

combe pointing out that "... in the 28 months since those powers came into force, not one order has been made; not one child, left out on his own far too late at night, has been rescued; not one community has been protected ..." (*Hansard* H.C., January 29, 2001, col.51). Notwithstanding this less than promising start, and despite the warnings of the Joint Committee that there remain serious human rights concerns over the child curfew scheme generally, ss.48 and 49 of this Act amend the 1998 Act to extend the age range of children who might be subject to curfew to those under 16, and also to allow the police to initiate such schemes. The local authority power to make curfew schemes remain unchanged.

49 Power for police to make schemes

- (1) Section 14 of the Crime and Disorder Act 1998 (local child curfew schemes) shall be amended as follows.
- (2) In subsection (1) (power to make schemes)—
 - (a) after "local authority" there shall be inserted "or a chief officer of police"; and
 - (b) after "the authority", in each place where it appears, there shall be inserted "or (as the case may be) the officer".
- (3) After subsection (3) there shall be inserted—

"(3A) Before making a local child curfew scheme, a chief officer of police shall consult—

 - (a) every local authority any part of whose area lies within the area to be specified; and
 - (b) such other persons or bodies as he considers appropriate."
- (4) For subsection (4) there shall be substituted—

"(4) A local child curfew scheme shall, if made by a local authority, be made under the common seal of the authority.

(4A) A local child curfew scheme shall not have effect until it is confirmed by the Secretary of State."
- (5) In subsection (7)(b) after "authority" there shall be inserted "or (as the case may be) the chief officer of police".

PART 2

POWERS OF SEIZURE

Additional powers of seizure

50 Additional powers of seizure from premises

- (1) Where—
 - (a) a person who is lawfully on any premises finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises,
 - (b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain, and
 - (c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises—
 - (i) whether what he has found is something that he is entitled to seize, or
 - (ii) the extent to which what he has found contains something that he is entitled to seize,

that person's powers of seizure shall include power under this section to seize so much of what he has found as it is necessary to remove from the premises to enable that to be determined.
- (2) Where—
 - (a) a person who is lawfully on any premises finds anything on those

- seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,
- (b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and
 - (c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,
- that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.
- (3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, shall be confined to the following—
 - (a) how long it would take to carry out the determination or separation on those premises;
 - (b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;
 - (c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;
 - (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
 - (e) in the case of separation, whether the separation—
 - (i) would be likely, or
 - (ii) if carried out by the only means that are reasonably practicable on those premises, would be likely,
 to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.
 - (4) Section 19(6) of the 1984 Act and Article 21(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (powers of seizure not to include power to seize anything that a person has reasonable grounds for believing is legally privileged) shall not apply to the power of seizure conferred by subsection (2).
 - (5) This section applies to each of the powers of seizure specified in Part 1 of Schedule 1.
 - (6) Without prejudice to any power conferred by this section to take a copy of any document, nothing in this section, so far as it has effect by reference to the power to take copies of documents under section 28(2)(b) of the Competition Act 1998 (c. 41), shall be taken to confer any power to seize any document.

GENERAL NOTE

Sections 50 to 60 and Schedules 1 and 2 to this Act provide for a range of extensions to powers of seizure from premises, and from the person. The Joint Committee expressed the view that these provisions were compatible with human rights.

Section 50 sets out the key additional powers required to deal with the problem identified in *Chesterfield Justices and Chief Constable of Derbyshire, Ex p. Bramley* [2000] WLR 409. In that case there was an application for judicial review brought by *Bramley*, a car dealer, who challenged the seizure by the Derbyshire police of documents, including correspondence with his solicitors, from his premises. Before the hearing the police conceded that the search warrant and seizure had been unlawful and paid Mr *Bramley* £1000 in damages. The parties nonetheless agreed that the Divisional Court should be asked to rule on the legal principles. Both the Attorney General and the Law Society intervened in the case and were represented at the

material they wished to seize was not legally privileged, they had the right to remove it to examine the contents elsewhere to determine what was and what was not within the terms of the warrant. Lord Justice Kennedy in the Divisional Court rejected this claim. He said that a police officer executing a search warrant should be able to make a preliminary sift of documents and then take all, or a large part of them, to sort out properly elsewhere. If the officer seized documents which later turned out to be outside the scope of the warrant, the Police and Criminal Evidence Act 1984 (c.60) provided no defence to an action of trespass to goods based on an unjustified seizure. The Court suggested that this problem could only be remedied by legislation.

It is clear that, although the instant case concerned the police and their powers under the 1984 Act, the same issue arises under equivalent powers of seizure given to a range of enforcement authorities where it is not practicable on the premises to ascertain which material can lawfully be seized and which cannot. These authorities include the Serious Fraud Office, the Inland Revenue, Customs & Excise, and the Office of Fair Trading. Perhaps the most difficult problems arise where the relevant material is held on a computer. Although s.20 of the 1984 Act has permitted the police, where they have statutory power to search and seize material, to require that computer-held material be produced in visible and legible form so that it can be taken away, it may be impossible to determine which material is relevant and seizable without removing the computer and/or imaging the contents of the hard disk and/or removing CD ROMs or floppy disks. Section 20 is one of a number of provisions subject to minor amendment by Sched.2, para.13(2) of this Act.

