JUDICIAL REVIEW AND COURTS BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Judicial Review and Courts Bill as brought from the House of Commons on 26 January 2022 (HL Bill 102).

- These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. 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 The Judicial Review and Courts Bill introduces reforms to Judicial Review. It also includes a number of measures to help address the backlog across criminal courts, tribunals and Coroner's Courts and continue to modernise the delivery of justice and improve efficiency.

2 In summary, the Bill contains measures in the following areas:

- Judicial Review
    - Gives the Courts a discretion to suspend Quashing Orders for a period of time in certain circumstances. This discretion will include a non-exhaustive list of factors to consider.
    - Gives the Courts a discretion to provide prospective-only remedies. This will include a list of non-exhaustive factors to consider.
    - Creates a broad presumption for the Courts to use the new variations of Quashing Orders where it appears to the court that as a matter of substance, they offer adequate redress in relation to the relevant defect, unless there is a good reason not to do so.
    - Removes *Cart* Judicial Reviews via an ouster clause. This will remove a person's ability to judicially review a decision of the Upper Tribunal to refuse permission to appeal from the First-tier Tribunal.
- Criminal courts
    - Introduces a new automatic online conviction and standard statutory penalty (AOCSSP) procedure for specified summary-only non-imprisonable offences, which will give defendants who wish to plead guilty the option of having their entire case completed online without the involvement of the magistrates' court.
    - Enables prosecutors to provide defendants who are prosecuted for summary-only offences that are also initiated by police charge (in person at a police station) with the option to indicate a plea in writing/online and proceed via the existing procedure (referred to as "pleading guilty by post") that is available under section 12 of the Magistrates' Court Act 1980 ("the MCA 1980").
    - Clarifies that the Single Justice Procedure (SJP) applies to companies.
    - Enables magistrates' courts to provide defendants who are prosecuted for triable either-way offences with the option to both indicate a plea and engage with the allocation decision (to decide on the most suitable mode of trial) in writing/online before they appear at the magistrates' court for their first hearing.
    - Provides magistrates' courts with the mechanism to bypass the allocation procedure (that is either conducted in writing/online or at a traditional hearing) for triable either-way offences by providing defendants with an earlier opportunity to elect for a jury trial at the Crown Court.
    - Enables magistrates' courts to proceed with the plea-before-venue and allocation procedures for triable either-way offences in the absence of defendants who fail without good cause to appear at court for their hearing.

- Enables magistrates' courts to send indictable-only and triable either-way cases to the Crown Court for a jury trial or sentencing, without the need for a first hearing at the magistrates' court.
- Enables the Crown Court to remit certain cases back to a magistrates' court for trial (where defendants consent) or for sentencing (where magistrates' courts sentencing powers are adequate) in a wider range of circumstances.
- Removes various statutory requirements for documents to be sent by post so that they can be served in accordance with the Criminal Procedure Rules (CrimPRs), including by electronic means via the new Common Platform.
- Removes various statutory requirements to hold hearings in court in order to determine applications for a witness summons or the lifting of reporting restrictions, so that decisions can be made on the papers instead in accordance with the CrimPRs.
- Removes the jurisdictional boundaries of magistrates' courts, known as local justice areas (LJAs), which currently restrict work and magistrates from being moved easily between magistrates' courts in different areas.
- Enables the maximum custodial sentence which can be imposed by the magistrates' court for a single triable either way offence to be varied between 6 and 12 months.

- Online Procedure Rule Committee
  - Establishes a framework for Online Procedure Rules, made by a new Online Procedure Rule Committee (OPRC or 'the Committee'), to enable parties to civil, family or tribunal proceedings to use the online procedure. The rules are to apply to proceedings specified in regulations made by the Lord Chancellor. The Government expects the Committee to focus on the civil and family jurisdictions in the first instance.
  - Makes provision for the membership of the OPRC and its scope and remit, including the procedure for appointing members.
  - Enables the Lord Chancellor to alter the composition of the OPRC by regulations, made with the concurrence of the Lord Chief Justice and the Senior President of Tribunals and after consultation of other senior judicial office holders, in order to assist in making of new online rules. The OPRC itself will be independent and will be made up of members of the judiciary and members with expertise in the lay advice sector and IT.
  - Prescribes the process for making Online Procedure Rules: rules must be signed by at least half of the members of the Committee, including the chair, or a majority of the members of the Committee in any other case (the committee will be made up of 6 members) before being submitted to the Lord Chancellor or Secretary of State for approval.
  - Confers power on the Lord Chancellor to require the OPRC to make online rules to achieve a specified purpose and/or within a reasonable period in accordance with the prescribed procedures for making rules.

- Permits the Lord Chancellor to make amendments to other legislation which are necessary or desirable in order to facilitate the making of, or are consequential on, Online Procedure Rules.

- Employment Tribunals
  - To transfer the responsibility for the making of Employment Tribunals (ETs) procedure regulations and Employment Appeal Tribunal (EAT) rules from the Secretary of State for Business, Energy and Industrial Strategy (SoS BEIS) and the Lord Chancellor respectively to the Tribunal Procedure Committee (TPC), as a power to make unified Employment Tribunal Procedure Rules equivalent to the TPC's rule making power under the Tribunals, Courts and Enforcement Act 2007;
  - To provide for two additional members to be appointed to the TPC to ensure expertise in employment matters: an employment judge to be appointed by the Lord Chief Justice and an employment practitioner to be appointed by the Lord Chancellor;
  - To allow for the delegation of judicial functions in the ETs and the EAT to authorised case officers on a similar basis to the First-tier Tribunal and Upper Tribunal;
  - To make the Lord Chancellor responsible for laying down the statutory framework governing composition of the employment tribunals and EAT. The Senior President of Tribunals will be responsible for determining composition in individual cases. This aligns the procedure with the procedure in the First-tier Tribunal and Upper Tribunal"; and
  - To transfer responsibility for the remuneration of ET judges from the SoS BEIS to the Lord Chancellor.

- Coroner's Courts
  - To allow virtual hearings in coroners' courts ("Virtual hearings");
  - To allow a coroner to discontinue an investigation where the cause of death becomes clear (e.g. by natural causes), without a post-mortem examination ("Discontinuing investigations where cause of death becomes clear");
  - To allow inquests to proceed without a hearing in non-contentious cases ("Inquests without a hearing in non-contentious cases");
  - To remove the requirement (on a temporary basis) for an inquest with a jury in relation to a death where COVID-19 (a notifiable disease) is suspected to be the cause ("No requirement for jury at inquest where coronavirus suspected"), with power to review and extend this provision after 2 years; and
  - To allow the merger of coroner areas within a local authority where the new coroner area would not be the entire local authority area ("Merger of coroner areas").

- City of London Courthouses
  - This measure will make amendments to primary legislation regarding provision of courthouses to HM Courts & Tribunals Service (HMCTS) by

the City of London Corporation. HMCTS and the City of London have reached agreement on a scheme where two courthouses and accommodation are to be closed and replaced by a new combined courthouse and accommodation on a different site. The new court building will replace the ageing Mayor's and City of London Court and the City of London Magistrates' Court with new and modern facilities. The new court will also provide two additional county and eight Crown courts, a total of 18 hearing rooms. Technical changes to legislation are required to revoke provisions which currently place duties on the Corporation to provide county and magistrates court capacity at the current locations.

Policy background

Judicial Review

3 Judicial Review is one of the mechanisms in the UK's Constitution which provides citizens with a means to ensure that those holding public office or exercising public powers are held accountable and use their powers according to the boundaries and the manner in which they should be exercised, as set down and as intended by Parliament.

4 Judicial review is not concerned with the merits of a decision, but with whether it was lawfully made. In England and Wales, an application for judicial review can be brought on the grounds of illegality, procedural unfairness, unreasonableness/irrationality, or for breach of the Human Rights Act 1998. The court 'reviews' the decision at issue and decides if it is flawed and, if it is, may grant remedies.

5 In England and Wales, applications for judicial review are made to the Administrative Court, in the Queen's Bench Division of the High Court. In Northern Ireland, applications are made to the High Court (Northern Ireland); and in Scotland, to the Court of Session (Outer House).

6 In its manifesto ahead of the 2019 UK General Election the Government committed to ensuring "that judicial review is available to protect the rights of the individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays."

7 In light of that commitment in July 2020 the Government established the Independent Review of Administrative Law (IRAL), chaired by Lord Faulks QC, to consider options for reform to the process of Judicial Review. The IRAL panel was asked to examine trends with regard to the judicial review of executive action, in particular in relation to the policies and decision making of the Government, and to consider how the legitimate interest in the citizen being able to challenge the lawfulness of executive action through the courts can be properly balanced with the role of the executive to govern effectively under the law.

8 The panel's terms of reference asked it to give particular consideration to:

a. Whether the amenability of public law decisions to judicial review by the courts and the grounds of public law illegality should be codified in statute;

b. Whether the legal principle of non-justiciability requires clarification and, if so, the identity of subjects/areas where the issue of the justiciability/non-justiciability of the exercise of a public law power and/or function could be considered by the Government;

c. Where the exercise of a public law power should be justiciable: (i) on which grounds the courts should be able to find a decision to be unlawful; (ii) whether those grounds should depend on the nature and subject matter of the power; and (iii) the remedies available in respect of the various grounds on which a decision may be declared unlawful; and

d. Whether procedural reforms to judicial review are necessary, in general to "streamline the process".

9 The IRAL conducted a Call for Evidence, which ran from 7 September to 26 October 2020. It submitted its final report to Government in January 2021 and that report was published on 18 March 2021.

10 The IRAL report made two recommendations for changes to the way the substantive law on judicial review operates. First, it recommended overturning the Supreme Court decision in R (on the application of *Cart*) v The Upper Tribunal [2011] UKSC[1] concluding that "the continued expenditure of judicial resources on considering applications for a *Cart* JR cannot be defended, and that the practice of making and considering such applications should be discontinued."[2] Second, it recommended legislating to "give courts the option of making a suspended quashing order, that is, a quashing order which will automatically take effect after a certain period of time if certain specified conditions are not met."[3] In addition, it made a number of recommendations for procedural reform.

11 Alongside the publication of the IRAL report on 18 March the Government also published a public consultation document in which it indicated its intention to accept the recommendations of the IRAL report for reforming the substantive law and additionally sought views on a number of further measures. These included:

a. legislating for a general framework to clarify the effect of statutory ouster clauses;

b. legislating to introduce remedies which are of prospective effect only, to be used by the courts on a discretionary basis; and

c. legislating on the principles which lead to a decision being a nullity by operation of law.

12 After considering the IRAL report and the responses to the public consultation the Government has focussed its reforms on two specific areas of the substantive law, both of which are included in this Bill. The Government has decided not to proceed with the proposal to legislate for a general framework to clarify the effect of ouster clauses or the wider proposal to legislate on the principles which lead to a decision being a nullity. Instead it will focus on removing the *Cart* JR avenue of review, and providing for additional powers to courts to suspend or alter the retrospective effects of quashing orders – this is to provide the courts with more flexibility when deciding how best to use any remedies.

Remedies

13 Currently, when considering a judicial review, the High Court has various remedies available to it. These are:

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[1] Paragraph 3.46, Page 71, IRAL

[2] Paragraph 3.46, Page 71, IRAL

[3] Paragraph 3.49, Page 71, IRAL

a. An order quashing the decision in question (quashing order, previously certiorari);

b. An order restraining the body under review from acting beyond its powers (prohibiting order, previously prohibition); and

c. An order requiring the body under review to carry out its legal duties (mandatory order, previously mandamus).

d. The High Court can also make declarations, issue injunctions, and in very rare cases grant damages.

14 The IRAL Panel recommended that the Government create a power for the courts to suspend the effects of quashing orders and suggested the Government should legislate to the effect that "on an application for Judicial Review the High Court may suspend any quashing order that it makes, and provide that the order will not take effect if certain conditions specified by the High Court are satisfied within a certain time period."

15 The Panel's reasoning was that such a remedy would increase the flexibility of the set of remedies available and increase the court's flexibility in deciding which remedy could be appropriate. The court would thus be better able to tailor its remedies to the facts of the case. The need for flexibility stems from the immediate effect of the current set of remedies – that they only provide for a decision being invalid and quashed immediately and retrospectively, or for no remedy to be given, or a declaration of unlawfulness. This legislation does not provide for a specific mechanism for the second part of the IRAL's recommendation – that a court could set conditions, which if fulfilled would prevent the decision being quashed. It was considered that such a power could create practical complexities in its use and the set of cases where this remedy appeared feasible is extremely small.

16 The Panel saw two general areas where a suspended quashing order may be useful.

17 Firstly, in circumstances where a case raised significant constitutional questions, or where quashing a decision would pose significant risks to national security or the public interest, a suspended quashing order could be used to allow Parliament to clarify or amend the position.

18 Secondly in circumstances where a suspended quashing order would allow the defect to be corrected. For example, in R (Hurley and Moore) v Secretary of State for Business, Innovation & Skills [2012] EWHC 201 (Admin), the High Court found that the Secretary of State had, in issuing Regulations allowing universities to charge students up to £9,000 in fees, "failed fully to carry out his public sector equality duties" to assess properly whether the proposed Regulations would prove unacceptably discriminatory on grounds of race, sex or disability. Despite this, the High Court declined to quash the Regulations because of the inconvenience that it would cause. Instead, the Court issued a declaration that the Secretary of State had acted unlawfully. As a remedy, a suspended quashing order may have provided more flexibility. Such an order could have indicated that that the Regulations would be quashed within a couple of months of the Court's judgment but would give the Secretary of State time to prepare for the effect of any quashing or to consider the "public sector equality duties" and whether the Regulations needed to be revised.

19 It is the Government's view that the argument for increased remedial flexibility extends to providing the courts with a further power to modify the retrospective effects of a quashing order. The Government's public consultation proposed legislating for 'prospective quashing orders' where the courts could declare an action or decision unlawful onwards from a particular point. Consultees had mixed views on this proposal and a number argued that they struggled to conceive of many cases where such a remedy would be appropriate. The Government acknowledges that these circumstances may arise relatively rarely, however, it

believes that the courts will apply their discretion appropriately and as an additional tool for them to use in deciding on remedies the proposal does have merit. Therefore, the Bill provides the courts with an additional power to remove or limit the retrospective effect of any quashing order it makes.

20 With regard to the new remedial powers that the Government is providing for in this Bill it considers it appropriate to provide the court with a non-exhaustive list of factors that it should consider when deciding whether to suspend or alter the retrospective effects in that specific case. This should aid consistency as the courts consider when and how to apply the new remedies.

21 In addition, the Government is also providing for a general presumption to use these new remedial powers in circumstances where it appears to the court that they afford adequate redress unless there is a good reason not to do so. It would be up to the court to decide what kind of remedy would be appropriate – suspending or altering the retrospective effect of a quashing order may afford the defendant time to remake their decision. The diverse circumstances of possible cases make it difficult to assume that any one remedy or combination of remedies would be most appropriate in all circumstances.

22 Since Anisminic v FCC [1969] 2 AC 147, [1969] 2 WLR 163 and subsequent cases dealing with the question as to whether any error of law constitutes a jurisdictional error thus invalidating the act in question, there has been arguable ambiguity as to what kind of errors make a decision invalid and which do not. The case Ahmed v HM Treasury (No.2) [2010] 2 AC 534 exposed one of the ramifications of invalidity on the court's remedial discretion. In Ahmed (No. 2) it was held that it would be pointless (and misleading) to suspend the coming into force of a quashing order because it would make no difference to the underlying legal position: it was not the quashing order that deprived the relevant orders of effect, but the fact that they were ultra vires. The clauses, while empowering the court to modify a quashing order, also provide for the effects of its doing so in the context of the doctrine of nullity. This means that the underlying invalidity of the act in question may be disregarded and the act treated as valid until the quashing order comes into effect (in regard to suspended orders), or its past use may be permanently treated as if it were valid. So, regardless of a particular error being deemed as invalidating the act the court may still suspend or alter the effect of a quashing order, which in turn would allow the act to be treated as valid, as if the error invalidating that particular act had not occurred.

