

POLICE, CRIME, SENTENCING AND COURTS BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Bill as brought from the House of Commons on 6 July 2021 (HL Bill 40).

- These Explanatory Notes have been provided by the Home Office, Ministry of Justice and Department for Transport in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 In December 2019, the Government was elected with manifesto commitments to make the country safer by empowering the police and courts to take more effective action against crime and lead “a fair justice system”. This included specific commitments to: enshrine “the Police Covenant into law”; “pass the Police Protection Bill”; and introduce “a new court order to target known knife carriers, making it easier for officers to stop and search those convicted of knife crime”. On courts and sentencing, it included commitments to: empower the courts to address crime; ensure “a fair justice system” by introducing “tougher sentencing for the worst offenders and [ending] automatic halfway release from prison for serious crimes”; toughen “community sentences, for example by tightening curfews and making those convicted do more hours of community payback”; and “turn people away from crime and end the cycle of reoffending”. This Bill contains a number of measures to support the delivery of those commitments. The purpose of the Bill is to:
 - protect the police and other emergency workers and enhance the wellbeing of police officers and staff;
 - protect the public by giving the police the tools needed to address crime and disorder, and by addressing the root causes of serious violent crime using multi-agency approaches to prevention;
 - ensure that the most serious violent and sexual offenders spend time in prison that matches the severity of their crimes, protects victims and gives the public confidence;
 - address repeat and prolific offenders through robust community sentences which punish and also address offenders’ needs; and
 - modernise the delivery of criminal justice by overhauling existing court processes to provide better services for all court users.
- 2 The Bill is in thirteen parts.
- 3 Part 1 contains measures to better protect the police and other emergency workers. In particular, it places a duty on the Secretary of State to publish an annual report on progress against the delivery of the Police Covenant; doubles the maximum penalty for assault on emergency workers; enables special constables to join the Police Federation of England and Wales; and amends the offences relating to dangerous and careless driving, so that the enhanced skills and training of police officers and police driving instructors can be taken into account in any prosecution for such an offence arising from their conduct.
- 4 Part 2 contains measures to prevent, investigate and prosecute crime. Chapter 1 places a duty on specified authorities (including local and health authorities and chief officers of police) to collaborate with each other to prevent and reduce serious violence. Chapter 2 places a duty on relevant authorities to undertake offensive weapons homicide reviews. Chapter 3 establishes a statutory framework for the extraction of information from digital devices for the purposes of the prevention, detection, investigation or prosecution of crime, safeguarding purposes and the purposes of investigating deaths. Chapter 4 reforms the pre-charge bail system; extends the offence of arranging or facilitating the commission of a child sex offence to cover a wider range of preparatory conduct in respect of sex offences committed against children under 13; extends provisions of trust provisions to capture those that lead activities in sporting and religious settings; strengthens the courts’ sentencing powers in relation to criminal damage to memorials; makes amendments to the Crime (Overseas Production Orders) Act 2019; makes further provision for the taking of photographs, fingerprints and non-intimate samples from

persons convicted of an offence; and confers powers on the police to obtain information about the location of human remains where there is no on-going criminal investigation.

- 5 Part 3 strengthens police powers to address non-violent protests. This includes provisions to extend the powers to place conditions on public processions and assemblies; amend the offence relating to the breaching of conditions placed on a public procession or assembly; replace the common law offence of public nuisance with a new statutory offence; and amend the legal framework designed to prevent disruptive activities in the vicinity of the Palace of Westminster to ensure vehicular access to Parliament.
- 6 Part 4 provides for a new offence to address unauthorised encampments and amends existing powers to remove trespassers on land under the Criminal Justice and Public Order Act 1994.
- 7 Part 5 contains provisions relating to road traffic. These include measures to increase the maximum penalty for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs; create a new offence of causing serious injury by careless or inconsiderate driving; place on a statutory footing provision for charging fees for courses offered as an alternative to prosecution for low-level driving offences; clarify powers to charge fees for the removal of abandoned vehicles; and remove the obligation on drivers to surrender their driving licence before they can accept a fixed penalty notice or a conditional offer, or before they attend a court hearing for a road traffic offence.
- 8 Part 6 contains provisions creating two tiers of cautions, replacing the existing six disposals. There will be a lower-tier disposal (community caution) and an upper-tier disposal (diversionary caution).
- 9 Part 7 contains provisions relating to sentencing and release. In September 2019 the Government published a white paper - '[A Smarter Approach to Sentencing](https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing)' – setting out a number of reforms to the adult sentencing and release framework.¹ These provisions include measures to increase the minimum sentences for particular offences, including making a Whole Life Order the starting point for those convicted of child murder and raising the starting points for those sentenced for committing murder whilst under 18. This Part also contains provisions that relate to release of offenders on licence; extend the driver disqualification period to reflect minimum periods in custody; and ensure that polygraph conditions can be applied to eligible service offenders and repatriated prisoners. Chapter 2 covers changes to community sentences including increasing the maximum curfew requirements and the piloting of specific amendments to community and suspended sentence orders.
- 10 Part 8 contains provisions relating to youth justice. The Sentencing White Paper also set out a number of reforms to the youth justice remand, sentencing and release framework. These provisions include measures to strengthen the tests to be applied by the courts to remand children to custody; make the Detention and Training Order more flexible; make changes to Youth Rehabilitation Orders; and abolish the Reparation Order.
- 11 Part 9 contains provisions relating to establishing charitable status for the providers of Secure 16 to 19 Academies and regulating the use of temporary release of children in Secure Children's Homes and Secure 16-19 Academies.
- 12 Part 10 makes further provision for the management of offenders. Chapter 1 provides for Serious Violence Reduction Orders, which will confer on the police new targeted stop and

¹ [Ministry of Justice A Smarter Approach to Sentencing \(September 2020\) https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing](https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing)

search powers to address knife crime offenders. Chapter 2 relates to the management of sex offenders and, in particular, amends the framework in the Sexual Offences Act 2003 and Sentencing Code in respect of Sexual Harm Prevention Orders and Sexual Risk Orders. Chapter 3 relates to the management of terrorist offenders and includes new powers for police to search the premises of an offender out on licence in order to check compliance with licence conditions for purposes connected with protecting the public from a risk of terrorism; search offenders out on licence; and arrest a terrorist offender in urgent cases pending a decision to recall them into custody for breach of licence.

- 13 Part 11 contains provisions enabling some custodial sentences of over four years to become spent after a certain period of time.
- 14 Part 12 makes several changes to the procedures in courts and tribunals, specifically in relation to the use of sign language interpreters for deaf jurors, the prohibition on unauthorised transmission and recording of proceedings, the regulation of remote observations of proceedings, and the use of live links in criminal proceedings.
- 15 Part 13 contains miscellaneous and general provisions, including in relation to extent and commencement.
- 16 The Bill was originally introduced in the House of Commons in the 2019-21 session on 9 March 2021 and given a Second Reading following a two-day debate on 16 March 2021 ([Official Report, 15 March 2021, columns 59 to 132](#) and [16 March 2021, columns 198 to 276](#)). In accordance with the motion agreed by the House of Commons on 16 March ([Official Report, columns 276 to 277](#)), the Bill was carried over to the 2021-22 session and reintroduced on 12 May 2021.

Policy background

Police Covenant

- 17 The Front Line Review [announced by the then Home Secretary](#) at the Police Federation Annual Conference in May 2018 invited police officers, police community support officers and police staff in England and Wales to share ideas to change and improve policing.² The subsequent [report](#) published by the Home Office in July 2019 highlighted the concerns of police officers and staff and the need to do more to help them.³ Following the report's publication, on 18 July 2019 the then Home Secretary [announced](#) plans to establish a Police Covenant, similar to the covenant that exists for the [armed forces](#), to provide support to those working in policing.⁴⁵
- 18 The Home Secretary announced in September 2019 a [consultation](#) about the Police Covenant, which ran from 26 February to 22 April 2020.⁶ The consultation paper sought views on the principle of implementing a Police Covenant in England and Wales, to enhance support for the police and their families. The consultation attracted 1,113 responses with over 90% of respondents either agreeing or strongly agreeing with the idea of establishing a Police Covenant and enshrining it in legislation. A [response to the consultation](#) was published in September 2020, setting out the initial focus of the Covenant as:⁷
- Physical Protection;
 - Health and Wellbeing;
 - Support for Families.
- 19 The Government's report also proposed that legislation should be brought forward to require the Home Secretary to report annually to Parliament on the Covenant. It was thereafter decided that the scope of the Covenant, and the duty to report, should extend to cover non-Home Office forces – British Transport Police, Civil Nuclear Constabulary, MoD Police, and National Crime Agency officers – meaning the provision extends UK wide, to ensure those forces which operate UK-wide are captured by the provisions.
- 20 The Covenant itself will take the form of a declaration and is not set out in the legislation. The legislative provisions comprise a duty on the Secretary of State to produce a report annually, addressing key issues in respect of the Covenant, specifically the health and wellbeing of members and former members of the police workforce in England and Wales, their physical protection, and the support for members of their families, taking into account any disadvantages experienced by the police workforce as a result of working in policing.
- 21 Enshrining the Police Covenant report in law is designed to embed the importance of these issues in public consciousness, and to introduce accountability and encourage action to prevent detriment being suffered by members of the police workforce. The report must be laid before Parliament, providing an opportunity to scrutinise the nature of the issues facing those

² [Home Secretary Police Federation speech 2018 - GOV.UK \(www.gov.uk\)](#)

³ [The Front Line Review Recommendation Report July 2019](#)

⁴ [Home Secretary announces plans for a police covenant - GOV.UK \(www.gov.uk\)](#)

⁵ [Armed Forces Covenant: guidance and support - GOV.UK \(www.gov.uk\)](#)

⁶ [Police Covenant for England and Wales \(publishing.service.gov.uk\)](#)

⁷ [Police Covenant for England and Wales response to the consultation \(publishing.service.gov.uk\)](#)

working in policing, and any work being done in these areas. These provisions will be underpinned by a non-statutory governance structure to support the Home Secretary in fulfilling these new duties. Clause 1 gives effect to these proposals.

Assaults on emergency workers

- 22 The Assaults on Emergency Workers (Offences) Act 2018 modified the criminal offence of common assault or battery in instances where it is committed against an emergency worker who is acting in the course of their functions to provide for a maximum custodial penalty on summary conviction or on indictment of 12 months' imprisonment.
- 23 Section 67 of the Sentencing Code ("the Code") (as introduced by the Sentencing Act 2020 (the "2020 Act")) provides that more serious assaults committed against emergency workers may be aggravated on sentence within the current statutory maxima for these offences.
- 24 On 13 July 2020 the Government launched a targeted consultation on doubling the maximum penalty for assaulting an emergency worker to two years. This was in line with the Government's manifesto commitment. This consultation was directed at representative groups of emergency workers and other key stakeholders. The large majority of those who responded were in favour of doubling the maximum penalty from 12 months to two years.
- 25 Following consultation, on 15 September 2020 the Government announced that it would bring forward legislation to increase the maximum penalty for assaulting an emergency worker from 12 months' to two years' imprisonment.
- 26 The Bill seeks to ensure that the law provides emergency workers with sufficient protection to enable them to carry out their duties, and the maximum penalty reflects the severity of those offences.
- 27 The current definition of an emergency worker applies to front-line workers who operate in what can sometimes be life or death situations to protect the public and this may mean they place themselves at personal risk. It is in this context that the law recognises them for special protection.
- 28 The current maximum penalty for the offence of common assault or battery committed against an emergency worker is 12 months' imprisonment. The Bill's provisions will increase the maximum penalty from 12 months to two years' imprisonment and will provide the courts with enhanced powers to sentence in a way that reflects the severity of the offence.

Special constables – Police Federation membership

- 29 The Police Federation for England and Wales ("the Police Federation") represents the interests of police officers below the rank of superintendent (namely, constables, sergeants, inspectors and chief inspectors). It was created in 1919 to represent officers, reflecting the fact that police officers are members of a disciplined service with an obligation to protect the public and, as such, are prohibited from joining a trade union or taking industrial action.
- 30 Membership of the Police Federation is confined to members of a police force (section 59 of the Police Act 1996), that is those who hold the office of constable and are remunerated by their police force. In England and Wales, special constables, that is volunteer police officers, are not "members" of their police force and are therefore ineligible for membership of the Police Federation. While special constables can access insurance, funded by the Home Office, to cover the cost of legal assistance for disciplinary and misconduct proceedings, this does not provide the end-to-end support, advice and pastoral care, for example in the immediate aftermath of an incident, that comes with membership of the Police Federation.

- 31 In July 2019, the then [Home Secretary announced](#) the Government's intention to support the Police Federation offering membership to special constables. Clause 3 of the Bill amends the Police Act 1996 to enable the Police Federation to represent special constables.
- 32 Special constables fulfil a range of specialised and frontline roles within police forces and therefore often face the same risks as regular officers. These provisions will ensure special constables in England and Wales have access to the same level of support and representation as regular constables through access to membership of the Police Federation.

Police driving standards

- 33 The tests set out in the Road Traffic Act 1988 (the "1988 Act") for the offences of careless and dangerous driving apply to police drivers in the same way as any other driver, taking no account of the various exemptions to road traffic legislation (for example, in relation to speed limits and road signs) that apply to the police or of their additional training. Those offences are committed when a person drives in a way that is below (careless) or far below (dangerous) that which would be expected of a competent and careful driver that is a member of the public.
- 34 Following a [campaign](#) by the Police Federation of England and Wales (the "Police Federation"), in September 2017, the then Minister for Policing and the Fire Service, Rt Hon Nick Hurd MP, commissioned a Home Office review of the law, guidance, procedures and processes surrounding police pursuits. The review had a particular focus on identifying the reasons why the current legal framework was seen as falling short, identifying options for improvement and developing recommendations.
- 35 In May 2018, the Home Office published a [consultation](#), "The Law, Guidance and Training Governing Police Pursuits", which set out the findings of the review and options for changes in the law. In particular, the consultation sought views on:
- whether any legislative change should apply only to police pursuits or to police response driving as well;
 - whether to revise the various exemptions from certain areas of road traffic legislation to make them clearer and more consistent;
 - amending the definitions in the offences of careless and dangerous driving to take account of the training and experience of police drivers; and
 - making clear that a suspect being pursued is responsible for their own decision to drive dangerously and that blame should not be attached to the pursuing police officer.
- 36 The Home Office received 383 responses to the consultation with two-thirds of respondents (66.6%) agreeing that a police officer responding to an emergency or a pursuit should be compared to the standard of a police driver with similar training and skill. The Government published its [response](#) to the consultation and the then Home Secretary issued a [Written Ministerial Statement](#) on 2 May 2019 announcing that the Government would seek to introduce a new test to assess the standard of driving of a police officer. The new test will allow the courts to judge their standard of driving against a competent and careful police constable with the same level of training, rather than a member of the public as at present. The proposed new test is intended to strike the right balance between giving trained officers the confidence they need to fight crime effectively while holding to account those who drive in an inappropriate manner and put the public at risk. Clauses 4 to 6 of the Bill give effect to these proposals.

Serious violence duty

- 37 In April 2018, the Government published its [Serious Violence Strategy](#) to help further address knife crime, gun crime and homicide. The Strategy explained that the Government's approach was not solely focused on law enforcement, but depended on partnerships across a number of sectors such as education, health, social services, housing, youth services and victim services. In April 2019, the Home Office published a [consultation](#) paper seeking views on options to implement a multi-agency or "public health" approach to preventing and tackling serious violence. This set out three options to achieve this:
- a new duty on specific organisations to have due regard to the prevention and tackling of serious violence;
 - revise Community Safety Partnerships ("CSPs"), as established under the Crime and Disorder Act 1998 ("the 1998 Act"). Section 6 of the 1998 Act requires CSPs to formulate and implement strategies to reduce crime and disorder, combat the misuse of substances and reduce reoffending;
 - a voluntary non-legislative approach to encourage areas to adopt voluntary measures to engage in a multi-agency approach.
- 38 The consultation closed on 28 May 2019. The Home Office received 288 responses which indicated overall support for a multi-agency public health approach but with differing views on the approach to take. The then Home Secretary issued a [Written Ministerial Statement](#) on 15 July 2019 to announce the publication of the Government's [response](#) to the consultation. The response proposed a new duty on relevant agencies to collaborate, where possible through existing partnership structures, to prevent and reduce serious violence and to amend the 1998 Act, which sets out the strategies CSPs must formulate and implement, to explicitly include serious violence. Chapter 1 of Part 2 of the Bill gives effect to these proposals.

Homicide reviews

- 39 Reviews of certain deaths currently take place in England and Wales under sections 16M to 16Q of the Children Act 2004, section 9 of the Domestic Violence, Crime and Victims Act 2004, section 44 of the Care Act 2014, section 135(4)(a) of the Social Services and Well-being (Wales) Act 2014, section 70 of the Health and Social Care (Community Health and Standards) Act 2003 and section 1.5.4 of NHS England's [Serious Incidents Framework](#) in certain specified circumstances, namely where a person aged under 18 dies, a person dies due to domestic violence, a vulnerable adult dies, or someone in receipt of mental health care commits homicide. The reviews are a formal process bringing together relevant local safeguarding partners to learn lessons and to make recommendations for change and improvement in order to prevent future homicides.
- 40 In April 2018, the Government published its [Serious Violence Strategy](#) to help further address knife crime, gun crime and homicide. The then Home Secretary expressed determination to "take action to address serious violence and in particular the recent increases in knife crime, gun crime and homicide". Currently most adult homicides are not subject to a formal review and therefore there is no process for learning lessons and making recommendations for change and improvement in order to help to prevent future homicides.
- 41 Chapter 2 of Part 2 of the Bill introduces a new legal requirement on relevant partners in England and Wales to arrange and conduct homicide reviews in prescribed circumstances for adult homicides involving offensive weapons. This legal requirement will be placed on the review partners – the relevant local authority/authorities, police chief constable and clinical commissioning group/local health board - and there is also a requirement for any individual or body asked to provide relevant information to a review to comply.

- 42 This Chapter provide for the legislative framework for these new offensive weapons homicide reviews, and allows for secondary legislation to implement specific operational details, which will be made following engagement and co-design with local partners.

Extraction of information from digital devices for purposes of a criminal investigation etc

- 43 With so much more of individuals' lives being lived online, important information for the prevention, detection, investigation or prosecution of crime is now held on digital devices, such as mobile phones. This includes information from complainants and witnesses in criminal proceedings. The arrangements by which such information is made available to law enforcement agencies, prosecutors and the defence are critical to confidence in the criminal justice system and to meeting the right to a fair trial. Extraction of information from digital devices has therefore become a more frequent and routine part of criminal investigations.
- 44 In June 2020, the Information Commissioner's Office published a [report](#) on police practice in England and Wales around the extraction and analysis of data from mobile phones and other electronic communication devices of victims, witnesses and suspects during a criminal investigation. The report identified inconsistencies in the approach taken by police forces to extract digital data and the complex legal framework that governs this practice. It recommended clarifying the lawful basis for data extraction and introducing a code of practice to guide this activity in order to increase consistency and ensure that any data taken is strictly necessary for the purpose of the investigation.
- 45 Chapter 3 of Part 2 introduces a specific legal basis for the extraction of information from complainants', witnesses' and others' digital devices. This will be a non-coercive power based on the agreement of the routine user of the device. It will be applicable to specified law enforcement and regulatory agencies, such as the police, who extract information to support investigations or to protect vulnerable people from harm. This will provide a nationally consistent legal basis for the purpose of preventing, detecting, investigating or prosecuting criminal offences and for safeguarding and preventing serious harm.

Pre-charge bail

- 46 An individual who has been arrested by the police but who has not yet been charged can be released on pre-charge bail or released without bail while the investigation continues. Pre-charge bail means the individual under investigation is released from police custody, with or without conditions, while officers continue their investigation. Individuals on pre-charge bail are required to return to the police station at a specified date and time, known as "answering bail", either to be informed of a final decision on their case or to be given an update on the progress of the investigation.
- 47 Conditions may be imposed upon the individual if they are deemed necessary to prevent someone from failing to surrender to custody; prevent further offending; or prevent someone from interfering with witnesses or otherwise obstructing the course of justice. Conditions may also be imposed for the individuals' own protection or, if aged under 18, for their own welfare and interests.
- 48 The then Government legislated through the Policing and Crime Act 2017 to address concerns that individuals were being kept on pre-charge bail for long periods, sometimes with strict conditions. The reforms introduced:
- a "presumption" against pre-charge bail unless necessary and proportionate in all circumstances; and

- clear statutory timescales and processes for the initial imposition and extension of bail, including the introduction of judicial oversight for the extension of pre-charge bail beyond three months.

- 49 Since the reforms came into force in April 2017, the use of pre-charge bail has fallen, mirrored by an increasing number of individuals released without bail, commonly known as “released under investigation” (“RUI”). This change has raised concerns that bail is not always being used when appropriate, including to prevent individuals from committing an offence or interfering with witnesses. Other concerns focus on the potential for longer investigations in cases where bail is not used and the adverse impacts on the courts.
- 50 On 5 November 2019 the Government [announced a review](#) of pre-charge bail to address the concerns raised around the impact of the current regime on the police, victims, those under investigation and the broader criminal justice system.
- 51 The Government held a [public consultation](#) which ran from 5 February to 29 May 2020 which sought views on proposed reforms that would remove the general presumption against bail and instead introduce a risk-based approach to the use of bail. In addition, the consultation sought views on proposals to amend the statutory framework governing pre-charge bail timescales and authorisations designed to remove disincentives against use of pre-charge bail whilst supporting the timely progression of investigations.
- 52 The consultation received 844 responses, with 80% of respondents agreeing with the proposal to remove the presumption against pre-charge bail and 88% strongly agreeing that bail conditions needed to be made more effective to prevent interference with victims and witnesses. The [Government’s response](#) to the consultation was published on 14 January 2021. Clause 43 and Schedule 4 give effect to these proposals.

Extending the offence of arranging or facilitating the commission of a child sex offence

- 53 The Sexual Offences Act 2003 (“the 2003 Act”) contains a number of specific child sex offences. Under the provisions of the Criminal Attempts Act 1981, attempting to commit any of these offences is also an offence in itself.
- 54 At the Ministerial Digital Industry Roundtable 2019, the Five Country Ministers (the UK together with Australia, Canada, New Zealand and the USA) [agreed](#) that “tackling [the online child sexual abuse] epidemic requires an immediate upscaling of the global response to ensure that all children across the globe are protected...and that there is no safe space online for offenders to operate.”
- 55 Section 14 of the 2003 Act provides that it is also an offence to undertake acts preparatory to one of the child sexual offences in sections 9 to 13. Such preparatory acts might, for example, include the (alleged) offender approaching a person requesting that they procure a child under 13 for the purpose of sexual activity. Section 14 currently does not apply to the child sex offences in sections 5 to 8 of the 2003 Act (rape and other offences against children under 13). Clause 44 addresses this gap in the criminal law.

Positions of trust

- 56 The existing position of trust offences were created as part of the 2003 Act and are to be found within sections 16 to 24. These provisions contain a number of offences which criminalise sexual activity with children, aged under 18, by people who hold a “position of trust” in relation to them, even where such activity is apparently consensual and would otherwise be legal.

- 57 The policy intention in relation to creating further positions of trust is to extend protection by preventing other individuals, who are not in an existing position of trust and who carry out certain activities on a regular basis in a sport or in a religion and know that they do so, from using their position to abuse, exploit or manipulate young people to consent to sex.
- 58 In Spring 2019, the Ministry of Justice conducted a review of the law in this area, speaking to 45 stakeholders including charities, sports bodies, religious organisations, victims' groups, the police and the Crown Prosecution Service.
- 59 The review found strong evidence for extending the law to include those individuals who hold influence or authority over 16 and 17-year-olds by virtue of their roles and the activities which they undertake within a sports or a religious setting. Clause 45 makes the necessary change to the 2003 Act.
- 60 Mindful of public concern about the potential for abuse by those individuals who are also considered to be in positions of trust when carrying out certain other activities, provision has also been made to enable further positions of trust to be created by the Secretary of State in the future by way of secondary legislation (regulations) should there be evidence of a need to do this.

Criminal damage to memorials

- 61 There is concern that the current law does not allow the courts to deal effectively with cases of criminal damage or desecration of war memorials and other statues. This issue re-emerged during summer 2020 when many statues and memorials were damaged. Earlier, during the 2019-21 session, backbench MPs asked the Government to support their Desecration of War Memorials Bill, intended to introduce a new and specific offence where a person destroys, damages or otherwise desecrates a war memorial. The Government has adopted an alternative approach through Clause 46 of this Bill to introduce an amendment to the Magistrates' Courts Act 1980 ("the 1980 Act") to remove consideration of monetary value with respect to criminal damage to memorials which would otherwise, in some cases, determine venue and limit sentencing powers.

Amendments to the Crime (Overseas Production Orders) Act 2019

- 62 The Crime (Overseas Production Orders) Act 2019 ("COPO Act") grants law enforcement agencies and prosecuting authorities the power to apply for and obtain electronic data directly from service providers (those who create, process, communicate or store electronic data) to support criminal investigations and prosecutions. Such orders may be used only when permitted under an international co-operation arrangement between the UK and the country where the subject of the order is located. Each request will be subject to scrutiny in UK courts, mirroring the existing safeguards and tests already in place for domestic powers to obtain investigatory and evidential material.
- 63 The COPO Act addresses the constraints of existing domestic court orders and the limits of Mutual Legal Assistance ("MLA") in being able to compel the production of electronic data from another jurisdiction quickly. The COPO Act does this by creating a new overseas production order which has extra-territorial effect, meaning that these orders are granted by UK courts exerting jurisdiction over evidence and persons outside the UK. This jurisdiction may be asserted only where an international co-operation arrangement to which the UK is a party permits this to happen and has been designated for the purposes of the Act. An international co-operation arrangement will be in the form of a treaty with another country or countries, and will relate (in whole or part) to the provision of assistance in connection with the investigation or prosecution of offences. The COPO Act reflects the anticipated framework required to implement such international agreements in future.

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Bill as brought from the House of Commons on 6 July 2021 (HL Bill 40)

- 64 Work on implementing the COPO Act, which came into force on 9 October 2019, for England, Wales and Scotland and 22 February 2021 for Northern Ireland, has identified the need to make a number of amendments to allow the Act to work more effectively. Clause 47 and Schedule 5 amend the COPO Act, in particular, to:
- allow law enforcement officers and prosecutors to seek and receive associated or connected communications data attached to content of communications; and
 - allow the Secretary of State and Lord Advocate to delegate the service of an overseas production order where it might be more expedient for an appropriate body to take on this function.

Functions of prisoner custody officers in relation to live link hearings

- 65 As a response to Covid-19, HM Courts and Tribunals Service (“HMCTS”) increased the roll-out of Video Remand Hearings (“VRH”) from police stations. Although it has been helping the courts respond to the pandemic by reducing the number of defendants travelling to magistrates’ courts, police forces have reported resourcing and operational issues with operating VRH.
- 66 The Government considers it important to continue to make the best use of technology such as VRH to improve future efficiency. Clause 53 provides Prisoner Escort and Custody Service (“PECS”) officers with the power to have custody over prisoners in police stations, including detainees in legal custody, for the purpose of overseeing any preliminary, sentencing or enforcement hearing taking place by way of live link, in particular VRH, and matters associated with such hearings (such as overseeing pre-trial meetings with solicitors and probation officers).

Proceeds of crime: account freezing orders

- 67 Account freezing and forfeiture provisions were created by the Criminal Finances Act 2017 (“CFA”), which inserted new provisions into the Proceeds of Crime Act 2002 (“POCA”). Those powers enable certain law enforcement officers to apply to the court for an account freezing order. The court can only make such an order where there are reasonable grounds for suspecting that the money present in an account is the proceeds of crime, or that it is intended for use in unlawful conduct. Once money is subject to an account freezing order, then law enforcement may seek to have it forfeited.
- 68 The CFA account freezing and forfeiture provisions applied to money held in accounts maintained with banks and building societies. The Financial Services Act 2021 further amended POCA to make provision for money held in accounts maintained by Electronic Money Institutions (“EMIs”) and Payment Institutions (“PIs”), in England and Wales and Scotland, keeping pace with technological advances in the financial sector. Clause 54 of the Bill provides for consistency of powers across the UK by ensuring that they can be used in respect of EMI and PI accounts in Northern Ireland.

Police powers to address non-violent protests

- 69 Current legislation to manage protests provides predominantly for powers to counter behaviours at protests which are violent or distressing to the public. These powers include those under the Public Order Act 1986 (the “1986 Act”) which provides the police with powers to manage public processions and assemblies, including protests. Section 12 of the 1986 Act allows the police to impose any type of condition on a public procession necessary to prevent serious disorder; serious damage to property; or serious disruption to the life of the

community; or if the organiser's purpose is to intimidate others into doing or not doing something that they have a right to do, or to not do. Conditions that may be imposed on a public assembly are more limited, being restricted to specifying their maximum duration, maximum attendance and location (section 14(1) of the 1986 Act).

70 Recent changes in the tactics employed by certain protesters, for example gluing themselves to buildings or vehicles, blocking bridges or otherwise obstructing access to buildings such as the Palace of Westminster and newspaper printing works in September 2020, have highlighted some gaps in current legislation. To address these gaps, Clauses 55 to 57 and 61 amend the 1986 Act to:

- allow the police to place any necessary condition on a public assembly, as they can with a public procession;
- amend the offences relating to the breaching of conditions placed on a public procession or assembly by closing a loophole which some protesters exploit to evade conviction for breaching conditions, and increasing the maximum penalties for the offence;
- broaden the range of circumstances in which the police can impose conditions on the generation of noise at a public procession or public assembly to include where police reasonably believe the noise generated by persons taking part may have a significant detrimental impact on persons in the vicinity or cause a serious disruption to the running of an organisation;
- allow the police to impose conditions on one-person protests where they reasonably believe the noise generated by the person carrying on the protest may have a significant detrimental impact on persons in the vicinity or may result in serious disruption to the activities of an organisation;
- confer a power on the Secretary of State to make provision in regulations about the meaning of "serious disruption to the life of the community" or "serious disruption to the activities of an organisation which are carried out in the vicinity of the procession/assembly/one-person protest".

71 Clause 58 amends Part 3 of the Police Reform and Social Responsibility Act 2011 so that a police officer may direct an individual to cease, or not start, obstructing the passage of a vehicle into or out of the Parliamentary Estate and expands the Palace of Westminster controlled area to ensure that all entrances are included. This measure follows the recommendation of the Joint Committee on Human Rights in their October 2019 Report "[Democracy, freedom of expression and freedom of association: Threats to MPs](#)" (First report, session 2019, HC37 and HL Paper 5) for further legislation to protect the right of access to the Parliamentary estate for those with business there.

72 Clause 59 further provides a power for the Secretary of State to make provision to define a new controlled area around the temporary locations of Parliament when one or both Houses relocate as part of the Palace of Westminster Restoration and Renewal Programme, or for any reason (e.g. an emergency relocation due to events such as a fire or flood). Some or all of the prohibited behaviours in the existing controlled area as provided for in the Police Reform and Social Responsibility Act 2011 and amended through this Bill, will be prohibited in the newly defined controlled area.

73 Clause 60 gives effect to recommendations made by the Law Commission in their July 2015 Report on "[Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency](#)", that the common law offence of public nuisance should be replaced by a statutory

offence covering any conduct which endangers the life, health, property or comfort of a section of the public or obstructs them in the exercise of their rights.

Unauthorised encampments

- 74 There are a number of existing powers available to the police and local authorities to address unauthorised encampments. Sections 61 to 62E of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) confer powers on the police to direct trespassers to leave land and to remove any vehicles or other property they have with them on the land. Sections 77 to 79 confer similar powers on local authorities in respect of unauthorised sites.⁸ The vast majority of travelling communities reside in caravans on authorised sites. Out of the 22,710 caravans recorded in England in January 2020, only 694 (3%) were on unauthorised sites. Despite this relatively low proportion, there have been long-standing concerns about the disproportionate impact some unauthorised encampments can have. They can infringe upon the settled communities’ rights through temporary loss of local amenities and can cause distress to local communities and local businesses.
- 75 Recognising these concerns, from 5 April to 15 June 2018, the Government ran a [consultation](#) on the effectiveness of enforcement against unauthorised encampments. The consultation sought views on the scale of the problem, whether existing powers could be used more effectively and if any additional powers were required. Alongside the Government [response](#) to the consultation published on 6 February 2019, the then Home Secretary [announced](#) the Government would look to amend sections 61 and 62A of the 1994 Act to enable unauthorised encampments to be addressed more effectively. He also confirmed that Home Office officials would review how the Government could criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales.
- 76 Following this a second [consultation](#) was launched on 5 November 2019 and ran until 4 March 2020. This consultation asked how to strengthen the police’s powers to address unauthorised encampments. It included proposals to amend the 1994 Act and proposals for the introduction of a new criminal offence of trespass. The Government published its [response](#) to this consultation on 8 March 2021, setting out proposals to create a new offence and strengthen the powers in the 1994 Act; Part 4 gives effect to these proposals.

Road traffic

Road traffic offences

- 77 On 5 December 2016 the Government launched a consultation, “Driving offences and penalties relating to causing death or serious injury”. The consultation sought views on specific offences dealing with causing death or serious injury, which had been identified as of the greatest concern to the public. The consultation ran until 1 February 2017.
- 78 The [Government response to the consultation](#) was published on 16 October 2017. The Government committed to bring forward proposals for reform of the law to:
- create a new offence of causing serious injury by careless driving;
 - increase the maximum penalty for causing death by dangerous driving from 14 years to life imprisonment; and
 - increase the maximum penalty for causing death by careless driving when under the influence of drink or drugs from 14 years to life imprisonment.

⁸ [Count of Traveller Caravans](#), January 2020, England, Ministry of Housing, Communities and Local Government

- 79 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 created an offence of causing serious injury by dangerous driving. The Criminal Justice and Courts Act 2015 added a further offence of causing serious injury while driving disqualified. There are therefore two “causing serious injury” driving offences, relating to dangerous driving and disqualified driving, but no offence with respect to serious injury resulting from careless driving.
- 80 A new offence of causing serious injury by careless, or inconsiderate, driving means that those who drive carelessly resulting in a person suffering serious injury will be liable to prosecution for a specific offence which carries a maximum penalty of a custodial sentence of 2 years on indictment rather than under the offence of careless, and inconsiderate, driving which has the maximum penalty of a fine. The Government believes that this new offence better reflects the overall seriousness of the careless, or inconsiderate, driving that leads to serious injury.
- 81 14 years’ imprisonment is the current maximum custodial penalty available for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs. Increasing the maximum penalty to life imprisonment for these offences will provide the courts with enhanced powers to sentence appropriately for the most serious cases.
- 82 Clauses 65 to 67 and Schedule 7 to the Bill give effect to these measures.

Courses offered as an alternative to prosecution

- 83 Persons who commit certain low-level road traffic offences (for example, being caught speeding by a speed camera, driving without due care and attention, traffic light offences or not wearing a seat belt) may be offered educational courses under existing powers (section 1 of the Local Government (Goods and Services) Act 1970 and section 143 of the Anti-Social Behaviour, Crime and Policing Act 2014 read in conjunction with paragraph 14 of Schedule 1 to the Police Reform and Social Responsibility Act 2011). Such courses are offered as an alternative to a fixed penalty (www.ukroad.org.uk) and therefore a driver who successfully completes a course is not required to pay a financial penalty in relation to the offence, or to have points endorsed on their driving record. The current fee is around £100 as the exact course fee can vary according to local arrangements. This is charged to a driver who enrolls on a course, which covers the cost of the course, administrative expenses and an element to fund road safety programmes. Clause 68 sets out a specific statutory basis for this charging regime, to put beyond doubt the police’s power to charge. It does not change the way in which courses are offered, administered or run, but provides greater transparency over the way that fees are set. Those offered courses will not, therefore, see any change.

Charges for removal, storage and disposal of vehicles

- 84 Section 102 of the Road Traffic Regulation Act 1984 (the “1984 Act”) enables charges incurred in the removal, storage and disposal of vehicles under sections 99 and 101 of that Act to be recovered. This includes where vehicles are removed:
- On a road in contravention of a statutory prohibition or restriction;
 - On a road causing an obstruction to road users or likely to cause danger to them;
 - On a road or any land in the open air and appearing to be abandoned without lawful authority;
 - From a parking place where a vehicle has been left there in contravention of agreed conditions.
- 85 Following amendments to section 102(2) of the 1984 Act made in section 68 of the Road Traffic Act 1991 (the “1991 Act”) and paragraph 4(2) of Schedule 11 to the Traffic Management Act

2004 (the “2004 Act”), the police’s power to charge for the removal, storage and disposal of vehicles under sections 99 and 101 of the 1984 Act within civil enforcement areas for parking contraventions seems to have been inadvertently removed due to a drafting error. At the same time, the powers of local authorities, the Secretary of State and strategic highways companies to charge for removal, storage and disposal of vehicles were also inadvertently removed.

- 86 In order to return to a statutory footing the legal basis to charge vehicle recovery, storage and disposal fees, Clause 69 amends section 102(2A) of the Road Traffic Regulation Act 1984 so that the power to charge for the recovery, storage and disposal of vehicles is extended to the chief officer, local authorities, Secretary of State and strategic highways companies once more.

Surrender of driving licences

- 87 The paper counterpart to the driving licence was abolished in June 2015 by the commencement of section 10 of, and Schedule 3 to, the Road Safety Act 2006. As a result, there is no further need for a physical driving licence to be produced and surrendered (either to the court where proceedings are commenced, or to a constable, vehicle examiner or fixed penalty clerk in relation to fixed penalties or conditional offers) for an endorsement to be recorded on an individual’s driving record. Endorsement information is recorded on the electronic driver record held by the Driver and Vehicle Licensing Agency (“DVLA”). The only need for a licence to be produced or surrendered is therefore where the driver may be sentenced to disqualification or is actually disqualified.
- 88 Clauses 70 to 75, and Schedules 8 and 9 update the law in relation to the production and surrender of driving licences so as to streamline the processes for the electronic endorsement of driving licences by removing the need for the physical licence to be produced. They also strengthen the rules for the surrender of driving licences where a driver faces disqualification.

Fixed penalty notices for certain road traffic offences - Scotland

- 89 Currently, the police throughout Great Britain have the power to issue a conditional offer of fixed penalty notice (“COFPN”) under sections 75 to 77A of the Road Traffic Offenders Act 1988 (the “1988 Act”). This scheme was introduced in 1989 as an alternative to prosecution for certain low-level road traffic offences. Once a COFPN is issued, an individual has 28 days to accept the offer and make payment. If, in Scotland, the offer is not accepted or if the recipient fails to take any action, the police will submit a “Standard Prosecution Report” to the Crown Office and Procurator Fiscal Service for consideration of whether a prosecution should take place.
- 90 In England and Wales, in addition to powers to issue COFPN, section 54 of the 1988 act allows the police and Driver and Vehicle Standards Agency (“DVSA”) vehicle examiners to issue fixed penalty notices (“FPNs”) on-the-spot to alleged road traffic offenders. The level of the monetary penalty varies depending on the offence. For example, the penalty is £100 for driving without due care and attention, £200 for using a hand-held mobile phone while driving and £300 for driving without insurance. If the recipient does not either pay the fixed penalty on time or request a hearing in respect of the FPN, a sum equal to one and a half times the FPN amount becomes a registered fine and is collected and enforced in line with the normal procedures in place for court-imposed fines. There is no need for the police to report the matter to the Crown Prosecution Service, nor for a prosecution to take place. There is no equivalent power for police officers in Scotland to issue FPNs.
- 91 The Department for Transport, in partnership with the Scottish Government, ran a [public consultation](#) from 27 March to 8 May 2018 seeking views on whether to extend the power in section 54 of the 1988 Act to allow the police, traffic wardens and DVSA vehicle examiners to issue on-the-spot FPNs to suspected offenders of road traffic offences committed in Scotland.

The consultation received 26 responses with the majority of respondents agreeing to the proposed changes. A response to the consultation was published in September 2020 accepting the Scottish Government's request to enable the police to issue FPNs to suspected offenders of road traffic offences committed in Scotland. Clause 76 of the Bill gives effect to these proposals.

Cautions

- 92 Out of Court Disposals ("OOCs") are sanctions which allow the police to deal swiftly, proportionately and appropriately with low-level offending without the offender coming before court. They can maximise the use of officer time, achieving a satisfactory outcome for the public while allowing officers to spend more time on frontline duties tackling more serious and complex crime.
- 93 They are also an opportunity to provide intervention and support to offenders at an earlier stage in criminal behaviour, diverting them into rehabilitative services to help reduce escalation of offending. In this way, there is potential for a greater whole-systems approach, in particular diverting those who have mental health issues, health vulnerabilities or other complex needs into appropriate services as a condition of the disposal, getting to the root cause of their offending.
- 94 Police forces currently have access to up to six OOCs for adults (Cannabis/Khat warning, Community Resolution, Penalty Notice for Disorder, Simple and Conditional Cautions). The Bill will reduce this to two statutory OOCs.
- 95 The Government and the police conducted a joint review of the existing OOC framework in 2013, and held a public consultation, which ran from November 2013 to January 2014. The consultation responses confirmed that the OOC framework was in need of reform. The joint Government and police response to the consultation was published in November 2014. It set out plans to reduce the number of disposals from six to two. A new 'two-tier framework' was piloted in three police forces.
- 96 A two-tier framework, based on the pilot forces, has been voluntarily adopted by a number of police forces to date through the National Police Chiefs' Council OOC strategy which was published in 2017.
- 97 Part 6 of the Bill takes forward the Government's commitment to legislate, implementing the new two-tier framework to ensure transparency and consistency of approach for OOCs across England and Wales. These measures introduce a two-tier legislative framework, comprising community and diversionary cautions to simplify the OOCs framework. The new framework will still afford the police scope to innovate through local initiatives, such as deferred prosecution; the Ministry of Justice-led programme 'Chance to Change' is piloting such a scheme in two police forces areas as recommended by the Lammy Review.⁹

Custodial Sentences

Minimum sentences for particular offences

- 98 For offenders who commit certain key offences of a serious nature, the law provides minimum custodial sentences. These generally, although not exclusively, apply to repeat offences, such as a third conviction for domestic burglary. These minimum sentences are not technically mandatory; rather they are a mandatory consideration that the court must make before

⁹ [Lammy review: final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/lammy-review-final-report)<https://www.gov.uk/government/publications/lammy-review-final-report>

passing a sentence. Courts have the discretion not to impose the minimum when they consider that there are particular circumstances pertaining to the offender and/or the offence which would make it unjust. The court will apply a reduction for an early guilty plea, although the reduction cannot take the sentence length to below 80% of the minimum.

- 99 A large proportion of repeat offenders do not receive the minimum custodial sentence. The Bill aims to reduce the occasions in which the court could depart from the minimum term, by changing the threshold for passing a sentence below the minimum term for offences including: a third class A drug trafficking offence (7 years minimum); a third domestic burglary (3 years minimum); a repeat offence involving a weapon or bladed article (6 months minimum); and threatening a person with a weapon or bladed article (6 months minimum). The changes will also apply to 16- and 17-year-olds who receive a 4-month detention and training order (“DTO”) for a repeat offence involving a weapon or bladed article or threatening a person with a weapon or bladed article.
- 100 These changes will also align the criteria used for these offences with section 311 of the Sentencing Code (“the Code”) (as introduced by the Sentencing Act 2020 (the “2020 Act”)), which states, in relation to offences involving firearms, that the court must impose an appropriate custodial sentence of at least the minimum term unless the court is of the opinion that there are “exceptional” circumstances which relate to the offence or to the offender which would justify not doing so.
- 101 Clause 101 and Schedule 11 amend sections 312 to 315 and 320 of the Code in relation to the offences mentioned above so that it requires the court to impose a custodial sentence of at least the statutory minimum term unless there are exceptional circumstances that relate to any of the offences or to the offender which would make it unjust to do so. Judicial discretion to depart from the minimum is retained.
- 102 These changes will apply only prospectively, and the court will continue to apply a discount for an early guilty plea, not below 80% of the minimum term prescribed by legislation.

Life Sentences: time to be served

Whole life order as a starting point for premeditated child murder

- 103 Clause 102 will expand the existing criteria, set out in Schedule 21 to the Code, so that the premeditated murder of a child should have, as its starting point, a whole life order when it comes to a court passing sentence. This change is being made to reflect the particularly heinous nature of such murders, ensuring they carry the most severe punishment available as a starting point.

Whole life orders for young adult offenders in exceptional cases

- 104 Currently, whole life orders can be imposed only on offenders aged 21 and over. Clause 103 will make it possible for judges to impose whole life orders on offenders aged 18 to 20 in exceptionally serious circumstances. The measures will amend provisions in the Code, which deal with whole life orders, so that, although it will remain the case that such sentences cannot ordinarily be imposed on offenders below the age of 21, judges have the option of imposing them in cases where the court considers that the seriousness of the offence is exceptionally high even by the standard of offences which would normally result in a whole life order).

Starting points for murder committed when under 18

- 105 Detention at Her Majesty’s Pleasure (“DHMP”) is a mandatory life sentence for offenders who commit the offence of murder when they are a child, as set out in section 259 of the Code. As with all life sentences, the court must set a minimum term to be served in custody before the offender can be considered for release by the Parole Board. Paragraph 6 of Schedule 21 to the

2020 Act sets the minimum term starting point at 12 years for all children. Clause 104 amends the Code to introduce a sliding scale of starting points for minimum terms. The scale takes into consideration the age of the child and the seriousness of the murder. The older the child and the more serious the murder, the higher the starting point.

- 106 Those who are sentenced to DHMP can currently apply for a review of their minimum term at the halfway point. The purpose of the review is to determine if the existing minimum term is still appropriate, in light of the individual's progress in custody. The individual can apply for further reviews every two years under current policy. Clause 105 enshrines the minimum term review process into legislation. It also removes eligibility for continuing reviews past the age of 18. Those sentenced to DHMP will be eligible for only a single review at the halfway point of their minimum term but no further reviews once they have turned 18. Those who were already age 18 or over at sentencing will no longer be eligible for any minimum term review.

Life sentence not fixed by law: minimum term

- 107 Discretionary life sentences may be imposed where a serious offence (such as manslaughter, rape or grievous bodily harm with intent) has been committed. When imposing such a sentence, the court must set a minimum term (commonly known as a tariff) that must be served in full in custody before the prisoner can be considered for release by the Parole Board. Clause 106 will change the way in which the starting point for discretionary life sentence minimum terms are calculated so that there is greater consistency across the sentencing framework as it applies to serious offences.
- 108 The change will require courts to base the minimum term on a starting point of at least two-thirds of a notional determinate sentence instead of half of such a sentence as at present. This change is necessary because most serious violent and sexual offenders who receive determinate sentences – including those who may receive an extended determinate sentence – are required to serve two-thirds of their custodial term before they may be released. The Government has also legislated through the Counter-Terrorism and Sentencing Act 2021 to require that the most serious terrorist offenders given a determinate sentence serve the whole of their custodial term before they can be released. To ensure consistency with that position, where a prisoner receives a discretionary life sentence instead of such a determinate sentence, this change provides that the starting point for the minimum term would be the whole of the custodial term for that notional determinate sentence.
- 109 The measure will amend section 323 of the Code and will mean that those serving discretionary life sentences should serve longer in prison before being considered for release by the Parole Board.

Release on licence

Abolishing automatic halfway release for certain serious offenders

- 110 Standard release provisions are set out in section 244 of the Criminal Justice Act 2003 ("CJA 2003"), which before 2020 provided in all cases that offenders in receipt of a standard determinate sentence ("SDS") for any offence would be automatically released from their sentence at the half-way point and they would then serve the remainder of their sentence on licence in the community. The Government's 2019 manifesto committed to "end automatic halfway release from prison for serious crimes".
- 111 In February 2020, this halfway release requirement was changed for terrorist offenders in receipt of an SDS, by the Terrorist Offenders (Restriction of Early Release) ("TORER") Act 2020, so they would instead have to serve two-thirds of their sentence before the Parole Board

would consider if they were safe for early release. This fast-track legislation was brought forward following the terror attacks at Fishmongers' Hall and Streatham in London.

- 112 In relation to non-terrorist offenders, the Release of Prisoners (Alteration of Relevant Proportion of Sentence) ("ROPARPS") Order 2020 (SI 2020/158) came into force on 1 April 2020. This Order ensured that offenders who receive an adult SDS of 7 years or more, for an offence that attracts a maximum life sentence, must serve two-thirds in custody before they are automatically released on licence for the remainder of the sentence.
- 113 Clause 107 further expands on this to deliver the manifesto commitment, providing that offenders sentenced to an adult SDS of between 4 and 7 years for certain serious violent and sexual offences (where that offence attracts a maximum penalty of life) will be required to serve two-thirds of their sentence in custody instead of half. It will also enshrine the provisions of the ROPARPS Order 2020 in primary legislation.
- 114 The release provisions that are set out in section 244 of the CJA 2003 also apply to section 250 sentences (standard determinate sentences for youths). This Bill changes the automatic release from half-way to the two-thirds point for those who receive a section 250 sentence of seven years or more for certain serious violent and sexual offences (where that offence attracts a maximum penalty of life).
- 115 Clauses 107 and 108 are intended to ensure that the proportion of the sentence served in custody reflects the gravity of the offence committed, and to address concerns about the current automatic halfway release of offenders who have committed very serious violent and sexual offences.

Power to refer high-risk offenders to the Parole Board in place of automatic release

- 116 Offenders who are assessed as dangerous by the sentencing court may be sentenced to an extended determinate sentence and may be released before the end of their custodial term only if the Parole Board assess they no longer pose a public protection risk. The majority of offenders who are not assessed as dangerous by the sentencing court will be given an SDS. They will be automatically released before the end of their sentence – either at the halfway point or the two-thirds point of the sentence – to serve the remainder of the sentence on licence in the community.
- 117 The Government introduced fast-track legislation after the terrorist attack at Fishmongers' Hall and Streatham in London in February 2020, the TORER Act 2020, to ensure that those convicted of terrorist or terrorist-connected offences serving standard determinate sentences could not be released before the end of their sentence without the approval of the Parole Board.
- 118 Clause 109 builds on this approach by introducing a new power for the Secretary of State to prevent the automatic early release of prisoners serving an SDS who are identified as a significant public protection concern while they are imprisoned. This measure will ensure that prisoners who become dangerous or are identified as dangerous in prison following conviction and sentencing are not subject to automatic release before the end of their sentence. They will instead be assessed by the Parole Board who will determine if they can be safely released on licence before this point. There will be no provision for holding an offender in custody beyond the end of the sentence handed down by the court.

Increase in requisite custodial period for certain other offenders of particular concern

- 119 A Sentence for Offenders of Particular Concern ("SOPC") must be imposed where there is a conviction for a specified offence (certain terrorist offences and the two most serious child sex offences - rape of a child under 13 and sexual assault of a child under 13) but the offending is

not deemed serious enough to attract a life sentence and where the court assesses that the offender is not dangerous and therefore does not require an extended determinate sentence. Under this sentence, an offender may be considered for early release (at either the halfway or two-thirds point of the custodial term) by the Parole Board. If not released early, they must be released at the end of their custodial term to serve a further period of 12 months on licence. The TORER Act 2020 moved the earliest release point for terrorist offenders sentenced to a SOPC from halfway to two-thirds.

- 120 This measure will change the earliest release point for all remaining offences which attract a SOPC (those specified child sex offences), bringing them into line with those terrorist offenders who receive a SOPC. This is in order to achieve consistency between all offenders serving the sentence itself, regardless of the offence committed, and to achieve consistency with the release arrangements that are in place for other serious offenders. This change will ensure that all those who receive a SOPC can be released, at the earliest and at the discretion of the Parole Board, only after having served two-thirds of their custodial term rather than half of the term as at present. The change will also ensure that all those who receive a SOPC are brought into line with the two-thirds release point that applies to other serious offenders. It will align in particular with the changes being made in this Bill to require certain serious sexual and violent offenders who receive an SDS of 4 years or more to serve two-thirds instead of half their sentence in custody. The measure will amend section 244A of the CJA 2003.

Power to make provision for reconsideration and setting aside of Parole Board decisions

- 121 The courts have recently found that there is no power in the current legal framework for the Parole Board to re-open a case where they have made a decision, other than under the terms of the reconsideration mechanism which the Government introduced in the Parole Board Rules 2019 (SI 2019/1038). The scope of that mechanism was deliberately restrictive to ensure it was within the power set out in primary legislation to make rules. This means that there is the potential for the Secretary of State to be required by legislation to release a prisoner at the direction of the Parole Board, even where the parole decision may be based on an error of fact or law. In that situation the only recourse available is to apply to the High Court for the decision to be set aside, which is a costly and time-consuming process.
- 122 To remedy this, Clause 110 provides that the rules the Secretary of State may make may confer a power on the Parole Board to set aside its own release decisions administratively on application from the Secretary of State without the need for a judicial review of the decision by the High Court.
- 123 The reconsideration mechanism requires the Parole Board to take decisions which are provisional for 21 days, during which time a reconsideration application may be made. The power for the Board to make provisional decisions currently exists only in secondary legislation. The lawfulness of that approach was tested in the High Court and while the Government successfully defended the claim, Clause 110 will now put this question beyond doubt by making specific provision for the Parole Board to be able to make provisional decisions and reconsider those decisions.

Responsibility for setting licence conditions for fixed-term prisoners

- 124 The current system for setting and varying licence conditions for fixed-term prisoners is complex and confusing for practitioners to apply correctly and the statutory provisions on responsibility for setting licence conditions are inconsistent across different determinate sentence types. This creates an environment where confusion and administrative mistakes can occur.

- 125 The provisions made by Clause 111 will create a clear, consistent and logical split in responsibility for licence conditions for determinate sentence prisoners. This will be easier to operate in practice and corrects the current inconsistent approach that has evolved through the CJA 2003 following previous changes to the release and recall provisions. Licence conditions for indeterminate prisoners will remain the responsibility of the Parole Board.

Repeal of uncommenced provision for establishment of recall adjudicators

- 126 The Criminal Justice and Courts Act 2015 (“the 2015 Act”) introduced provisions for the creation of a new body of decision makers called ‘recall adjudicators’. This was done with the intention of removing from the Parole Board the responsibility for reviewing the detention of recalled fixed-term prisoners and instead having those cases reviewed by recall adjudicators appointed by the Secretary of State. This was conceived in order to reduce pressure on the Parole Board because of the large and increasing backlog of oral hearings that had developed since the ‘Osborn’ Supreme Court judgment in 2013, which required the Parole Board to direct a higher proportion of cases to an oral hearing as opposed to a decision on the papers.
- 127 Following Royal Assent to the 2015 Act, implementation was delayed by the General Election. In the intervening time new ways of working enabled the pressure on the Parole Board to be reduced and the backlog of cases awaiting an oral hearing to be eliminated. As a result, it was no longer necessary to implement those provisions and they have become redundant. Clause 112 repeals these provisions.