This group of sections does two things. It deals first with the main problem identified in *Ex p. Bramley*. They give the police and other law enforcement authorities power, where it is not "reasonably practicable" to carry out the determination on site, to remove material from the premises so that they can examine it elsewhere. Subsection (3) defines "reasonably practicable". Second, by recognising the special problems relating to material stored on computer, it allows investigators to seize and forensically examine an entire disk or hard drive to examine the material thereon. This means retaining all the material on the disk or drive, some of which may turn out to be legally privileged. The new sections allow the police to retain this inextricably linked material. Provision is made for application to be made by a complainant to a judge, for the return of the material seized.

Part 1 of Sched.1 to this Act is a list of the powers of seizure conferred by various pieces of legislation to which s.50 will henceforth apply.

Schedule 2 to this Act modifies a range of different enactments to ensure that the various provisions relating to testing, access, compensation and forfeiture in relation to items seized under specified legislation will also apply where material is seized under s.50.

51 Additional powers of seizure from the person

- (1) Where—
 - (a) a person carrying out a lawful search of any person finds something that he has reasonable grounds for believing may be or may contain something for which he is authorised to search,
 - (b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain, and
 - (c) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search—
 - (i) whether what he has found is something that he is entitled to seize, or
 - (ii) the extent to which what he has found contains something that he is entitled to seize,
 that person's powers of seizure shall include power under this section to seize so much of what he has found as it is necessary to remove from that place to enable that to be determined.
- (2) Where—
 - (a) a person carrying out a lawful search of any person finds something ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,
 - (b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and

- (c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised, that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.
- (3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, shall be confined to the following—
- how long it would take to carry out the determination or separation at that time and place;
 - the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;
 - whether the determination or separation would (or would if carried out at that time and place) involve damage to property;
 - the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
 - in the case of separation, whether the separation—
 - would be likely, or
 - if carried out by the only means that are reasonably practicable at that time and place, would be likely, to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.
- (4) Section 19(6) of the 1984 Act and Article 21(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (powers of seizure not to include power to seize anything a person has reasonable grounds for believing is legally privileged) shall not apply to the power of seizure conferred by subsection (2).
- (5) This section applies to each of the powers of seizure specified in Part 2 of Schedule 1.

GENERAL NOTE

This section provides additional powers of seizure *from the person* where there is already existing power to search that person. The terms of s.51 are closely similar to those of s.50. It is designed to cater for cases where a person searched may be carrying a computer or computer disks, or a case with a large amount of correspondence which cannot practicably be examined on the street.

Part 2 of Sched.1 to this Act is a list of the powers of seizure conferred by various pieces of legislation to which s.51 will henceforth apply.

52 Notice of exercise of power under s. 50 or 51

- (1) Where a person exercises a power of seizure conferred by section 50, it shall (subject to subsections (2) and (3)) be his duty, on doing so, to give to the occupier of the premises a written notice—
- specifying what has been seized in reliance on the powers conferred by that section;
 - specifying the grounds on which those powers have been exercised;
 - setting out the effect of sections 59 to 61;
 - specifying the name and address of the person to whom notice of an application under section 59(2) to the appropriate judicial authority in respect of any of the seized property must be given; and

- specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 53(2).
- (2) Where it appears to the person exercising on any premises a power of seizure conferred by section 50—
- that the occupier of the premises is not present on the premises at the time of the exercise of the power, but
 - that there is some other person present on the premises who is in charge of the premises,
- subsection (1) of this section shall have effect as if it required the notice under that subsection to be given to that other person.
- (3) Where it appears to the person exercising a power of seizure conferred by section 50 that there is no one present on the premises to whom he may give a notice for the purposes of complying with subsection (1) of this section, he shall, before leaving the premises, instead of complying with that subsection, attach a notice such as is mentioned in that subsection in a prominent place to the premises.
- (4) Where a person exercises a power of seizure conferred by section 51 it shall be his duty, on doing so, to give a written notice to the person from whom the seizure is made—
- specifying what has been seized in reliance on the powers conferred by that section;
 - specifying the grounds on which those powers have been exercised;
 - setting out the effect of sections 59 to 61;
 - specifying the name and address of the person to whom notice of any application under section 59(2) to the appropriate judicial authority in respect of any of the seized property must be given; and
 - specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 53(2).
- (5) The Secretary of State may by regulations made by statutory instrument, after consultation with the Scottish Ministers, provide that a person who exercises a power of seizure conferred by section 50 shall be required to give a notice such as is mentioned in subsection (1) of this section to any person, or send it to any place, described in the regulations.
- (6) Regulations under subsection (5) may make different provision for different cases.
- (7) A statutory instrument containing regulations under subsection (5) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

GENERAL NOTE

Under this section, there is a requirement on the part of the investigating authority to give the person from whom the material has been seized, whether under ss.50 or 51, a notice specifying what has been seized as well as information about the right to apply to a judge for return of the seized material.

Return or retention of seized property

53 Examination and return of property seized under s. 50 or 51

- (1) This section applies where anything has been seized under a power conferred by section 50 or 51.

- (2) It shall be the duty of the person for the time being in possession of the seized property in consequence of the exercise of that power to secure that there are arrangements in force which (subject to section 61) ensure—
- that an initial examination of the property is carried out as soon as reasonably practicable after the seizure;
 - that that examination is confined to whatever is necessary for determining how much of the property falls within subsection (3);
 - that anything which is found, on that examination, not to fall within subsection (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed; and
 - that, until the initial examination of all the seized property has been completed and anything which does not fall within subsection (3) has been returned, the seized property is kept separate from anything seized under any other power.
- (3) The seized property falls within this subsection to the extent only—
- that it is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by section 54;
 - that it is property the retention of which is authorised by section 56; or
 - that it is something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within paragraph (a) or (b).
- (4) In determining for the purposes of this section the earliest practicable time for the carrying out of an initial examination of the seized property, due regard shall be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if he chooses) of being represented at the examination.
- (5) In this section, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful.