Cart Judicial Reviews (*Cart* JRs)

23 *Cart* JRs are applications for judicial review of a decision of the Upper Tribunal (the UT) to refuse permission to appeal against a decision of the First-tier Tribunal (the FtT).

24 This type of judicial review arose from the 2011 decision of the United Kingdom Supreme Court (the UKSC) in R (on the application of *Cart*) v The Upper Tribunal; R (on the application of MR (Pakistan)) v The Upper Tribunal (Immigration & Asylum Chamber) and Secretary of State for the Home Department [2011] UKSC 28. These two English cases were heard alongside a Scottish case raising the same issues, judgment for which was given separately (Eba v Advocate General for Scotland [2011] UKSC 29). All three cases were brought by claimants who had failed in their initial appeals to the FtT and were then refused permission to appeal to the UT – first by the FtT, and then by the UT itself.

25 In the absence of any further route of appeal against the UT's decision the claimants in the *Cart* cases asked the High Court (and the Court of Session, in Eba) to judicially review the UT's refusal of permission to appeal. The Supreme Court concluded that the High Court (and the Court of Session) retained a supervisory jurisdiction over such matters, establishing the process for what became known as *Cart* JRs.

26 Since *Cart* JRs came into existence the number of challenges via this route is high, and the success rate is low. The IRAL panel assessed this success rate as just 0.22%. Having investigated this further the Government believes that the success rate is slightly higher and estimates it is around 3%. This remains lower than in most other types of judicial review.

Criminal Courts

27 Her Majesty's Courts and Tribunal Service (HMCTS) is an executive agency of the Ministry of Justice (MoJ) and is responsible for the administration of courts and tribunals in England and Wales. This includes the criminal court system, which comprises of magistrates' courts, the Crown Court, and the criminal division of the Court of Appeal.

28 There have been two notable reviews of the efficiency of the criminal court system in England and Wales in recent decades: by Sir Robin Auld in his 'Review of the Criminal Courts (2001)' [4] and Sir Brian Leveson in his 'Review of Efficiency in Criminal Proceedings (2015)'.[5] Both of these reviews identified improvements that could be made to the structure, processes, and efficiency of the criminal justice system (CJS).

29 In September 2016, the then Government published a consultation paper titled *'Transforming our Justice System'*, which was released in tandem with a joint statement by the Lord Chancellor, the Lord Chief Justice of England and Wales, and the Senior President of Tribunals.[6] The joint statement described plans for a modern court system, shared by the Government and senior judiciary, stating 'the vision is to modernise and upgrade our justice system so that it works even better for everyone, from judges and legal professionals, to witnesses, litigants and the vulnerable victims of crime.' The statement also identified a number of 'real challenges' that still remain in the justice system today through inefficient and outdated processes.

30 The majority of the criminal court measures contained in this Bill were first introduced in the Prisons and Courts Bill on 23 February 2017, which fell with the dissolution of Parliament when a general election was called that same year. The measures in this Bill will help the Government to continue to realise the vision for the criminal courts that was described in the 2016 joint statement, as well as delivering on more of the recommendations that featured in Lord Justice Auld's and Lord Justice Leveson's previous reviews of the criminal court system. Furthermore, the measures will also complement new criminal court measures that feature in the Police, Crime, Sentencing and Courts Bill ("the PCSC Bill") (which enable greater use of audio and video technology in criminal proceedings where appropriate), and the judicial powers of authorised court officers created by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.

31 The criminal court measures in this Bill also form part of HMCTS's criminal court reform programme, in which the Government is investing over £1 billion to transform the courts and tribunals system, and a further £142 million of COVID-19 funding to upgrade court buildings so that they are digitally enabled. The measures will enable key parts of the reform programme so that the Government can continue to deliver vital improvements to the criminal court system and modernise the delivery of justice; this includes digitising and

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[4] *A review of the Criminal Courts of England and Wales, Rt. Hon Robert Auld, LJ [2001]:* [ARCHIVED CONTENT] Criminal Courts Review (nationalarchives.gov.uk)

[5] *Review of Efficiency in Criminal Proceedings, Rt. Hon Sir Brian Leveson, LJ [2015]:* Review of Efficiency in Criminal Proceedings by The Rt Hon Sir Brian Leveson (January 2015) (judiciary.uk)

[6] *Transforming our Justice System, p3:* Transforming Our Justice System By the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals (publishing.service.gov.uk)

streamlining preliminary pre-trial court proceedings via the Common Platform,[7] removing unnecessary courtroom hearings, and forging stronger links between the Crown Court and magistrates' courts. This will make the criminal courts more easily accessible to users and provide greater flexibility for the effective deployment of resources; saving court time, reducing delays, delivering swifter justice, and supporting recovery.

32 While these measures are designed to reduce waiting times and unnecessary travel for court participants, a full hearing at court will always be available when needed and where the court considers it to be in the interests of justice.

Enabling written/online preliminary pre-trial proceedings and more flexible allocation of cases

33 All criminal cases begin in a magistrates' court; however, criminal offences fall into three categories that affect which jurisdiction of the criminal court system is able to try and sentence them: summary-only offences (which should normally be heard in a magistrates' court); indictable-only offences (which must be heard in the Crown Court), and triable either-way offences (which may be heard in either a magistrates' court or the Crown Court). The decision to allocate a triable either-way case to the Crown Court is dependent on the complexity and severity of the case, the adequacy of magistrates' court sentencing powers, and a defendant's right to elect for a jury trial.

34 The legal framework for preliminary pre-trial proceedings for all categories of criminal offence is set out in primary legislation under the Magistrates' Courts Act 1980 ("the MCA 1980") and the Crime and Disorder Act 1998 ("the CDA 1998"). The practices and procedures which must be followed are generally set out in secondary legislation under the Criminal Procedure Rules (CrimPRs), which are made and regularly updated by the Criminal Procedure Rule Committee (CrimPRC).[8] This body of legislation and rules determines the circumstances in which a hearing must occur as part of a case's progression, when and how to indicate and enter a plea, and how cases are allocated to be heard in a magistrates' court or the Crown Court. The measures in this Bill will make changes to the legal framework provided by the MCA 1980, the CDA 1998, and subsequent legislation in order to provide new preliminary pre-trial proceedings that will increase flexibility in how a defendant can interact with the court in the lead up to trial and remove unnecessary hearings.

35 The criminal court measures in this Bill will enable defendants in most triable either-way cases to have the option to engage with the court for certain preliminary pre-trial proceedings in writing/online via the Common Platform. Defendants will have the option (with the assistance of a solicitor) to provide an indication of plea and engage with the allocation procedure in writing/online without the need for a hearing in the magistrates' court. If a defendant does not wish to engage through the new written/online procedure or the court does not provide them with the option in the first place (the exclusions will be set out in the CrimPRs), they will be required to appear at a court hearing and proceed as normal. The addition of a new invitation for defendants to elect for a jury trial at an earlier stage of the proceedings in triable either-way

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[7] The Common Platform is a new online digital management system, which replaces several legacy IT systems with a single system and brings together all the relevant information about a criminal case from beginning to end. HMCTS began introducing the Common Platform into Magistrates' and Crown Courts for live operational use in September 2020, where it has since been used to support all manner of criminal cases. As of January 2022, the Common Platform is currently live in 101 courts, equating to 44% of all criminal courts, and has managed over 40,000 criminal cases since rollout began. HMCTS aim to go live at all remaining criminal courts as soon as possible in 2022, but this is dependent on agreeing to resume rollout to further sites with the senior judiciary.

[8] The establishment of the Criminal Procedure Rule Committee was an outcome of the Auld Review 2001; and legislation in the Criminal Justice Act 2003: https://www.gov.uk/government/organisations/criminal-procedure-rule-committee/

cases will also provide magistrates' courts with the chance to bypass the subsequent allocation procedure (conducted at a court hearing or in writing/online), which will save the court time by removing the need to decide on the most suitable mode of trial when a defendant is certain that they wish to elect for trial in the Crown Court.

36 The criminal court measures will also provide greater flexibility in the way in which criminal cases can be allocated between magistrates' courts and the Crown Court, where this is deemed appropriate by the court. It will enable magistrates' courts in a wider range of circumstances to proceed with the plea-before-venue and allocation procedures in a defendant's absence, so long as it is in the interests of justice to do so. It will provide the court with an important means of progressing cases which would otherwise stall and create uncertainty and lengthy waiting times. It will also enable magistrates' courts to direct indictable-only and triable either-way cases to the Crown Court for trial or sentencing without the need for a first hearing at a magistrates' court, which will ensure cases reach the most appropriate venue earlier in the proceedings and avoid unnecessary hearings. Furthermore, the Crown Court will be able to remit certain cases back to a magistrates' court for trial (with a defendant's consent) or for sentencing (where a magistrates' court's sentencing powers are considered to be sufficient) in a wider range of circumstances than it currently can.

37 The criminal court measures will aim to further improve efficiency and speed up court processes by removing statutory requirements to hold a hearing in relation to certain matters, namely determining applications for a witness summons and applications to lift reporting restrictions. Although the court will continue to have the option of convening a hearing in these circumstances, the measures will enable the court to make a decision 'on the papers' without a hearing, where satisfied that this is appropriate.

38 Finally, the criminal court measures will amend existing legislation to enable the service of documents in criminal proceedings and certain related contexts to be in accordance with the CrimPRs. This means the most appropriate means of service (including service by electronic means) can be used in any given case, taking into account the preferred method of those individuals receiving the documents and their access to digital resources and online communication.

Removal of Local Justice Areas (LJAs)

39 This is one of several criminal court measures in this Bill which will help create a more flexible and unified criminal court system. England and Wales are currently divided into 75 LJAs and this measure will provide for the removal of these jurisdictional boundaries. This will provide the magistrates' courts with the freedom and flexibility to manage their caseloads more effectively and ensure that cases are dealt with sooner and in more convenient places. It will also help create a more unified criminal court system through the restructuring of the leadership and management arrangements for magistrates' courts, so they can be more closely aligned to the Crown Court.

Introducing a new automatic online conviction and standard statutory penalty (AOCSSP) procedure

40 The then Government's joint 2016 statement in response to its consultation *'Transforming our Justice System'* also set out its intentions to proceed with a new AOCSSP procedure, which would provide a new means of dealing with certain specified summary-only non-imprisonable offences.[9]

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[9] *Transforming our Justice System, p8:* Transforming Our Justice System By the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals (publishing.service.gov.uk)

41 Many defendants prosecuted for these types of offences can already choose to enter a plea in writing/online and have their case dealt with by a single magistrate (supported by a legal advisor) 'on the papers' outside of a magistrates' court hearing via the Single Justice Procedure (SJP), which was established under the Criminal Justice and Courts Act 2015 ("the CJCA 2015").

42 The criminal court measures in this Bill will introduce the new AOCSSP procedure for certain summary-only non-imprisonable offences that will enable these cases to take place entirely online and without the involvement of a magistrate. Eligible offences will be specified in secondary legislation made by the Secretary of State and will need to be agreed by Parliament by the affirmative procedure. These will be the most straightforward cases and the Government's intention is to initially apply this provision to travelling on a train or tram without a ticket and fishing with an unlicensed rod. Defendants will be required to opt-in for this procedure and choose to receive the automatic online conviction and the penalty specified for their offence.

Online Procedure Rule Committee

46 This proposal will establish a framework for Online Procedure Rules, made by a new Online Procedure Rule Committee (OPRC), to enable parties to civil, family or tribunal proceedings to use the online procedure. The rules are to apply to proceedings specified in regulations made by the Lord Chancellor. The government expects the Committee to focus on the civil and family jurisdictions in the first instance.

47 The introduction of an 'online court' to resolve some low value civil money claims was one of the key recommendations of the Review of Civil Court Structures led by Lord Justice Briggs, which was published in July 2016. Similar measures were also contained in the Courts and Tribunals (Online Procedure) Bill. That Bill was introduced in 2019, but did not reach Royal Assent.

Employment Tribunals

48 ETs were established under the responsibility of the Department for Trade and Industry (now Business, Energy and Industrial Strategy (BEIS)) by the Employment Tribunals Act 1996 (ETA), which also made provision about the Employment Appeal Tribunal (originally established under the responsibility of the Lord Chancellor by the Employment Protection Act 1975).

49 Following the transfer of the ETs and the EAT to the Tribunal Service (now Her Majesty's Courts and Tribunal Service) in 2006, BEIS has retained responsibility for the rules and governance of ETs as well as the overarching policy framework for ETs and the EAT. Responsibility for making changes to the regulations which determine procedural matters within ETs continues to rest with BEIS ministers who make changes to regulations to address specific policy issues, including those that may be raised in consultation with stakeholders.

50 ETs are the only area of tribunal business where control over procedure rests with a Government minister in another department (BEIS) outside of the Ministry of Justice. This contrasts with all other matters heard in the justice system where procedural rules are the responsibility of independent judicial-led committees or of the Lord Chief Justice.

Transferring responsibility for the making of procedure rules for ETs and EAT from the Secretary of State for BEIS to the Tribunal Procedure Committee

51 In 2016 the Government consulted on reforming the employment tribunal structure and announced the transfer of responsibility for ET and EAT rules from the SoS BEIS to the Tribunal Procedure Committee (TPC). This Bill will legislate for that change. The TPC is better

placed to make and amend rules for the ETs, given that it is an independent rule-making committee. These arrangements will also allow for a quicker response to the need to introduce, amend or revise ET procedure rules to help address the backlog in outstanding ET claims as well as dealing with other changing circumstances such as the COVID-19 pandemic.

52 Although the policy intention is to make the arrangements between the ETs and other tribunals more consistent, the Government wishes to retain the existing distinct and separate structure of the ETs and EAT. The ETs and the EAT will therefore remain outside the unified tribunal structure and continue to retain separate rules (Employment Tribunal Procedure Rules) from the unified tribunal system (Tribunal Procedure Rules).

Aligning the power to make Employment Tribunal Procedure Rules with the TPC's power to make Tribunal Procedure Rules

53 The Bill makes provision so that arrangements for making Employment Tribunal Procedure Rules for the ETs and EAT mirror the arrangements for the FtT and UT, conferring on the TPC in relation to the ETs and EAT all the powers and duties exercised in relation to the tribunals in the FtT and UT.

Providing for two additional members to be appointed to the TPC

54 The 2016 Consultation responses were strongly in favour of ensuring appropriate employment expertise on the TPC. To ensure that the membership of the TPC has the necessary skills and experience to fulfil its duties in relation to ETs and the EAT, the Bill provides for the TPC to have two additional members; one, appointed by the Lord Chancellor, who has experience of advising on ET matters; and a second, appointed by the Lord Chief Justice, who has experience as a judicial or non-legal panel member of the ETs.

Allow for the delegation of judicial functions in the ET and the EAT to legal case officers

55 The measures also include provision enabling delegation of certain judicial functions to authorised case officers. Such provision was made for tribunals in the unified structure by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018, and will now be extended to the ETs and EAT.

Make the Lord Chancellor responsible for making the statutory framework for composition of employment tribunals and EAT

56 The measures also include provision to replicate for the ETs the arrangements used for determining the composition of panels in the FtT and UT. This will enable panel composition to be more easily tailored according to the specific needs of users and the complexities of the case, streamlining the handling of cases whilst continuing to ensure that the tribunals' decisions are fair and informed.

