

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

BACKGROUND

Parts 1 to 6: Anti-social Behaviour

What is anti-social behaviour?

7. The term “anti-social behaviour” describes the everyday nuisance, disorder and crime that has a huge impact on victims’ quality of life. In the year ending March 2013, 2.3 million incidents of anti-social behaviour were recorded by the police in England and Wales, equivalent to around 6,300 incidents every day. However, many incidents are not reported at all, or are reported to other agencies such as local councils or social landlords.
8. Much of what is described as anti-social behaviour is criminal (for example, vandalism, graffiti, aggressive begging and people being drunk or rowdy in public), but current legislation also provides a range of civil powers, such as the anti-social behaviour order (“ASBO”) and the anti-social behaviour injunction (“ASBI”). These offer an alternative to criminal prosecution and give the police and other agencies the ability to deal with the cumulative impact of an individual’s behaviour, rather than focus on a specific offence. Some powers, such as the ASBI, have a lower standard of proof (that is, the civil “balance of probabilities” rather than the criminal “beyond reasonable doubt”). While the ASBO can be used by a number of agencies, the ASBI can only be used by social landlords.
9. In addition, informal interventions and out-of-court disposals are an important part of professionals’ toolkit for dealing with anti-social behaviour, offering a proportionate response to first-time or low-level incidents and a chance to intervene early and prevent behaviour from escalating. For example, tools such as warning letters and acceptable behaviour agreements are often used to deal with low-level anti-social behaviour, with one intervention frequently enough to stop the behaviour.

Consultation

10. *The Coalition: Our Programme for Government* outlined a commitment to reform the powers available to deal with anti-social behaviour. Specifically it said:

“We will introduce effective measures to tackle anti-social behaviour and low-level crime
11. In response to this, a consultation document was published in February 2011.¹ The consultation outlined proposals to streamline radically the current range of powers available to tackle anti-social behaviour. In particular, the consultation sought views on the replacement of the current tools for tackling anti-social behaviour with a new suite of

¹ <https://www.gov.uk/government/consultations/more-effective-responses-to-anti-social-behaviour>

powers: the criminal behaviour order; the crime prevention injunction; the community protection order; the direction power; and the community trigger.

Putting victims first: More effective responses to anti-social behaviour

12. In May 2012, the Home Office published a White Paper, *Putting victims first: more effective responses to anti-social behaviour* (the White Paper included a summary of responses to the earlier consultation).² This set out how the Government would support local areas to:
 - a. **Focus the response to anti-social behaviour on the needs of victims** – helping agencies to identify and support people at high risk of harm, giving frontline professionals more freedom to do what they know works, and improving our understanding of the experiences of victims;
 - b. **Empower communities to get involved in tackling anti-social behaviour** – by, among other things, giving victims and communities the power to ensure action is taken to deal with persistent anti-social behaviour through a new community trigger, and making it easier for communities to demonstrate in court the harm they are suffering;
 - c. **Ensure professionals are able to protect the public quickly** – giving them faster, more effective formal powers, and speeding up the eviction process for the most anti-social tenants, in response to consultations by the Home Office and Department for Communities and Local Government; and
 - d. **Focus on long-term solutions** – by addressing the underlying issues that drive anti-social behaviour, such as binge drinking, drug use, mental health issues, troubled family backgrounds and irresponsible dog ownership.
13. The reforms proposed were designed to provide better protection for victims and communities, and ensure that professionals had effective powers that were quick, practical and easy to use, and acted as real deterrents to perpetrators – replacing 19 of the complex existing powers (see Annex B) with six simpler and more flexible new ones, and giving victims a say in how agencies tackle anti-social behaviour.

Pre-legislative scrutiny

14. On 13 December 2012, the draft Anti-social Behaviour Bill was published for pre-legislative scrutiny by the Home Affairs Select Committee. The Committee published its report on 15 February 2013 (Twelfth Report of Session 2012-13, HC836). The Government response to this was published on 16 April 2013 (Cm 8607). In its response to the Committee's recommendations, the Government indicated that it would make three main changes to the policy as set out in the draft Bill, namely:
 - a. Provide for a limit on the maximum length of injunctions for under 18s of 12 months;
 - b. Introduce a requirement for pre-approval of the use of a dispersal order by an officer of at least the rank of inspector; and
 - c. Set a maximum threshold for the community trigger that local agencies could use when establishing their processes.

Recovery of possession of dwelling-houses on anti-social behaviour grounds

15. Under current housing legislation, landlords may apply to the county court to evict tenants who are behaving anti-socially using the relevant "ground for possession". These are ground 2 of Schedule 2 to the Housing Act 1985 for secure tenants (mostly

² Cm 8367, <http://www.official-documents.gov.uk/document/cm83/8367/8367.pdf>

tenants of local authorities) and ground 14 of Schedule 2 to the Housing Act 1988 for assured tenants (tenants of housing associations and landlords in the private rented sector) respectively.³ These grounds are discretionary, that is, the court must be satisfied that anti-social behaviour has occurred and that it would be reasonable to grant possession.

16. In practice, eviction for anti-social behaviour is exceptional: social landlords in England own around four million homes but only evict about 2,000 tenants for anti-social behaviour each year. Available evidence suggests that early interventions by social landlords successfully resolve over 80% of complaints about anti-social behaviour. However, where social landlords resort to eviction where all other intervention measures have been tried and have failed, that process can be protracted (on average around seven months from the date of application to the court for a possession order to an outcome).
17. In August 2011 the Department for Communities and Local Government (“DCLG”) consulted on proposals to expedite the possession process where serious housing related anti-social behaviour or criminality had already been proved in another court. In these circumstances landlords could choose to use, instead of existing discretionary grounds for possession, a new mandatory ground. This would provide the landlord with an unqualified right of possession, subject only to the court’s considering the proportionality of the decision to seek possession (where the landlord is a public authority) where this is required by the decision of the Supreme Court in *Manchester City Council v Pinnock* [2011] 2 AC 104.
18. The discretionary grounds for possession for anti-social behaviour (which also includes criminal behaviour) referred to above apply only where the behaviour has taken place in, or in the locality of, the dwelling house.
19. Following the riots in August 2011, and concerns about “riot tourism”, DCLG broadened the consultation on the new mandatory power of possession to cover proposals to extend the scope of the discretionary ground so that landlords would have powers to seek to evict a tenant where they, or a member of their household, are engaged in riot related offences anywhere in the UK.
20. Final proposals, in the light of consultation, were published alongside and as part of the May 2012 White Paper *Putting victims first: more effective responses to anti-social behaviour*. Part 5 gives effect to these. In addition, following representations from landlords, and in light of the submissions to the Home Affairs Select Committee on the draft Anti-social Behaviour Bill, Part 5 extends the existing discretionary grounds for possession for anti-social behaviour to enable landlords to seek possession where criminality or anti-social behaviour is directed against them or their contractors or staff, wherever this occurs.

The Community Remedy

21. On 9 October 2012, the Home Secretary announced her intention to legislate to introduce a community remedy. This would be a menu of community sanctions for low-level crime and anti-social behaviour, sponsored by the Police and Crime Commissioner (“PCC”) (or in London, the Mayor’s Office for Policing and Crime and the Common Council of the City of London). It would be used as part of informal and formal out-of-court disposals. The aim is to help PCCs make community justice more responsive and accountable to victims and the public, with proportionate but meaningful punishments.

³ These relevant grounds on which a court may order repossession under these provisions are that: the tenant or a person residing in or visiting the dwelling-house: (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or (b) has been convicted either of using the dwelling-house or allowing it to be used for immoral or illegal purposes, or of an indictable offence committed in, or in the locality of, the dwelling-house.