GENERAL NOTE

This section deals with the subsequent examination of the seized material, and what may properly be retained. Subsections (3) and (5) permit the retention of inextricably linked material. This might entitle the police to retain a whole computer hard drive if that was needed to show when a particular document on that computer was created, amended or deleted.

54 Obligation to return items subject to legal privilege

- (1) If, at any time after a seizure of anything has been made in exercise of a power of seizure to which this section applies—
- it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—
 - is an item subject to legal privilege, or
 - has such an item comprised in it,
 and
 - in a case where the item is comprised in something else which has been lawfully seized, it is not comprised in property falling within subsection (2),
- it shall be the duty of that person to secure that the item is returned as

- (2) Property in which an item subject to legal privilege is comprised falls within this subsection if—
- the whole or a part of the rest of the property is property falling within subsection (3) or property the retention of which is authorised by section 56; and
 - in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful.
- (3) Property falls within this subsection to the extent that it is property for which the person seizing it had power to search when he made the seizure, but is not property which is required to be returned under this section or section 55.
- (4) This section applies—
- to the powers of seizure conferred by sections 50 and 51;
 - to each of the powers of seizure specified in Parts 1 and 2 of Schedule 1; and
 - to any power of seizure (not falling within paragraph (a) or (b)) conferred on a constable by or under any enactment, including an enactment passed after this Act.

GENERAL NOTE

Legally privileged material is protected from seizure under the Police and Criminal Evidence Act 1984 (c.60). It is, however, possible to seize it under the provisions of ss.50 or 51, or under the 1984 Act if the officer making the seizure had no reason to believe that it was legally privileged. This section sets out the obligation to return this material, subject to its retention if it is inextricably linked to other seizable material.

55 Obligation to return excluded and special procedure material

- (1) If, at any time after a seizure of anything has been made in exercise of a power to which this section applies—
- it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—
 - is excluded material or special procedure material, or
 - has any excluded material or any special procedure material comprised in it,
 - its retention is not authorised by section 56, and
 - in a case where the material is comprised in something else which has been lawfully seized, it is not comprised in property falling within subsection (2) or (3),
- it shall be the duty of that person to secure that the item is returned as soon as reasonably practicable after the seizure.
- (2) Property in which any excluded material or special procedure material is comprised falls within this subsection if—
- the whole or a part of the rest of the property is property for which the person seizing it had power to search when he made the seizure but is not property the turn of which is required by this section or section 54; and
 - in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.
- (3) Property in which any excluded material or special procedure material is comprised falls within this subsection if—

- (a) the whole or a part of the rest of the property is property the retention of which is authorised by section 56; and
- (b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.
- (4) This section applies (subject to subsection (5)) to each of the powers of seizure specified in Part 3 of Schedule 1.
- (5) In its application to the powers of seizure conferred by—
 - (a) section 93I(5) of the Criminal Justice Act 1988 (c. 33),
 - (b) section 56(5) of the Drug Trafficking Act 1994 (c. 37), and
 - (c) Article 51(5) of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 6)),
 this section shall have effect with the omission of every reference to special procedure material.
- (6) In this section, except in its application to—
 - (a) the power of seizure conferred by section 8(2) of the 1984 Act,
 - (b) the power of seizure conferred by Article 10(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
 - (c) each of the powers of seizure conferred by the provisions of paragraphs 1 and 3 of Schedule 5 to the Terrorism Act 2000 (c. 11), and
 - (d) the power of seizure conferred by paragraphs 15 and 19 of Schedule 5 to that Act of 2000, so far only as the power in question is conferred by reference to paragraph 1 of that Schedule,
 “special procedure material” means special procedure material consisting of documents or records other than documents.

GENERAL NOTE

This section contains similar provisions to s.54, but relating to special procedure and excluded material as defined in the Police and Criminal Evidence Act 1984 (c.60). Special procedure material includes confidential material created in the course of a business. Excluded material includes journalistic material and personal records which are held in confidence. These kinds of material receive additional protections in the 1984 Act and s.55 gives similar additional protection where seizure has taken place under any of the powers of seizure listed in Sched.1.

Part 3 of Sched.1 to this Act is a list of the powers of seizure conferred by various pieces of legislation to which s.55 will henceforth apply.

56 Property seized by constables etc.

- (1) The retention of—
 - (a) property seized on any premises by a constable who was lawfully on the premises,
 - (b) property seized on any premises by a relevant person who was on the premises accompanied by a constable, and
 - (c) property seized by a constable carrying out a lawful search of any person,
 is authorised by this section if the property falls within subsection (2) or (3).
- (2) Property falls within this subsection to the extent that there are reasonable grounds for believing—
 - (a) that it is property obtained in consequence of the commission of an offence; and
 - (b) that it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed.
- (3) Property falls within this subsection to the extent that there are reasonable grounds for believing—

- (b) that it is necessary for it to be retained in order to prevent its being concealed, lost, altered or destroyed.
- (4) Nothing in this section authorises the retention (except in pursuance of section 54(2)) of anything at any time when its return is required by section 54.
- (5) In subsection (1)(b) the reference to a relevant person's being on any premises accompanied by a constable is a reference only to a person who was so on the premises under the authority of—
 - (a) a warrant under section 448 of the Companies Act 1985 (c. 6) authorising him to exercise together with a constable the powers conferred by subsection (3) of that section;
 - (b) a warrant under Article 441 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) authorising him to exercise together with a constable the powers conferred by paragraph (3) of that Article;
 - (c) a warrant under section 199 of the Financial Services Act 1986 (c. 60) authorising him to exercise together with a constable the powers conferred by subsection (3) of that section;
 - (d) a warrant under section 43 of the Banking Act 1987 (c. 22) authorising him to exercise together with a constable the powers conferred by subsection (2) of that section; or
 - (e) a warrant under section 44A of the Insurance Companies Act 1982 (c. 50) authorising him to exercise together with a constable the powers conferred by subsection (3) of that section.