Transfer responsibility for the remuneration of ET judges from the SoS BEIS to the Lord Chancellor

57 The SoS for BEIS currently has responsibility for remuneration for members of the ETs and EAT. Given the transfer of other responsibilities in relation to the ETs and EAT to the Lord Chancellor, it is considered appropriate for responsibility for remuneration of the ET judiciary to follow; consequently, the measures include provision to transfer the responsibility for the remuneration of the ET judges from the BEIS Secretary of State to the Lord Chancellor. This will produce a result in line with existing provision in the Tribunals, Courts and Enforcement Act 2007 which provides that the Lord Chancellor is responsible for remuneration, pay and expenses of judges and members of the First-tier Tribunal and Upper Tribunal.

Coroner's Courts

58 Coroners are independent judicial officeholders who have a duty to investigate deaths reported to them that may be violent or unnatural, that have an unknown cause or that occurred in prison or in other state detention.

59 The purpose of a coronial investigation is to determine who the deceased was and how, when and where they died. In order to do this, the coroner may hold an inquest which is a fact-finding inquiry in a court. In some cases, for example non-natural deaths in custody or other state detention, the inquest has to be held with a jury.

60 During the COVID-19 pandemic, coroners have reported backlogs of inquest cases, in particular jury and non-jury complex inquests due to social distancing regulations.

Discontinuance of investigation where cause of death becomes clear

61 Section 4 of the Coroners and Justice Act (CJA) 2009 provides that coroners can only discontinue an investigation where the cause of death has been revealed by a post-mortem examination (PM). In all other circumstances, once an investigation has commenced, the coroner has no power to discontinue it and must hold an inquest.

62 The effect of this provision is that if the coroner discovers the cause of death by means other than a PM – for example through medical records that become available at a later stage - the coroner must proceed to inquest, even though the outcome may be a foregone conclusion. This is an unnecessary step which is time consuming, costly and adds to the distress of the bereaved family. This provision will amend section 4 of the CJA 2009, broadening the circumstances in which coroners can discontinue investigations.

Power to conduct non-contentious inquests in writing

63 Each year, circa 30,000 inquests are held in England and Wales, and in a significant number of these cases, those most likely to attend (the bereaved family) are content not to attend. In practice, many hearings are held in a completely empty courtroom, with the coroner conducting the hearing to no-one (other than a recording device). This provision will give coroners the power to determine when an inquest can be held without a hearing, which could be where there is no practical need or public interest to do so, and in turn free up physical space and resources for inquests which do need a hearing. Whilst a significant number of inquests are entirely non-contentious, there will still be cases which genuinely need a full public hearing and coroners will be required to continue to hold these.

64 Rule 23 of the Coroners (Inquests) Rules 2013[10] provides for a 'documentary' or 'Rule 23 inquest' which comes very close to being entirely on paper, but a limited public hearing must still take place (as per Chief Coroner's Guidance No.29 – Documentary Inquests[11]). The intention is for the provision to serve as a natural extension of the existing arrangement. The Chief Coroner will provide further guidance to coroners accompanying any law change, ensuring that 'paper' inquests are conducted fairly and cases which require a full public hearing continue as required.

Use of audio or video links at inquests

65 During the COVID-19 pandemic, coroners have sought ways to ensure that inquest hearings could continue, whilst being mindful of the need to support the Government in its efforts to curb the spread of the virus. The Chief Coroner in his guidance 35 on hearings during the

[10] The Coroners (Inquests) Rules 2013 (legislation.gov.uk)

[11] Guidance-No.-29-Documentary-inquests.pdf (judiciary.uk)

pandemic[12] noted that whilst it was possible for all parties who needed to be present to do so by virtual link, the coroner (or jury if there was one) had to be physically present at the hearing.

66 Whilst coroners have been able to continue to conduct very routine inquests, in almost all coroner areas backlogs have built up of more complex inquests with multiple attendees, in particular jury inquests, as courts have lacked the necessary infrastructure to operate during the lockdown restrictions.

67 This provision will clarify that the Coroners Rules (made under section 45 of the CJA 2009) may allow pre-inquest reviews and inquests to take place where all participants, including the coroner, will be able to participate remotely. It will help to address issues in relation to the COVID-19 pandemic and recovery which are likely to continue for many years, in particular, help reduce the backlog quicker and contribute to the effort to stop the spread of the virus. Wholly remote hearings are allowed in mainstream courts and tribunals so this provision will bring coroner's courts in line with them, and avoid them being outliers.

No requirement for jury at inquest where coronavirus suspected

68 The classification of COVID-19 as a notifiable disease (notifiable to Public Health England (PHE) under the Health Protection Regulations 2019 for public health purposes) meant that, under section 7(2)(c) of the Coroners and Justice Act 2009 (the 2009 Act), any inquest into a death where the coroner had reason to suspect that the death was caused by COVID-19 would have had to take place with a jury. This could have had very significant resource implications for Local Authority run coroner services.

69 Although inquests requiring a jury could have been adjourned until the pandemic had passed, this would have deprived bereaved families of swift closure and would, in any event, simply build up resource pressure for the future. The Coronavirus Act 2020 (CVA 2020) therefore modified the 2009 Act to disapply the requirement that coroners must conduct any inquest with a jury where they have reason to suspect the death was caused by COVID-19.

70 There is concern that when the CVA 2020 sunsets, coroners will be required again to hold inquests with a jury where they have reason to suspect a death has been caused by COVID-19. If there were future outbreaks of COVID-19 after March 2022, or coroners were already investigating deaths then where COVID-19 was suspected to be the cause, they would be required to hold an inquest with a jury. If coroners were required to hold jury inquests in cases where COVID-19 were suspected as the cause of death, this would add to the existing backlog of jury inquests. The intention is to replicate Section 30 within the 2009 Act when the CVA sunsets.

71 Coroners would still be able to conduct an inquest with a jury if a death was suspected to have been caused by COVID-19 under existing powers, where they think there is good reason to do so. They would still be required to hold an inquest with a jury where another notifiable disease is suspected to be the cause.

72 There are additional provisions which will require Lord Chancellor to review this provision every 2 years and empower the Lord Chancellor to extend it if the Lord Chancellor considers it would be expedient for the coronial system for this provision to be retained longer.

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[12] Chief Coroner Guidance No.35- Hearings during the pandemic Chief-Coroner-Guidance-No.-35-hearings-during-the-pandemic.pdf (judiciary.uk)

Phased transition to new coroner areas

73 It is a long-standing central government and more recently Chief Coroner objective to merge coroner areas when the opportunity arises to improve consistency of coroner provision and standardise practice. Paragraph 2 of Schedule 2 to the CJA 2009 provides that a coroner area consists of a local authority area or the combined areas of two or more local authorities. Smaller areas made under previous legislation were preserved under the CJA 2009. In practice, this means that where there are a number of coroner areas within a local authority, it is not possible to merge them if that would result in the new coroner area consisting of less than the area of the local authority.

74 This has caused difficulties. For example, a local authority area which consists of three or more separate coroner areas may wish to combine all of them into one coroner area, but may prefer to achieve this piecemeal by merging one area with another as and when a senior coroner from one of the coroner areas retires. This is not possible under Schedule 2 to the CJA 2009 in its present form. Schedule 2 therefore needs minor revision to provide greater flexibility. The provision will modify Schedule 2 by way of a new transitional provision in Schedule 22 to permit two coroner areas to combine, by order of the Lord Chancellor, into one coroner area which consists of the area of a local authority or part of the area of the local authority.

City of London Courthouses

75 The City of London currently provides three court buildings to HMCTS under a statutory provision. The City of London is working in partnership with HMCTS to provide a flagship new court building on Fleet Street. The Mayor's and City of London Court and the City of London Magistrates' Court are ageing, grade two listed buildings. Their heritage status imposes operational restrictions and they provide only four courtrooms each. The new court will be a purpose built 18 room centre with technology suitable for the needs of modern justice.

76 This measure will revoke provisions which currently place duties on the Corporation to provide county and magistrates' court capacity at the current locations. There will be a transitional period when HMCTS is occupying existing sites and has taken on the lease of the new building and is completing fitting-out works. Court hearings will then move to the new site when it is ready for occupation; at this stage the duty on the City of London regarding the existing buildings will cease. Obligations in relation to the replacement courthouse and accommodation will be governed by contractual arrangements.

77 The Central Criminal Court has formed no part of the discussions between HMCTS and the City of London and is to remain.

Legal background

78 The Bill amends the following legislation:

a. Part II of the Senior Courts Act 1981 in relation to adding a new provision on quashing orders and making changes to existing provisions on quashing orders.

b. Part 1, Chapter 2 of the Tribunals, Courts and Enforcement Act 2007, which relates to review of decisions and appeals of the First-tier Tribunal and Upper Tribunal and provisions on quashing orders.

c. Magistrates' Court Act 1980 in relation to creating the automatic online conviction scheme, to pre-trial procedures in the magistrates' court and in the youth court and in

relation to removing the requirement for a hearing of an application to lift reporting restrictions. There is also an amendment in relation to magistrates' court sentencing powers.

d. Children and Young Persons Act 1933 in relation to involvement of a parent or guardian in criminal proceedings.

e. Criminal Procedure (Attendance of Witnesses) Act 1965 in relation to removing the requirement for a hearing for a witness summons.

f. Interpretation Act 1978 to insert a definition of the term "general limit" for the purposes of being able to vary the limit on magistrates' court sentencing powers for the purpose of either way offences.

g. Senior Courts Act 1981 in relation to the powers of the Crown Court to remit to the magistrates' court.

h. Criminal Justice Act 1987 in relation to removing the requirement for a hearing of an application to lift reporting restrictions.

i. Environmental Protection Act 1990 in relation to magistrates' court sentencing powers.

j. Criminal Procedure and Investigations Act 1996 in relation to removing the requirement for a hearing of an application to lift reporting restrictions.

k. Crime and Disorder Act 1998 in relation to sending cases to the Crown Court and the powers of the youth court.

l. Scotland Act 1998 in relation to magistrates' court sentencing powers.

m. Youth Justice and Criminal Evidence Act 1998 in relation to removing the requirement for a hearing of an application to lift reporting restrictions.

n. Criminal Justice Act 2003 in relation to the institution of criminal proceedings and to magistrates' court sentencing powers.

o. Sentencing Act 2020 in relation to remitting for sentence to the magistrates' court or youth court and to create different "general limits" on sentencing for triable either way and summary-only offences and to create a power to vary the general limit on the custodial sentence for triable either way offences in the magistrates' court to either 6 or 12 months.

p. Schedule 1 of the Bill replaces rules for service of documents in criminal or related proceedings with those set out in the Criminal Procedure Rules in the following fourteen Acts: Road Traffic Act 1960, Misuse of Drugs Act 1971, Prices Act 1974, Salmon and Freshwater Fisheries Act 1975, Isle of Man Act 1979, Magistrates' Courts Act 1980, Public Passenger Vehicles Act 1981, Video Recordings Act 1984, Weights and Measures Act 1985, Road Traffic Act 1988, Road Traffic Offenders Act 1988, Transport and Works Act 1992, Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice and Police Act 2001.

q. The Employment Tribunals Act 1996, which provides for employment tribunals and the Employment Appeal Tribunal and for their composition and powers and for practice and procedure in proceedings before them.

r. The Civil Procedure Act 1997, which establishes the Civil Procedure Rule Committee and the power to make Civil Procedure Rules.

s. The Courts Act 2003, which among other things establishes the Family Procedure Rule Committee and the power to make Family Procedure Rules.

t. The Tribunals, Courts and Enforcement Act 2007, which among other things establishes the Tribunal Procedure Committee and the power to make Tribunal Procedure Rules.

u. Section 4 of the Coroners and Justice Act 2009, which relates to discontinuance of investigation where cause of death becomes clear before inquest.

v. The Bill will disapply Section 7(2)(c) of the Coroners and Justice Act 2009 which requires a coroner to hold an inquest by jury where they have reason to suspect that the cause of death is COVID-19 (a notifiable disease).

w. The Bill adds Section 9C to the Coroners and Justice Act 2009 to give a power to coroners to conduct non-contentious inquests in writing.

x. Section 45 of the Coroners and Justice Act 2009, which relates to coroners rules.

y. The Bill adds Section 9C to the Coroners and Justice Act 2009 to give a power to coroners to conduct non-contentious inquests in writing.

z. The Bill adds Paragraph 1A into Schedule 22 of the Coroners and Justice Act 2009 (transitional provisions) so that two or more coroner areas may be combined even if the new coroner area is not the entire local authority area (as is otherwise required by paragraph 1(2) of Schedule 2 to the Coroners and Justice Act 2009).

aa. Section 29 of the Courts Act 1971, which relates to the current statutory duty on the City of London to provide the Mayor's and City of London Court.

bb. Repealing paragraph 16 of Schedule 2 to the Courts Act 2003, in respect of the City of London Magistrates' Court; and paragraph 35 of Schedule 14 to the Access to Justice Act 1999, consequential on that repeal.

Territorial extent and application

79 Clause 47 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. Subject to the exceptions provided below, the Bill extends to England and Wales, Scotland and Northern Ireland.

80 Sections 1(4), 2(2) and 34 have the same extent as the amendments or repeals to which they relate.

81 The following provisions extend only to England and Wales:

a. Section 13

b. Section 40

c. Section 42(1)

d. Paragraph 3(2) of Schedule 2

e. Part 1 of Schedule 3

82 Part 3 of Schedule 3 extends only to England and Wales and Scotland.

83 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Judicial review

Clause 1: Quashing orders

84 This clause grants the courts a new power in Judicial Review by way of amendment to the Senior Courts Act 1981. The provisions are concerned with suspending or altering the effects of quashing orders.

85 Subsection (1) of clause 1 inserts a new section 29A to the Senior Courts Act 1981.

86 The new section 29A(1)(a) deals with suspension: that the quashing order does not take effect until a date specified in the order, to be specified by the court. Subsection (7) of new section 29A makes further provision that section 29(2) of the Senior Courts Act 1981 does not prevent the ability of the court to vary the date specified for the suspension.

87 Subsection (1)(b) of new section 29A deals with the permanent limitation of the retrospective effects of a quashing order, from some point in the past or future. It provides courts with power to remove or limit any retrospective effect of the quashing. Subsection (1)(a) and (b) of new section 29A may be used independently or cumulatively.

88 New section 29A, subsection (2), provides that in using the powers in subsection (1), the court may make that order subject to conditions. The clause provides no limit or prescription on the type or nature of the conditions, leaving this determination to the court.

89 Subsections (3), (4), and (5) of new section 29A deal with the effects of these powers on a decision found to be invalid. The case *Ahmed v HM Treasury (No2)* [2010] UKSC[13] found that suspending a quashing order would be of no effect and in fact pointless, as the performative aspect of the court's judgment was the finding of invalidity due to the decision in question being *ultra vires*. A quashing order would be merely declaratory. It was the fact in that case that the decision was *ultra vires* which deprived it of legal effect, not the quashing order.

90 To address this point, subsection (3) of new section 29A provides that using the power under subsection (1)(a) means that the impugned act in question may be treated as valid for all purposes (subject to any conditions imposed by virtue of subsection (2)) until the quashing takes effect. Suspending the effects of the quashing order in this way creates another effect – for an act found to be invalid, to be treated as if it were valid, until the quashing order comes into effect at the end of the period of suspension. Subsection (6) of new section 29A clarifies what happens when the quashing order comes into effect, confirming that the act in question would henceforth be treated as void *ab initio,* and what was treated as valid during the period of suspension would at that point not be so treated. This does not preclude the possibility of the court also setting a limit on the retrospective effect, by also using the power in subsection (1)(b).

91 Subsection (4) of new section 29A sets out the implications in circumstances where the power in subsection (1)(b) is used. In this instance the use of that power means that the decision or act in question is to be treated as valid for all retrospective purposes for which the quashing order does not apply. This means, for example, that any decisions or actions taken under the impugned act before it is quashed may permanently be treated as valid even after the act is quashed (subject to any conditions imposed by virtue of subsection (2)).