Release at direction of Parole Board after recall: fixed-term prisoners

- 128 Clause 113 makes a number of minor changes and improvements to the provisions in the CJA 2003 dealing with recall and re-release of fixed-term prisoners. These measures will ensure that the Parole Board applies the same ‘public protection’ release test as they apply in all other parole cases when considering the re-release of recalled fixed-term prisoners. In practice, the Parole Board already applies this test in these cases so this change will simply fill a gap in the legislation where there is currently no provision for the test the Board should apply.
- 129 Clause 113 also removes the current provision which allows the Parole Board to direct release of a fixed-term prisoner on a specified future date (in section 256 of the CJA 2003). This is undesirable because it creates an expectation of release on that date, which may not be possible if other conditions of release also need to be fulfilled. In those circumstances, applications are required to the Parole Board to change the timing of its release direction. This provision is therefore being removed and replaced with a new provision as to timing (see below).
- 130 This Clause also amends the existing provision so that, in a case where a recalled determinate prisoner has less than 13 months remaining on their sentence (at which point they must then be released automatically), there is no requirement on the Secretary of State to make the further annual referral to the Parole Board. This is on the basis that the prisoner will be due for release in any event at the end of their sentence by the time that further review would take place, so such a referral serves no useful purpose.
- 131 Current legislation also requires a recall case to be referred to the Parole Board to consider re-release even where another sentence is being served from which release is not yet possible. Provision is made (new section 256AZA of the Criminal Justice Act 2003) to remove that requirement and thereby avoid unnecessary referrals to the Parole Board.

Power to change test for release of fixed-term prisoners following recall

- 132 The new measures (contained in Clause 114) provide that when considering the release of recalled fixed-term prisoners, the Parole Board is required to apply the same test as for any

other parole case; that is, that the Parole Board must be satisfied that the prisoner's detention is no longer necessary for the protection of the public.

133 For other parole cases (excluding life sentences), the Secretary of State has the power to amend the release test by Order. Having added the same 'public protection' release test to the legislation for recalled fixed-term prisoners, it is necessary for consistency to also replicate the power to amend that test in line with other parole cases in which that test is applied.

134 In addition, Clause 114 also makes similar provisions for a power to amend the test in the CJA 2003 that the Secretary of State applies when deciding whether a 'fixed term recall' may be appropriate (under section 255A) and when deciding whether to re-release a recalled prisoner under sections 255B or 255C.

Release at direction of Parole Board: timing

135 Clause 115 amends existing legislation regarding the timing of a prisoner's release following a direction by the Parole Board. In all cases, when the Parole Board directs release, the Secretary of State must give effect to the direction 'as soon as it is reasonably practicable' to do so. In recall cases, the Parole Board will no longer be able to direct 'immediate' release. The reason for these changes is that in practice, decisions described as requiring 'immediate release' are unhelpful and unnecessary. They may create an expectation that release will take place immediately after the Board decision is made, which may not be possible due to the need to make necessary arrangements for the licence conditions the Board stipulates the prisoner must be subject to on release (for example, a requirement to reside in approved premises).

Driver disqualification

136 As a consequence of recent changes to the release points for offenders in England and Wales (and, for terrorist offenders, in Scotland as well), made through the Terrorist Offenders (Restriction of Early Release) Act 2020, the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 and those made by the Counter-Terrorism and Sentencing Act 2021 and by this Bill, the Government have considered the legislation that provides for an appropriate extension period when a driving disqualification is imposed with a custodial sentence. The Bill amends such legislation to ensure that an appropriate extension period is of a length that accurately correlates with the relevant release points of the associated custodial sentence.

137 Alongside a discretionary disqualification period, which is set at the discretion of the court, a judge must impose the appropriate extension period. This period is imposed to ensure that, as far as is possible, the total disqualification period is equal to the anticipated time actually spent in custody (the extension period) plus the discretionary disqualification period imposed by the court. To achieve this, the Bill amends the appropriate extension periods prescribed in Chapter 1 of Part 8 of the 2020 Act; section 248D of the Criminal Procedure (Scotland) Act 1995; and the Road Traffic Offenders Act 1988, so the appropriate extension period accurately correlates with the new release provisions. The Bill also amends the equivalent driving disqualification provisions as they relate to Scotland to ensure they continue to operate correctly.

138 These changes are necessary to ensure those in receipt of a driving disqualification and a custodial sentence will not have a significant part of that disqualification subsumed by time spent in custody.

Sentences and offences in respect of which polygraph condition may be imposed

139 Clause 122 makes provision to enable the Secretary of State to add polygraph testing as a licence condition for individuals convicted of sexual offences or domestic abuse offences

subject to release on licence, who have been convicted under service law, or who are repatriated to England or Wales from overseas. The Bill also updates and extends the list of sex offences eligible for polygraph testing.

- 140 Section 28 of the Offender Management Act 2007 enables the Secretary of State to impose a polygraph testing licence provision on an offender released on licence in England and Wales. The current arrangements for testing sex offenders commenced in January 2013, following a successful pilot of polygraph for sexual offenders. Polygraph testing is included as an additional licence condition for all serious sexual offenders (in the case of indeterminate sentenced prisoners, with the consent of the Parole Board). In addition, probation officers have the discretion to propose the condition for some less serious offenders, where it is deemed necessary and proportionate to do so.
- 141 There is currently no ability to impose polygraph conditions on sex offenders and domestic abuse offenders who meet the criteria and are repatriated offenders, or service offenders. It is considered that the Secretary of State's ability to include a polygraph testing condition should be extended to sex offenders and domestic abuse offenders who are repatriated to England and Wales from overseas, or who are service offenders. This will ensure that the management of those offenders will benefit from the polygraph and will put beyond all doubt who should be made subject to testing. It will also make it consistent with the legislation that applies to terrorist offenders.
- 142 The Clause retains existing sexual offences which are eligible for polygraph, and additionally expands the list to include sexual offences listed in Schedule 3 to the Sexual Offences Act 2003 (the specified list of sexual offences for which notification requirements must be imposed). This will ensure consistency, both in the management of sex offenders and between jurisdictions when an offender is transferred from Scotland or Northern Ireland to serve their licence period in England and Wales and ensure current offences of concern in all jurisdictions are reflected.

Minor amendments to do with weapons-related offences

- 143 Clause 123 streamlines the release point for two specific (and very rarely charged) offences relating to the use of nuclear material and weapons-related acts overseas, to ensure where the offender is sentenced to a standard determinate sentence of 7 years or more they will be automatically released after two-thirds of their sentence. This is necessary as the offences, though serious, are not inherently terroristic offences and ought properly to be located in Part 1 of Schedule 15 to the CJA 2003 (specified violent offences).

Application of various provisions to service offences

- 144 The service justice system – the criminal justice system that applies to UK service personnel – uses a modified form of the sentencing law of England and Wales which is set out in the Armed Forces Act 2006. Where changes are made to the England and Wales civilian sentencing and release framework, it is the policy position that, where appropriate, service offences and the sentences they attract should reflect those changes to keep the criminal justice system and the service justice system aligned. This legislation therefore contains minor amendments to existing service law to ensure that this is the case.

Community Sentences

Strengthening supervision powers for probation practitioners

- 145 There is currently a lack of clarity in legislation around a Responsible Officer's ability to instruct an offender, who is subject to a community order or a suspended sentence order, to attend supervision appointments. This is problematic in scenarios where additional

appointments are required to address non-compliance with a requirement of the court, or where possible public protection concerns have arisen, including post-completion of a requirement of the court.

- 146 In order to rectify this, Clause 125 clarifies the scope of supervision powers available to Responsible Officers. This will be achieved by creating a power which will provide Responsible Officers with the ability to require offenders to attend appointments at any stage of a Community Order or during the supervision period of a Suspended Sentence Order.
- 147 The measure will also place a duty on offenders to comply with requests for additional appointments given by their Responsible Officer; failure to do so will result in enforcement action.
- 148 In order to achieve this in legislation, the Bill amends the Code by strengthening the existing “keep in touch” duty.

Increases in maximum daily curfew hours and curfew requirement period

- 149 A curfew is a requirement of a community order or suspended sentence order. It requires that the offender must remain for the periods specified at a place also specified. Chapter 2 of Part 9 and Chapter 5 of Part 10 of the Code (as introduced by the 2020 Act) are concerned with community orders, suspended sentence orders and the imposition of a curfew requirement. The measures in Clauses 126 and 127 will make curfews more flexible and allow them to be imposed more creatively by courts.
- 150 Currently, a community order or suspended sentence order may specify a maximum of 16 hours curfew per day, providing in practice a weekly maximum of 112 hours of curfew. Clause 126 will increase the daily maximum to 20 curfew hours per day, whilst maintaining the seven-day period maximum of 112 hours. Paragraph 9 of Schedule 9 to the Code (on curfew requirements) is amended to reflect a new daily maximum of 20 hours and to operate within the seven-day period maximum limit. The purpose of this change is to allow for a curfew to have a greater impact on specified days. This will also allow for the total hours falling in a seven-day period to be used more creatively and flexibly by decision makers, enabling them to target what could be considered ‘leisure days’ for more punitive hours than is currently available to them.
- 151 At present, a curfew can be imposed for a maximum of 12 months. This Clause also increases the maximum length of time a curfew can be imposed for someone convicted of an offence on or after these provisions come into force to two years, by amending paragraph 9 of Schedule 9 to the Code. This change will increase the punitive weight of a curfew requirement, but also has the potential to support rehabilitation by providing a longer period during which some of the positive effects of curfew could be established, such as deterring criminal associates. It is envisaged that courts will be able to use longer curfews in particularly serious cases, where a sentence served in the community may be more effective in preventing future re-offending, alongside appropriate consideration of a custodial sentence.
- 152 Where an offender is brought before the court on or after the commencement of these provisions in the Bill for breach of an order which was made before such commencement, the court may impose a curfew according to the new measures.
- 153 Finally, any changes to the curfew, however small, must currently be approved by the court. Clause 127 gives power to the responsible officer (as defined in section 213 and 299 of the Code i.e. probation officers) to vary electronic monitoring requirements within a prescribed range of circumstances, limited to such an extent that they do not undermine the weight or purpose of the requirement as imposed by the court. The scope of the power to amend the requirement is limited to two aspects:

- a shift in start and/or end times of the curfew periods within a 24-hour period only (this will not make a change to the number of hours imposed); and
- a change to the residence of the offender as set out in the order (a change to the residence for the purposes of curfew may not be made if this undermines an existing order for a residence requirement).

154 The courts will be notified of the changes to the original order using a variation notice, which will also provide evidence of the consent of the offender. This legislative change seeks to reduce the burden on the courts, freeing up time for other matters and saving probation resource by reducing the volumes of papers prepared for court and court visits. There will also be advantages for offenders, allowing for variations where typically there are alterations to work hours or location that make compliance impossible, or where an offender's curfew residence address needs to be changed in a timely way.

Removal of attendance centre requirements for adults

- 155 This measure will abolish Senior Attendance Centres ("SACs") by removing SAC requirements from the menu of sentencing options available to sentencers.
- 156 SACs are rarely used and the Government believes their removal will promote simpler and more consistent sentencing, with the needs of young adult offenders better met by other available community sentence requirements.
- 157 Clause 128 amends the 2020 Act so that SACs requirements are no longer available to sentencers, unless the offender was convicted of the offence before the date on which the amendment came into force.

Problem-Solving Courts

- 158 In 2016 a Problem-Solving Court Working Group, established by the then Lord Chancellor, Rt Hon Michael Gove MP, and the Lord Chief Justice, concluded that a new problem-solving court model that more closely resembles international best practice by incorporating a core set of elements should be tested here.
- 159 Historically elements of a problem-solving approach have been trialed separately across England and Wales. For example: Liverpool Community Justice Centre, Family Drug and Alcohol Courts, and Greater Manchester's female-focused approach.
- 160 The Government has committed to piloting 'Problem-Solving Courts' in up to five locations in a way that incorporates previously tried problem-solving approaches. Many of the elements needed to run a problem-solving court approach based on best practice already exist; for instance, the ability for the sentencer to order a detailed pre-sentence report and in some cases to review an individual's progress during the sentence.
- 161 Some legislative changes are necessary to ensure that the recommendations made by the 2016 Working Group can effectively be put into practice and to ensure that a thorough evaluation can take place:
- giving the court a power to regularly review community and suspended sentence orders and to initiate breach proceedings at a review hearing;
 - expand the power to test for illicit substances outside the provisions of Drug Rehabilitation Requirements; and
 - enable the court to impose short custodial penalties for non-compliance.

162 The Bill will enable the new measures to be implemented in certain courts, for offenders who meet the particular eligibility criteria. The policy intention is to conduct a limited initial pilot, but the legislative changes will allow for the potential to enable the pilot to be rolled out to further courts in the future, and also allow for the pilot measures to be made permanent after the end of the pilot period.

163 The existing provisions will continue to operate in other courts and for offenders who are non-eligible for these measures.

Unpaid Work consultation duty

164 Currently probation officials have no formal requirement to consult local stakeholders on the design or delivery of Unpaid Work carried out by offenders as part of a community sentence. Clause 131 creates a new statutory duty requiring probation officials to consult key local and regional stakeholders on the design and delivery of Unpaid Work.

165 The Scottish Government introduced a similar provision into section 227ZL of the Criminal Procedure (Scotland) Act 1995, requiring local authorities to consult prescribed persons in the community about the type of Unpaid Work that should be carried out by offenders.

166 The creation of a similar duty in England and Wales will improve links between probation officials and their communities. It is hoped that this will ensure strong community participation in Unpaid Work both from key agencies and members of the public. Improving the quality of placements by better understanding community needs has an important role to play in the rehabilitative process and will support offenders to make more effective reparation to local communities for the damage caused by crime.

Youth Justice

Remand

167 The Legal Aid, Sentencing and Punishment of Offenders (“LASPO”) Act 2012 introduced new youth remand provisions. The changes aimed to reduce numbers of children unnecessarily remanded to custody by making it more difficult to remand a child and giving local authorities a financial incentive to reduce remands.

168 A 2019 report from the Independent Inquiry into Child Sexual Abuse (“IICSA”) noted a significant increase in the use of custodial remand for children and data shows that in 2018/19, only a third of children remanded to custody or local authority accommodation (“LAA”) went on to receive a custodial sentence. Following IICSA’s recommendation to investigate why the child remand population is as high as it is, the Government publicly committed to review custodial remand for children and develop options to reduce its use where appropriate.

169 These measures amend the LASPO framework to tighten the tests the courts must satisfy to decide when to remand a child to custody. The aim of the policy is to encourage courts to impose custodial remand only where absolutely necessary, while ensuring the public remains safe.

170 Clause 132 introduces a statutory duty for courts to consider the welfare and best interests of the child when making remand decisions. It amends the tests courts must apply to determine whether to remand a child into custody and makes it a statutory requirement for the courts to record the reasons for their decision, which will also reinforce the existing presumption of non-custodial remand by ensuring the courts consider remand to LAA as a first step. These provisions amend the ‘real prospect’ test and the ‘necessity condition,’ so that remand in Youth Detention Accommodation (Young Offender Institution, Secure Training Centre or Secure Children’s Home) can be imposed only for the most serious cases, where a custodial

sentence appears the only option and the risk posed by the child cannot be safely managed in the community.

Detention and Training Orders

171 A Detention and Training Order (“DTO”) is a youth custodial sentence that can be given for 4, 6, 8, 10, 12, 18 or 24 months. This is fixed in section 236(1) of the Code and is the only youth sentence with fixed lengths. Clause 133 amends the Code to remove the fixed lengths so that a DTO of any length from 4 to 24 months can be given.

172 Time spent on remand or bail (where it is subject to a qualifying curfew condition and an electronic monitoring condition) is currently taken into account by the court in their sentence calculation when deciding which of the fixed lengths to impose. Schedule 15 amends the Code so that time spent on remand or on qualifying bail is to count as time served under sections 240ZA and 240A of the CJA 2003.

173 When a DTO and another sentence of detention are served consecutively, the order in which the sentences are given impacts on the amount of early release available. Clause 135 removes this inconsistency.

Youth Rehabilitation Orders

174 The Criminal Justice and Immigration Act 2008 (the “2008 Act”) introduced the Youth Rehabilitation Order (“YRO”), a new generic community sentence for youths now set out in sections 173 to 199 of the Code. It provides courts with a choice of 18 requirements from which a sentence can be designed. The YRO also provides for two high-intensity requirements (Intensive Supervision and Surveillance (“ISS”) or Intensive Fostering) that are set as alternatives to custody for the most serious offenders.

175 Clause 136 will make the following changes to the YRO:

- a. a standalone electronic whereabouts monitoring requirement will be added to the list of available requirements;
- b. the curfew requirement will be amended to raise the maximum number of daily hours from 16 to 20 while retaining a weekly maximum of 112 hours;
- c. youth offending teams or probation staff will be made the Responsible Officers for YROs with electronic compliance monitoring requirements;
- d. the maximum length of the extended activity requirement of a YRO with Intensive Supervision and Surveillance will be extended from 180 days to 365 days;
- e. a mandatory location monitoring requirement will be added to YROs with Intensive Supervision and Surveillance; and
- f. the age limit of the education requirement will be raised so that it is the same as the age of compulsory education and training, rather than compulsory school age.

176 These measures make provision for the Government to pilot items (a), (d) and (e) above and to restrict their use if necessary, in light of evidence of use in practice.

Abolition of Reparation Orders

177 The Reparation Order was introduced in the Powers of Criminal Courts (Sentencing) Act 2000 (“PCC(S)A”), and is now set out in sections 109 to 116 of the Code. It requires an offender to make reparation to the victim(s) of the offence or to the community at large. Since the PCC(S)A came into force, other sentences which allow for reparation, such as the YRO, have been introduced and usage of the Reparation Order has declined significantly. As a consequence of this decline, Clause 137 abolishes the Reparation Order.

Secure Schools and Secure Children's Homes

Temporary Release from Secure Children's Homes

- 178 Temporary release is an essential part of the successful rehabilitation of children who are sentenced to custody. Some objectives of a child's sentence plan will require them to attend meetings or participate in activities outside the secure establishment.
- 179 The Youth Custody Service and Secure Children's Homes ("SCHs") providers currently rely on inherent powers to make arrangements for the mobility of children detained in such accommodation to help address their offending behaviour and to support the integration of children back into the community at the end of their sentence. Clause 138 places existing provisions on a statutory basis. The Secretary of State and SCH registered managers will be able to temporarily release children detained following a court sentence or breach of a civil order. As secure 16 to 19 academies will be legally constituted as SCHs, this will also have the effect of conferring autonomy on that provider to take decisions about temporary release.

Secure 16 to 19 Academies

- 180 Secure 16 to 19 academies are a new type of custodial provision for children and young people remanded or sentenced to detention in relation to a criminal offence. They will be run by child-focused providers and create a therapeutic environment within a secure setting, in line with international evidence that this is the most successful approach in reducing reoffending.
- 181 They will be dually established as 16 to 19 academies and SCHs. This means that they must be principally concerned with the provision of education to young people between the ages of 16 and 19. The Government intends that the majority of young people to be accommodated in secure 16 to 19 academies will fall within this age range.
- 182 Key to the vision for secure 16 to 19 academies is the autonomy of providers. The market for providers consists primarily of charities at the present time. This legislative change aims to provide confidence to future secure school providers regarding their ability to autonomously operate secure schools in line with both their charitable objects and the Government's vision.

Serious Violence Reduction Orders

- 183 Recorded knife crime has risen over a period of years. Police recorded offences in England and Wales involving knives and sharp instruments totalled 46,265 in the year ending March 2020, up from 43,706 offences in the year ending March 2019.
- 184 There are a number of existing powers to enable the police to address knife crime.
- 185 Section 1 of the Police and Criminal Evidence Act 1984 allows an officer to search someone if they have reasonable grounds to suspect that they are carrying a knife to commit an offence or carrying an offensive weapon. Section 60 of the Criminal Justice and Public Order Act 1994 allows a constable, on the authorisation of an officer of the rank of inspector or above, where serious violence is anticipated, to search anybody, without suspicion, to see if they are carrying an offensive weapon or dangerous implement. The section 60 powers are strictly limited and can be used only in a specific area and for a short time period.
- 186 The Offensive Weapons Act 2019 introduced Knife Crime Prevention Orders, which apply to adults and children aged 12 or over, and will allow a court to impose specific requirements or restrictions, for example prohibiting a person from being in a certain place, associating with particular people or undertaking certain activities.
- 187 A number of offenders who carry knives and weapons go on to offend repeatedly. The proportion of offenders for whom a knife related conviction was their first knife or offensive

weapon offence has been decreasing and was at 71% for the year ending September 2019, its lowest level since 2009.

- 188 The Government, in their 2019 manifesto, pledged to make it “easier for officers to stop and search those convicted of knife crime.” A [public consultation](#) ran from 14 September to 8 November 2020 seeking views on a new order, the Serious Violence Reduction Order (“SVRO”), which would work in conjunction with current stop and search provisions and target individuals who have been convicted of a relevant knife-related offence. The consultation received 549 responses. Of those responding, 77.8% agreed that a new order should be created.
- 189 The Government published its response to this consultation on 9 March 2021. The response set out proposals for a new order that the courts can make in respect of a person convicted of a knife or offensive weapon related offence. The Government’s response also set out that these orders would initially be subject to a pilot in a small number of police forces to build an understanding of the effectiveness of the new orders. Chapter 1 of Part 10 provides for SVROs.

Management of sex offenders

- 190 Under Part 2 of the Sexual Offences Act 2003 (the “2003 Act”), offenders who receive a conviction, caution, or finding for specified sexual offences are automatically required to provide the police with a record of (amongst other things) their name, address, date of birth, national insurance number, any foreign travel, where they are living in a household with a child under the age of 18, their bank account and credit card details, and information about their passports or other identity documents. This must be done annually and whenever their details change.
- 191 In addition, Part 2 of the 2003 Act provides for various civil preventative orders, including the sexual harm prevention order (“SHPO”) and the sexual risk order (“SRO”), to protect the public from sexual harm. A SHPO may be imposed on someone who has a finding, conviction or caution for a specified sexual or violent offence. A SHPO may be made either by a court on conviction, or by a magistrates’ court on application by the police or National Crime Agency. An SRO may be imposed on a person without a conviction but who poses a risk of sexual harm.
- 192 These orders can include any prohibition the court considers necessary for the purpose of protecting the public from sexual harm, including the prevention of foreign travel to any country or countries specified in the order. Any prohibition must be necessary for protecting the public in the UK from sexual harm or, in relation to foreign travel, protecting children or vulnerable adults from sexual harm outside the UK.
- 193 In January 2021, the Government published its “[Tackling Child Sexual Abuse Strategy](#)” which committed to measures to strengthen these orders. The provisions in Chapter 2 of Part 10 seek to improve the efficiency and effectiveness of these orders and the notification requirements for registered sex offenders by:
- Enabling positive obligations to be imposed through SHPOs and SROs.
 - Making it clear that a court may include an electronic monitoring requirement through SHPOs and SROs.
 - Providing for the civil standard of proof (‘balance of probabilities’) to apply when the court is deciding an application for an SHPO or SRO (in determining whether the individual has done the act in question).

- Removing a requirement for the Secretary of State to prescribe a list of police stations where registered sex offenders must notify, and enabling the police to determine and maintain the list directly.
- Enabling the police to make sex offenders who are convicted of or cautioned for specified sexual offences abroad subject to notification requirements without the need for a court order.
- Providing for the reciprocal enforcement of SHPOs and SROs throughout the United Kingdom.
- Enabling the British Transport Police and Ministry of Defence Police to apply for an SHPO or SRO.

194 The Independent Inquiry into Child Sexual Abuse (IICSA), chaired by Professor Alexis Jay OBE, was set up in 2014 because of serious concerns that some organisations had failed and were continuing to fail to protect children from sexual abuse. IICSA recommended in its [Children Outside the UK](#) report, published in January 2020, that more could be done to protect children outside the UK from sexual abuse. In particular, IICSA recommended greater use of foreign travel restrictions through SHPOs and SROs via the establishment and maintenance of a list of countries where children are considered to be at high risk of sexual abuse and exploitation from overseas offenders to be used by police and the courts when considering foreign travel restrictions for offenders through these orders. Clauses 146 and 147 gives effect to this IICSA recommendation.

Management of terrorist offenders

195 Sections 325 to 327B of the CJA 2003 provide for the establishment of Multi-Agency Public Protection Arrangements (“MAPPA”) across England and Wales. These arrangements require the Police, Probation and Prison Services to work together with other agencies to assess and manage the risks posed by violent and sexual offenders living in the community in order to protect the public. Offenders who meet the criteria set out in sections 325 to 327 of the CJA 2003 will be subject to management under the MAPPA process.

196 The measures that may be put in place under MAPPA to manage the risk posed by terrorist offenders can include the use of licence conditions: placing restrictions on association, residence, movement and activities; applying electronic monitoring requirements to the offender; surveillance; or the use of civil preventative orders, such as serious crime prevention orders.

197 Following the terrorist attack in Fishmongers’ Hall, London, in December 2019 (which was committed by a terrorist offender released on licence), the Independent Reviewer of Terrorist Legislation, Jonathan Hall QC, was asked to undertake an independent review of MAPPA regarding the management of terrorist offenders and other offenders of terrorism concern. Under current MAPPA arrangements, offenders convicted of a terrorism offence listed in Part 3 of Schedule 15 must be managed under MAPPA, whilst other terrorism or terrorist connected offenders are managed under the discretionary power in section 325(2)(b) which allows for management of other offenders who are assessed to pose a risk to the public. The outcome of the independent [review was published](#) on 2 September 2020 and concluded that MAPPA was a well-established process which did not require wholesale change. Instead, the review recommended a number of legislative changes to the current system including additional powers to better manage offenders who present a risk of committing an act of terrorism, including:

- Statutory provision to enable judges to grant search warrants to check an offender's compliance with their licence conditions, where this is necessary for the purpose of assessing their terrorist risk;
- Statutory provision to allow the police to conduct a personal search, to look for weapons or harmful objects in cases where a new licence condition requires an offender to submit to a personal search;
- Statutory provision enabling the arrest, in urgent cases, of released offenders pending a decision to recall to prison where there is concern they might abscond;
- Amendment of section 325(2)(a) of the CJA 2003 so that all persons subject to the notification requirements of the Counter-Terrorism Act 2008 are automatically eligible for MAPPA;
- Statutory provision in the CJA 2003 so that other dangerous offenders who are deemed to be at risk of involvement in terrorism-related activity are eligible for MAPPA whether or not their risk arises from offences committed by them;
- Statutory provision in the CJA 2003, equivalent to section 115 of the Crime and Disorder Act 1998, providing a lawful basis for disclosure by any person or body for the purpose of MAPPA; and
- Statutory provision in the CJA 2003 clarifying the statutory function of MAPPA for all MAPPA agencies for the purposes of the Data Protection Act 2018, to provide agencies with certainty about which regime applies when sharing information under MAPPA.

198 On 17 December 2020, the Government set out its response to the independent review of terrorist supervision in a [Written Ministerial Statement](#) and a [letter](#) to Jonathan Hall. In the statement, the Government committed to bringing forward legislation to introduce further powers for the police and probation service in line with Jonathan Hall's recommendations. Chapter 3 of Part 10 of the Bill gives effect to the above recommendations. Other recommendations made by Jonathan Hall which require legislation have been implemented through the Counter-Terrorism and Sentencing Act 2021.

Rehabilitation of Offenders

199 A key element in reducing reoffending is access to employment. In order to support these aims, Clause 164 amends the Rehabilitation of Offenders Act 1974 to provide for some custodial sentences of over four years to become spent after a certain period of time, meaning when asked, the conviction would not have to be disclosed. The existing rehabilitation periods for certain other disposals given or imposed on conviction are also reduced. This will reduce the number of ex-offenders required to disclose their convictions as part of basic checks for employment and mean that those who have served their time and stopped committing crime are not unfairly discriminated against in the job market.

200 To ensure the protection of the public, this change will not apply to persons sentenced to any sentence of more than four years following a conviction for any serious violent, sexual or terrorist offence. The policy therefore means that such convictions will continue to never become spent (and will always need to be disclosed). A table setting out the changes to rehabilitation periods is set out at Annex C.

201 Clause 164 also clarifies the applicable rehabilitation periods for certain other orders on conviction.

Procedures in Courts and Tribunals

British Sign Language interpreters for deaf jurors

202 Clause 165 amends the common law to permit the presence of a British Sign Language (“BSL”) interpreter in the jury deliberation room to assist a profoundly deaf juror in proceedings before a court. The trial judge will have a duty to consider such a reasonable adjustment and, if satisfied the BSL interpreter’s services will enable the person to act effectively as a juror, will affirm the summons. Offences relating to research and sharing research during a trial period will apply to BSL interpreters as they apply to jurors, with a new offence created for circumstances where a BSL interpreter intentionally interferes in or influences the deliberations of the jury.

Transmission and recording of court and tribunal proceedings

- 203 In criminal proceedings, the courts have a duty to deal with cases effectively and expeditiously and that includes making use of technology such as live video and audio links (“live links”) where it is in the interests of justice to do so. Live links have been increasingly used across the courts, enabling greater participation in proceedings from remote locations, particularly during the current pandemic.
- 204 These provisions will replace the current temporary provisions in the Coronavirus Act 2020, simplifying the regime and making it clear that a jury as a panel can participate in a trial (but only by live video link). Live links will make proceedings in criminal cases more efficient for all parties by reducing delay and unnecessary travel and the need for physical appearances at court, save where the interests of justice require it.
- 205 Further measures focus on permitting and facilitating the remote observation of proceedings across the courts and tribunals using video and audio links in order to uphold the principle of open justice. These measures will enable criminal, family and civil courts, coroners, unified tribunals, employment tribunals and the Competition Appeal Tribunal to provide transmissions of proceedings, by audio or video live link, either to designated premises or to individuals who have requested access and have identified themselves to the court or tribunal. Once enabled in secondary legislation these powers may allow open justice to be upheld in this way in various types of hearings: e.g. wholly remote hearings; hybrid hearings (i.e. those taking place in a court room with some participants joining via audio or video links), and traditional (wholly in-person) hearings. This secondary legislation will be made by the Lord Chancellor in concurrence with the Lord Chief Justice or the Senior President of Tribunals as appropriate.
- 206 This legislation will also provide safeguards which prohibit observers or participants from making unauthorised recordings or transmissions of proceedings which involve live links or transmissions. Courts and tribunals will be enabled to make audio or audio-visual recordings of all types of proceedings for their own use. This legislation makes permanent and expands the temporary provisions in the Coronavirus Act 2020 for the courts and unified tribunals, and will bring the Employment Tribunals, the Employment Appeal Tribunal, and the Competition Appeal Tribunal in line with this legislation.

Legal background

207 The Bill amends the following legislation:

- Section 41 of the Criminal Justice Act 1925, which relates to photography in court.
- Part 1 of the Criminal Appeal Act 1968, which relates to hearings in criminal appeals.

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- Section 5, 6, 7 and 8A of, and Schedule 2 to, the Rehabilitation of Offenders Act 1974, which relate to rehabilitation periods for offenders.
- The Juries Act 1974 to permit British Sign Language interpreters for deaf jurors.
- Section 22 of and Schedule 2 to the Magistrates' Court Act 1980, which concern criminal damage to memorials.
- Section 9 of the Contempt of Court Act 1981, which relates to sound recording in court.
- Part 4 of the Police and Criminal Evidence Act 1984, which sets out the statutory regime governing pre-charge bail.
- Sections 64A of and Schedule 2A to the Police and Criminal Evidence Act 1984, which relate to the photographing and fingerprinting of suspects.
- Section 102 of the Road Traffic Regulation Act 1984, which makes provision for charges for the removal, storage and disposal of vehicles.
- Paragraph 2 of Schedule 1 to the Repatriation of Prisoners Act 1984, which provides for application of early release provisions to prisoners repatriated to England and Wales.
- Sections 12 and 14 of the Public Order Act 1986, which set out conditions that can be applied to public processions and public assemblies.
- Section 32 of the Criminal Justice Act 1988, which relates to giving evidence via television link in criminal proceedings.
- Sections 7, 27, 35A, 35C, 52, 54, 69, 75, 76, 77A, 103, and Part 1 Schedule 2 of the Road Traffic Offenders Act 1988, which makes provision for the prosecution and punishment of road traffic offences, including provision in relation to the imposition of driving disqualification orders, the production and surrender of driving licences and for the issue of fixed penalty notices.
- Sections 2A and 3ZA of the Road Traffic Act 1988, which set out the meaning of dangerous and careless driving for the purposes of the offences of dangerous and careless driving.
- Section 164 of the Road Traffic Act 1988, which makes provision for the power of police constables to require production of driving licence and in certain cases statement of date of birth.
- Sections 2, 3 and 9 of the Road Traffic (New Drivers) Act 1995, which makes provision about newly qualified drivers who commit certain offences, including provision about the production and surrender of driving licences.
- Part V of the Criminal Justice and Public Order Act 1994, which, amongst other things, confers powers to remove trespassers on land.
- Section 248D of the Criminal Procedure (Scotland) Act 1995, which provides for the extension of driving disqualifications where a custodial sentence is also imposed.
- Sections 59 and 60 of the Police Act 1996, which make provision in respect of the Police Federation for England and Wales and the Police Federation for Scotland.

- Parts 1 and 2 of the Employment Tribunal Act 1996, which establish and make provision for the employment tribunals and the Employment Appeal Tribunal respectively.
- Chapter 2 of the Crime (Sentences) Act 1997, which relates to life sentences, and Schedule 1 which relates to transfer of prisoners within the British Islands.
- Sections 5A, 6, 17 and 18 of the Crime and Disorder Act 1998, which, among other things, make provision for specified public authorities in England and Wales to formulate and implement crime and disorder reduction strategies.
- Part IIIA of the Crime and Disorder Act 1998, which relates to live links in hearings.
- Part 5 of the Terrorism Act 2000, which sets out counter-terrorism powers.
- Part 2 of the Enterprise Act 2002, which establishes and makes provision for the Competition Appeal Tribunal.
- Part 7 of the Courts Act 2003, which contains provisions about rules, Rules Committees and Practice Directions, including the participation of the public in court proceedings and the offences of transmission and recording of court proceedings.
- Part 5 of the Extradition Act 2003, which relates to conduct of extradition proceedings.
- Part 1 of the Sexual Offences Act 2003 which relates to, among other things, the offence of abuse of position of trust and provides for an offence of arranging or facilitating a child sex offence.
- Part 2 of the Sexual Offences Act 2003 which relates to, among other things, the notification requirements for sexual offenders and provides for Sexual Harm Prevention Orders and Sexual Risk Orders in England and Wales (and equivalent orders in Scotland and Northern Ireland).
- The Criminal Justice Act 2003 including: Part 8 which relates to use of video and audio links in criminal proceedings; Chapter 6 of Part 12 relating to release, licences, supervision and recall of offenders; sections 325 and 327 which provide for arrangements for assessing risks posed by certain offenders; section 330 which provides for making of orders under the Act; Schedule 15 which provides a list of specified serious offences for release purposes; and Schedules 19A and 31 which provides for supervision default orders.
- Provisions of the Armed Forces Act 2006 which relate to sentencing, service courts and court martials.
- Sections 1 and 28 of the Offender Management Act 2007, which relate to offender management and the use of polygraph as a licence condition.
- Chapter 2 of the Tribunals, Courts and Enforcement Act 2007, which establishes and makes provision for the First-Tier Tribunal and Upper Tribunal.
- Sections 4, 5 and 39 of the Criminal Justice and Immigration Act 2008, which relate to Youth Rehabilitation Orders.
- Sections 1B and 12 of the Academies Act 2010, which relate to secure 16 to 19 academy arrangements.

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- Part 3 of the Police Reform and Social Responsibility Act 2011, which relates to activities in Parliament Square and the surrounding area and access to the Palace of Westminster.
- The Legal Aid, Sentencing and Punishment of Offenders Act 2012, including Chapter 3 which relates to remand of children otherwise than on bail, and section 128 which sets the test for Parole Board release.
- Sections 101 and 102 of the Anti-Social Behaviour, Crime and Policing Act 2014, which relate to cautions.
- Sections 8 to 10 of and Schedule 3 to the Criminal Justice and Courts Act 2015, which relate to recall adjudicators.
- Section 1 of the Assault on Emergency Workers (Offences) Act 2018, which provides for the penalty for assault on an emergency worker.
- Sections 3, 9, 14, 15 and 17 of the Crime (Overseas Production Orders) Act 2019, which enables law enforcement officers and prosecutors to access and obtain stored electronic content data direct from service providers based or operating outside the UK to support criminal investigations and prosecutions in the UK.
- The Sentencing Act 2020, relating to a range of sentencing matters.

208 The Bill also repeals a significant amount of existing enactments relating to the current cautions and out-of-court disposals frameworks across a number of Acts, including the Criminal Justice and Police Act 2001, the Criminal Justice and Immigration Act 2008, the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Rehabilitation of Offenders Act 1974, the Criminal Justice and Courts Act 2015, the Crime and Disorder Act 1998, and the Commissioners for Revenue and Customs Act 2005.

Territorial extent and application

- 209 Clause 175 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 210 Subject to the exceptions described below, the provisions in the Bill extend and apply to England and Wales only.
- 211 Clause 1(9) includes within the definition of forces covered by the duty to report in respect of the Police Covenant the British Transport Police, who operate in Scotland in respect of railways. The National Crime Agency and the Ministry of Defence Police operate both in Scotland and Northern Ireland as well as within England and Wales; however, the operations of these officers are reserved matters. On that basis, because the duty extends to forces which operate UK wide, Clause 1 (police covenant report) extends and applies to England, Wales, Scotland and Northern Ireland.
- 212 The amendments to section 59 of the Police Act 1996 made by Clause 3 (special constables and Police Federations), to the Public Order Act 1986 made by Clauses 55 to 57 and 61 about protest measures, to the Criminal Justice and Public Order Act 1994 (powers to remove trespassers from land) by Clause 62, to the Road Traffic Offenders Act 1988 made by Clause 68(1) (courses offered as alternative to prosecution) and to the Road Traffic Regulation Act 1984 made by Clause 69 (charges for removal etc. of abandoned vehicles) extend to England and Wales and Scotland but apply to England and Wales only.
- 213 Clause 3(8) (regulations for Police Federations), Clauses 4 to 6 (police driving standards), Clauses 65 to 67 and Schedule 7 (road traffic offences), Clause 68(3) to (7) (courses offered as alternative to prosecutions: fees etc.) and Clauses 70 to 75 and Schedules 8 and 9 (surrender of driving licences) extend and apply to England and Wales and Scotland.
- 214 Clause 76 (fixed penalty notices in Scotland), Clauses 118 to 119 (extension of driving disqualification where custodial sentence imposed and under certain existing orders) and Part 2 of Schedule 17 (variation of order made in England and Wales by court in Scotland) extend to England and Wales and Scotland but apply to Scotland only.
- 215 Clause 151(7) which amends the Abusive Behaviour and Sexual Harms (Scotland) Act 2006, Clause 143 which amends provisions in the Sexual Offences Act 2003 and paragraph 5 of Schedule 18 (management of terrorist offenders: consequential amendment) in respect of notification orders extend and apply to Scotland only.
- 216 Clause 54 (proceeds of crime: account freezing orders), Clause 68(2) (courses offered as alternative to prosecutions: fees etc.), Part 1 of Schedule 17 (variation of order made in England and Wales or Scotland by court in Northern Ireland) and paragraph 4 of Schedule 18 (management of terrorist offenders: consequential amendment) extend and apply to Northern Ireland.
- 217 Clauses 36 to 42 and Schedule 3 (extraction of information from mobile devices), Clause 47 and Schedule 5 (overseas production orders), Clause 124 (application of provisions about minimum terms to service offences), Clause 153 (positive obligations and electronic monitoring requirements: service courts), Clause 154(4), 156(7) and 157(2) to (7) (enforcement of orders in another part of the United Kingdom), Clauses 158 to 163 and paragraph 3 of Schedule 19 (management of terrorist offenders) extend and apply to England, Wales, Scotland and Northern Ireland.
- 218 There is a convention ("the Sewel Convention") that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament,

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Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. (In relation to Scotland and Wales, this convention is enshrined in law: see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006.)

- 219 The provisions in Clause 3(8) (regulations for Police Federations), Clauses 36 to 42 and Schedule 3 (extraction of information from mobile devices), Clause 47 and Schedule 5 (overseas production orders), Clause 51(2) (special procedure for access to material relating to human remains), and Clauses 154(4), 156(7) and 158(2) to (7) and Part 2 of Schedule 17 (enforcement of orders in another part of the United Kingdom), relate, in part, to matters within the legislative competence of the Scottish Parliament.
- 220 The provisions in Chapter 1 of Part 2 (serious violence duty), Chapter 2 of Part 2 (homicide reviews), and Clause 60 (offence of public nuisance) relate, in part, to matters within the legislative competence of Senedd Cymru.
- 221 The provisions in Clauses 36 to 42 and Schedule 3 (extraction of information from mobile devices), Clause 47 and Schedule 5 (overseas production orders), Clause 51(2) (special procedure for access to material relating to human remains), Clause 68(2) (courses offered as alternative to prosecutions: fees etc), and Clauses 154(4), 156(7) and 158(2) to (7) and Part 1 of Schedule 17 (enforcement of orders in another part of the United Kingdom) relate to matters within the legislative competence of the Northern Ireland Assembly.
- 222 If, following introduction of the Bill, there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 223 See the table at Annex D for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the House of Commons relating to Public Business.

Extent in the Channel Islands, Isle of Man and British Overseas Territories

- 224 The changes that this Bill makes to the Armed Forces Act 2006 (“AFA 2006”) may be extended to the Channel Islands by Order in Council under section 384(1) of the AFA 2006. If such an Order is made, it can modify those changes (so that the law of the Channel Islands is not the same as that of the United Kingdom).
- 225 The changes that this Bill makes to the AFA 2006 extend directly (i.e. without the need for an Order in Council) to the Isle of Man, and the British Overseas Territories (excluding Gibraltar), but an Order in Council may be made under section 384(2) of the AFA 2006 to modify the Act in its application to any of those territories.
- 226 The changes that this Bill makes to the Reserve Forces Act 1996 may be extended by Order in Council to the Channel Islands or the Isle of Man. If such an Order is made, it can modify those changes (so that the law of the Channel Islands and the Isle of Man is not the same as that of the United Kingdom).

Commentary on provisions of Bill

Part 1: Protection of the police etc.

Clause 1: Police covenant report

- 227 Clause 1 establishes a new duty for the Secretary of State, in each financial year, to prepare a police covenant report, and lay it before Parliament.
- 228 Subsection (2) sets out the substantive areas on which the report must focus, namely the health and wellbeing and physical protection of members and former members of the police workforce, and support for their families. The report must address those issues insofar as they relate to individuals' current or previous role in the police workforce.
- 229 Subsection (2)(d) allows the Secretary of State to also address in the report other areas they consider appropriate to include. This provides an element of flexibility where particular issues arise that the Secretary of State considers ought to receive attention in the report in a given year.
- 230 Subsection (3) requires that, in putting together the police covenant report, the Secretary of State must have regard in particular to the sacrifices made by and obligations imposed on members of the police workforce. In doing so, subsection (3)(b) also requires the Secretary of State to have regard to the desire to remove any disadvantage that members and former members of the police workforce may experience as a result of their role.
- 231 Under subsection (4), in preparing the report the Secretary of State must ensure the views of other relevant Government departments and anyone else deemed appropriate by the Secretary of State are sought, and, under Clause 1(5), either set out in full or summarised.
- 232 Subsection (6) requires that, before a summary of any views obtained under Clause 1(4) can be included in the Police Covenant report, the person who provided the view in question must approve that summary.
- 233 Under subsection (7), the report must state the Secretary of State's view as to whether members or former members of the police workforce, or a particular group within that demographic, are at a disadvantage in comparison to such other people as the Secretary of State considers appropriate. Subsection (8) requires that the Secretary of State's response to any such disadvantage identified under subsection (7) is to be set out in the report.
- 234 Subsection (9) defines terms for the purpose of this Clause, including 'members of the police workforce' which includes for these purposes members of police forces in England Wales, special constables appointed under section 27 of the Police Act 1996; staff appointed by the chief officer of police of a police force in England and Wales and persons designated as community support volunteers or policing support volunteers under section 38 of the Police Reform Act 2002 (the "2002 Act"). It also includes constables and special constables (appointed under section 25 of the Railways and Transport Safety Act 2003 (the "2003 Act")) of the British Transport Police Force; employees of the British Transport Police Authority appointed under section 27 of the 2003 Act and under the direction and control of the Chief Constable of the British Transport Police Force; and persons designated as community support volunteers or policing support volunteers under section 38 of the 2002 Act as applied by section 28 of the 2003 Act. In addition it includes members of the Civil Nuclear Constabulary; employees of the Civil Nuclear Police Authority employed under paragraph 6 of Schedule 10 of the Energy Act 2004 if, or to the extent that, they are employed to assist the Civil Nuclear Constabulary; members of the Ministry of Defence Police and other persons under the direction and control of the Chief Constable of the Ministry of Defence Police; and National Crime Agency officers.

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235 It also makes clear that ‘former members of the police workforce’ means persons who have ceased to be members of the police workforce. The Clause also defines ‘financial year’ as the period beginning with the day on which the section comes into force ending with the following 31 March and then every successive period of 12 months. It goes on to define a ‘relevant Government department’ as a UK Government department, apart from Home Office, which the Secretary of State considers has functions relevant to a matter covered by the report.

236 As one of the aspects the report must focus on is support for families, subsection (10) makes clear that the reference to ‘members of the families of members and former members of the police workforce’ in subsection (2) means such descriptions of persons connected with members or former members of the police workforce as the Secretary of State considers should be covered by the report.

Clause 2: Increase in penalty for assault on emergency worker

237 Clause 2 increases the maximum penalty upon conviction on indictment for the offence of assault on an emergency worker. Subsection (1) amends section 1(2)(b) of the Assaults on Emergency Workers (Offences) Act 2018, which provides that the maximum penalty for common assault or battery committed against an emergency worker is 12 months’ imprisonment, or a fine, or both. Subsection (1) substitutes the maximum penalty for conviction on indictment of 12 months for 2 years’ imprisonment. Under section 3(1) of the 2018 Act the occupations and positions covered by the term emergency worker include police constables, National Crime Agency officers, prison and custody officers, fire, rescue and search personnel and those providing NHS healthcare services who have face to face interaction with patients or other members of the public

238 Subsection (2) provides that this section of the Bill will apply only to offences committed on or after the section comes into force. This means that there is no retrospective application with regards to the provision.

Clause 3: Special constables and Police Federations: amendments to the Police Act 1996

239 Section 59 of the Police Act 1996 (“the 1996 Act”) sets out that there shall be the Police Federation of England and Wales and Police Federation for Scotland. Section 60 enables the Secretary of State to make regulations to prescribe the constitution and proceedings of the Police Federations or authorise the Federations to make rules concerning such matters relating to their constitution and proceedings.

240 By virtue of sections 59 and 60 of the 1996 Act, membership of the Police Federations are open to ‘members of police forces’. Throughout policing legislation references to ‘members of police forces’ have not been considered to mean the special constabulary in England and Wales. For example, section 90 of the 1996 Act relating to assaults against police officers refers to the special constabulary in addition to ‘members of a police force’. In Scotland, special constables are considered to fall under the definition of “members of police forces” by virtue of section 99 of the Police and Fire Reform (Scotland) Act 2012.

241 It is important to note that throughout the provision, there are two versions of amendments made to section 59: one version for England and Wales and another version for Scotland. This has the advantage of making it clear on the face of the provision which parts apply to each jurisdiction. The arrangements for the Police Federation of Scotland will not change. This is because special constables are already eligible to join the Police Federation of Scotland.

242 Subsection (2) amends section 51 of the 1996 Act to enable the Secretary of State to make regulations as to whether the time spent by special constables in attendance of meetings of the Police Federation, and any recognised body under section 64 (such as trade unions), is treated as time spent on duty.

- 243 Subsection (4) amends section 59(1) of the 1996 Act to enable England and Wales special constables to become members of the Police Federation of England and Wales. The amended Section 59(1) retains the wording setting out who the Police Federation can represent and on what matters; namely, matters which affect members' welfare and efficiency. Subsections (1)(a) and (b) set out that questions of promotion and discipline affecting individual members is expected.
- 244 Subsection (5) inserts section 59(1B) of the 1996 Act, restating the law in Scotland.
- 245 Subsection (6) amends section 59(1) of the 1996 Act to enable the Police Federation of England and Wales to represent special constables in any proceedings brought under regulations about disciplinary proceedings relating to conduct, efficiency and effectiveness of special constables under section 51(2A) of that Act. Subsection (6) also inserts section 59(2A), restating the law in Scotland.
- 246 Subsection (7) amends sections 59(3)(a) and (b) of the 1996 Act to specify that special constables may be represented by members of a police force and vice versa. This is because special constables and regular officers work alongside each other, and there is a need for flexibility as to who can provide that representation, depending on the situation and availability of the individual in question. New section 59(3)(c) restates the law in Scotland, making clear that a constable of the Police Service of Scotland may be represented under section 59(2A) only by another constable of the Police Service of Scotland.
- 247 Subsection (8) amends section 60(2)(e) of the 1996 Act to enable the Secretary of State to make regulations under section 60(1) about the pay, pension or allowance and other conditions of service for any member of a police force or special constable who is the secretary or officer of a Police Federation, and to apply existing regulations with modifications. Whilst special constables are volunteers, were a special constable be elected to a secretary or officer position in the future, this provision enables the Secretary of State to make regulations governing any pay, pension or allowance or other conditions of service.

Clause 4: Meaning of dangerous driving: constables etc.

- 248 Sections 1, 1A and 2 of the Road Traffic Act 1988 (the "1988 Act") provide for offences of causing death by dangerous driving, causing serious injury by dangerous driving and dangerous driving respectively. Section 2A of the 1988 Act defines dangerous driving for the purpose of these offences. This Clause amends section 2A so that in any prosecution for an offence under section 1, 1A or 2 of the 1988 Act a designated person's standard of driving is compared to that of a competent and careful constable who has undertaken the prescribed training, and therefore has the same skills, where the designated person is driving for police purposes.
- 249 Subsection (3) inserts new subsections (1A) to (1F) into section 2A of the 1988 Act (meaning of dangerous driving). New section 2A(1A) and (1B) provide that a designated person is to be regarded as driving dangerously if (a) the way the designated person drives falls far below what would be expected of a competent and careful constable who has undertaken the same prescribed training; and (b) it would be obvious to such a careful and competent constable who had undertaken the same prescribed training that driving in that way would be dangerous. Under the new comparison, a careful and competent police driver is not expected to be a perfect police driver. The new comparison takes into account whether a careful and competent police driver, who has undertaken the same training, would have reasonably made the same decision under the circumstances. This modified test applies where a designated person is driving for police purposes (or, in the case of NCA, law enforcement purposes), and has undertaken prescribed training.

- 250 New section 2A(1C) defines the term ‘designated person’ as a constable, a member of staff appointed by the chief officer, a member of staff appointed by a local policing body and employed to assist a police force in England and Wales, a member of staff appointed by the British Transport Police Authority, a member of staff appointed by the Scottish Police Authority, an NCA officer, a driving instructor employed or engaged by a chief officer of police, Scottish Police Authority or NCA to instruct those individuals, and driving instructors employed or engaged by those bodies to instruct those driving instructors
- 251 New section 2A(1D) sets out that ports constables are not included within the definition of constable.
- 252 New section 2A(1E) states that the test applies to NCA officers when they are driving for law enforcement purposes rather than for policing purposes.
- 253 New section 2A(1F) specifies that the test will apply to persons engaged by the NCA for the purpose of training NCA officers or to train a person to become an NCA driving instructor.
- 254 Subsection (4) makes consequential amendments to section 2A(3) of the 1988 Act.
- 255 Subsection (5) provides that the change to the definition of dangerous driving does not have retrospective effect.

Clause 5: Meaning of careless driving: constables etc

- 256 Sections 2B and 3 of the 1988 Act provide for offences of causing death by careless, or inconsiderate, driving and careless, or inconsiderate, driving respectively. Section 3ZA of the 1988 Act defines careless, or inconsiderate, driving for the purposes of these offences. This Clause amends section 3ZA so that in any prosecution for an offence under section 2B or 3 of the 1988 Act, a designated person’s standard of driving is compared to that of a competent and careful constable with the same training and, therefore, the same skills.
- 257 Subsection (3) inserts new subsections (2A) to (2F) into section 3ZA of the 1988 Act. New section 3ZA(2A) and (2B) provide that a designated person is to be regarded as driving without due care and attention if the way the designated person drives falls below what would be expected of a competent and careful constable who has undertaken the same prescribed training and, therefore, the same level of skills. Under the new comparison, a careful and competent police driver is not expected to be a perfect police driver. The new comparison takes into account whether a careful and competent police driver, who has undertaken the same training, would have reasonably made the same decision under the circumstances. This modified test applies where a designated person is driving for police purposes (or, in the case of NCA, law enforcement purposes), and has undertaken prescribed training.
- 258 New section 3ZA(2C) defines the term ‘designated person’ as a constable, a member of staff appointed by the chief officer, a member of staff appointed by a local policing body in England and Wales, a member of staff appointed by the British Transport Police Authority, a member of staff appointed by the Scottish Police Authority, an NCA officer, or a driving instructor employed or engaged by a chief officer of police, Scottish Police Authority or NCA to instruct those individuals and driving instructors employed or engaged by those bodies to instruct those driving instructors.
- 259 New section 3ZA(2D) sets out that ports constables are not included within the definition of constable.
- 260 New section 3ZA(2E) states that the test applies to NCA officers when they are driving for law enforcement purposes rather than for policing purposes

- 261 New section 3ZA(2F) specifies that the test will apply to persons engaged by the NCA for the purpose of training NCA officers or to train a person to become an NCA driving instructor.
- 262 Subsection (4) makes consequential amendments to section 3ZA(3) of the 1988 Act.
- 263 Subsection (5) provides that the change to the definition of dangerous driving does not have retrospective effect.