GENERAL NOTE

This section, which is referred to in ss.53, 54 and 55, sets out certain situations in which seized property may be retained. It mirrors the power given to the police under s.19 of the Police and Criminal Evidence Act 1984 (c.60), which arises independently of a power of search where the officer is on premises by virtue of a warrant or with the consent of the owner.

57 Retention of seized items

- (1) This section has effect in relation to the following provisions (which are about the retention of items which have been seized and are referred to in this section as “the relevant provisions”)—
 - (a) section 22 of the 1984 Act;
 - (b) Article 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));
 - (c) section 20CC(3) of the Taxes Management Act 1970 (c. 9);
 - (d) paragraph 4 of Schedule 9 to the Weights and Measures (Northern Ireland) Order 1981 (S.I. 1981/231 (N.I. 10));
 - (e) section 44A(6) of the Insurance Companies Act 1982;
 - (f) section 448(6) of the Companies Act 1985 (c. 6);
 - (g) paragraph 4 of Schedule 8 to the Weights and Measures Act 1985 (c. 72);
 - (h) section 199(5) of the Financial Services Act 1986;
 - (i) Article 441(6) of the Companies (Northern Ireland) Order 1986;
 - (j) section 43(4) of the Banking Act 1987;
 - (k) section 40(4) of the Human Fertilisation and Embryology Act 1990 (c. 37);
 - (l) section 5(4) of the Knives Act 1997 (c. 21);
- (m) paragraph 7(2) of Schedule 9 to the Data Protection Act 1998 (c. 29);
- (n) section 28(7) of the Competition Act 1998 (c. 41);
- (o) section 176(8) of the Financial Services and Markets Act 2000 (c. 8);
- (p) paragraph 7(2) of Schedule 3 to the Freedom of Information Act 2000 (c. 26).

- (2) The relevant provisions shall apply in relation to any property seized in exercise of a power conferred by section 50 or 51 as if the property had been seized under the power of seizure by reference to which the power under that section was exercised in relation to that property.
- (3) Nothing in any of sections 53 to 56 authorises the retention of any property at any time when its retention would not (apart from the provisions of this Part) be authorised by the relevant provisions.
- (4) Nothing in any of the relevant provisions authorises the retention of anything after an obligation to return it has arisen under this Part.

GENERAL NOTE

The provisions listed here set out when property obtained under these powers may be retained.

58 Person to whom seized property is to be returned

- (1) Where—
 - (a) anything has been seized in exercise of any power of seizure, and
 - (b) there is an obligation under this Part for the whole or any part of the seized property to be returned,
 the obligation to return it shall (subject to the following provisions of this section) be an obligation to return it to the person from whom it was seized.
- (2) Where—
 - (a) any person is obliged under this Part to return anything that has been seized to the person from whom it was seized, and
 - (b) the person under that obligation is satisfied that some other person has a better right to that thing than the person from whom it was seized,
 his duty to return it shall, instead, be a duty to return it to that other person or, as the case may be, to the person appearing to him to have the best right to the thing in question.
- (3) Where different persons claim to be entitled to the return of anything that is required to be returned under this Part, that thing may be retained for as long as is reasonably necessary for the determination in accordance with subsection (2) of the person to whom it must be returned.
- (4) References in this Part to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing's having been found on any premises, are references to the occupier of the premises at the time of the seizure.
- (5) References in this section to the occupier of any premises at the time of a seizure, in relation to a case in which—
 - (a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises, and
 - (b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,
 are references to that person.

GENERAL NOTE

The section sets out to whom property which is obliged to be returned should be returned. This is normally the person from whom the property was seized.

*Remedies and safeguards***59 Application to the appropriate judicial authority**

- (1) This section applies where anything has been seized in exercise, or purported exercise, of a relevant power of seizure.