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[13] Her Majesty's Treasury v Ahmed and others [2010] UKSC 5 – see: HM Treasury v Ahmed & Ors [2010] UKSC 5 (04 February 2010) (bailii.org)

92 Subsection (5) of new section 29A provides that where the action or decision in question is upheld by virtue of section 29A(3) or (4), it is to be treated for all purposes as if its validity and force were, and always had been, unimpaired by the relevant defect. Relevant defect is defined in subsection (11) as "the defect, failure or other matter on the ground of which the court is making the order". Subsection (5) therefore does not prevent defects, failures or other matters which are not the subject of the order from having an effect on the validity of the impugned act.

Example (1): Effect of suspended relief

The court finds a decision by a public body to create a regime for issuing certain licenses to be invalid. This does not prevent the court from issuing a quashing order which is suspended for 30 days on condition that no new licenses are issued. This means that licenses issued already would be treated as valid for the 30 days. A person who had been issued a license would need to prepare for that license to be invalid, but could continue to rely on it for the 30 days. The public body would also have time to put in place transitional arrangements, set up a new licensing regime, or take any other action considered necessary.

Example (2): Effect of prospective relief

The Government passes secondary legislation which establishes a licensing regime for the sale of certain medical devices to hospitals. After a time, in which this regulation has been widely used, it is challenged and found to be unlawful in part. Due to the issuing of many licenses already, the court decides to quash the regulation prospectively. This means that no further licenses could be issued, but those previously issued would remain valid. This would prevent administrative chaos. Retrospective quashing may have caused sudden disruption to supply chains, or severe financial consequences for businesses who would not be able to continue providing that service. The Government would be in a position to assess the situation and make any new regulations deemed necessary.

Example (3): Effect of suspended and prospective relief

The court finds a decision by a public body to authorise and set in motion a process for assessing and developing potential sites for infrastructure projects, to be unlawful on the ground of failure to take into account a necessary consideration. The court has the power to suspend or make prospective the relief it grants. Immediate and retrospective quashing would mean ongoing actions pursuant to that decision would be invalid. The court decides to suspend its quashing order for three months, and that it would come into effect prospectively from that point on condition that any work ceases until the public body exercises its powers to amend its decision. The public body is thus afforded a chance to re-assess its decision in light of the consideration it had previously not accounted for. Before the three month suspension expires it makes minor alterations to its decision, and the work proceeds with minimal delay. Actions, such as award of contracts which were taken pursuant to the original decision, insofar as they are unaltered by the new decision, are treated as valid.

93 Subsection (8) of new section 29A provides that the courts must have regard to certain factors in deciding whether to exercise their powers under subsection (1). This subsection guides a court's considerations towards the use of the powers under subsection (1). The list provided is non-exhaustive and does not constrain the court's discretion to consider other relevant factors, as made explicit in subsection (8)(f).

a. The first factor (8)(a) addresses what kind of error is in question. The fact that an error may be technical or minor, or is more substantive, or fatally undermines the entire decision in question is relevant to determining whether to suspend or alter the retrospective effect of a quashing order. Similarly, the court could have regard to whether the decision maker had acted outside their actual jurisdiction or permitted field of activity.

b. The second factor addresses the potentially disproportionate effects of exercising or failing to exercise the new power on public administration. Such consequences might include economic or financial instability resulting from the immediate quashing of a regulation, or the public authority being in a position where it had to immediately set up new arrangements, or pay compensation, or reverse actions taken pursuant to the quashed decision.

c. The third factor pertains to the interests of the claimant or third parties who would benefit from an act being quashed with immediate effect. The court would consider whether the interests of justice required those persons be given immediate relief, for instance if suspending or limiting relief would cause prejudice to their rights in tort or contract, rights under the Human Rights Act 1998, or their ability to raise a defence in criminal proceedings, or would deny the claimant an effective remedy.

d. The fourth factor pertains to third parties who may have relied or are relying on the act in question in good faith that it was lawfully made. Their interests may be at stake if they were suddenly unable to conduct their business for instance, as it relied on a certain licence which was quashed retrospectively.

e. The fifth factor addresses a situation where the defendant (or some other person with responsibility over the act in question) has taken any action or proposes to take action or made undertakings to the court. This may concern actions to rectify any unlawfulness, or review a decision in light of the court's judgment. They may include representations that the case is constitutionally significant and contentious, and warrants Parliament being given an opportunity to pass emergency legislation, if the Government proposes to bring forward such legislation.

f. Paragraph (f) makes provision that the court can consider any other factors it deems relevant.

94 Subsections (9) and (10) of new section 29A provides a presumption that if the court is making a quashing order, the court should use the new remedial powers in subsection (1) in circumstances where it appears to the court, as a matter of substance, that the use of the provisions would offer adequate redress in relation to the relevant defect unless there is good reason not to do so. This presumption, in subsection (10), also directs the courts to take into particular account the considerations in subsection (8)(e).

95 Subsection (11) of new section 29A defines certain terms used in the section. Including "(purported thing)" as part of the definition of 'impugned act' means that the court has the power to use these remedies and that the remedies take effect in the manner set out in the section, regardless of any effect of 'nullity'. Nullity is the concept whereby what was considered by the decision maker to be an action with effect in law, when found to be invalid, is revealed as an action that does not and did not have effect in law, and thus it was no action

(in a legal sense) at all. Therefore, even when a court considers a decision to be a nullity, the powers in subsection (1) are available.

96 The definition of 'relevant defect' in subsection (11) of new section 29A is "the defect, failure or other matter on the ground of which the court is making the quashing order."

97 Subsection (2) of clause 1 updates the power to remit in the Senior Courts Act 1981 to ensure it is compatible with the new remedial powers in subsection (1) of new section 29A. This ensures that the court, as well as using any of the powers in subsection (1) of new section 29A, can remit the decision back to the decision maker so that a fresh decision can be reached.

98 Subsection (3) of clause 1 makes consequential amendments to the Tribunals Courts and Enforcement Act (TCEA) 2007. The tribunals operating under the TCEA have a judicial review jurisdiction, which currently functions (in relation to cases arising under the law of England and Wales) in broadly the same way as the Judicial Review jurisdiction of the High Court of England and Wales. To maintain this arrangement, this amendment provides the Upper Tribunal with the same powers as set out in new section 29A of the Senior Courts Act 1981 and makes a further consequential change on remittance.

99 Subsection (4) of clause 1 provides that the powers in clause 1 will be available in respect of proceedings commenced on the day of or after commencement of these provisions.

Clause 2: Exclusion of review of Upper Tribunal's permission-to-appeal decisions

100 This clause makes certain decisions of the Upper Tribunal final, and stipulates that they are not subject to review by any other court. This will operate subject to certain exceptions.

101 Subsection (1) inserts a new section 11A into the Tribunals, Courts and Enforcement Act 2007 ("TCEA 2007").

102 Subsection (1) of the new section 11A sets out which decisions of the Upper Tribunal are affected by this clause. The clause will only apply to decisions by the Upper Tribunal to refuse permission to appeal further to applications under Section 11(4)(b) of the TCEA 2007. This means that the following decisions are not affected by the clause:

a. decisions of the Upper Tribunal in relation to applications for permission (or leave) to appeal from bodies other than the First-tier Tribunal;

b. decisions of the Upper Tribunal which do not relate to applications for permission (or leave) to appeal under section 11(4)(b).

103 Subsection (2) of the new section 11A provides that no other court can question or set aside the Upper Tribunal's decision about permission (or leave) to appeal. It should be noted that subsection (7) of new section 11A defines "decisions" as including "purported decisions'". This means that even decisions which might otherwise be regarded as a nullity, are caught by the new section.

104 Subsection (3) of new section 11A re-iterates and further clarifies the extent of the rule. Subsection (3)(a) provides that, if the Upper Tribunal were to make an error in reaching its decision on permission (or leave) to appeal, this does not mean that the Upper Tribunal has acted beyond its powers. Such decisions will therefore still be caught by the rule. Subsection (3)(b) emphasises the effect of subsection (2) in preventing the making of an application to a court of supervisory jurisdiction about the decision, as the jurisdiction of that court does not extend to these decisions.

105 Subsection (4) of the new section 11A provides for specific exceptions to subsections (2) and (3), that is, certain circumstances where a challenge can still be brought against decisions of

the Upper Tribunal on applications for permission (or leave) to appeal. This includes where the Upper Tribunal did not have jurisdiction, whether because it did not have before it a valid application under section 11(4)(b) (subsection (4)(a)), or because the Tribunal itself was not properly constituted to carry out its task (subsection (4)(b)). Subsection (4)(c) covers circumstances where the Upper Tribunal acted in bad faith or in such procedurally defective ways as amounts to fundamental breaches of the principles of natural justice. Fundamental breaches of the principles of natural justice include such things as the decision being affected by bias or corruption. All these scenarios would be very unlikely to arise, but it is important to ensure that such decisions would still be subject to review.

106 Subsection (5) of new section 11A makes provision for an exception in cases where the First-tier Tribunal's jurisdiction over the underlying matter in question was or could have been created by an Act of the Scottish Parliament or an Act of the Northern Ireland Assembly passed without consent of the Secretary of State. This means that Upper Tribunal decisions about permission (or leave) to appeal are reviewable when the underlying decision, considered by the First-tier Tribunal, is a kind of decision, provision about which would be within legislative competence of the Scottish Parliament or Northern Ireland Assembly.

107 Subsection (6) of the new section 11A clarifies that nothing in the clause affects the normal position in regards to judicial review challenges to substantive decisions of the First-tier Tribunal. The subsection means that the court of supervisory jurisdiction should not alter its standard approach of refusing permission to bring a judicial review of an inferior court or tribunal's decision, where an alternative remedy exists. Nothing in the clause changes the fact that an alternative remedy (i.e. application for permission or leave to appeal to the Upper Tribunal) is available in relation to substantive decisions of the First-tier Tribunal.

108 Subsection (7) of the new section 11A defines 'decision' for the purposes of this section, so that it includes 'purported decision' meaning that regardless of whether a decision is a nullity, the provisions in this section still apply. 'The supervisory jurisdiction' is also defined, making clear to which courts this refers.

109 Subsection (2) of the clause sets out the transitional arrangements for new section 11A, and provides that decisions of the Upper Tribunal made before the section comes into force are not affected.

Example (1): Review of the Upper Tribunal not permitted

A claimant fails in a claim before the First-tier Tribunal. The claim relates to a non-devolved matter. The claimant applies to the First-tier Tribunal for permission to appeal the decision to the Upper Tribunal. The First-tier Tribunal refuses permission. The claimant then makes a valid application for permission to appeal directly to the Upper Tribunal under section 11(4)(b) of the TCEA 2007. The Upper Tribunal, properly constituted, refuses permission to appeal. The claimant thinks the Upper Tribunal's decision was wrong. The Upper Tribunal did not act in bad faith, or fundamentally breach the principles of natural justice.

The effect of this clause is that the claimant cannot seek to challenge the Upper Tribunal's decision in any court, including by way of an application for judicial review.

Example (2): Review of the Upper Tribunal permitted

A claimant fails in a claim before the First-tier Tribunal. The claim relates to a non-devolved matter. The claimant applies to the First-tier Tribunal for permission to appeal to the Upper Tribunal. The First-tier Tribunal

refuses permission. The claimant then makes a valid application for permission to appeal directly to the Upper Tribunal under section (11)(4)(b) of the TCEA 2007. The Upper Tribunal, properly constituted, refuses permission to appeal. In the course of adjudicating on the application, the Upper Tribunal judge refuses to hear submissions from the claimant for no good reason.

The effect of this clause is that the claimant can seek to challenge the Upper Tribunal's decision in another court, including by way of an application for judicial review, because the Upper Tribunal acted in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.

Part 2: Courts, tribunals and coroners

Chapter 1: Criminal procedure

Clause 3: Automatic online conviction and penalty for certain summary offences

110 Clause 3 inserts new sections 16G to 16M into the Magistrates' Courts Act 1980 ("the MCA 1980") to provide for the new automatic online conviction and standard statutory penalty process.

111 New section 16G defines the references in these sections to a person being offered the automatic online conviction option and a person (or their legal representative) accepting this option (see new section 16G(1) and (2)). It also provides that an offer or acceptance of the automatic online conviction option by electronic notification means a written notification by electronic means, in accordance with the Criminal Procedure Rules (CrimPRs) (new section 16G(4)).

112 New section 16H provides that in order for a person accused of an offence to receive a criminal conviction under this new online option, the "qualifying conditions" must be met and the accused person must be offered and accept the automatic online conviction option in respect of the offence (new section 16H(1) and (2)).

113 The qualifying conditions are set out in new section 16H(3) to (6). Where the automatic online conviction option is offered, the offence must be a summary-only non-imprisonable offence (new section 16H(4)) which is specified in regulations made by the Lord Chancellor (new section 16H(3)(a)). These regulations are to be made by a statutory instrument laid under the affirmative procedure (new section 16H(5)).

114 The other qualifying conditions as to when this automatic online conviction option may be offered, include that the accused person must also be 18 years of age when charged (or a body corporate) (new section 16H(3)(b)), and the "required documents" (as defined in new section 16H(6)) served on the accused in accordance with the CrimPRs (new section 16H(3)(c) and (d)). An explanation of how to access the offer of an automatic online conviction will be provided by the prosecutor alongside the written charge.

115 New section 16I provides for the penalty and other related costs to be imposed on offenders convicted via the new automatic online conviction procedure. In all cases, a penalty will be imposed on offenders convicted via this new procedure, which will consist of a fine and surcharge of an amount specified for the offence (new sections 16I(2) and (8)), and prosecution costs which will be determined by the relevant prosecutor (new sections 16I(6) and (7)).

116 In certain cases, the penalty may also consist of a specified number of penalty points to be endorsed on the offender's driving record (new section 16I(3)) or an amount of compensation

if specified for the offence which will be determined by the relevant prosecutor but may not exceed the maximum amount specified for the offence (new section 16I(4) and (5)).

117 Defendants (which throughout these Explanatory Notes with regards to criminal procedure, includes all 'accused persons') will be given full details of the prospective fixed fine, surcharge and other costs (for example, compensation, and/or penalty points if relevant) before agreeing to accept the automatic conviction and penalty.

118 New section 16J gives the Lord Chancellor the power, by regulations, to specify different amounts of fines, compensation and surcharge for different offences and for different circumstances in which a particular offence is committed (new section 16J(1), (3) and (4)). With regard to penalty points, regulations may only specify this in association with an offence if it is an offence that would or could ordinarily result in the endorsement of the offender's driving record with penalty points if convicted (new section 16J(2)). These regulations are to be made by a statutory instrument laid under the affirmative procedure (new section 16J(6)).

119 The way in which the fixed fine is set using the above powers will be based on current fining practice. Relevant factors in setting the fine level for each offence may be the overall average of fines imposed for the offence, any sentencing guidelines published by the Sentencing Council, current sentencing practice, and income data.

120 New section 16K(1) provides that the time when a conviction under section 16H takes effect is to be determined in accordance with the CrimPRs.

121 New sections 16K(2) to (7) state that a conviction under section 16H and a penalty imposed under section 16I (including all elements of said penalty: fine, prosecution costs, surcharge and, if applicable, compensation and/or endorsement of a person's driving record) are to be treated as if they had been imposed by the specified magistrates' court (as defined in new section 16K(8)).

122 New section 16L deals with notice of conviction and penalty. Section 16L(1) provides that a person convicted under section 16H must be given a notice of conviction and penalty by electronic means.