Clause 6: Regulations relating to sections 4 and 5

- 264 Clause 6 amends section 195 of the 1988 Act to provide that the power to make regulations prescribing training or skills for the purposes of new section 2A(1A)(b) or 3ZA(2A)(b) may make different provision for different persons or areas.

Part 2: Prevention, investigation and prosecution of crime

Chapter 1: Functions relating to serious violence

Clause 7: Duties to collaborate and plan to prevent and reduce serious violence

- 265 Subsection (1) places a duty on specified authorities for a local government area to collaborate with the other specified authorities for that same area to prevent and reduce serious violence. The specified authorities (as listed in Schedule 1) are chief officers of police, specified health authorities, local authorities, probation service providers, youth offending teams and fire and rescue services. Each specified authority must collaborate with every other specified authority in that area, although the scale, scope and nature of that collaboration are likely to differ, depending on local circumstances. A “local government area” for these purposes is, in England, a district council, a London borough, the City of London or the Isles of Scilly, and, in Wales, a county or county borough (see Clause 10(4)).
- 266 Subsection (2) states that the duty created in subsection (1) includes a duty to plan with the other specified authorities for that area, to prevent and reduce serious violence in the area, although again, the nature of that planning is likely to differ, depending on local circumstances.
- 267 Subsection (3) requires specified authorities in a local government area to work with the other specified authorities in that area to identify the kinds of serious violence that occur in the area; to identify the causes of serious violence in the area so far as is possible; and to prepare and implement a strategy that is aimed at preventing and reducing serious violence in the area. It is expected that this will involve the formulation of a local problem profile/strategic needs assessment, which identifies the main issues and drivers of serious violence in the local area and the cohorts of people most affected or at risk; and the production of a strategy which sets out the proposed local area response to the issues and drivers identified in the local problem profile and describes how the specified authorities will work together to prevent and reduce serious violence in the specified local area.
- 268 Subsection (4) requires, in preparing a strategy for a local area, that the specified authorities for the area must consult each educational authority, prison authority or youth custody authority in that area (these terms are defined in Clause 11 and Schedule 2).
- 269 Subsection (5) states that a strategy prepared for a local area may include actions which are to be carried out by an educational authority, prison authority or youth custody authority in that area. Clause 14 includes further provision relating to the duties of such authorities in respect of such actions.
- 270 Subsection (6) states that the specified authorities, in preparing a strategy for a local government area in England or Wales, may invite participation from a prescribed person who

is not subject to the Serious Violence Duty, as specified in an order made by the Secretary of State or the Welsh Ministers (as appropriate) under section 5(3) of the Crime and Disorder Act 1998 (see the Crime and Disorder Strategies (Prescribed Descriptions) (England) Order 2004 (SI 2004/118), as amended, and Crime and Disorder Strategies (Prescribed Descriptions) (Wales) Order 2009 (SI 2009/3050)).

271 Subsection (7) mandates that once a strategy has been prepared for a local government area, the specified authorities must keep it under review and must from time to time prepare and implement a revised strategy.

272 Subsection (8) states that a strategy prepared under this Clause may also cover an area larger than a local government area if it is also prepared in the exercise of powers under Clause 8. Clause 8 is concerned with collaborations between specified authorities in more than one local government area. The effect of this Clause is therefore to support such collaborations by providing, for example, for a common strategy to be prepared for multiple local government areas in the same city, county or region.

273 Subsection (9) confers a power on the Secretary of State, by regulations, to make provision for or in connection with the publication and dissemination of a strategy under this Clause. Such regulations may specify, amongst other things, the date by which the first strategy must be published.

Clause 8: Powers to collaborate and plan to prevent and reduce serious violence

274 Subsection (1) permits two or more specified authorities to collaborate and plan with each other to prevent and reduce serious violence in a relevant area. “Relevant area” is defined (in subsection (12)) as an area including all or part of a local government area or all or part of more than one local government areas (regardless of whether it is also a specified authority for the other area or areas). This provision will also enable specified authorities to work across boundaries where necessary in order to take a co-coordinated approach to serious violence that operates across boundaries. This could be used, for example, in tackling “county lines” activity which often spans more than one local government area.

275 Subsections (2) to (10) contain analogous provisions to those in Clause 7(2) to (12) which will apply where two or more specified authorities have chosen to collaborate to deliver the serious violence duty.

Clause 9: Power to authorise collaboration etc. with other persons

276 Subsection (1) creates a power for the Secretary of State to make regulations to confer powers on specified authorities to collaborate with prescribed persons or bodies (which could be in the public, voluntary or private sectors) for the purposes of preventing or reducing serious violence in a prescribed area; and a reciprocal power for persons and bodies so prescribed to collaborate with a specified body for these purposes.

277 Subsection (2) supports such collaborative working by conferring a power on the Secretary of State, by regulations, to create information sharing gateways that permits prescribed persons to disclose information to any person listed in subsection (3), for the purposes of preventing and reducing serious violence in a prescribed area. This would be a permissive gateway. It would permit but would not require the sharing of information. For example, a prescribed voluntary organisation could share management information about the characteristics of its clients and beneficiaries, which could support the development of a local problem profile / needs assessment.

278 Subsections (4) to (9) make further provision about the scope of the regulation-making power in subsection (2). They provide that any information sharing gateway created by such

regulations could enable information to be shared notwithstanding any obligation of confidence or any other restriction on the disclosure of the information, save that disclosure would not be permitted if it would contravene data protection legislation defined in subsection (9) for the purposes of this Chapter as having the same meaning as in section 3 of the Data Protection Act 2018) and the prohibitions on disclosure provided for in any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. An example of a case in which confidential information could be so disclosed might arise where a prescribed voluntary organisation has been mapping incidents of serious violence reported to it by its clients and beneficiaries. It may wish to share this map with a specified authority, to support the development of a local problem profile / needs assessment.

279 Any new information sharing gateway created by regulations made under subsection (2) is intended to augment rather than replace existing powers to collaborate or disclose information for the purpose of preventing or reducing serious violence, accordingly subsection (6) preserves such existing powers.

Clause 10 and Schedule 1: Specified authorities and local government areas

280 Subsection (1) introduces Schedule 1 which lists the specified authorities who are subject to the serious violence duty. The list includes local authorities, probation service providers, youth offending teams, clinical commissioning groups (in England), local health boards (in Wales), chief officers of police, and fire and rescue authorities.

281 Subsection (4) defines a “local government area” (that is, the area in respect of which the serious violence duty in Clause 9 applies) as a district, a London borough, the City of London or the Isles of Scilly when in England, and as a county or county borough when in Wales.

282 Subsection (7) confers a power on the Secretary of State, by regulations, to amend the list of specified authorities in Schedule 1. Such regulations may add, modify or remove an entry in an existing table as well as add a new table in that Schedule.

Clause 11 and Schedule 2: Educational, prison and youth custody authorities

283 Subsection (1) introduces Schedule 2 which defines an ‘educational authority’, ‘prison authority’ and ‘youth custody authority’ for the purposes of Chapter 1 of Part 2.

284 Subsection (3) confers a power on the Secretary of State, by regulations, to amend Schedule 2. Such regulations may add, modify or remove an entry in a table in that Schedule.

Clause 12: Preventing and reducing serious violence

285 Subsections (1) and (2) define the terms ‘preventing’ and ‘reducing’ serious violence in an area to mean preventing people from becoming involved, either as a victim or perpetrator in serious violence in the area and reducing instances of serious violence in the area. This means that it could include early intervention work, to divert people away from serious violence.

286 Subsection (3) provides that ‘violence’ for the purposes of this Chapter includes violence against property and threats of violence (in addition to violence against a person), but does not include terrorism.

287 Subsection (4) provides that in considering what amounts to serious violence for the purposes of this Chapter particular factors must be taken into account. It will be for specified authorities in each local area to decide what amounts to serious violence in their particular locality, but in making any such determinations, the following factors must be considered: the maximum penalty that could be imposed for any offence involved in the violence; the impact of the violence on any victim; the prevalence of the violence in the area; and the impact of the violence on the community in the area. It is anticipated that work to answer these questions will form part of the development of the strategy required under Clause 7 or 8.

Clause 13: Involvement of local policing bodies

- 288 Subsection (1) provides a power to a local policing body (namely, a police and crime commissioner, the Mayor's Office for Police and Crime and the Common Council of the City of London in its capacity as a police authority) in a police area to assist a specified authority in the exercise of its function to prevent and reduce serious violence.
- 289 Subsection (2) enables a local policing body to monitor the exercise by specified authorities of their functions under Clause 7 or 8, as the case may be.
- 290 Subsection (3) allows a local policing body to report its findings under subsection (2) to the Secretary of State. The Secretary of State may use evidence from such monitoring by a local policing body in deciding whether to exercise the direction-making power in Clause 18.
- 291 Subsection (4) enables the Secretary of State, by regulations, to confer functions on a local policing body for the purposes of enabling it to assist specified authorities in discharging their functions under Clause 7 or 8. A non-exhaustive list of the type of assistance that may be provided for in such regulations is set out in subsection (5), including the provision of funding and a convening role. Subsection (6) requires a specified authority to cooperate with a local policing body where that body decides to provide assistance to the specified authority under subsection (1), monitor in accordance with subsection (2) the discharge of the serious violence duty by the specified authority or exercise other functions in relation to the specified authority conferred by regulations made under subsection (4).

Clause 14: Involvement of educational, prison and youth custody authorities

- 292 Subsections (1) and (2) enable an educational, prison or youth detention authority (as defined in Schedule 2 and collectively referred to as a "relevant authority") for a local government area to collaborate with a specified authority for that area in order to prevent and reduce serious violence in that area, and vice versa.
- 293 Subsection (3) requires that a relevant authority and a specified authority must collaborate with each other as detailed in subsections (1) and (2) if either the relevant authority or specified authority requests such collaboration.
- 294 Where a strategy prepared under Clause 7 or 8 specifies an action to be carried out by a relevant authority (see Clause 7(5) and 8(5)), subsection (4) places a duty on the relevant authority to carry out that action. For example, a serious violence reduction strategy may require local schools to provide the specified authorities with management information about exclusions from school.
- 295 Subsection (5) enables a relevant authority for a local government area to collaborate with another relevant authority for that area to prevent and reduce serious violence in that area and places a duty on a relevant authority to collaborate with another relevant authority for those purposes if requested to do so by that other relevant authority. For example, a local young offenders' institution may choose to collaborate with a secure children's home located in the same area if they are experiencing similar issues with serious violence within their institutions.
- 296 Subsection (6) enables a relevant authority to collaborate with another relevant authority for the purpose of preventing and reducing serious violence across local government areas where their area of operation is not coterminous with that area.
- 297 Subsections (7) and (8) qualify the duties to collaborate placed on relevant authorities by this Clause. The duty does not apply to the extent that the relevant authority considers that compliance with the duty would be incompatible with any other duty of the authority imposed by an enactment (other than the duty imposed by subsection (5)(b)), would have an

adverse effect on the exercise of the authority's functions would be disproportionate to the need to prevent and reduce serious violence in the area to which the duty relates, or would mean that the authority incurred unreasonable costs. In determining whether those reasons apply the cumulative effect of complying with the duties under this Clause must be taken into account.

- 298 Subsection (9) provides that, notwithstanding subsections (7) and (8), a relevant authority may still be required to collaborate with a specified authority for the purposes of enabling the specified authority to discharge its functions under Clause 7(3) or 8(3) of identifying the kinds or causes of serious violence in the area and of preparing a strategy to prevent and reduce serious violence.

Clause 15: Disclosure of information

- 299 Subsections (1) and (2) create an information sharing gateway, to permit the disclosure to a specified authority of information held by specified authorities, local policing bodies and educational, prison or youth custody authorities. Such disclosures would be made to allow the specified authority receiving any such information to exercise its functions under Chapter 1 of Part 2. This would be a permissive gateway. It would permit but would not require the sharing of information. For example, a clinical commissioning group could disclose management information about hospital attendances where serious violence was suspected, which could support the development of a local problem profile / strategic needs assessment.
- 300 Subsections (3) to (4) make further provision about the disclosure of information under this Clause. They provide that any disclosure of information under this Clause may be made notwithstanding any obligation of confidence or any other restriction on the disclosure of the information, save that disclosure would not be permitted if it would contravene the data protection legislation or the prohibitions on disclosure provided for in any Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- 301 Subsections (5) and (6) disappplies any conditions or limitations on the disclosure of information that would apply if the disclosure was one that could be made under an information sharing gateway provided for in regulations made under section 6(2) of the Crime and Disorder Act 1998 or in section 115 of that Act as well as one that could be made under this Clause.
- 302 Subsection (7) provides that this information sharing gateway does not otherwise affect any existing power to disclose information.

Clause 16: Supply of information to local policing bodies

- 303 Subsections (1) and (2) create a power for local policing bodies to request any specified authority, educational authority, prison or youth custody authority within its police force area, or any other local policing body, to supply it with such information as it may specify, in order to exercise its functions under Clause 13.
- 304 Subsection (3) specifies that information requested under subsection (1) must relate to the person or body to which the request was made; a function of that body or person; or a person or body in respect of whom a function is exercisable by the person or body requested to supply the information. That is to say, the request cannot be for information held by the body or person in question about a third party – it must be about that body or person. It cannot be about functions that that body or person does not actually have – it must be about things they do themselves, rather than things that are done by others. It can however be about third parties where such parties are carrying out a function on behalf of the person or body to whom the request is made.

- 305 Subsection (4) states that where a request is made under subsection (1), the person or body to whom it relates must comply and supply the requested information (subject to subsection (6)).
- 306 Subsections (5) to (6) provides that in discharging an obligation under this Clause to provide information to a local policing body, a person does not breach any obligation of confidence or any other restriction on the disclosure of the information, save that disclosure would not be permitted if it would contravene data protection legislation or the prohibitions on disclosure provided for in Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- 307 Subsection (7) provides that any information supplied to a local policing body under this Clause must be used only by that body for the purpose of enabling or assisting it to perform its functions under Clause 14. That is to say, it could be used only for purposes connected with preventing or reducing serious violence. Nor could it be further disseminated outside of that policing body. For example, it could not be shared with the police or other law enforcement agency.

Clause 17: Directions

- 308 Subsections (1) and (2) gives the Secretary of State a power to issue directions to a specified authority or educational, prison or youth custody authority for the purpose of securing compliance where it has failed to discharge specified duties under Chapter 1 of Part 2. Directions given under this Clause may require the relevant specified authority to take such steps as in the opinion of the Secretary of State are necessary, for the purpose of securing compliance with the duty.
- 309 Subsection (3) provides for a direction under subsection (1) to be enforced by a mandatory order, that is an order granted on application to the Administrative Court in England and Wales, to compel a public body to comply with a legal duty.
- 310 Subsection (4) provides that the Secretary of State must consult the Welsh Ministers before giving a direction under subsection (1)s to a devolved Welsh authority.
- 311 Subsection (5) provides that the direction power does not apply in relation to probation services provided by the Secretary of State or publicly run prisons, young offender institutions, secure training centres or secure colleges.

Clause 18: Guidance

- 312 This Clause confers a power on the Secretary of State to issue guidance to specified authorities, prescribed persons and bodies, educational authorities, prison and youth custody authorities and local policing bodies. Such bodies must have regard to any such guidance in exercising their functions under Chapter 1 of Part 2. There is a requirement for the Secretary of State to consult the Welsh Ministers before issuing guidance which relates to the exercise of functions by a devolved Welsh authority.

Clause 19: Amendments of the Crime and Disorder Act 1998

- 313 Clause 19 amends the Crime and Disorder Act 1998 (the “1998 Act”). The 1998 Act introduced Community Safety Partnerships (“CSPs”) (formerly known as Crime and Disorder Reduction Partnerships) to help address crime and reduce offending. This Clause amends the 1998 Act to ensure preventing and reducing serious violence is a priority for CSPs.
- 314 Subsection (2) amends section 5A of the 1998 Act (combination agreements: further provision). Under the 1998 Act, members of a CSP are referred to as “responsible authorities”. Responsible authorities for two or more local government areas may agree to combine their work by entering into a combination agreement. This means that CSPs for

multiple local government areas in the same city, county or region may agree to enter into a combination agreement to create common plans and strategies. Under section 5A(2) of the 1998 Act, combination agreements may be entered for one or more of three statutory purposes. These are where the relevant a local policing body or bodies consider that to do so would be in the interests of: (a) reducing crime and disorder; (b) reducing re-offending; or (c) combatting the misuse of drugs, alcohol and other substances. Subsection (2) adds two further statutory purposes, namely: (d) preventing people from becoming involved in serious violence (as defined in section 18 of the 1998 Act as amended by subsection (12)); and (e) reducing instances of serious violence.

- 315 Subsections (3) to (7) amend section 6 of the 1998 Act. Subsection 6(1) of the 1998 Act requires responsible authorities – again, the members of the CSP – to formulate and implement strategies for: (a) the reduction of crime and disorder in the area (including anti-social behaviour adversely affecting the local environment); (b) combatting the misuse of drugs, alcohol and other substances in the area; and (c) the reduction of re-offending in the area. Subsection 6(2) of the 1998 Act creates a power for the “appropriate national authority” to make regulations in connection with the formulation and implementation of strategies made under section 6(1). Section 6(3)(e) provides that such regulations may include provision in respect of the objectives to be addressed in a strategy and performance targets in respect of those objectives, while section 6(6) provides that regulations made under section 6(3)(e) may require a strategy to be formulated so as to address (in particular) two things: (a) the reduction of crime or disorder of a particular description; and (b) the combatting of a particular description of misuse of drugs, alcohol or other substances. The “appropriate national authority” is defined at section 6(9) as the Secretary of State in England, Welsh Ministers in relation to strategies for combatting the misuse of misuse of drugs, alcohol or other substances in areas in Wales; and the Secretary and State and Welsh Ministers acting jointly, in relation to strategies for combatting crime and disorder or re-offending in Wales.
- 316 Subsection (4) amends section 6(1) of the 1998 Act to require the crime and disorder reduction strategies prepared by responsible authorities to address two further matters, namely preventing people from becoming involved in serious violence in the area; and reducing instances of serious violence in the area.
- 317 Subsection (5) amends section 6(6) of the 1998 Act so that regulations made under section 6(3)(e) may in addition require a strategy to be formulated so as to address (c) the prevention of people from becoming involved in serious violence of a particular description; and (d) the reduction of instances of serious violence of a particular description. Subsection (6) makes a consequential amendment to the definition of the appropriate national authority in section 6(9) to provide that the Secretary of State is the appropriate national authority for the purposes of making such regulations.
- 318 Subsection (7) inserts a new subsections (10) and (11) into section 6 of the 1998 Act. New section 6(10) requires the Secretary of State to consult the Welsh Ministers before making regulations under section 6 which relate to a strategy for preventing people from becoming involved in serious violence in the area; and reducing instances of serious violence in the area, if and to the extent that such provision applies in relation to a devolved Welsh authority within the meaning of section 157A of the Government of Wales Act 2006. New section 6(11) includes provision relating to the interpretation of the term serious violence (when read with the amendments to section 18 of the 1998 Act made by subsection (12)).
- 319 Subsections (8) to (11) amend section 17 of the 1998 Act. Section 17 imposes on specified public authorities a duty to consider crime and disorder implications when exercising their functions. The authorities in question include: local authorities; fire and rescue authorities; local policing bodies; national park authorities; the Broads Authority; the Greater London

Authority and Transport for London. Each of these authorities must exercise their various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that they can reasonably do, to prevent: (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drug, alcohol and other substances in its area; and (c) re-offending in its area. Subsections (9) to (11) add a fourth requirement on these bodies to exercise their various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that they can reasonably do, to prevent and reduce serious violence in their areas.

Clause 20: Amendment to the Police and Justice Act 2006

320 This Clause amends section 19 of the Police and Justice Act 2006. Section 19 requires every local authority to have a crime and disorder committee. The crime and disorder committee has powers to oversee the work of ‘responsible authorities’ – that is, the members of a CSP. In particular, crime and disorder committees have powers in connection with the work of the local CSP to address local crime and disorder matters under section 19. As the law stands, there are two statutory local crime and disorder matters, namely: (a) crime and disorder (including forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment); and (b) the misuse of drugs, alcohol and other substances. This Clause adds a third statutory local crime and disorder matter, namely serious violence, within the meaning of the 1998 Act (as amended by Clause 19).

Clause 21: Regulations

321 This Clause makes further provision in respect of the powers to make regulations under Chapter 1 of Part 2, including specifying the level of parliamentary scrutiny for each power. In particular, subsection (3) provides that the Secretary of State must consult Welsh Ministers before making regulations under this Chapter if and to extent that the regulations make provision that applies in relation to a devolved Welsh authority within the meaning of the Government of Wales Act 2006 (see section 157A of that Act).

Clause 22: Index of defined expressions

322 This Clause contains an index of expressions used in Chapter 1 of Part 2 and signposts the definitions of those expressions.

Chapter 2: Offensive Weapons Homicide Reviews

Clause 23: Duty to arrange a review

323 This Clause places a duty on “relevant review partners” to conduct offensive weapons homicide reviews in certain circumstances.

324 Subsection (1) provides for a review to be arranged by the relevant review partners in certain cases. Review partners are defined in Clause 24(2) as a chief officer of police for a police area in England and Wales; a local authority in England and Wales, a clinical commissioning group (in relation to England); or a local health board (in relation to Wales). Clause 24 makes provision about relevant review partners.

325 A review must be arranged if a death was, or is likely to have been, a qualifying homicide (defined by subsection (6)); the death occurred, or is likely to have occurred, in England and Wales; such other conditions as the Secretary of State may specify in regulations (for example, the circumstances of or relating to the death); and the review partners are the relevant review partners in respect of the death.

326 Subsection (6) defines a qualifying homicide as being where the person who died was aged 18 or over, and the death, or the events surrounding the death, involved the use of an offensive

weapon, as defined by subsection (8). Homicide is not defined for the purposes of this Chapter, and the reference to that term is not limited to cases where an offence has been committed, for example, a case where a person is attacked by another with a knife, but also covers cases where an offence may not have been committed, for example, where an individual while acting in self defence, kills their attacker using an offensive weapon. By referencing ‘the events surrounding’ the homicide, an offensive weapon homicide review could be conducted if an offensive weapon was involved in the homicide, though may not have been the decisive factor in the death; for example, if a victim was stabbed with a knife, but subsequently died from being strangled.

327 Conditions which may be specified in regulations under subsection (1)(c) may include conditions relating to the circumstances of or relating to the death, the circumstances or history of the victim or of other persons. Such conditions would be intended to provide that reviews are only conducted in cases where lessons might be learned from any institutional or local points of failure, or where a review might assist in understanding the local or national threat from serious violence.

328 Subsections (2) to (5) provide that the duty to arrange an offensive weapons homicide review does not apply where the death may be subject to an existing review, as set out in Clause 25, or where an offensive weapons homicide review has already been started or taken place; and that the duty to arrange an offensive weapons homicide review ceases to apply if, on further information a review partner considers the conditions in subsection (1) are no longer satisfied; however subsection (4) provides that where a review has already started it cannot be discontinued if further information indicates a change in which review partners are the relevant review partners.

329 Subsection (7) enables the Secretary of State, by regulations, to amend the definition of a qualifying homicide, and to make such consequential amendments to this Chapter as appear appropriate to reflect any alteration in the definition of a qualifying homicide. This power would allow homicides that do not involve offensive weapons to be included in future.

Clause 24: Relevant review partners

330 This Clause provides the Secretary of State with a power to make regulations for identifying which review partners are the relevant review partners in respect of a death.

331 The regulations may provide that the relevant review partners in respect of any person’s death consist of a chief officer of police for a police area in England or Wales of a specified description, a local authority, or authorities where a district council is within the area of a county council of a specified description, and a clinical commissioning group or a local health board of a specified description; and may provide for the description of the relevant review partners to be specified by reference to the place where the death occurred or is likely to have occurred, or by reference to other matters. The regulations may also provide for review partners to agree which of them are the relevant review partners (in cases where review partners from more than one area may be relevant) and for the Secretary of State to direct which review partners are the relevant review partners in particular cases.

Clause 25: Relationship with other review requirements

332 This Clause and Clause 23(2) disapply the duty in Clause 23(1) to arrange a review in certain cases.

333 Subsections (1) and (3) disapply the duty if the death is one that must or may be subject to a child death review in England (see sections 16M(1)(and (2) of the Children Act 2004), may be subject to a domestic homicide review in England or Wales (see section 9 of the Domestic Violence, Crime and Victims Act 2004), may or must be subject to a safeguarding adults

review in England (see section 44(1)(and (4) of the Care Act 2014), or if regulations under section 135(4)(a) of the Social Services and Well-being (Wales) Act 2014 require a Safeguarding Board to review the death of a child or adult.

334 Subsection (2) provides that the Secretary of State may make regulations to disapply the duty to arrange an offensive weapons homicide review in the case of a death which may or must be investigated by NHS bodies (in England, as defined in Clause 35(1)) where a death was caused by persons who are receiving or have received any health services relating to mental health. Subsection (4) provides an equivalent power to make regulations to disapply the duty to arrange an offensive weapons homicide review in respect of a death caused by a person who is receiving or has received any mental health services in Wales where there may be a review of, or investigation into, the provision of that health care under section 70 of the Health and Social Care (Community Health and Standards) Act 2003.

Clause 26: Notification of Secretary of State

335 This Clause provides for the Secretary of State to receive a notification from a review partner if they become aware of qualifying circumstances in relation to a persons death, which include they are the likely relevant review partners.

336 Subsection (1) provides that notification must be either that the review partner is under a duty to arrange an offensive weapons homicide review, that the review partner is not under that duty, or that the review partner has not been able to take a decision as to whether they are under that duty. By virtue of subsection (7) a review partner becomes aware of qualifying circumstances when they become aware of such facts as make it likely that the conditions in Clause 23(1)(a) (that the death was, or is likely to have been, a qualifying homicide) and Clause 23(1)(b) (the death occurred, or is likely to have occurred, in England or Wales) are satisfied in relation to the death, and they are one of the relevant review partners in respect of the death. Subsection (2) provides that the duty to notify does not, however, apply if when they become aware of qualifying circumstances, they are also aware that no duty to arrange a review arises because a review has already started or is taking place (see Clause 23(5)) or the death falls within a review set out in Clause 25.

337 Subsection (8) provides that the notification to be made to the Secretary of State within one month of a review partner becoming so aware. Such a requirement is intended to ensure that consideration of whether a review is required begins promptly, in order that lessons and recommendations can be identified and acted upon quickly.

338 It is recognised that in some cases it may not be possible to make a decision within one month, for example, in relation to whether a death meets the definition of a qualifying homicide, it may take time to verify the use of an offensive weapon. In such cases subsection (3) requires that the Secretary of State is notified once a decision has been made. Subsections (4) to (6) require additional notifications to be made to the Secretary of State in certain circumstances where a decision previously notified is reconsidered.

Clause 27: Conduct of review

339 Subsections (1) and (2) place a duty on the review partners that arranged a review to cooperate in and contribute to the conduct of a review and set out the purpose of such a review, namely to identify lessons learned and consider whether anyone should take actions in the light of such lessons.

340 Subsection (3) places a duty on the review partners to inform any individual or organisation of any actions that it would be appropriate for them to take in light of lessons learned. This might include recommendations directed to, but not limited to, the Government, the police including British Transport Police, probation services, local agencies and social services, hospitals, GPs or third-sector organisations.

341 Subsections (4) to (8) relate to the requirement to produce a report on the review which is to be sent to the Secretary of State. The report must include the findings of the review, any conclusions drawn and recommendations in light of those findings and conclusions including any actions that it would be appropriate to take. The report must not include any material that might jeopardise the safety of any person, or prejudice the investigation or prosecution of an offence. The Secretary of State must consider if it is appropriate to publish the full report, and if so must publish, or make arrangements for the publication of, the report. If it is considered inappropriate to publish the full report, the Secretary of State must publish, or make arrangements for the publication of, so much of the report as the Secretary of State considers appropriate to publish, allowing the redaction of any sensitive information prior to publication, for example, relating to individuals involved in the death.

Clause 28: Information

342 The purpose of offensive weapons homicide reviews is to ensure that review partners consider the circumstances that led to a homicide and identify lessons learnt, opportunities to intervene and inform responses to address serious violence and homicide. Conducting the reviews therefore requires the collection and processing of information relevant to the circumstances of the death being reviewed, for example information about the person who died and their circumstances, and information about a person who caused, or is likely to have caused the death and their circumstances.

343 Subsection (1) provides that a review partner may request a person to provide information to them, or to any of the other review partners. Subsections (2) to (4) provide that such a request may only be made if it is made for the purpose of enabling or assisting the performance of functions conferred by Clauses 23 to 27 (including considering whether or not to establish a review) and that the recipient of the request is, due to their functions or activities, considered by the review partner to be likely to have information that would enable or assist the performance of those functions. Other individuals or organisations that may have relevant information could include, but is not limited to, British Transport Police, probation services, schools, universities, colleges, GP practices, hospitals and third-sector organisations.

344 Subsections (5) and (6) place a legal requirement on any person receiving a request under this Clause to provide the information requested. This requirement may be enforced by the review partner making an application to the High Court or the county court for an injunction.

345 Subsection (7) provides review partners with a power to share information with another review partner if that information is shared for the purpose of enabling or assisting the performance of functions under Clauses 23 to 27. This ensures review partners are able to share either information they already hold, or information they receive via a request made under subsection (1) with other review partners for those purposes.

Clause 29: Information: supplementary

346 As per paragraph 342, the collection and analysis of information relevant to the death will be essential in learning lessons to prevent future deaths. This Clause makes supplementary provision in relation to the disclosure of information. Subsection (1) provides that a person cannot be required by Clause 28 to disclose information they could not be compelled to disclose in proceedings before the High Court, meaning information that is subject to legal professional privilege cannot be required to be disclosed.

347 Subsections (2) and (3) provide that a disclosure of information required or authorised by Clauses 26 to 28 (being information contained in notifications to the Secretary of State, contained in the report of the review, and information disclosed under Clause 28) does not breach any obligation of confidence owed by the person making the disclosure, or any other

restriction on the disclosure of information, but Clauses 26 to 28 do not require or authorise a disclosure that would contravene the data protection legislation (as defined in subsection (5)) or that is prohibited by any parts of Part 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. Subsection (4) provides that this information sharing gateway does not otherwise affect any existing powers or duties of review partners to disclose information.

Clause 30: Delegating functions

348 Subsections (1) and (2) provide a power for the Secretary of State to make regulations enabling the relevant review partners to act jointly to delegate one or more of the functions specified in the regulations (which may be some or all of a review partners functions under Clauses 27 and 28 relating to a review or a report on the review) to either one of themselves, or another person. Such regulations could enable relevant review partners to decide one review partner or one individual should conduct the review and / or author the report on behalf of all the relevant review partners.

349 Subsections (3) and (4) provide a further power for the Secretary of State to make regulations enabling a county council and a district council for an area that is within the area of the county council, to agree to delegate one or all of the functions specified in the regulations (which may be some or all of the functions of a review partner under Clauses 23 to 28) to one of them. Such regulations could enable county and district councils for the same area to agree that one acts on behalf of the other in respect of one or more of the functions of a review partner in Clauses 23 to 28.

Clause 31: Guidance

350 Subsection (1) places a duty on review partners to have regard to guidance issued by the Secretary of State when carrying out their functions under this Chapter. The guidance will, amongst other things, cover the notification requirements, the conduct of reviews, the content of the report, and information sharing.

351 Subsection (2) places a duty on the Secretary of State to consult those appearing to represent review partners, the Welsh Ministers so far as the guidance relates to a devolved Welsh authority, and any other person the Secretary of State considers appropriate.

Clause 32: Power to pay grant: local health boards

352 This Clause applies the power to pay a grant under section 31(2) to (5) of the Local Government Act 2003 in relation to local health boards in Wales, and enables a Minister of the Crown to pay a grant to local health boards in Wales in relation to expenditure incurred or to be incurred by those local health boards in the exercise of their functions under this Chapter. This Clause only provides for a power to pay a grant to local health boards as existing provisions, such as the power to make grants under section 31 of the Local Government Act 2003, and provision under the National Health Service Act 2006 can already be relied upon to pay grants in relation to expenditure incurred or to be incurred in the exercise of functions under this Chapter by a chief officer of police for a police area in England and Wales; a local authority in England and Wales and a clinical commissioning group.

Clause 33: Piloting

353 This Clause makes provision for two conditions which must be met before the provisions relating to offensive weapons homicide reviews can be brought fully into force across the whole of England and Wales for all purposes. Firstly, offensive weapons homicide reviews must be piloted in one or more area in England and Wales or for one or more specified purposes; and secondly, the Secretary of State must lay a report before Parliament on the operation of the pilot. The pilot can be for a specified period and may by regulations be extended for a further specified period.

Clause 34: Regulations

354 This Clause makes further provision in respect of the powers to make regulations under this Chapter, including specifying the parliamentary procedure for such regulations.

Clause 35: Interpretation

355 Subsection (1) defines the terms used throughout this Chapter.

356 Subsections (2) and (3) confers a power on the Secretary of State, by regulations, to amend the definition of a “review partner” and to make such consequential amendments to this Chapter as appear to be appropriate as a result of the inclusion of a new review partner or removal of an existing review partner. Before making such regulations the Secretary of State must consult representatives of review partners, as well as Welsh Ministers so far as the proposed regulations relate to a devolved Welsh authority, and any other person the Secretary of State considers appropriate.

Chapter 3: Extraction of information from electronic devices

Clause 36: Extraction of information from electronic devices: investigations of crime etc.

357 Subsection (1) provides that an authorised person can extract information stored on an “electronic device” if two conditions are met. First, that the device has been provided voluntarily by a user of the device, and, second, that that user has given their agreement for information stored on the device to be extracted.

358 Subsection (2) sets out the purposes for which the power in subsection (1) can be used, namely the prevention, detection, investigation or prosecution of crime; helping to locate a missing person; or protecting a child or at-risk adult (as defined in subsection (4)) from neglect or harm. So far as the first of these purposes goes, an example is where a victim of a crime has kept texts on their mobile phone which may have a bearing on the investigation of the offence. If the victim voluntarily provides their mobile phone to the police and gives their agreement for the extraction of information from the phone, the police can use this power to review the text messages during the criminal investigation (provided the other provisions of Clause 36 are adhered to).

359 Subsection (3) makes clear that ‘crime’ means conduct which amounts to a criminal offence in a part of the UK or conduct which, had it taken place in a part of the UK, would have amounted to an offence there. This allows the power to be exercised further to the receipt of mutual legal assistance requests from overseas (provided the conduct in question would have constituted an offence in the UK, had it taken place here).

360 Subsection (5) sets out conditions which must be satisfied for an authorised person to extract information from an electronic device under subsection (1). Firstly, the authorised person must reasonably believe that information stored on the device will be relevant for preventing, detecting, investigating or prosecuting crime, helping to locate a missing person or protecting a child or at-risk adult from neglect or harm. Secondly, the authorised person must be satisfied that extraction of that information is necessary and proportionate to achieve that purpose.

361 Subsection (7) applies where the authorised person thinks there is a risk of obtaining information in excess of that which is required. In such a case, in order to be satisfied that extraction is proportionate, the authorised person must be satisfied that there are no other ways of obtaining the required information which avoid that risk or, if there are, that it is not reasonably practicable to rely on them. This means that, for example, a police constable

should not use this power to extract video evidence from a witness's digital device if there is a risk of extracting other information and it is possible and practical to obtain the same video evidence another way which doesn't carry that risk. There may be instances where the information required exists elsewhere, such as in CCTV, but it is not reasonably practicable to obtain it, as doing so would take an excessive amount of time. The authorised person must demonstrate that these issues and alternatives for obtaining the information have been considered before undertaking the extraction activity.

362 In order to ensure that victims and witnesses are informed of what happens to their device and information throughout the investigation, the police will issue a Digital Processing Notice ("DPN") when the extraction of information is required. The DPN explains why the police need the device and what happens to it during the investigation. By signing the DPN, the victim or witness confirms they agree to the police extracting information from their device. The witness information sheet and officer guidance form issued by the National Police Chiefs' Council is available [here](#).

363 Subsection (8) requires authorised persons to have regard to the code of practice issues by the Secretary of State under Clause 40 when exercising, and when considering whether to exercise, the power in subsection (1).

364 Subsection (9) provides that the power conferred by subsection (1) is without prejudice to other statutory or common law powers to extract information or to seize any item or information – for example, the general powers of seizure conferred by section 19 of PACE, exercisable where a constable is lawfully on any premises (this provision allows the constable to seize anything on the premises if the constable has reasonable grounds for believing it is evidence relating to an offence and it is necessary to seize it in order to prevent the evidence being concealed etc).

365 Subsection (10) defines various terms used in this Chapter, including:

- "authorised person", which means a police constable or other law enforcement agency/officer listed in Schedule 3;
- "information", which includes photographs and video or sound recordings;
- "electronic device", which means any device, such as a mobile phone, on which information is capable of being stored electronically (and includes a component part of such a device);
- "user", which means an individual who ordinarily uses a device (who may not necessarily be the owner of the device or the person in whose name a contract with a telecommunications service provider is held). Typically, for the purposes of this power, the user will be the victim or witness of a crime which is being investigated by the police or other authorised person.

Clause 37: Application of section 36 to children and adults without capacity

366 Subsections (1) and (6) set out that children and adults without capacity, respectively, are not capable of deciding whether to provide a device or agree to the extraction of information from it, for the purposes of the power in Clause 36.

367 A child is defined as a person aged under 16 (see section 36(10)). Section 37(10) defines 'adult without capacity' by reference to the Mental Capacity Act 2005 (for England and Wales), the Adults with Incapacity (Scotland) Act 2000 and the Mental Capacity Act (Northern Ireland) 2016.

368 In cases where a user of an electronic device is a child or an adult without capacity, another specified person may provide the device and give their agreement to the extraction of information from it.

369 In the case of a child, subsection (3) sets out that the people who may provide the device and give agreement to the extraction of information from it are a parent or guardian of the child (or, if the child is in care, a person representing the authority who has care of the child), or (if no such person is available) another responsible person aged 18 or over. The authorised person must, so far as it is reasonably practicable to do so, ascertain the views of the child and, taking into account the age and maturity of the child, have regard to those views.

370 In the case of an adult without capacity, subsection (8) sets out that the people who may provide the device and give agreement to the extraction of information from it a parent or guardian of the person (or, if the person is in care, a person representing the authority who has care of the person), a registered social worker, a person who has power of attorney which is wide enough to cover these matters, a person authorised under an intervention order whose authorisation covers such matters or (if none of those people is available) another responsible person aged 18 or over.

371 Subsection (11) defines terms relevant for these purposes (e.g. “registered social worker”).

Clause 38: Application of section 36 where user has died etc.

372 Subsection (1) sets out that in three special cases an authorised person may exercise the power in Clause 36 to extract information from a device even though a user has not voluntarily handed over the device or agreed to extraction.

373 The first case is where a user is deceased (subsection (2)).

374 The second case is where a user is a child or adult without capacity, and the authorised person believes their life is at risk or there is a serious risk of harm to them (subsection (3)).

375 The third case is where a user is missing, and the authorised person believes their life is at risk or there is a serious risk of harm to them (subsection (4)).

376 In these cases, there is no requirement on the police or other authorised person to obtain the agreement of the deceased’s next of kin or user’s parent, guardian etc., albeit that the police or other authorised person may inform the next of kin or parent, guardian etc. that they are in possession of the device and have extracted information from it for the purposes of a criminal investigation or another purpose specified in Clause 36(2).

Clause 39: Extraction of information from electronic devices: investigations of death

377 Subsection (1) provides that an authorised person may extract information from an electronic device if a user of that device has died. Subsections (2) and (3) set out that this power may only be used for the purposes of an investigation or inquest into the person’s death, or determining whether such an investigation or inquest should be held.

378 Police assist coroners and the Lord Advocate in gathering evidence to determine who has died, where, by what cause and when. A device such as a mobile phone may contain evidence that assists in answering those questions, for example it may have relevant internet search history that assists in determining if suicide was likely or may contain a communication sent to another party such as a suicide note which narrows the time of death.

379 Subsections (4) to (8) contain provisions which apply to the use of this power, similar to those in Clause 36(5) to (9) which apply to the use of the power in Clause 36(1).

Clause 40: Code of practice about the extraction of information

- 380 Subsection (1) imposes a requirement on the Secretary of State to prepare a code of practice which provides guidance on the exercise of the powers in Clauses 36(1) and 39(1). The code will give practical guidance to authorised persons on how and when it is appropriate to use the powers. This will ensure they exercise their functions in accordance with the law. The code will ensure a greater understanding on the use of the powers and their application in real life.
- 381 Subsection (2) requires the Secretary of State to consult with the Information Commissioner, the Scottish Ministers and the Department of Justice in Northern Ireland (and such other persons as the Secretary of State thinks appropriate) in preparing the code.
- 382 Subsections (3) to (9) set out the process for issuing the code of practice. Subsection (6) allows the Secretary of State to revise the code of practice from time to time. For example, as the needs of society and the law could change in the future, the code can be revised to remain relevant and applicable for the exercise of this power.

Clause 41: Regulations about the extraction of confidential information

- 383 Subsection (1) requires the Secretary of State to make provision about the exercise of the powers in Clauses 36(1) and 39(1) in relation to confidential information.
- 384 Subsections (2) and (3) define “confidential information”. It includes material subject to legal privilege (in Scotland, material in respect of which a claim to confidentiality of communications could be maintained in legal proceedings), meaning certain communications between a client and their legal advisor. It also includes confidential journalistic material.
- 385 Subsection (4) gives examples of the matters which regulations under subsection (1) may cover.
- 386 Subsection (6) requires regulations made under subsection (1) to be laid before Parliament and approved by a resolution of both Houses.

Clause 42 and Schedule 3: Authorised persons

- 387 Clause 42 and Schedule 3 define “authorised persons” for the purposes of Chapter 3 of Part 2. The list of authorised persons set out in Schedule 3 covers law enforcement agencies and certain regulatory bodies. The Schedule recognises that an authorised person may contract with another person (for example, a forensic science provider) to extract information from an electronic device on their behalf.
- 388 Schedule 3 is split into three parts, recognising the different responsibilities of the various bodies:
- The persons listed in Part 1 of the Schedule may exercise the power under Clause 36(1) for all the purposes listed in subsection (2) of that Clause, and the power in Clause 39(1).
 - The persons listed in Part 2 of the Schedule may exercise the power in Clause 36(1) for all the purposes listed in subsection (2) of that Clause. They may not exercise the power in Clause 39(1).
 - Lastly, the persons listed in Part 3 of the Schedule may only exercise the power in Clause 36(1) for the purposes of preventing, detecting, investigating or prosecuting crime. They may not exercise that power for other purposes or the power in Clause 39(1)
- 389 Sub-section (4) of Clause 42 confers a power on the Secretary of State, by regulations, to amend Schedule 3, including by adding or removing persons to/from the list.

Chapter 4: Other provisions

Clause 43 and Schedule 4: Pre-charge bail

390 This Clause introduces Schedule 4 which amends provisions in the Police and Criminal Evidence Act 1984 (“PACE”), the Bail Act 1976 and the Criminal Justice Act 2003 relating to pre-charge bail. The amendments relate to the granting of pre-charge bail and the factors to be taken to account when doing so. These amendments also introduce a duty to seek views of alleged victims regarding the imposition or variation of pre-charge bail conditions and the nature of these conditions. Clause 43 and Schedule 4 also includes amendments to the time limits and levels of authorisation of pre-charge bail and the effect on the maximum detention period of an arrest for breach of bail conditions or failure to answer bail, as well as introducing a power for the College of Policing to issue statutory guidance relating to pre-charge bail.

391 Clause 43(3) provides that the changes made by Schedule 4 only apply to persons arrested after the commencement of these provisions. Where a person is arrested under section 46A of PACE, for failure to answer bail, these amendments only apply to that person if they were arrested after the commencement of these provisions for the offence for which they were originally released on bail. These amendments also only apply to a person arrested under section 24A of the Criminal Justice Act 2003 (failure to comply with conditional caution) if the person was arrested after the commencement of these amendments for the offence in respect of which the caution was given.

Part 1 of Schedule 4: Grant of pre-charge bail

392 Part 1 of Schedule 4 aims to remove the perceived presumption against bail introduced by the Policing and Crime Act 2017, and amends that construction where it appears across a range of circumstances involving the imposition of pre-charge bail. Paragraph 2 of Schedule 4 amends section 30A of PACE which confers on a constable power to release on bail a person who is arrested elsewhere than at a police station, also known as ‘street bail’. The effect of section 30A(1) currently in force is to provide for a presumption that, where a constable decides that it is appropriate to release an arrested person rather than take them to a police station, that release will be without bail, unless the requirements in section 30A(1A) are met. Those requirements are that the constable is satisfied that the release on bail is necessary and proportionate in all the circumstances (having regard, in particular, to any bail conditions that would be imposed) and bail is authorised by a police officer of the rank of inspector or above). Paragraph 2 amends section 30A to remove the presumption against pre-charge bail. This is replaced by a neutral position, with no presumption for or against pre-charge bail. The aim of this change, as well as the equivalent changes (below) to Part IV of PACE, is to remove the suggestion that the default position is to release a person before charge without bail and to encourage the use of pre-charge bail, where it is necessary and proportionate in all the circumstances. This aims to ensure that protection is afforded to victims and witnesses by the safeguards associated with pre-charge bail, particularly bail with conditions. Paragraph 2 also amends section 30A to enable a custody officer to authorise the initial release of a person on street bail (rather than an officer of at least the rank of inspector or above). This change reflects the level of expertise and knowledge held by custody officers and the operational realities of investigations.

393 Paragraph 3 removes the presumption against pre-charge bail in section 34 of PACE. Section 34 deals with the release of a person from police detention. Where the custody officer determines that the conditions in section 34(5A) are met, which include the pre-conditions for bail under section 50A of PACE (mirroring the necessary and proportionate criteria in section 30A(1A)), the person must be released on bail under the amended section 34(5). Where the

conditions in section 34(5A) do not apply, the person must be released without bail under new section 34(5AA).

394 Paragraph 4 amends section 36 of PACE which deals with custody officers at police stations. This change takes into account the amendment of the rank of officer authorising the initial release of a person on street bail from an officer of the rank of inspector or above to custody officer in section 30A, ensuring that reference made to a custody officer in section 30A(1A)(b) also includes a reference to an officer other than a custody officer who is performing the functions of a custody officer, by virtue of section 36(4). This aims to provide flexibility to a constable when locating a custody officer for the purpose of obtaining authorisation to a release on bail under section 30A(1A).

395 Paragraph 5 removes the presumption against pre-charge bail in section 37 of PACE. Section 37 deals with the duties of the custody officer before charge. Where the custody officer determines that there is insufficient evidence to charge and the pre-conditions for bail are satisfied, they must release on bail under the amended section 37(2) subject to section 37(3). Where the custody officer determines that there is insufficient evidence to charge and the pre-conditions are not satisfied, they must release without bail under new section 37(2A), again subject to section 37(3). Equivalent changes have been made to section 37(7) which sets out the options available to a custody officer where the custody officer determines they have sufficient evidence to charge an individual for the offence for which they were arrested.

396 Paragraph 6 removes the presumption against pre-charge bail in section 37CA of PACE which applies where a person is released on bail under the amended section 37(7)(b) or 37CA(2)(b) and then arrested under section 46A of PACE. If the person is to be released without charge (to note, the option to charge is provided in section 37CA(2)(a), which remains unchanged), the amended section 37CA(2) requires the person to be released on bail if the pre-conditions for bail are met. Where the pre-conditions for bail are not met (and the person is not charged under section 37CA(2)(a)), the person must be released without bail under new section 37CA(2)(c).

397 Paragraph 7 makes a consequential change to section 37D(4A) of PACE.

398 Paragraph 8 removes the presumption against pre-charge bail in section 41 of PACE. Section 41 provides for limits on the time in which a person can be detained without charge. This is (subject to certain exceptions) 24 hours, which is calculated from a point known in PACE as the "relevant time" (normally, the time at which the person arrives at the first police station to which they are taken after their arrest). A person who has been in detention for 24 hours after the "relevant time" and who has not been charged must be released (unless further detention is authorised or permitted under subsequent provisions of PACE). This paragraph amends section 41(7) to provide that a person who has spent 24 hours in police detention and has not been charged must be released on bail under section 41(7)(a) if the pre-conditions are met and without bail under section 41(7)(b) if the pre-conditions are not met.

399 Paragraph 9 removes the presumption against pre-charge bail in section 42 of PACE which provides for the continued detention of a person of up to 36 hours from the relevant time on the authorisation of an officer of the rank of superintendent or above. This paragraph amends section 42(10) to provide that, where a person has been detained for up to 36 hours from the relevant time and has not been charged, they must be released on bail under new section 42(10)(a), subject to section 42(10A), if the pre-conditions are met and without bail under new section 42(10)(b), subject to section 42(10A) if the pre-conditions are not met.

400 Paragraph 10 removes the presumption against pre-charge bail in section 43 of PACE, which deals with warrants of further detention. Section 43 is amended to provide that where an application to a magistrates' court for a warrant of further detention (for up to 72 hours from

the "relevant time") has been refused, the person to whom the application relates must, unless charged, be released on bail under new section 43(15)(a) if the pre-conditions are met and without bail under new section 43(15)(b) if the pre-conditions are not met. Similarly, where a warrant of further detention is issued by a magistrates' court, the person to whom the warrant relates must, unless charged, be released from police detention on or before the expiry of the warrant on bail under new section 43(18)(a) where the pre-conditions are met and without bail under new section 43(18)(b) where the pre-conditions are not met.

401 Paragraph 11 removes the presumption against pre-charge bail in section 44 of PACE, which relates to the extension of warrants of further detention. Section 44, as amended, provides that, where an application for a warrant of further detention (for up to 96 hours from the relevant time) has been refused by a magistrates' court, the person to whom the application relates must, unless charged, be released on bail under new section 44(7)(a) where the pre-conditions are met and without bail under new section 44(7)(b) where the pre-conditions are not met.

402 Paragraph 12 makes consequential changes to section 47ZC of PACE which sets out the four conditions that must be met for extension of the time limits on bail (the "applicable bail period") to be authorised under sections 47ZD to 47ZG of PACE.

403 Paragraph 13 makes changes to section 50A of PACE, which defines the pre-conditions for bail under Part 4 of PACE, to enable a custody officer to authorise the initial release of a person on bail (rather than an officer of at least the rank of inspector or above). This change reflects the level of expertise and knowledge held by custody officers and the operational realities of investigations.

404 Section 24A of the Criminal Justice Act 2003 confers on a constable power to arrest a person where the constable has reasonable grounds for believing that the person has failed, without reasonable excuse, to comply with any of the conditions attached to a conditional caution. Paragraph 15 removes the current presumption against pre-charge bail in section 24A(2) and creates a neutral position on the granting of pre-charge bail. If a person is released without charge and the release is to enable a charging decision to be made, such a person must be released on bail under new section 24A(2)(b) where the pre-conditions are met and without bail under new section 24A(2)(c) if the conditions in section 24A(2)(b) are not met.

405 Paragraph 16 makes consequential changes to section 24B of the Criminal Justice Act 2003.

Part 2 of Schedule 4: risk factors

406 Part 2 of Schedule 4 inserts new provisions into sections 30A and 50A of PACE, introducing a set of risk factors to which constables (in the case of "street bail" under section 30A of PACE) and custody officers (under Part IV of PACE) must have regard in determining whether releasing a person on bail is necessary and proportionate in all the circumstances. This set of factors aims to streamline and introduce some more consistency into the application of the "necessary and proportionate" test, helping to ensure that suspects are released on bail where appropriate. These provisions include, amongst other factors, the need to safeguards victims of crime and witnesses, as well as the need to prevent offending.

Part 3 of Schedule 4: duty to seek views

407 Part 3 aims to provide further protection to alleged victims of an offence by conferring a duty on persons in charge of the investigation of an offence to seek an alleged victim's views (or those of their representative in a case of a vulnerable alleged victim) where reasonably practicable to do so regarding the imposition and variation of a suspect's bail conditions and the nature of those conditions. When such conditions have been imposed or varied, a separate duty is conferred on those persons to notify the alleged victim of those conditions/that

variation. Paragraph 19 amends section 3A of the Bail Act 1976 by signposting the duty to notify alleged victims where bail has been granted, or conditions imposed on bail varied, under Part 4 of PACE.

408 Paragraph 21 of Schedule 4 amends section 30CA of PACE to establish a duty to seek views of alleged victims where a person is released on “street bail” under section 30A of PACE. Where a person has requested that a relevant officer vary their pre-charge bail conditions under section 30CA, these provisions insert a new subsection (4A), which requires a person in charge of the investigation of an offence (the “investigating officer”) , if it is reasonably practicable to do so, to seek the views of the alleged victim of the relevant offence (defined in new section 30CA(5) of PACE) on whether any of a person’s relevant bail conditions should be varied and, if so, what that variation should comprise of. The fact that this duty must be adhered to where reasonably practicable aims to provide investigating officers with operational flexibility, helping to mitigate the risks of the duty impacting significantly on the time taken to release a suspect on bail. “Relevant conditions”, under new subsection 30CA(5) is limited to conditions relating to the safeguarding of the alleged victim, to help ensure that this duty is proportionate and that victims’ views are sought only in relation to conditions relevant to their particular safeguarding needs. New subsection (4B) confers a separate duty on an investigating officer to inform the relevant officer, defined in subsection (5), of any views obtained, ensuring that any information provided by the alleged victim is feedback to the officer with the power to vary. Under new subsection (4C), if the conditions are varied, the investigating officer must notify the alleged victim of that variation, again where reasonably practicable to do so. New subsection (4D) sets out how the person in charge of the investigation should discharge this notification duty where the alleged victim is a vulnerable person. New subsection (7) sets out the circumstances in which an alleged victim may be considered vulnerable.

409 Paragraph 22 inserts new section 47ZZA into PACE. This imposes a duty to, where reasonably practicable, seek views from alleged victims on whether relevant conditions should be imposed on the release of a person on pre-charge bail and, if so, the nature of those conditions. A duty is not imposed on the investigating officer to seek views as to whether to release a suspect on bail as the constable/custody officer where relevant is required to consider the full range of circumstances in determining whether the pre-conditions for bail are met, not just the views of an alleged victim. Under new section 47ZZA(1), this duty will apply where a person has been arrested for an offence and a custody officer proposes to release the person on bail. Release on bail under section 37C(2)(b) or section 37CA(2)(b) of PACE is not subject to this duty, given that release on bail under these provisions must be with the same conditions as those originally imposed. There is therefore no need to notify the alleged victim of these conditions again.