- (2) Any person with a relevant interest in the seized property may apply to the appropriate judicial authority, on one or more of the grounds mentioned in subsection (3), for the return of the whole or a part of the seized property.
- (1) Those grounds are—
 - (a) that there was no power to make the seizure;
 - (b) that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 54(2);
 - (c) that the seized property is or contains any excluded material or special procedure material which—
 - (i) has been seized under a power to which section 55 applies;
 - (ii) is not comprised in property falling within section 55(2) or (3); and
 - (iii) is not property the retention of which is authorised by section 56;
 - (d) that the seized property is or contains something seized under section 50 or 51 which does not fall within section 53(3); and subsections (5) and (6) of section 55 shall apply for the purposes of paragraph (c) as they apply for the purposes of that section.
- (4) Subject to subsection (6), the appropriate judicial authority, on an application under subsection (2), shall—
 - (a) if satisfied as to any of the matters mentioned in subsection (3), order the return of so much of the seized property as is property in relation to which the authority is so satisfied; and
 - (b) to the extent that that authority is not so satisfied, dismiss the application.
- (5) The appropriate judicial authority—
 - (a) on an application under subsection (2),
 - (b) on an application made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure, or
 - (c) on an application made—
 - (i) by a person with a relevant interest in anything seized under section 50 or 51, and
 - (ii) on the grounds that the requirements of section 53(2) have not been or are not being complied with,
 may give such directions as the authority thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.
- (6) On any application under this section, the appropriate judicial authority may authorise the retention of any property which—
 - (a) has been seized in exercise, or purported exercise, of a relevant power of seizure, and
 - (b) would otherwise fall to be returned,
 if that authority is satisfied that the retention of the property is justified on grounds falling within subsection (7).
- (7) Those grounds are that (if the property were returned) it would immediately become appropriate—
 - (a) to issue, on the application of the person who is in possession of the property at the time of the application under this section, a warrant in pursuance of which, or of the exercise of which, it would be lawful to seize the property; or
 - (b) to make an order under—
 - (i) paragraph 4 of Schedule 1 to the 1984 Act,
 - (ii) paragraph 4 of Schedule 1 to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

- (iii) section 20BA of the Taxes Management Act 1970 (c. 9), or
- (iv) paragraph 5 of Schedule 5 to the Terrorism Act 2000 (c. 11), under which the property would fall to be delivered up or produced to the person mentioned in paragraph (a).
- (8) Where any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts ("part A" and "part B") comprised in it such that—
 - (a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in subsection (7) in relation to part A,
 - (b) it would (or would but for the facts mentioned in paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B, and
 - (c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question,
 the facts mentioned in paragraph (a) shall not be taken into account by the appropriate judicial authority in deciding whether the retention of the property is justified on grounds falling within subsection (7).
- (9) If a person fails to comply with any order or direction made or given by a judge of the Crown Court in exercise of any jurisdiction under this section—
 - (a) the authority may deal with him as if he had committed a contempt of the Crown Court; and
 - (b) any enactment relating to contempt of the Crown Court shall have effect in relation to the failure as if it were such a contempt.
- (10) The relevant powers of seizure for the purposes of this section are—
 - (a) the powers of seizure conferred by sections 50 and 51;
 - (b) each of the powers of seizure specified in Parts 1 and 2 of Schedule 1; and
 - (c) any power of seizure (not falling within paragraph (a) or (b)) conferred on a constable by or under any enactment, including an enactment passed after this Act.
- (11) References in this section to a person with a relevant interest in seized property are references to—
 - (a) the person from whom it was seized;
 - (b) any person with an interest in the property; or
 - (c) any person, not falling within paragraph (a) or (b), who had custody or control of the property immediately before the seizure.
- (12) For the purposes of subsection (11)(b), the persons who have an interest in seized property shall, in the case of property which is or contains an item subject to legal privilege, be taken to include the person in whose favour that privilege is conferred.

GENERAL NOTE

This section provides a right for anyone with a relevant interest in the seized property to apply to the relevant judicial authority (as defined in s.64 of this Act) for its return.

60 Cases where duty to secure arises

- (1) Where property has been seized in exercise, or purported exercise, of any power of seizure conferred by section 50 or 51, a duty to secure arises under section 61 in relation to the seized property if—
 - (a) a person entitled to do so makes an application under section 59 for the return of the property;
 - (b) in relation to England, Wales and Northern Ireland, at least one of the conditions set out in subsections (2) and (3) is satisfied;

- (c) in relation to Scotland, the condition set out in subsection (2) is satisfied; and
- (d) notice of the application is given to a relevant person.
- (2) The first condition is that the application is made on the grounds that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 54(2).
- (3) The second condition is that—
 - (a) the seized property was seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers specified in subsection (6); and
 - (b) the application—
 - (i) is made on the ground that the seized property is or contains something which does not fall within section 53(3); and
 - (ii) states that the seized property is or contains special procedure material or excluded material.
- (4) In relation to property seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers of seizure conferred by—
 - (a) section 931(5) of the Criminal Justice Act 1988 (c. 33),
 - (b) section 56(5) of the Drug Trafficking Act 1994 (c. 37), or
 - (c) Article 51(5) of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 6)),
 the second condition is satisfied only if the application states that the seized property is or contains excluded material.
- (5) In relation to property seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers of seizure specified in Part 3 of Schedule 1 but not by virtue of—
 - (a) the power of seizure conferred by section 8(2) of the 1984 Act,
 - (b) the power of seizure conferred by Article 10(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
 - (c) either of the powers of seizure conferred by paragraphs 1 and 3 of Schedule 5 to the Terrorism Act 2000 (c. 11), or
 - (d) either of the powers of seizure conferred by paragraphs 15 and 19 of Schedule 5 to that Act of 2000 so far as they are conferred by reference to paragraph 1 of that Schedule,
 the second condition is satisfied only if the application states that the seized property is or contains excluded material or special procedure material consisting of documents or records other than documents.
- (6) The powers mentioned in subsection (3) are—
 - (a) the powers of seizure specified in Part 3 of Schedule 1;
 - (b) the powers of seizure conferred by the provisions of Parts 2 and 3 of the 1984 Act (except section 8(2) of that Act);
 - (c) the powers of seizure conferred by the provisions of Parts 3 and 4 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (except Article 10(2) of that Order);
 - (d) the powers of seizure conferred by the provisions of paragraph 11 of Schedule 5 to the Terrorism Act 2000; and
 - (e) the powers of seizure conferred by the provisions of paragraphs 15 and 19 of that Schedule so far as they are conferred by reference to paragraph 11 of that Schedule.
- (7) In this section "a relevant person" means any one of the following—
 - (a) the person who made the seizure;
 - (b) the person for the time being having possession, in consequence of the seizure, of the seized property;

- (c) the person named for the purposes of subsection (1)(d) or (4)(d) of section 52 in any notice given under that section with respect to the seizure.