123 New section 16L(2) set out that this electronic notice of conviction and penalty will set out each separate penalty imposed on the offender under section 16I, and specify a magistrates' court for the purposes of sections 16K(2) to (7). The notice will also require the offender to pay the overall penalty in the manner specified in the notice and within the 28-day period beginning with the day on which the person's conviction took effect (new section 16L(3)).

124 New section 16M provides the magistrates' court with a power to set aside a conviction under 16H or replace a penalty imposed on a person under section 16I. New section 16M(1) provides that a magistrates' court may set aside a conviction if it appears to the court that the conviction is unjust, and that this can be considered on the papers by a single justice (new section 16M(3)). However if a magistrates' court composed of a single justice is minded to refuse to set aside the conviction, new section 16M(4) specifies that the decision must then be referred to a full magistrates' court which must consider the matter at a hearing where the parties may make representations.

125 New section 16M(5) provides that a magistrates' court may set aside a penalty imposed under new section 16I if it appears that the amount is unjust and if it does so then it may then impose any sentence that it could have imposed for that offence if the person had pleaded guilty before it at the earliest opportunity. That sentence will then be a normal sentence imposed by the magistrates' court, rather than one imposed under section 16I.

126 A magistrates' court may exercise this power to set aside a conviction or replace a penalty whether as a result of an application by the person convicted, the relevant prosecutor or of its own motion (see section 16M(7)).

Clause 4: Guilty plea in writing: extension to proceedings following police charge

127 Section 12 of the MCA 1980 currently sets out the procedure that is commonly known as 'pleading guilty by post', which enables prosecutors to provide a defendant who is prosecuted for a summary-only offence and is aged 16 years and over (or under 16 years when jointly charged with an adult) with the option to indicate a guilty plea in writing (including online) and opt that a magistrates' court may proceed to try, convict, and sentence them at a court hearing in their absence, without the need for the defendant or other parties in the case to make a court appearance at any stage of the proceedings.[14] This procedure can currently only be applied to the prosecution of summary-only offences that have been initiated against a defendant away from a police station in writing by either a postal requisition or summons.

128 Clause 4, subsection (1), introduces amendments to section 12 of the MCA 1980 that will enable prosecutors to also apply the procedure for pleading guilty by post to the prosecution of a summary-only offence against a defendant aged 16 years and over that has been initiated by charging them in person at a police station and granting them police bail to appear at a magistrates' court for a first hearing.

129 Clause 4, subsection (2), amends section 12(1)(a) of the MCA 1980 to remove the power that currently enables the Secretary of State to order the exclusion of a specific summary offence from the pleading guilty by post procedure. This power has never been exercised and is considered to be unnecessary; if a case is identified as being unsuitable for the procedure (because for example, the defendant is likely to receive a custodial sentence), the relevant prosecutor need not apply the procedure. Existing section 12(6) of MCA 1980 also retains the safeguard that if the court receives a notification withdrawing an indicated guilty plea on behalf of the defendant prior to a trial hearing, the court shall proceed to deal with the summary offence as if the indication had not been given.

130 Clause 4, subsection (3), inserts new section 12(2A) of the MCA 1980 to enable prosecutors to apply the procedure for pleading guilty by post to cases where a defendant aged 16 years and over has been charged with a summary-only offence at a police station and bailed to appear at magistrates' court under Part 4 of the Police and Criminal Evidence Act 1984 ("the PACE Act 1984").

131 Clause 4, subsection (4), amends section 12(3) of the MCA 1980 to provide details about the documents which must be served upon the defendant by the prosecutor in order to apply the pleading guilty by post procedure for a defendant who has been charged and bailed from a police station; which includes a notice as to the possible effects of procedure, details of the charge against them, and any information relating to them that may be supplied to the court by the prosecutor.

132 Clause 4, subsection (5), amends section 12(5) of the MCA 1980 so that a magistrates' court can proceed to try, convict, and sentence a defendant who has opted to proceed with the pleading guilty by post procedure subsequent to being charged and bailed from a police station at a court hearing in their absence.

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[14] Currently, whilst an indication of plea under the section 12 procedure can only be provided in writing by post, the legislation as drafted does not prevent such a plea from being provided in writing online should the necessary online facility be made available to provide for this method in the future.

133 Clause 4, subsection (6), inserts new section 12(5A) of the MCA 1980 to give a magistrates' court the power to discharge a defendant from their duty to surrender to the custody of the court where they have opted to proceed with the pleading guilty by post procedure having been charged and bailed from a police station. This will enable the court to proceed to deal with and dispose of the case without the need for the defendant to appear at court for the hearing. New section 12(5B) enables the function under new section 12(5A) to be carried out by a single justice.

134 Clause 4, subsection (6), also inserts new subsections (5C) to (5F) of section 12 of the MCA 1980 to retain the current prohibitions on sentencing a defendant in absence having proceeded with the case through the pleading guilty by post procedure, no matter how the prosecution was initiated. New subsection (5D) states that having tried and convicted a defendant in absence under the procedure, a magistrates' court will not have the power to impose a custodial sentence or other type of detention without first bringing the defendant before the court for a sentencing hearing. New subsection (5E) states that where a magistrates' court intends to impose a driving disqualification, the court must first adjourn the case to the give the defendant the opportunity to appear at court but can then disqualify them in absence at the next hearing. New subsection (5F) states that where a trial is adjourned with a view to its resumption for the purpose of new subsection (5E), the notice required by existing section 10(2) of the MCA 1980 must include notice of the reason for the adjournment.

135 Clause 4, subsection, (7) amends section 12(7) of the MCA 1980 so that section 12(7)(a) and (aa), which state details of what information that was served on the defendant must be read out at court prior to accepting a guilty plea and convicting them in absence, also apply to prosecutions initiated by charge and bail from a police station.

136 Clause 4, subsection (8), repeals section 12(12) and (13) of the MCA 1980, which deal with service of documents in Scotland. Accordingly, this repeal only extends and applies to England, Wales and Scotland. Section 12(13) is a superfluous provision given that equivalent provision is made in section 39 of the Criminal Law Act 1977 (as amended by the Criminal Justice Act 2003).

Clause 5: Extension of Single Justice Procedure (SJP) to corporations

137 Clause 5 amends section 16A of the MCA 1980 to clarify that the SJP can be used to prosecute legal persons such as corporations, as well as individuals.

Clause 6: Written procedure for indicating plea and determining mode of trial: adults

138 As previously explained above, criminal offences are categorised as summary-only offences (which should be tried in a magistrates' court), indictable-only offences (which must be tried in the Crown Court), or triable either-way offences (which can be tried in a magistrates' court or the Crown Court depending on the seriousness and complexity of the case, or the wishes of the defendant).

139 Section 17A of the MCA 1980 provides for the 'plea before venue' procedure that takes place at a magistrates' court hearing during which a defendant is invited to indicate a plea to a triable either-way offence when they make their first appearance at court. If the defendant indicates a not-guilty plea or fails to indicate a plea during the hearing, sections 18 to 23 of the MCA 1980 sets out the subsequent allocation procedure which provides the magistrates' court with the framework it must follow to decide whether the triable either-way offence is more suitable for a summary trial in the magistrates' court, or for trial on indictment in the Crown Court.

140 The MCA 1980 currently requires that the procedures for plea before venue and the allocation must be conducted in the defendant's presence at court during a hearing, with only a small

number of exceptions to this rule (for example, if the court is unable to proceed in the defendant's presence due to the defendant's disorderly conduct).

141 Clause 6, subsection (1), introduces amendments to the MCA 1980 that will enable the procedures for both plea before venue and the allocation for an adult defendant prosecuted in triable-either way cases to be conducted in writing (including online) via the Common Platform, without the need for a court hearing or the defendant's appearance at a magistrates' court.

142 Clause 6, subsection (2), inserts new section 17ZA of the MCA 1980, which enables a defendant charged with a triable either-way offence to be provided with the choice to engage with the plea before venue procedure and indicate a plea in writing/online, without the need for a court hearing.

143 New section 17ZA(1) specifies that this new section can only apply to a defendant who has attained the age of 18 years when they are charged; or who has attained the age of 18 years after they were charged but before they appeared at court to answer the charge, or provided, or failed to provide, a written/online indication of plea.

144 It will not always be appropriate for the court to provide a defendant with the choice to proceed with the plea before venue procedure in writing/online. Therefore, new section 17ZA(2) provides that the CrimPRs may make provisions about circumstances in which the new written/online plea procedure cannot be used for a case.

145 New sections 17ZA(3) and (4) state that a magistrates' court must provide a defendant with certain information in order to proceed with the new written/online plea procedure, including explanations as to the procedure, choices, and effects of those choices, and any other information specified by theCrimPRs.

146 Where a defendant provides a written/online indication of a guilty plea, new section 17ZA(5) directs the magistrates' court to proceed in accordance with new section 17ZB (see below for further detail).

147 Where a defendant provides a written/online indication of a not-guilty plea, new section 17ZA(6) of the MCA 1980 directs the magistrates' court to proceed with (i) the written/online allocation procedure in accordance with new section 17ZC of the MCA 1980 or, (ii) (if neither subsection (3) nor subsection (5) of section 17ZC has effect) the in-court allocation procedure in accordance with new section 18(1A).

148 Where a defendant fails to provide a written/online indication of plea, new section 17ZA(7) of the MCA 1980 directs the magistrates' court to proceed with an in-court hearing in accordance with section 17A of the MCA 1980 in order to receive the defendant's indication of plea.

149 New section 17ZA(8) of the MCA 1980 ensures that any indicated plea provided by a defendant in writing/online is treated as an indication and is not binding until they make a subsequent appearance at a court hearing to confirm or change their indicated plea.

150 New section 17ZA(9) of the MCA 1980 states that the new written/online plea procedure will not apply to cases in which a prosecutor's notice under section 51B or 51C of the CDA 1998 is received. Those notices relate to serious or complex fraud cases and certain cases involving children/young people and require the case to be sent to the Crown Court.

151 New sections 17ZA(10) and (11) of the MCA 1980 direct a magistrates' court to cease with the new online/written procedures and proceed with a normal court hearing to receive an indication of plea in accordance with section 17A of the MCA 1980 where a defendant notifies the court that they wish to withdraw a prior written/online indication of plea: (i) before the

start of a summary trial under section 9 of the MCA 1980; (ii) before the allocation procedure under section 18(1A) of the MCA 1980; or (iii) before they are sent to the Crown Court for trial.

152 New section 17ZA(12) of the MCA 1980 provides that the new written/online plea procedure can be applied to prosecutions initiated in various different ways, including defendants who have been summonsed, have received a written charge and requisition, or have been charged and bailed to court from a police station.

153 New section 17ZA(13) of the MCA 1980 defines the term "written indication of plea" used in new section 17ZA of the MCA 1980 and in new section 17ZB to amended section 18 of the MCA 1980, and when an adult is considered to have failed to provide an indication of written/online plea.

154 Clause 6, subsection (2), also inserts new section 17ZB of the MCA 1980 (after new section 17ZA of the MCA 1980) which will provide a magistrates' court with the option to send a case to the Crown Court for conviction and sentencing after a defendant has indicated a guilty plea in writing/online in accordance with new section 17ZA of the MCA 1980.

155 New section 17ZB(1) of the MCA 1980 dictates that this new section can only be proceeded with if the defendant has provided a written/online indication of a guilty plea in accordance with new section 17ZA.

156 New section 17ZB(2) of the MCA 1980 provides that the CrimPRs may make provisions about circumstances in which the written procedure under new section 17ZB cannot be used for a case.

157 New section 17ZB(3) and (4) of the MCA 1980 provide that a magistrates' court can consider whether the defendant is highly likely to require a Crown Court sentence if he or she pleads guilty at the summary trial. In such cases the court may write to the defendant seeking their agreement to be sent directly to the Crown Court for conviction and sentencing (new section 17ZB(5) of the MCA 1980). The court must provide the defendant with an explanation of the procedure, choices and the effects of those choices (new section 17ZB(6) of the MCA 1980). The court must also inform the prosecutor in writing and give them the opportunity to object (new section 17ZB(7) of the MCA 1980).

158 If the defendant and prosecutor do not object, the magistrates' court can send the case direct to the Crown Court (new section 17ZB(8) of the MCA 1980). However, if either the defendant or prosecutor objects to the case being sent directly to the Crown Court, the magistrates court must proceed with a summary trial (new section 17ZB(9) of the MCA 1980). That requirement also applies if the written procedure under new section 17ZB is not available. If a defendant confirms their indication of a guilty plea at the hearing, then the defendant can be convicted in accordance with section 9 of the MCA 1980. On conviction, the magistrates' court could either proceed to sentence the defendant or commit the case to the Crown Court for sentence under Chapter 2 of Part 2 of the Sentencing Code if the court considered its sentencing powers to be inadequate.

159 If a defendant changes their indication of written/online plea and pleads not guilty at a summary trial held in accordance with section 9 of the MCA 1980, the trial and the indicated written/online plea are void and the court must instead proceed with a hearing for the purposes of section 17A of the MCA 1980 on the basis the defendant was pleading not guilty (new section 17ZB(10) of the MCA 1980).

160 New section 17ZC of the MCA 1980 enables a magistrates' court to provide an adult defendant with the option to engage with the allocation procedure to decide on the most

suitable mode of trial for a triable either-way offence in writing/online, subsequent to the defendant having indicated a not-guilty plea in writing/online under new section 17ZA of the MCA 1980. This new section also provides a magistrates' court with the mechanism to bypass the allocation procedure for a triable either-way offence by providing a defendant with an earlier additional opportunity to elect in writing/online for their case to be sent to the Crown Court for a jury trial.

161 Where a defendant provides an indication of a not-guilty plea in writing/online in accordance with new section 17ZA, new section 17ZC(1) specifies that the court must proceed in accordance with new section 17ZC(3) or (5) of the MCA 1980. The applicable new subsection that the court will proceed under will depend on whether the offence in question is a "scheduled offence" (e.g. criminal damage contrary to section 1 of the Criminal Damage Act 1971) prescribed under Schedule 2 to the MCA 1980. This is because a scheduled offence requires the court to make additional findings during the allocation procedure in accordance with section 22 of the MCA 1980 as to whether the value involved exceeds £5,000, as this will affect which mode of trial will be available for the case.

162 New section 17ZC(2) of the MCA 1980 provides that the CrimPRs may make provisions about circumstances in which the written/online procedures under new section 17ZC of the MCA 1980 cannot be used for a case.

163 Where the offence in question is not a scheduled offence, new section 17ZC(3) of the MCA 1980 specifies that a magistrates' court must provide the defendant with certain information and ask whether they wish to indicate in writing/online that they do not consent to summary trial and, if they do not wish to do so, whether they wish to engage with allocation procedure in writing/online. New section 17ZC(4) specifies the information that must be provided by the court to the defendant, which includes an explanation of the procedure, choices, the effects of those choices, relevant time periods, and any other information specified by the CrimPRs.

164 Where the offence in question is a scheduled offence, new section 17ZC(5) of the MCA 1980 specifies that a magistrates' court must provide the defendant with certain information and ask whether they wish to engage with the written/online allocation procedure and provide a written/online indication of non-consent to summary trial and if the defendant does not wish to do that, whether they simply wish to engage with the written/online allocation procedure. New section 17ZC(6) of the MCA 1980 specifies the information that must be provided by the court to the defendant, which includes an explanation of the procedure, choices, the effects of those choices, relevant time periods, and any other information specified by the CrimPRs.

165 New section 17ZC(7) of the MCA 1980 specifies that where, in accordance with new section 17ZC(3) of the MCA 1980, a defendant informs a magistrates' court in writing/online that they would not consent to a summary trial, the court must send the case for trial on indictment to the Crown Court in accordance with section 51 of the CDA 1998.