A consultation on the community remedy ran from December 2012 to March 2013. The results of the consultation were published on 9 May 2013.⁴

Part 7: Dangerous Dogs

22. *The Coalition: Our Programme for Government* included a commitment to:
- “ensure that enforcement agencies target irresponsible owners of dangerous dogs
23. On 23 April 2012, the Department for Environment, Food and Rural Affairs (“Defra”) announced a consultation⁵ on a package of measures to tackle irresponsible dog ownership (House of Commons, Official Report, columns 30WS to 32WS; House of Lords, Official Report, columns 146WS to 148WS). Amongst other things, the consultation sought views on amendments to the Dangerous Dogs Act 1991 (“the 1991 Act”) to extend the offence of a dog being dangerously out of control and to allow owners of dogs seized as suspected dangerous dogs or prohibited types to retain possession of their dogs until the outcome of court proceedings. The Secretary of State for Environment, Food and Rural Affairs published the response to the consultation and announced the Government’s response in a further written ministerial statement on 6 February 2013 (House of Commons, Official Report, columns 15WS to 18WS; House of Lords, Official Report, columns 13WS to 16WS). Draft clauses to give effect to the proposed changes to the 1991 Act, and to clarify how the courts should interpret the test for dangerousness as a result of the High Court judgement in the case of *Sandhu*,⁶ were published by the Department for pre-legislative scrutiny by the Environment, Food and Rural Affairs Select Committee on 9 April 2013.⁷ The Committee published its report on 16 May 2013 and the Government’s response on 9 September 2013.⁸
24. During Commons Committee stage of the Bill, Richard Fuller MP tabled an amendment seeking to increase the maximum penalty (currently two years imprisonment) for an aggravated offence (that is, where a dog is dangerously out of control and injures a person or an assistance dog) under section 3 of the 1991 Act (Public Bill Committee, Official Report, 4 July 2013, columns 333 to 352). In response to the debate, the Minister undertook to consult on the issue. Defra subsequently undertook a consultation and in October 2013 published a summary of the responses to the consultation.⁹ Section 106 also amends section 3 of the 1991 Act to effect an increase in the maximum penalty.

Part 8: Firearms

Firearms control

25. The use of illegal firearms by urban street gangs and organised criminal groups is a continuing cause of concern. In 2010 the Home Affairs Select Committee conducted an inquiry into firearms control. In its report (Third Report of Session 2010-2011, HC 447) the Committee recommended that the Government should “introduce new offences for supply and importation of firearms to ensure that those guilty of such offences face appropriate penalties”. In its report *Ending Gang and Youth Violence*,¹⁰ published in November 2011, the Government undertook to consult “on the need for a new offence of possession of illegal firearms with intent to supply, and the penalty level for illegal firearms importation”. The consultation document, *Consultation on legislative changes to firearms control*, was published on 8 February 2012.¹¹ The Government’s response to the consultation was published on 22 October 2012. In a

4 <https://www.gov.uk/government/consultations/community-remedy-consultation>

5 The consultation document ‘Promoting more responsible dog ownership: proposals to tackle irresponsible dog ownership’ is available at: <http://www.defra.gov.uk/consult/2012/04/23/dangerous-dogs-1204/>

6 *R on the Application of Sandhu v Isleworth Crown Court and Defra* [2012] EWHC 1658 (Admin)

7 The Draft Dangerous Dogs (Amendment) Bill, Cm 8601, <http://www.official-documents.gov.uk/document/cm86/8601/8601.pdf>

8 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmenvfru/637/63702.htm>

9 <https://www.gov.uk/government/consultations/dangerous-dogs-maximum-prison-sentences-for-dog-attacks>

10 <http://www.homeoffice.gov.uk/publications/crime/ending-gang-violence/>

11 <http://www.homeoffice.gov.uk/publications/about-us/consultations/firearms-legislation/>

written ministerial statement (House of Commons, Official Report, column 44WS; House of Lords, Official Report, column WS1), the Minister for Policing and Criminal Justice announced that the Government would increase the maximum penalty for the illegal importation of firearms to life imprisonment and create a new offence of possession with intent to supply with a maximum sentence of life imprisonment. Sections 108, 109 and 111 give effect to this.

Firearms licensing – Persons previously convicted of crime

26. Two loopholes have come to light in the Firearms Act 1968 (“the 1968 Act”). At present, persons with suspended sentences are not prohibited from possessing firearms or shotguns in the same way as persons who have served custodial sentences. In 2010, the Home Affairs Select Committee recommended that “the legislation should be amended to clarify that persons in receipt of wholly suspended sentences are subject to the same prohibitions from obtaining a licence to hold section 1 firearms or shotguns as they would be if their sentence had not been suspended”. The Government undertook to carry out further work to assess the practicalities of implementing such a change, which section 110 now makes.¹² The second change that section 110 makes is to ensure that prohibited persons are unable to possess antique firearms. Intelligence suggests that there is growing interest from criminal groups in antique firearms, which can currently be possessed as ornament or curiosities without the need to hold a firearms certificate.

Firearms licensing – British Transport Police

27. The development of a British Transport Police (“BTP”) armed capability to respond as and when necessary to protect the public and avoid the need for other police forces, such as the Metropolitan Police, to divert their armed resources at times of heightened threat, was announced in a written ministerial statement on 24 May 2011 (House of Commons, Official Report, column 51WS; House of Lords, Official Report, column WS109). The establishment of that capability has been hampered by the current firearms licensing arrangements which place BTP officers in a different position to that enjoyed by officers from the territorial police forces in England and Wales and the Police Service of Scotland. The provisions of the 1968 Act apply to “police forces” with modifications which mean that police forces are not required to obtain certificates for firearms under the 1968 Act. However, the term “police force” is not defined in the 1968 Act. The Interpretation Act 1978 provides a general definition that any reference to “police” within legislation takes its definition from the Police Act 1996 (“the 1996 Act”) or in relation to Scotland, the Police and Fire Reform (Scotland) Act 2012, but neither Act includes BTP. The result of this anomaly is that BTP officers are not deemed “Crown servants” for the purpose of the 1968 Act and therefore do not benefit from the modifications to the Act that apply to police officers.
28. Individual officers, who may be required to exercise deadly force in the execution of their statutory functions in the protection of the public, must therefore apply to their local police force in a private capacity for a firearms certificate to enable them to perform a role on behalf of the State. They must rely on the same legal authority to possess firearms, and follow the same licensing procedure as individuals holding firearms for the purposes of sport and recreation. Apart from this unsatisfactory legal position, there are operational and procedural disadvantages to the current approach, which limit the flexibility of deployment and potentially undermine the capability. Section 112 brings BTP firearms officers within the modification in section 54 of the 1968 Act.

¹² Government Response to the Third Report from the Home Affairs Select Committee Session 2010-11, HC 4447, <http://www.official-documents.gov.uk/document/cm81/8155/8155.pdf>

Part 9: Protection from sexual harm and violence

Sexual harm prevention orders and sexual risk orders, etc

29. The Sexual Offences Act 2003 (“the Sexual Offences Act”) contains provision for three civil preventative orders:
- A sexual offences prevention order (“SOPO”) – This can be made where an offender has been convicted of a relevant sexual or violent offence and prohibitions are necessary to protect the public from serious sexual harm. A SOPO prohibits the offender from doing anything described in the order;
 - A foreign travel order (“FTO”) – This can be made where an offender has been convicted of a sexual offence involving children and there is evidence that the offender intends to commit further sexual offences involving children abroad. A FTO prohibits travel to the country or countries specified in it (or to all foreign countries, if that is what the order says); and
 - A risk of sexual harm order (“RoSHO”) – This can be imposed where a person aged 18 or over has done a specified act in relation to a child under 16 on at least two occasions. To seek a RoSHO, it is not necessary for the defendant to have a conviction for a sexual (or any) offence. A RoSHO prohibits the defendant from doing anything described in it.
30. **Section 113** and Schedule 5 amend the Sexual Offences Act to repeal the SOPO, FTO, and RoSHO in England and Wales and replace them with two new orders: the sexual harm prevention order and the sexual risk order. The creation of these new orders follows an independent review of the existing orders in the Sexual Offences Act carried out by Hugh Davies QC, which was published in May 2013.¹³ That review concluded that the existing civil prevention orders were not fit for purpose and failed to deliver adequate protection for children from sexual abuse. The report recommended a rationalisation and strengthening of the civil orders provided for in the Sexual Offences Act. The aim of the new orders is to provide enhanced protection for both the public in the UK and children and vulnerable adults abroad.