GENERAL NOTE

Sometimes an application to the relevant judicial authority under s.59 will mean that the relevant investigating authority must secure the material seized pending the hearing of that application.

61 The duty to secure

- (1) The duty to secure that arises under this section is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to secure that arrangements are in force that ensure that the seized property (without being returned) is not, at any time after the giving of the notice of the application under section 60(1), either—
- examined or copied, or
 - put to any use to which its seizure would, apart from this subsection, entitle it to be put,
- except with the consent of the applicant or in accordance with the directions of the appropriate judicial authority.
- (2) Subsection (1) shall not have effect in relation to any time after the withdrawal of the application to which the notice relates.
- (3) Nothing in any arrangements for the purposes of this section shall be taken to prevent the giving of a notice under section 49 of the Regulation of Investigatory Powers Act 2000 (c. 23) (notices for the disclosure of material protected by encryption etc.) in respect of any information contained in the seized material; but subsection (1) of this section shall apply to anything disclosed for the purpose of complying with such a notice as it applies to the seized material in which the information in question is contained.
- (4) Subsection (9) of section 59 shall apply in relation to any jurisdiction conferred on the appropriate judicial authority by this section as it applies in relation to the jurisdiction conferred by that section.

62 Use of inextricably linked property

- (1) This section applies to property, other than property which is for the time being required to be secured in pursuance of section 61, if—
- it has been seized under any power conferred by section 50 or 51 or specified in Part 1 or 2 of Schedule 1, and
 - it is inextricably linked property.
- (2) Subject to subsection (3), it shall be the duty of the person for the time being having possession, in consequence of the seizure, of the inextricably linked property to ensure that arrangements are in force which secure that that property (without being returned) is not at any time, except with the consent of the person from whom it was seized, either—
- examined or copied, or
 - put to any other use.
- (3) Subsection (2) does not require that arrangements under that subsection should prevent inextricably linked property from being put to any use falling within subsection (4).
- (4) A use falls within this subsection to the extent that it is use which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.
- (5) Property is inextricably linked property for the purposes of this section if it falls within any of subsections (6) to (8).
- (6) Property falls within this subsection if—

- it has been seized under a power conferred by section 50 or 51; and
 - but for subsection (3)(c) of section 53, arrangements under subsection (2) of that section in relation to the property would be required to ensure the return of the property as mentioned in subsection (2)(c) of that section.
- (7) Property falls within this subsection if—
- it has been seized under a power to which section 54 applies; and
 - but for paragraph (b) of subsection (1) of that section, the person for the time being having possession of the property would be under a duty to secure its return as mentioned in that subsection.
- (8) Property falls within this subsection if—
- it has been seized under a power of seizure to which section 55 applies; and
 - but for paragraph (c) of subsection (1) of that section, the person for the time being having possession of the property would be under a duty to secure its return as mentioned in that subsection.

*Construction of Part 2***63 Copies**

- (1) Subject to subsection (3)—
- in this Part, “seize” includes “take a copy of”, and cognate expressions shall be construed accordingly;
 - this Part shall apply as if any copy taken under any power to which any provision of this Part applies were the original of that of which it is a copy, and
 - for the purposes of this Part, except sections 50 and 51, the powers mentioned in subsection (2) (which are powers to obtain hard copies etc. of information which is stored in electronic form) shall be treated as powers of seizure, and references to seizure and to seized property shall be construed accordingly.
- (2) The powers mentioned in subsection (1)(c) are any powers which are conferred by—
- section 19(4) or 20 of the 1984 Act;
 - Article 21(4) or 22 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));
 - section 46(3) of the Firearms Act 1968 (c. 27);
 - section 43(5)(aa) of the Gaming Act 1968 (c. 65);
 - section 20C(3A) of the Taxes Management Act 1970 (c. 9);
 - section 32(6)(b) of the Food Safety Act 1990 (c. 16);
 - Article 34(6)(b) of the Food Safety (Northern Ireland) Order 1991 (S.I. 1991/762 (N.I. 7));
 - section 28(2)(f) of the Competition Act 1998 (c. 41); or
 - section 8(2)(c) of the Nuclear Safeguards Act 2000 (c. 5).
- (3) Subsection (1) does not apply to section 50(6) or 57.

64 Meaning of “appropriate judicial authority”

- (1) Subject to subsection (2), in this Part “appropriate judicial authority” means—
- in relation to England and Wales and Northern Ireland, a judge of the Crown Court;
 - in relation to Scotland, a sheriff.
- (2) In this Part “appropriate judicial authority”, in relation to the seizure of items under any power mentioned in subsection (3) and in relation to items seized under any such power, means—
- in relation to England and Wales and Northern Ireland, the High Court;

- (b) in relation to Scotland, the Court of Session.
- (3) Those powers are—
 - (a) the powers of seizure conferred by—
 - (i) section 448(3) of the Companies Act 1985 (c. 6);
 - (ii) Article 441(3) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)); and
 - (iii) section 28(2) of the Competition Act 1998; and
 - (b) any power of seizure conferred by section 50, so far as that power is exercisable by reference to any power mentioned in paragraph (a).