166 New section 17ZC(8) of the MCA 1980 specifies that, except where a defendant charged with a scheduled offence accepts the 'invitation' to provide a written/online indication of non-consent to summary trial, a magistrates' court must proceed with the allocation procedure by way of a hearing at court in accordance with new subsection (1A) of section 18 of the MCA 1980 (paragraph 6(7)(a) of Schedule 2) or by way of written/online procedures in accordance with new subsection (4A) of that section (paragraph 6(7)(b) of Schedule 2), depending on whether the defendant has opted for written/online allocation proceedings. (In the case of a defendant charged with a scheduled offence, any written/online indication of non-consent to summary trial will only apply if and when the court decides under section 22 of the MCA 1980 that the value involved makes the offence triable either-way.) After the allocation decision has been reached, the court can use existing case management powers to prepare the

case for trial in the relevant criminal court, at the start of which the defendant will be asked to confirm their plea.

167 New section 17ZC(9) of the MCA 1980 defines certain terms used in the drafting of new section 17ZC, amended section 18, and amended section 22 of the MCA 1980, which includes "election for written allocation proceedings", "written indication of non-consent to summary trial", and references to person's failing to do either of those things.

168 Section 22A of the MCA 1980 currently provides that offences of low-value shoplifting where the value is not in excess of £200 are triable only summarily but are still subject to a defendant's right to elect for their case to be sent to the Crown Court for a jury trial. Clause 6(3) inserts new subsections (1A) to (1E) of that section in order to provide a defendant charged with a low-value shoplifting offence who has provided an indication of a not-guilty plea in writing/online, with the choice to also exercise in writing/online their right to elect for a jury trial at Crown Court; without the need for a court hearing.

Clause 7: Initial option for adult accused to reject summary trial at hearing

169 The sequence of the allocation procedure conducted at a traditional court hearing for an adult defendant who indicates a not-guilty plea to a triable either-way offence during plea before venue is currently laid down by primary legislation under sections 17A to 23 of the MCA 1980.

170 A magistrates' court must currently decide whether an offence triable either-way is suitable for summary trial after the defendant indicates a not-guilty plea during 'plea before venue' (section 17A(7) of the MCA 1980) and after hearing representations from the prosecution and defendant and considering other specified issues as to suitability (section 19(2) to 19(4) of the MCA 1980). If the court decides that the offence is more suitable for summary trial, the defendant is notified of the decision and may request an 'indication of sentence' (section 20(3) of the MCA 1980). Unless the defendant changes the indicated plea to guilty in response to such an indication, the defendant is then asked by the court whether they consent to be tried summarily or wish to be tried on indictment (section 20(9) of the MCA 1980).

171 Clause 7 inserts new section 17BA of the MCA 1980 which enables a magistrates' court to provide a defendant who appears before them charged with a triable either-way offence – who did not indicate a guilty plea during plea before venue – with the opportunity to inform the court at an earlier additional stage in the proceedings that they would not consent to summary trial if this was later offered to them. That non-consent would avoid the need to proceed with the allocation procedure under sections 19 to 23 of the MCA 1980.

172 This clause essentially seeks to replicate the new 'written/online' opportunity to indicate non-consent to a summary trial at an earlier stage in the allocation procedure (provided for under new section 17ZC of the MCA 1980), so that this opportunity is also available for plea-before-venue and allocation procedures that take place in court during a traditional hearing.

173 New section 17BA(1) of the MCA 1980 specifies this section has effect in the circumstances set out in amended section 17A(7) (indication of not-guilty plea by accused at hearing), amended section 17B(2)(d) (indication of not-guilty plea by accused's representative at hearing), and new section 22(2B) (scheduled offence found at hearing to be triable either way-after indication of not-guilty plea).

174 New section 17BA(2) of the MCA 1980 specifies that where a defendant appears at the hearing, a magistrates' court must explain to the defendant that they may provide an indication to the court that they would not consent to a summary trial of the offence and the consequences of their choice. The court must explain that where the defendant chose to provide such an indication, this would result in the defendant being sent to the Crown Court

for trial without having the opportunity to make any representations as to which mode of trial is more suitable under section 19(2) of the MCA 1980 or to obtain an indication of sentence under section 20(3) of the MCA 1980. The court must explain that where the defendant chose not to provide an indication, this would result in the court proceeding with the allocation procedure in accordance with section 18(1) of the MCA 1980. Once a magistrates' court has provided these explanations, the court must proceed to ask the defendant if they wish to make such an indication to the court.

175 New section 17BA(3) of the MCA 1980 specifies that where a defendant is not present at the hearing, the court must ask the defendant's legal representative whether the defendant would wish to indicate that they would not consent to a summary trial of the offence.

176 New section 17BA(4) specifies that where a defendant, or their legal representative in their absence, provides an indication to a magistrates' court that they would not consent to a summary trial, the court must send the case to the Crown Court for a jury trial in accordance with section 51 of the CDA 1998.

177 New section 17BA(5) specifies that where a defendant, or their legal representative in their absence, declines to provide an indication to a magistrates' court that they would not consent to summary trial, the court must proceed as normal with the allocation decision procedure at the hearing in accordance with subsection 18(1) of the MCA 1980.

178 New section 17BA(6) defines "in-court indication of non-consent to summary trial", as used in the drafting of new section 17BA and amended section 18 of the MCA 1980. This term refers to an indication given by a defendant or their legal representative in response to the questions asked under new section 17BA(2) or (3) that the defendant would not consent to a summary trial in a magistrates' court for the offence.

Clause 8: Written procedure for indicating plea and determining mode of trial: children

179 The age of criminal responsibility in England and Wales is 10 years of age, which means that children and young people aged between 10 and 17 can be prosecuted for criminal offences. The criminal court system recognises the increased vulnerability and additional requirements that children and young people have, so treats these types of defendants differently from adults in the youth court. This includes bespoke plea before venue and allocation procedures which also take into account the fact that children and young people do not share the same right as adults to elect for their case to be sent to the Crown Court for a jury trial. Therefore, children and young people also require bespoke legislation for the new written/online plea and allocation procedures to cater for their needs.

180 Clause 8 inserts new section 24ZA of the MCA 1980, which enables a child or young person who is charged with an indictable offence that would require an allocation decision to be provided with the choice to indicate a plea in writing (including online), without the need for a youth court hearing.

181 New section 24ZA(1) specifies that this new section applies to a defendant who is a child or young person when they were charged with an offence other than one falling within section 51A(12) of the CDA 1998, and have not since attained the age of 18 years, where a magistrates' court (including a youth court) would have to determine whether to send the case to the Crown Court for trial.

182 New section 24ZA(2) provides that the CrimPRs may make provisions about circumstances in which the written procedure under new section 24ZA of the MCA 1980 cannot be used for a case.

183 New section 24ZA(3) and (4) state that a youth court must provide a child or young person with certain information in order to proceed with the new written/online plea procedure, including explanations as to the procedure, choices and effects of those choices, and any other information specified by the CrimPRs.

184 Where a child or young person provides a written/online indication of a guilty plea, new section 24ZA(5) directs the court to proceed to try the defendant under section 9 of the MCA 1980 when they appear at court for a hearing. If a child or young person appears at a summary trial in accordance with new section 24ZA(5) and pleads not guilty, new section 24ZA(6) states that the trial and the indicated plea are void and the youth court must proceed as if the hearing was instead for the purpose of section 24A of the MCA 1980 (child or young person's indication of plea at court) and the child or young person had indicated a plea of not-guilty.

185 Where a child or young person provides a written/online indication of a not-guilty plea, new section 24ZA(7) directs the youth court to provide the prosecutor and the child or young person with an opportunity to make any representations in writing about whether the court should send the case to the Crown Court for trial before the court makes its decision.

186 Where a child or young person fails to give a written indication of plea, new section 24ZA(8) of the MCA 1980 directs the youth court to proceed with a normal court hearing in accordance with section 24A of the MCA 1980.

187 New section 24ZA(9) of the MCA 1980 ensures that any indication of plea provided by a child or young person in writing/online is treated as an indication only and thus, is not binding until they make a subsequent appearance at a court hearing to confirm or change their indicated plea.

188 New section 24ZA(10) of the MCA 1980 provides that the new written/online plea procedure applies to prosecutions initiated in various different ways, including children and young persons who have been summonsed, have received a written charge and requisition, or have been charged and bailed to court from a police station.

189 New section 24ZA(11) of the MCA 1980 defines the term "written indication of plea" used in new section 24ZA, new section 24ZB, amended section 24A, and new section 24BA of the MCA 1980, and when a child or young person is considered to have failed to provide a written/online indication of plea.

190 New section 24ZA(12) of the MCA 1980 provides additional information about the definition of the term "relevant determination" used in new section 24ZA and new section 24ZB of the MCA 1980, which means the determination referred to in new section 24ZA(1)(c) of the MCA 1980 with regards to whether to send the case to the Crown Court for trial.

191 Clause 8 also inserts new section 24ZB of the MCA 1980 which states how a court should proceed if a child or young person attains the age of 18 years or wishes to withdraw an indication of written/online plea.

192 New section 24ZB(1) of the MCA 1980 specifies that new section 24ZB of the MCA 1980 applies where the court has provided a child or young person with the relevant information in compliance with new section 24ZA(3) of the MCA 1980.

193 New section 24ZB(2) of the MCA 1980 specifies that if the child or young person attains the age of 18 years before providing, or failing to provide, an indication of plea in writing/online, the procedure under new section 24ZA of the MCA 1980 will cease to have effect and the court must instead proceed in accordance with the new adult written/online plea procedure under new section 17ZA of the MCA 1980.

194 New sections 24ZB(3) and (4) of the MCA 1980 specify that if a child or young person attains the age of 18 years after they have provided a written/online indication of plea, but before a summary trial begins or a decision is made as to whether to send the case to the Crown Court for trial, the court must consider whether to use its powers under section 29 of the Children and Young Persons Act 1963 ("the CYPA 1963") to proceed and deal with the case in a way in which it could have if the child or young person had not attained that age. Where the court does not exercise its powers under section 29 of the CYPA 1963, new section 24ZA(5) or (7) of the MCA 1980 will cease to apply and the court will instead proceed as if the written/online indication of plea had been provided via the written/online plea procedure for adults under new section 17ZA of the MCA 1980.

195 New section 24ZB(5) and (6) of the MCA 1980 specifies that if a child or young person attains the age of 18 years having failed to provide a written/online indication of plea, but before a hearing takes place at court for the purposes of receiving the child or young person's plea under section 24A of the MCA 1980, the court must proceed as if the child or young person had failed to provide a written/online indication of plea via the written/online plea procedure for adults under new section 17ZA of the MCA 1980.

196 New section 24ZB(7) and (8) of the MCA 1980 direct the court to cease the new online/written procedures and proceed with a normal court hearing to receive an indication of plea in accordance with section 24A of the MCA 1980 where a child or young person notifies the court that they wish to withdraw a prior indication of written/online plea: before the start of a summary trial under section 9 of the MCA 1980; before the plea before venue procedure under section 24A(2) of the MCA 1980; or before they are sent to the Crown Court for trial. This is so long as the written/online indication of plea is not at that time being treated as if it had been given via the adult procedure under new section 17ZA of the MCA 1980.

197 New section 24ZB(8) also provides that where a child or young person attains the age of 18 years having withdrawn a prior written/online indication of plea before a hearing for the purpose of section 24A(2) of the MCA 1980, the court may (subject to any exercise of its powers under section 29 of the CYPA 1963) decide to proceed as if the child or young person had provided and withdrawn their written/online plea under the written/online procedure for adults under section 17ZA of the MCA 1980.

Clause 9: Powers to proceed if accused absent from plea-before-venue and allocation hearing

198 Section 17A(2) of the MCA 1980 currently requires that the plea-before-venue procedure for adult defendants prosecuted for triable either-way offences that is provided for under section 17A of the Act must be proceeded with in the presence of the defendant at a court hearing. The only current exception to this rule that will allow the court to proceed with plea-before-venue in the absence of the adult defendant is where the defendant is legally represented, and the court considers that it is not practicable for the proceedings to be conducted in the defendant's presence due to their disorderly conduct (section 17B(1) of the MCA 1980). If the court cannot complete the plea-before-venue procedure due to the adult defendant's absence, it cannot progress to the allocation procedure.

199 Section 18(2) of the MCA 1980 requires that the allocation procedure for adult defendants prosecuted for triable either-way offences provided for under sections 19 to 22 of the Act that follows plea-before-venue must also be proceeded with in the presence of the defendant at a court hearing. The only current exceptions to this rule that will allow the court to proceed in the absence of the adult defendant are where: (i) the defendant's disorderly conduct before the court means that it is not practicable for the proceedings to be conducted in their presence (section 18(3) of the MCA 1980); or (ii) the defendant has legal representation who in the

defendant's absence, signifies the defendant's consent to this and the court is satisfied there is good reason for doing so (section 23 of the MCA 1980).

200 Clause 9, subsection (1), amends the MCA 1980 to enable a magistrates' courts to proceed with the plea-before-venue and allocation procedures for adult defendants prosecuted for triable-either way offences in the absence of an adult defendant in a wider range of circumstances, so long as it is in the interests of justice to do so.

201 Clause 9, subsection (2)(a), changes the heading of section 17B of the MCA 1980 from "Intention as to plea: absence of accused" to "Power to proceed if accused does not appear to give indication as to plea".

202 Clause 9, subsection 2(b), substitutes section 17B(1) of the MCA 1980 with new subsections (1A) to (1F), which specify the wider range of circumstances in which section 17B of the MCA 1980 has effect so that a magistrates' court may proceed with the plea-before-venue procedure for triable either-way offences in the absence of an adult defendant.

203 New subsection (1A) provides overarching safeguards in that the court can only proceed in the absence of an adult defendant if the defendant fails to appear at the hearing and the court is satisfied that it is not contrary to the interests of justice to do so in combination with any of the conditions specified in new subsections 17B(1B) to 17B(1E) of the MCA 1980 being met.

204 The first condition, specified in new subsection (1B), is that the adult defendant's legal representative is present at the hearing and has been instructed by the defendant to consent to the hearing in the defendant's absence.

205 The second condition, specified in new subsection (1C), is that that the adult defendant's legal representative is present at the hearing and the court considers there is no acceptable reason for the defendant's failure to attend.

206 The third condition, specified in new subsection (1D), is that the court is satisfied that a notice of the allocation proceedings was served on the adult defendant within a reasonable time before the hearing and there is no acceptable reason for the defendant's failure to attend.

207 The fourth condition, specified in new subsection (1E), is that the adult defendant has appeared in court on a previous occasion to answer the charge (when the matter would have been listed for the plea-before-venue hearing in the defendant's presence) and the court does not consider there is an acceptable reason for the defendant's failure to attend.

208 A separate application of section 17B is specified in new subsection (1F), which essentially preserves the original effect of section 17B(1) of the MCA 1980. It provides that, where the court considers that it is not practicable for the proceedings to be conducted in an adult defendant's presence because of their disorderly conduct and it would not be contrary to the interest of justice to do so, they can proceed in the absence of the defendant.

209 Clause 9, subsection (2)(c), amends subsection (2) of section 17B of the MCA 1980, in order to acknowledge that there may now be circumstances in which a legal representative is not present at the hearing (e.g. if the condition specified under new subsection 1(D) above has been met) and thus, provides that section 17B(2)(a) to (d) only applies if a legal representative of the adult defendant is present.

210 Clause 9, subsection (2)(d), inserts new subsection (5) of section 17B of the MCA 1980, which directs the court to proceed with the allocation procedure in accordance with amended section 18(1) if no legal representative is present at the hearing. It also specifies that an adult defendant will be taken for the purposes of section 20 to have indicated a not-guilty plea.

211 Clause 9, subsection(3), omits subsection 18(3) of the MCA 1980 because the effect of this subsection will be preserved and provided for under new subsection (1F) of section 23 of the MCA 1980 (see below for further details), so that the powers to proceed if an adult defendant is absent from an allocation hearing are consolidated together under section 23 of the MCA 1980.