410 Under new section 47ZZA(3), the definition of “relevant condition” mirrors that under the new section 30CA(5) and is included for the same safeguarding reasons as under that provision. Under new section 47ZZA(4) , as with the amendments to section 30CA, a duty is imposed on the investigating officer to inform the custody officer, being the person with power to release a person on bail, of any views obtained from the alleged victim. Under new section 47ZZA(5), where the individual is released on conditional bail, the investigating officer must inform the alleged victim of these conditions, where reasonably practicable. New section 47ZZA(6) sets out how this duty may be discharged where the alleged victim is a vulnerable person.

411 New section 47ZZA(7) to (10) impose an equivalent duty on the investigating officer where a person requests to vary their bail conditions under section 3A(8) of the Bail Act 1976. New section 47ZZA(8) requires the investigating officer to, where reasonably practicable, seek the

views of the alleged victim in the same way as under section 30CA, that is regarding whether any of the relevant conditions should be varied and, if so, what variations should be made. Under new section ZZA(9), the investigating officer must inform the custody officer of any views obtained. Under new section 47ZZA(10), where the conditions have been varied, the investigating officer must notify the alleged victim of that variation. New section 47ZZA(11) sets out how the person in charge of the investigation should discharge this notification duty where the alleged victim is a vulnerable person. New section 47ZZA(12) defines the term “alleged victim”. New section 47ZZA(13) sets out the circumstances in which an alleged victim may be considered vulnerable.

412 Paragraph 23 makes consequential amendment to section 24B of the CJA 2003 which deals with the application of PACE provisions to arrest for failure to comply with conditions of a conditional caution under section 24A of the CJA 2003. Currently, section 30CA of PACE applies to a person arrested under section 24A; this amendment ensures that the new duty to seek the views of the alleged victim will not apply to an arrest under section 24A.

Part 4 of Schedule 4: limits on periods of bail without charge

413 Part 4 of Schedule 4 extends the initial period for which a person may be released on bail before charge (the “applicable bail period”) and the subsequent extensions of that period. Currently, all cases other than Serious Fraud Office (“SFO”) cases (known as “standard cases”) are afforded an initial bail period of 28 days whilst SFO cases are afforded a longer applicable bail period – three months - owing to the complex nature of these cases. The new provisions extend the initial bail period for “standard cases” from 28 days to three months, and for non-standard cases from three months to six months. These provisions are intended to reflect more accurately the time periods required to investigate different types of cases, and to ensure that bail periods are consistent with the operational realities of conducting an investigation.

414 Consultation responses indicated that cases involving other agencies, namely Her Majesty’s Revenue and Customs (“HMRC”), the Financial Conduct Authority (“FCA”) and National Crime Agency (“NCA”), also tend to be complex in nature and tend to take considerably longer to investigate than more “standard cases”, in the same manner as SFO cases. Part 4 of Schedule 4 therefore provides for a longer initial bail period to be granted for these additional categories of cases (‘the agency cases’).

415 In addition, the new provisions mean that standard cases, with a new initial bail period of three months, can be subject to two further extensions (the first extension being from three months to six months from the bail start date and the second extension being from six months to nine months from the bail start date) by the police before coming before a magistrates’ court. Standard cases which are designated as exceptionally complex (which necessarily will have already been subject to the second extension above), or the above agency cases can be extended to up to 12 months from the bail start date before coming before a magistrates’ court.

416 Paragraph 25 amends section 30B(8) of PACE to amend the time limit for “street bail”, granted under section 30A of PACE. The initial bail period for street bail is amended from 28 days to three months from the day after the person’s arrest.

417 Paragraph 26 of Schedule 4 amends section 47ZB of PACE which currently sets out that the initial bail period is three months from the bail start date for SFO cases, or 28 days from the bail start date in all other (that is, standard) cases (a person’s bail start date is the day after the day on which the person was arrested for the relevant offence, under section 47ZB(4)(a)). The longer initial bail period for SFO cases recognises that such cases have added complexity and therefore take longer to investigate and reach a charging decision. The changes made by paragraph 26 are two-fold. First, they extend the initial bail period of standard cases from 28

days from the bail start date to three months from the bail start date. Second, they expand upon the categories of non-standard cases to which an extended initial bail period applies. In addition to SFO cases, the extended initial bail period will also apply to FCA cases, NCA cases and HMRC cases. In such cases the initial bail period will be six months from the bail start date. The extension of the longer initial bail period for FCA, NCA, HMRC and SFO cases recognises the increased level of complexity and longer investigation times of these cases. Section 47ZB(4) now includes amended definitions of an “FCA case” and an “SFO case” and inserts definitions of an “HMRC case” and “NCA case”. This enables these agency cases to be determined as such where the relevant offence is being investigated by that authority and is confirmed by a member of that agency on whom power is conferred to do so, as listed in the amended subsection (4). Confirmation can be given in an SFO case, HMRC case or NCA case by any member of the SFO, officer of HMRC or NCA as the case may be, and in an FCA case by a member of staff of the FCA who has been designated for this purpose.

418 Paragraph 27 amends section 47ZC of PACE, which sets out the four conditions that a decision-maker, defined under that section, must be satisfied are met before authorising the extension of a person’s applicable bail period under section 47ZD to 47ZG. As above, this Part amends the ranks of officer who may authorise the extension of a person’s applicable bail period, in order to reflect operational realities and ensure each extension process is proportionate. The amended section 47ZC(6)(a) provides that the decision-maker for an extension in standard cases (dealt with under section 47ZD) is now a relevant officer instead of a senior officer. The relevant officer for the purposes of section 47ZD will now be an officer of the rank of inspector or above (currently such decisions must be made by an officer of the rank of superintendent or above). New section 47ZC(6)(aa) provides that the decision-maker for a second extension of bail in standard cases (under section 47ZDA) is a senior officer (that is, an officer of the rank of superintendent or above). These changes ensure that officers of the most senior ranks are only called upon at the more advanced stages of a case. New section 47ZC(6)(ab) provides that the appropriate decision-maker (see new section 47ZDB(6) as inserted by paragraph 29 of Schedule 4) in non-standard cases must be satisfied that the conditions are met before authorising an extension of the applicable bail period in those cases. Paragraph 27(c) amends section 47ZC(6)(b) to provide that designated cases can now only be designated as such by a “qualifying police officer”, rather than “appropriate decision maker”. This is owing to the change to authorisations in agency cases at section 47ZDB; these (as below) can be extended to up to 12 months from the bail start date, with no requirement for these cases to be designated as exceptionally complex before an extension is granted. This, as below, takes into account the already complex nature, and longer investigation times, of these cases.

419 Paragraph 28 amends section 47ZD of PACE to enable a relevant officer, once satisfied that the conditions in section 47ZC are met, to authorise an extension of the applicable bail period in standard cases from three months to six months from the bail start date. The relevant officer must also arrange for the person or their legal representative to be invited to make representations and must consider any that are made before making a decision. The person (or their representative) must be informed of the outcome. “Relevant officer” is defined at new section 47ZD(6) as an officer of the rank of inspector or above.

420 Paragraph 29 inserts new sections 47ZDA and 47ZDB into PACE. New section 47ZDA creates an additional bail extension point for standard cases and enables a senior officer (defined as a police officer of a rank of superintendent or above) to authorise a further extension of the applicable bail period in standard cases where the conditions A to D set out in section 47ZC are met. The applicable bail period can be extended under this provision from six months to nine months from the bail start date. As with section 47ZD, the senior officer authorising the extension must arrange for the person or their legal representative to be invited to make

representations and must consider any that are made before making a decision. The person (or their representative) must be informed of the outcome.

421 New section 47ZDB creates an extension point for non-standard cases and enables the appropriate decision-maker within the agencies listed at section 47ZB to authorise an extension of the applicable bail period where conditions A to D set out in section 47ZC are met. The appropriate decision-maker in an FCA case is a member of staff of the FCA designated as such by the Chief Executive of that Authority, an officer of the grade equivalent to superintendent or above in a HMRC case, an NCA officer of the rank equivalent to that of superintendent or above in an NCA case, and a member of the SFO who is of the Senior Civil Service in an SFO case. These authorisation levels reconcile with the equivalent ranks of police officer required to authorise extensions of the applicable bail period in standard cases beyond six months. The applicable bail period can be extended under this provision from six months to 12 months from the bail start date. As with sections 47ZD and 47ZDA, the appropriate decision-maker must arrange for the person or their legal representative to be invited to make representations and must consider any that are made before making a decision. The person (or their representative) must be informed of the outcome.

422 Paragraph 30 amends section 47ZE of PACE which currently provides for an exception to the general position that the extension of the applicable bail period beyond three months from the bail start date must be authorised by a magistrates' court. The amendments remove references to the SFO and the FCA as extensions involving these agencies are now addressed in new section 47ZDB. Section 47ZE, as amended, is now only concerned with cases that have been granted an extension under new section 47ZDA (i.e. standard cases which have been extended to nine months from the bail start date by a senior officer). Where a case has been designated as being exceptionally complex, a qualifying police officer (defined as a police officer of at least the rank of assistant chief constable (or Commander in the Metropolitan or City of London forces)) may extend the applicable bail period to twelve months from the bail start date where they are satisfied that conditions A to D in section 47ZC are met. The qualifying police officer must consult the Director of Public Prosecutions before authorising an extension under section 47ZE(3). As with an extension under section 47ZD and new sections 47ZDA and 47ZDB, the qualifying police officer must consider representations from the person (or their legal representative) before reaching a decision and must arrange for the person to be informed of the decision.

423 Paragraph 31 amends section 47ZF of PACE to deal with extensions to the applicable bail period by a magistrates' court. These changes aim to free up court resources by ensuring that a court will only be involved in the pre-charge bail process for the lengthiest, most complex investigations, whilst also ensuring judicial oversight will be available in such cases. These changes also continue to distinguish between the complexity of standard and non-standard cases upon these cases reaching a court. Changes reflect that extensions by the court can only be authorised in cases which fall under new sections 47ZDA (i.e. cases which have been extended by a senior officer to nine months from the bail start date), section 47ZDB (i.e. agency cases which have been extended by the appropriate decision-maker to twelve months from the bail start date), or under section 47ZE (i.e. exceptionally complex cases extended by a qualifying police officer to 12 months from the bail start date). A magistrates' court can authorise an extension of the applicable bail period to 12 months from the bail start date for cases which fall within new section 47ZDA or 18 months from the bail start date for cases which fall within new section 47ZDB or section 47ZE, provided that conditions B to D in section 47ZC are met. If a case falls within section 47ZF(7), for example where the further investigations to be made are likely to take more than 12 months in a standard case or more than 18 months in a designated or agency case, bail can be extended to 18 months from the bail start date if it falls within new section 47ZDA or 24 months from the bail start date if it

falls within new section 47ZDB or section 47ZE provided that conditions B to D in section 47ZC are met. Qualifying applicants are able to apply to the court for such extensions to the applicable bail period – section 47ZF is also amended to enable an officer from HMRC or the NCA to be a qualifying applicant.

424 Paragraph 32 amends section 47ZI of PACE which provides detail on the procedures to be followed by a magistrates' court in matters falling under sections 47ZF, 47ZG and 47ZH. Applications to extend bail under sections 47ZF and 47ZG are, subject to sections 47ZI(2) and (3), determined by a single justice of the peace on the basis of written evidence only. Section 47ZI(2), as amended, reflects the wider changes made to the applicable bail period and extensions of this to enable a single justice of the peace to require an oral hearing where a person's applicable bail period would be extended to a point at or before 24 months (currently 12 months) from the bail start date and the single justice considers it in the interests of justice to require an oral hearing. Section 47ZI(3), as amended, enables an oral hearing to be required where the application would result in a person's applicable bail period being extended beyond 24 months and either party has requested a hearing.

425 Paragraph 33 amends section 47ZM of PACE to reflect the new applicable bail period for 'street bail' granted under section 30A of PACE which is now three months from the bail start date rather than 28 days.

426 The changes to the applicable bail period and authorisation levels made by Part 4 of Schedule 4 are set out in tabular form at Annex B to these explanatory notes.

Part 5 of Schedule 4: police detention after arrest for breach of pre-charge bail etc.

427 Part 5 makes changes to the function of the "detention clock" in relation to an arrest for failure to answer bail or for breach of bail conditions under section 46A of PACE. Section 41 of PACE provides that a person shall not be kept in police detention for more than 24 hours without being charged (a period commonly referred to as the "detention clock"). The release of a person on bail suspends this "detention clock". The arrest of a person for breach of bail conditions re-starts this clock. Part 5 of Schedule 4 amends section 47 of PACE (bail after arrest), providing that the "detention clock" shall be suspended for three hours from a person's arrival at a police station where they are arrested for failure to attend a police station or breach of their bail conditions under section 46A of PACE. This is designed to ensure that the detention clock is not run down as a result of an individual repeatedly breaching bail conditions, helping to ensure that the time taken to deal with the arrest does not have a detrimental impact on future time that may be required to, for instance, interview the suspect. Paragraph 35 amends section 41 of PACE to signpost section 47 of PACE, as amended.

Part 6 of Schedule 4: guidance on pre-charge bail

428 Part 6 of Schedule 4 inserts new section 50B into PACE. New section 50B(1) creates a new power for the College of Policing to issue statutory guidance on pre-charge bail granted to a person under Part 3 or Part 4 of PACE. Statutory guidance is being created to underpin the pre-charge bail regime and ensure greater consistency across forces in how the regime is applied. As set out in subsection (2), the guidance will cover but not be limited to the exercise of powers to release a person on pre-charge bail; the exercise of powers to impose or vary conditions of pre-charge bail; the exercise of powers to arrest a person— for failing to answer pre-charge bail, or for breaching any conditions of pre-charge bail; the exercise of powers to extend the period of pre-charge bail; and the duty to seek the views of alleged victims about conditions of pre-charge bail. The College of Policing must receive the Secretary of State's approval to issue the guidance and the guidance may be revised in part or in full, again with the approval of the Secretary of State, as set out in subsection (3).

429 Subsections (4) and (5) of section 50B set out the requirements as to how guidance under section 50B must be issued. The College of Policing must consult with persons representing the view of local policing bodies; the National Police Chiefs' Council and any other persons the College believes should be consulted. The Secretary of State must lay before Parliament any guidance issued or revised under this power.

430 Subsections (6)-(8) of section 50B require persons exercising functions relating to pre-charge bail to have regard to the guidance, with a carve-out for members of the above-named agencies to ensure that this guidance does not apply to them. The application of the guidance is deliberately not limited to constables or police officers in order to take into account the number of civilian police staff exercising functions relating to pre-charge bail. Where a person does not comply with the guidance on pre-charge bail, this will not, in and of itself, render them liable to any criminal or civil proceedings. The guidance will be admissible in any criminal or civil proceedings and a court may take into account a failure to comply with the guidance.

Clause 44: Arranging or facilitating commission of a child sex offence

431 Section 14 of the Sexual Offences Act 2003 ("the 2003 Act") provides for the preparatory offence of arranging or facilitating the commission of a child sexual offence. It effectively criminalises acts preparatory to the substantive offences provided for in sections 9 to 13 of the 2003 Act (including the offences of sexual activity with a child and inciting a child to engage in such activity). Subsection (2) extends the section 14 offence so that it also covers acts preparatory to the offences in sections 5 to 8 of the 2003 Act, namely rape of a child under 13, assault of a child under 13 by penetration, sexual assault of a child under 13, and causing or inciting a child under 13 to engage in sexual activity.

432 Subsection (3) amends the maximum penalty for the section 14 offence, currently 14 years' imprisonment on conviction on indictment. The effect of the amendment is that the maximum penalty will be aligned with that for the substantive offence in respect of which the section 14 offence of arranging or facilitating has been committed. For example, if an individual arranges or facilitates the rape of a child under 13 (section 5 of the 2003 Act), the maximum penalty for the section 14 offence would be life imprisonment to match that for the section 5 offence.

Clause 45: Positions of trust

433 Subsection (2) inserts a new section 22A into the Sexual Offences Act 2003 ("the 2003 Act") and subsection (3) makes a consequential amendment section 138(2) of that Act.

434 New section 22A(1) sets out the circumstances in which person (A) will be in a position of trust in relation to person (B) for the purposes of section 16 to 19 the 2003 Act, namely, that person A must coach, teach, train, supervise or instruct person B on a regular basis in a sport or a religion.

435 New section 22A(1)(b) sets out a requirement that person A must have knowledge that they meet the requirements set out in section 22A(1)(a) in relation to person B.

436 New section 22A(2) defines what "sport" and "religion" includes for the purposes of section 22(A)(1). 'Sport' is defined as including "any game in which physical skill is the predominant factor, and any form of physical recreation which is also engaged in for purposes of competition or display"; and 'religion' is defined as including any religion "which involves belief in more than one god", including any religion that has a belief in one god, or any religion "which does not involve belief in a god".

437 New section 22A(3) expressly makes clear that a person is not in a position of trust where a person (A) is already considered to be in a position of trust in relation to another person (B) by virtue of circumstances within section 21.

438 New section 22A(4) provides for a delegated power by which the Secretary of State may, by way of secondary legislation, add or remove an activity in which a person may be coached, taught, trained, supervised or instructed. Any such change would be made by way of regulations subject to the affirmative procedure in accordance with section 138(2) of the 2003 Act.

Clause 46: Criminal damage to memorials: mode of trial

439 This Clause amends section 22 and paragraph 1 of Schedule 2 to the Magistrates Court Act 1980 (“the 1980 Act”) to ensure that where criminal damage is caused to a memorial, courts can sentence appropriately and reflect the true level of harm and culpability and thereby address the concern around the current limits on mode of trial and sentencing.

440 Subsection (1) amends paragraph 1 of Schedule 2 to the 1980 Act with the effect that an offence under section 1 of the Criminal Damage Act 1971 (“the 1971 Act”) which is committed by destroying or damaging a memorial (“a memorial offence”) is not a scheduled offence for the purposes of sections 22 and 33 of the 1980 Act.

441 Subsection (2) inserts the new subsections (11A), (11B), (11C) and (11D) into section 22 of the 1980 Act which define a “memorial” to include buildings, other structures, moveable objects, gardens or other things planted or grown on land. This Clause also set out that memorials should have a commemorative purpose such as to commemorate individual(s), animal(s) or event(s).

442 Subsection (3) provides that the amendments do not apply in relation to offences committed before it comes into force.

443 Destruction or damage to memorials continues to include acts of desecration as was the position in law prior to the amendments made to section 22 and paragraph 1 of Schedule 2 to the 1980 Act. Whether or not a memorial has in fact been destroyed or damaged will, if necessary, remain a matter for determination by the court.

Clause 47 and Schedule 5: Overseas production orders

444 This Clause gives effect to Schedule 5 which makes amendments to the COPO Act.

445 Section 3 of the COPO Act sets out the scope of applications for overseas production orders and of the orders themselves in relation to material that can and cannot be specified or described in the application or order, by defining “electronic data” and “excepted electronic data” and related terms. Paragraph 2 of Schedule 5 amends the definitions of “electronic data” and “excepted electronic data”. The new definitions allow communications data which “is comprised in, included as part of, attached to or logically associated” with stored electronic data to be included in an application for an overseas production order. Such communications data (information on who sent an electronic communication, when and to whom) is necessary to provide the electronic content data (pictures, communication content) with the context required to allow it to be used effectively as evidence.

446 The practical effect is to enable law enforcement officers and prosecutors to make a request for the relevant associated and connected communications data, as defined in section 3 of the COPO Act as amended by this paragraph, together with the specified and described electronic content data sought through an overseas production order.

447 Paragraph 2(3) ensures that an application for an overseas production order cannot be made only for communications data or for excepted electronic data.

448 Paragraph 3 amends section 5 of the COPO Act which sets out what an overseas production order must or must not contain, in terms of specifying the electronic data that is to be

produced, or to which access is to be given, where the judge is satisfied that, based on the application before them, an order should be made.

449 Section 5(3) provides that a judge, when making an overseas production order, must only include electronic data that meets the requirements of the legal tests as set out in section 4 of the COPO Act. Where only part of the data sought satisfies those requirements the judge cannot specify or describe in the order any reference to electronic data that does not meet the requirements of that section. Section 4(5) sets out the requirement that all or part of the evidence is likely to be of substantial value. Section 4(7) sets out a further requirement that all or part of the evidence is in the public interest to be produced or accessed. The amendment made to section 5(3) by this paragraph requires that section 4(6) also be considered. Section 4(6) requires that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely to be relevant evidence in respect of the offence to which the application relates.

450 Paragraph 4 amends section 9 of the COPO Act which provides that the only person who may serve an overseas production order is the Secretary of State, in respect of an order made in England, Wales or Northern Ireland, or the Lord Advocate, in relation to an order made in Scotland. The amendment enables the Secretary of State or the Lord Advocate, as the case may be, to delegate the service of an overseas production order to a person prescribed in regulations made by the Secretary of State or the Lord Advocate as appropriate. Section 9 provides that an order can only be served on a service provider by a relevant person (the Secretary of State, Lord Advocate or prescribed person) if that person considers that to do so is compliant with the applicable international cooperation arrangement designated under the COPO Act. This operational agility to delegate the service of overseas production orders to a prescribed person will ensure for example that this function can be discharged by a body which has the appropriate infrastructure and controls in place to be able to securely transmit requests and receive data from service providers based overseas.

451 Paragraph 5 makes consequential amendments to section 14 of the COPO Act as a result of the amendments to section 9 made by paragraph 4 of Schedule 5. Section 14 of the COPO Act sets out how an overseas production order, notice of an application, and any other documents made by a court relating to an overseas production order can be served on a person. The effect of the amendments is to allow persons designated by the Secretary of State or the Lord Advocate to comply with the provisions of the Act in relation to the service of an overseas production order.

452 Paragraph 6 amends section 15 of the COPO Act which enables a judge advocate to make an overseas production order on an application by a member of a service police force, for the purposes of investigating or prosecuting certain offences within the service jurisdiction. The amendments to section 15 are consequential on the amendments made in paragraphs 4 and 5 of Schedule 5 enabling the Secretary of State or Lord Advocate to delegate the service of an overseas production order to a prescribed person.

453 Paragraph 7 makes consequential amendments to section 17 of the COPO Act, which sets out the parliamentary procedure in relation to regulations legislation made under the Act. These amendments provide that any regulations made under the regulation-making powers provided for in new sections 9(5) and 14(6) of the COPO Act are subject to the negative procedure.

Clause 48: Power to photograph certain persons at a police station

454 Section 64A of PACE confers a power on the police to take photographs from a person who has been detained in a police station and/or arrested. If a person is arrested, charged or convicted without a photograph being taken, there is no power to require them to attend a

police station later for this to be done, although there is such a “recall” power in Schedule 2A to PACE relating to taking of fingerprints and DNA samples. More suspects are now interviewed voluntarily in the first instance and then arrested, or charged later, so the absence of a recall power increasingly means that photographs of suspects and offenders are not taken. This may make it more difficult to detect crimes the person may have committed in the past or may commit in the future.

455 Subsection (2) amends the existing power to take photographs in section 64A of PACE by inserting new subsections (1C) to (1M) into that section. New subsection (1C) confers a power to photograph certain persons at a police station. New subsections (1D) to (1M) set out the circumstances in which that power may be exercised.

456 New subsection (1C) provides that the power only applies if there is no power to photograph the person under existing subsections (1) or (1A), so that the powers do not overlap.

457 New subsection (1D) provides that the power applies where the individual in question has been arrested for a recordable offence and released, charged with a recordable offence or informed they will be reported for such an offence and where they meet the requirements in the new subsection (1E). New subsection (1E) provides the power applies where the person has not been photographed in the course of the investigation, or where a photograph taken is unavailable (i.e. where it is lost or destroyed) or inadequate (i.e. where it is unclear, incomplete or no longer an accurate representation) and it is considered that a further photograph is required to assist in the prevention or detection of crime. This is similar to existing provisions relating to fingerprints in section 49.

458 New subsections (1F) and (1G) provide that the power applies where the individual in question has been convicted of a recordable offence or given a caution relating to a recordable offence, and they meet the requirements in the new subsection (1G). The conditions in the new subsection (1G) provide that the power applies where the person has not been photographed since they were convicted or cautioned, where a photograph taken is unavailable or inadequate and it is considered a further photo is needed to assist in the prevention and detection of crime. This is similar to existing provisions relating to fingerprints in section 61.

459 New subsections (1H) and (1I) apply where the person has been convicted in a jurisdiction outside England and Wales and where the act constituting the offence would also constitute a “qualifying offence” in England and Wales as defined in section 65A(1) (i.e. a serious offence, generally sexual and violent offences). This also mirrors comparable existing provisions relating to fingerprints in section 61 of PACE. New subsection (1I) provides that, as with new subsections (1F) and (1H), this power applies if the person has not been photographed already or if they have, but the photograph is unavailable or inadequate, and it is considered a new photo is necessary to assist in the prevention or detection of crime.

460 New subsection (1J) provides that the authorisation of an inspector is required before taking a photograph of a person falling within new subsection (1G) or (1I). New subsection (1K) provides that the officer must be satisfied taking is necessary to assist in the prevention or detection of crime. These also mirror comparable existing provisions relating to fingerprints in section 61 of PACE.

461 New subsection (1L) defines the meaning of ‘unavailable’ and ‘inadequate’.

462 Subsections (3) to (8) extend the recall power in Schedule 2A to PACE to cover photographs. Subsection (4) amends the title of Schedule 2A to cover photographs.

463 Subsection (5) adds a new Part 3A to Schedule 2A (comprising paragraphs 14A to 14E), following on from the existing Parts 1, 2, and 3, which deal with fingerprints, intimate

samples, and non-intimate samples (in practice, these are almost always DNA samples) respectively. These provisions mirror those in the existing provisions relating to fingerprints and non-intimate samples.

464 New paragraph 14A of Schedule 2A imposes a six-month time limit on when people falling within section 64(1D)(a) (i.e. those arrested and released, charged etc.) can be required to attend a police station to be photographed.

465 New paragraph 14B of Schedule 2A imposes a six-month time limit on when people falling within section 64A(1D)(b) or (c) can be required to attend a police station to be photographed.

466 New paragraph 14C of Schedule 2A imposes a two-year time limit on when people falling within section 64(1F) (i.e. those convicted or cautioned) can be required to attend a police station to be photographed.

467 New paragraph 14D of Schedule 2A applies the power to persons convicted outside England and Wales.

468 New paragraph 14E of Schedule 2A imposes restrictions on multiple exercises of the power in relation to the same offence. A person cannot be recalled for a third or subsequent occasion without the recall being authorised by an officer of at least the rank of inspector.

469 Subsections (6) to (8) make other consequential amendments to Schedule 2A to reflect the fact that the Schedule now deals with the taking of photographs as well as fingerprints and samples.

Clause 49: Power to specify date of attendance at police station for fingerprinting etc.

470 People who are arrested and taken to a custody suite can have fingerprints, DNA samples and a photograph taken straight away. If this is not done, there is a recall power to require those who have been arrested, charged or convicted to attend a police station so that their fingerprints and DNA sample can be taken (but not photographs – this is addressed by Clause 48 as described above). Currently, the person can be required to attend a police station at a particular time but not a particular day, only any day within a seven-day period. Police forces find this makes the power difficult to use, as they cannot deploy an officer or staff member to take the biometrics at a specific time. In practice, this results in opportunities to take fingerprints, DNA or photographs being missed. This means that opportunities may be missed to detect crimes the person may have committed in the past or may commit in the future.

471 This Clause amends paragraph 16 of Schedule 2A of PACE to allow the police to specify the date and time (or times) of attendance.

Clause 50: Entry and search of premises for human remains or material relating to human remains

472 The purpose of Clauses 50 to 52 is to help the police to locate human remains in situations where it is not currently possible to do so. This legislation will enable a justice of the peace, on an application by a constable, to issue a search warrant or production order with a view to facilitating access to material and information that may indicate the location of a deceased person's body or remains (provided certain conditions are met).

473 Significantly, the exercise of this power is not dependent on a belief that an indictable offence has been committed, nor that the information in question would likely comprise admissible evidence to support a subsequent prosecution, as currently required when applying for search warrants and production orders. These provisions are designed to provide closure to families, and to enable lawful and proper disposal of human remains. The Clauses mirror, as far as is possible, provisions for obtaining search warrants and production orders within PACE.

474 Clause 50 enables a justice of the peace in England and Wales to issue a search warrant, on an application by a constable, authorising an officer to enter and search premises (subsection (1)) if the following conditions are met:

- That there are reasonable grounds for believing that the premises contain relevant human remains or material that may relate to the location of relevant human remains (subsection (2));
- That there are reasonable grounds for believing that the material does not consist of or include items subject to legal privilege, excluded material, or special procedure material (subsection (3)); and
- in respect of each set of premises set out in the application, it is not practicable to speak to a person entitled to either grant entry to the premises or access to the material; that entry will not be granted without a warrant being produced or that there is a risk that, unless a constable can gain immediate access to the premises, the purpose of the search will be frustrated or seriously prejudiced (subsection (4)). This could cover a situation, for example, where there is a concern that, in the absence of a warrant, the material in question might be destroyed or removed.

475 Subsection (5) provides that the application may refer either to one or more sets of specified premises (a “specific premises warrant”) or any premises occupied or controlled by a specified person (an “all premises warrant”).

476 Subsection (6) provides that if the application is for an all premises warrant then the justice of the peace must, in addition to the conditions at subsections (2) to (4), be satisfied that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application; and that it is not reasonably practicable to specify all the premises occupied or controlled by that person which might need to be searched.

477 Subsection (7) provides that, if the justice of the peace is satisfied that it is necessary to fulfil the purpose of the search, the warrant may grant access to given premises on multiple occasions. Under subsection (8), if a warrant authorises multiple entries, its terms can limit those entries to a maximum number or can permit an unlimited number of entries.

478 Subsection (9) provides that police may seize and retain anything found under the search warrant authorised under subsection (1) and, if necessary, to use reasonable force to execute a warrant.

479 Subsection (10) provides that the power to issue a warrant under this section is in addition to any other existing power to issue a search warrant. Subsection (11) defines the term “relevant human remains” for the purposes of these provisions (this Clause, Clause 51 and Schedule 6). Warrants applied for under this section can only be issued with a view to locating relevant human remains.

480 Relevant human remains for these purposes is defined as one of three set of circumstances. First, the remains or body of a person who the constable making the application reasonably believes has died in England and Wales but whose death has not been registered under section 15 of the Births and Deaths Registration Act 1953; second, the remains or body of a person whose death has been registered in the absence of a body following an investigation by a coroner under section 1(5) of the Coroners and Justice Act 2009; or third, the body or remains of a person in respect of whom a declaration of presumed death has been made under the Presumption of Death Act 2013.

481 Subsection (12) provides that certain terms, namely “items subject to legal privilege”, “excluded material”, “special procedure material” and “premises” used in this Clause, Clause 51 and Schedule 6 have the same meaning as in PACE.

Clause 51 and Schedule 6: Special procedure for access to material relating to human remains

482 Clause 51 introduces Schedule 6 which allows officers to apply to access excluded material or special procedure material that either constitutes, or relates to the location of, relevant human remains as defined in Clause 50(11), provided the specified conditions are met.

483 Clause 51(2) makes clear that the position in respect of the cross-border execution of warrants and orders granted under Schedule 1 to PACE (set out in section 4 of the Summary Jurisdiction (Process) Act 1881 in respect of Scotland and section 29 of the Petty Sessions (Ireland) Act 1851 in respect of Northern Ireland) is mirrored in respect of warrants and orders granted under Schedule 6.

484 This provision therefore replicates insofar as possible section 9(2A) of the PACE. In effect, this ensures that a ‘process’ (a warrant or order) issued by a court in England or Wales under these powers and endorsed by a court in Scotland may be executed in Scotland (and vice versa). Section 29 of the 1851 Act provides equivalent provisions for execution in Northern Ireland.

485 Schedule 6 gives a judge the power to issue a production order to grant police officers access to excluded or special procedure material. Paragraph 1(1) of Schedule 6 provides that the judge may make such an order, following an application by a police officer, if the conditions set out at paragraphs 1(2) to (1)(6) of the Schedule are met. Those conditions are:

- that there are reasonable grounds to believe the person specified in the application possesses, or holds on their premises, material that consists of, or is related to, the location of relevant human remains (para 1(2));
- that there are reasonable grounds to believe this material includes, or consists of, excluded material or special procedure material (para 1(3)), but does not include or consist of material subject to legal privilege (para 1(4));
- that other methods of obtaining the material have been tried without success or have not been tried because it appeared that they were bound to fail (para 1(5)), for example because necessary conditions under other powers have not been met; and
- that it is in the public interest for access to be given to this material, having regard to the need to ensure human remains are found and disposed of lawfully (para 1(6)(a)), for example to enable burial or cremation; and having regard to the circumstances under which the person in possession comes to hold it (para 1(6)(b)).

486 Paragraph 2 specifies that the effect of an order made under this Schedule is that the person specified in the application must produce it to a constable or grant a constable access to the material before the end of seven days from the date of the order, unless a longer period is specified on the order.

487 Paragraph 3(a) provides that where an order is made requiring information which is stored electronically to be produced to a constable, it must be produced in a form that can be taken away, and is either visible and legible, or can readily be made so. Under paragraph 3(b), where an order is made requiring access to information stored electronically to be given to a constable, the material must be visible and legible.

488 Paragraph 4 requires in effect that where a constable has been given access to material under this Schedule, they must follow the provisions in sections 21 and 22 of PACE. In effect this

requires a constable, within a reasonable time period, if so requested by the individual appearing to occupy the premises on which the material was held, or to have had custody or control the information or material at the point access was given, to provide that person with a record of what they accessed or took away. Similarly, should such a person or anyone acting on their behalf request access to anything taken away under this Schedule, access will be granted under the supervision of a constable. It makes similar provision where such an individual requests a copy or a photograph of any such material. These are subject to certain conditions.

489 These provisions also make clear that any information or material taken away under this Schedule can be retained for as long as necessary in all the circumstances, and sets limitations on the purpose for which such information or material can be used.

490 The requirements for notice of an application for an order under this Schedule are laid out in paragraph 5. If material sought consists of or includes journalistic material then the application must be made *inter partes* (paragraph 5(1)). Notice of application for an order may be served by delivering it to the relevant individual, leaving it at their proper address or sending it by post (paragraph 5(2)). Notice may also be served to a corporation or partnership and the relevant individuals to serve and the proper addresses of such persons are set out in paragraphs 5(3) and 5(4).

491 Once notice has been served on an individual in respect of given material, that person may not hide, destroy, dispose of or alter that material without leave from a judge or written permission from a constable, until such time as the application has either been dismissed or abandoned or the individual in question has complied with the order made in respect of that the application (paragraph 6).

492 Paragraph 7 provides that failure to comply with an order may be dealt with by a judge as if it were a contempt of court.

493 Schedule 6 also includes provisions for a judge to issue a warrant authorising officers to enter and search premises for excluded or special procedure material with a view to locating relevant human remains. Paragraph 8(1) provides that a warrant may be issued if the following conditions, set out in paragraphs 8(2) – (4), are met:

- That there are reasonable grounds to believe that there is material on the premises that may consist of human remains or relate to the location of relevant human remains;
- That the conditions set out in paragraphs 1(3) to (6) of Schedule 6 are met in relation to the material in question (paragraph (3)), namely
 - i. that there are reasonable grounds to believe this material includes or consists of excluded material or special procedure material (para 1(3)), but does not include or consist of material subject to legal privilege (paragraph 1(4));
 - ii. that other methods of obtaining the material have been tried without success or have not been tried because it appeared that they were bound to fail (paragraph 1(5)), for example because necessary conditions under other powers have not been met; and
 - iii. that it is in the public interest for access to be given to this material having regard to the need to ensure human remains are found and disposed of lawfully (paragraph 1(6)(a)), for example to enable burial or cremation; and to the circumstances under which the person in possession comes to hold it (paragraph 1(6)(b)); and

- That there are reasonable grounds to believe that, in relation to each of the sets of premises specified in the application:
 - i. that it is not practicable to communicate with any person entitled to grant entry to the premises; or where communication with such a person is practicable, it is not practicable to communicate with any person entitled to grant access to the material;
 - ii. that the material is subject to restrictions or a legal obligation of secrecy which are or is likely to be breached if disclosure is made without a warrant being issued; or
 - iii. that there is a risk the purpose of the search may be seriously prejudiced if notice of an application for an order is given, for example where evidence may be removed or disposed of unless an officer can secure immediate access to it.

494 Paragraph 8(5) confirms that a search warrant issued under this Schedule may be for specified premises (known as a ‘specific premises warrant’) or all premises owned or occupied by a particular individual (an “all premises warrant”).

495 Paragraph 9 provides that if the application is for an all premises warrant then the judge, in addition to the other conditions set in paragraph 8 of Schedule 6, must also be satisfied that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application; and that it is not reasonably practicable to specify all the premises occupied or controlled by that person which might need to be searched.

496 Paragraph 10 provides that, if the justice of the peace is satisfied that it is necessary to fulfil the purpose of the search, the warrant may grant access to given premises on multiple occasions. If a warrant authorises multiple entries, its terms can limit those entries to a maximum number, or can permit an unlimited number of entries.

497 Paragraph 11 provides that the police may seize and retain anything for which a search has been authorised under the search warrant and, if necessary, use reasonable force for the execution of the warrant.

498 Paragraph 12 provides that provision may be made in the Criminal Procedure Rules about proceedings under this Schedule with the exception of proceedings for an order that relates to journalistic material.

499 Paragraph 13 sets out that the costs of any application, or anything done in pursuance of an order under this Schedule shall be at the discretion of the judge.

500 Paragraph 14 confirms that in this Schedule ‘journalistic material’ has the same meaning as in section 13 of PACE and specifies that, for these purposes, a judge means a Circuit judge, a qualifying judge advocate (within the meaning of the Senior Courts Act 1981) or a District Judge (Magistrates’ Court).

Clause 52: Additional seizure powers

501 This Clause amends Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001, to make clear that section 50 of that Act applies to the powers of seizure conferred by Clause 50 or Schedule 6. This in effect makes provision for seizure, where a constable is on any premises as a result of a warrant or order issued under Clause 50 or Schedule 6 and finds anything for which they have reasonable grounds to consider they are authorised to search for, but it is not reasonably practicable on particular premises either to determine whether the material or information in question is indeed within scope of the warrant or order; or for something they consider to be within scope to be separated from something else located on the premises.

Clause 53: Functions of prison custody officers in relation to live link hearings

502 Clause 53 amends sections 80 and 82 of the Criminal Justice Act 1991 (“the 1991 Act”) to enable specially authorised prisoner custody officers (commonly known as PECS officers) to have custody over prisoners in police stations for purposes connected with certain hearings taking place by way of live link, including VRH.

503 Section 80 of the 1991 Act provides the Secretary of State may make arrangements, including contractual arrangements, for named functions to be performed by prisoner custody officers authorised to do so in accordance with that section. Clause 53(3) inserts, as paragraph (ba), a new function into those listed in subsection (1). The new function for which arrangements may be made concerns the custody of prisoners at a police station for any purpose connected with the prisoners participation in a preliminary, sentencing or enforcement hearing taking place by way of live audio link or live video link within the meaning of Part 3A, as amended by Clause 168 and Schedule 19. Clause 53(4) inserts a new subsection (1B) which clarifies that the new function applies whether the hearing is yet to take place, is taking place or has taken place. Clause 53(4A) makes provision for the terms ‘preliminary, sentencing and enforcement hearing’, ‘live audio link’ and ‘live video link’ to have the meaning given to them in section 56(1) of the Criminal Justice Act 2003, as amended by Clause 168 and Schedule 19.

504 Section 82 of the 1991 Act sets out the powers and duties of prisoner custody officers acting in pursuit of arrangements made under section 80, which include powers of search and use of reasonable force where necessary. Clause 53(6) inserts new subsections (4A) to (4C). New subsection (4A) provides that subsections (4B) and (4C) apply where an officer is acting pursuant to arrangements at a police station for the purpose of the new function. New subsection (4B) provides that it is the officer’s duty to give effect to, in relation to the prisoner, any order of the Crown Court under section 142 of the Powers of Criminal Courts (Sentencing) Act 2000 (concerning a power of the Crown Court to order a search of a person before it) or any order of a magistrates’ court under section 80 of the 1980 Act (concerning a similar power of a magistrates’ court). New subsection (4C) provides that the fact an officer is exercising, or may exercise, the new function does not prevent a constable from exercising any powers in relation to the prisoner that are otherwise available to the constable.

Clause 54: Proceeds of crime: account freezing orders

505 Clause 54 provides for consistency of account freezing and forfeiture provisions across the UK by ensuring that they can be used in respect of accounts maintained with Electronic Money Institutions (such as PayPal) and Payment Institutions (such as Revolut) in Northern Ireland.

506 Subsection (1) replaces the two separate definitions of “relevant financial institution” in the Proceeds of Crime Act 2002 as they apply to England and Wales and Scotland, and Northern Ireland, and replaces them with a single list.

507 Subsection (2) ensures that the definition of a “relevant financial institution” applies across the entirety of the Proceeds of Crime Act 2002.

508 Subsections (3) and (4) amend the Financial Services Act 2021 to remove sections that are now obsolete, in light of the other amendments made in Clause 54.

Part 3: Public order

509 Clauses 55 to 57 and Clause 61 amend Part 2 of the Public Order Act 1986 (the “1986 Act”) which provides various powers to manage processions and assemblies. In particular, sections 12 and 14 give the police a power to impose conditions on people organising and taking part in public processions and public assemblies, respectively. Part 2 of the 1986 Act extends and applies to England and Wales, and Scotland, but Clauses 55 to 57 and Clause 61 have been drafted so that the changes apply to England and Wales only.

510 Section 12 provides that if the senior police officer, having regard to various factors, reasonably believes that a public procession:

- a. may result in:
 - i. serious public disorder,
 - ii. serious damage to property,
 - iii. or serious disruption to the life of the community,
- b. or the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

the senior police officer may give directions imposing on the persons organising or taking part in the procession such conditions as appear to them necessary to prevent such disorder, damage, disruption or intimidation. Such directions can include conditions as to start and finish times, route and the size of processions.

511 Section 14 is drafted in similar terms, although the range of conditions that can be imposed are limited. Section 14 provides that if the senior police officer, having regard to various factors, reasonably believes that a public assembly:

- a. may result in:
 - i. serious public disorder,
 - ii. serious damage to property, or
 - iii. serious disruption to the life of the community.
- b. or the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do.

the senior police officer may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to them necessary to prevent such disorder, damage, disruption or intimidation.

512 A “public procession” means a procession in a public place (section 16 of the 1986 Act).

513 A “public assembly” means, in England and Wales, an assembly of two or more persons in a public place which is wholly or partly open to the air (section 16 of the 1986 Act).

514 Any directions given under sections 12 and 14 given by a chief officer in relation to a procession or assembly that is intended to be held must be done so in writing (section 12(3) and section 14(3)).

515 It is an offence for an organiser or a participant of a public procession to knowingly fail to comply with a condition imposed under section 12 of the 1986 Act. It is a defence for them to prove that the failure arose from circumstances beyond their control (section 12(4) and (5)). It is also an offence for an individual to incite a person to breach an imposed condition. The maximum sentence for the offence in the case of a person who organised the public assembly is three months’ imprisonment, a level 4 fine (currently £2,500), or both, or in the case of a person who simply took part in the assembly, a level 3 fine (currently £1,000).

516 Equivalent offences exist for organisers and participants (section 14(4) and (5)) of an assembly who knowingly fail to comply with a condition imposed under section 14 and for those who incite others to breach a condition (section 14(6)).

Clause 55: Imposing conditions on public processions

517 This Clause amends section 12 of the 1986 Act to broaden the circumstances in which conditions can be imposed on a public assembly in England and Wales, and provide the Secretary of State a power to make provision about the meaning of “serious disruption to the life of the community” and “serious disruption to the activities of an organisation which are carried out in the vicinity of a public procession”.

518 Subsection (2) amends section 12(1) by broadening the circumstances in which conditions may be imposed on those organising or taking part in a procession to include where the senior police officer reasonably believes that the noise generated by persons taking part in the procession may have a significant relevant impact on persons in the vicinity or may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession.

519 Subsection (3) provides for a two-stage test of what is a significant relevant impact on persons in the vicinity. Firstly, new subsection (2A) of section 12 sets out an exhaustive list of the cases in which the noise generated by persons taking part in a public procession may have an impact on persons in its vicinity. These include where it may cause persons of reasonable firmness with the characteristics of persons likely to be in the vicinity to suffer impacts such as serious unease. Secondly, new subsection (2B) of section 12 provides that when considering whether that impact is significant, the senior police officer must have regard to the likely number of people in the vicinity who may experience an impact, the likely duration of that impact, and the likely intensity of that impact.

520 Subsection (4) inserts new subsections (12) to (15) into section 12 of the 1986 Act, which provide the Secretary of State with a power by regulations to make provision about the meaning of “serious disruption to the life of the community” and “serious disruption to the activities of an organisation which are carried on in the vicinity of a public procession”.

Clause 56: Imposing conditions on public assemblies

521 This Clause amends section 14 of the 1986 Act to broaden the range of circumstances in which conditions can be imposed on a public assembly in England and Wales, allow for any type of condition to be imposed on such a public assembly, and provide the Secretary of State a power to make provision about the meaning of “serious disruption to the life of the community” and “serious disruption to the activities of an organisation which are carried on in the vicinity of a public assembly”.

522 Subsections (2), (4) and (5) amend sections 14(1), 14(2) and insert new subsections (2A) and (2B) to broaden the circumstances in which conditions may be imposed on those organising or taking part in an assembly in the same way as described above for processions.

523 Subsection (3) inserts new subsection (1A) which allows the senior police officer to impose any condition on an assembly in England and Wales that they believe necessary to prevent the disorder, damage, disruption, impact or intimidation. In Scotland the conditions that can be imposed on an assembly will remain limited to placing a maximum on the number of people in attendance, a maximum duration of the event and the location of the assembly.

524 Subsection (6) inserts new subsections (11) to (14) into section 14 of the 1986 Act, which provide the Secretary of State with a power by regulations to make provision about the meaning of “serious disruption to the life of the community” and “serious disruption to the activities of an organisation which are carried on in the vicinity of a public assembly”.

Clause 57: Offences under sections 12 and 14 of the Public Order Act 1986

- 525 Subsections (2) to (5) amend section 12 of the 1986 Act to remove the need for an organiser or participant to have “knowingly” breached a condition placed on a procession in England and Wales for an offence to have been committed. New subsection (5A) provides that a person is guilty of an offence if at the time they failed to comply with the condition they know or ought to have known that the condition had been imposed.
- 526 Subsection (6) increases the maximum sentence in England and Wales for an organiser who fails to comply with a condition from three months’ imprisonment to six months’ imprisonment and/or a fine not exceeding level 4 (currently £2,500), for a participant who fails to comply with a condition to a fine not exceeding level 4 (as against the current maximum penalty of a level 3 fine), and a person who incites a participant to commit an offence to six months’ imprisonment (as against the current maximum penalty of three months’ imprisonment) and/or a fine not exceeding level 4. On the coming into force of the increase in magistrates’ courts sentencing powers provided for in the Criminal Justice Act 2003, the maximum term of imprisonment would rise to 51 weeks’ imprisonment. Subsections (7) to (10) makes the same changes described above to the offences of breaching conditions imposed on an assembly in England and Wales, in section 14 of the 1986 Act.
- 527 Subsection (11) makes the same changes described above to the maximum sentences for the offences of breaching conditions imposed on an assembly in England and Wales, in section 14 of the 1986 Act.
- 528 It remains a defence for a person to prove that the breach of the condition arose from circumstances beyond their control, in relation to both processions and assemblies. These remain in subsections (4) and (5) of section 12, for processions, and section 14, for assemblies, of the 1986 Act.

Clause 58: Obstruction of vehicular access to Parliament

- 529 This Clause makes it an offence for an individual to fail to comply with the direction of a police officer to stop, or not start, obstructing the passage of a vehicle into or out of the Parliamentary Estate. It does so by amending Part 3 of the Police Reform and Social Responsibility Act 2011 (the “PRSRA”).
- 530 Part 3 (comprising sections 141 to 149) of the PRSRA provides powers in relation to prohibited activity in the controlled areas of Parliament Square and of the Palace of Westminster, defined in sections 142 and 142A respectively (see also the map annexed to the guidance available [here](#)).
- 531 Section 143 of the PRSRA provides that a constable or other authorised person who has reasonable grounds for believing that a person is doing, or is about to do, a prohibited activity, may direct the person to cease doing that activity or not to start doing it. Failure to comply with the direction without reasonable excuse is a criminal offence and is punishable on summary conviction by an unlimited fine.
- 532 Subsection (2) extends the Palace of Westminster controlled area as defined in section 142A of the PRSRA. The controlled area is extended to include Canon Row, Parliament Street, Derby Gate, Parliament Square and part of Victoria Embankment.
- 533 Subsection (3) adds obstructing of the passage of a vehicle into or out of the Parliamentary Estate as a prohibited activity in the Palace of Westminster controlled area.
- 534 Subsections (4) and (5) provide that the extension of the Palace of Westminster controlled area does not affect directions, orders, or authorisations made or given in relation to that area before this Clause comes into force, which will continue to apply in relation to the Palace of Westminster controlled area as originally defined.

Clause 59: Power to specify other areas as controlled areas

535 Clause 59 inserts new section 149A into the PRSRA.

536 New section 149A(1) and (2) give powers to the Secretary of State to make regulations which may apply any provisions of section 143 to 148 and 149(3) of the PRSRA, with or without modifications, in relation to an area specified in the regulations.

537 New section 149A (3) sets out the parameters of the power to make regulations. The power may only be exercised if either House of Parliament is, or is proposed to be, located somewhere other than the Palace of Westminster while Parliamentary building works are carried out and as a result of that relocation, or proposed relocation, the Secretary of State considers it reasonably necessary for prohibited activities in relation to the controlled area of Parliament Square or the Palace of Westminster to be prohibited in relation to the area specified in the regulations. The power may also be exercised if either House relocates for any other reason, for example an emergency relocation due to events such as a fire or flood.

538 New section 149A(5) provides that the Secretary of State may make consequential modifications to other legislation in consequence of the regulations.

Clause 60: Intentionally or recklessly causing public nuisance

539 This Clause replaces the existing common law offence of public nuisance as it applies to in England and Wales with a statutory offence of intentionally or recklessly causing public nuisance.

540 Subsections (1) and (2) set out the elements of the offence. The offence applies where a person does an act, or fails to act in circumstances where they are required to do so by law, and the act or omission causes serious harm to the public or a section of the public, or that the act or omission obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large. Serious harm is defined in subsection (2). The person must have intended their act or omission would have such a consequence, or was reckless as to whether it would have such a consequence.

541 Subsection (3) provides for a reasonableness defence, allowing for a person to prove that they had a reasonable excuse for the act or omission. The burden of proof is placed on the defendant as the facts as to whether they have a reasonable excuse will be within their knowledge. The prosecution will still need to have proved all the elements of the offence to the criminal standard of proof, including the serious harm or obstruction that arises as a result of the act or omission, and the defendant intended or was reckless as to serious harm or obstruction. Although not explicit set out, the standard to which the defendant will be required to prove the defence is the balance of probabilities.

542 Subsections (4) and (5) set the maximum penalty for the offence, namely six months' imprisonment (rising to 12 months on the commencement of the increase in magistrates' courts sentencing powers provided for in the Sentencing Act 2000) and/or an unlimited fine on summary conviction, and 10 years' imprisonment and/or an unlimited fine on conviction on indictment.

543 Subsection (6) abolishes the common law offence of public nuisance.

544 Subsection (7) provides that the new statutory offence does not have retrospective effect. Actions or omissions that occurred or began before the coming into force of this subsection cannot form part of this offence.

545 Subsection (8) makes provision for civil and other criminal liability.

Clause 61: Imposing conditions on one-person protests

- 546 This Clause amends the 1986 Act by inserting new section 14ZA, which will allow for the imposing of conditions on a person organising or carrying on one-person protests where it is reasonably believed that the noise generated by the protest may have a significant relevant impact on persons in its vicinity or that such noise may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the one-person protest.
- 547 New section 14ZA(1) to (3) of new section 14ZA set out the circumstances in which conditions can be imposed on a person organizing or carrying on one-person protests. Where a senior police officer reasonably believes, having had regard to various factors, that the noise generated by a one-person protest may have a relevant impact on persons in its vicinity or may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the one-person protest, the senior police officer may give directions imposing on the person organising or carrying on the protest such conditions as appear to them necessary to prevent such disruption or impact.
- 548 New section 14ZA(4) and (5) provide the definition of “one-person protest” and “the senior police officer”. “One-person protest” means a protest carried on by one person in a public place; “the senior police officer” means in relation to a one-person protest being held, the most senior in rank of the police officers present at the scene, and in relation to a one-person protest intended to be held, the chief officer of police.
- 549 New section 14ZA(6) and (7) provide for a two-stage test of what is a significant relevant impact on persons in the vicinity. The relevant impacts are where the noise generated may result in intimidation or harassment of persons of reasonable firmness with the characteristics of persons likely to be in the vicinity, or it may cause such persons to suffer serious unease, alarm or distress. When considering whether the relevant impact is significant, the senior police officer must have regard to the likely number of persons in its vicinity who may experience any of the relevant impacts, the likely duration of that impact on such persons, and the likely intensity of that impact on such persons.
- 550 New section 14ZA(8) provides that any directions given by a chief officer by virtue of subsection (5)(b) must be done so in writing.
- 551 New section 14ZA(9) sets out where a person is guilty of breaching a condition imposed under subsection (2).
- 552 New section 14ZA(10) provides the defence of proving that the breach of the condition arose from circumstances beyond their control as it is in section 12 of the 1986 Act, for public processions, and section 14 of the 1986 Act, for public assemblies.
- 553 New section 14ZA(11) makes it an offence to incite someone to commit an offence under subsection (9).
- 554 New section 14ZA(12) and (13) set the maximum penalty for the offence in subsection (9) as a fine not exceeding level 4 on the standard scale, and subsection (11) as imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale or both.
- 555 New section 14ZA(14) provides that the penalty under subsection (13) for the offence under subsection (11) is to be read as 6 months instead of 51 weeks if the offence has been committed before the increase in magistrates’ courts sentencing powers provided for in the Criminal Justice Act 2003 come into force.
- 556 New section 14ZA (15) to (18) provide the Secretary of State with a power by regulations to make provision about the meaning of “serious disruption to the activities of an organisation which are carried on in the vicinity of a one-person”, in section 14ZA of the 1986 Act.