Use of premises for child sex offences

31. The National Group on Sexual Violence against Children and Vulnerable People (SVACV) is a panel of experts that was established by the Government to co-ordinate and implement the learning from recent inquiries into historical sexual abuse and current sexual violence cases. On 24 July 2013, the Government published a progress report and action plan on the work of the Group.¹⁴ The action plan included work to enhance measures to disrupt and prevent child sexual exploitation (“CSE”), including raising awareness within areas or environments associated with CSE, for example, the night time economy, hotels and bed and breakfast accommodation.
32. A feature of recent CSE cases has been the use of premises such as hotels, take-away outlets or accommodation to groom and sexually exploit children.
33. Powers to close premises are available under Part 2A of the Sexual Offences Act. However, these relate only to prostitution and pornography offences. They do not apply to premises which are being used to perpetrate other sexual offences against children. The provisions in section 115 of and Schedule 6 to the Act extend the closure powers in the Sexual Offences Act so that they can be used in connection with a wider range of offences and to conduct preparatory to offences (such as grooming). Sections 116 to 118 provide the police with an additional tool to tackle CSE taking place at hotels, guest houses and bed and breakfast accommodation. They will allow the police to require

¹³ http://www.ecpat.org.uk/sites/default/files/the_davies_review.pdf

¹⁴ <https://www.gov.uk/government/publications/sexual-violence-against-childrenand-vulnerable-people-national-group>

such establishments to provide information about guests, where they reasonably believe CSE has been or will be taking place on the premises.

Violent offender orders

34. Part 7 of the Criminal Justice and Immigration Act 2008 provides for violent offender orders (“VOO”), which are civil preventative orders that can be made by the courts on application from the police to impose restrictions on offenders convicted of specified violent offences who pose a risk of serious violent harm to the public in the UK. A VOO may contain any restriction the court considers necessary for protecting the public from serious violent harm, for example, by prohibiting an offender’s access to certain places, premises, events or people to whom they pose the highest risk. VOOs may also be made in relation to offenders with convictions for an offence committed overseas which would have been a specified offence had the act giving rise to the conviction been done in the United Kingdom.
35. The offences on the basis of which a VOO may be sought do not currently include murder committed overseas. Murder was not originally included on the list of specified offences, because an individual convicted in the UK would be subject to licence conditions for life, making a VOO unnecessary. To amend the list of offences in respect of which a VOO may be sought, primary legislation is required.
36. In a report into the circumstances of the death of Maria Stubbings, who was murdered by her ex-partner, Marc Chivers, the Independent Police Complaints Commission highlighted that gaps in the law in respect of the supervision of offenders convicted overseas presents a significant risk to public safety.¹⁵

Part 10: Forced marriage

37. The Forced Marriage (Civil Protection) Act 2007 inserted a new Part 4A in the Family Law Act 1996 which provides a specific civil remedy – the forced marriage protection order – against forced marriage in England and Wales. A forced marriage protection order may contain as many provisions as the court deems necessary to protect a person who is at risk of forced marriage or who has already been forced into a marriage. This could include, for example, provisions not to threaten, harass or use force against the person concerned; to surrender the person’s passport or other travel document; and not to enter into any arrangements for the engagement or marriage of the person to be protected, whether civil or religious, in the UK or abroad. Breach of a forced marriage protection order could otherwise only be dealt with as a contempt of court punishable with a fine or a custodial sentence of up to two years’ imprisonment.
38. On 10 October 2011, the Prime Minister announced the Government’s intention to make the breach of a forced marriage protection order a criminal offence. A consultation published in December 2011¹⁶ sought views on how the new offence should be framed, specifically on a proposal to use as a model the existing offence of breaching a non-molestation order which a court may make to protect a person from domestic violence. That consultation also sought views on whether forcing someone to marry against their will should become a criminal offence, or whether the existing civil remedy, set out in Part 4A in the Family Law Act 1996, was sufficient. A majority were in favour of the creation of a new offence and the Government concluded that criminal offences were necessary, in addition to the civil regime, to act as an effective deterrent, to properly punish perpetrators, and to fulfil the United Kingdom’s international obligations under the Istanbul Convention signed in 2012. The Prime Minister announced on 8 June 2012 that forced marriage would be criminalised.¹⁷ A summary of responses to the consultation was published in June 2012.

¹⁵ http://www.ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Maria%20Stubbings%20-%20Final%20Report%20for%20Publication.pdf

¹⁶ <http://www.homeoffice.gov.uk/publications/about-us/consultations/forced-marriage/>

¹⁷ <http://www.number10.gov.uk/news/forced-marriage-to-become-criminal-offence/>

Part 11: Policing etc

College of Policing

39. The Home Office's plans for policing reform, published in July 2010, set out in *Policing in the 21st Century*¹⁸ included proposals for strengthening the national structures in policing by, amongst other things, phasing out the National Policing Improvement Agency ("NPIA"). Among the functions undertaken by the NPIA was the provision of learning and development services to police forces. Following this commitment to phase out the NPIA, the Home Secretary commissioned Chief Constable Peter Neyroud to carry out a review of police leadership and training. The outcome of his review was published on 15 April 2011.¹⁹ The principal recommendation of the review was the creation of a professional body for the police in England and Wales. The Home Secretary published her response to this review on 15 December 2011 (House of Commons, Official Report, columns 125WS to 127WS; House of Lords, Official Report, columns WS157 to WS159) and signalled her intention to establish a professional body ("the College of Policing"). On 1 December 2012, some of the functions, assets and people that had previously worked for the NPIA transferred to the College of Policing (which has been established as a company limited by guarantee). The NPIA was formally abolished on 7 October 2013 when section 15(2) of the Crime and Courts Act 2013 was brought into force.
40. The purpose of the College of Policing is to support the fight against crime and protect the public by ensuring professionalism in policing. It aims to do this through the delivery of five key areas of responsibility. First, the College will have the responsibility for setting standards and developing guidance and policy for policing. Second, it will build and develop the research evidence base for policing. Third, it will support the professional development of police officers and staff. Fourth, it will support the police, other law enforcement agencies and those involved in crime reduction to work together. Fifth, it will identify and develop the ethics and value of the police. Where necessary, sections 123 to 130 establish the legislative basis for the College to discharge its responsibilities.

Review bodies for police remuneration etc

41. The terms and conditions of service for police officers in the United Kingdom are set out in regulations made by the Secretary of State (for the police forces in England and Wales), Scottish Ministers (for the Police Service of Scotland) and the Department of Justice in Northern Ireland (for the Police Service of Northern Ireland). The current police pay machinery is made up of the Police Negotiating Board for the United Kingdom ("PNB"). The PNB's remit is to facilitate negotiations between the Official and Staff Sides, which represent those with responsibility for governing and maintaining police forces in the UK²⁰ and those representing members of police forces respectively.²¹ The PNB is specifically tasked with considering changes to police officer pay; allowances; hours of duty; leave; the issue, use and return of police clothing, personal equipment and accoutrements; and pensions; and making agreed recommendations to the various Ministerial authorities on these matters. Where agreement cannot be reached, the PNB's constitution provides for reference of the disputed matter to an independent Police Arbitration Tribunal, which considers evidence from both sides and makes findings which have the status of an agreed recommendation from the PNB. There is a separate mechanism for consultation on

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118239/policing-21st-full-pdf.pdf

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118227/report.pdf

²⁰ The Official Side comprises, in the case of England and Wales, representatives of the Home Secretary, Police and Crime Commissioners (in London, the Mayor's Office for Policing and Crime and the Common Council of the City of London police area) and chief constables. In Scotland and Northern Ireland the equivalent persons are the Scottish Cabinet Secretary for Justice, the Northern Ireland Minister of Justice, the Scottish Police Authority, the Northern Ireland Policing Board and the chief constables of the Police Service of Scotland and the Police Service of Northern Ireland.

²¹ The Staff Side comprises the Chief Police Officers' Staff Association, Police Superintendents' Association of England and Wales, the Police Federation of England and Wales and their equivalents in Scotland and Northern Ireland.

regulations concerning other terms and conditions of service outside the remit of the PNB. In England and Wales, this is the Police Advisory Board for England and Wales (“PABEW”), a separate body which also has the function of advising the Secretary of State on general questions which affect the police. In Scotland and Northern Ireland, legislation provides for consultation with the bodies that govern and maintain the police forces, and the members of those forces.