65 Meaning of “legal privilege”

- (1) Subject to the following provisions of this section, references in this Part to an item subject to legal privilege shall be construed—
 - (a) for the purposes of the application of this Part to England and Wales, in accordance with section 10 of the 1984 Act (meaning of “legal privilege”);
 - (b) for the purposes of the application of this Part to Scotland, in accordance with section 33 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (interpretation); and
 - (c) for the purposes of the application of this Part to Northern Ireland, in accordance with Article 12 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (meaning of “legal privilege”).
- (2) In relation to property which has been seized in exercise, or purported exercise, of—
 - (a) the power of seizure conferred by section 28(2) of the Competition Act 1998, or
 - (b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power,
 references in this Part to an item subject to legal privilege shall be read as references to a privileged communication within the meaning of section 30 of that Act.
- (3) In relation to property which has been seized in exercise, or purported exercise, of—
 - (a) the power of seizure conferred by section 20C of the Taxes Management Act 1970 (c. 9), or
 - (b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power,
 references in this Part to an item subject to legal privilege shall be construed in accordance with section 20C(4A) of that Act.
- (4) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by section 448(3) of the Companies Act 1985 (c. 6) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of section 452(2) of that Act (privileged information).
- (5) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by Article 441(3) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of Article 445(2) of that Order (privileged information).
- (6) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by sub-paragraph (2) of paragraph 3 of Schedule 2 to the Timeshare Act

1992 (c. 35) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of sub-paragraph (4) of that paragraph (privileged documents).

- (7) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by paragraph 1 of Schedule 9 to the Data Protection Act 1998 (c. 29) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of paragraph 9 of that Schedule (privileged communications).
- (8) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by paragraph 1 of Schedule 3 to the Freedom of Information Act 2000 (c. 36) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of paragraph 9 of that Schedule (privileged communications).
- (9) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of so much of any power of seizure conferred by section 50 as is exercisable by reference to a power of seizure conferred by—
 - (a) section 448(3) of the Companies Act 1985,
 - (b) Article 441(3) of the Companies (Northern Ireland) Order 1986,
 - (c) paragraph 3(2) of Schedule 2 to the Timeshare Act 1992,
 - (d) paragraph 1 of Schedule 9 to the Data Protection Act 1998, or
 - (e) paragraph 1 of Schedule 3 to the Freedom of Information Act 2000,

shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the item would have been taken for the purposes of this Part to be an item subject to legal privilege had it been seized under the power of seizure by reference to which the power conferred by section 50 was exercised.

66 General interpretation of Part 2

- (1) In this Part—
 - “appropriate judicial authority” has the meaning given by section 64;
 - “documents” includes information recorded in any form;
 - “item subject to legal privilege” shall be construed in accordance with section 65;
 - “premises” includes any vehicle, stall or moveable structure (including an offshore installation) and any other place whatever, whether or not occupied as land;
 - “offshore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971 (c. 61);
 - “return”, in relation to seized property, shall be construed in accordance with section 58, and cognate expressions shall be construed accordingly;
 - “seize”, and cognate expressions, shall be construed in accordance with section 63(1) and subsection (5) below;
 - “seized property”, in relation to any exercise of a power of seizure, means (subject to subsection 5)) anything seized in exercise of that power; and
 - “vehicle” includes any vessel, aircraft or hovercraft.
- (2) In this Part references, in relation to a time when seized property is in any person’s possession in consequence of a seizure (“the relevant time”), to something for which the person making the seizure had power to search shall be construed—

- (a) where the seizure was made on the occasion of a search carried out on the authority of a warrant, as including anything of the description of things the presence or suspected presence of which provided grounds for the issue of the warrant;
- (b) where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which on that occasion was believed by him to be, or appeared to him to be, of a particular description, as including—
 - (i) anything which at the relevant time is believed by the person in possession of the seized property, or (as the case may be) appears to him, to be of that description; and
 - (ii) anything which is in fact of that description;
- (c) where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which there were on that occasion reasonable grounds for believing was of a particular description, as including—
 - (i) anything which there are at the relevant time reasonable grounds for believing is of that description; and
 - (ii) anything which is in fact of that description;
- (d) where the property was seized in the course of a search to which neither paragraph (b) nor paragraph (c) applies, as including anything which is of a description of things which, on the occasion of the search, it would have been lawful for the person carrying it out to seize otherwise than under section 50 and 51; and
- (e) where the property was seized on the occasion of a search authorised under section 82 of the Terrorism Act 2000 (c. 11) (seizure of items suspected to have been, or to be intended to be, used in commission of certain offences), as including anything—
 - (i) which is or has been, or is or was intended to be, used in the commission of an offence such as is mentioned in subsection (3)(a) or (b) of that section; or
 - (ii) which at the relevant time the person who is in possession of the seized property reasonably suspects is something falling within sub-paragraph (i).
- (3) For the purpose of determining in accordance with subsection (2), in relation to any time, whether or to what extent property seized on the occasion of a search authorised under section 9 of the Official Secrets Act 1911 (c. 28) (seizure of evidence of offences under that Act having been or being about to be committed) is something for which the person making the seizure had power to search, subsection (1) of that section shall be construed—
 - (a) as if the reference in that subsection to evidence of an offence under that Act being about to be committed were a reference to evidence of such an offence having been, at the time of the seizure, about to be committed; and
 - (b) as if the reference in that subsection to reasonable ground for suspecting that such an offence is about to be committed were a reference to reasonable ground for suspecting that at the time of the seizure such an offence was about to be committed.
- (4) References in subsection (2) to a search include references to any activities authorised by virtue of any of the following—
 - (a) section 28(1) of the Trade Descriptions Act 1968 (c. 29) (power to enter premises and to inspect and seize goods and documents);
 - (b) section 29(1) of the Fair Trading Act 1973 (c. 41) (power to enter premises and to inspect and seize goods and documents);