Part 4: Unauthorised encampments

Clause 62: Offence relating to residing on land without consent in or with a vehicle

- 557 Clause 62 introduces a new 60C to 60E into the Criminal Justice and Public Order Act 1994 (“the 1994 Act”). New 60C introduces a criminal offence of residing or intending to reside on land without consent in or with a vehicle. An offence is committed if a person aged 18 or over (“P”) is residing or is intending to reside on land without the consent of an occupier of the land and they have or intend to have at least one vehicle with them on the land, one or more of the conditions mentioned in subsection (4) is satisfied; and P, without reasonable excuse, fails to comply as soon as reasonably practicable with a request made by an occupier of the land, a representative of an occupier, or a constable, to leave the land and remove from the land property which is in P’s possession or under P’s control. P also commits an offence if, without reasonable excuse, they enter or re-enter the land within 12 months of a request to leave with an intention of residing there without the consent of the occupier and they have or intend to have at least one vehicle with them on the land.
- 558 The person must be residing in or intending to reside in, or with, a vehicle. This means that the provisions do not capture ramblers and those who wish to enjoy the countryside from doing so.
- 559 The conditions in the new section 60C(2) are: (a) in a case where P is residing on the land, that significant damage or significant disruption has been caused or is likely to be caused as a result of P’s residence; (b) where P is not yet residing on the land, it is likely that significant damage or significant disruption would be caused as a result of P’s residence if P were to reside on the land; (c) that significant damage or significant disruption has been caused or is likely to be caused as a result of conduct carried on, or likely to be carried on, by P while P is on the land; or (d) that significant distress has been caused or is likely to be caused as a result of offensive conduct carried on or likely to be carried on by P while P is on the land.
- 560 An offence is therefore committed, and powers of arrest available, (provided the other conditions above are met) where a person has first been asked to leave by an occupier, their representative or a constable (so it is made clear to the person that they do not have permission to be on that land). This means there is no requirement for a constable to first issue a direction for the person to leave before an arrest can be made (senior officers have powers to direct trespassers away from land in section 61 of the 1994 Act before an arrest can be made and may only arrest if the person, without reasonable excuse, fails to leave the land as soon as reasonably practicable following a request to do so or they, having left, enter the land again as a trespasser within a specified period).
- 561 The offence applies where significant damage, disruption or distress has been caused or is likely to be caused and, without reasonable excuse, the person does not leave when asked to do so, removing their property. The qualifying condition of ‘significant’ means that a higher threshold must be met than that under section 61 of the 1994 Act for tackling trespassers on land, where a power to direct can be caught by P causing a lower level of harm (to note, as below, these provisions amend section 61 to broaden the types of harm that can be caught by the power to direct). This qualification in the new offence helps to ensure that the offence and powers of arrest, seizure and forfeiture (see below) are proportionate.
- 562 New section 60C(6) provides for a reasonable excuse defence, allowing for a person to show that they had a reasonable excuse for failing to comply as soon as reasonably practicable with a request from an occupier, their representative or a constable or, after receiving such a request, for entering or re-entering the land with the intention of residing there without the consent of the occupier of the land. The burden of proof is placed on P as the facts as to

whether they have a reasonable excuse will be within their knowledge. The prosecution will still need to have proved all the elements of the offence to the criminal standard of proof, including the significant damage, disruption or distress and the intention to reside on the land without the consent of the occupier in or with a vehicle. Although not explicitly set out, the standard to which the defendant will be required to prove the defence is the balance of probabilities.

563 New section 60C(7) includes provision relating to the application of the offence under section 60C in relation to common land. New section 60C(7)(a) provides that, in relation to common land to which the public has access and where the occupier of the land cannot be identified, a local authority is to be treated as the “occupier”. This means that, in these cases, a person must not reside or intend to reside on the land without the consent of the local authority and a local authority can request that a person leaves the land and removes their property. Where an occupier can be identified, however, this provision ensures that the consent of the local authority will be irrelevant to the offence.

564 New section 60C(7)(b) also enables a commoner to request that a person leaves the land and removes their property where a person’s residence or intended residence without the consent of the occupier is or would be an infringement of the commoner’s rights and: a) the occupier is aware of the person’s residence or intended residence and had an opportunity to consent to it; or b) if that does not apply, any one or more of the commoners took reasonable steps to try to inform the occupier of the person’s residence or intended residence and provide an opportunity to consent to it. This provides a commoner with powers to act (by way of request to leave) where their rights are infringed but helps to ensure that an occupier is afforded the opportunity to consent before they do so. The conditions in new section 60C(1) ensure that an offence is not committed where an occupier consents to the person’s residence or intended residence.

565 New section 60C(8) sets out non-exhaustive definitions for “damage” and “disruption” (for distress, an exhaustive definition of “offensive conduct” is provided) to capture the wide variety of impacts caused by persons residing on land in or with vehicles without consent. Damage includes physical damage, being “damage to the land” and non-physical damage, being “damage to the environment” which includes excessive noise, smells, litter or deposits of waste. Disruption includes a person’s ability to access any facilities located on the land or otherwise make lawful use of the land or a supply of water, energy or fuel.

566 The maximum penalty for the offence is three months’ imprisonment, a level 4 fine (currently £2,500), or both (new section 60C(5)).

567 Where a constable reasonably suspects that an offence has been committed under new section 60C, new section 60D confers on a constable powers to seize and remove any relevant property (defined in new section 60D(2)) that appears to belong to the person who the constable suspects has committed the offence, is in their possession or under their control. This property includes a vehicle, if the constable suspects the person had this with them or intended to have this with them in commission of an offence under new section 60C.

568 Property seized under new section 60D may be retained by the chief officer of the police force for the area in which the property was seized for up to three months from the date of seizure or, if criminal proceedings are commenced, until the conclusion of those proceedings. New section 60D(5) ensures that a chief officer of police ceases to be entitled to retain the property if written notice is provided to P that they are not to be prosecuted for an offence under new section 60C.

569 New section 60D(8) ensures that property must be returned by the chief officer of police to the person believed to be the owner, subject to any order of forfeiture under new section 60E, where the chief officer of police ceases to be entitled to retain this.

570 New section 60D(10) to (11) provide that the seized property must be returned to a person if a chief officer of police is satisfied that it belongs to them at that point and belonged to them at the time of the suspected offence but not if the chief officer reasonably believes the property was, with the person's consent, in P's possession or control at the time of the suspected offence.

571 Under new section 60E seized property can be forfeited and dealt with in a manner specified by order of the court which convicts P of an offence under new section 60C.

572 Before making an order for forfeiture of the property the court must permit anyone who claims to be the owner or to have an interest in it to make representations and must consider the property's value and the likely consequences of forfeiture.

Clause 63: Amendments to existing powers

573 Subsection (3) amends section 61(1)(a) (power to remove trespassers on land) of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"), insofar as it applies to England and Wales, to broaden the types of harm caught by the power of a senior officer to direct trespassers with a common purpose of residing on land to leave the land and remove their property. These now comprise damage, disruption or distress and, unlike for the new offence, these do not need to be "significant" to be caught by the power.

574 Under new section 61(10) (as inserted by subsection (7)), "damage" and "disruption" are afforded the same definitions as in new section 60C; damage, for instance, includes damage to the environment.

575 In line with the existing provision under section 61, a senior officer may direct all trespassers with a common purpose of residing on the land, where he reasonably believes any of them has caused the damage, disruption or distress and reasonable steps have been taken by or on behalf of the occupier to ask them to leave (there is no requirement to reasonably believe the damage, disruption or distress was caused by one particular trespasser).

576 Subsections (4) and (5) amend section 61(4) of the 1994 Act to provide that a person issued with a direction to leave by a senior officer in England and Wales under section 61(1) commits an offence if they, without reasonable excuse, enter the land again as a trespasser within twelve months of the direction. This extends the period of time (from three months) during which the trespasser must not return, strengthening the enforcement action available where a direction is issued.

577 Subsection (6) amends section 61(9) to enable the police to direct trespassers on land that forms part of a highway in England and Wales.

578 Subsection (8) amends section 62(1)(b) of the 1994 Act (powers to seize property related to an offence under section 61) to enable the vehicle of a person to be seized if they, without reasonable excuse, enter land again as a trespasser within twelve months of being issued with a direction under section 61(1).

579 This brings the seizure power in line with the amended period of prohibited return (above) under section 61.

580 Subsection (9) amends section 62B(2) of the 1994 Act (failure to comply with direction under section 62A: offences) to provide that a person commits an offence where they enter any land in the area of the relevant local authority as a trespasser with an intention of residing there within 12 months of being issued with a direction to leave under section 62. Subsection (10) makes equivalent amendment in relation to the power of seizure for an offence committed under section 62B.

581 Subsection (11) amends section 68(5) of the 1994 Act to ensure that the definition of land in that provision remains unamended by these changes, as this section falls outside the scope of this area (but currently refers to the definition of land in section 61).

582 Subsection (12) provides that these changes do not apply to a person issued with a direction before the coming into force of these amendments.

Clause 64: Guidance on exercise of police powers in respect of trespassers on land etc

583 This Clause introduces a new section 62F into the 1994 Act which confers a duty on the Secretary of State to issue guidance relating to the exercise by police officers and constables in England and Wales of their functions under sections 60C to 62E of the 1994 Act and under the Regulations made under section 67 relating to vehicles seized under section 62(1) or section 62C(3) (see the Police (Retention and Disposal of Vehicles) Regulations 1995, SI 1995/723).

584 This will support police in discharging their functions to take enforcement action against unauthorised encampments.

585 The Secretary of State may from time to time revise the guidance issued under subsection (1). Police officers and constables in England and Wales must have regard to the guidance issued under this Clause when exercising any of their functions under sections 60 to 62E of the 1994 Act and under the Regulations made under section 67. The Secretary of State must arrange for the guidance and any revised guidance issued under this section to be published in such manner as the Secretary of State considers appropriate.

Part 5: Road traffic

Clause 65: Causing death by dangerous driving or careless driving when under the influence of drink or drugs: increased penalties

586 Clause 65 amends the table at Part 1 of Schedule 2 to the Road Traffic Offenders Act 1998 (the “RTOA 1988”) increasing the maximum penalties for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs from 14 years’ imprisonment to imprisonment for life. The increase in the maximum penalties for these offences does not apply to offences committed before commencement of these provisions.

Clause 66: Causing serious injury by careless, or inconsiderate, driving

587 Subsection (1) inserts new section 2C into the RTOA 1988 which introduces a new offence of causing serious injury by careless, or inconsiderate, driving.

588 The offence is committed if a person causes serious injury by driving a car or other mechanically propelled vehicle on a road or other public place without due care and attention or without reasonable consideration for other road users.

589 New sub2C(2)(a) defines serious injury in England and Wales as physical harm that amounts to grievous bodily harm under the Offences Against the Person Act 1861 and new section 2C(2)(b) defines serious injury in Scotland as severe physical injury.

590 Subsection (2) amends section 3ZA of the RTOA 1988 so that the meaning of careless, or inconsiderate, driving applies to the new section 2C offence.

591 Subsection (3) amends the table in Part 1 of Schedule 2 to the RTOA 1988 to set the maximum penalty for the offence on indictment as two years’ imprisonment and/or a fine and the maximum penalty on summary conviction as 12 months and/or a fine (noting the practical effect of subsection (4) below).

592 There is a general limit on the magistrates' court's power in section 224 of the Code to impose imprisonment, or detention in a young offender institution for more than six months in respect of any one offence. There are uncommenced legislative provisions in paragraph 24(2) of Schedule 22 to the Code that would increase the magistrates' court's power to impose imprisonment, or detention in a young offender institution to 12 months, if commenced. Subsection (4) therefore provides that for England and Wales the maximum penalty of 12 months on summary conviction is to be read as six months in relation to an offence committed before paragraph 24(2) of Schedule 22 to the 2020 Act comes into force.

Clause 67 and Schedule 7: Road traffic offences: minor and consequential amendments

593 This Clause introduces Schedule 7, which makes minor and consequential amendments in relation to Clauses 65 and 66.

594 Paragraph 1(2)(a) amends section 12E of the RTOA 1988 (effect of motor race order) by inserting the new offence into the table at section 12E(3). The table contains a list of statutory provisions which do not apply in relation to authorised on-road races in England and Wales which comply with the prescribed conditions under certain circumstances.

595 Paragraph 1(2)(b)-(c) amends the table at section 12E(3) so that it refers to the current section 3ZB offence (causing death by driving: unlicensed or uninsured drivers) and inserts the section 3ZC offence (causing death by driving: disqualified drivers). This update reflects that section 3ZB and a section 3ZC are now separate offences, as made by the Criminal Justice and Courts Act 2015. This Act had the effect of separating out the offence of causing death by driving: disqualified drivers, from the offence of causing death by driving: unlicensed or uninsured drivers. The table is also amended to include the section 3ZD offence (causing serious injury by driving: disqualified drivers) to avoid an anomaly whereby a competitor could otherwise be charged with causing serious injury by driving whilst disqualified, but not with the offence of causing death by driving whilst disqualified.

596 Paragraph 1(3) inserts the new section 2C offence into section 12H(3) (races and trials of speed in Scotland). Section 12H(3) disapplies certain offences in relation to authorised on-road races in Scotland under certain circumstances.

597 Paragraph 1(4) inserts the new section 2C offence into section 13A(1) (disapplication of sections 1 to 3 for authorised motoring events). Section 13A disapplies certain offences in relation to authorised off-road racing events.

598 Paragraph 2(2)(a) amends section 24(1) of the RTOA 1988 to include the new section 2C offence of causing serious injury by careless, or inconsiderate, driving as an alternative verdict to a section 1A offence of causing serious injury by dangerous driving. Paragraph 2(2)(b) amends the same section so that the section 3 offence of careless, and inconsiderate, driving can be an alternative verdict to the new section 2C offence of causing serious injury by careless, or inconsiderate, driving.

599 Paragraph 2(3) inserts the new section 2C offence into the table after paragraph 4 of Schedule 1 to the RTOA 1988. Schedule 1 lists which sections of the RTOA 1988 apply in relation to prosecutions of certain road traffic offences. The table after paragraph 4 details the provisions creating the offence, the general nature of the offence and the applicable provisions of the Act.

600 Paragraph 3 inserts the new section 2C offence into new paragraph 3(bb) of Schedule 3 to the Crime (International Co-operation) Act 2003. This places a duty on the Secretary of State to notify the Republic of Ireland of a UK driving disqualification arising from a conviction for causing serious injury by careless, or inconsiderate, driving for the purposes of mutual recognition of the driving disqualification in the UK and Republic of Ireland.

601 Paragraph 4 inserts the new section 2C offence into paragraph 12(a) of Schedule 2 to the Armed Forces Act 2006 (road traffic offences in relation to which duty to notify service police of possible corresponding service offence arises).

Clause 68: Courses offered as an alternative to prosecution: fees etc

602 This Clause provides a clear statutory footing for the charging of fees for courses offered as an alternative to prosecution for fixed penalty offences.

603 Subsection (1) inserts Part 3B, comprising sections 90G to 90I, into the RTOA 1988.

604 New section 90G(1) confers power on policing bodies to charge a fee to a person who enrolls on a course offered in England and Wales in relation to a specified fixed penalty offence; and new section 90G(2) allows for the fee charged to be set at a level which exceeds the cost of the course and related administrative expenses. Any excess generated by the charge must be used for the purpose of promoting road safety.

605 New section 90G(3) confers power on the Secretary of State to specify in regulations the level of fees, use of fee income, and how fees are to be calculated. This will not affect policing bodies' duty to be open and transparent about the way they account for expenditure. New section 90G(4) specifies that regulations made under 90G(3) can set the amount of maximum amount of a fee.

606 New section 90(6) gives the Secretary of State the power to which offences are fixed penalty offences for which courses can be offered, and to specify a body to approve the courses which can be offered under this section. New section 90G(7) specifies that nothing in this section limits any other power to charge fees, except for within this section.

607 New section 90H allows provision to be made, in regulations, to prevent courses being offered to repeat offenders. New section 90I sets out the procedure for making regulations and specifies that regulations made under this power are subject to the negative resolution procedure (90I(2)).

608 Subsection (2) makes equivalent provisions for Northern Ireland by amending Part 4B the Road Traffic Offenders (Northern Ireland) Order 1996.

609 Subsection (3) enables the Secretary of State to make corresponding or similar provision for Scotland in relation to fixed penalty offences by way of statutory instrument subject to the positive resolution procedure (subsection (7)), but the Secretary of State must consult the Lord Advocate before doing so (subsection (5)).

Clause 69: Charges for removal, storage and disposal of vehicles

610 Police, strategic highways companies, Secretary of State, local authorities and (within the Greater London area) Transport for London often remove, store and dispose of vehicles. This takes place where, for example, a vehicle is abandoned, parked in an obstructive manner or damaged following a road traffic collision.

611 This Clause clarifies and returns to a statutory footing the legal basis for the police to charge for vehicle recovery, storage and disposal of vehicles removed under section 99 or section 101 of the 1984 Act, from within an area designated a civil enforcement area (as defined in Schedule 8 to the Traffic Management Act 2004) for parking contraventions. Section 74 of and Schedule 8 to the Traffic Management Act 2004 establish (and enable the establishment of) geographical areas in which there will be civil enforcement for one or more classes of contravention that are subject to civil enforcement. These are referred to as "civil enforcement areas".

612 The Clause does this by enabling removals from within and outside a civil enforcement area under new section 102(2). Subsection (2) therefore amends section 102 of the Road Traffic

Regulation Act 1984 so that an ‘appropriate authority’ (as defined by section 102(8) of the Road Traffic Regulation Act 1984), which includes the police, local authority, Secretary of State and Strategic Highways Company, can charge for section 99 and section 101 removal, storage and disposal of vehicles from both within and outside a civil enforcement area.

613 Subsection (3) provides that local authorities can continue to charge for removal of vehicles from within a civil enforcement area as an enforcement authority under Schedule 9 to the Traffic Management Act 2004.

Clause 70: Production of licence to the court

614 This Clause adjusts the requirements for the production of a driving licence to a court.

615 Subsection (2) amends section 7 of the RTOA 1988 to change the current duty on a person who is prosecuted for an offence involving obligatory or discretionary disqualification, and who is the holder of a licence, to produce their licence to the court.

616 Currently, under section 7, the person must produce their licence to the court, but has the options of delivering it or posting it in advance of the hearing, or having it with them at the hearing.

617 Also currently, under section 7, where the case is tried by a single justice on the papers without a hearing (under section 16A of the Magistrates Courts Act 1980), and there is a conviction, that person must produce their licence to the court. The person is given the option of delivering their licence, posting it within the period allowed for indicating a wish to make representations, or, if the person has indicated a wish to make representations by having it with them at the hearing fixed to consider those representations.

618 Subsection (2) removes the options of delivering or posting the licence to the court in advance in all these cases. As for taking it to the hearing, the Clause imposes a duty on the accused to bring the licence to the hearing only where there is a hearing and where the accused attends. These adjustments are intended to minimise the extent to which a court needs to handle the physical licence administratively.

619 Subsection (3) changes the powers of a court to order production of a licence.

620 Currently, under section 27(1) of the RTOA 1988, where a person who is the holder of a licence is convicted of an offence involving obligatory or discretionary disqualification, and a court proposes to disqualify that person, or to make an order for the endorsement of their licence, the court must, unless they have already received it, require the licence to be produced to it. It is a summary offence not to comply subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

621 Subsection (3) amends section 27(1) to provide that:

- the court, rather than being obliged to order licence production, will have a power to require production, which they may exercise at their discretion,
- the power will apply both where the court proposes to disqualify (e.g. where it adjourns for sentencing) and where it disqualifies, and
- the power will not apply where the court neither disqualifies, nor proposes to disqualify, a driver.

622 These changes will prevent a court having to handle the physical licence administratively where a driver faces endorsement but not disqualification. In disqualification cases it is envisaged that where the convicted driver is present in court with their licence the court will

collect it there and then, but otherwise can pass the issue of collection of the licence over to the DVLA under their new enforcement power in Clause 70. The changes also clarify that the court's power to require licence production not only applies where a court proposes to disqualify but also where it orders disqualification (and the same sanction would apply, that is, non-compliance would be a summary offence subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000)).

Clause 71: Surrender of licence to Secretary of State where disqualified

623 This Clause gives the Secretary of State the power to require the surrender of a driving licence to the Secretary of State where a court has ordered disqualification.

624 Subsection (1) inserts a new section 37A into the RTOA 1988 which empowers the Secretary of State by notice in writing to require a person, who is the holder of a licence and who has been disqualified by court order, to surrender their licence to the Secretary of State within 28 days. It makes it an offence not to comply with the notice without reasonable excuse.

625 Subsection (2) provides that the offence is a summary offence with a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

Clause 72: Removal of requirement to surrender licence where fixed penalty notice

626 This Clause relates to fixed penalties for traffic offences as provided for in Part III (fixed penalties) of the RTOA 1988. It removes from the fixed penalty process the need to produce a driving licence.

627 Currently, under section 54 of the RTOA 1988 (notices on the spot etc.), a person (who is the holder of a licence) who has been stopped by a constable or a vehicle examiner for a fixed penalty offence which appears to involve obligatory endorsement (without triggering disqualification for totting up 12 or more penalty points) may only be given a fixed penalty notice if they have produced for inspection and surrendered their licence. Where the person does not do so the person may be given an interim notice indicating that if they produce the interim notice and surrender their licence to a specified police station, or send them to a specified office of the Secretary of State where the interim notice is given by a vehicle examiner, they would be given a fixed penalty notice.

628 Subsection (2) amends section 52 of the RTOA 1988 to add to the information to the driver that must be included in a fixed penalty notice where the notice relates to an offence involving obligatory endorsement. The notice must indicate that if the driver is to validly pay the fixed penalty the driver must include with the payment certain information as to the driver's identity (see notes below on subsection (4)).

629 Subsection (3) amends section 54 of the RTOA 1988 to omit all references to the need for the production, inspection and surrender of the licence, and to omit the process of giving interim notices. A fixed penalty notice may now be given in all cases without the need for licence production.

630 Subsection (4) amends section 69 of the RTOA 1988 (payment of penalty) to require that in order to validly pay a fixed penalty in respect of an offence involving obligatory endorsement the payee must provide adequate information as to their identity to ensure that the endorsement is recorded against the correct person's driving record.

631 Subsection (4)(b) inserts a new subsection (2A) into section 69 to provide that, where payment is made by post, payment is only effectively made if the letter contains the payee's name and date of birth and, where they are the holder of a licence, the licence number.

632 Subsection (4)(c) inserts new subsections (3A) to (3D) into section 69 to provide that, where payment is made otherwise than by post, payment may only effectively be made if the payee provides the fixed penalty clerk, or the Secretary of State, with the payee's name and date of birth and, where they are the holder of a licence, the licence number, or otherwise satisfies them as to the payee's identity.

Clause 73: Removal of requirement to deliver up licence where conditional offer

633 This Clause relates to the procedures for conditional offers of fixed penalties set out in sections 75 to 77A of the RTOA 1988. The Clause omits the requirements for delivery and dealing with driving licences.

634 Subsection (2)(a) adds to the information to the driver that must be included in a conditional offer where the offer relates to an offence involving obligatory endorsement. The offer must indicate that if the driver is to validly pay the fixed penalty the driver must include with the payment certain information as to the driver's identity (see notes below on subsection (2)(b) and (c)).

635 Subsection (2)(b) and (c) removes, as one of the conditions which must be fulfilled for the acceptance of a conditional offer to be effective, the requirement for the licence to be delivered to the fixed penalty clerk or the Secretary of State (in cases where the alleged offence involves obligatory endorsement, and the alleged offender is the holder of a licence). It substitutes a condition that the payee provides the fixed penalty clerk, or the Secretary of State, with the payee's name, date of birth and licence number, or otherwise satisfies them as to the payee's identity.

636 Subsection (3) amends section 76 of the RTOA 1988 (effect of offer and payment of penalty) as follows:

- Firstly it amends the wording of section 76(2) so that it provides, in effect, that no proceedings shall be brought against an alleged offender for the offence to which a conditional offer applies where that person not only pays the fixed penalty but also fulfils the identification requirements.
- Secondly it removes from section 76(3) the reference to a licence being returned to an alleged offender, where it transpires that the person is not eligible for a conditional offer due to their being liable to disqualification for totting up 12 or more penalty points.
- Thirdly it adjusts the wording in section 76(4), for consistency of language with the amendment referred to in (a) above.

637 Subsection (4) amends section 77A (endorsement of driving records where penalty paid) to omit any reference to licences having to be delivered, sent or returned to any party.

Clause 74 and Schedule 8: Surrender of licence and test certificates by new drivers

638 Clause 74 introduces Schedule 8.

639 Schedule 8 amends the Road Traffic (New Drivers) Act 1995 ("NDA"). The NDA provides that persons who pass their driving test are subject to a probationary period of two years, from the date of their test, during which they are subject to being disqualified, and having to retake their test, if they are allocated six or more penalty points for road traffic offences within that period.

640 Paragraphs 2 and 3 amend sections 2 and 3 of the NDA, which relate to the revocation of new drivers' licences. Currently, under those sections, the Secretary of State is required to revoke a new driver's licence by written notice. This must be done upon receipt of an official

notification indicating that the new driver has been given penalty points by a court, or through the fixed penalty or conditional offer process, which bring the total allocated to the driver to six or more, together with the driver's licence. Licence revocation must be undertaken where it appears to the court, or the fixed penalty clerk or the Secretary of State, the offence was committed during the driver's probationary period.

- 641 Sections 2 and 3 of the NDA are amended to remove any references to the production and handling of the new driver's licence as part of the process, and to provide that, where the relevant notices of endorsement are received, it is for the Secretary of State to check if the offence was committed during the new driver's probationary period. In addition, various minor drafting amendments are made.
- 642 Paragraph 4 inserts a new section 3A into the NDA which provides that where the Secretary of State serves a notice on a new driver revoking their licence the notice may also require surrender of the licence to the Secretary of State within 28 days. It makes it an offence not to do so without reasonable excuse. Where the licence received is a Northern Ireland one the Secretary of State must send it to the Northern Ireland licensing authority. The offence is a summary offence subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).
- 643 Paragraph 5 substitutes for section 9(5) of the NDA slightly revised provision in relation to the address of the Secretary of State to which notices, or revoked licences or test certificates, must be sent for consistency in language with the other amendment made to the NDA.
- 644 Paragraph 6 makes amendments to Schedule 1 (newly qualified drivers holding test certificates) to the NDA. Schedule 1 to the NDA currently makes similar provision for driving test pass certificates as apply to full driving licences (e.g. requirements to produce, surrender and revoke test certificates, and any associated full licences where applicable). This covers the scenarios where a new driver has to be disqualified for being allocated six or more penalty points within their probationary period before actually receiving their full driving licence. This would happen where they have a provisional licence plus a test pass certificate or where they have a test pass certificate for a class of vehicle for which their full licence is either treated as, or is, a provisional licence for that class.
- 645 Paragraph 6(2) omits the current duties to produce test certificates to the court, or for their production and handling in relation to the giving of fixed penalty notices and the making of conditional offers, or for courts or fixed penalty clerks to send confiscated test certificates to the Secretary of State. These adjustments are intended to minimise the extent to which test certificates need to be handled administratively by the courts and fixed penalty clerks.
- 646 Paragraph 6(3) provides for the Secretary of State by notice to revoke a new driver's test certificate upon receipt of an official notice indicating that the new driver has been allocated penalty points by a court, or through the fixed penalty or conditional offer process, which bring the total allocated to the driver to six or more within the driver's probationary period. These changes are to make the language of the existing test certificate revocation power match the other NDA amendments, and to dispense with any reference to the Secretary of State being supplied with the new driver's test certificate in advance of serving a revocation notice.
- 647 Paragraph 6(4) inserts a new paragraph 5A into Schedule 1 to the NDA which provides that where the Secretary of State serves a notice on a new driver revoking their test certificate the notice may also require surrender of the test certificate to the Secretary of State within 28 days. It makes it an offence not to comply with the notice without reasonable excuse. Where the test certificate received is a Northern Ireland one the Secretary of State must send it to the Northern Ireland licensing authority. The offence is a summary offence subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

648 Paragraph 6(6) omits the current duties to produce test certificates and associated full licences to the court, or for their production and handling in relation to the giving of fixed penalty notices and the making of conditional offers, or for courts or fixed penalty clerks to send confiscated test certificates and associated full licences to the Secretary of State. These adjustments are intended to minimise the extent to which test certificates, and their associated full licences, need to be handled administratively by the courts and fixed penalty clerks.

649 Paragraph 6(7) provides for the Secretary of State by notice to revoke a new driver's test certificate and associated full licence upon receipt of an official notice, indicating that the new driver has been allocated penalty points by a court, or through the fixed penalty or conditional offer process, which bring the total allocated to the driver to six or more within the driver's probationary period. These changes are to make the language of the existing test certificate, and associated full licence, revocation power match the other NDA amendments, and to dispense with any reference to the Secretary of State being supplied with the new driver's test certificate and full licence in advance of serving a revocation notice.

650 Paragraph 6(8) inserts a new paragraph 8A into Schedule 1 to the NDA which provides that where the Secretary of State serves a notice on a new driver revoking their test certificate and associated full licence the notice may also require surrender of the licence, or test certificate, or both to the Secretary of State within 28 days. It makes it an offence not to comply with the notice without reasonable excuse. Where the test certificate, or associated licence, received is a Northern Ireland one the Secretary of State must send it to the Northern Ireland licensing authority. The offence is a summary offence subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

Clause 75 and Schedule 9: Minor and consequential amendments

651 Clause 75 introduces Schedule 9.

652 Part 1 of Schedule 9 makes minor and consequential amendments to the RTOA.

653 Part 2 of Schedule 9 makes minor and consequential amendments to the RTOA and the Crime (International Co-operation) Act 2003.

654 Paragraph 23 expands the existing power of police constables, and vehicle examiners, in section 164 of the Road Traffic Act 1988, to require in certain circumstances the surrender of driving licences. The measure would empower them to require surrender of a driving licence, or test certificate, by a person where that person has already been required by the DVLA under the powers provided in the measure to surrender their licence, or test certificate, and has failed to do so. Failure to surrender the licence, or test certificate, to the constable or vehicle examiner, would be a summary offence subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

655 Part 3 of Schedule 9 makes consequential repeals of amending enactments.

Clause 76: Power to issue fixed penalty notices on-the-spot in Scotland

656 This Clause extends to the police in Scotland the power to issue Fixed Penalty Notices ("FPNs") on-the-spot to road traffic offenders.

657 Subsection (1) takes out the words "England and Wales" from section 54 of the Road Traffic Offenders Act 1988, as a result the power to issue FPNs on-the-spot under section 54 applies throughout Great Britain.

658 Subsection (2) applies to Scotland and prevents the police or the Procurator Fiscal in Scotland from issuing a conditional offer of fixed penalty notice to a person who has already received an FPN for the same offence. The offender can make up their mind whether to accept the FPN

or dispute it in court, confident in the knowledge that they will not receive any further direct measure aimed at diverting them from court. This accords with the position in England and Wales currently.

659 Subsection (3) removes the paragraph in Schedule 4 to the Road Traffic Act 1991 which specifically disapplied section 54 from Scotland; it is a necessary consequence of subsection (1) which applies section 54 to the whole of Great Britain.

Part 6: Cautions

Clause 77: Diversionary and Community Cautions

660 Clause 77 makes provision for diversionary and community cautions.

661 Subsections (2) and (3) state that a diversionary caution may be given by an authorised person to a person aged 18 or over in relation to an offence and a Community Caution may be given to a person aged 18 or over in relation to an offence that is not otherwise an excluded offence.

662 Subsection (4) and subsection (5)(a)-(b) states that both diversionary cautions and community cautions have conditions attached to them and sets out the consequences of breaching them.

663 Subsection (6)(a) - (c) sets out the meaning of an excluded offence.

664 Subsection (7)(a) – (c) provides the meaning of an authorised person.

Clause 78: Giving a diversionary caution

665 Clause 78 establishes the process and requirements for giving a diversionary caution, and sets out those requirements at subsection (2)(a)-(e). Those requirements are that an authorised person or prosecution authority decides that there is sufficient evidence to charge the offender with the offence and that a diversionary caution should be given to the offender, that the offender admits the offence and that they accept the caution. An authorised person must explain the effect of the caution to the offender and warn them that non-compliance may result in prosecution for the offence. The offender must also sign a document that contains details of the offence, their admission to having committed that offence and their consent to both being given the caution and the conditions attached to that caution.

666 Subsection (3) limits the ability of the authorised person to give a diversionary caution to an offender when the offence is an indictable only offence unless there are exceptional circumstances relating to the person or the offence and the Director of Public Prosecutions consents to the giving of the diversionary caution. Subsection (4) states that diversionary cautions cannot be given in respect of offences committed before this section comes into force. Subsection (5) makes it clear that the use of diversionary cautions is subject to regulations made in relation to restricting multiple use of cautions.

Clause 79: Deciding on the conditions

667 Clause 79 sets out what conditions can be attached to diversionary cautions and who sets them. Subsection (1)(a) and (b) state that the conditions attached to diversionary cautions are to be decided by either (a) the authorised person giving the caution or (b) a prosecuting authority that is giving the caution. Subsection (2)(a) – (c) states which conditions may apply to a discretionary caution. Those conditions may be rehabilitation and reparation conditions, financial penalty conditions and the foreign national offender condition.

668 Subsection (3)(a) and (b) and (4) state that when deciding what conditions to attach to a diversionary caution the person giving the caution must make reasonable efforts to obtain the views of any victims, in particular their views as to whether any of the actions listed in the

community remedy document ought to be applied and then take those views into account. (Following the introduction of the Anti-social Behaviour, Crime and Policing Act 2014 each police force in England and Wales is required to publish a community remedy document which provides victims with a choice of activities and sanctions for offenders to complete). If the victim or victims select a condition that is listed in the community remedy document, that condition must be attached unless, as provided for in subsection (5)(a) and (b), it is not an action that can be attached as a condition to a diversionary caution, or it would not be appropriate to attach it.

Clause 80: Rehabilitation and reparation conditions

- 669 Clause 80 makes detailed provision for attaching conditions to diversionary cautions which must have the objective of facilitating the rehabilitation of the offender and/or ensure that the offender makes reparation for the offence (subsections (1) and (2)). Under subsection (3), these conditions may be restrictive conditions, unpaid work conditions and attendance conditions.
- 670 Subsection (4)(a) – (d) sets out the details of the activities the offender may be restricted from undertaking if subject to a restrictive condition.
- 671 Subsection (5) requires the offender to carry out unpaid work of a specified description for no more than 20 hours where there is an unpaid work condition attached to the caution.
- 672 If an attendance condition is included subsection (6)(a) and (b) require the offender to attend a specific place for a specific purpose, which may not exceed 20 hours where the condition is to make reparation for the offending behaviour.
- 673 Subsection (7) provides that the offender may be required to pay for the reasonable cost of the provision of education, training or any other service provided to the offender as part of an attendance condition.
- 674 Subsection (8) states that the maximum number of hours that can be required for the purposes of either unpaid work or attendance conditions can be amended by regulations.
- 675 Subsection (9) states that conditions authorised by Clause 80 may contain details of how the condition must be complied with, including times at which something must or must not be done. Under subsection (9)(b), these details can be provided after the caution has been given. Subsection (10) provides that curfew conditions may not be attached to a diversionary caution. Subsection (11) defines the meaning of ‘specified’.

Clause 81: Financial penalty conditions

- 676 Clause 81 establishes how financial penalty conditions can be attached to a diversionary caution. Subsection (1) states that a condition requiring the offender to pay a financial penalty can be attached to a diversionary condition with the purposes of punishing the offender.
- 677 Subsection (2)(a) – (d) sets out that the condition must specify the amount of the financial penalty, the person to whom the financial penalty must be paid, how it may be paid, and the date before which it must be paid. Subsection (3) caps the level of financial penalty in that it cannot exceed an amount prescribed in regulations.
- 678 Subsection (4) requires a person, who is not a designated officer for a magistrates’ court and who has received payment of a financial penalty in accordance with a financial penalty condition, to give that payment to a designated officer for a magistrates’ court. This has the practical effect of ensuring that money paid in respect of a financial penalty is received into central funds.
- 679 Subsection (5) allows 28 days for payment beginning with the day on which the caution was given.

Clause 82: Foreign offenders' conditions

680 Clause 82 enables the foreign offenders' conditions to be attached to diversionary cautions. This condition can only be attached to a diversionary caution given to a 'relevant foreign offender', as defined by subsection (4)(a) and (b).

681 The objectives of the foreign offenders' condition are set out in subsection (2)(a) and (b) and are to ensure that the relevant foreign offender departs the United Kingdom and does not return for a period of time. Subsection (3) makes it clear that the expiry of the period does not give the offender a right to return to the United Kingdom.

Clause 83: Variation of conditions

682 Clause 83 enables an authorised person or prosecution authority to, with the consent of the offender, vary conditions attached to a diversionary caution by either modifying or omitting any of the conditions under subsection (a) or adding a condition under subsection (b).

Clause 84: Effect of diversionary caution

683 Clause 84(1) establishes that if an offender to whom a diversionary caution was given does not comply with the conditions attached to this without reasonable excuse, then they may be prosecuted. Subsection (2) establishes that the document signed by the offender as set out in Clause 78(2)(e) above, in which they accept the caution and the conditions attached to it, is admissible evidence in any such proceedings. Subsection (3) states that the diversionary caution ceases to have effect in the event of any proceedings being started.

Clause 85: Arrest for failure to comply

684 Clause 85 provides constables with a power of arrest without warrant. Subsection (1) applies when a constable has reasonable grounds for believing that the offender has failed without reasonable excuse to comply with any of the conditions attached to a diversionary caution.

685 Subsection (2) sets out what must happen to an offender arrested under this section. Subsection (2)(a) provides for an offender to be charged with the original offence in respect of which the diversionary caution was given and subsection 2(b) provides for an offender to be released without charge. Subsection (3)(a) sets out the circumstances where an offender can be released on bail without charge under subsection (2)(b). Where the pre-conditions for bail are satisfied, an offender can be released on bail without charge to enable a decision to be made as to whether the offender should be charged with the offence. Subsection 3(b) states that, in any other case, the offender can be released without bail, with or without any variations in the conditions attached to the diversionary caution. By virtue of subsection (4), subsection (2) also applies in the case of an offender that returns to the police station having been bailed for investigation and in certain other circumstances where the offender is detained by the police.

686 Subsection (5) states that, where an offender is released on bail under subsection (3)(a), the custody officer must inform the offender that the release is to enable a decision to be made as to whether the offender should be charged with the offence in question.

687 Subsection (6) provides for circumstances where an offender arrested under this section, or any other person in whose case subsection 2 applies, may be kept in police detention in order to be dealt with in accordance with subsection 2 or in order to appoint a different or additional time for answering bail under section 47(4A) of the Police and Criminal Evidence Act 1984 (as modified by Clause 85). If a person is not in a fit state to be dealt with in these way, they may be kept in police detention until they are.

688 Subsection (7) sets out that the power under section (6)(a) includes the power to keep an offender in police detention if it is necessary to do so for the purpose of investigating whether

the person has failed, without reasonable excuse, to comply with any of the conditions attached to the diversionary caution.

689 Subsection (8) makes provision for subsection (2) and (3) to be complied with as soon as practicable.

690 Subsection (9) provides that an offender who falls within subsection (4)(a) or (b) and who is in police detention in relation to a matter other than the diversionary caution, need not be released if the offender is liable to be kept in detention in relation to that other matter.

691 Subsection (10) states that the pre-conditions for bail referred to in this section are as set out in section 50A of the Police and Criminal Evidence Act 1984.

Clause 86: Application of Police and Criminal Evidence Act 1984

692 Clause 86 provides that the provisions of PACE set out in subsection 2(a) to (j) apply, with the modifications identified in subsection (3), to offenders arrested for suspected breach of a diversionary caution. The provisions of PACE set out in subsection 2(a) to (i) that apply with modification to arrest for failure to comply with a diversionary caution include an arrest elsewhere than at police station, bail elsewhere than at police station, arrest for further offence, limitations on police detention, custody officers at the police stations, record of grounds for detention, duties of custody officer after charge, responsibilities in relation to persons detained, x-rays and ultrasound scans. Subsection (3) (a) to (e) sets out what the modifications are.

693 Subsections (4) to (7) set out further provisions of PACE which apply to suspected breach of diversionary cautions as they would in the case of a person arrested for an offence, which enables consistency.

Clause 87: Giving a community caution

694 Clause 87 establishes the process and requirements for giving a community caution and sets out those requirements at subsection (2)(a) - (e). Those requirements are that an authorised person decides that there is sufficient evidence to charge the offender with the offence and that a community caution should be given to the offender, that the offender admits the offence and accepts the caution. The authorised person must explain to the offender the effect of the caution and non-compliance with the conditions attached to it. The offender must also sign a document that contains details of the offence, their admission to committing that offence, their consent to being given the caution and the conditions attached to that caution.

695 Subsection (3) states that community cautions cannot be given in respect of offences committed before this provision comes into force. Subsection (4) makes it clear that the use of community cautions is subject to regulations made in relation to restricting multiple use of cautions.

Clause 88: Deciding on the conditions

696 Clause 88 sets out what conditions can be attached to community cautions and who sets them. Clause 87 (1) states that the conditions attached to community cautions are to be decided by either (a) the authorised person giving the caution or (b) a prosecuting authority that is giving the caution. Clause 88(2)(a) and (b) state that conditions authorised by Clauses 89 and 90 may be attached. Those conditions may be rehabilitation and reparation conditions and financial penalty conditions.

697 When setting conditions subsections (3)(a) and (b) and (4) require that, when deciding what conditions to attach to a community caution, the person giving the caution must make reasonable efforts to obtain the views of any victims, in particular their views as to whether

any of the actions listed in the community remedy document ought be applied and then take those views into account. If the victim or victims select a condition that is listed in the community remedy document, that condition must be attached unless, as provided for in subsection (5)(a) and (b), it is not an action that can be attached as a condition to a community caution, or it would not be appropriate to attach it.

Clause 89: Rehabilitation and reparation conditions

698 Clause 89 makes detailed provision for attaching conditions to a community caution which must have the objective of facilitating the rehabilitation of the offender and/or ensure that the offender makes reparation for the offence (subsections (1) and (2)). Under subsection (3), these conditions may be restrictive conditions, unpaid work conditions and attendance conditions.

699 Subsection (4)(a) – (d) sets out the details of the activities the offender may be restricted from undertaking if subject to a restrictive condition.

700 Subsection (5) refers to unpaid work conditions under subsection (3)(b), which requires the offender to carry out unpaid work of a specified description for no more than 10 hours, where there is an unpaid work condition attached to the caution.

701 If an attendance condition is included, Subsection (6)(a) and (b) requires the offender to attend a specific place for a specific purpose, which may not exceed 10 hours where the condition is to make reparation for the offending behaviour.

702 Subsection (7) provides that the offender may be required to pay for the reasonable cost of the provision of education, training or any other service provided to the offender as part of an attendance condition.

703 Subsection (8) allows for the making of regulations to vary the maximum number of hours that can be required for the purposes of either unpaid work or attendance conditions.

704 Subsection (9) states that conditions authorised by Clause 88 may contain details of how the condition must be complied with, including times at which something must or must not be done. These details can under subsection (9)(b) be provided after the caution has been given. Subsection (10) provides that curfew conditions may not be attached to a community caution. Subsection (11) defines the meaning of ‘specified’.

Clause 90: Financial penalty conditions

705 Clause 90 establishes how financial penalty conditions can be attached to a community caution. Subsection (1) states that a condition requiring the offender to pay a financial penalty can be attached to a community condition with the purposes of punishing the offender.

706 Subsection (2)(a) to (e) sets out that the condition must specify the amount of the financial penalty, the person to whom the financial penalty must be paid, how it may be paid, the date before which it must be paid and the consequences of non-payment. Subsection (3) caps the level of financial penalty in that it cannot exceed an amount prescribed in regulations.

707 Subsection (4) requires a person, who is not a designated officer for a magistrates’ court and who has received payment of a financial penalty in accordance with a financial penalty condition, to give that payment to a designated officer for a magistrates’ court.

708 Subsection (5) allows 28 days for payment beginning with the day on which the caution was given.

709 Subsection (6) states that non-payment results in an increase of 50% to the amount payable. Subsection (7) provides for an additional period of 21 days for payment of the increased penalty and also allows for that increased penalty to be registered at a magistrates’ court for enforcement in the same way as if it were a fine.

Clause 91: Enforcement of financial penalties: registration

- 710 Clause 91 provides the framework for the registration process for enforcing financial penalties as part of the community caution regime. It enables the chief officer of police to issue a certificate in respect of monies outstanding and registerable under Clause 90(7). Subsection (1) (a)-(c) states that the registration certificate should contain the particulars of the financial penalty, the outstanding amount, confirm that the amount is registerable for enforcement against the offender as a fine, and the last known address of the offender. Subsection (2) requires this certificate to be sent to the designated officer for the local justice area in which the offender appears to reside.
- 711 Subsection (3) places duties on the designated officer on receipt of a registration certificate. They must (a) register the amount for enforcements as a fine in the register of a magistrates' court acting for that area or (b) cause the certificate to be sent to the designated officer for the local justice area in which the offender resides if the offender does not live in their area.
- 712 Subsection (4) states that the designated officer registering the outstanding amount for enforcement as a fine must give the offender notice of the registration, specify the amount registered and provide the other details set out in the registration certificate. Under subsection (5), any enactment referring to a fine or other sum to be paid following conviction by a magistrates' court applies in the same way to an amount registered under this section.

Clause 92: Enforcement of financial penalties: court proceedings

- 713 Clause 92(1) provides a framework for court proceedings arising from the enforcement of financial penalties. Subsections (1)(a) to (c) applies to those persons against whom proceedings are being taken but who claim (a) not to be the person to whom the community caution was given, (b) to have paid the amount required, or (c) to have a reasonable excuse for not paying. Subsection (2) allows the court to adjourn proceedings on one or more occasions, but for no longer than 28 days in total, to allow a claim to be investigated. Subsection (3) states that the court must accept a claim under subsection (1)(a) or (b) unless, on the balance of probabilities, the claim is unfounded. Subsection (4) provides that, where a claim under subsection (1)(b) is accepted by the court, the condition of the caution requiring payment ceases to have effect. Subsection (5) refers to a claim under subsection (1)(c), which provides that whilst the court must accept the facts claimed as an excuse unless it is shown on a balance of probabilities that the claim relating to those facts is unfounded, the court has a discretion to decide the question as to reasonableness of any such excuse. Subsection (6) provides that, where a court accepts a claim under subsection 1(c), the court can decide whether the condition of the caution that requires payment of the amount should cease to have effect, be varied so as to reduce the amount or extend the time for payment, or both.

Clause 93: Variation of conditions

- 714 Clause 93 enables an authorised person or prosecution authority to, with the consent of the offender, vary conditions attached to a community caution by either modifying or omitting any of the conditions under subsection (1)(a) or adding a condition under subsection (1)(b). Subsection (2) refers to the ability under Clause 94 (2) to rescind a condition imposed under Clause 88 which has not been complied with and instead attach a financial penalty.

Clause 94: Effect of community caution

- 715 Clause 94(1) establishes that if an offender to whom a community caution is given does not comply with the conditions attached to this without reasonable excuse, then they may be not prosecuted. Subsection (2)(a) and (b) provide that in these circumstances, the authorised person or prosecution authority may rescind any conditions not complied with and instead attach a condition imposing a financial penalty under section 101.

Clause 95: Code of practice

716 Clause 95 makes provision for the Secretary of State to prepare a Code of Practice setting out further detail in relation to the criteria and circumstances for giving diversionary and community cautions.

717 Subsection (2) (a)-(k) sets out the types of matters in relation to which the Code of Practice can include provisions such as the circumstances in which cautions may be given, the procedure to be followed in connection with the giving of cautions, the conditions which may be imposed and the period of time for which they can be imposed, who may give cautions, the form and manner in which they are to be given, the places where they may be given, who the financial penalty should be paid to, arrangements for monitoring compliance with conditions, the circumstances where a power of arrest may arise for non-compliance and who decides how a person should be dealt with under section 96(2) and (3).

718 Subsections (3) to (7) set out the steps the Secretary of State is required to take before the Code of Practice can be made or revised, including publishing the Code of Practice in draft, considering any representations made on the draft, placing it before Parliament and making regulations to commence the Code of Practice. After preparing a draft, this cannot be published or amended without the consent of the Attorney General.

Clause 96: Restriction on multiple cautions

719 Clause 96 enables the Secretary of State to make regulations that place restrictions on the multiple use of diversionary and community cautions. Subsection (1) provides for regulations to be made to prohibit the giving of either type of caution where a person has already been cautioned on one or more occasions. Subsection (2)(a) – (d) state that restrictions can be referenced by the kinds of caution the person has already received, the number of times they have received cautions, the time period prior to the offending behaviour for which a caution is being considered or the types of offending behaviour for which the offender has already received a caution.

720 Subsection (3)(a)-(c) defines what is meant by ‘cautioned’ as either having received a diversionary or community caution after this Part comes into effect, a conditional caution under Part 3 of the CJA 2003 prior to this Part coming into effect or previously having received any other type of caution prior to this Part coming into effect.

Clause 97: Abolition of other cautions and out-of-court disposals

721 Clause 97 has the practical effect of abolishing previously existing cautioning regimes and the regime setting out on the spot penalties for disorderly behavior for adult offenders. Subsection (1) sets out that no cautions other than diversionary or community cautions should be given to offenders aged 18 or over who admit having committed an offence. Subsection (2) repeals Part 3 of the CJA 2003 which established the conditional caution regime, and subsection (3) repeals Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 which established the Penalty Notice for Disorder regime. Subsection (4) is a savings provision which has the effect of continuing the operation of the provisions referred to in subsections (2) and (3) in relation to offences committed before this Part comes into force.

Clause 98: Consequential amendments relating to Part 6

722 Clause 98 and Schedule 10 make consequential amendments to other legislation and repeal certain legislation in consequence of the creation of the diversionary and community caution.

Clause 99: Regulations under Part 6

723 Clause 99 subsection (1) sets out that regulations under this Part are to be made by statutory instrument. Subsection (2) states that these regulations can contain different provision for

different purposes and can make consequential, supplementary, transitional and transitory provision and savings. Subsections (3) to (5) detail the parliamentary procedure applicable to the making of regulations under this Part.

Clause 100: Interpretation of Part 6

724 Clause 100 sets out definitions of terminology used in this Part.

Schedule 10 Cautions: Consequential Amendments

725 Schedule 10 makes consequential amendments to legislation to reflect the introduction of diversionary and community cautions and that existing cautions will no longer be in use.

726 Paragraphs 1 to 3 amend the Rehabilitation of Offenders Act 1974, which sets out the rules on when convictions and cautions are spent, to remove reference to the cautions that will no longer be in use and to ensure that diversionary and community cautions are included.

727 Paragraph 4 to 7 amend the Bail Act 1976 to ensure that this Act applies to bail granted under Part 6 and to remove reference to bail granted under Part 3 of the CJA 2003 which will no longer be in force.

728 Paragraph 8 amends section 31R of the Matrimonial and Family Proceedings Act 1984, which sets out the prohibition in such proceedings of cross-examination in person of victims by those convicted of offences and refers to convictions including the receiving of cautions. The amendment removes reference to the cautions that will no longer be in use and replaces this with reference to diversionary and community cautions.

729 Paragraphs 9 to 11 amend the Police Act 1997, which sets out the criminal record checking regime, to remove reference to the cautions that will no longer be in use and to ensure that diversionary and community cautions are included.

730 Paragraphs 12 to 19 amend the Police and Criminal Evidence Act 1984, which sets out the framework of police powers, to modify this framework in light of existing cautions no longer being in use and the introduction of the diversionary and community cautions.

731 Paragraphs 20 to 22 amend the Crime and Disorder Act 1998 in relation to youth conditional cautions so that the provisions on the power of arrest for failure to comply with conditions attached to a youth conditional caution without a reasonable excuse refer to the relevant section of Part 6 and not to Part 3 of the CJA 2003 which sets out the conditional caution regime and is being repealed by section 108.

732 Paragraphs 23 to 26 amend the Police Reform Act 2002 to remove the provision for granting to specified persons the power to give penalty notices for disorder under Part 1 of the Criminal Justice and Police Act 2001 which is being repealed by section 108.

733 Paragraph 27 amends section 147A of the Licensing Act 2003 which deals with the offence of persistently selling alcohol to children. The amendment removes reference to the receiving of a penalty under Part 1 of the Criminal Justice and Police Act 2001 which is being repealed by section 108.

734 Paragraphs 28 to 30 amend provision in the Courts Act 2003 on the collection of fines in order to replace reference to registration of sums payable in default of a penalty notice for disorder under Part 1 of the Police and Criminal Justice Act 2001, which is being repealed by section 108, with reference to section 95 which deals with registration of unpaid financial penalties.

735 Paragraph 31 makes an amendment to the CJA 2003 to remove a subsection which relates to Part 3 of this Act which is being repealed by section 108.

736 Paragraphs 32 amend the provisions of the Offender Management Act 2007 which set out the meaning of “the probation purposes” to remove reference to the cautions no longer in use and to ensure that diversionary and community cautions are included.

737 Paragraphs 33 to 36 amend the Anti-social Behaviour, Crime and Policing Act 2014 to ensure that the provisions on the community remedy document and out-of-court-disposals are modified to reflect the introduction of diversionary and community cautions and to remove references to the cautions which will no longer be in use.

738 Paragraph 37 removes sections 17 and 18 of the Criminal Justice and Courts Act 2015 that refer to restrictions on the use of simple cautions as such cautions will no longer be in use on the basis of section 108.

739 Paragraphs 38 and 39 include consequential repeals resulting from the repeal of Part 3 of the CJA 2003 and Part 1 of the Criminal Justice and Police Act 2001.

Part 7: Sentencing and release

Chapter 1: Custodial sentences

Clause 101: Minimum sentences for particular offences

740 Clause 101 amends the criteria for passing a sentence below the minimum term for particular offences. Subsection (1) makes clear that the Code is amended in accordance with subsections (2) to (7).