212 Clause 9 subsection (4)(a), changes the heading of section 23 of the MCA 1980 from "Power of court, with consent of legally represented accused, to proceed in his absence" to "Power to proceed if accused absent from allocation hearing" to account for the wider range of circumstances that will be provided for.

213 Clause 9, subsection (4)(b), substitutes section 23(1) of the MCA 1980 with new subsections (1A) to (1G), which specify the wider range of circumstances in which section 23 of the MCA 1980 has effect so that a magistrates' court may proceed with the allocation procedure for triable either-way offences in the absence of an adult defendant.

214 New subsection (1A) provides overarching safeguards in that the court can only proceed in the absence of an adult defendant if the defendant fails to appear at the hearing, and the court is satisfied that it is not contrary to the interests of justice to do so in combination with any of the conditions specified in new subsections 23(1B) to 23(1E) of the MCA 1980 being met.

215 The first condition, specified in new subsection (1B), is that the adult defendant's legal representative is present at the hearing and has been instructed by the defendant to consent to the hearing in the defendant's absence.

216 The second condition, specified in new subsection (1C), is that that an adult defendant's legal representative is present at the hearing and the court considers there is no acceptable reason for the defendant's failure to attend.

217 The third condition, specified in new subsection (1D), is that the court is satisfied that a notice of the allocation proceedings was served on the adult defendant within a reasonable time before the hearing and there is no acceptable reason for the defendant's failure to attend.

218 The fourth condition, specified in new subsection (1E), is that the adult defendant has appeared in court on a previous occasion to answer the charge (when the matter would have been listed for the allocation hearing in the defendant's presence) and the court does not consider there is an acceptable reason for the defendant's failure to attend.

219 A separate application of section 23 is specified in new subsection (1F), which essentially preserves the effect of omitted section 18(3) of the MCA 1980. It provides that, where the court considers that it is not practicable for the proceedings to be conducted in an adult defendant's presence because of their disorderly conduct and it would not be contrary to the interest of justice to do so, they can proceed in the absence of the defendant.

220 New subsection (1G) allows a magistrates' court to move straight to the allocation procedure if (under new section 17B(5) of the MCA 1980) it decides at the prior plea-before-venue stage to proceed in the absence of the adult defendant or a legal representative, without a fresh consideration of the merits of proceeding in the absence of the defendant. This means that the court will need to reconsider the merits of proceeding in absence of the defendant: (i) where the court has not proceeded from plea-before-venue straight to allocation during the same hearing; or (ii) where a legal representative is present.

221 In cases where the allocation decision is proceeded with in an adult defendant's absence, they are deemed to have indicated a not-guilty plea, and the court will proceed to allocate the case for a summary trial in the magistrates' court or a jury trial on indictment in the Crown Court. This allocation decision is made on the basis of the complexity of the case and whether the magistrates' sentencing powers would be adequate to deal with the case on conviction.

222 Clause 9, subsection (4)(c), amends section 23(4) of the MCA 1980, which directs how the court should proceed if it decides that the offence is more suitable for a summary trial in an adult defendant's absence, in order to provide that section 23(4)(a) and (b) only apply if a legal representative of the defendant is present at the hearing.

223 Clause 9, subsection (4)(d), inserts new subsections (4A) and (4B) of section 23 of the MCA 1980, which direct how the court should proceed if the court decides that the offence is more suitable for summary trial in the adult defendant's absence when no legal representative is present at the hearing. New subsection (4A) enables the court to prepare for and proceed with a summary trial of the offence. However, new subsection (4B) specifies that where an offence is allocated for summary trial in the absence of a defendant and a legal representative, the defendant (who will not have previously consented to be tried summarily), may at any time before the start of the summary trial apply to the court for the question of the mode of trial to be re-opened. If the court agrees that it would be in the interest of justice to do so (having particular regard to the reason why the defendant previously failed to appear), it may cease to proceed to trial and instead recommence the allocation decision hearing so that the defendant may elect for a jury trial if they wish.

224 Clause 9 subsection (5) inserts new section 24BA of the MCA 1980 (power to proceed if child or young person absent from plea and allocation hearing), which enables the magistrates' court (including a youth court) to proceed with the allocation procedure for an indictable offence where a defendant is a child or young person in their absence when the child or young person has both failed to provide an indication of plea in writing/online (in accordance with new section 24ZA of the MCA 1980) and failed to appear at the subsequent allocation hearing.

225 New section 24BA(1) of the MCA 1980 provides overarching safeguards that specify the court can only proceed to allocate the offence in the absence of a child or young person where: (i) a hearing is being held for the purpose of section 24A(2) of the MCA 1980; (ii) the child or young person has not appeared at the hearing; (iii) the child or young person has failed to provide a written/online indication of plea in accordance with new section 24ZA of the MCA 1980; (iv) either the court is satisfied that notice has been served on the defendant in good time or the defendant has appeared at court on a previous occasion to answer the charge; (v) the court considers there is no acceptable reason for the child or young person's failure to appear; and (vi) the court is satisfied that it would not be contrary to the interests of justice for the hearing to proceed in the child or young person's absence.

226 New section 24BA(2) of the MCA 1980 provides that where the court proceeds in accordance with new section 24BA, section 24A will cease to apply.

227 New section 24BA(3) of the MCA 1980 specifies that if an absent child or young person has no legal representation present at the hearing, the court is to proceed with the allocation decision as if the child or young person had appeared and indicated a not-guilty plea.

228 New section 24BA(4) of the MCA 1980 specifies that if an absent child or young person does have legal representation present at the hearing, the court is to proceed in accordance with the existing provisions for allocation in the absence of a child or young person provided for under section 24B(2) of the MCA 1980.

Clause 10: Sending cases to Crown Court for trial

229 Clause 10 will amend section 51 (sending of adult defendants to Crown Court for trial) and section 51A (sending of children or young persons to Crown Court for trial) of the Crime and Disorder Act 1998 ("CDA 1998") to enable indictable offences to be sent to the Crown Court without a first hearing in the magistrates' court. This is both in respect of offences that are only triable on indictment and those that are triable either-way, but which have been allocated for trial in the Crown Court.

230 Amendments to section 51 of the CDA 1998 are set out in subsections (2) to (5), and amendments to section 51A of the CDA 1998 are set out in subsections (7) to (11). The application of sections 51 and 51A of the CDA 1998 turn on the age of the defendant when the court considers sending a case to the Crown Court.

231 Sections 51, new subsection (2A) (adults), and 51A, new subsection (3A) (children), will provide for sending at a hearing if the defendant is present before the court when it is determined that the case is to be sent. However, if the defendant is not present when it is determined that the case is to be sent, the magistrates' court must serve certain documents on the person being sent to the Crown Court for trial (sections 51, new subsection (2B), and 51A, new subsection (3B)). This includes documents which state the charge against the defendant, explain that the court is required to send the defendant to the Crown Court for trial for the offence, and any other information as required by the CrimPRs.

232 As soon as practicable after the relevant documents have been served on the defendant, the magistrates' court must send the defendant to the Crown Court for trial (sections 51, new subsection (2C), and 51A, new subsection (3C)). This can be done outside of a court hearing.

233 The CrimPRs can make provisions about the circumstances in which a defendant is not to be served the documents giving the defendant notification of being sent to the Crown Court for trial, and how a defendant is to be sent to the Crown Court for trial in such circumstances (sections 51, new subsection (2E), and 51A, new subsection (3E)).

234 The circumstances when related cases or co-defendants are also to be sent to the Crown Court along with the main offence will be dealt with by the CrimPRs under sections 51, new subsections (3A) and (3B), and 51A, new subsections (4A) and (4B). The CrimPRs will replace the existing provisions in sections 51(3) to (12) and 51A(4) to (10). They may include provision for related summary-only offences to be sent to the Crown Court (see new subsection (3B)(a)(iii) and (4B)(a)(iii)). However, in the event that, for whatever reason, the indictment subsequently changes so that only the summary offence(s) remains, there is a new general power to remit such cases from the Crown Court to the magistrates' court (see Clause 11).

235 The circumstances where indictable offences can be sent straight to the Crown Court without a first hearing will apply to cases where defendants have been charged by postal charge and requisition or charged and bailed by the police. Consequently, Clause 10 also inserts new subsection (2A) into section 52 of the CDA 1998 to provide that where the court sends a person for trial under section 51 or 51A other than in open court, it must do so on bail (see new subsection (2A)(a)) and that bail must be unconditional (if the defendant is not already on bail, or is on unconditional bail), or if the defendant is already on bail subject to conditions, subject to the same conditions (see new subsection (2A)(b)). However, this is a discretionary power, and magistrates' courts will only deem a case suitable to be sent under this power where it is appropriate to issue bail on the papers.

Clause 11: Powers of Crown Court to remit cases to the magistrates' court

236 Clause 11 inserts new section 46ZA into the Senior Courts Act 1981 so as to give the Crown Court a new general power to send a person back to a magistrates' court for trial (see new section 46ZA(1)).

237 New section 46ZA(2) states that this power to remit cannot be exercised if the offence in question is indictable-only (or falls within section 51A(12) of the CDA 1998 if the defendant is under 18). Where the offence in question is triable either-way, the Crown Court must obtain the defendant's consent to exercise the power if the defendant has attained the age of 18 (or is a body corporate): new section 46ZA(3). Accordingly, defendants' right to elect for jury trial is unaffected (there is no requirement for the defendant to consent to the court remitting a summary-only offence).

238 In light of the general principle of summary trial in the youth court for under 18-year-olds, new section 46ZA(4) requires the Crown Court to consider (if need be of its own motion) whether to send a person under the age of 18 who appears before the Crown Court back to a magistrates' court (including a youth court); and if it decides not to send a under-18 defendant back, the court must give reasons for not sending.

239 In deciding whether to exercise the power (new section 46ZA(5)), the Crown Court must consider all other offences which are related to the main offence, whether in relation to the same defendant or a co-defendant, and have regard to any allocation guidelines.

240 New section 46ZA(6) also provides that where the Crown Court exercises the power set out in new section 46ZA(2) it may give the necessary directions in regard to whether the defendant is remanded in custody or released on bail until the defendant can appear or be brought before the magistrates' court.

241 New section 46ZA(7) states that there is no right of appeal against an order under new section 46ZA(1).

242 Clause 11 also inserts new section 25A into the Sentencing Code to give the Crown Court the power to remit an adult offender to a magistrates' court for sentence (new section 25A(2)). New section 25A(1) sets out that this power can only be exercised where a person has attained the age of 18 (or is a body corporate), and where an individual has either been convicted of an offence by a magistrates' court and committed to the Crown Court for sentence, or has been convicted of a offence by the Crown Court following a plea of guilty.

243 In deciding whether to exercise the power (new section 25A(3)) the Crown Court must consider all other offences which are related to the main offence, whether in relation to the same defendant or a co-defendant, and have regard to any allocation guidelines.

244 New section 25A(4) states that there is no right of appeal against an order under new section 25A(2).

245 Clause 11 will also inset new subsection (2A) into section 25 of the Sentencing Code to provide for the court's ability remit back to youth court for sentencing. It is possible this could be used in relation to those individuals believed to be over 18 who have been committed for sentence by the magistrates' court, who later turn out to be under 18 years of age.

Clause 12: Powers of youth court to transfer cases if accused turns 18

246 Clause 12 amends section 47 of the CDA 1998 (powers of youth court) in order to make provision for the youth court to remit defendants to the adult magistrates' court or the Crown Court, where a person who appears or is brought before a youth court charged with an offence subsequently attains the age of 18 (new subsection (A1)). New subsection (4A) sets out that, under this section, a person is taken to be the age which that person appears to the court after considering any available evidence.

247 New subsection (1) sets out that where a defendant has been charged with either a summary offence or an offence triable either way, and has subsequently attained the age of 18, the youth court may remit the person for trial to an adult magistrates' court at any time before the start of the trial. Where a defendant has been charged with an indictable offence, and has subsequently attained the age of 18, the youth court may send the person for trial to the Crown Court at any time before the start of the trial (new subsection (1A)).

248 Where the youth court is proposing to remit a person to an adult magistrates' court for an offence triable either way, the court must give the defendant the opportunity to elect for a jury trial and, if the person does so elect, must send the person for trial to the Crown Court (see new subsection (1C)(b)).

249 New subsection (1D) provides that this power does not have to be exercised in open court in the presence of the defendant in question; however, if it is not, then the youth court must serve certain documents on the defendant which state the charge against them; explain that the court is proposing to either remit for trial to an adult magistrates' court or send the defendant for trial to the Crown Court; and any other information as required by the CrimPRs.

250 The circumstances when related cases or co-defendants are also to be sent to the Crown Court along with the main offence will be dealt with by the CrimPRs under new subsections (1E) and (1F). This may include provision for related summary-only offences to be sent to the Crown Court.

Clause 13: Magistrates court sentencing powers

251 Clause 13 amends the Sentencing Act 2020 and the Criminal Justice Act 2003 in order to provide powers to vary the general limit on magistrates' court sentencing powers for a single triable either way offence to either 6 months or 12 months.

252 Subsection (1) amends section 224 of the Sentencing Code to establish separate general limits on the sentencing powers of the magistrates' court for summary-only and triable either-way offences.

253 Subsection (2) inserts new section 14(A) into Schedule 23 to the Sentencing Act 2020 to provide the power to amend the general limit for triable either-way offences only. This allows for the limit for custodial sentences for triable-either way offences to be varied between either 6 months or 12 months maximum. At the point the limit is changed, this will apply only to offences for which a conviction is obtained on, or after, the day the amendment comes into force. The power is subject to the negative resolution procedure.

254 Subsection (3) amends Schedule 1 to the Interpretation Act 1978 to insert a definition of the term "general limit in a magistrates' court" to provide that the general limit for triable either way offences is the limit currently specified in section 224 of the Sentencing Code.

255 Subsection (4) amends section 32(1) of the Magistrates' Courts Act 1980 and subsection (5) amends section 282(3) of the Criminal Justice Act 2003 in order to refer to the "general limit in a magistrates' court". This will ensure that if the limit is varied in the future using the power, these references will change in accordance with that variation.

256 Subsections (6) and (7) provide that legislation to which s282(3) of the Criminal Justice Act 2003 does not apply should be read as providing for a maximum term of imprisonment not exceeding the "general limit in a magistrates' court". This applies to legislation to which Section 282(3) of the Criminal Justice Act does *not* apply and which provides for a maximum term of 12 months on summary conviction of triable either-way offences, including triable-either way offences created after the Criminal Justice Act 2003 came into force.

257 Subsections (8) and (9) provide that primary legislation which confers a power to create a triable either-way offence, should be read as conferring a power to provide for a term of imprisonment not exceeding the general limit. This applies to powers created before the Criminal Justice Act 2003 was passed where the maximum term of imprisonment on summary conviction of a triable either-way offence is stated as 6 months, and powers created after the Act was passed which provide for a 12 month maximum term.

258 Subsection (10) creates a power for the Secretary of State to amend by regulations certain enactments (specified at subsection (11)) in order to spell out the effects of subsections (5), (7) and (9), and to make any amendments to that legislation which are consequential on any amendments made using that power.

259 Subsection (11) defines 'relevant legislation' as an Act passed before or in the same session as this Act, or an Act or Measure of the Welsh Parliament, subordinate legislation and retained direct EU legislation made before the passing of this Act.

Clause 14: Involvement of parent or guardian in proceedings conducted in writing

260 Section 34A of the Children and Young Persons Act 1933 ("the CYPA 1933") states that where a child or young person is charged with an offence or is for any other reason brought before the court, the court may (if the child is 16 years and over) or must (if the child is under 16 years) require a parent or guardian to attend at court during all stages of the proceedings unless it would be unreasonable to do so having regards to the circumstances of the case.