42. On 1 October 2010 the Home Secretary appointed Tom Winsor to review the remuneration and conditions of service of police officers in England and Wales, and to make recommendations which will enable police forces to manage their resources to serve the public more cost effectively, taking account of the current state of the public finances. The second and final report of the review, containing reforms to be implemented in the longer term, was published on 15 March 2012.²² Amongst other things, the review recommended that “the Police Negotiating Board should be abolished and replaced by an independent police officer review body”.²³ The Home Secretary responded to the final report in a Written Ministerial Statement on 27 March 2012 (House of Commons, Official Report, columns 126WS to 128WS); in that statement she indicated that the Government would consult on proposals for implementing the Winsor recommendations on changes to the police officer pay machinery.
43. In October 2012, the Government launched a consultation to seek views on how best to implement recommendations made by Tom Winsor on replacing the current police pay machinery with an independent police pay review body. The Government’s response to the consultation was published on 25 April 2013.²⁴ In a Written Ministerial Statement (House of Commons, Official Report, column 68WS; House of Lords, Official Report, column WS174 to WS175), the Home Secretary announced that, following consideration of consultation responses on how a new police pay review body should be implemented, the Government would establish a Police Remuneration Review Body to consider the remuneration of police officers of the rank of chief superintendent or below. This body will consider evidence from interested parties and make recommendations to Government on police officer remuneration. The remuneration of chief officers (that is, officers of the rank of Assistant Chief Constable, or the equivalent ranks in the Metropolitan Police Service and the City of London Police, and above) will be considered by the Senior Salaries Review Body. Sections 131 to 134 and Schedule 7 give effect to these reforms by abolishing the PNB, establishing the Police Remuneration Review Body and modifying the functions of the PABEW. These measures apply in relation to police officers in England and Wales and Northern Ireland. The Criminal Justice (Scotland) Bill introduced into the Scottish Parliament on 20 June 2013 includes provision for a new Police Negotiating Board for Scotland.

Independent Police Complaints Commission

44. The Independent Police Complaints Commission (“the IPCC”) was established by Part 2 of the Police Reform Act 2002 (“the 2002 Act”) to provide an effective and independent means of overseeing the investigation of complaints and alleged misconduct relating to the police in England and Wales. It has a general duty to secure public confidence in the arrangements for handling complaints (and other matters). The IPCC came into being in April 2004, replacing its predecessor, the Police Complaints Authority.
45. The 2002 Act sets out the statutory framework in accordance with which the IPCC has oversight of police complaints, conduct matters and death or serious injury (“DSI”) matters. These are the three principal ways in which a matter may be considered by the

22 <http://www.review.police.uk/>. Publication of the report was accompanied by a Written Ministerial Statement by the Home Secretary on 15 March 2012 (House of Commons, Official Report, column 38WS).

23 Recommendation 115. Associated recommendations dealt with the membership and terms of reference of the new police pay review body (recommendation 116), the transfer to the Policy Advisory Boards of the responsibility for considering changes to police pensions (recommendation 117) and the arrangements for setting the pay of chief officers (recommendation 118).

24 <https://www.gov.uk/government/consultations/consultation-on-implementing-a-police-pay-review-body>

IPCC: as a complaint, relating to the conduct of a person serving with the police; as a “conduct matter”, where there is no complaint, but there is an indication that a person serving with the police may have committed a criminal offence or behaved in a way which would justify disciplinary proceedings; or where there has been a DSI following direct or indirect contact with the police.

46. Chief officers and local policing bodies (that is Police and Crime Commissioners or, in London, the Mayor’s Office for Policing and Crime and the Common Council of the City of London) have a duty under the 2002 Act to record complaints, conduct matters and DSI matters that fall within the 2002 Act and in respect of which they are the appropriate authority. All DSI matters and certain categories of complaints and conduct matters (as set out in paragraphs 4 and 13 of Schedule 3 to the 2002 Act and regulations 4 and 7 of the Police (Complaints and Misconduct) Regulations 2012) must be referred to the IPCC. The IPCC encourages appropriate authorities to refer complaints or incidents that do not come within these categories but where the gravity of the subject matter or exceptional circumstances justifies referral. The IPCC may also require any complaint or recordable conduct matter to be referred to it by the appropriate authority.
47. When cases are referred to the IPCC, it assesses the seriousness of the case and the public interest and determines the form of investigation. There are four types of investigation:
 - **Independent investigations** – These are carried out by IPCC investigators and overseen by an IPCC Commissioner. The IPCC investigator has all the powers and privileges of a police constable.
 - **Managed investigations** – These are carried out by Professional Standards Departments (“PSDs”) of police forces under the direction and control of the IPCC.
 - **Supervised investigations** – These are carried out by police PSDs under their own direction and control. The IPCC sets the terms of reference and receives the final report.
 - **Local investigations** – These are carried out entirely by police PSDs.
48. Following the publication of the Hillsborough Independent Panel’s report²⁵ on 12 September 2012 and the subsequent debate in the House of Commons on 22 October 2012 (Official Report columns 719 to 804), the powers and capacity of the IPCC came into the spotlight. As a result, the Government gave a commitment to provide the IPCC with the powers and resources required to exercise its statutory functions in investigating complaints against those serving with the police.
49. The Police (Complaints and Conduct) Act 2012, and the Police (Complaints and Conduct) Regulations 2013 provide the IPCC with new powers to: (a) require an individual currently serving under the direction and control of a chief officer, who witnessed matters under investigation, to attend an interview by the IPCC; and (b) investigate a matter which was previously the subject of an investigation by its predecessor, the Police Complaints Authority.
50. Separately, the IPCC made the case for a further enhancement of its powers in its May 2012 report on *Corruption in the Police Service in England and Wales*.²⁶ In that report the IPCC argued that in order to investigate directly and tackle more cases of corruption, it would need to be able to investigate “contracted out employees, to gain access to data held by third parties and to require formal response to our recommendations”.

²⁵ <http://hillsborough.independent.gov.uk/>

²⁶ http://www.ipcc.gov.uk/news/Pages/pr_240512_corruptionreport.aspx?auto=True&l1link=pages%2Fnews.aspx&l1title=News%20and%20press&l2link=news%2FPages%2Fdefault.aspx&l2title=Press%20Releases

51. The Home Affairs Select Committee (“HASC”) subsequently conducted an inquiry into the IPCC. In its report, published on 1 February 2013,²⁷ HASC concluded that “it is vital to have a body that is truly independent and competent to get to the truth of the matter and ensure that misconduct and criminality in the police force cannot go unpunished”. In identifying weaknesses in the IPCC’s ability to inspire public confidence, HASC concluded that “the Commission must bring the police complaints system up to scratch and the Government must give it the powers it needs to do so”. Sections 135 to 139 implement two of the specific recommendations of the HASC report and confer other powers on the IPCC intended to enable it to discharge its statutory functions more effectively.
52. In addition to strengthening the IPCC’s powers, the Home Secretary announced in an oral statement on Police Integrity on 12 February 2013 (House of Commons, Official Report, columns 713 to 714) that she would transfer to the IPCC responsibility for dealing with all serious and sensitive cases and, as a corollary to this, transfer resources from forces to the IPCC in order to ensure that it has the budget and the manpower to do its work. Annex D sets out details of the number of complaints made against police forces in England and Wales in 2011/12 and how these, and other conduct and DSI matters, were dealt with by forces and the IPCC.

Appointment of chief officers of police

53. The *Independent Review of Police Officer Terms and Conditions* carried out by Tom Winsor set out proposals for three direct entry schemes into the police. These were a fast track to inspector rank, direct entry at superintendent rank and, for those with equivalent experience from overseas, direct entry at chief constable rank.
54. In a Written Ministerial Statement on 27 March 2012 the Home Secretary welcomed these proposals seeing them as enabling policing to draw upon the best pool of talent available (House of Commons, Official Report, columns 126 WS to 128 WS). A public consultation was launched on 30 January 2013 on how to implement the direct entry schemes. The response to the consultation was published on 14 October 2013.²⁸ Section 140 of the Act makes the necessary amendments to the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) to facilitate direct entry at chief constable rank.