741 The changes apply to offences relating to the (i) minimum sentence of 6 months (adults) or 4 months detention and training order (16- and 17-year-olds) for threatening with a weapon or bladed article (section 312 of the Code), (ii) minimum sentence of 7 years for third class A drug trafficking offence (section 313 of the Code), (iii) minimum sentence of 3 years for third domestic burglary (section 314 of the Code) and (iv) minimum sentence of 6 months (adults) or 4 months detention and training order (16- and 17-year olds) for a repeat offence involving weapon or bladed article (section 315 of the Code).

742 Subsections (2) to (5) change subsection (2) of each of sections 312 to 315 of the Code and insert a new subsection (2A). Subsection (2) sets out the current criteria for passing a sentence below the minimum term and provides that the court must impose an appropriate custodial sentence, except where the court is of the opinion that there are particular circumstances which relate to the offence or to the offender; and would make it unjust to do so in all the circumstances. New subsection (2A) of each of sections 312 to 315 provides that the court must impose an appropriate custodial sentence unless the court is of the opinion that there are exceptional circumstances which relate to the offence or to the offender and justify not doing so. Subsection (2) of each of sections 312 to 315 has been amended so that it applies to cases where the offence was committed before the commencement of the provisions. New subsection (2A) of each of sections 312 to 315 applies to offences committed on or after the commencement of the provisions.

743 Subsection (6) amends section 316(1)(a) (appeals where previous conviction set aside) of the Code to refer to each of the new subsections (2A) for the repeat strike offences that were listed in these provisions.

744 Subsection (7) amends section 320 of the Code to include an offence under section 312 so that where an offence is found to have been committed over or during a period of two or more days, it is taken to be committed on the last of those days.

745 Subsection (8) amends section 399(c) (mandatory sentence requirements) of the Code to refer to the new subsections (2A) for the offences in sections 312-315 of the Code.

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Bill as brought from the House of Commons on 6 July 2021 (HL Bill 40)

746 Subsection (9) amends uncommenced provisions in Schedule 22 of the 2020 Act. There are provisions in this schedule that abolish sentences of detention in a young offender institution (“DYOI”). Once these provisions are commenced, any references to DYOI sentences in sections 313 and 314 of the Code will need to be removed. Subsections (9)(a) and (b) therefore amend paragraphs 66 and 67 of Schedule 22 so that, once commenced, the references to DYOI sentences in the new subsection (2A) in each of sections 313 and 314 will be removed.

747 Subsection (10) introduces Schedule 11 which contains the consequential amendments. Subsections (10) and (11) make clear that these amendments apply to offences committed on or after the commencement of these provisions and that where an offence is found to be committed over several days, it is taken to be committed on the last of those days.

Schedule 11: Minimum sentences for particular offences: Consequential Amendments

748 Schedule 11 amends section 37 of the Mental Health Act 1983 so that subsection (2A) will apply for offences committed on or after commencement of the Bill.

749 Schedule 11 also makes amendments to sections 225(2), 226(2) and 227A(1A) and (2) of the Armed Forces Act 2006 Act, plus several minor consequential amendments to that Act, to ensure that the armed services justice regime is aligned with the civilian system.

Clause 102: Whole life order as starting point for premeditated child murder

750 Clause 102 amends Schedule 21 of the Code to extend the application of whole life orders. Whole life orders are the most severe penalty available in the justice system and requires that a prisoner spend the rest of his or her life in prison without the possibility of release on parole, unless there are compassionate grounds for possible release.

751 Clause 102 inserts a new subsection (ba) in paragraph 2(2) of Schedule 21 of the Code. Section 322 of the Code requires the court to have regard to the principles in Schedule 21 when assessing the seriousness of murder cases and in deciding on the appropriate minimum term for a mandatory life sentence. Paragraph 2(2) of Schedule 21 deals with exceptionally serious cases in which the court should normally consider a whole life order as its starting point and gives examples of circumstances where a whole life order should be the starting point. New subsection 2(2)(ba) adds the murder of a child if it involves a substantial degree of premeditation or planning to such circumstances. This additional criterion will apply to offences committed on or after the date on which these provisions in the Bill come into force.

Clause 103: Whole life orders for young adult offenders in exceptional cases

752 Clause 103 amends the Code. Subsection (2)(a) amends section 321(3)(a) of the Code to add a reference to new subsections (3A) and (3B) and subsection (2)(b) inserts new subsections (3A)-(3C) into section 321. New subsection (3A) restates the current position which is that when imposing a life sentence, a whole life order may be imposed where the offender was aged 21 or over when the offence was committed.

753 New subsections (3B) and (3C) create an exception to the usual position that someone must be at least 21 years of age to receive a whole life order by allowing for the application of whole life orders in exceptional circumstances to those who are aged 18 or over but under 21 at the time when the offence is committed.

754 New subsections (3B) and (3C) apply to offences that are committed on or after the date on which these provisions in the Bill come into force. The test set out in new subsections (3B) and (3C) is that where the offender is aged 18 or over but under 21 when the offence was committed, the court may impose a whole life order if it considers that the seriousness of the offence (or combination of offences) is exceptionally high even by the standard of offences that would normally attract a whole life order as the starting point for offenders aged 21 and over.

755 Section 322 of the Code makes further provision in relation to mandatory life sentences. Subsection (3) amends section 322(3)(a) which sets out the considerations for the court to make in determining seriousness. Subsection (3) amends this provision to include a reference to new subsection (3C) so that the new test to impose whole life orders for 18 to 20-year-olds is considered by courts on determining the seriousness of the offence or offences. Clause 124 inserts new subsection (5) in section 261A of the Armed Forces Act 2006 to ensure that the changes to the provisions on whole life orders in sections 321 to 322 and Schedule 21 of the Code will also apply to life sentences imposed by Court Martial.

Clause 104: Starting points for murder committed when under 18

756 This Clause amends Schedule 21(6) to the Code. It replaces the 12-year starting point for all children who commit murder with different starting points based on the age of the child and the seriousness of the offence.

757 The starting points are set out in a table. Column 1 includes three age groups; those aged 14 or under, 15 to 16-year-olds and 17-year-olds. Each age group has a starting point for each of the four levels of seriousness of the offence. These levels of seriousness are the same as set out in Schedule 21 subsections 2(1), 3(1), 4(1) and 5(1) which apply to adults who commit murder.

758 For children, cases with a level of exceptionally high seriousness (paragraph 2) fall into the starting point of paragraph 3. This reflects paragraph 3(2)(i) of the Code which states that a murder that would fall within paragraph 2 of the Schedule falls into paragraph 3 if the offender was aged under 21 when the offence was committed.

759 This Clause also applies the changes that replace the current starting point to service personnel who are sentenced to Detention at Her Majesty's Pleasure ("DHMP").

Clause 105: Sentences of detention during Her Majesty's pleasure: review of minimum term

760 Subsection 1 of Clause 105 amends the Crime (Sentences) 1997 Act to insert new sections 27A and 27B. These new sections introduce a minimum term review process for individuals who are sentenced to DHMP under the age of 18. These individuals are referred to as 'an eligible life prisoner'. The purpose of the review is to determine if there should be reduction in their minimum term.

761 New section 27A (Sentence of detention during Her Majesty's pleasure imposed on a person under 18: application for minimum term review) sets out that an eligible prisoner can apply for a review once they have served half of the minimum term of their sentence. They can apply for a further review once two years have passed since the previous application was determined. They can apply for that further review only if they are under the age of 18 when they make the application.

762 The application for a review is made to the Secretary of State. He / she considers the application and, unless he / she decides the application is frivolous or vexatious, refers it to the High Court.

763 Where the decision is not to refer to the application to the High Court, the Secretary of State must inform the eligible life prisoner of the decision and the reasons for it.

764 If the eligible life prisoner makes representations or provides further evidence in support of their application within four weeks of being informed of the initial decision, the Secretary of State must consider those representations or evidence. If the Secretary of State no longer considers the application to be frivolous or vexatious he / she refers it to the High Court. Otherwise the Secretary of State informs the eligible life prisoner of the decision not to refer the application.

- 765 Subsection (7) of new section 27A defines a DHMP sentence as one that has been imposed either before or after this section comes into force and was made under one of the provisions listed in column 1 of the table at subsection (8).
- 766 It defines the minimum term as the term that was given for the DHMP sentence or if there have been reductions made (under the tariff review process), the term after the most recent of those reductions has been made.
- 767 It defines the minimum term order as the order made under the provision listed in column 2 of the table at subsection (8) that corresponds to the appropriate provision in column 1.
- 768 The application for a minimum term review is determined either when the High Court makes the decision to reduce the minimum term or not, or when the Secretary of State informs the eligible life prisoner that their application will not be referred to the High Court.
- 769 Where an eligible life prisoner made an application for a minimum term review before this new section comes into force, if they had served at least half of their minimum term when they made their application, it should be treated as though it was made under this new section.
- 770 Subsection (11) removes the right from anyone sentenced to DHMP from requesting a review unless the requirements of this new section are met.
- 771 New section 27B (Power of High Court to reduce minimum term) sets out the process when the Secretary of State refers an application for a tariff review to the High Court. The High Court can decide to either reduce the minimum term or confirm that the original minimum term length remains. The decision of the High Court is final. The High Court decides on the appropriate length of any reduction.
- 772 Subsection (4) of 27B sets out the evidence that the High Court must particularly take into account when deciding on whether to reduce a minimum term. This can be amended by regulations approved by both Houses of Parliament.
- 773 Subsection 2 of Clause 105 amends section 28 of the Crime (Sentences) 1997 Act to ensure that the release of life prisoners takes into account any reductions made to a minimum term under the tariff review process.
- 774 Subsection 3 of Clause 105 provides for transitional cases so that where an eligible life prisoner made an application for a minimum term review before this new section comes into force, if they had served at least half of their minimum term when they made their application, the application should be considered under the policy that existed prior to the new section coming into force.
- 775 This Clause also applies the review of the minimum term process to service personnel who are sentenced to DHMP under section 218 of the Armed Forces Act 2006.

Clause 106: Life sentence not fixed by law: minimum term

- 776 Clause 106 amends section 323 of the Code. That section sets out the approach the court must take to determine a minimum term when it is required to make a minimum term order (rather than a whole life order) for those persons given a discretionary life sentence. A discretionary life sentence is a life sentence for offences other than murder where the judge has a discretion to impose a life sentence if the seriousness of the offence or the previous criminal record of an offender warrants it. The minimum term order must specify a minimum term, commonly referred to as a tariff, which the person is required to serve in custody before being considered for release by the Parole Board. The amendments change the starting point for the determination of the minimum term to at least two-thirds of the equivalent determinate

sentence or custodial term of such sentence. The changes will apply to any sentence that is imposed after the provision comes into force, including in respect of offences committed before the provision comes into force.

777 Clause 105(1)(a) inserts new subsections (1A) to (1C) into section 323 of the Code.

778 New subsections (1A) and (1B) set out that the starting point in determining the minimum term is the relevant portion of the notional determinate sentence. The notional determinate sentence is the custodial sentence that the court would have imposed if the court had not imposed a discretionary life sentence.

779 New subsection (1C) defines the relevant portion depending on the notional determinate sentence. Paragraph (a) provides that if the notional determinate sentence would be a determinate sentence that attracts no early release before the end of the appropriate custodial term, then the relevant portion is the whole of the appropriate custodial term that the court would have determined for such a sentence. Determinate sentences that attract no early release in this regard are extended determinate sentences (imposed under sections 254, 266 or 279 of the Code) and serious terrorism sentences (imposed under sections 268A or 282A of the Code) where, in accordance with section 247A(2) of the CJA 2003, the early release provisions of that section do not apply. Paragraph (b) provides that if the notional determinate sentence would be any other extended determinate sentence that is not within paragraph (a) or a sentence of particular concern (imposed under sections 252A, 265, or 278 of the Code) then the relevant portion is two-thirds of the appropriate custodial term that the court would have determined for that sentence. Paragraph (c) provides that if the notional determinate sentence is any other custodial sentence, then the relevant portion is two-thirds of the term that the court would have determined for that sentence.

780 Clause 106(1)(b) amends subsection (2) of section 323 of the Code. It provides that the minimum term must be the starting point (as determined in accordance with new subsections (1A)-(1C)) adjusted as the court considers appropriate, which retains judicial discretion to adjust the starting point for the minimum term where the court considers appropriate. Once the appropriate starting point is determined, the court then takes into account the matters set out in existing paragraphs (a) and (c). Paragraph (a) concerns the seriousness of the offence or the combination of the offence and one or more offences associated with it. Paragraph (c) concerns the crediting of periods on remand or similar. The Clause omits paragraph (b), which was the previous provision by which the court considered the release provisions that applied to determinate sentences against release for those subject to a discretionary life sentence.

781 Clause 106(2) amends section 261A of the Armed Forces Act 2006. That section provides that section 323 of the Code applies as if references to a court include the Court Martial and subject to amendments as it applies in relation to a life sentence passed by the Court Martial. The Clause amends section 323 as it applies to a Court Martial to refer to the equivalent sentencing provisions of the Armed Forces Act 2006 in place of the sentencing provisions referred to in new subsection (1C)(b) above.

782 Clause 106(3) makes consequential amendments to the Code and the Armed Forces Act 2006 regarding the prospective abolition of sentences of detention in a young offender institution.

Clause 107: Increase in requisite custodial period for certain violent or sexual offenders

783 Clause 107 of this Bill makes amendments to the automatic release provision for certain violent or sexual offenders sentenced to a standard determinate sentence ("SDS") set out in section 244 of the CJA 2003.

- 784 Subsection (3) inserts new section 244ZA in the CJA 2003 which makes special provision for the release on licence of certain violent or sexual offenders serving standard determinate sentences.
- 785 New section 244ZA (1) provides that the Secretary of State has a duty to release a prisoner on licence to whom this section applies once they have served the requisite custodial period, which is defined in subsection (8) as two-thirds of the sentence.
- 786 New subsections (2) – (7) prescribe which offenders and offences the two-thirds release point will apply to.
- 787 New section 244ZA(4) and (9) replace the Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 (S.I. 2020/158) and will apply to prisoners if they are subject to a sentence of imprisonment or detention under section 96 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 262 of the Code, that was imposed on or after 1 April 2020 where the term is 4 years or more, for an offence that is specified in Part 1 (violent offences) or Part 2 (sexual offences) of Schedule 15 to the CJA 2003 which attract a maximum penalty of life imprisonment.
- 788 New section 244ZA(5) will apply to prisoners who are subject to a sentence of imprisonment or a sentence of detention under section 262 of the Code for a term of at least 4 years but less than 7 years, imposed on or after the day on which this Clause comes into force in respect of an offence listed in subsection (7).
- 789 New section 244ZA(6) will also apply to young offenders who are subject to a sentence of detention under section 250 of the Code for a term of seven years or more, in respect of an offence listed in subsection (7).
- 790 Subsection (4) of the Clause amends section 260(5) of the 2003 Act to ensure that any prisoner subject to new section 244ZA who has been removed from prison for the purposes of deportation (under the Early Removal Scheme – ‘ERS’) but remains in the United Kingdom is still subject to the duties and powers of the Secretary of State in the same way as if the prisoner remained in custody.
- 791 Subsection (5) amends section 261(5) of the CJA 2003 to provide that where an offender subject to those release provisions has been removed from prison to be deported under the ERS and then re-enters the UK before their sentence expiry date, they are still liable to serve the outstanding custodial part of their sentence.

Clause 108: Increasing in requisite custodial period for certain other offenders of particular concern

- 792 Clause 108 amends the CJA 2003 by inserting a new subsection into section 244A and consequentially amending section 264, which deals with consecutive sentences of imprisonment. Clause 107 provides that offenders serving a SOPC (including service offenders under section 224A of the Armed Forces Act 2006) imposed after commencement of the provision cannot be considered for discretionary release by the Parole Board until they have served two-thirds of their custodial term (replacing one-half). Clause 108(3) provides for the same change for those serving a SOPC consecutively along with another term of imprisonment.

Clause 109: Power to refer high-risk offenders to Parole Board in place of automatic release

- 793 Clause 109 inserts new provision into the CJA 2003 for high-risk offenders who would otherwise be due for automatic release at the halfway or two-thirds point of their sentence. This Clause will also apply to service prisoners by virtue of sections 237(1) and (1B) of the CJA 2003.

- 794 The Secretary of State has a duty under the CJA 2003 to automatically release certain fixed term prisoners from custody. Under section 243A, prisoners must be released unconditionally before the end of their sentence. Under section 244 and new 244ZA (inserted by Clause 107, prisoners must be released once they have served the requisite custodial period to serve the remainder of their sentence on licence. The date on which this would occur is known as their automatic release date. The new provision, to be inserted as sections 244ZB and 244ZC of the CJA 2003, would enable the Secretary of State to refer certain prisoners to the Parole Board instead of automatically releasing them. The prisoner would then not be released until the Board decides it is safe to do so or the offender reaches the end of their sentence. The power may be exercised if the Secretary of State believed on reasonable grounds that the release of the prisoner would pose a significant risk of serious harm to the public by committing murder or certain 'specified' offences within the meaning of section 306 of the Code (mainly of a violent, sexual or terrorist nature).
- 795 New subsections 244ZB(4)-(8) provide for the notice procedure, which has the effect of overriding the automatic release date whilst in force. This procedure places a duty on the Secretary of State to notify the prisoner of the intention to refer the prisoner to the Board instead of automatically releasing them. Under subsection (5), such notice must be given before their automatic release date. Subsection (6) specifies that the notice must explain the effect of the referral in relation to the prisoner's release, the Secretary of State's reasons for making the referral and the prisoner's right to make representations, which can be made at any time up until the Board decides on the prisoner's case under subsection (11).
- 796 Under new subsection 244ZB(7), the notice takes effect from when it is received by the prisoner (or when it would ordinarily be expected to be received by the prisoner) and remains in force until the Secretary of State refers the case to the Parole Board, or the notice is revoked.
- 797 In a case where the Secretary of State no longer believes that the prisoner would pose a significant risk of harm to the public if released, subsection (8) places a duty on the Secretary of State to revoke the notice, in which case the prisoner's automatic release entitlement will be restored and they will be automatically released under the relevant section of the CJA 2003.
- 798 Under new subsection 244ZB(9), a prisoner to whom this mechanism applies will be able to apply to the High Court if their automatic release date has passed and their release has been delayed for longer than is reasonably necessary for the Secretary of State to carry out the referral to the Board. The High Court must revoke the notice if unreasonable delay is made out.
- 799 Subsections 244ZB(10) and (11) provide that the Secretary of State may cancel a referral to the Board, and must do so if they no longer consider the prisoner to pose a significant risk to the public. This may happen at any time until the Parole Board has concluded its consideration of the prisoner's case. As with a revoked notice, if the Secretary of State rescinds a referral, the prisoner is to be treated as if they were never referred and will be automatically released under the relevant section of the CJA 2003.
- 800 New subsection 244ZB(12) provides for the prisoner to make representations to the Secretary of State following the notice under subsection (4). It also makes it clear that if representations have not been received from the prisoner, this will not delay the referral to the Board.
- 801 Clause 109 also inserts new subsection 244ZC which provides for offenders referred to the Board under new section 244ZB. New subsection 244ZC(2) states that where the Board do not release a prisoner referred under section 244ZB, the Secretary of State must refer them to the Board again no later than a year after the last referral and then annually thereafter.
- 802 New subsections 244ZC(3)-(6) provide for the release of a prisoner referred under section 244ZB from custody. New 244ZC(3) places a duty on the Secretary of State to release these

offenders on licence once the requisite custodial period has been served (defined in new subsection (6) as the period which the prisoner would have been eligible for release had they not been referred under section 244ZB), and the Board has directed it. Subsection (4) provides the Board must not direct release unless it is no longer necessary for the protection of the public that the prisoner should be confined.

803 Subsection (5) excludes prisoners who have been referred to the Parole Board under new section 244ZB from early release subject to home detention curfew.

804 Subsections (6) and (7) exclude prisoners who have been recalled from being considered for automatic release under section 255A(2) of the CJA 2003. This means that ‘re-release’ will be considered by the Parole Board under section 255C.

805 Subsection (8) provides that an offender who has been removed from prison as part of the early removal scheme for foreign national offenders remains subject to section 244ZB whilst in the UK.

806 Subsection (9) provides that an offender who has already been removed from the UK for deportation purposes who would have fallen into scope of section 244ZC if they had not been removed is subject to those provisions if they return before the end of the sentence.

807 New subsection (10) establishes the definition of “the requisite custodial period” in the Interpretation provision for Chapter 6 of Part 12 of the CJA 2003.

808 Subsection (11) ensures that the inserted sections 244ZB and 244ZC continue to apply to prisoners who are transferred on a restricted basis to Scotland or Northern Ireland, in keeping with other relevant provisions of the CJA 2003.

809 Subsection (12) adds sections 244ZB and 244ZC to the list of provisions in section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which allows for the tests to be applied by the Parole Board when considering initial release on licence to be altered by secondary legislation.

Clause 110: Power to make provision for reconsideration and setting aside of Parole Board decisions

810 Clause 110 expands the rules the Secretary of State may make under section 239(5) of the CJA 2003, concerning proceedings of the Parole Board, by inserting new subsections (5A) to (5C).

811 New subsection (5A) provides that such rules may make provision requiring or permitting the Parole Board to make provisional decisions which must or may be reconsidered before they become final. The rules may also confer a power on the Parole Board to be able to set aside its decisions and directions if they fall within new subsection (5B). These rules may be concerned with Parole Board cases dealt with under Chapter 6 of Part 12 of the CJA 2003 (which deals with release of fixed-term prisoners) or under Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (release of life and indeterminate prisoners).

812 New subsection (5B) sets out two instances where provision may be made in the rules for the Parole Board to set aside a decision or direction. The first is concerned with both decisions not to release or directions to release where the Parole Board determines that it would not have given or made its decision or direction but for an error of law or fact. The second is only concerned with directions to release where the Parole Board determines it would not have made the direction if either:

- information that was not available to the Board when the direction was given had been so available; or

- a change in circumstances relating to the prisoner that occurred after the direction was given had occurred before it was given.

813 New subsection (5C) provides that the power to set aside a direction to release cannot apply where the prisoner has already been released from prison in accordance with that direction and is in the community on licence. It also provides that the rules may suspend any requirement on the Secretary of State to release a prisoner following a direction from the Board in cases where a decision of the Board is pending on whether to set aside the release direction.

Clause 111: Responsibility for setting licence conditions for fixed-term prisoners

814 Clause 111 amends section 250 of the CJA 2003 which deals with the setting and variation of licence conditions for fixed term prisoners when they are released and subsequently when in the community. The Clause substitutes existing subsections (5A) to (5B) with new subsections (5A) to (5C) to provide that the Secretary of State must not include, vary or cancel certain licence conditions on the licences of certain prisoners released in accordance with certain provisions unless the Board has directed their inclusion, variation or cancellation.

815 The Clause also makes provision to treat any condition of a licence in force before commencement which required a direction of the Board but had not received one as if from commencement such a direction had been given.

Clause 112: Repeal of uncommenced provision for establishment of recall adjudicators

816 Sections 8 to 10 of, and Schedule 3 to, the Criminal Justice and Courts Act 2015 introduced provisions, that have not been commenced, for the creation of a new body of decision makers called 'recall adjudicators'. This was with the intention of removing from the Parole Board the responsibility for reviewing the detention of recalled fixed-term prisoners and instead have those cases reviewed by recall adjudicators appointed by the Secretary of State.

817 Clause 112 repeals those uncommenced provisions.

Clause 113: Release at direction of Parole Board after recall: fixed-term prisoners

818 Clause 113 amends the provisions dealing with the recall and further release of prisoners in Chapter 6 of Part 12 of the CJA 2003.

819 Subsection (2) amends section 255B of the CJA 2003 which deals with recalled prisoners who are subject to automatic release after a fixed period. New subsection (4A) is inserted to specify that when considering whether to direct the re-release of a prisoner early within that fixed period, the Board must not direct release unless satisfied that the public protection test (being the test specified for all other parole release cases) is met.

820 Subsection (3) amends section 255C of the CJA 2003 which deals with recalled prisoners who are not subject to automatic release. New subsection (4A) is inserted to specify that when considering whether to direct re-release following the recall, the Board must not direct release unless satisfied that the public protection test is met.

821 Subsection (4) omits section 256 of the CJA 2003. That section provides the Parole Board may determine a reference of a recalled prisoner by fixing a date for release or making no direction for release. That section is no longer needed as a consequence of the amends made by this Clause to sections 255B, 255C and 256A and the new provision for timing of release made by Clause 115.

822 Subsection (5) amends section 256A of the CJA 2003 dealing with the further review of recalled prisoners. Subsection (1) of that section is substituted for new subsections (1) and (1A)

to provide where release of a prisoner is not directed following their initial recall, the Secretary of State is required to refer their case back to the Parole Board for a decision on release within one year of the Parole Board decision. New subsection (1B) provides that referral is not required if the date on which the Secretary of State is to automatically release the prisoner is less than 13 months from the previous Parole Board decision. Subsections (4) and (5) are substituted to provide that following the referral the Parole Board must not direct release of the prisoner unless satisfied that the public protection test is met and if such a direction is given the Secretary of State must give effect to that direction.

823 Subsection (6) inserts a new section 256AZA into the CJA 2003 dealing with release after recall where an offender recalled to custody is serving two or more terms of imprisonment or detention. In those circumstances the new section provides that nothing in the release after recall provisions (sections 255A to 256A of the CJA 2003) requires the Secretary of State to release the recalled offender in respect of any of his terms of imprisonment or detention unless and until the Secretary of State is required to release the offender in respect of each of the terms. The section also provides that nothing in those provisions requires the Secretary of State to refer the recalled offender's case to the Parole Board in respect of any of the terms unless and until the Secretary of State is required either to refer the offenders case to the Board, or release the offender, in respect of each of the terms. As a consequence, a recalled offender may not have their case referred to the Parole Board in accordance with the release after recall provisions if at the point a referral is otherwise required to be made they are serving another term of imprisonment or detention which does not then require such referral.

824 Subsection (7) removes a transitional provision for prisoners subject to earlier release provisions which becomes redundant on the omission of section 256 of the CJA 2003.

Clause 114: Power to change test for release of fixed-term prisoners following recall

825 Clause 114 inserts a new section 256AZB in Chapter 6 of Part 12 of the CJA 2003. This provides an order-making power subject to the affirmative procedure to change the test to be applied when the Secretary of State decides whether automatic release from a recall is suitable (as prescribed in section 255A) and the tests applied by the Secretary of State and Parole Board for release following recall (as prescribed in sections 255B, 255C and 256A).

Clause 115: Release at direction of Parole Board: timing

826 Clause 115 amends Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 ("the 1997 Act") (which deals with the release of life and indeterminate sentenced prisoners) and Chapter 6 of Part 12 of the CJA 2003 (release and recall of fixed-term prisoners) to make provision for the timing of a prisoner's release following a direction by the Parole Board.

827 Subsection (1)(a) removes the reference to 'immediate' in section 32(5) of the 1997 Act, which otherwise provides on a reference to the Board by the Secretary of State of a recalled life prisoner, the Secretary of State must give effect to any direction for immediate release of that prisoner by the Board.

828 Subsection (1)(b) inserts a new section 32ZB into that Act. The new section provides that where the Parole Board directs the initial release of a life prisoner under section 28 of the 1997 Act, or their release after recall under section 32 of the 1997 Act, the Secretary of State must give effect to the direction as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the licence of the life prisoner. The duty to give effect to the direction is also noted as being subject to any provision to suspend that requirement in rules concerning the setting aside of Parole Board directions.

829 Subsection (2)(a) removes the reference to ‘immediate’ in section 255B(5) and 255C(5) of the CJA 2003, which otherwise provide, similar to the above, that on a reference to the Board by the Secretary of State of a recalled fixed-term prisoner, the Secretary of State must give effect to any direction for immediate release of that prisoner by the Board.

830 Subsection (2)(b) inserts a new section 256AZC into that Act. Similar to the above, the new section provides that where the Parole Board direct the release of any fixed-term prisoner under Chapter 6 of Part 12 of the CJA 2003 (that is, on initial release where relevant or release after recall), the Secretary of State must give effect to the direction as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the licence of the prisoner. As for life prisoners, the duty to give effect to the direction is also noted as being subject to any provision to suspend that requirement in rules concerning the setting aside of Parole Board directions.

Clause 116: Extension of driving disqualification where custodial sentence imposed: England and Wales

831 Clause 116 of this Bill makes amendments to Section 35A of the Road Traffic Offenders Act 1988 (“RTOA 1988”) and to section 166 of the 2020 Act to ensure that where there have been changes to release provisions in England and Wales through recent legislation this is accurately reflected in the appropriate extension period required when a driver disqualification is imposed with a custodial sentence.

832 Subsection (1) amends section 35A(4) of the RTOA 1988. Subsections (1)(a) to (c) and new paragraph (fza) provide for imposition of an appropriate extension period equal to the appropriate custodial term for terrorist offenders serving an extended sentence who are subject to section 247A(2A) of the CJA 2003, for whom no early release is possible.

833 Subsection (1)(d) makes provision for the correct appropriate extension period for special sentences for offenders of particular concern (“SOPC”) by adding reference to the new youth terrorism SOPC (section 252A of the 2020 Act) and changing the period from half to two-thirds of the custodial term.

834 Subsection (1)(e) and new paragraph (fb) makes provision for the correct appropriate extension period for serious terrorism sentences (imposed under section 268A and 282A of the 2020 Act) of the whole custodial term imposed by the Court in those cases.

835 New paragraph (fc) makes provision for the appropriate extension period in the case of a sentence to which new section 244ZA of the CJA 2003 will apply to be two-thirds of the sentence. New paragraph (fd) makes provision for the correct appropriate extension period for terrorist offenders sentenced to an SDS and subject to release under section 247A of the CJA 2003 of two-thirds of the sentence.

836 Subsection (2) makes amendments to section 166 of the 2020 Act which prescribes the relevant appropriate extension periods for offenders convicted after 1 December 2020. Subsection (2)(a) updates the table in subsection (5) to provide for a two-thirds appropriate extension period for all SOPC sentences.

837 New entries 6B and 6C to the table in section 166(5) of the 2020 Act provide for an appropriate extension period of two-thirds of the sentence for terrorist offenders serving a standard determinate sentence, and for serious offenders subject to the new release provisions under section 244ZA of the CJA 2003 (as inserted by this Bill).

838 New subsection 5A of section 166 of the 2020 Act clarifies where section 247A(2A) of the CJA 2003 would apply in respect of extended sentences for terrorist offenders who are not eligible for early release, the appropriate extension period is equal to the whole custodial term imposed.

839 Subsection (2A) ensures that the amendments made by subsection (2)(a)(i) do not apply to a person who is sentenced between the passing of the Bill (when this Clause comes in to force) and the coming in to force of Clause 107 two months later and who will be a person to whom section 244A of the CJA 2003 applies.

840 Subsection (3) provides for prospective consequential amendments to these provisions, should the sentence of detention in a young offender institution be repealed.

841 Clause 116 Subsection (4) repeals paragraph 34 of Schedule 22 to the Coroners and Justice Act 2009, which is a now-defunct order-making power relating to appropriate extension periods for old sentences imposed under the Criminal Justice Act 1991.

Clause 117: Increase in driving disqualification periods under certain existing orders: England and Wales

842 Clause 117 makes provision to amend the appropriate extension period for certain offenders whose appropriate extension period does not align with the release provision of their sentence.

843 Clause 117 applies where a driving disqualification order was imposed before commencement in accordance with the provisions specified in subsection (3). Where an offender is subject to section 244ZA (or SI 2020/158 before commencement of that section) or 247A of the CJA 2003, has been made subject to an incorrect appropriate extension period as part of their disqualification order, and they are yet to be released, new subsection (2) applies to adjust the appropriate extension period to the length it would be had it been imposed after commencement of Clause 116.

844 Subsection (5) ensures that any sentence imposed under a provision that may then be repealed by the 2020 Act that are referenced in subsection (1)(d), (2)(d) and (4) are read as referring to an equivalent sentence imposed under corresponding provision in the 2020 Act.

Clause 118: Extension of driving disqualification where custodial sentence imposed: Scotland

845 Clause 118 of this Bill makes amendments to section 35C of the RTOA 1988 and to section 248D of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to ensure that release provisions in Scotland are accurately reflected in the appropriate extension period required when a driver disqualification is imposed with a custodial sentence. The measures provide for the appropriate extension period to reflect the earliest potential release point of the relevant sentence.

846 Subsections (2)(a) and (d) amend section 35C(4) of the RTOA 1988. Subsection (2)(a) inserts new paragraphs (aa), (ab) and (ac), which provide for the appropriate extension period lengths for those who receive a serious terrorism sentence or an extended sentence. Subsection (2)(d) inserts new paragraphs (ca) and (cb) which provide the appropriate extension period lengths for those serving a terrorism sentence and all other terrorist offenders.

847 Subsections (2)(b) and (c) remove references in section 35C to the Custodial Sentences and Weapons (Scotland) Act 2007 (“the 2007 Act”), which is yet to be commenced.

848 Subsections (3) and (4) make provision in subsections (7) and (8) of section 35C to provide that, if the proportion of sentence to be served under the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) is changed by the Scottish Ministers by amending order, the Secretary of State for Justice may by further order provide that the appropriate extension period may be read as that new proportion.

849 Subsection (5) inserts new definitions and replaces definitions from the uncommenced 2007 Act with existing definitions from the 1993 and 1995 Acts.

850 Subsections (6) to (10) make the same amendments to section 248D of the 1995 Act.

851 Subsection (11) repeals the power to make interim arrangements pending commencement of the 2007 Act which is rendered unnecessary by the changes.

Clause 119: Increase in driving disqualification periods under certain existing orders: Scotland

852 Clause 119 makes provision to amend the appropriate extension period for certain terrorist offenders whose appropriate extension period does not align with the release provision of their sentence.

853 Clause 119 applies where a driving disqualification order was imposed before commencement of this Bill in relation to a sentence of imprisonment to which section 1AB of the 1993 Act applies, where the appropriate extension period for the purposes of the order would have been longer had the sentence been imposed after the commencement of Clause 118 but where the offender has not yet been released in respect of that sentence.

854 In such circumstances, subsection (2) applies to adjust the appropriate extension period to the length it would be had it been imposed after commencement of Clause 118.

Clause 120: Calculation of a period before release or Parole Board referral where multiple sentences being served

855 Clause 120 provides clarification on when automatic release will take place and when referral to the Parole Board is required where a prisoner is serving concurrent or consecutive sentences.

856 Subsection (1) of Clause 120 inserts new section 33A in the Crime (Sentences) Act 1997 (“the 1997 Act”) to deal with release where fixed-term sentences are concurrent with or consecutive to life sentences and makes consequential amendments.

857 New section 33A(2) provides that release cannot take place from the life sentence until the prisoner must also be released from the fixed-term sentence.

858 New section 33A(3) provides that referral to the Parole Board in respect of the life sentence does not take place before the parole referral date or automatic release date (whichever is applicable) of the fixed-term sentence is reached.

859 New subsection 33A(4) provides that, for the purposes of the above provisions, the existence of the life sentence is to be ignored when considering what the release provisions which apply to the fixed-term sentence required. (That is to avoid circularity with new section 267C of the CJA 2003 – see below.)

860 New subsection 33A(5) defines the “fixed-term provisions” as those set out in Chapter 6 of Part 12 of the CJA 2003.

861 Subsections (2)-(8) of Clause 120 amends Chapter 6 of Part 12 of the CJA 2003 to substitute references to subsection (2) of section 264 with references to the new subsections (2B), (2D) and (2E) of that section as inserted by subsection (10) of Clause 120 in relation to requisite custodial periods – as below.

862 Subsection (9) of Clause 120 inserts new subsection (2)(aza) in section 263 of the CJA 2003 – dealing with concurrent terms – to provide that referral to the Parole Board, where there are concurrent fixed-term sentences, does not take place until the latest referral date on each of the sentences, or automatic release date where relevant, is reached.

863 Subsection (10)(a) of Clause 120 replaces subsection (2) of section 264 of the CJA 2003 – dealing with consecutive terms – with new subsections (2A) to (2F).

864 New subsection (2A) applies new subsection (2B) where none of the consecutive sentences are subject to the parole process.

865 New subsection (2B) requires an offender to serve the aggregate of all the relevant consecutive custodial periods before being released on licence.

866 New subsection (2C) applies new subsections (2D) and (2E) where at least one of the consecutive sentences is subject to the parole process.

867 New subsection (2D) provides that referral to the Parole Board does not take place until the aggregate of the minimum custodial period of the non-parole sentence(s) and the minimum custodial period(s) of the sentences that are subject to the parole process have been served.

868 New subsection (2E) provides that release cannot take place until it has been directed by the Board or, the offender has reached the point at which the aggregate of all the minimum custodial periods of the non-parole sentences and maximum custodial periods of the sentences that are subject to the parole process have been served.

869 New subsection (2F) sets out:

- the release provisions of Chapter 6 of Part 12 of the CJA 2003 where the initial release from a term of imprisonment is an automatic release; and
- the release provisions of Chapter 6 of Part 12 of the CJA 2003 where the initial release from a term of imprisonment is subject to a Parole Board referral.

870 Subsection (10)(b) of Clause 120 amends subsections (6) and (6A) of section 264 of the CJA 2003 to create a new definition of ‘minimum custodial period’ in relation to sentences where the initial release is automatic.

871 Subsection (10)(c) of Clause 120 inserts new subsection (6B) in section 264 of the CJA 2003. New subsection (6B) provides the definition of the ‘maximum custodial period’ (in relation to sentences where the initial release is subject to Parole Board referral.

872 Subsection (11) of Clause 119 inserts new section 267C in the CJA 2003 which deals with release where life sentences are concurrent or consecutive to fixed-term sentences.

873 New subsection 267C(2) provides that release cannot take place from the fixed-term sentence unless the prisoner must also be released in accordance with the life sentence release provisions.

874 New subsection 267C(3) ensures that referral to the Parole Board on the fixed-term sentence does not take place before the prisoner must also be referred to the Board or released in accordance with the life sentence release provisions.

875 New subsection 267C(4) ensures, for the purposes of the above provisions, that the presence of the fixed-term sentence is to be ignored when considering what the release provisions which apply to the life sentence require. (That is to avoid circularity with new section 33A of the 1997 Act – see above).

876 New subsection 267C(5) defines the “life sentence provisions” as those set out in Chapter 2 of Part 2 of the 1997 Act.

877 Subsection (12) of Clause 120 repeals subsections 11(1) and 11(4) of the Criminal Justice and Courts Act 2015. Those provisions (which have not been commenced) deal with the referral of a life sentenced prisoner’s case to the Parole Board where they are also serving a fixed-term sentence. They are no longer necessary because the position of such prisoners is now dealt with by new section 33A, as inserted by this Clause.

Clause 121: Application of release provisions to repatriated prisoners

878 Clause 121 amends paragraph 2 of the Schedule to the Repatriation of Prisoners Act 1984 (“the 1984 Act”) (which modifies the operation of domestic release provisions in relation to prisoners repatriated from overseas jurisdictions to serve their sentences in England or Wales). The intention is that repatriated prisoners will be treated in the same manner as equivalent domestic offenders for the provisions relating to release on licence, where the application of those provisions depends on the nature or circumstances of the prisoner’s offence.

879 The Counter-Terrorism and Sentencing Act 2021 (HL Bill 129, Schedule 11) includes provision along similar lines specifically directed at terrorist offenders. This Clause will replace that provision with more general provision.

880 Eligibility for polygraph testing as a condition of a release licence (under section 28 of the Offender Management Act 2007), restricted eligibility for release on licence for terrorist and terrorist-connected offenders (under section 247A of the Criminal Justice Act 2003), and later release points for offenders who commit certain violent or sexual offences as introduced by Clause 106 of this Bill, all depend on the offence committed by the prisoner. In terrorism cases, polygraph testing and restricted eligibility for release may also depend on findings made by the Court when sentencing an offender (under section 69 of the 2020 Act). Polygraph testing also depends, in the case of offences involving domestic abuse, on the offence committed, and in some cases on the circumstances of the individual offence. The Clause will enable these provisions, and any similar provisions that may be enacted in the future, to operate in relation to corresponding cases involving overseas offenders repatriated to England and Wales.

881 The main provisions are found in subsection (1)(b) and (c). Subsection (1)(b) inserts new sub-paragraphs (3ZA) to (3ZF) of paragraph 2 of the Schedule to the 1984 Act. Of those provisions:

- Sub-paragraph (3ZA) provides the Secretary of State with the power to specify offence type, offending circumstances, and court findings in a repatriation warrant. If that is done, the offender is to be treated for the purposes of the release enactments in England and Wales in accordance with what is specified.
- Sub-paragraph (3ZB) provides that an offence may be specified in the warrant only if the offence corresponds to that which the prisoner was convicted of and sentenced for overseas.
- Sub-paragraphs (3ZC) and (3ZD) prevent circumstances of offending and court findings being specified in the warrant unless they correspond to matters which could have been found by a court in England and Wales, had the offender been tried and sentenced there. The Secretary of State will only be able to rely on findings made by the overseas court for that purpose.
- Sub-paragraph (3ZE) provides that the provisions may not be operated so as to produce a retrospective effect beyond that which would be possible in a corresponding domestic case.
- Sub-paragraph (3ZF) enables the Secretary of State to amend a warrant that has already been issued to specify the relevant matters, including warrants where the transfer of the offender has already taken place.

882 Subsection (1)(c) brings section 28 of the Offender Management Act 2007 (inclusion of polygraph testing conditions in licences) within the provisions relating to release on licence to which paragraph 2 of the Schedule to the 1984 Act applies.

883 Subsections (1)(a) and (3) repeal obsolete provisions of, or amending, the 1984 Act, to do with historic sentencing and release regimes.

884 Subsection (2) makes saving provision in relation to the more limited provision (referred to above) made by the Counter-Terrorism and Sentencing Act 2021, which is expected to be in force for a period before its replacement by the provisions inserted by this Clause.

Clause 122: Sentences and offences in respect of which polygraph conditions may be imposed

885 Clause 122 amends section 28 of the Offender Management Act 2007, which provides for certain offenders to have a condition included in their licence on release requiring them to undergo polygraph testing. Currently the section is limited to sex offenders, but proposals are currently before Parliament to extend it to cover domestic abusers (in the Domestic Abuse Act 2021 and terrorism offenders (in the Counter-Terrorism and Sentencing Act 2021).

886 Paragraph (a) restates the types of custodial sentence that make an offender eligible for a polygraph condition, being custodial sentence of life or a term of 12 months or more. The new wording will ensure, in particular, that all custodial sentences passed by a service court or a court in Scotland or Northern Ireland will be caught. While section 28 extends only to England and Wales, service offenders sentenced to imprisonment generally serve their sentences in England and Wales, and offenders convicted in Scotland or Northern Ireland may be transferred to England and Wales to serve their sentences.

887 Paragraph (b) clarifies the definition of relevant sexual offence for offenders convicted in Scotland and Northern Ireland, following the repeal of the relevant Schedules, and extends the definition of relevant sexual offence for those convicted in England & Wales, Scotland and Northern Ireland to include offences listed in Schedule 3 to the Sexual Offences Act 2003 (“the 2003 Act”).

888 Schedule 3 to the 2003 Act contains references to length, type of sentence and age of offender, as well as the offence committed. Paragraph (c) prevents these references from being taken into account in determining whether an offence is a ‘relevant sexual offence’.

889 Armed forces legislation provides for acts that are, or would be, offences under English and Welsh law to be prosecuted as “service offences”. Paragraph (f) provides for such service offences to be treated in the same way as the underlying offence in English and Welsh law for the purposes of section 28. Paragraphs (d) and (e) remove similar provision, to be inserted by the Counter-Terrorism and Sentencing Act 2021, relating specifically to terrorism cases (which will be superseded).

Clause 123: Minor amendments to do with weapons-related offences

890 This Clause moves two offences from Part 3 (Specified Terrorism Offences) of Schedule 15 to the CJA 2003 to Part 1 (Specified Violent Offences) of Schedule 15. This Clause also makes the equivalent change to Schedule 18 to the 2020 Act.

Chapter 2: Community Sentences

Clause 125: Supervision by responsible owner

891 Clause 125 amends section 215 and section 301 of the Code, which obliges offenders who are subject to a community order or suspended sentence order to keep in touch with their Responsible Officer (the probation practitioner managing the order an offender is serving).

892 Subsection (2) (a) inserts a new subsection (1A) into section 215 of the Code. This provides Responsible Officers with the power to require an offender serving a community order to

attend an appointment, for the purposes of ensuring the offender complies with rehabilitative requirements or where public protection concerns exist. It also clarifies that this power only applies to community orders made on or after this Clause comes into force.

893 Subsection (2) (a) inserts a new subsection (1B) which imposes a duty on the offender to comply with any instruction given by a Responsible Officer in accordance with the power in subsection (1A).

894 Subsection (2) (b) amends section 215 (2) to clarify that subsection (1A) is applicable in the case of a community order, whenever it was made.

895 Subsection 2 (c) inserts a new subsection (2A) which clarifies that the additional powers detailed by subsections (1A) and (2) apply until the end date specified on the community order has been reached, even where all associated community requirements have been concluded.

896 Section 2 (d) amends section 215 (3) to specify that an offender who is under an obligation to comply with an instruction given by a Responsible Officer under section 215 is liable to breach proceedings if he does not.

897 Subsection (3) (a) inserts a new subsection (1A) into section 301 of the Code. This provides Responsible Officers with the power to require an offender serving a suspended sentence order to attend an appointment, for the purposes of ensuring the offender complies with rehabilitative requirements or where public protection concerns exist. It also clarifies that this power only applies to suspended sentence orders made on or after the commencement of this Bill.

898 Subsection (3) (a) inserts a new subsection (1B) which imposes a duty on the offender to comply with any instruction given by a Responsible Officer in accordance with the power in subsection (1A).

899 Subsection (3) (b) amends section 301 (2) to clarify that subsection (1A) is applicable in the case of a suspended sentence order, whenever it was made.

900 Subsection (3) (c) inserts a new subsection (2A) which clarifies that the additional powers detailed by subsections (1A) and (2) apply until the end date of the supervision period on the suspended sentence order has been reached, even where all associated community requirements have been concluded.

901 Subsection (3) (d) amends section 301 (3) to specify that an offender who is under an obligation to comply with an instruction given by a Responsible Officer under section 301 is liable to breach proceedings if he does not.

Clause 126: Increases in maximum daily curfew hours and curfew requirement period

902 Clause 126 makes amendments to the Code and the CJA 2003 in respect of the maximum daily curfew hours and the maximum curfew requirement period which can be imposed as part of a curfew requirement under a community order or suspended sentence order.

903 Subsection (1) introduces amendments made to paragraph 9 of Schedule 9 to the Code by subsections (2) to (5). This relates to the curfew requirements for a community order and suspended sentence order.

904 Subsection (2) amends sub-paragraph (4) on the maximum daily curfew hours that can apply in any one day and also provides that the maximum number of curfew hours that may be imposed for a seven-day period. It replaces the “16 hours” maximum with a new measure

known as “the relevant number of hours”, which is defined in new sub-paragraph (4A) (see subsection (3)) and also provides that the maximum number of curfew hours that may be imposed for a seven-day period is 112 hours.

905 Subsection (3) inserts new sub-paragraphs (4A). Sub-paragraph (4A) defines the meaning of “the relevant number of hours”. This provides that the maximum daily curfew which can be imposed as part of a community order or suspended sentence order on someone convicted of an offence before these provisions came into force is 16 hours. For someone convicted of an offence on or after these provisions came into force, the maximum daily curfew is 20 hours (subject to the weekly limit set out in new sub-paragraph (4)(c)).

906 Subsection (4) amends sub-paragraph (5) on the maximum curfew requirement period that can apply. It replaces the “12 months” maximum with a new measure known as “the relevant period”, which is defined in new sub-paragraph (6) (see subsection (5)).

907 Subsection (5) inserts a new sub-paragraph (6) and defines the meaning of “the relevant period”. This provides that the maximum curfew requirement period which can be imposed as part of a community order or suspended sentence order on someone convicted of an offence before these provisions came into force is 12 months, and for someone convicted of an offence on or after these provisions came into force is two years.

908 Subsection (6) amends paragraph 13 of Schedule 23 to the Code. Paragraph 13 gives the Secretary of State the power to amend limits for certain community requirements by regulations, such as the curfew requirements.

909 Subsection (6) updates sub-paragraphs (1)(b) and (2)(a) of paragraph 13 so that the Secretary of State’s power to amend limits on the curfew requirements are updated to account for the changes made to paragraph 9 of Schedule 9 to the Code.

910 Subsection (7) introduces consequential amendments made to the CJA 2003 by subsections (8) and (9), concerning supervision default orders and default orders.

911 Subsection (8) amends Schedule 19A of the CJA 2003 which relates to supervision default orders. Subsection (8) updates the curfew provisions relating to supervision default orders to account for the changes made to paragraph 9 of Schedule 9 of the Code.

912 Subsection (9) amends Schedule 31 of the CJA 2003 which relates to default orders. Subsection (9) updates the curfew provisions relating to default orders to account for the changes made to paragraph 9 of Schedule 9 of the Code.

Clause 127: Power for responsible officer to vary curfew requirements etc

913 Clause 127 amends the Code by inserting a new power for a responsible officer to vary a curfew requirement made under a community order or suspended sentence order. Specifically, it makes amendments to Part 5 of Schedule 9 (community orders and suspended sentence orders: curfew requirements) and consequentially to Part 4 of Schedule 10 (amendment of community order) and Part 3 of Schedule 16 (amendment of suspended sentence order).

914 Subsection (2) inserts a new paragraph 10A to Schedule 9 Part 5, introducing a new power for the responsible officer to vary a curfew requirement.

915 Sub-paragraphs (1)(a) to (c) set out the conditions that must be met for the power to apply: that a relevant order must include a curfew requirement, that it must be in force, and it is in respect of a conviction made on or after these provisions came into force. Sub-paragraph 1(d) provides that the power can only be exercised where the responsible officer considers that the variation condition under sub-paragraph (2) is met.

- 916 Sub-paragraph (2) provides that the variation condition is satisfied if there has been a change in the offender's circumstances since the relevant order was made which the responsible officer considers affects the offender's ability to reasonably comply with the order, and it is appropriate to amend the curfew arrangements. The power for the responsible officer is limited at sub-paragraph (2)(a) to varying the start time of any of the curfew periods and at sub-paragraph (2)(b) to varying the place of the curfew in relation to any of those periods.
- 917 Sub-paragraph (3) provides a discretionary power for the responsible officer to make changes to the curfew, with the changes specified in a "variation notice". This must be with the consent of the offender. Under sub-paragraph (3)(a) and (3)(b) the variation notice must specify as applicable: a new start time for the curfew periods, and a new relevant place for the curfew periods.
- 918 Sub-paragraph (4) provides that the effect of a variation notice is to change the relevant order, with effect from the date specified on the notice.
- 919 Sub-paragraph (5) provides that a variation notice may specify different variations of the start time, or of the relevant place, for different days.
- 920 Sub-paragraph (6) requires the responsible officer to obtain and consider information about each place proposed to be specified in the notice, before giving a variation notice, which under sub-paragraph (7) must include information from those likely to be affected by the offender's enforced presence.
- 921 Sub-paragraph (8) provides limitations to the power to vary the curfew. Sub-paragraph (8)(a) prohibits a variation to the length of any of the offender's curfew periods. Sub-paragraph (8)(b) provides that where the relevant order includes a residence requirement (under Part 7, paragraph 13) the place for the curfew periods may not be varied in a way that is inconsistent with that requirement. Sub-paragraph (8)(c) prohibits variation in the circumstances set out in sub-paragraph (9).
- 922 Sub-paragraph (9) prohibits a variation to the curfew if the original order includes an electronic compliance monitoring requirement, and variation by the responsible officer if the responsible officer considers that the court would not impose a monitoring requirement or would have imposed a different monitoring requirement.
- 923 Sub-paragraph (10) requires the responsible officer to give the appropriate court details of the variation (namely, under sub-paragraphs (10)(a) and (10)(b) a copy of a variation notice and evidence of the offender's consent to the notice) so that the court record can be updated.
- 924 Sub-paragraph (11) defines what is meant by "appropriate court", "curfew periods", "relevant place", and "start time" in paragraph (10A).
- 925 Subsection (3) inserts a new sub-paragraph (3) into paragraph 16 of Schedule 10 to the Code which relates to amendment of the court order due to changes of residence outside of the local justice area. Sub-paragraph (3) provides that, where a responsible officer has varied the relevant place for the curfew, under sub-paragraph 10A, they must notify the appropriate court, and the court must update the community order.
- 926 Subsection (4) inserts a new paragraph 17A to Schedule 10 to the Code relating to the amendment of a community order because of the variation of a curfew requirement by the responsible officer.
- 927 Sub-paragraph 17A(1) requires the responsible officer to give the court a copy of the community order curfew variation notice and evidence of the offender's consent to the variation notice. Sub-paragraph 17A(2) provides that the court must amend the community order to reflect the changes set out in the variation notice.

- 928 Subsection (5) amends paragraph 23 of Schedule 16 to the Code by inserting a new sub-paragraph (3). It requires the responsible officer to notify the appropriate court where a relevant order has been varied under sub-paragraph 17A, and the court to update the suspended sentence order.
- 929 Subsection (6) inserts a new paragraph 24A to Schedule 16 to the Code relating to the amendment of a suspended sentence order because of the variation of a curfew requirement by the responsible officer.

Clause 128: Removal of attendance centre requirements for adults

- 930 Clause 128 has the effect of removing the attendance centre requirement from the list of requirements that a court can impose on an offer as part of a community order or suspended sentence order. It does so by amending sections 207, 291 and Schedule 9 of the Code. The Clause also introduces Schedule 12 to the Bill, which makes consequential amendments to the Code and to other relevant Acts.
- 931 Subsection (2) inserts an amendment into section 207 (3) of the Code, and specifies that an attendance centre requirement is only available as a requirement of a community order if the offender was convicted of an offence before this Clause comes into force, and if the offender was under 25 years old when convicted of the offence.
- 932 Subsection (3) inserts an amendment to section 291 (3) of the Code, and specifies that an attendance centre requirement is only available as a requirement of a suspended sentence order if the offender was convicted of an offence before this Clause comes into force, and if the offender was under 25 years old when convicted of the offence.
- 933 Subsection (4) amends Schedule 9 to the Code, in relation to community orders and suspended sentence order requirements. It amends the heading to Part 13 (the section of the Code covering attendance centre requirements) to make clear they are not available to courts as a requirement if an offender has been convicted after this Clause comes into force.
- 934 Subsection (5) introduces Schedule 12 to the Bill which outlines related amendments to the Code and other relevant Acts.

