 Act enables community support officers whose designation applies paragraph 3 to them to detain persons acting in an anti-social manner if they fail to comply with a requirement to give name and address or give a name and address that the community support officer has reasonable grounds for suspecting to be false. Paragraphs 3A(2) and 7A(8) inserted by this Schedule also enable community support officers to detain if a person fails to satisfactorily meet a requirement to give name and address for certain road traffic offences or having refused to be searched for alcohol or tobacco. *Paragraph 3(10)* inserts into Schedule 4 to the 2002 Act a new paragraph 2(8) which provides that community support officers may not use the power of detention under paragraphs 3(2), 3A(2) or 7A(8) unless their designation has applied paragraph 2 to the community support officer in question.
286. *Paragraph 8* also inserts new paragraph 7B into Schedule 4 to the 2002 Act. This paragraph provides for community support officers to seize and retain controlled drugs when found unlawfully in a person's possession. Community support officers must comply with a constable's instructions about what to do with any controlled drugs seized and if a person maintains that he or she is lawfully in possession of the controlled drug then the community support officer must inform the person about where inquiries can be made about its recovery. If a community support officer finds a controlled drug unlawfully in a person's possession or reasonably believes that a person is in unlawful possession of a controlled drug then the community support officer may require the person's name and address. The paragraph makes it an offence to fail to comply with this requirement and a person guilty of this offence shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. New paragraph 7C provides that where a person fails to give their name and address or gives a false or inaccurate name and address when required under new paragraph 7B then sub-paragraphs (3), (4) and (5) of paragraph 2 of Schedule 4 to the 2002 Act apply as long as the community support officer's designation specifies that paragraph 2 applies to them.
287. *Paragraph 9* inserts a new paragraph 8A into Schedule 4 to the 2002 Act. Where the powers in this paragraph are specified in a community support officer's designation it gives the community support officer a limited power to enter and search licensed premises under section 180 of the Licensing Act 2003 if he believes that one of the licensing offences specified in paragraph 2(6A) of Schedule 4 to the 2002 Act has been, or is being committed. These licensing offences are all connected with the sale and consumption of alcohol by and to young people and persons who are already drunk. Community support officers will be able to enter any premises, other than clubs, for the purposes of investigating a relevant licensing offence with a constable. However, community support officers will be able to enter premises alone only where they reasonably believe that a premises licence, a licence that permits a premises to sell alcohol, authorises the sale of alcohol for consumption off the premises. This limited power of entry and search will add to community support officers' existing powers to deal with alcohol-related anti-social behaviour and those that supply alcohol to young people.
288. *Paragraph 11* inserts a new paragraph 13A into Schedule 4 to the 2002 Act. Where the powers in this paragraph are specified in the designation of a community support

These notes refer to the Serious Organised Crime and Police Act 2005 (c.15) which received Royal Assent on 7th April 2005

officer, the community support officer has the same power to place temporary traffic signs on a road in extraordinary circumstances as a constable under section 67 of the Road Traffic Regulation Act 1984. It will be an offence for a driver to fail to comply with a traffic sign placed by a community support officer under this paragraph. The purpose of this power is to give community support officers an additional power to help them to provide assistance road traffic accidents and other road incidents.

289. *Paragraph 12* extends to community support officers the power to photograph a person who has been arrested, detained or given fixed penalty notices elsewhere than at a police station.
290. *Paragraphs 13 to 15* provide that an investigating officer may apply for and execute warrants issued under section 26 of the Theft Act 1968 and section 23(3) of the Misuse of Drugs Act 1971. These warrants permit investigating officers to search persons and to enter premises and to seize stolen goods and controlled drugs related to offences and documents relating to drugs offences. A warrant will be granted only under section 26 of the 1968 Act where a justice of the peace is satisfied that there is reasonable cause to believe that stolen goods are in a person's custody or are being stored on a premises. A warrant will be granted under section 23(3) of the 1971 Act only where a justice of the peace is satisfied that there are reasonable grounds for suspecting that controlled drugs are being possessed unlawfully by a person on premises or documents related to a drugs offence are present on those premises. Investigating officers will not be able to use force to enter those premises unless they are in the company and under the supervision of a constable, unless they are entering for the purpose of saving life or limb or preventing serious damage to property.
291. *Paragraph 16* inserts a new paragraph 33A into Schedule 4 to the 2002 Act to give to detention officers the power to take footwear impressions.