Financial arrangements for chief officers of police

55. The 2011 Act established chief constables (and the Commissioner of Police of the Metropolis) as corporations sole. Subject to the consent of their Police and Crime Commissioner (in London, the Mayor’s Office for Policing and Crime), these chief officers of police are able to spend and invest money and enter into contracts on their own behalf.
56. The 2011 Act does not apply local government legislation to chief officers of police, other than requiring them to have a qualified chief finance officer in the same manner as a local authority (or a Police and Crime Commissioner). In particular, Part 1 of the Local Government Act 2003, which sets out a framework of capital finance controls, was not applied. It is now considered desirable for this control framework to apply to chief officers of police. Section 141 achieves this. The section does not apply to the City of London Police as the 2011 Act did not change the policing arrangements in the City, and in particular did not establish the Commissioner of the City of London Police as a corporate entity.

²⁷ House of Commons Home Affairs Select Committee report, ‘Independent Police Complaints Commission’, Eleventh Report of Session 2012–13: [cmhaff/494/494.pdf](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/494/494.pdf)><http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/494/494.pdf>

²⁸ <https://www.gov.uk/government/consultations/consultation-on-the-implementation-of-direct-entry-in-the-police>

Local commissioning of services

57. The 2011 Act established directly elected local Police and Crime Commissioners with responsibility for maintaining the police force in their area and holding the chief constable to account for the full range of their responsibilities. The first Police and Crime Commissioners were elected, and took up their posts, in November 2012.
58. Since the establishment of Police and Crime Commissioners opportunities for them to assume additional responsibilities on behalf of local communities have been identified. In particular, on 2 July 2012 the Government published its response to the consultation *Getting it Right for Victims and Witnesses*.²⁹ The response set out a package of reforms to the way the Government commissions support services for victims and witnesses of crime, outside of those directly provided by criminal justice agencies. These are services which support victims in coping with the immediate impacts of crime and, as far as is possible, to recover from the harm experienced. The intention is to move from the current centrally commissioned arrangements to a mixed model of national and local commissioning with support targeted at those who have suffered the greatest impact from crime: victims of serious crime, the most persistently targeted and the most vulnerable. Local policing bodies (that is, Police and Crime Commissioners and, in London, the Mayor's Office for Policing and Crime and the Common Council of the City of London) are regarded as the most appropriate bodies to take on the local commissioning role, using grant funding provided to them by the Government for the purpose.
59. The kinds of services that Police and Crime Commissioners may provide or commission for victims of crime include practical support such as the provision of information, refuges or shelters, financial support and guidance, and advice and assistance on security measures. They may also include emotional support services such as counselling, treatment for post-traumatic stress disorder and peer support groups.
60. [Section 143](#) expands Police and Crime Commissioners' existing powers to provide or arrange for the provision of services which secure, or contribute to securing, crime and disorder reduction and creates a clear statutory basis upon which all local policing bodies can provide or commission services for the support of victims of, and witnesses to, crime and anti-social behaviour as well as for other persons affected by offences or anti-social behaviour.

Power to take further fingerprints or non-intimate samples

61. The Police and Criminal Evidence Act 1984 ("PACE") currently allows DNA sampling only once in an investigation. If the Crown Prosecution Service ("CPS") decides not to proceed with a case where the accused person has not previously been convicted or charged with a qualifying offence, that person's DNA must be deleted. However, the CPS has now introduced a new procedure, *Victims' Right to Review*, under which an investigation may be restarted. A successful review of a decision not to prosecute will thus allow no way to retake DNA as it has already been taken during the investigation. The same considerations apply to fingerprinting as to DNA sampling. Section 144 therefore allows the taking of fingerprints and DNA in an investigation, if the previous prints, samples or profile taken during that investigation had been deleted.

Power to retain fingerprints or DNA profile in connection with different offence

62. Section 63P of PACE, which was inserted into PACE by the Protection of Freedoms Act 2012, provides that where biometrics (DNA profiles and fingerprints) taken in the investigation of one offence lead to the person being arrested, charged or convicted of a different offence, they may be retained as if the biometrics had been taken in connection with the latter offence. For example, a person may be arrested for offence A and have their biometrics taken, then be investigated for offence B. No further action is taken

29 <https://consult.justice.gov.uk/digital-communications/victims-witnesses>

in relation to offence A, but the person is prosecuted and convicted of offence B. The power to retain biometrics taken from a convicted person applies in this case, but only if the biometrics taken for offence A “lead to” the person being arrested for or charged with offence B. If there is no such causal link, the biometrics cannot be retained. This has particular implications for the retention of DNA profiles, as DNA is generally not taken more than once (to avoid unnecessary costs) whereas fingerprints are taken on each arrest, as they are used to verify identity as well as to check on possible links to crime scenes. If section 63P had been brought into force without qualification, DNA profiles taken in the past from many convicted persons could no longer be held. The [Protection of Freedoms Act 2012 \(Destruction, Retention and Use of Biometric Data\) \(Transitional, Transitory and Saving Provisions\) \(Amendment\) \(No. 2\) Order 2013 \(SI 2013/2770\)](#) made transitional provisions to address this until 30 September 2014. Section 145 makes these arrangements permanent.

Retention of personal samples that are or may be disclosable

63. The Protection of Freedoms Act 2012 (“PoFA”) amended PACE to require that all samples taken from individuals (such as cheek swabs for DNA, blood, hair and urine) must be destroyed within six months. (This provision has not yet been brought into force fully.) This applies whether the samples were taken for the purpose of including the resultant profile on the National DNA Database or for evidence in court. It differs from PoFA’s treatment of all other evidence, where retention of evidence for court is governed by the Criminal Procedure and Investigations Act 1996 (“CPIA”) and its associated Code of Practice. During implementation of PoFA, concerns were raised by the CPS and the police that this requirement to destroy samples could jeopardise court proceedings because arguments about samples and the conclusions drawn from their analysis cannot be dealt with properly if they no longer exist. Section 146 therefore amends PACE so that samples which may be needed in court proceedings will be governed by the CPIA in the same way as other types of evidence – thereby enabling them to be retained during investigation and prosecution. If PoFA is brought fully into effect without this change, forces would have to seek court orders on an individual basis for retention of samples, which would be likely to result in a large number of applications for such orders, particularly in relation to serious cases. This would be procedurally cumbersome and would result in higher costs for the police and courts.
64. The amendment provides that once CPIA no longer applies, the sample must be destroyed, and prevents a sample retained under CPIA from being used other than for the purposes of any proceedings for the offence in connection with which it was taken.

Power to seize invalid passports etc

65. The Government’s ability to disrupt individuals from travelling abroad to engage in terrorism-related and other serious or organised criminal activity has become increasingly important with developments in various parts of the world. The Home Secretary has the power under the Royal Prerogative to refuse or withdraw a British passport on public interest grounds. The public interest criteria were updated in a Written Ministerial Statement on 25 April 2013.³⁰
66. There are no explicit statutory enforcement powers specifically to require the return of a cancelled passport. There is also a need to provide clarity on the statutory powers available at ports to disrupt people from travelling on invalid documents. Section 147 and Schedule 8 address these issues by creating two new sets of powers. The first is for police officers, immigration officers and designated customs officials to search for and seize invalid travel documents (including cancelled passports) at ports. The second comprises powers for police officers to search for and seize passports cancelled on public interest grounds within the UK (not at ports) in specified circumstances.