Schedule 12: Removal of attendance centre requirements for adults: related amendments

- 935 Schedule 12 makes consequential amendments to section 60 of the Powers of Criminal Courts (Sentencing) Act 2000, sections 221, 300 of the CJA 2003 and Schedule 11 and 17 of the Code.
- 936 Paragraph 1 of Schedule 12 introduces amendments to section 60 to the Powers of Criminal Courts (Sentencing) Act 2000.
- 937 Paragraph 2 subparagraphs (2) and (3) amend section 60 of the 2000 Act and specify that attendance centre orders are only available for offenders under 18 years old.
- 938 Subparagraph (4) confirms that subsections (1) to (3) will not apply if other amendments to section 60 are commenced before this Clause comes into force.
- 939 Paragraph 4 of Schedule 12 introduces amendments to sections 221 and 300 of the CJA 2003.
- 940 Paragraphs 5 make amendments to section 221 of the CJA 2003. Subparagraph (2) omits “aged under 25”, and subparagraph (3) inserts a new subsection (4) to define what is meant by “relevant order”.
- 941 Paragraph 6 amends section 300(2) of the CJA 2003 (power to impose attendance centre requirements on fine defaulter). Subparagraph (1)(a) and (b) amends section 300(2)(c) if the

relevant amendment is in force when this Clause comes into force, in which case all reference to attendance centre requirements can be removed. Subparagraph (2) defines what is meant by “relevant amendment” in sub-paragraph (1).

942 Paragraph 7 amends paragraph 102 of Schedule 32 to the CJA 2003 to ensure that an attendance centre requirement can only apply to those under 18 if the provisions in subparagraph (2)(b) of paragraph 102 of Schedule 32 and section 61(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 are uncommenced when this Bill comes into force.

943 Paragraph 9, subparagraph (1) introduces the amendments to Schedule 11 to the Code, which makes provision for the transfer of community orders to Scotland or Northern Ireland in subsections (6) and (7).

944 Subparagraph (2) amends paragraph 12 (2) sub-paragraphs (g) and (h) in relation to the availability of attendance centre requirements.

945 Subparagraph (3) amends Schedule 11 to the Code, paragraph 25 (3) sub-paragraph (b) in relation to the availability of attendance centre requirements.

946 Paragraph 10, subparagraph (1) introduces the amendments to Schedule 17 to the Code, which makes provision for the transfer of suspended sentence orders to Scotland or Northern Ireland in subsection (2) and (3).

947 Subparagraph (2) amends paragraph 9 (2) sub-paragraphs (g) and (h) in relation to the availability of attendance centre requirements.

948 Subparagraph (3) amends paragraph 32 sub-paragraph (2) and sub-paragraph (5) in relation to the availability of attendance centre requirements.

Clause 129 and Schedule 13: Special procedures relating to review and breach

949 Clause 129 introduces Schedule 13 which makes provision for courts to have powers to review community and suspended sentence orders and to commit an offender to custody for breach of a community or suspended sentence order. This Clause and schedule form the legislative basis of the problem-solving court approach.

950 Paragraph 1 of Schedule 13 introduces the amendments to the Code.

951 Paragraph 2 of Schedule 13 inserts a new section 395A into the Code. Section 395A(1) provides a power for the Secretary of State to make regulations specifying that community orders or suspended sentence orders of a specified description and made within a specified period or after a specified time, may qualify for special procedures for the purpose of one of the provisions set out in subsection (2). That is, the amendments made by one or more of the provisions specified in subsection (2) may apply. Subsection (3) provides that the description specified in regulations may be framed by reference to the courts by which the orders are made, the persons who are subject to the orders, and/or the offences to which the orders relate. Subsection (4) provides that where a description of a community or suspended sentence order is specified in regulations for the first time, those regulations must specify a period of 18 months beginning with the day on which the regulations come into force. This is the pilot period.

952 Paragraphs 3 to 5 of Schedule 13 relate to the review of community orders subject to special procedures, i.e. orders to which the amendments made by these provisions apply by virtue of inserted section 395A.

953 Paragraph 3 of Schedule 13 amends Section 211 of the Code by disapplying the Crown Court’s power to direct an offender to be supervised by a magistrates’ court where the community order qualifies for special procedures.

- 954 Paragraph 4 amends section 217(2) of the Code by inserting subsection (2A) which provides that regulations made under section 217 may not make provision in respect of community orders which qualify for special procedures.
- 955 Paragraph 5 inserts new sections 217A, 217B and 217C into the Code.
- 956 Section 217A(1) confers a discretion on courts to provide that a community order that imposes one or more community requirements, and qualifies for special procedures, may be subject to periodic review. Subsection (2) specifies what must be included in a community order with a review requirement. Subsection (3) specifies that the 'responsible court' is the court by which the order was made. Subsection (4) provides that more information about community orders that qualify for special procedures may be found at section 395A.
- 957 Section 217B makes provision for what is to happen at a review hearing. Subsection (1) states that the section applies to review hearings for community orders. Subsection (2) to (3) provide for what the court may and may not do upon review of a community order. Subsection (2) provides that after considering the progress report the court may amend the community order requirements or any provision of the order relating to those requirements. Subsection (3) prohibits the court from making certain amendments of the community order requirements unless the offender expresses willingness to comply with the amended requirement. Subsection (4) makes further provision for the purposes of subsection 3(a) and has the effect of allowing the court to add an electronic monitoring requirement to an existing requirement (if the offender is willing to comply). Subsection (5) empowers the court to adjourn the review hearing where it considers that an offender has breached a community requirement of an order without reasonable excuse, and to deal with the case forthwith under paragraph 10 or 11 of Schedule 10 to the Code (which set out the powers of the magistrates' court and Crown Court in breach proceedings). Subsection (6) provides that where a court does not deal with the case forthwith, paragraph 9A of Schedule 10 should be referred to. Subsection (7) is an interpretation provision.
- 958 Section 217C makes provision to allow the court to alter the review arrangements. Subsection (1) states that where the court reviews the progress report and forms the opinion that the offender's progress in complying with the order is satisfactory, subsections (2) and (3) will apply. Subsection (2) provides that where the court forms the opinion that the offender is making satisfactory progress before a review hearing is held, it can dispense with a review hearing. It may also amend the community order to provide that subsequent reviews can be held on the papers, and without a review hearing.
- 959 Subsection (3) provides that where a review hearing is held, the court may amend the community order to provide that subsequent reviews are to be held on the papers. Subsection (4) applies where the court is holding a review on the papers (without a review hearing) and forms the opinion that the offender's progress is no longer satisfactory. In that case, the court may require the offender to attend a hearing of the court at a specified time and place in the future. Subsection (5) states that at a review hearing the court may amend the community order so as to vary the intervals at which review hearings must take place. Subsection (6) specifies whom these powers are exercisable by. Subsection (7) is an interpretation provision.
- 960 Paragraphs 6 to 10 of Schedule 13 relate to the review of suspended sentence orders subject to special procedures, i.e. orders to which the amendments made by these provisions apply by virtue of inserted section 395A.
- 961 Paragraph 6 of Schedule 13 amends section 293 of the Code to provide that nothing in that section applies to orders which qualify for special procedures.
- 962 Paragraph 7 inserts section 293A to the Code which provides for the review of suspended sentence orders which qualify for special procedures.

- 963 Section 293A confers a discretion on courts to provide that a suspended sentence order that imposes one or more community requirements, and qualifies for special procedures may be subject to periodic review. Subsection (2) specifies what must be included in a suspended sentence order with a review requirement. Subsection (3) specifies that the ‘responsible court’ is the court by which the order was made. Subsection (4) provides that more information about suspended sentence orders that qualify for special procedures may be found at section 395A.
- 964 Paragraph 8 of Schedule 13 amends section 294 of the Code. Subparagraph (2) ensures that the section applies to reviews of suspended sentence orders subject to special procedures. Subparagraph (3) amends subsection 294(5) to enable the court to immediately initiate breach proceedings under paragraph 13 of Schedule 16 where it is of the opinion that the offender has breached a community requirement of a suspended sentence order subject to special procedures without reasonable excuse. Subparagraph (4) inserts new subsection 5A which provides that where a court does not deal with the case forthwith, paragraph 9A of Schedule 16 should be referred to.
- 965 Paragraph 9 of Schedule 13 amends section 295 of the Code to apply that provision to reviews of suspended sentence orders qualifying for special procedures.
- 966 Paragraph 10 of Schedule 13 amends section 297 of the Code by disapplying the Crown Court’s power to direct an offender to be supervised by a magistrates’ court where the suspended sentence order qualifies for special procedures.
- 967 Paragraph 11 of Schedule 13 amends Schedule 9 of the Code by disapplying the provisions relating to review of orders imposing drug rehabilitation requirements from community orders and suspended sentence orders qualifying for special procedures.
- 968 Paragraph 12 of Schedule 13 amends Schedule 10 of the Code to provide the court with a power to commit an offender to custody for breach of a community order which qualifies for special procedures.
- 969 Sub-paragraphs 12(2) and (3) of Schedule 13 ensures that the offender will be brought before the court which made the order. Sub-paragraph 12(4) inserts subsection 9A which to ensure that a court may initiate breach proceedings even where it does not do so forthwith under section 217B(5) and makes provision for the court to issue a summons or warrant to require the appearance of an offender.
- 970 Sub-paragraph 12(5) amends paragraph 10 of Schedule 10 to the Code which deals with the powers of the magistrates’ court following a breach of a community requirement of an order. This sub-paragraph amends the provision such that it applies where the court is of the opinion that the offender has breached a community order to which special procedures apply. It also inserts new sub-paragraph (ba) which creates an additional power for magistrates’ courts dealing with a community order which qualifies for special procedures, being the power to commit the offender to prison for a period not exceeding 28 days.
- 971 Sub-paragraph 12(6) makes amendments similar to those made by sub-paragraph 12(5) in relation to the powers of the Crown Court.
- 972 Sub-paragraph 12(7) inserts new paragraph 13A into Schedule 10 of the Code. Paragraph 13A provides that a committal to prison under inserted paragraphs 10(5)(ba) or 11(2)(ba) of Schedule 10 may be a committal to a young offender institution in the case of a person under the age of 21. Committal to a young offender institution is to be regarded as legal custody for these purposes. Sub-paragraph 13A(3) provides that no more than three orders for committal to prison under inserted paragraphs 10(5)(ba) and 11(2)(ba) may be made in relation to the same community order.

- 973 Sub-paragraph 12(8) amends paragraph 14 of Schedule 10 of the Code to clarify that if a community order qualifies for special procedures then the ‘appropriate magistrates court’ for the purpose of that paragraph is the court that made the order.
- 974 Paragraph 13 of Schedule 13 makes amendments to Schedule 16 of the Code to provide the court with a power to commit an offender to custody for breach of a suspended sentence order which qualifies for special procedures.
- 975 Sub-paragraph 13(3) inserts paragraph 9A to Schedule 16 which mirrors for suspended sentence orders qualifying for special procedures the insertion of paragraph 9A to Schedule 10.
- 976 Sub-paragraph 13(6) of Schedule 13 amends paragraph 13 of Schedule 16 to the Code which provides powers for the court to deal with the offender for breach of requirements or subsequent convictions. It inserts new paragraph 13(1)(d)(da) which creates an additional power for courts dealing with a suspended sentence order which qualifies for special procedures, being the power to commit the offender to prison for a period not exceeding 28 days where there has been a breach of a community requirement of the order. This power is only available to the court where the offender is aged 18 or over.
- 977 Sub-paragraph 13(7) amends paragraph 14 of Schedule 16 which provides a duty to activation a suspended sentence order following a breach, where it would not be unjust to do so. It inserts a new paragraph 14(2)(c) to require that where a suspended sentence order qualifies for special procedures, and a community requirement of the order has been breached, the court must consider the possibility of making a committal to custody under paragraph 13(1)(da) when considering whether activating the suspended sentence would be unjust.
- 978 Sub-paragraph 13(8) of Schedule 13 inserts a new paragraph 16A into Schedule 16 of the Code.
- 979 Paragraph 16A makes provision such that a committal to prison under paragraph 13(1)(da) of Schedule 16 to the Code may be a committal to a young offender institution in the case of a person under the age of 21. Committal to a young offender institution is to be regarded as legal custody for these purposes. Inserted paragraph 16A(3) provides that no more than three orders for committal to prison under paragraph 13(1)(da) may be made in relation to the same suspended sentence order.
- 980 Part 2 of Schedule 13 introduces prospective amendments to the Code. Paragraph 14(2) would amend paragraph 21 of Schedule 22 of the Code. This ensures that powers to imprison an offender for willful and persistent breaches of an order, if they were to come into force in the future, would not apply to orders which are subject to special procedures for the purposes of these provisions. Paragraphs 14(3) and 14(4) insert new paragraphs 75A and 78A respectively. These omit references in these provisions to detention in a young offender institution should sentences of detention in a young offender institution be abolished in the future.

Clause 130 and Schedule 14: Drug testing requirement

- 981 Clause 130 and Schedule 14 amend the Code to enable notified courts to impose drug tests as part of community and suspended sentence orders.
- 982 Schedule 14 paragraphs 2 and 4 insert drug testing requirements into s201 (community orders) and into s287 (suspended sentence orders) of the Code.
- 983 Schedule 14 paragraph 3 inserts subsection (3A) into section 207 of the Code and prohibits the drug testing requirement from being applied to a community order of an offender who was convicted of the offence before the date on which Clause 130 comes into force.

- 984 Schedule 14 paragraph 5 inserts subsection (3A) into section 291 of the Code and prohibits the drug testing requirement from being applied to a suspended sentence order of an offender who was convicted of the offence before the date on which Clause 130 comes into force.
- 985 Schedule 14 paragraph 6 inserts the details of the Drug Testing Requirement into (Part 10A) of Schedule 9 of the Code at paragraphs 22A and 22B.
- 986 Paragraph 22A(1) defines a drug testing requirement as a requirement for the offender to provide samples as directed by the responsible officer, during a timeframe specified in the order, to determine if they have any drug or psychoactive substance in their body.
- 987 Paragraph 22A(2) requires that the order itself must specify that if the offender provides samples to a person other than a responsible officer, the results of the tests carried out on the samples are to be communicated to the responsible officer and provides that the order may make provision about the specific provision of samples by virtue of sub-paragraph (1).
- 988 Paragraph 22A(3) sets out the powers of the responsible officer to give directions about the provision of samples which include: specifying the types of samples the offender must give, at which time and in which circumstances.. This paragraph also makes the responsible officer's powers under paragraph 22A(1) subject to provisions of the order and guidance issued by the Secretary of State.
- 989 Paragraph 22A(4) provides for the Secretary of State to revise any guidance issued.
- 990 Paragraph 22A(5) provides that the definitions of "drug" and "psychoactive substance" have the same meanings given in section 2 of the Misuse of Drugs Act 1971 and section 2(1) of the Psychoactive Substances Act 2016 respectively.
- 991 Paragraph 22B restricts the courts ability to impose the drug testing requirement unless two conditions are met; the misuse condition and the availability of arrangements condition.
- 992 Paragraph 22B(2) requires that in order for the misuse condition to be satisfied, the misuse of a controlled drug or psychoactive substance must have caused or contributed to the offence to which the relevant order relates or it is likely to contribute towards further offending behaviour.
- 993 Paragraph 22B(3) requires that, in order for the availability of arrangements condition to be met, the Secretary of State must have notified the court that arrangements for implementing drug testing requirements are available in the offender's home local justice area.

Clause 131: Duty to consult on unpaid work requirements

- 994 Clause 131 of this Bill inserts a new Section 10A of the Offender Management Act 2007 which creates a duty on the organisation responsible for the management and delivery of unpaid work requirements to consult with key stakeholders on the delivery of unpaid work.
- 995 Section 10A, subsection (1) requires a probation provider to consult, the frequency of the consultation (annually), and who must be consulted (prescribed persons) by a probation provider in relation to unpaid work.
- 996 Subsection (2) defines "prescribed person" as a person or persons prescribed by the Secretary of State by regulations (such regulations shall be subject to negative resolution procedure).
- 997 Subsection (3) defines "unpaid work requirements".
- 998 Subsection (4) defines "a person is supervised by a provider of probation services" in subsection (1) sub-paragraph (b). It has the effect that a person is supervised by a provider of probation services under subsection (1) sub-paragraph (b) if an officer of that provider has functions relating to the person's compliance with an unpaid work requirement.

Part 8: Youth justice

Clause 132: Youth remand

- 999 Clause 132 of this Bill amends the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which provide the legislative framework governing bail hearings and the tests courts must satisfy to remand a child or young person (i.e. aged under 18) to Youth Detention accommodation. The relevant sections are ss. 91, 98, 99, 102 and equivalent provisions for extradition proceedings under sections 100 and 101.
- 1000 Subsection (2) introduces in section 91a statutory duty for the court to consider the welfare and best interests of the child when applying the sets of conditions that must be met in order to remand a child to custody. This reflects the welfare principle set out in section 44 of the Children and Young Persons Act 1933 and promotes a ‘child first’ approach to decision-making.
- 1001 Subsection (3) amends section 98, the ‘first set of conditions’ so that when assessing whether the likelihood that the alleged offence would result in a custodial sentence, the court must be of the opinion that the prospect of custody is ‘very likely’. This will ensure that the mere possibility of a custodial sentence is not enough to warrant secure remand.
- 1002 Subsection (3) also adds the sentencing condition to the first set of conditions under section 98, where it only applies to section 99 under current provisions.
- 1003 Subsections (3)(c) and 4(d) amend the “necessity condition” which must be satisfied under both section 98 and 99. The necessity condition is intended to ensure that, where the other conditions are satisfied, a child can only be remanded to custody in order to protect the public from death or serious harm or prevent the commission of an imprisonable offence. These Clauses introduce an additional consideration, which is that for the necessity condition to be satisfied, the court must be of the opinion that no alternative is available to manage the risk posed by the child safely in the community.
- 1004 Subsection (4) amends the “history condition” so that only a recent and significant history of breaching bail, or offending while on bail, should justify custodial remand.
- 1005 The Clause makes the corresponding amendments to sections 100 and 101 which provide the first and second set of conditions for extradition proceedings.
- 1006 Subsection (7) amends section 102 (remands to youth detention accommodation) to introduce a duty for the court to provide the reasons for the decision to remand the child to Youth Detention Accommodation and to require the court to state that they have considered the welfare of the child and remand to Local Authority accommodation in making their decision.

Clause 133: Discretion as to length of term

- 1007 Subsection (1) of Clause 133 amends section 236 of the Code to remove the fixed lengths of the DTO and prescribe that any length of DTO can be given which is at least 4 months and no longer than 24 months.

Clause 134: Consecutive detention and training and sentence of detention: effect of early release decision

- 1008 This Clause amends the Code and the CJA 2003. It makes amendments to fix an existing discrepancy in relation to early release which meant that different lengths of early release were available for offenders sentenced to a DTO and another sentence consecutively, depending on the order in which they received those sentences. The amendments make it so that where an offender is serving a DTO and another sentence consecutively, the offender is

able to benefit from the same amount of early release regardless of the order in which the sentences are given.

Clause 135 and Schedule 15: Detention and training orders: time to count as served

- 1009 This Clause introduces Schedule 15 which makes amendments to ensure that time on remand or bail (subject to a qualifying curfew condition and an electronic monitoring condition) is counted as time served.
- 1010 Schedule 15 amends sections 240ZA and 240A of the CJA 2003 so that time spent on remand or qualifying bail is counted as time served and credited against the custodial part of the DTO.
- 1011 It amends section 240ZA so that where an offender is given two or more sentences (one of which being a DTO), those sentences are to be treated as a single term for the purposes of crediting days spent in custody or on qualifying bail.
- 1012 It amends the Code to remove the distinct approach for DTOs in sections 239 and 240 where time on remand and bail was taken into account when determining the term of the DTO.
- 1013 Schedule 15 also amends the Armed Forces Act 2006 to preserve the current provisions for the consideration of remand so where a DTO is made under the Armed Forces Act 2006, time spent on remand continues to be taken into account when setting the term of the DTO.

Clause 136: Youth rehabilitation orders

- 1014 Clause 136 makes amendments to youth rehabilitation order ("YRO") provisions set out in the Criminal Justice and Immigration Act 2008 ("the 2008 Act") and the Code. These amendments are set out in Schedule 16.
- 1015 The Clause allows certain provisions, those making changes to electronic monitoring requirements and YROs with intensive supervision and surveillance ("ISS") to be brought into force for specific purposes i.e. for the purposes of a pilot. The Clause also gives the Secretary of State a power to make amendments by an affirmative statutory instrument to any piloted provisions before bringing them fully into force.

Schedule 16: Youth rehabilitation orders

- 1016 Schedule 16 makes multiple amendments to the Code to replace the term "electronic monitoring requirement" in the Code with "electronic compliance monitoring requirement." This is to distinguish electronic monitoring for the purposes of compliance from the electronic whereabouts monitoring requirement and to mirror the language used for electronic monitoring for adult community sentences.
- 1017 Part 1 of the Schedule introduces general requirements that an offender who is given an electronic monitoring requirement must comply with, including allowing the apparatus to be fitted and monitored, not interfering with its operation and keeping it in working order. The new section 43A will apply to any electronic monitoring requirements imposed after the section comes into force and the new section 43A will be further amended (paragraph 12(9) and (10)) when piloted provisions come into force to reflect the change of language of electronic monitoring requirements to electronic compliance monitoring requirements.
- 1018 Part 2 of the Schedule makes amendments to the YRO provisions in the Code and in the 2008 Act.
- 1019 Paragraph 2 amends section 39 (youth default orders), replacing the term "electronic monitoring requirement" with "electronic compliance monitoring requirement" to ensure that the cross-reference to paragraphs of Schedules to the Code reflect the change in language which distinguishes electronic monitoring for the purposes of compliance from the new electronic whereabouts monitoring requirement.

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Bill as brought from the House of Commons on 6 July 2021 (HL Bill 40)

- 1020 Paragraph 9 confirms that the code of practice issued by the Secretary of State will apply to data gathered from electronic compliance and whereabouts monitoring requirements imposed as part of YROs.
- 1021 This Schedule makes a number of amendments that introduce the new electronic whereabouts monitoring requirement for the YRO. Paragraph 12(13) defines this as a requirement to submit to electronic monitoring of the offender's whereabouts and specifies how the requirement will function.
- 1022 Part 3 of the Schedule amends provisions relating to YROs with ISS in the Code, adding a mandatory electronic whereabouts monitoring requirement to the YRO with ISS and changing the maximum length of the extended activity requirement from 180 to 365 days.
- 1023 Paragraph 19 amends the YRO curfew requirement to change the maximum daily curfew hours from 16 to 20 and introduce a new weekly maximum of 112 hours.
- 1024 Paragraph 21 amends the YRO education requirement to specify that it can be imposed on offenders beyond compulsory school age, provided they are still of the age where they must participate in compulsory education or training as set out in Part 1 the Education and Skills Act 2008. Part 1 of the Education and Skills Act 2008 only applies to offenders who are resident in England when sentenced to the YRO. The amendment to the section makes clear that for offenders who are resident in Wales, the education requirement can still only be imposed on offenders who are still of compulsory school age.
- 1025 Part 5 of the Schedule amends the 2008 Act and the Code so that the electronic monitoring provider can no longer be the responsible officer for a YRO with electronic monitoring requirements and the responsible officer in these cases must be a member of a youth offending team or probation officer.

Clause 137: Abolition of reparation orders

- 1026 This Clause amends section 110(1) of the Code (availability of reparation order) to remove reparation orders as a sentencing option from the date this Clause comes into force.

Part 9: Secure Children's Homes and Secure 16 to 19 Academies

Clause 138: Temporary Release from secure children's homes

- 1027 Clause 138 of this Bill introduces a statutory power for the temporary release of persons detained in secure children's homes following sentences of detention, detention and training orders and detention orders following breach of certain civil orders.
- 1028 Subsection (1) describes those to whom the temporary release power will apply. Subsection (2) provides that the Secretary of State or the registered manager of the home may temporarily release a person to whom the Clause applies.
- 1029 Subsection (3) provides that temporary release under this Clause may be granted under conditions.
- 1030 Subsection (4) provides that the Secretary of State and registered managers will have concurrent powers to recall persons temporarily released under this Clause.
- 1031 Subsection (5) provides that the registered managers of secure children's homes must have regard to any guidance issued by the Secretary of State about the use of powers of temporary release under this Clause. Subsection (6) provides various definitions in respect of the application of this Clause, including "detention and training order," "further detention order," "secure children's home" and "registered manager."

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Bill as brought from the House of Commons on 6 July 2021 (HL Bill 40)

- 1032 Subsection (7) inserts a new subsection 49(5) into the Prison Act 1952 providing that a person shall be deemed to be unlawfully at large if the period for which he is temporarily released has expired or if he has been recalled under this Clause.

Clause 139: Secure 16 to 19 Academies

- 1033 Clause 139(1) amends section 1B of the Academies Act 2010 (16 to 19 Academies), to clarify that 16 to 19 academies can provide secure accommodation for the purpose of restricting liberty but only if approved to do so by the Secretary of State. A 16 to 19 Academy which provides secure accommodation is to be known as a “secure 16 to 19 academy.”
- 1034 Clause 139(2) amends section 12 of the Academies Act 2010 (charitable and trust corporation status of Academy Proprietors, etc.) to make express provision that the setting up, establishment and running of a secure 16 to 19 Academy is to be treated as a charitable purpose, within the meaning of section 2 of the Charities Act 2011 (the 2011 Act), falling within the advancement of education description of purposes. The effect is that preparatory steps, and the establishment and running of a secure 16 to 19 academy will be charitable for the purposes of the Academies Act, so that they fall within the definition of QAPs, and for the purposes of any other enactment.
- 1035 New section 12(6) clarifies that this charitable purpose is to be disregarded in determining whether other purposes may be charitable by virtue of being regarded as analogous in accordance with section 3(1)(m) of the 2011 Act.
- 1036 Clause 139(3) inserts secure 16 to 19 academies into the definition of youth detention accommodation in section 248 of the Code so that a person detained following a detention and training order made by a court may be placed within a secure 16 to 19 academy. Subsection (4) makes amendments to the Children’s Homes (England) Regulations 2015 so as to apply the provisions of those Regulations to secure 16 to 19 academies.

Part 10: Management of offenders

Chapter 1: Serious Violence Reduction Orders

Clause 140: Serious violence reduction orders

- 1037 This Clause introduces a new civil order in the Sentencing Code, the Serious Violence Reduction Order (“SVRO”). Subsection (1) inserts a new Chapter 1A, comprising of sections 342A to 342K, into Part 11 of the Sentencing Code.
- 1038 New section 342A provides the power to make a SVRO. Subsection (1) provides that SVROs can be made on application from the prosecution in relation to a person aged 18 or over, and convicted of an offence (as described in section 342A(3) and (4)) after the provisions in relation to SVROs come into force (that is, the first appointed day as defined in subsection (10)).
- 1039 New section 342A(2) sets out the conditions in either subsection (3) or (4) and the condition in subsection (5) must be met in order for the court to be able to make an SVRO.
- 1040 New section 342A(3) provide that an SVRO can be made if the court is satisfied on the balance of probabilities that a bladed article or offensive weapon was used by the offender in the commission of the offence, or that the offender had a bladed article or offensive weapon with them when the offence was committed. New section 342A(4) provides that an SVRO can be made if the offender convicted of the offence did not use the weapon or have the weapon with them, but another person used a bladed article or offensive weapon, or had a bladed article or offensive weapon with them when the offence was committed, and the offender knew, or ought to have known, that would be the case. By virtue of new section 342A(11) references to

an offence in subsection (4) include any offence arising out of the same facts as the offence which the offender was convicted of.

- 1041 These provisions set out that those convicted of any offence involving a bladed article or offensive weapons can be considered for SVROs, including, for example, a conviction for unlawful possession such weapons or for using someone to mind a weapon. They also provide that if an offence involving a bladed article or an offensive weapon is committed by more than one person (or one set of facts gives rise to a number of individuals being convicted of different offences relating to that set of facts), every offender involved in the offence or offences, who knew, or ought to have known of the weapon can be considered for an SVRO, even if only one of them used the bladed article or offensive weapon, or had it with them during the commission of the offence.
- 1042 New section 342A(5) provides that in order to make an SVRO, the court must be satisfied that the order is necessary: (i) to protect the public from harm involving a bladed article or an offensive weapon; (ii) to protect any particular member of the public (including the offender) from such harm; or (iii) to prevent the offender from committing an offence involving a bladed article or offensive weapon. As a result, an SVRO can be made not only to protect the community from the risk posed by the offender but also to protect the offender themselves from the risk of harm involving a bladed article or offensive weapon by helping to deter them from committing knife or offensive weapons related offences.
- 1043 New section 342A (6) provides that the court may make a SVRO only if the court is also dealing with the offender for the offence that may result in an SVRO made. New section 342A(6)(b) provides that SVROs cannot be made if the court gives an absolute discharge to the offender.
- 1044 New subsection 342A (7) provides that the court may hear evidence from both the offender and the prosecution when considering whether to make an SVRO. New section 342A(8) provides that court may consider evidence (in relation to whether to make an SVRO) that would not have been admissible in the proceedings in which the offender was convicted.
- 1045 New section 342A(9) provides that the court must explain in plain language to the offender the powers that a constable has in respect of the offender while the order is in effect, and the effects of the order, that is, any requirements imposed by the order, the consequences of breaching an SVRO and what constitutes a breach.
- 1046 New section 342B provides for the requirements and prohibitions imposed by an SVRO.
- 1047 New section 342B(1) defines serious violence reduction order for the purposes of new Chapter 1A of Part 11 of the Code. Serious violence reduction order means an order made in respect of an offender that imposes on the offender the requirements set out in section 342B(2) and (4) (in relation to notification of information) and any other requirement or prohibitions specified in regulations made by the Secretary of State.
- 1048 New section 342B(2) and (3) set out the information that the offender must provide to the police within three days of the order taking effect. This information is the name, or names, of the offender on the day the notification is given, the offender's home address on that day and any other address where the offender regularly stays.
- 1049 New section 342B(4) and (5) provide that the offender must notify the police if they change their name or home address, or if they decide to live for a period of one month or more at an address not previously notified to the police. This information must be provided to the police within three days of such change.
- 1050 New section 342B(6) specifies that the offender must provide the information required in person by attending a police station in a police area in which the offender lives and by giving

an oral notification to a police officer, or any person authorised by the officer in charge of the station.

- 1051 New section 342B(7) provides that any regulations made by the Secretary of State under subsection (1)(b) to add further restrictions or prohibitions to an SVRO can be made only after a report on the pilot under Clause 140 is laid before Parliament and if the Secretary of State considers that it is appropriate to make the regulations for the purpose of assisting police constables to exercise the power to search the offender conferred by new section 342E.
- 1052 New subsection 342B(8) provides that regulations made by the Secretary of State under subsection (1)(b) are subject to the affirmative resolution procedure.
- 1053 New section 342C(1) provides that a court may impose on the offender any additional requirement or prohibition specified in regulations made by the Secretary of State, subject to the condition in subsection (2).
- 1054 New section 342C(2) describes the condition as one that would assist police constables to exercise the power to search the offender conferred by section 342E. For example, any additional condition that would assist the police with identification of any individual subject to an SVRO would in turn assist with the exercise of the stop and search power.
- 1055 New section 342C(3) provides that regulations made by the Secretary of State in relation to this section can only be made after a report on the pilot under Clause 141 is laid before Parliament.
- 1056 New section 342C(4) sets out that the regulations are subject to the affirmative resolution procedure.
- 1057 New section 342D(1) sets out that the order takes effect on the day it is made. Section 342D(3) and (4) allow for the order not to take effect until the offender is released from custody or ceases to be subject to a custodial sentence.
- 1058 New section 342D(2) sets out that an SVRO must contain a start date and will be for a fixed period of a minimum of six months and a maximum of two years.
- 1059 New section 342D(5) provides that where a court makes an SVRO and the offender had already been subject to an order, the earlier SVROs ceases to have effect. This will ensure that an offender is not subject to more than one SVRO at the same time.
- 1060 New section 342E provides the police with a power to search a person subject to an SVRO, and to detain them for the purpose of carrying out that search, provided that such person is in a public place. The purpose of this power is to check if the person has a bladed article or an offensive weapon with them.
- 1061 New section 342E(4) provides that the police office may seize and retain items found in the course of the search which they reasonably suspect to be a bladed article or an offensive weapon.
- 1062 New section 342E(6) provides that a constable may use reasonable force, if necessary, in order to exercise the powers conferred in this section.
- 1063 New section 342E(7) provides that this power may be used in addition to existing powers held by the police under common law or by virtue of any other enactment, for example the power to stop and search under section 1 of PACE.
- 1064 New section 342F confers a power for the Secretary of State to make regulations regulating the retention, safe keeping, disposal and destruction of any items retained by constable under the

power in new section 342E. New section 342F(3) provides that such regulations are subject to the negative procedure.

1065 New section 342G(1) provides that an offender who is subject to an SVRO commits an offence if they:

- fail to comply with any requirements or prohibitions set out in the order, without reasonable excuse;
- knowingly provides false information to the police when purporting to comply with the requirements of the order (for example compliance with the notification requirements in new section 342B);
- tell a police constable that they are not subject to an SVRO, when in fact they are; and
- intentionally obstructs a police constable exercising the stop and search power under new section 342E.

1066 The maximum penalty for each of these offences is on summary conviction, imprisonment for 12 months, or in relation to an offence committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, six months, a fine or both. The maximum penalty for each of these offences on conviction on indictment is imprisonment for a two years, or a fine or both.

1067 New section 342G(4) provides that where a person is convicted of an offence under this section, an order for conditional discharge is not a sentencing option available to the court.

1068 New section 342H(1) and (2) provide that an application to the appropriate court (as defined by section 342H(9)) may be made for variation, renewal or discharge of an SVRO by the offender, or by the police force in which the offender lives, has committed the offence or where the police believe that the offender intends to come to, or by the chief constable of the British Transport Police Force where the offence on the basis of which the SVRO was made is an offence committed within the jurisdiction of British Transport Police. This provision allows for an application to be made to modify an SVRO to reflect changing circumstances.

1069 New section 342H(3) and (4) provide that the application must be made in accordance with the rules of court, and that the court must hear the person making the application and any other person as provided by subsection (2) who wishes to be heard before making a decision.

1070 New section 342H(5) provides that the court may vary, renew or discharge an order as it sees appropriate. New section 342H(6) provides that the court may renew an order, or vary an order so as to lengthen its duration, only if it considers doing so is necessary to protect the public or any particular member of the public from the risk of harm involving a bladed article or offensive weapon, or to prevent the offender from committing an offence involving a bladed article or offensive weapon.

1071 New section 342H(7) provides that the court must explain in plain language to the offender the effects of the variation or renewal of the order, and the powers that a police constable has under the stop and search power in section 342E.

1072 New section 342I(1) provides that an offender issued with a SVRO can appeal against a decision to make the order as if the order were a sentence passed on the offender for an offence.

1073 New section 342I (2) to (4) provide rights of appeal following a decision on an application for an order varying, renewing or discharging an SVRO, including provisions as to which court

an appeal can be made to, and that the Crown Court may make such orders as may be necessary and such incidental and consequential orders as appear to it to be appropriate.

1074 New section 342J provides that the Secretary of State may issue guidance to the police about the exercise of their functions under new Chapter 1A of Part 11 of the Code in relation to SVROs. Such guidance may be revised, and the Secretary of State must arrange for it to be published. New section 342J(4) provides that the police must have regard to such guidance when exercising functions under new Chapter 1A in relation to SVROs.

1075 New section 342K defines terms used in new Chapter 1A of Part 11 of the Code.

1076 Clause 140(2) and (3) make consequential amendments as a result of new Chapter 1A of Part 11 of the Code. Subsection (2) amends section 80(3) of the Code to include a reference to offences in section 342G (offences relating to an SVRO) in a list of circumstances where an order for conditional discharge is not available. Subsection (3) amends the Prosecution of Offences Act 1985 to provide for the Director of Public Prosecutions to conduct applications for SVROs under new section 342A of the Code.

Clause 141: Serious violence reduction orders: Piloting

1077 This Clause makes provision for two conditions which must be met before the provisions relating to SVROs in Clause 140 can be brought into force across the whole of England and Wales for all purposes. Firstly, SVROs must be piloted in one or more area in England and Wales for one or more specified purposes; and secondly, the Secretary of State must lay a report before Parliament on the operation of the pilot.

1078 Subsections (4) and (5) provide that regulations under Clause 175(1) bringing into force Clause 139 for the purpose of piloting may provide for a specified period for the pilot and that subsequent regulations may continue the pilot for a further specified period.

Chapter 2: Management of sex offenders

Clause 142: Locations for sexual offender notification

1079 Registered sex offenders must notify certain personal details to the police, including their name and home address, and notify the police of any changes to those details. Section 87 of the 2003 Act provides a power for the Secretary of State to make regulations specifying the police stations at which an offender may notify the police of the relevant information. Clause 142 amends section 87 to remove the requirement for the Secretary of State to prescribe a list of police stations for this purpose and makes this the responsibility of the chief officer of police. The requirement for the annual statutory instrument is withdrawn, in lieu of this, chief officers of police will publish a list of police stations in their area, as is the current practice, where an offender may notify.

Clause 143: Offences outside the United Kingdom: notification requirements

1080 Where an offender convicted, cautioned or having had a relevant finding made against him in respect of a relevant sexual offence overseas currently lives in, or intends to travel to, the United Kingdom, section 97 of the 2003 Act provides a power for the police to make an application to the courts for a Notification Order, which makes them subject to the notification requirements for registered sex offenders as if they had been convicted in the UK.

1081 Subsection (1) inserts new sections 96ZA, 96ZB and 97ZC into the 2003 Act which replace sections 97 to 103 of that Act insofar as they apply to England and Wales (sections 97 to 103 are repealed by subsection (5)).

1082 New sections 96ZA and 96ZB remove the need for the police to seek a court order to place notification requirements on an individual convicted of an equivalent, relevant sexual offence

(Schedule 3 offences in the 2003 Act) in a foreign court. The requirement for a court order will be replaced with a power for the police to serve a notice requiring the relevant offenders to notify when authorised by an officer of the rank inspector or above.

1083 A notice may be withdrawn by the police when authorised by an officer of the rank inspector or above.

1084 Where an offender is under the age of 18 the police may serve a parental notice in addition to a notice on the offender. Such a notice will place the obligations of the offender on the parents until the offender reaches the age of 18 or the notice is withdrawn.

1085 Enabling the police to make an individual who committed a relevant offence outside of the United Kingdom subject to the notification requirements without the involvement of the court will streamline the process, supporting better management of those who pose a risk and removing an opportunity for the offender to abscond before their court date.

1086 New Section 96ZC provides modifications and clarifications to the notification requirements insofar as they apply to a person to whom this Clause applies.

1087 New section 96ZD provides a route of appeal to a magistrates' court retaining the broad grounds for appeal which are in place in current legislation.

Clause 144: Notification Orders: Scotland

1088 Subsections (1) to (5) amend sections 97 to 100 of the 2003 Act to reflect the fact that as a result of the provisions in Clause 142 these provisions will now only apply to Scotland; no substantive changes are made to the law in Scotland. Sections 97 to 100 currently operate in Scotland subject to the modifications made by section 103 of the 2003 Act which is repealed by subsection (6).

1089 Subsection (6) also repeals section 101 (notification orders and interim notification orders: appeals in England and Wales) of the 2003 Act in consequence of the repeal of sections 97 to 100 insofar as they apply to England and Wales.

Clause 145: Applications by British Transport Police and Ministry of Defence Police

1090 This Clause amends sections 103A, 103F, 103J, 122A, 122B, 122E and 122J of the 2003 Act to enable the chief constable of the British Transport Police and Ministry of Defence Police to apply for SHPOs or SROs and interim SHPOs and SROs in respect of individuals who pose a risk of sexual harm within their jurisdiction.

Clause 146: List of countries

1091 Clause 146 makes provision for the establishment of a list of countries and territories considered to be at high risk of child sexual exploitation or abuse by UK nationals and residents.

1092 Subsection (1) confers the power on the Secretary of State to prepare such a list or direct a relevant person to do so on their behalf. A relevant person is defined at subsection (11) as a person whose statutory functions relate to the prevention or detection of crime, or other law enforcement purposes. This could include for example, the National Crime Agency.

1093 Subsections (2) and (3)(b) provides that the Secretary of State must lay the list before Parliament and subsection (4) provides that as soon as practicable thereafter the person who prepared the list must publish it.

1094 Subsection (5) provides that the list of countries has effect for the purposes of the provisions of the Sentencing Code and 2003 Act relating to an application for or making of an SHPO, interim SHPO, SRO or interim SRO and the variation, renewal or discharge of such orders.

Through these orders a court may restrict an individual's travel to any country or countries, where proportionate and necessary to protect children and vulnerable adults outside the UK from sexual harm.

1095 Subsection (6) provides that the person who prepared the list must keep it under review, and may prepare a revised list. A revised list might be necessitated, for example, by a change in intelligence about the risk of child sexual exploitation or abuse posed by UK nationals and residents towards a given country.

1096 Subsection (9) provides that the Secretary of State may withdraw the list at any time.

Clause 147: Requirement for the court and certain persons to have regard to the list of countries

1097 Clause 147 provides for a requirement upon applicants (including the police and National Crime Agency) and the courts to have regard to the list of countries in respect of applications for SHPOs and SROs and in particular whether a prohibition on foreign travel is necessary to protect children from sexual harm from the defendant outside the United Kingdom.

1098 New section 346(2) of the Sentencing Code and, new section 103A(3A) of the 2003 Act (as inserted by subsection (1) and (4)) require courts to have regard to the list in considering whether an SHPO is necessary and in particular whether a foreign travel restriction as part of an SHPO is necessary for these purposes. Such a decision would not be based on the list itself; instead, the list would be considered alongside the merits of the civil order application and any representations made by the defendant.

1099 New section 103A(4B) of the 2003 Act (as inserted by subsection (4)) requires the applicant of an SHPO to have regard to the list in considering whether a defendant has acted in a way such that an SHPO would be necessary and whether a prohibition on foreign travel should be included in the SHPO.

1100 Subsection (5) requires the court and applicant to have regard to the list when applying for or making applications to vary or renew a SHPO.

1101 Subsections (6) to (9) replicate these provisions for the SRO and the interim versions of SHPOs and SROs.

Clause 148: Standard of proof

1102 This Clause amends sections 103A(3) and 122A(6) of the 2003 Act to provide that the court when considering an application for a SHPO and SRO respectively should apply the civil standard of proof ('balance of probabilities'), rather than the criminal standard of proof, when determining whether the individual the application is made in respect of has done the act of a sexual nature specified in the application. This amendment brings these orders in line with other civil orders, for example Domestic Abuse Prevention Orders (DAPO) as introduced in the Domestic Abuse Act 2021.

Clause 149: Sexual harm prevention orders: power to impose positive requirements

1103 Sections 103A to 103K of the 2003 Act, provide a route via an application to the court for a chief officer of police or the Director General of the National Crime Agency to obtain a SHPO in respect of a qualifying offender who has since acted in such a way as to give reasonable cause to believe it is necessary for such an order to be made. These orders currently place a range of restrictions, or negative requirements, on individuals depending on the nature of the case. These can include restrictions on contact with specific persons and restrictions on travel.

1104 This Clause amends the 2003 Act and the Sentencing Code to enable the courts to impose positive obligations as conditions of an SHPO. Positive obligations allow the courts to require

individuals made subject to an order to engage in specified activity. This can include to attend a behaviour change programme, alcohol or drug treatment, or to take a polygraph test. Enabling the courts to impose positive obligations as well as restrictions will strengthen the management of those who pose a risk of sexual harm and increase prevention through rehabilitation.

- 1105 Subsections (5) and (11) amend section 350 of the Code and section 103E of the 2003 Act respectively to enable an SHPO to be renewed or varied so as to include additional positive obligations (for example, where an individual's circumstances have changed).
- 1106 Subsection (12) amends section 103F(3) of the 2003 Act to enable the court to impose positive obligations in interim SHPOs.
- 1107 Subsection (13) amends section 103I of the 2003 Act, the effect of which is to make a failure to comply with a positive obligation without reasonable excuse a criminal offence, in line with the current provisions on breaching negative obligations, a conviction for which is punishable by up to five years' imprisonment.

Clause 150: Sexual risk orders: power to impose positive requirements

- 1108 This Clause makes equivalent amendments to the provisions of the 2003 Act relating to SROs to those made by Clause 149 in relation to SHPOs to enable the courts to impose positive obligations, which can include attendance at a behaviour change programme, alcohol or drug treatment, or to taking a polygraph test as conditions of a SRO. Subsection (6) amends section 122H of the 2003 Act, the effect of which is to make a failure to comply with a positive obligation without reasonable excuse a criminal offence, in line with the current provisions on breaching negative obligations. A conviction for a breach is punishable by up to five years' imprisonment and in that individual becoming subject to the notification requirements for sex offenders.

Clause 151: Positive requirements: further amendments

- 1109 This Clause makes amendments to the Sentencing Code, the 2003 Act and the Abusive Behaviour and Sexual Harm (Scotland) Act 2006 so that positive obligations in a SHPO or SRO can be enforced and varied in other parts of the United Kingdom.
- 1110 Subsection (1) amends section 351 of the Sentencing Code, which provides for variations of a SHPO by a court in Northern Ireland, to enable such variations to include positive obligations.
- 1111 Subsections (2) and (3) amend sections 113 and 128 of the 2003 Act so that a breach of a positive requirement under a SHPO or SRO will constitute a breach in Northern Ireland.
- 1112 Subsection (4) amends section 136ZA of the 2003 Act to provide that positive requirements of SHPOs and SROs apply throughout the United Kingdom.
- 1113 Subsections (5) and (6) amend sections 136ZC and 136ZD of the 2003 Act so that courts in Northern Ireland can vary positive requirements of SHPOs and SROs.
- 1114 Subsection (7) amends section 37 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2006 to make it an offence in Scotland to breach a positive requirement under a SHPO, SRO or an equivalent order made elsewhere in the United Kingdom.

Clause 152: Electronic monitoring requirements

- 1115 This Clause amends the Sentencing Code and the 2003 Act to make express provision for a court to impose electronic monitoring conditions as part of a SHPO or SRO. Electronic monitoring requirements enable the person who is responsible for the monitoring, "the responsible person", to monitor and record, via an electronic tag, information on a subjects compliance with an order's conditions, for instance curfews or exclusion zones.

- 1116 Subsection (2) amends section 343 of the Code to provide that an electronic monitoring requirement may be imposed to support the monitoring of an individual's compliance with other requirements of an SHPO (for example, the operation of an exclusion zone).
- 1117 Subsection (4) inserts new section 348A and 348B into the Code. New section 348A sets out the conditions that must be satisfied to enable an electronic monitoring requirement to be attached to a SHPO.
- 1118 New section 348A(2) specifies that where another person's cooperation is required in order to secure the electronic monitoring, the monitoring cannot be required without that person's consent. This may include, for example, the occupier of the premises where the perpetrator lives or other persons living in the same premises as the offender.
- 1119 New section 348A(3) obliges the court to ensure that electronic monitoring arrangements are available in the relevant local area (as defined in subsection (4)) before imposing an electronic monitoring requirement. In practice, the court would be notified of the availability of such arrangements by the Ministry of Justice.
- 1120 New section 348A(5) provides that a SHPO which includes an electronic monitoring requirement must specify the person who is responsible for the monitoring ("the responsible person") and new section 348A(6) provides that the responsible person must be of a description specified in regulations made by the Secretary of State (such regulations are not subject to any parliamentary procedure).
- 1121 New section 348A(6) provides that the responsible person must be of a description specified in regulations made by the Secretary of State (such regulations are not subject to any parliamentary procedure).
- 1122 New section 348A(7) sets out the requirements for installation and maintenance of the electronic monitoring apparatus, including the requirements for the offender to submit to monitoring apparatus being fitted or installed, inspected or repaired. This subsection also prohibits the perpetrator from interfering with the monitoring apparatus and requires the perpetrator to take steps to keep the apparatus in working order, including keeping the equipment charged as directed. Failure to adhere to these requirements would constitute a breach of the SHPO.
- 1123 An electronic monitoring requirement may not apply for more than 12 months, but this may be extended for a further period of no more than 12 months each time (new section 348A(8) and (9)).
- 1124 New section 348B requires the Secretary of State to issue a code of practice relating to the processing of data gathered in the course of electronic monitoring of individuals under electronic monitoring requirements imposed by SHPOs. The processing of such data will be subject to the requirements of the General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under new section 348B is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance of the data protection legislation. For example, it is envisaged that the code will set out the length of time for which data may be retained and the circumstances in which it may be permissible to share data with the police to assist with crime detection.
- 1125 Subsection (10) inserts new sections 103FA and 103FB which make equivalent provisions for SHPOs made under the 2003 Act as for those made under the Code set out above.
- 1126 Subsections (11) to (16) amend sections 122A, 122D, 122E, 136ZA and 138(3) of the 2003 Act and insert new sections 122EA and 122EB, these changes have the effect of making equivalent provisions for electronic monitoring of SROs as for SHPOs.

Clause 153: Positive requirements and electronic monitoring requirements: service courts

- 1127 This Clause amends section 137 of the 2003 Act which modifies the provisions in Part 2 of the 2003 Act relating to court orders, convictions, findings, offences and proceedings to apply in the context of service courts. The amendments to section 137(3) make further modifications to Part 2 to reflect the amendments made in Chapter 2 of Part 10 in relation to SHPOs.

Clause 154: Enforcement of requirements of orders made in Scotland or Northern Ireland

- 1128 This Clause amends sections 103I, 113, 122, 122H and 128 of the 2003 Act to enable orders created in Scotland under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 to be enforceable in England and Wales and Northern Ireland. This enables SHPOs or SROs imposed by a Scottish court to be enforced by courts in England and Wales or Northern Ireland when these orders are made following the commencement of the provisions enabling them in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. These amendments will ensure that a Scottish SHPO or SRO is enforceable in other jurisdictions.
- 1129 Subsection (7) amends section 136ZA of the 2003 Act to enable Scottish SHPOs and SROs to apply throughout the United Kingdom.

Clause 155: Effect of conviction for breach of Scottish order etc

- 1130 This Clause amends sections 122I and 129 of the 2003 Act so that an offender who is convicted of a breach of a Scottish SHPO or SRO is made subject to notification requirements where they were not already under such requirements.

Clause 156: Orders superseding, or superseded by, Scottish orders

- 1131 This Clause amends section 136ZB of the 2003 Act and section 349 of the Sentencing Code to enable Scottish SHPOs and SROs to supersede other sex offender management orders in the United Kingdom when made at a later date.

Clause 157 and Schedule 17: Variation of order by court in another part of the United Kingdom

- 1132 Clause 157 introduces Schedule 17 which provides for the mutual recognition of all sex offender management orders throughout the United Kingdom, by enabling the courts to vary an order in respect of an offender in their jurisdiction regardless of where the order originated.
- 1133 Part 1 of Schedule 17 makes provision for the variation of a SHPO or SRO made in England, Wales or Scotland by a court in Northern Ireland by amending sections 136ZC and 136ZD of the 2006 Act and section 351 of the Sentencing Code.
- 1134 Part 2 makes provision for the variation of a SHPO or SRO made in England or Wales, or a sexual offences prevention order, risk of sexual harm order or foreign travel order made in Northern Ireland by a court in Scotland by inserting new sections 136ZE and 136ZF to the 2006 Act and new section 351A of the Sentencing Code.
- 1135 Part 3 makes provision for the variation of a SHPO or SRO made in Scotland or a sexual offences prevention order, risk of sexual harm order or foreign travel order made in Northern Ireland by a court in England and Wales by inserting new sections 136ZG, 136ZH, 136ZI and 136ZJ to the 2006 Act and new section 351A of the Sentencing Code.

Chapter 3: Management of terrorist offenders

Clause 158: Terrorist offenders released on licence: arrest without warrant pending recall decision

- 1136 Subsection (1) inserts new section 43B into the Terrorism Act 2000 (the “2000 Act”), which enables the police to arrest a terrorist offender who is likely to be recalled to custody due to a breach of their licence conditions where there is a terrorism risk.
- 1137 New section 43B(1) limits the use of the power to quite specific circumstances in practice. If an offender commits a terrorism offence, they can be arrested under section 41 of the 2000 Act. If they breach their licence conditions but can be recalled before a terrorism risk develops, urgent arrest will not be necessary. This power could be used, for example, when a terrorist offender refuses to go with the police to their Approved Premises after release from prison, where arrest would not be possible under existing legislation. Section 114(2) of the 2000 Act allows the reasonable use of force in making such an arrest.
- 1138 The power of arrest applies only to offenders on licence convicted of terrorism or terrorism-connected offences (see new section 43B(4) and (5)). This safeguards against its misuse by limiting the cohort in scope and addresses the threat posed by particularly high-risk individuals. Section 247A of the Criminal Justice Act 2003 and the equivalents for Scotland and Northern Ireland define offences under counter-terrorism legislation and offences with a terrorism connection, including service offences.
- 1139 New section 43B(2), read with the definition of “relevant period” in new section 43B(6), limits the detention period (to six hours in England and Wales and 12 hours in Scotland or Northern Ireland) following arrest to prevent infringement of the offender’s rights while allowing a necessary period for a decision on recall to be processed. It is expected that the police and probation will co-operate to facilitate this process, including by the police only making arrests when probation intend to recall. New section 43B(3) further protect the offender’s rights by applying the relevant detention conditions in Schedule 8 to the 2000 Act, as modified by subsection (2) of the Clause, as for other terrorism-related arrests, in proportion to the relatively short length of the detention.
- 1140 New section 43B(7) enables a constable in one part of the UK to exercise the power of arrest in any part of the UK. The cross-agency co-operation informing exercise of the power will generally occur within rather than across jurisdictions.