- (c) paragraph 9 of the Schedule to the Prices Act 1974 (c. 24) (powers of entry and inspection);
 - (d) section 162(1) of the Consumer Credit Act 1974 (c. 39) (powers of entry and inspection);
 - (e) section 11(1) of the Estate Agents Act 1979 (c. 38) (powers of entry and inspection);
 - (f) Schedule 9 to the Weights and Measures (Northern Ireland) Order 1981 (S.I. 1981/231 (N.I. 10));
 - (g) section 79 of, or Schedule 8 to, the Weights and Measures Act 1985 (c. 72) (powers of entry and inspection etc.);
 - (h) section 29 of the Consumer Protection Act 1987 (c. 43) (powers of search etc.);
 - (i) Article 22 of the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20));
 - (j) section 32(5) of the Food Safety Act 1990 (c. 16) (power to inspect records relating to a food business);
 - (k) paragraph 3 of the Schedule to the Property Misdescriptions Act 1991 (c. 29) (powers of seizure etc.);
 - (l) Article 33(6) of the Food Safety (Northern Ireland) Order 1991 (S.I. 1991/762 (N.I. 7));
 - (m) paragraph 3 of Schedule 2 to the Timeshare Act 1992 (c. 35) (powers of officers of enforcement authority).
- (5) References in this Part to a power of seizure include references to each of the powers to take possession of items under—
- (a) section 44A(3) of the Insurance Companies Act 1982 (c. 50);
 - (b) section 448(3) of the Companies Act 1985 (c. 6);
 - (c) section 199(3) of the Financial Services Act 1986 (c. 60);
 - (d) Article 441(3) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6));
 - (e) section 43(2) of the Banking Act 1987 (c. 22);
 - (f) section 2(5) of the Criminal Justice Act 1987 (c. 38);
 - (g) section 40(2) of the Human Fertilisation and Embryology Act 1990 (c. 37);
 - (h) section 28(2)(c) of the Competition Act 1998 (c. 41); and
 - (i) section 176(5) of the Financial Services and Markets Act 2000 (c. 8);
- and references in this Part to seizure and to seized property shall be construed accordingly.
- (6) In this Part, so far as it applies to England and Wales—
- (a) references to excluded material shall be construed in accordance with section 11 of the 1984 Act (meaning of “excluded material”); and
 - (b) references to special procedure material shall be construed in accordance with section 14 of that Act (meaning of “special procedure material”).
- (7) In this Part, so far as it applies to Northern Ireland—
- (a) references to excluded material shall be construed in accordance with Article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (meaning of “excluded material”); and
 - (b) references to special procedure material shall be construed in accordance with Article 16 of that Order (meaning of “special procedure material”).
- (8) References in this Part to any item or material being comprised in other property include references to its being mixed with that other property.
- (9) In this Part “enactment” includes an enactment contained in Northern Ireland legislation.

*Supplemental provisions of Part 2***67 Application to customs officers**

The powers conferred by section 114(2) of the 1984 Act and Article 85(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (application of provisions relating to police officers to customs officers) shall have effect in relation to the provisions of this Part as they have effect in relation to the provisions of that Act or, as the case may be, that Order.

68 Application to Scotland

- (1) In the application of this Part to Scotland—
 - (a) subsection (4) of section 54 and subsection (10) of section 59 shall each have effect with the omission of paragraph (c) of that subsection;
 - (b) section 55 and subsection (3)(c) of section 59 shall be omitted; and
 - (c) Schedule 1 shall have effect as if the powers specified in that Schedule did not include any power of seizure under any enactment mentioned in that Schedule, so far as it is exercisable in Scotland by a constable, except a power conferred by an enactment mentioned in subsection (2).
- (2) Those enactments are—
 - (a) section 43(5) of the Gaming Act 1968 (c. 65);
 - (b) section 44A(3) of the Insurance Companies Act 1982 (c. 50);
 - (c) section 448(3) of the Companies Act 1985 (c. 6);
 - (d) section 199(3) of the Financial Services Act 1986 (c. 60);
 - (e) section 43(2) of the Banking Act 1987 (c. 22); and
 - (f) section 176(5) of the Financial Services and Markets Act 2000 (c. 8).

69 Application to powers designated by order

- (1) The Secretary of State may by order—
 - (a) provide for any power designated by the order to be added to those specified in Schedule 1 or section 63(2);
 - (b) make any modification of the provisions of this Part which the Secretary of State considers appropriate in consequence of any provision made by virtue of paragraph (a);
 - (c) make any modification of any enactment making provision in relation to seizures, or things seized, under a power designated by an order under this subsection which the Secretary of State considers appropriate in consequence of any provision made by virtue of that paragraph.
- (2) Where the power designated by the order made under subsection (1) is a power conferred in relation to Scotland, the Secretary of State shall consult the Scottish Ministers before making the order.
- (3) The power to make an order under subsection (1) shall be exercisable by statutory instrument; and no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.
- (4) In this section “modification” includes any exclusion, extension or application.

70 Consequential applications and amendments of enactments

Schedule 2 (which applies enactments in relation to provision made by this Part and contains minor and consequential amendments) shall