30 <https://www.gov.uk/government/speeches/the-issuing-withdrawal-or-refusal-of-passports>

Port and border controls

67. Schedule 7 to the Terrorism Act 2000 (“the 2000 Act”) provides for counter-terrorism port and border controls. It enables an examining officer (who may be a constable, an immigration officer, or a customs officer designated for the purpose of the Schedule by the Secretary of State and the Commissioners for Revenue and Customs) to stop and question, and where necessary detain and search a person travelling through a port, airport, international rail station or the border area. Such an examination is for the purpose of determining whether the person appears to be someone who is or has been concerned with the commission, preparation or instigation of acts of terrorism. An examining officer may question a person whether or not he has grounds for suspecting that person may be concerned with terrorism. Equally, stopping an individual does not necessarily mean that the examining officer believes the person to be a terrorist.
68. An examining officer may require a person to answer questions or provide certain documents. No period of examination may exceed nine hours (reduced to a maximum of six hours by this Act). Wilful obstruction or frustration of an examination is an offence under the 2000 Act.
69. Only around three people in every 10,000 are examined as they pass through the UK’s ports and borders. Most examinations, 97%, last under one hour. Between 2004 and 2009, the number of terrorist-related arrests that resulted directly from a Schedule 7 stop was about 20 per year. In addition, Schedule 7 examinations have produced information that has contributed to long and complex intelligence-based counter-terrorism investigations.³¹
70. The Home Secretary launched a public consultation on 13 September 2012 on the review of the operation of Schedule 7 (House of Commons, Official Report, column 15WS) with a view to ensuring that the powers struck a proper balance between the need to maintain the protection of the UK Border and respect for individual freedoms.³² The response to the consultation was published on 11 July 2013. Section 148 and Schedule 9 make the changes to Schedule 7 to the 2000 Act arising from the consultation.

Inspection of the Serious Fraud Office

71. The Serious Fraud Office (“SFO”) was created in 1988 by the Criminal Justice Act 1987 to investigate and prosecute serious or complex fraud. That Act provides the Director of the SFO with the power to investigate and prosecute any suspected offence which involves serious or complex fraud, and gives the Director the power to require a person to answer questions or provide information and documents in relation to matters under investigation.
72. HM Crown Prosecution Service Inspectorate (“HMCPSI”), established under the Crown Prosecution Service Inspectorate Act 2000, is an independent inspectorate for the Crown Prosecution Service (“CPS”), the principal prosecuting authority for criminal cases in England and Wales. The purpose of HMCPSI is to enhance the quality of justice through independent inspection and assessment of prosecution services, and in so doing improve their effectiveness and efficiency.
73. In a Written Ministerial Statement on 4 December 2012 (House of Commons, Official Report, column 51WS to 52WS; House of Lords, official report, columns WS54 to

³¹ Data about the exercise of Schedule 7 is included in Annex C. Statistics about the operation of police powers under the Terrorism Act 2000, including Schedule 7 are published online at:

www.gov.uk/government/collections/operation-of-police-powers-under-the-terrorism-act-2000 (covering the period from April 2010) and

<http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/terrorism.html> (covering the period September 2001 to March 2010). A more detailed breakdown of examination times is available for the period April 2009 to March 2012 and is included in Annex C.

³² <http://www.homeoffice.gov.uk/publications/about-us/consultations/schedule-7-review/>

WS56) the Attorney General announced his intention to extend the statutory power of HMCPSI to inspect the SFO. In his statement, the Attorney General noted that the first voluntary inspection of the SFO by HMCPSI, which took place in November 2012, was an important step in building the effectiveness of the SFO and showed the benefits to both the SFO and the Government of independent external inspection.³³ Providing a statutory duty for HMCPSI to inspect the SFO is intended to ensure the continued delivery of these benefits. Section 149 gives effect to this extension of HMCPSI's statutory remit.

Fees for criminal record certificates

74. Since December 2012, the Disclosure and Barring Service has been responsible for issuing certificates to applicants containing details of their criminal records and other relevant information. This function was previously undertaken by the Criminal Records Bureau, which had for some years issued criminal record certificates to volunteers free of charge with the cost of these free certificates being cross-subsidised by fee-paying applicants. It is Government policy that criminal records checks, including the new update service provided by the Disclosure and Barring Service under measures in the Protection of Freedoms Act 2012, should continue to be provided free of charge to volunteers.
75. Interim measures are in place to ensure current fees can lawfully reflect such costs under section 102 of the Finance (No 2) Act 1987.³⁴ Section 151 places these measures on a more transparent legislative basis.

Powers of community support officers

76. Police community support officers ("PCSOs") were introduced in 2002. The main elements of the PCSO role include engaging with the public; providing a visible police presence; enforcing the law and preventing crime, particularly low-level crime and anti-social behaviour; and gathering information.
77. The powers available to PCSOs are provided in Schedule 4 to the Police Reform Act 2002 ("the 2002 Act"). They comprise 20 standard powers that all PCSOs hold (for example, the power to issue a fixed penalty notice for littering and to seize tobacco from a person aged under 16) and further discretionary powers that may be designated by the chief constable.³⁵ The provisions in section 152 and Schedule 10 add further discretionary powers.

Use of amplified noise equipment in vicinity of the Palace of Westminster

78. Part 3 of the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") authorises constables and authorised persons (the Greater London Authority and Westminster City Council) to direct that certain types of activity should not take place in the controlled area of Parliament Square, that is the central area of Parliament Square and the pavements immediately adjoining that area. The prohibited activities are set out in section 143(2) of the 2011 Act and include operating any amplified noise equipment. Section 147 of the 2011 Act provides the Greater London Authority and Westminster City Council (as the responsible authority) with the power to authorise a person to operate amplified noise equipment within the controlled area. Section 153 extends the

³³ The report of the inspection is available at: http://www.hmcp.si.gov.uk/inspections/inspection_no/526/

³⁴ The Police Act 1997 (Criminal Records) (Fees) Order 2004 (SI 2004/1007), as amended by the Protection of Freedoms Act 2012 (Consequential Amendments) No. 2 Order 2013 (SI 2013/1196), specifies functions which the Disclosure and Barring Service may recover the costs of when setting fees under the provisions in Part 5 of the Police Act 1997. The relevant functions are those of issuing, to volunteers, criminal record certificates and enhanced criminal record certificates, and update information in respect of such certificates.

³⁵ A list of both standard and discretionary powers is available on gov.uk:

<https://www.gov.uk/government/publications/police-community-support-officer-powers>

controls on amplified noise equipment to the new “Palace of Westminster controlled area”.

Part 12: Extradition

79. The extradition of persons to and from the United Kingdom is governed by the provisions of the Extradition Act 2003 (“the 2003 Act”).
80. **Part 1** of the Act deals with the surrender of people from the UK to other EU Member States following a European Arrest Warrant (“EAW”).³⁶
81. The process in a Part 1 case is, in summary, as follows:
- On receipt of an EAW from a Part 1 territory, the appropriate authority, which is the National Crime Agency (“NCA”), must decide whether to issue a certificate.
 - Where the NCA issues a certificate the person is arrested pursuant to the EAW.
 - Where the person is arrested, the person is brought before a judge as soon as practicable and, at this initial hearing, the judge must decide whether the person is the person named in the EAW. In cases where the judge decides that that is the case, the judge must fix a date for the extradition hearing.
 - The extradition hearing takes place. At the hearing, the judge must decide whether the offence listed in the EAW is an “extradition offence” and, if the judge is satisfied that it is, must consider whether the person’s extradition is barred by any of a number of reasons. If the judge is satisfied that the person’s extradition is not so barred, and that it is compatible with the European Convention on Human Rights (“the ECHR”), the judge must order extradition.
82. The person may appeal the decision of the judge to order extradition. The right of appeal lies first to the High Court³⁷ and then (in England, Wales and Northern Ireland), with leave, to the Supreme Court.
83. If the district judge decides that extradition is barred, and discharges the person, the requesting state also has a right to appeal against this decision.
84. Part 2 of the 2003 Act deals with extradition from the UK to territories which are designated by order for the purposes of that Part. Those territories are territories with which the UK has entered into extradition arrangements (but which are not other EU Member States). Part 2 territories currently include the USA and many Commonwealth countries; a full list of such territories is set out in Annex E.
85. The process in a Part 2 case is, briefly, as follows:
- On receipt of a request from a Part 2 territory, the Secretary of State³⁸ must decide whether to issue a certificate. Subject to limited exceptions, the Secretary of State must issue a certificate (and send the certificate and request to a judge) if the request is valid.
 - Where the Secretary of State issues a certificate and sends it and the request to a judge, the judge may issue a warrant for the arrest of the person concerned if certain conditions are satisfied.
 - Where the judge issues a warrant, the person may be arrested and, if the person is arrested, he or she must be brought before the judge as soon as practicable. Where that happens, the judge must fix a date for the extradition hearing.