Clause 159: Power to search terrorist offenders released on licence

- 1141 Clause 159 inserts new section 43C into the 2000 Act, which enables the police to make a personal search of a terrorist offender on licence.
- 1142 New section 43C(1) specifies that the stop and search may be conducted for purposes connected with protecting the public from terrorism and new section 43C(2), (8), and (9) provide that the offender must be required to submit to the search by their licence conditions (in the case of England and Wales, see the Criminal Justice (Sentencing) (Licence Conditions) Order 2015). In practice, it is expected that such licence conditions will only be applied to a limited cohort of terrorist offenders who pose a high risk of serious harm. It provides a deterrent for offenders on licence to take weapons with them when travelling and exposes offender managers to less danger during meetings with high risk offenders. This is not possible under the normal stop and search powers in section 43 of the 2000 Act or, in exceptional circumstances, section 47A, which are not designed for compliance or assurance purposes.
- 1143 New section 43C(3) allows a search to be conducted in locations where the police have lawful access but the public may not. This will include probation premises.

- 1144 New section 43C(7) allows anything carried by the offender to be searched. This allows for the identification of weapons, as well as phones which could be used to contact terrorist networks and thus pose a terrorism risk. Under section 2(9) of PACE, it is not permitted to require the removal of any clothing apart from an outer coat, jacket, or gloves.
- 1145 New section 43C(4) to (6) allow a vehicle to be searched and follow section 43(4A), (4B), and (4C) of the 2000 Act. Section 116(2) of the 2000 Act provides for a vehicle to be stopped and section 114(2) provides for the reasonable use of force. This addresses the possibility of vehicle attacks and prevents offenders in scope from avoiding being searched by travelling in a vehicle.
- 1146 New section 43C(10) enables a constable in one part of the UK to exercise the power of search in any part of the UK. The cross-agency co-operation informing exercise of the power will generally occur within rather than across jurisdictions.

Clause 160: Search of premises of offender released on licence for purposes connected with protection from a risk of terrorism

- 1147 Clause 160 inserts new section 43D into the 2000 Act, which enables the police to search the premises of an offender released on licence.
- 1148 New section 43D(1) stipulates that the police first obtain a warrant from a court and new section 43D(2) provides the requirements for this, including that there must be a terrorism risk. New section 43D(7) and (8) define the offenders in scope. Chapter 6 of Part 12 of the CJA 2003 and Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 and the equivalents in Scotland and Northern Ireland capture any offender serving a custodial sentence imposed in any part of the UK who has been released on licence. This includes offenders convicted of a non-terrorism offence who are nevertheless thought to pose a terrorism risk, for example if they are known to have associated with terrorist offenders in prison and intelligence suggests they may engage in terrorist activity shortly after release. This is not possible under other premises search powers, including paragraph 1 of Schedule 5 to the 2000 Act, which is limited to terrorist investigations, and section 56A of the Counter-Terrorism Act 2008, which is limited to convicted terrorist offenders subject to notification requirements. Cross-agency agreement of the terrorism risk posed is expected before submission of an application for a warrant by the police.
- 1149 New section 43D(3) to (6) provide for the access to enter and search premises afforded by the warrant. This includes multiple occupancy premises, which may apply for example in searching an offender's Approved Premises, and entry on multiple occasions, for example when new intelligence of a terrorism risk comes to light. When deciding whether to apply for and use a warrant the police will consider the necessity and proportionality of doing so in all cases.
- 1150 The definition of "premises" at section 121 of the 2000 Act applies here. This is any place and includes vehicles. As per section 116(1), the power to search premises confers the power to search containers.

Clause 161: Powers of seizure and retention

- 1151 Clause 161 inserts new section 43E into the 2000 Act, which governs the seizure and retention of items found when the search powers in new sections 43C and 43D are exercised.
- 1152 New section 43E(1) links the section to the powers of personal and premises search. New section 43E(7) applies it to the cohorts stipulated there: terrorist offenders with a specific licence condition for the personal search and any offenders with a terrorism risk for the premises search. The powers of seizure and retention help ensure public protection, including

by allowing the confiscation of weapons, and supporting investigation, such as by reviewing phones that may be used to contact terrorist networks.

1153 New section 43E(2) sets out the grounds for seizure, including at subsection (2)(b) to check an offender's compliance with licence conditions and then to consider the risk of terrorism this entails. This addresses scenarios in which items are found that could be of terrorism risk but which require further investigation to confirm this, and which would not necessarily result in automatic recall. Ascertaining both breach of licence and terrorism risk is expected to be conducted through cross-agency agreement. Items that may be seized include computerised information, by virtue of section 20 of PACE. For the avoidance of doubt, computerised information can be seized in Scotland.

1154 New section 43E(3) to (6) govern retention. New section 43E(5) sets a seven day limit on the retention on anything that is not required for the purposes set out in subsection (4); this gives a proportionate time for the item to be investigated where the terrorism risk is not immediately clear.

1155 New section 43E(8) preserves the ability of a court to deliver property to a person after it has come into police possession under section 1 of the Police (Property) Act 1897.

Clause 162 and Schedule 18: Sections 157 to 160: consequential provision

1156 Clause 162 introduces Schedule 18, which makes consequential amendments with respect to Clauses 158 to 161 to PACE, the Criminal Justice and Police Act 2001, the Counter-Terrorism Act 2008, and equivalent enactments in Scotland and Northern Ireland.

Clause 163: Arrangements for assessing etc risks posed by certain offenders

1157 Clause 163 of this Bill makes amendments to the multi-agency public protection arrangements ("MAPPA") regime set out in sections 325 to 327 of the CJA 2003 to ensure MAPPA management of certain terrorist offenders once released on licence, or for the duration they are subject to terrorism notification requirements, and to enable other offenders considered to pose a terrorist risk to be managed in that way. It also expands the potential for information-sharing as part of MAPPA.

1158 Subsection (2) and (3)(a) amend section 325 of the CJA 2003 to create a new MAPPA category of "relevant terrorist offenders". The term 'relevant terrorist offenders' is to be defined by provision inserted into section 327 of the CJA 2003 by subsection (10). It includes those convicted of offences listed in Schedule 19ZA to the CJA 2003 (which is proposed to be substituted by the Counter-Terrorism and Sentencing Act 2021), equivalent service offences or offences found to have been aggravated by a terrorist connection, and given a custodial sentence of 12 months or more. It also includes persons who carried out acts amounting to such an offence but who were found unfit to plead or not guilty by way of insanity.

1159 Subsection (3)(b) inserts new subsection 2(c) into section 325 of the CJA 2003, so that any convicted person who is considered by the responsible authority to pose a risk of involvement in terrorism-related activity can also be managed under MAPPA.

1160 New subsection (4) replaces the existing information-sharing power contained in subsection (4) of section 325. It does not restrict or displace any other existing information-sharing powers used by MAPPA agencies. New subsections (4) and (4A) of that section provide a new power for the disclosure of information between the responsible authority, duty to cooperate agencies and other persons whom the responsible authority considers may contribute to the assessment and management of risk as defined under section 325(2).

1161 New subsection (4B) provides clarity in relation to disclosure of information about a person subject to MAPPA. Disclosure under section 325 s will not breach any obligation of confidence

owed by a person disclosing information, or any other restriction on the disclosure of information. This means that any information held by MAPPA agencies, or by other relevant persons, can be disclosed, for the purposes of MAPPA.

- 1162 New subsection (4C) places a limit on disclosure of information to confirm that subsection (4) does not permit disclosure which would contravene data protection legislation or would be prohibited by the Investigatory Powers Act 2016.
- 1163 New subsections (4D) to (4F) provide that a person who is permitted to disclose or receive information under MAPPA arrangements to be treated as a competent authority for the purposes of Part 3 of the Data Protection Act 2018, with the exception of intelligence services.
- 1164 New subsection (4G) clarifies that the new power created by new subsection (4) does not affect other information-sharing powers used by MAPPA agencies.
- 1165 Subsection (5) includes the new parties defined in subsection (4A) within the list of ‘duty to cooperate’ agencies.
- 1166 Subsection (6) inserts new definitions.
- 1167 Subsections (7) to (10) amend section 327 of the CJA 2003 which covers interpretation of section 325.
- 1168 Subsections (8) and (9) make minor amendments to section 327(3) and (4) to clarify the definition of relevant sexual or violent offender and ensure that those sentenced to life fall under this definition.
- 1169 Subsection (10) amends section 327 of the CJA 2003 to provide the definition of “relevant terrorist offender” referred to above. This new category is defined largely by reference to the notification requirement provisions of the Counter-Terrorism Act 2008.

Part 11: Rehabilitation of offenders

Clause 164: Rehabilitation of offenders

- 1170 Clause 164 extends the scope of the Rehabilitation of Offenders Act 1974 (“ROA”) as it applies to England and Wales so that certain custodial sentences of over four years currently excluded from rehabilitation may become spent, unless imposed in respect of certain offences. It also amends the times at which different sentences may become spent and makes provision on the face of the ROA for the rehabilitation periods that apply to certain orders on conviction.
- 1171 Subsection (2) amends section 5(1) of the ROA, which concerns those sentences excluded from rehabilitation. A new paragraph (b) is substituted in that subsection in place of the exclusion from rehabilitation for certain sentences imposed for a term exceeding 48 months. The sentences listed in that new paragraph are excluded from rehabilitation when imposed for either an offence specified in Schedule 18 of the Code, being serious violent, sexual or terrorism offences, or an offence imposed under service law corresponding to such offence (as interpreted in accordance with new subsections (1ZA) and (1ZB) inserted by subsection (3)). The listed sentences are a sentence of imprisonment, a sentence of youth custody, a sentence of detention in a young offender institution, a sentence of corrective training, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18 convicted of certain serious offences), a sentence of detention under section 250 or 252A of the Code (sentence of detention for those convicted of certain serious offences or special custodial sentence for terrorist offenders), a sentence of detention under section 209 or 224B of the Armed Forces Act 2006 (offenders under 18 convicted of certain serious offences or special custodial sentence for terrorist offenders) or a sentence of detention under section

205ZC(5) or 208 of the Criminal Procedure (Scotland) Act 1995 (terrorism sentence with fixed licence period or detention of children convicted on indictment) and, in each case, for a term exceeding 4 years.

1172 Subsection (4)(a) amends the table in section 5(2) to provide for the following:

- Custodial sentences of over four years become spent seven years after the end of the sentence (which would include any licence period). In respect of those under 18 at the date of conviction, those sentences become spent 42 months after the end of the sentence (including any licence period).
- Custodial sentences of over one year and up to and including four years become spent four years after the end of the sentence (including any licence period). In respect of those under 18 at the date of conviction, those sentences become spent two years after the end of the sentence (including any licence period).
- Custodial sentences of up to and including one year become spent 12 months after the end of the sentence (including any licence period). In respect of those under 18 at the date of conviction, those sentences become spent six months after the end of the sentence (including any licence period).

1173 Subsections (4)(b), (8)(a) makes changes to the rehabilitation period for community and youth rehabilitation orders. The entry for such orders is removed from the table in section 5(2) and added to the definition of relevant order in section 5(8). Accordingly, the rehabilitation period for community and youth rehabilitation orders is determined in the same way as that applicable to relevant orders.

1174 Subsection (4A) inserts new subsections (2A) and (2B) to make provision about the rehabilitation period that applies to a person who is subject to a relevant order where the last day on which the order is to have effect is not provided for by or under the order. Where provision is made by or under such order for the order to have effect until further order, until the occurrence of a specified event or otherwise for an indefinite period, the rehabilitation period for such order begins with the date of conviction in respect of which the order was imposed and ends when the order ceases to have effect.

1175 Subsection (5) replaces subsection (3) in order to remove the redundant reference to community and youth rehabilitation orders and reflect new subsections (2A) and (2B). Accordingly, where the last day on which a relevant order is to have effect is not provided for by or under the order or is not otherwise dealt with under new subsections (2A) and (2B), the rehabilitation period will be 24 months beginning with the date of conviction.

1176 Subsections (6) and (7) make provision to disapply section 5(7)(a) or (b) for the purposes of determining whether a sentence is excluded from rehabilitation under subsection (1)(b), as amended by this Clause. Paragraph (a) of subsection (7) provides consecutive terms of imprisonment are to be treated as a single term and paragraph (b) provides terms of imprisonment which are wholly or partly concurrent (imposed in respect of offences of which a person was convicted in the same proceedings) are also treated as a single term. By disapplying these provisions, a sentence for an offence described in subsection (1)(b) is only to be excluded from rehabilitation if the term for that sentence, taken individually, exceeds four years. If the sentence is not excluded from rehabilitation, those paragraphs may still be relevant to the determination of the rehabilitation period.

1177 Subsection (7) also inserts a new subsection (7B) to provide a sentence imposed for an offence outside of England and Wales which would constitute a Schedule 18 offence if committed in England and Wales is to be treated as a Schedule 18 offence for the purposes of section 5.

1178 Subsection (8)(b) replaces paragraph (g) of the definition of relevant order in subsection (8) to make provision about the rehabilitation period that applies to a person who is subject to an order which imposes requirements or restrictions on the person or is otherwise intended to regulate the person's behavior.

1179 Subsections (9) to (11) contain the consequential provisions relating to these amendments. These apply the changes to the ROA retrospectively so that existing convictions will become spent according to the new rehabilitation periods. Anyone treated as rehabilitated for the purpose of the ROA before commencement of these provisions will continue to be treated as such.

Part 12: Procedures in courts and tribunals

Clause 165: British Sign Language interpreters for deaf jurors

1180 Clause 165 inserts new sections 9C, 20H and 20I into the Juries Act 1974 and makes a minor related amendment to section 22(A1) of the same Act. It makes provision for British Sign Language ("BSL") interpreters to be present in the jury deliberation room, meaning that profoundly deaf jurors will no longer be automatically excluded from completing jury service simply because they require the assistance of a BSL interpreter.

1181 New subsections 9C(1) and (2) place a duty on the judge to consider whether the assistance of a BSL interpreter would enable a profoundly deaf person to act as a juror and, if so, to appoint one or more interpreters and to affirm the summons in the exercise of their discretion.

1182 New subsections 9C(3) and (4) permit an interpreter appointed under new subsection (2) to remain with the jury in the course of their deliberations in proceedings before a court, and make clear that the interpreter must not interfere in or influence the deliberations of the jury.

1183 New section 20H addresses those existing provisions in the Juries Act 1974 which are to apply to BSL interpreters as they already apply to jurors, with a necessary modification being made to the meaning of "the trial period" for these purposes. New subsection (1) deals with challenge for cause; new subsection (2) deals with surrender of electronic communication devices; new subsection (3) deals with the offence of research; new subsection (4) deals with the offence of sharing research; and new subsection (5) deals with exceptions to the offence of disclosing jury deliberations.

1184 New section 20I makes it an offence for an interpreter appointed under section 9C(2) intentionally to interfere in or influence jury deliberations, and sets out the penalty where proceedings have been instituted by or with the consent of the Attorney General and a person is found guilty of this offence.

1185 A reference to new section 20I is inserted alongside existing references to sections 20A, 20B and 20C within section 22(A1) (offences which do not affect contempt of court at common law) to confirm that nothing in new section 20I affects what constitutes contempt of court at common law.

Clause 166: Continuation of criminal trial on death or discharge of a juror

1186 Clause 166 makes a minor, technical amendment to section 16 of the Juries Act 1974 (continuation of criminal trial on death or discharge of juror) to omit subsection (2) which references trials for offences punishable with death.

Clause 167: Remote observation and recording of court and tribunal proceedings, and Schedule 19: Further provisions about the transmission and recording of court and tribunal proceedings, Part 1 (Remote observation and recording: tribunals)

1187 This Clause makes provision for the remote observation of court and tribunal proceedings using audio and/or audio-visual live links. These measures (together with Clause 167 and Part 2 of

Schedule 19) replace the temporary and more limited modifications made by Schedule 25 to the Coronavirus Act 2020.

- 1188 Subsection (1) of Clause 167 inserts into the Courts Act 2003 a new section 85A, which makes provision to enable the public to remotely observe proceedings by the direction of the judge in any of the courts listed, in order to satisfy the principle of open justice.
- 1189 New section 85A(1) of the Courts Act 2003 defines the scope of the new section, which applies to proceedings in any of the courts listed there.
- 1190 New section 85A(2) empowers the court to direct that proceedings are to be transmitted electronically for the purpose of enabling persons not taking part in the proceedings to watch or listen to the proceedings – but only if the proceedings are ones which are specified under subsection (8)(a) of the new section.
- 1191 New section 85A(3) sets limits on the power to direct transmission, ensuring that it does not extend to directing any general broadcast of the proceedings (broadcasting of proceedings being the province of section 32 of the Crime and Courts Act 2013, which is unaffected by these provisions).
- 1192 The court may only direct transmission which is by way of livestreaming to designated livestreaming premises (defined in new section 85A(4)) or which involves individuals having access only after identifying themselves to the court (or to a person acting on behalf of the court).
- 1193 New section 85A(5) makes it clear that a direction for transmission of proceedings can include provision about the method of transmission (for example, to fit it to the particular platform used by the court for conducting proceedings by virtual means) and the persons who are permitted to watch or listen to it (so that, for example, if only certain people would be allowed to be present in court if the proceedings were being held in a courtroom in the normal way, only those people would be allowed to watch or listen to the transmission).
- 1194 New section 85A(6) makes it clear that a recording can be made by the court of a transmission of any proceedings which are conducted “virtually”, to ensure that an appropriate record is kept for such proceedings in the same way as proceedings may be recorded when conducted in a courtroom in the normal way.
- 1195 New section 85A(7) makes it clear that a direction for transmission or recording can, as appropriate in the court’s discretion, relate to part of the proceedings rather than the whole, and be varied or revoked.
- 1196 New section 85A(8) enables the Lord Chancellor to make regulations to specify the proceedings in relation to which a direction for transmission may be made, any matters of which the court must be satisfied before making, or must take into account in making, any direction, and any provision for matters under New section 85A(5) which a direction must cover.
- 1197 Regulations may only be made with the concurrence of the Lord Chief Justice, and are subject to affirmative resolution procedure.
- 1198 New section 85A(9) allows for greater flexibility in making clear that regulations may make different provision for different purposes (so that, for example, different factors would be taken into account by the court for particular types of proceedings).
- 1199 Subsection (2) of Clause 167 introduces Part 1 of Schedule 19, which inserts into the Tribunals, Courts and Enforcement Act 2007, the Employment Tribunals Act 1996 and the Enterprise Act 2002 new sections which make provision for the First-Tier Tribunal and Upper Tribunal,

employment tribunals and the Employment Appeal Tribunal and the Competition Appeal Tribunal respectively which corresponds to the provision made for courts by new section 85A of the Courts Act 2003.

- 1200 Part 1 of Schedule 19 inserts a new section 29ZA into the Tribunals, Courts and Enforcement Act 2007 (covering the First-Tier Tribunal and Upper Tribunal); new sections 12ZA and 32A into the Employment Tribunals Act 1996 (covering employment tribunals and the Employment Appeal Tribunal respectively); and a section 15A into the Enterprise Act 2002 (covering the Competition Appeal Tribunal). Those sections mirror the new section 85A of the Courts Act 2003, with differences only as required for the specific tribunal context. This is principally to provide that the power to make regulations which is conferred on the Lord Chancellor is exercisable only with the concurrence of the Senior President of Tribunals (rather than the Lord Chief Justice).
- 1201 Subsection (3) of Clause 167 amends section 41 of the Criminal Justice Act 1925 to make it clear that section 41 does not apply to anything done in accordance with a direction made under the new section 85A and the corresponding new sections for tribunals; and so no offence is committed by any filming necessary to deliver the transmission pursuant to such a direction.
- 1202 Subsection (4) amends section 29 of the Criminal Justice (Northern Ireland) Act 1945 to make similar provision to that made by subsection (3) but with regard to UK tribunals in Northern Ireland (specifically, the Competition Appeal Tribunal, First Tier Tribunals, and Upper Tribunals).
- 1203 Subsection (5) makes a similar amendment to that of Subsection (3) to section 9 of the Contempt of Court Act 1981, so that any sound recording necessary to deliver that transmission is not a contempt.
- 1204 Subsection (6) amends section 108(3) of the Courts Act 2003, which lists the secondary legislative powers under that Act which are subject to affirmative resolution procedure, to add to the list the power under the new section 85A(8).
- 1205 Regulations under section 85A(8) are accordingly subject to affirmative resolution procedure.
- 1206 Corresponding provision in relation to tribunals is made in Part 1 of Schedule 19.

Clause 168: Offence of recording or transmission in relation to remote proceedings, and Schedule 19: Further provisions about the transmission and recording of court and tribunal proceedings, Part 2 (Offences of recording and transmission: tribunals)

- 1207 This Clause makes provision, corresponding broadly to the prohibitions in section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981, prohibiting unauthorised recording or transmission of a transmission of proceedings made pursuant to a direction under the measures introduced by Clause 166 and Part 1 of Schedule 19.
- 1208 Subsection (1) inserts a new section 85B into the Courts Act 2003, making provision prohibiting unauthorised recording or transmission in relation to such “remote proceedings”, as both an offence and, alternatively, a contempt of court.
- 1209 New section 85B(1) of the Courts Act 2003 sets out the offence (which by virtue of new section 85B (8) is a summary-only offence for which the penalty is a fine not exceeding level 3 on the standard scale) of unauthorised recording or transmission of an image or sound covered by new section 85B(2) (an image or sound of proceedings which is received remotely) or new section 85B(3) (an image or sound of a person who is remotely attending proceedings).
- 1210 New section 85B(4) defines what is meant by remotely attending proceedings, to include remote participation in, or watching or listening to, proceedings. So, for example, making an unauthorised recording of a witness giving evidence by live link would be captured.

- 1211 New section 85B(5) defines an “unauthorised” recording or transmission as being one which is not authorised, either specifically or generally, either by the court conducting the proceedings in question, or by the Lord Chancellor.
- 1212 New section 85B(6) provides a defence for a person who, when making an unauthorised recording or transmission of an image or sound, was not in designated live-streaming premises (defined in new section 85B(7)) and did not know that the image or sound in question was one within new section 85B (2) or (3).
- 1213 New section 85B(9) provides for unauthorised recording or transmission to be a contempt as well as an offence, and makes provision to avoid double jeopardy, so that a person may not be punished by way of contempt for conduct for which that person has been convicted of an offence new section 85B(1), and vice versa.
- 1214 New section 85B(10) makes it clear that unauthorised recording or transmission is an offence or contempt regardless of whether the person in question intended the recording or transmission in question to be seen or heard by anyone else.
- 1215 New section 85B(11) defines specific terms used throughout the new section.
- 1216 Subsection (2) of Clause 168 introduces Part 2 of Schedule 19, which inserts into the Tribunals, Courts and Enforcement Act 2007, the Employment Tribunals Act 1996 and the Enterprise Act 2002 new sections which make provision restricting unauthorised recording or transmission in relation to remote proceedings in the First-Tier Tribunal and Upper Tribunal, employment tribunals and the Employment Appeal Tribunal and the Competition Appeal Tribunal respectively which corresponds to the provision made in relation to remote proceedings in courts by new section 85B of the Courts Act 2003.
- 1217 Part 2 of Schedule 19 inserts a new section 29ZB into the Tribunals, Courts and Enforcement Act 2007 (covering the First-Tier Tribunal and Upper Tribunal); new section 37R into the Employment Tribunals Act 1996 (covering employment tribunals and the Employment Appeal Tribunal respectively); and a section 15B into the Enterprise Act 2002 (covering the Competition Appeal Tribunal). Those sections mirror the new section 85B of the Courts Act 2003, with differences only as required for the specific tribunal context.

Clause 169: Expansion of use of video and audio links in criminal proceedings, and Schedule 19: Further provision about the transmission and recording of court and tribunal proceedings, Part 3 (Live links in criminal proceedings)

- 1218 Clause 169, subsection (1) amends the CJA 2003 to extend the circumstances in which a criminal court can make a direction for the use of live links during “eligible criminal proceedings”.
- 1219 It expands the courts’ powers to use technology across a wider range of hearings and participants so that any person (including members of the jury in a criminal trial) may take part in criminal proceedings through a live link. New section 51(2) of the CJA 2003 makes clear that any live link directions relating to the jury must apply to all members of the jury, who must all take part through live video link while present at the same place, at the same time; a direction for a live audio link cannot be made for a jury panel.
- 1220 New section 51(3) of the CJA 2003 defines “eligible criminal proceedings” as encompassing preliminary hearings, summary trials, Crown Court trials, appeals to the Crown Court and appeals to the Court of Appeal (criminal division) and proceedings that are preliminary or incidental to such appeals, bail hearings following conviction, sentencing hearings, enforcement hearings and others.

- 1221 New section 51(4) of the CJA 2003 provides that the court must be satisfied that a live link direction is in the interests of justice before making one. By way of an additional safeguard, it also provides for the parties, and the relevant youth offending team in youth cases, to be given the opportunity to make representations to the court before the court determines whether to make a live link direction.
- 1222 Section 51(5) of the CJA 2003 places a duty on the court to consider all the circumstances of the case when deciding whether to make a live link direction, as well as any relevant guidance from the Lord Chief Justice. Section 51(6) lists those circumstances, including the views of the person to whom the direction would apply, the suitability of facilities that they would need to use, whether the person would be able to take part in the proceedings effectively through a live link, and the arrangements that would need to be made for the public to see or hear the proceedings if a live link is to be used.
- 1223 Subsection (2) of Clause 169 amends the Crime and Disorder Act 1998 (“the CDA 1998”) to omit Part 3A (live links in preliminary, sentencing and enforcement hearings), as the provisions governing live links in those types of hearing are now dealt with under the CJA 2003.
- 1224 Subsection (3) of Clause 169 explains that further provision relating to the changes introduced by this Clause are made in Part 3 of Schedule 19.
- 1225 Paragraph 1 of Schedule 19, Part 3 inserts a new section 52 into the CJA 2003, setting out the supplementary procedural matters around the giving, variation and rescinding of live link directions.
- 1226 New section 52 provides that the court may direct the use of live link to several, or all, persons participating in “eligible criminal proceedings” (as defined in new section 51 of the CJA 2003 – see paragraph 1221 above) and may also give a direction which only applies to a particular person for certain aspects of the proceedings, such as the giving of evidence. Persons outside of England and Wales may be directed to participate through a live link if the court so directs.
- 1227 Under subsections (2) and (3) of new section 52 of the CJA 2003, the court may vary or rescind a live link direction at any time, but only if this is in the interests of justice and only after the parties to the proceedings have been given the opportunity to make representations (including the relevant youth offending team in youth cases).
- 1228 Subsection (4) provides that, where the court varies a live link direction, other provisions in the CJA 2003 will apply. If another person is to be added to the direction, the test for and the effect of making the original direction apply. If the effect of the variation is such that a person can no longer take part in the proceedings, the test and conditions for rescinding a direction apply.
- 1229 Subsection (5) ensures that any decision to vary or rescind a live link direction is subject to the same considerations as a decision to give such a direction, namely any relevant guidance from the Lord Chief Justice and the circumstances of the case.
- 1230 Subsection (6) states that a live link direction may be given, varied or rescinded either by the court’s own motion or on application by a party to the proceedings but specifies that a party may only apply for a variation or rescinding of a live link order if there has been a material change of circumstances since the direction was originally made.
- 1231 Subsection (7) requires the court to state, in open court, its reasons for refusing any application from a party to give, vary or rescind a live link direction. It also requires magistrates’ courts to enter the reasons in the register of their proceedings.

- 1232 Under subsection (8), any hearings taking place in relation to the giving, varying or rescinding of a live link direction can themselves involve a live link, either upon application to the court or by order of the court.
- 1233 Subsection (9) of new section 52 clarifies that requirements for the relevant youth offending team to have an opportunity to make representations before a live link direction is made only apply in cases where the defendant is a party to the proceedings and is either not yet 18 years old or is 18 years old but the court is dealing with the case as if they were still under 18.
- 1234 New section 52A makes further provision about the effect of live link directions made under section 51 of the CJA 2003. Under subsections (1) and (2), participation in eligible criminal proceedings through a live link as directed by the court will be treated as complying with any requirement to attend or appear before court, or to surrender to the custody of the court, and such persons will be treated as present in court for the proceedings.
- 1235 Subsection (3) states that any eligible criminal proceedings occurring in accordance with a live link direction will be regarded as taking place at the court where at least one member of the court taking part in the proceedings is in a courtroom. If no member of the court, but one other participant, is taking part in proceedings in a courtroom, then that court is deemed to be the court where the proceedings take place. If nobody taking part in proceedings is doing so from a courtroom or if more than courtroom is involved, then the proceedings will be regarded as taking place wherever the court directs (which will be a place where the court can lawfully sit for the purposes of the proceedings).
- 1236 Subsection (4) defines “courtroom” for the purposes of subsection (3), as any place where proceedings of the sort in question might ordinarily be held.
- 1237 Subsection (5) clarifies that any statement made by a witness outside the United Kingdom through a live link is treated as having been made in the proceedings (just as it would were they to have made their statement whilst physically present in court).
- 1238 Subparagraph (3) of Schedule 19 amends current section 53 of the CJA 2003 (magistrates’ courts permitted to sit at other locations) to accommodate any participation through live link, rather than only the giving of evidence. It also inserts a new subsection (4) into section 53 which allows a single justice to give, vary or rescind live link directions, and to require or permit a person taking part in a hearing about the giving, varying or rescinding of a live link direction to participate in that hearing by live link.
- 1239 The Schedule also amends section 54 of the CJA 2003 (Warning to jury) to explicitly refer to the defendant as a person who may take part in proceedings by live link. Section 55 of the CJA 2003 (Rules of court) is amended in accordance with the expanded power to use live links and to enable the Criminal Procedure Rules to provide for contested live link applications to be determined without a hearing. (Uncontested live link applications can already be determined without a hearing.)
- 1240 Section 56 (Interpretation of Part 8) is also amended in accordance with the expanded power to use live links, to define the key terms used in these provisions, including the different types of hearing to which they apply. This section defines “live audio link” and “live video link” and states these two matters shall be disregarded (i) the extent to which a person may be unable to see or hear proceedings by reason of impairment of eyesight or hearing, and (ii) the effect of any other direction or order which prevents a person from seeing another person taking part in proceedings.
- 1241 Paragraph 2 of the Schedule amends the Extradition Act 2003 to enable live links to be used in extradition proceedings.

- 1242 Paragraph 3 amends the Criminal Appeal Act 1968 in accordance with the expanded powers to use live links under sections 51 and 52 of the CJA 2003 in relation to appeals to the criminal division of the Court of Appeal. It also provides for a single judge of the Court of Appeal and the Registrar of Criminal Appeals to be able to exercise these powers.
- 1243 Paragraph 4 amends The Police and Criminal Evidence Act 1984 to reflect the omission of Part 3A (live links in preliminary, sentencing and enforcement hearings) from the CDA 1998 (see paragraph 1203 above), which previously governed the use of live links for the purposes of this Act. Reference is now made to live link directions made under section 51 of the CJA 2003.
- 1244 The Criminal Justice Act 1998, the Youth Justice and Criminal Evidence Act 1999 and the Crime (International Co-operation) Act 2003 are also amended in accordance with the expanded powers to use live links.

Clause 170: Repeal of temporary provisions

- 1245 Clause 170, subsection (1) repeals sections 53 to 55 and Schedule 23 to 25 of the Coronavirus Act 2020 which are temporary modifications that are superseded by the provisions made by Clause 166 to Clause 168.

Part 13: Final provisions

Clause 172 and Schedule 20: Minor amendments in relation to the sentencing consolidation

- 1246 Clause 172 of and Schedule 20 to the Bill makes a number of minor and technical amendments to the 2020 Act and the CJA 2003, subsequent to the consolidation of sentencing procedural law into the Code by the 2020 Act. The amendments are contained in Schedule 20 to the Bill.
- 1247 Some of these amendments correct typographical errors, such as the amendment at paragraph 2 which substitutes the word ‘Part’ in section 108(4) of the 2020 Act with ‘Chapter’. Other typographical amendments include those at paragraphs 3, 4, 7, 8 and 9(2).
- 1248 Paragraph 5 amends subsection (6)(a) and (b) of section 414 of the 2020 Act to provide that references in that section to provisions applied by the Armed Forces Act 2006 also include provisions applied under that Act.
- 1249 Paragraphs 6 amends paragraphs 7(2)(b), 9(1) and 9(6) of Schedule 5 to the 2020 Act (which makes provision concerning the breach, revocation and amendment of reparation orders) to reflect the fact that someone who is subject to a reparation order may be 18 or over at the time they are brought before a court under Schedule 5; in such cases, they should be dealt with by a magistrates’ court other than a youth court.
- 1250 Paragraph 9(3) inserts a prospective amendment into paragraph 43 of Schedule 22 to the 2020 Act. If this specific amendment is commenced, it would confine the application of section 226(3) of the 2020 Act (which states that the court may not pass a sentence of imprisonment unless certain conditions are met) to those aged 21 or over. This would be in addition to the existing amendment in respect of section 226(2) of the 2020 Act.
- 1251 Paragraph 10 inserts a reference to sentences of detention under section 262 of the 2020 Act into section 237(1B) of the CJA 2003, and clarifies that such references include sentences of detention in a young offender institution under section 210B of the Armed Forces Act 2006 - thereby ensuring such sentences are covered by the release provisions in Chapter 6 of Part 12 of the CJA 2003.

Commencement

- 1252 Clause 176(4) provides for the following provisions to come into force on Royal Assent: Clauses 12, 21 and 22 (functions relating to serious violence); Clauses 30 and 33 to 35 (offensive homicide reviews); Clause 109 (power to refer high-risk offenders to the Parole Board); Clauses 116 to 119 (driving disqualifications: extension in connection with custodial period); Clause 136(2)-(9) (youth rehabilitation orders); Clauses 138 and 139 (secure schools and secure 16 to 19 academies); Clause 141 (serious violence reduction orders: piloting); Clause 163 (arrangements for assessing risk etc posed by certain offenders); Part 14 (final provisions with the exception of Clause 172 and Schedule 20). Certain regulation-making powers and powers to issue guidance also come into force on Royal Assent.
- 1253 Clause 176(5) provides for the following provisions to come into force two months after Royal Assent: Clause 2 (increase in penalty for assault on emergency workers); Clause 45 (positions of trust); Clause 46 (criminal damage to memorials); Clause 47 and Schedule 5 (overseas production orders); Clause 53 (functions of prisoner custody officers in relation to live link hearings); Clause 54 (proceeds of crime: account freezing orders); Clauses 62 to 64 (unauthorised encampments); Clauses 65 to 67 and Schedule 7 (road traffic offences); Clause 101 and Schedule 11 (minimum sentences for particular offences); Clauses 102 to 105 (life sentences: time to be served); Clauses 107 and 108 (release on licence); Clause 112 (repeal of uncommenced provision for establishment of recall adjudicators); Clauses 120 to 124 (custodial sentences: minor amendments); Clauses 126, 127, 129 and 130 and Schedules 12 and 13 (community and suspended sentence orders); Clauses 132 to 135 and 136(1) and Schedule 15 and Parts 1, 4 and 5 of Schedule 16 (youth rehabilitation orders); Clause 137 (abolition of reparation orders); Clauses 158 to 162 (management of terrorist offenders); Clauses 165 and 166 (juries); Clauses 169 and 170(1) and Schedule 19 (procedure in courts and tribunals); and Clause 172 and Schedule 20 (minor amendments arising out of sentencing consolidation).
- 1254 The remaining provisions will be brought into force by means of commencement regulations made by the Secretary of State (Clause 176(1)). Clauses 33, 136 and 141 enable the provisions in Chapter 2 of Part 2 (homicide reviews), Parts 2 and 3 of Schedule 16 (youth rehabilitation orders) and Chapter 1 of Part 10 (SVROs) respectively to be piloted.

Financial implications of the Bill

- 1255 The main public sector financial implications of the Bill fall to criminal and civil justice agencies (including the police, prosecutors, HM Courts and Tribunals Service, the Legal Aid Agency, Electronic Monitoring Service and HM Prison and Probation Service), local authorities, clinical commissioning groups, local health boards, fire and rescue services and educational authorities. The estimated annual cost of the measures in the Bill in respect of England and Wales once fully implemented is £100 million to £146 million. These figures are estimated based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions as they apply to England and Wales are set out in the impact assessments published alongside the Bill.

Parliamentary approval for financial costs or for charges imposed

- 1256 The money resolution and the ways and means resolution passed on 16 March 2021 continue to apply to the Bill.

- 1257 A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. There is potential Government expenditure under a number of provisions of the Bill, in particular Clause 1 (police covenant), Chapter 1 of Part 2 (serious violence duty), Chapter 2 of Part 2 (offensive weapons homicide reviews) and other provisions in the Bill which entail expenditure by the police and other bodies funded by the Government who are involved in the prevention, investigation or prosecution of offences or the management of offenders.
- 1258 A ways and means resolution is required for the provisions of a Bill that will involve taxation or other charges similar to taxation. Clause 68 provides for the charging of fees for courses offered as an alternative to prosecution.

Compatibility with the European Convention on Human Rights

- 1259 Baroness Williams of Trafford has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

"In my view the provisions of the Police, Crime, Sentencing and Courts Bill are compatible with the Convention rights".

- 1260 The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights: this memorandum is available on the Government website.

Related documents

- 1261 The following documents are relevant to the Bill and can be read at the stated locations:

- [Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence](#) – Government Consultation, April 2019
- [Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence](#) – Government Response, July 2019
- [The Front Line Review, Recommendation Report](#), July 2019
- [Serious Youth Violence](#), Home Affairs Select Committee, July 2019
- [Democracy, freedom of expression and freedom of association: Threats to MPs](#), Joint Committee on Human Rights, October 2019
- [Police Covenant for England and Wales](#) – Government Consultation, February 2020
- [Serious Youth Violence: Government Response to the Committee's Sixteenth Report of Session 2017 – 2019](#) – Government Response, March 2020
- [Police Covenant for England and Wales](#) – Government Response, September 2020
- [The Law, Guidance and Training Governing Police Pursuits: Current Position and Proposals for Change](#) – Government Consultation, May 2018
- [The Law, Guidance and Training Governing Police Pursuits](#) – Government Response, May 2019

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- [Police Powers: Pre-charge Bail – Government Consultation](#), February 2020
- [Police Powers: Pre-charge Bail – Government Response](#), January 2021
- [Prosecuting road traffic offences in Scotland, Fixed Penalty Notice reform](#) – Department for Transport and Scottish Government Consultation, March 2018
- [Prosecuting road traffic offences in Scotland, fixed penalty notice reform](#) -Government Response, March 2018
- [Children Outside the United Kingdom Investigation](#) – Independent Inquiry into Child Sexual Abuse
- [Guidance on Part 2 of the Sexual Offences Act 2003](#) – Home Office Guidance, September 2018
- [Criminal Procedure and Investigations Act 1996 \(section 23\(1\)\) Code of Practice](#) – Ministry of Justice Guidance, March 2015
- [Mobile phone data extraction by police forces in England and Wales](#) – Information Commissioner’s Office Investigation Report, June 2020
- [Powers for dealing with unauthorised development and encampments](#) – Government Consultation, April 2018
- [Government response to the consultation on powers for dealing with unauthorised development and encampments](#), February 2019
- [Strengthening police powers to tackle unauthorised encampments](#) – Government Consultation, November 2019
- [Strengthening police powers to tackle unauthorised encampments](#) – Government Response, March 2021
- [Terrorist Risk Offenders: Independent Review of Statutory Multi-Agency Public Protection Arrangements](#) – Jonathan Hall QC Report, May 2020
- [Serious Violence Reduction Orders: A new court order to target known knife carriers](#) – Government Consultation, September 2020
- [Serious Violence Reduction Orders: A new court order to target know knife carriers](#) – Government Response, March 2021
- [Serious Violence Strategy](#) – Government Strategy, April 2018
- [Simplification of Criminal Law: Public Nuisance and Outraging Public Decency – Law Commission Report, June 2015](#)
- [Democracy, freedom of expression and freedom of association: Threats to MPs – The Joint Committee on Human Rights, October 2019](#)
- [Government Response to Charlie Taylor's Review of the Youth Justice System](#), December 2016
- [A Smarter Approach to Sentencing](#), - Government Strategy, September 2020
- [Response to the consultation on driving offences and penalties relating to causing death or serious injury](#) – Government Consultation Response, October 2017

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Annex A – Glossary

AFA 2006	The Armed Forces Act 2006
BSL	British Sign Language
CAT	Competition Appeal Tribunal
CFA	Criminal Finances Act 2017
CJA 2003	Criminal Justice Act 2003
COFPN	Conditional Offer of Fixed Penalty Notice
COPO Act	Crime (Overseas Production Orders) Act 2019
CSPs	Community Safety Partnerships
DHMP	Detention at Her Majesty's Pleasure
DVLA	Driver and Vehicle Licensing Agency
DVSA	Driver and Vehicle Standards Agency
DYOI	Detention in a Young Offenders Institution
DPN	Digital Processing Notice
DTO	Detention and Training Order
EAT	Employment Appeal Tribunal
EMI	Electronic Money Institutions
ERS	Early Removal Scheme
ET	Employment Tribunal
FCA	Financial Conduct Authority
FPNs	Fixed Penalty Notices
HMRC	Her Majesty's Revenue and Customs
IICSA	The Independent Inquiry into Child Sexual Abuse
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
MAPPA	Multi-Agency Public Protection Arrangements

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MLA	Mutual Legal Assistance
NCA	National Crime Agency
NDA	Road Traffic (New Drivers) Act 1995
PACE	Police and Criminal Evidence Act 1984
PCC(S)A	Powers of Criminal Courts (Sentencing) Act 2000
PI	Payment Institution
Police Federation	Police Federation of England and Wales
PRSA	Police Reform and Social Responsibility Act 2011
ROA	Rehabilitation of Offenders Act 1974
ROPARPS	Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020
RTOA 1988	Road Traffic Offenders Act 1988
RUI	Released under investigation
SCHs	Secure Children's Homes
SDS	Standard Determinate Sentence
SFO	Serious Fraud Office
SHPO	Sexual Harm Prevention Order
SOPC	Sentence for Offenders of Particular Concern
SRO	Sexual Risk Order
SVRO	Serious Violence Reduction Order
The 1971 Act	Criminal Damage Act 1971
The 1980 Act	Magistrates Court Act 1980
The 1984 Act	Repatriation of Prisoners Act 1984
The 1986 Act	Public Order Act 1986
The 1988 Act	Road Traffic Act 1988
The 1991 Act	Criminal Justice Act 1991

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The 1993 Act	Prisoners and Criminal Proceedings (Scotland) Act 1993
The 1994 Act	Criminal Justice and Public Order Act 1994
The 1995 Act	Criminal Procedure (Scotland) Act 1995
The 1996 Act	Police Act 1996
The 1997 Act	Crime (Sentences) Act 1997
The 1998 Act	Crime and Disorder Act 1998
The 2000 Act	Terrorism Act 2000
The 2003 Act	Sexual Offences Act 2003
The 2007 Act	Custodial Sentences and Weapons (Scotland) Act 2007
The 2008 Act	Criminal Justice and Immigration Act 2008
The 2011 Act	Charities Act 2011
The 2015 Act	Criminal Justice and Courts Act 2015
The 2020 Act	Sentencing Act 2020
The Code	The Sentencing Code
TORER	Terrorist Offenders (Restriction of Early Release) Act 2020
VRH	Video Remand Hearing
YCS	Youth Custody Service
YRO	Youth Rehabilitation Order

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Bill as brought from the House of Commons on 6 July 2021 (HL Bill 40)

Annex B – Pre-charge bail authorisation requirements

Months	Existing pre-charge bail arrangements - standard cases ¹⁰	New pre-charge bail arrangements – standard cases	Existing pre-charge bail arrangements - SFO cases	New pre-charge bail arrangements – agency cases ¹¹
1 (28 days)	Initial bail period Inspector	Initial bail period Custody Officer	Initial bail period Inspector – confirmed by Superintendent	Initial bail period Custody officer – confirmed by relevant authorised agency member as indicated below
2	First extension			
3	Superintendent			
4	Second extension ¹²	First extension Inspector	First extension A member of the Serious Fraud Office who is of the Senior Civil Service¹³	
5	Magistrate			
6				
7	Third extension	Second extension ¹⁴ Superintendent	Second extension Magistrate	First extension Relevant authorised agency member as indicated below
8	Magistrate			
9				
10	Fourth extension	Third extension Magistrate	Third extension Magistrate	
11	Magistrate			
12				
13	Fifth extension	Fourth extension Magistrate	Fourth extension Magistrate	Second extension Magistrate
14	Magistrate			
15				
16	Sixth extension	Fifth extension Magistrate	Fifth extension Magistrate	
17	Magistrate			
18				

¹⁰ Under existing authorisation requirements, all cases other than Serious Fraud Office (“SFO”) cases (known as “standard cases”)

¹¹ New pre-charge bail arrangements provide for a longer initial bail period to be granted to three other agencies (alongside the SFO), namely Her Majesty’s Revenue and Customs (“HMRC”), the Financial Conduct Authority (“FCA”) and National Crime Agency (“NCA”). As they tend to be complex in nature and tend to take considerably longer to investigate than more “standard cases”, these cases are referred to as “agency cases”.

¹² Cases that meet the requirements under section 47ZE of the Police and Criminal Evidence Act 1984 can be granted a further extension of up to 6 months from the bail start date before coming before a Magistrates’ Court.

¹³ This is provided that the case meets the requirements under section 47ZE.

¹⁴ Cases that meet the requirements under section 47ZE of the Police and Criminal Evidence Act 1984 can be granted a further extension of up to 12 months from the bail start date before coming before a Magistrates’ Court.

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Authorisation levels for agency cases

- **NCA** – Authorised by Custody Officer, confirmed by a National Crime Agency officer
- **FCA** – Authorised by Custody Officer, confirmed by a member of staff designated for this purpose by the Chief Executive
- **SFO** – Authorised by Custody Officer, confirmed by a member of the Serious Fraud Office
- **HMRC** – Authorised by Custody Officer, confirmed by an officer of Revenue and Customs

First extension

- **NCA** - a National Crime Agency officer who is of a grade equivalent to the rank of Superintendent or above
- **FCA** - a member of staff of the Financial Conduct Authority who is of the description designated for this purpose by the Chief Executive
- **SFO** - a member of the Serious Fraud Office who is of the Senior Civil Service
- **HMRC** – an officer of Revenue and Customs who is of a grade equivalent to the rank of Superintendent or above

Annex C – Changes to the Rehabilitation of Offenders Act 1974

● Existing Regime (England & Wales)			Proposals for New Rehabilitation Periods (England & Wales)		
Sentence	Adults	Under 18s	Sentence	Adults	U18s
Community order	12 months	6 months	Community Order	At end of order	At end of order
Custody of 6 months or less	2 years	18 months	Custody of under 1 year	12 months	6 months
Custody of between 6 months and 30 months	4 years	2 years	Custody of between 1 year and 4 years	4 years	2 years
Custody of between 30 months and 4 years	7 years	3.5 years	Custody of more than 4 years [†]	7 years	3.5 years
Custody of more than 4 years	Conviction is never spent	Conviction is never spent			

[†] = Excluding serious violent, sexual or terrorist offences, that continue to never be spent.

Annex D – Territorial extent and application in the United Kingdom

1262 The provisions of Clauses 1, 2, 7 to 35, 43 to 46, 48 to 50, 52, 53, 55 to 64, 69, 77 to 117, 120 to 123, 125 to 143, 145 to 150, 152, 155 and 163 to 166 of and Schedules 1, 2, 4, 6, 10 to 16 to the Bill extend and apply to England and Wales only (disregarding minor effects as detailed below).

1263 In the view of the UK Government, with the exception of the provisions in Clauses 68 (removal etc. of abandoned vehicles), 116 and 117 (extension of driving disqualification: England and Wales), 145 (insofar as it relates to the Ministry of Defence Police) and 162 (arrangements for assessing etc. risks posed by certain offenders), the provisions of the Bill that apply to England and Wales only are within the legislative competence of the Scottish Parliament or Northern Ireland Assembly.¹⁵

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S)
Clause 2	Yes	Yes	No	No	No	Yes	Yes	No
Clause 3	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S)
Clauses 4 to 6	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clauses 7 to 22	Yes	Yes	No	No	No	Yes	Yes	Yes (W)
Clauses 23 to 35	Yes	Yes	No	No	No	Yes	Yes	Yes (W)
Clauses 36 to 42	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI)
Clause 43	Yes	Yes	No	No	No	Yes	Yes	No
Clause 44	Yes	Yes	No	No	No	Yes	Yes	No
Clause 45	Yes	Yes	No	No	No	Yes	Yes	No
Clause 46	Yes	Yes	No	No	No	Yes	Yes	No
Clause 47	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI)
Clauses 48 and 49	Yes	Yes	No	No	No	Yes	Yes	No
Clause 50	Yes	Yes	No	No	No	Yes	Yes	No

¹⁵ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 51	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (S,NI)
Clause 52	Yes	Yes	No	No	No	Yes	Yes	No
Clause 53	Yes	Yes	No	No	No	Yes	Yes	No
Clause 54	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Clause 55 to 59	Yes	Yes	No	No	No	Yes	Yes	No
Clause 60	Yes	Yes	No	No	No	Yes	Yes	Yes (W)
Clause 61	Yes	Yes	No	No	No	Yes	Yes	No
Clause 62 to 64	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 65 to 67	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 68	In part	In part	In part	In part	N/A	N/A	N/A	Yes (NI)
Clause 69	Yes	Yes	No	No	No	No	Yes	No
Clauses 70 to 75	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 76	No	No	Yes	No	N/A	N/A	N/A	No
Clauses 77 to 100	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 101 to 115	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 116 and 117	Yes	Yes	No	No	No	No	Yes	No
Clauses 118 and 119	No	No	Yes	No	N/A	N/A	N/A	No
Clause 120	Yes	Yes	No	No	No	Yes	Yes	No
Clause 121	Yes	Yes	No	No	No	Yes	Yes	No
Clause 122	Yes	Yes	No	No	No	Yes	Yes	No
Clause 123	Yes	Yes	No	No	No	Yes	Yes	No
Clause 124	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 125 to 131	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 132 to 138	Yes	Yes	No	No	No	Yes	Yes	No
Clause 139	Yes	In Part	No	No	No	Yes	Yes	No

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clauses 140 and 141	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 142 and 143	Yes	Yes	No	No	No	Yes	Yes	No
Clause 144	No	No	Yes	No	N/A	N/A	N/A	No
Clause 145	Yes	Yes	No	No	No	No	No	No
Clause 146 to 150	Yes	Yes	No	No	No	Yes	Yes	No
Clause 151	In part	In part	In part	No	N/A	N/A	N/A	Yes (S)
Clause 152	Yes	Yes	No	No	No	Yes	Yes	No
Clause 153	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 154	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (S, NI)
Clause 155	Yes	Yes	No	No	No	Yes	Yes	No
Clause 156	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (S, NI)
Clause 157	In part	In part	In part	In part	N/A	N/A	N/A	Yes (S, NI)
Clause 158 to 161	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 162	In part	In part	In part	In part	N/A	N/A	N/A	No
Clause 163	Yes	Yes	No	No	No	Yes	Yes	No
Clause 164	Yes	Yes	No	No	No	Yes	Yes	No
Clause 165 to 166	Yes	Yes	No	No	No	Yes	Yes	No
Clause 167	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 168 to 170	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 172	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Schedules 1 and 2	Yes	Yes	No	No	No	Yes	Yes	Yes (W)
Schedule 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI)
Schedule 4	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI)
Schedule 6	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 7	Yes	Yes	Yes	No	N/A	N/A	N/A	No

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Bill as brought from the House of Commons on 6 July 2021 (HL Bill 40)

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Schedule 8 and 9	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Schedule 10	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 11	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 12	Yes	Yes	No	No	No	Yes	Yes	No
Schedules 13 and 14	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 15 and 16	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 17	In part	In part	In part	In part	N/A	N/A	N/A	Yes (S, NI)
Schedule 18	In part	In part	In part	In part	N/A	N/A	N/A	No
Schedule 19	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Schedule 20	Yes	Yes	In part	In part	N/A	N/A	N/A	No

Minor or consequential effects¹⁶

1264 The following provisions that apply to England and Wales have effects outside England and Wales, all of which are, in the view of the Government of the United Kingdom, minor or consequential.

1265 Clauses 55 to 57 make amendments to sections 12 and 14 of the Public Order Act 1986 and Clause 62 amends sections 61, 62, 62B and 62C of the Criminal Justice and Public Order Act 1994. These enactments extend and apply to England and Wales and Scotland, but the amendments made by the Bill affect the application of the relevant provisions in England and Wales only.

Subject matter and legislative competence of devolved legislatures

1266 The provisions of the Bill relate to policing, the prevention, detection and investigation of crime, sentencing and the operation of the criminal courts. Subject to certain exceptions these are all matters within the legislative competence of the Scottish Parliament and Northern Ireland Assembly.

1267 In relation to Scotland, the Bill includes measures which apply to Scotland and relate to the following reserved matters: defence; special powers and other provisions for dealing with terrorism; the interception of communications; the subject matter of the Road Traffic Act 1988,

¹⁶ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

the Road Traffic Offenders Act 1988 and the Road Traffic (New Drivers) Act 1995; and certain matters relating to the operation of reserved courts and tribunals.

- 1268 In relation to Northern Ireland, the Bill includes measures which apply to Northern Ireland and relate to the following excepted or reserved matters: defence; special powers and other provisions for dealing with terrorism; the subject matter of sections 3 to 10 and Schedule 1 of the Investigatory Powers Act 2016; and certain aspects of the operation of reserved courts and tribunals.
- 1269 The Bill generally deals with reserved matters in Wales, including matters relating to civil or criminal proceedings; tribunals; foreign affairs; defence; special powers, and other special provisions, for dealing with terrorism; interception of communications; communications data; the prevention, detection and investigation of crime; the maintenance of public order; policing; police and crime commissioners; the subject-matter of the Rehabilitation of Offenders Act 1974; knives; telecommunications and wireless telegraphy; road traffic offences; driving licences; transport security; prisons and offender management; and criminal law (the relevant reservations being those set out at paragraphs 8(1)(c), 9, 10, 11, 29, 33, 35, 36, 39, 40, 41, 42, 49, 53, 83, 105, 106, 126 and 175(2) and (3) of Schedule 7A and paragraph 4(1) and (2)(c) and (3)(d) of Schedule 7B to the Government of Wales Act 2006).
- 1270 Insofar as the Bill does not deal with these matters, in particular by extending the functions of local authorities, local health boards, fire and rescue authorities and educational authorities in Wales, the measures in the Bill relate to devolved matters.

POLICE, CRIME, SENTENCING AND COURTS BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Bill as brought from the House of Commons on 6 July 2021 (HL Bill 40).

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