³⁶ The provisions in Part 1 give effect to Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States 2002/584/JHA, as amended by Council Framework Decision 2009/299/JHA

³⁷ In Scotland, references to the High Court are read as references to the High Court of Justiciary.

³⁸ In Scotland, most of the functions which the Secretary of State performs in England, Wales and Northern Ireland are performed by the Scottish Ministers.

- An extradition hearing then takes place. At the hearing, the judge must consider a number of factors including whether the person's extradition is barred for any of the reasons set out in the Act. Provided the judge is satisfied that none of the bars to extradition apply and that the person's extradition is compatible with the ECHR (and nothing else in the relevant sections of Part 2 demands the person's discharge), the judge must send the case to the Secretary of State for a decision on whether to order extradition.
 - The Secretary of State must decide whether he or she is prohibited from ordering extradition on any of the grounds set out in the 2003 Act. Provided the Secretary of State is satisfied that the person's extradition is not prohibited, he or she must order the person's extradition, unless certain limited exceptions apply.
86. A person may appeal the decision of the judge to send the case to the Secretary of State and/or the decision of the Secretary of State to order extradition. It is open to the requesting state to appeal any decision not to send the case to the Secretary of State. As in Part 1 cases, the right of appeal lies first to the High Court and then (in England, Wales and Northern Ireland), with leave, to the Supreme Court.
87. Part 3 of the 2003 Act deals with extradition to the UK and Part 4 covers police powers.
88. The Coalition Programme for Government included a commitment to "review the operation of the Extradition Act – and the US/UK extradition treaty – to make sure it is even handed". The Government commissioned such a review by the Rt. Hon. Sir Scott Baker in September 2010 (House of Commons, Official Report, 8 September 2010 column 18WS). The review report³⁹ was published by the Home Secretary on 18 October 2011 (House of Commons, Official Report, column 62WS to 63WS) and she announced the Government's response in an oral statement on 16 October 2012 (House of Commons, Official Report, columns 164 to 180; House of Lords, Official Report, columns 1373 to 1383). The review recommended a number of changes to the 2003 Act including changes relating to asylum (see paragraphs 9.47-9.59 of the report), time limits for notice of appeal (see paragraphs 10.3-10.9), and leave to appeal (see paragraphs 10.10-10.16). In addition, in a statement on 9 July 2013 on the decision whether the UK should opt out of those EU police and criminal justice measures adopted before the Lisbon Treaty came into force (Official Report, columns 177 to 193), the Home Secretary announced the Government's intention to bring forward a number of additional changes to Part 1 of the 2003 Act, including changes on the issues of proportionality, pre-trial detention and dual criminality. The provisions in Part 12 give effect to these changes and make other miscellaneous changes to the 2003 Act.

Part 13: Criminal Justice and Court Fees

Compensation for miscarriages of justice

89. Article 14(6) of the International Covenant on Civil and Political Rights (which was ratified by the United Kingdom in May 1976) requires State Parties to compensate those who have suffered a "miscarriage of justice". Section 133 of the Criminal Justice Act 1988 ("the 1988 Act"), which extends throughout the United Kingdom, gives effect to that obligation. Section 133 of the 1988 Act provides for the payment of compensation to a person whose conviction has been reversed as a result of a new or newly-discovered fact which shows beyond reasonable doubt that a "miscarriage of justice" has occurred. In England and Wales, the Secretary of State for Justice determines applications under section 133. The Scottish Ministers determine such applications in Scotland. The Department of Justice in Northern Ireland determines all applications under section 133 in that jurisdiction save for certain cases involving sensitive national security information which are determined by the Secretary of State for Northern Ireland.

39 <http://www.homeoffice.gov.uk/publications/police/operational-policing/extradition-review>

90. Section 133 of the 1988 Act has given rise to a significant body of case law and the way section 133 has been interpreted by the courts has changed over time. Prior to May 2011, the test applied was that of “clear innocence”, following the judgment of Lord Steyn in *Mullen*.⁴⁰ However, in May 2011, the majority of the Supreme Court in *Adams*⁴¹ held that the meaning of miscarriage of justice under section 133 was wider than that. Lord Phillips identified two categories of case which would qualify as miscarriages of justice: the first, a case where the new (or newly discovered) fact showed the applicant to be “clearly innocent”; the second, where the new fact “so undermines the evidence against the applicant that no conviction could possibly be based on it”. In January 2013, the Divisional Court, in the case of *Ali and others*,⁴² redefined the second category test to be: “has the claimant established, beyond reasonable doubt, that no reasonable jury (or magistrates) properly directed as to the law, could convict on the evidence now to be considered?” In February 2014, on appeal, the Court of Appeal held that the definition of a miscarriage of justice as articulated by the majority of the Supreme Court in *Adams* was to be preferred over the Divisional Court’s.⁴³
91. [Section 175](#) provides a statutory definition of a miscarriage of justice as a case where the new or newly discovered fact shows beyond reasonable doubt that the applicant did not commit the offence. This new definition will apply to decisions taken by the Secretary of State in England and Wales, and to decisions taken by the Secretary of State for Northern Ireland in relation to applications involving sensitive national security information.
92. At present in England and Wales, some 40 to 50 applications under section 133 are received each year; of these some 2 or 3 are found to be eligible for compensation. Once an application has been accepted as eligible for compensation, the amount to be paid is decided by an Independent Assessor, based on information provided by the applicant. The Secretary of State has no influence over the amount paid, although there are statutory limits (see sections 133A and 133B of the 1988 Act) which restrict the maximum payable to £500,000 where the applicant spent less than 10 years in prison, and £1,000,000 where the period of imprisonment was more than 10 years. These limits were introduced by the Criminal Justice and Immigration Act 2008, and came into force on 1 December 2008.
93. The table below shows awards of miscarriages of justice compensation made under either section 133 of the Criminal Justice Act 1988 or the ex gratia scheme (which was abolished by the Home Secretary in 2006) between 2001 and 2012 in England and Wales.
94. There is no correlation between the numbers of people who have been granted eligibility to the two schemes in any one year by the Secretary of State and the amount of compensation paid by the Government in that year. The process by which the independent assessor decides the amount of compensation that is payable can take some time, so payments may not be made in the same year that the applicant was granted eligibility. The table also shows that one applicant was found eligible for compensation under the ex gratia scheme in 2010/11, well after the scheme was abolished. This application had initially been refused, but the decision was reversed following Judicial Review proceedings.

	<i>No Applications Granted (England & Wales)</i>	<i>Section 133</i>	<i>Ex-Gratia</i>	<i>Paid £M</i>
2001-02	27	17	10	6.2
2002-03	36	25	11	8.2

⁴⁰ <http://www.bailii.org/uk/cases/UKHL/2004/18.html>

⁴¹ http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0012_Judgment.pdf

⁴² <http://www.bailii.org/ew/cases/EWHC/Admin/2013/72.html>

⁴³ <http://www.bailii.org/ew/cases/EWCA/Civ/2014/194.html>

	<i>No Applications Granted (England & Wales)</i>	<i>Section 133</i>	<i>Ex-Gratia</i>	<i>Paid £M</i>
2003-04 -	31	23	8	6.3
2004-05	47	39	8	6.5
2005-06	27	21	6	8.3
2006-07	28	23	5	12.3
2007-08	9	7	2	8.2
2008-09	7	7	0	12.6
2009-10	1	1	0	11.5
2010-11	1	0	1	11.3
2011-12	3	3	N-A	13.2
2012-13	1	1	N-A	1.2

Low-value shop theft

95. The police are empowered to prosecute directly a number of uncontested, low level cases without the involvement of the CPS, and a best practice model for police-led prosecutions is being implemented in a number of pathfinder areas. Police-led prosecutions are designed to be a simpler and more proportionate response to high-volume, low-level offences where the case is uncontested, increasing police discretion to tackle crime in their area, freeing up CPS resource to focus on more complex cases and generating efficiencies in the criminal justice system. On 16 May 2012, as part of the Government's commitment to improve the efficiency of the criminal justice system, the Home Secretary announced her intention in a Written Ministerial Statement to simplify and extend the police-led prosecutions model (House of Commons, Official Report, column 36WS; House of Lords, Official Report, column WS37).
96. Shop theft is a high-volume crime that causes significant harm in local communities. Under current law the police may choose to deal with such offences by means of a Penalty Notice for Disorder,⁴⁴ where this is deemed appropriate. However, approximately 80,000 cases of shop theft come to court each year and the fact that the vast majority of these are dealt with in magistrates' courts (where most cases result in a guilty plea) makes shop theft a suitable offence for the simpler, more proportionate police-led process. In addition, the value of goods stolen is typically low. Research into shop theft in 2006⁴⁵ showed that the median value of goods stolen was £40, and that 90% of cases involved property worth less than £200. Shop theft has, therefore, been identified as a suitable offence for police-led prosecutions. However, the police-led model is designed for summary-only offences, that is, cases that are dealt with in the magistrates' courts rather than the Crown Courts. In order to extend the benefits of this simpler, police-led model to uncontested cases of low-value shop theft, section 176 enables minor offences of shoplifting in England and Wales to be treated as summary only for most purposes.

⁴⁴ A Penalty Notice for Disorder ("PND") is a type of fixed penalty notice that can be issued for a specified range of minor disorder offences, introduced in the Criminal Justice and Police Act 2001. An "upper tier" PND (attracting a £90 penalty) may be issued for theft from a shop (section 1 of the Theft Act 1968) where the goods stolen are below the value of £100. Although a penalty notice is not a conviction it will be recorded in police records and may be disclosed under an enhanced criminal records check.

⁴⁵ Research for the Sentencing Advisory Panel in 2006 <http://www.lccsa.org.uk/assets/documents/consultation/researchreport-theft0806.pdf>

Marital coercion

97. Section 47 of the Criminal Justice Act 1925 abolished the previously existing presumption that a wife who committed any offence (except treason or murder) in the presence of her husband did so under his coercion and should therefore be acquitted, and instead provided a defence to all criminal offences other than treason and murder where a wife could show that she committed the offence in the presence of, and under the coercion of, her husband. The Law Commission concluded in 1977 (*Criminal Law: Report on Defences of General Application*, Law Com. No. 83)⁴⁶ and in 1993 (*Legislating the Criminal Code: Offences against the Person and General Principles*, Law Com. No. 218)⁴⁷ that the defence was not appropriate to modern conditions as it only applies to married women and called for it to be abolished. Section 177 abolishes the defence of marital coercion and accordingly repeals section 47 of the Criminal Justice Act 1925.

Victim Surcharge

98. The duty to order the Victim Surcharge was introduced through section 161A of the Criminal Justice Act 2003 (“the Criminal Justice Act”) which requires a court when dealing with a person for one or more offences to order him or her to pay a surcharge. Section 161B of the Criminal Justice Act gave the Secretary of State the power to specify the amount of Surcharge, which was originally set at £15 whenever an offender was dealt with by way of a fine in the [Criminal Justice Act 2003 \(Surcharge\) \(No 2\) Order 2007 \(SI 2007/1079\)](#).
99. The Victim Surcharge has raised approximately £52.4 million over the last six years (£3.8 million in 2007/08, £8.1 million in 2008/09, £9.2 million in 2009/10, £10.5 million in 2010/11, £10.3 million in 2011/12 and £10.5 million in 2012/13) with all revenue being used by the Government to fund victim support services.
100. In the response to the consultation, *Getting it right for victims and witnesses*,⁴⁸ the Government set out proposals to ensure that offenders are responsible for making greater reparation to victims and for contributing more to the cost of victim support services.
101. Under the [Criminal Justice Act 2003 \(Surcharge\) Order 2012 \(SI 2012/1696\)](#) (“the 2012 Order”), which came into force on 1 October 2012, courts are now required to order an adult offender sentenced to a fine to pay a surcharge equating to 10% of the fine subject to a minimum of £20 and a maximum of £120. The 2012 Order also requires the court to order a surcharge of £60 where an adult offender is sentenced to a community order and a surcharge as determined in the table below where an adult offender is sentenced to imprisonment (including a suspended custodial sentence):

<i>Period of custody</i>	<i>Amount of surcharge</i>
Six months or less	£80
More than six months and up to and including 2 years	£100
More than 2 years	£120

102. The 2012 Order specifies lower surcharge amounts where the offender is under the age of 18. The approach to ordering the surcharge as set out in the 2012 Order ensures that the amount to be paid is linked to the seriousness of the sentence. The arrangements for payments of the Victim Surcharge in the 2012 Order, along with increased financial

⁴⁶ <http://www.official-documents.gov.uk/document/hc7677/hc05/0556/0556.pdf>

⁴⁷ <http://www.official-documents.gov.uk/document/cm23/2370/2370.pdf>

⁴⁸ <https://consult.justice.gov.uk/digital-communications/victims-witnesses>

penalties such as penalty notices for disorder, are expected to raise up to an additional £50 million per year for victim support services.

103. Currently magistrates' courts (but not the Crown Court) in sentencing a person to immediate custody have the power to add additional days to be served in default of payment of the Surcharge. The response to the consultation, *Getting it right for victims and witnesses* (paragraphs 141 and 142) set out the Government's intention to legislate to remove this power. Section 179 gives effect to this change in magistrates' courts sentencing powers.

Court and tribunal fees

104. On 26 March 2013 the Lord Chancellor and Secretary of State for Justice announced his intention to explore proposals for the reform of the resourcing and administration of courts and tribunals (House of Commons, Official Report, column 95WS; House of Lords, Official Report, column WS84 to WS85). This included the contributions litigants make to proceedings and the necessity of raising revenue and investment to modernise court and tribunal infrastructure and deliver a better and more flexible service to court users.
105. The civil and family courts in England and Wales are mostly funded by court fees paid by those people using court services. Fees are charged in the civil and family courts and in some tribunals. For example fees are charged in civil courts for those making money and possession claims, and in family courts for those seeking divorce and for proceedings relating to the arrangements for separating couples, including financial provision and the arrangements for looking after their children. The cost of running the civil and family courts in England and Wales is approximately £600m a year. In 2012/13, 81 per cent of this amount was funded through court fees. The remaining 19 per cent was met by the taxpayer. A system of remissions (fee waivers) exists to ensure that those unable to afford fees are not denied access to justice. As part of Spending Review 2010 the Ministry of Justice is committed to delivering, by 2014/15, a fee strategy that delivers full-cost recovery in the civil and family courts, excluding remissions.
106. The Court of Protection is a specialist court which deals with all issues relating to people who lack capacity to make specific decisions in England and Wales. It can make decisions and appoint deputies to make decisions about someone's property and financial affairs or their healthcare and personal welfare. The Court of Protection can also decide on where a person should live and, in cases where a person lacks capacity, can give consent to medical treatment and decide on what treatment that person should have.
107. The Office of the Public Guardian is an Executive Agency of the Ministry of Justice with responsibilities that extend across England and Wales. It supports the Public Guardian with the registration of Lasting Powers of Attorney (LPA) (and older Enduring Powers of Attorney (EPA)), the supervision of deputies appointed by the Court of Protection, and the investigation of any concerns about the way an attorney or deputy is acting.
108. [Section 180](#) provides the Lord Chancellor with a general power, subject to the agreement of the Treasury, to charge fees above cost when prescribing fees under specified enactments for services provided by the civil and family courts, the Court of Protection, the Office of the Public Guardian and tribunals. The purpose of charging enhanced fees is to ensure that the courts and tribunals are adequately resourced. In using this power, the Lord Chancellor is required to have regard to:
- the financial position of the courts and tribunals; and
 - the competitiveness of the legal services market.

These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014

109. On 3 December 2013, the Government set out its detailed proposals for using the power to set enhanced fees in the consultation paper *Court fees: Proposals for reform*.⁴⁹ This sought views on a series of proposals for charging enhanced fees, including for money claims, in commercial proceedings and for divorce, alongside proposals for reducing the current deficit of £100 million in the cost of running the Courts and Tribunals Service. The consultation closed on 21 January 2014.

⁴⁹ <https://www.gov.uk/government/consultations/court-fees-proposals-for-reform>