261 Clause 14, subsection (1), introduces a number of amendments to section 34A of the CYPA 1933 so that the court may (if the child is 16 years and over) or must (if the child is under 16 years) notify a parent or guardian when proceedings against a child or young person are conducted in writing/online outside of a courtroom hearing if they are unaware (e.g. when a child or young person is invited to provide a written/online indication of plea where an allocation decision is required in accordance with new section 24ZA of the MCA 1980) unless it would be unreasonable to do so having regards to the circumstances of the case.

262 Clause 14, subsection (2), changes the heading of section 34A of the CYPA 1933 from "Attendance at court of parent or guardian" to "Attendance at court or other involvement of parent or guardian" to account for the additional written/online proceedings that will also be addressed within this provision.

263 Clause 14, subsection (3), inserts new subsections (1A) to (1C), which specify the circumstances in which a court may (if the child is 16 years and over) or must (if the child is under 16 years) notify a parent or guardian of proceedings conducted in writing if they are unaware unless and to the extent that the court is satisfied that it would be unreasonable to do so, having regard to the circumstances of the case.

264 New subsection (1A) specifies that where a child or young person is charged with an offence, the court may (if the child is 16 years and over) or must (if the child is under 16 years) exercise the functions conferred by new subsections (1B) and (1C) unless it would be unreasonable to do so having regards to the circumstances of the case.

265 New subsection (1B) specifies that where any stage of the proceedings against a child are conducting in writing/online, the court may or (as the case may be) must ascertain whether the child or young person's parent or guardian is aware that the written/online proceedings are taking place and if they are not, provide them with information about the proceedings.

266 New subsection (1C) specifies that where a child or young person provides a written/online indication of plea under new section 24ZA of the MCA 1980, the court may or (as the case may be) must ascertain whether the child or young person's parent or guardian is aware that a written/online indication of plea has been provided and if they are not, bring the written/online indication of plea to their attention.

267 Clause 14, subsection (4), amends section 34A(2) of the CYPA 1933, which makes provision for the application of section 34A in relation to a child or young person for whom a local authority have parental responsibility, so that new subsections (1A) to (1C) also apply.

Clause 15: Removal of certain requirements for hearings about procedural matters

268 Clause 15 will allow the Crown Court to determine an application for a witness summons in criminal proceedings without a hearing. It also removes certain statutory requirements in criminal proceedings for the court to hold a hearing before lifting reporting restrictions. Although the court will continue to have the option of convening a hearing in all these

circumstances, the amendments will enable the court to make a decision 'on the papers' without a hearing, where satisfied that this is appropriate.

269 Subsection (1) amends section 2(8)(d) of the Criminal Procedure (Attendance of Witnesses) Act 1965 to allow the Crown Court to determine an application for a witness summons in criminal proceedings on the papers.

270 Subsection (2) to (7) amend nine provisions to enable courts in England and Wales to consider written representations rather than have to hear oral representations from an accused person who objects to the lifting of reporting restrictions imposed in relation to:

a. a pre-trial ruling by a magistrates' court;
b. a preparatory hearing in a complex or serious fraud case or an appeal arising from such a hearing;
c. a preparatory hearing in a complex, serious or lengthy case, or an appeal arising from such a hearing;
d. a pre-trial ruling in a case which is to be tried on indictment;
e. allocation or sending proceedings;
f. an application for dismissal of a charge in a case which has been sent to the Crown Court for trial;
g. a special measures direction in relation to a vulnerable or intimidated witness;
h. a direction for a vulnerable accused to give evidence through a live link; and
i. a direction prohibiting an accused person from cross-examining a witness in person.

Clause 16: Documents to be served in accordance with Criminal Procedure Rules

271 Clause 16 gives effect to Schedule 1, which contains amendments to existing legislation to enable the service of documents in certain criminal proceedings, or in certain related contexts to be in accordance with CrimPRs. As a result, such service can be effected by whichever means is the most appropriate in any given case, including by electronic means.

Clause 17: Power to make consequential or supplementary provision

272 This clause allows the Lord Chancellor to make regulations which make consequential or supplementary provisions in relation to any of the provisions in this Chapter.

273 The regulations may amend, repeal or revoke primary and secondary legislation, but may only amend, repeal or revoke provision of an Act passed before this Bill is passed or in the same Session.

274 Under subsections (3) and (4), regulations under this section will be subject to the negative resolution procedure in Parliament unless they amend primary legislation, in which case they will be subject to the affirmative resolution procedure. Clause 45 makes further provision in relation to those procedures.

Clause 18: Consequential and related amendments

275 This clause introduces Schedule 2, which makes consequential and related amendments.

Chapter 2: Online procedure

Clause 19: Rules for online procedure in courts and tribunals

276 This clause provides in subsection (1) that there are to be rules, to be known as Online Procedure Rules, which, for specified proceedings (meaning proceedings specified in regulations made by the Lord Chancellor under clause 20) require parties to civil, family or

tribunal proceedings to use electronic means to start proceedings or take steps in them (i.e. online procedure). Rules may provide for all or any part of the procedure for conducting proceedings online, including starting and defending proceedings and participating in hearings. Subsection (2) provides that these rules are to be called Online Procedure Rules; subsection (3) provides for objectives to which regard must be had whenever the power to make Online Procedure Rules is exercised, including the objective of securing that practice and procedure under the rules are accessible and fair (for which subsection (4) specifically provides that regard must be had to those who need support to take part in any way using electronic means.) Subsection (5) provides for different rules to be able to be made for different kinds of proceedings.

277 Subsection (6) requires provision to be made in Online Procedure Rules for litigants who are not legally represented to be able to choose to take by non-electronic means steps which they would otherwise be required to take by electronic means. Subsection (7) provides that Online Procedure Rules, where they require a person to use electronic means, must also provide that a court or tribunal may direct the use instead of non-electronic means. Subsection (8) makes clear that Online Procedure Rules may provide for matters to be determined by electronic means as a result of steps taken, or failed to be taken, by the parties by electronic means (so that, for example, a matter might be determined by electronic means in default of a response which a party was required to provide by electronic means).

278 Subsections (9) to (11) provide for circumstances in which the rules are not to apply or are to cease to apply to proceedings so enabling, for example, particularly complex cases to be transferred out of the online procedure to the appropriate court or tribunal and so become subject to the civil, family, or tribunal procedural rules ('the applicable standard rules') as appropriate; and for the rules to be able to provide for alternative procedures to accommodate those cases to which the Online Procedure Rules would otherwise cease to apply. For example, this might apply where a party might not have access to the requisite IT, so creating a parallel procedure which may still be subject to those features of the online procedure that are readily available to the parties. Subsection (12) permits rules to provide for separate proceedings to be taken in a different court than the normal one and for separate proceedings to be taken together (so that, for example, certain housing-related matters might be brigaded together in a single set of proceedings before a single court or tribunal rather than having to be spread across one or more courts and/or tribunals). Subsection (13) requires that the Online Procedure Rules may not provide for proceedings to be taken outside the jurisdiction where the proceedings are brought. It also requires that the Online Procedure Rules may not provide for appeals to take place in the same court or tribunal as the decision being appealed against. Subsection (14) makes it clear that this clause is subject to clause 21 (which allows the Lord Chancellor to provide in regulations for parties to have the option of proceeding under Online Procedure Rules or the "applicable standard rules"; and subsection (15) introduces Schedule 3, which makes provision about practice directions in relation to proceedings governed by Online Procedure Rules.

Clause 20: "Specified kinds" of proceedings

279 Subsection (1) of this clause allows for proceedings which are of one of the listed types of proceedings (civil, family, First-tier or Upper Tribunal, employment tribunal or Employment Appeal Tribunal) to be specified in regulations as subject to the online procedure and accordingly to Online Procedure Rules.

280 Subsection (2) provides a non-exhaustive list of the factors by reference to which proceedings may be specified as coming within the scope of the online procedure, including the legal basis of the proceedings (for example, a breach of contract) and the factual basis of the proceedings (for example, a money claim), and the value of any claim within the proceedings.

281 Subsections (3) and (4) make regulations under this clause subject to the "concurrence requirement" (i.e. requiring the concurrence of the Lord Chief Justice, or Senior President of Tribunals if the regulations concern proceedings before tribunals – see clause 31) and to affirmative resolution procedure.

Clause 21: Provision supplementing section 18

282 Subsection (1) enables the Lord Chancellor to specify the circumstances in which a party to proceedings may choose whether to proceed under Online Procedure Rules or under the applicable standard rules for the appropriate alternative civil or family court or tribunal, and subsection (2) makes it clear that practice directions for online proceedings (under Schedule 3) do not apply where the applicable standard rules apply because of provision made under subsection (1). Subsections (3) and (4) enable the Lord Chancellor to specify the circumstances in which Online Procedure Rules should not apply, or cease to apply, to specified proceedings (subsection (5) explains the meaning of "excluded proceedings") and to provide for the circumstances in which such proceedings may nonetheless remain subject to the Online Procedure Rules, so enabling the rules to provide for alternative procedures under clause 19 (10) to (12).

283 Subsections (6) and (7) make regulations under this clause subject to the "concurrence requirement" (i.e. requiring the concurrence of the Lord Chief Justice or Senior President of Tribunals – see clause 31) and to affirmative resolution procedure.

Clauses 22 and 23: The Online Procedure Rule Committee and the powers of the Online Procedure Rule Committee

284 These clauses set out the membership of the OPRC and its powers. They also include the procedure for appointing members. The Lord Chancellor is authorised to reimburse the committee members for travel expenses and out of pocket expenses incurred whilst on committee business. The Committee has the same rule making powers that are available to the Civil Procedure Rule Committee, the Family Procedure Rule Committee and the Tribunal Procedure Committee (including the ability to make rules providing for a matter to be provided for in a practice direction), and may apply any other procedural rules or procedural provisions not in rules (such as provision contained in a statute for a particular area).

Clause 24: Power to change certain requirements relating to the Committee

285 This clause (which is on similar lines to provision made in relation to other rule committees) enables the Lord Chancellor by regulation to alter the composition of the OPRC, by amending clause 22, with the concurrence of, the Lord Chief Justice and the Senior President of Tribunals and following consultation with senior members of the judiciary. Regulations under this clause are subject to the negative resolution procedure. This flexibility is considered necessary because, as the scope of the Online Procedure Rules increases, it may be necessary to increase the Committee's membership or widen its expertise in order to assist in making rules.

Clause 25: Process for making Online Procedure Rules

286 This clause describes the process for making Online Procedure Rules (which mirrors that for rules made by other rule committees). Before making or amending rules, the OPRC must hold a meeting (unless it is inexpedient to do so) whether in person or otherwise, and consult any appropriate persons, which allows the Committee to call on the expertise of non-committee members to inform discussion about any proposed rule changes. Any rules drafted by the Committee must be signed by at least half the members of the committee, where one is the chair, or a majority of the committee members in any other case, before being submitted to the Lord Chancellor who may allow or disallow the rules. Where a rule is disallowed, the Lord Chancellor, having appropriate regard for digitally excluded people, must give the

Committee written reasons for doing so. Rules come into force on such a date as the Lord Chancellor decides and are to be contained in a statutory instrument subject to the negative resolution procedure.

Clause 26: Power to require Online Procedure Rules to be made

287 The Lord Chancellor may (as with other rule committees) give the OPRC written notice that the Lord Chancellor thinks that the online rules should include provision to achieve a specified purpose. The Committee must on being given such a notice make the rules within a reasonable period and in accordance with the procedure for making rules, outlined above. Although rarely used, it is a matter of expediency that the appropriate Minister should be able to direct the Committee to make rules, which might be required as a matter of urgency, without additional procedure. This is consistent with current powers in section 3A of the Civil Procedure Act 1997, section 79A of the Courts Act 2003 and Part 3 of Schedule 5 to the Tribunals Courts and Enforcement Act 2007.

Clause 27: Power to make amendments in relation to Online Procedure Rules

288 These clauses (mirroring provision in relation to Civil Procedure Rules and rules made by other rule committees) enable the Lord Chancellor by regulations to amend primary and secondary legislation as the Lord Chancellor considers necessary or desirable either in consequence of Online Procedure Rules or to facilitate the making of Online Procedure Rules. Regulations which amend primary legislation must be made subject to affirmative resolution procedure (*subsection (5)*), while those which amend subordinate legislation alone are subject to negative resolution procedure (*subsection (6)*). It is anticipated that this power will be used to make minor revisions to legislation in order, for example, to regularise and modernise terminology to match that in new rules. Before making regulations, the Lord Chancellor must consult the Lord Chief Justice and the Senior President of Tribunals (*subsection (3)*).

Clause 28: Duty to make support available for those who require it

289 This clause provides for the Lord Chancellor to arrange for the provision of such support as the Lord Chancellor considers appropriate and proportionate to allow digitally excluded people to participate fully in proceedings using electronic means.

Clause 29: Power to make consequential or supplementary provision

290 This clause allows the Lord Chancellor to make regulations which make consequential or supplementary provision in relation to any provisions of this Chapter.

291 Regulations may amend, repeal or revoke primary and secondary legislation, but may only amend, repeal or revoke provision of an Act passed before this Bill is passed or in the same session.

292 Under subsections (3) and (4), regulations made under this section will be subject to the negative resolution procedure in Parliament unless they amend primary legislation, in which case they will be subject to the affirmative resolution procedure.

Clause 30: Amendments of other legislation

293 This clause introduces Schedule 4, which makes amendments to other legislation, principally to exclude the "applicable standard rules" from cases where Online Procedure Rules apply.

Clause 31: Judicial agreement to certain regulations

294 This clause explains what is meant by the "concurrence requirement" for certain powers to make regulations. Subsection (1) gives the meaning, namely that for regulations subject to the concurrence requirement, the regulations require the concurrence of the Lord Chief Justice (if or to the extent that they relate to civil or family proceedings) and/or the Senior President of

Tribunals (if or to the extent that they relate to proceedings in the First-tier Tribunal, Upper Tribunal, employment tribunals or the Employment Appeal Tribunal). Subsection (2) allows for the Lord Chief Justice to delegate the function of concurring in the making of such regulations to a judicial office holder.

Clause 32: Interpretation of this Chapter

295 This clause defines terms used in clauses 20-32 and Schedules 3 and 4.

Chapter 3: Employment Tribunals

Clause 33: Employment Tribunal Procedure Rules

296 This clause (together with Schedule 5, which it introduces) makes provision for there to be Employment Tribunal Procedure Rules, to be made by the Tribunal Procedure Committee, replacing the powers of the Secretary of State and Lord Chancellor to make employment tribunal procedure regulations and Employment Appeal Tribunal rules respectively.

297 Subsections (1) to (4) make the main provision to replace/transfer the powers, replacing existing sections 7 and 30 of the Employment Tribunals Act 1996 (the 1996 Act), which respectively provide for employment tribunal procedure regulations and Employment Appeal Tribunal rules, with new sections providing for "Procedure Rules" to govern practice and procedure in the employment tribunals (section 7) and Employment Appeal Tribunal (section 30), and inserting into the 1996 Act a new section 37QA which provides that there are to be Employment Appeal Tribunal Procedure Rules made by the Tribunal Procedure Committee, and that "Procedure Rules" in the 1996 Act as amended means those rules.

298 Subsection (1) is introductory and provides for the 1996 Act to be amended as provided by subsections (2) to (4).

299 Subsection (2) substitutes for section 7 of the 1996 Act a new section 7 which provides that Procedure Rules are to govern the practice and procedure to be followed in the ETs.

300 Subsection (3) similarly substitutes for section 30 of the 1996 Act a new section 30, subsection (1) of which provides that Procedure Rules are to govern the practice and procedure to be followed in the EAT, while subsection (2) provides that the EAT (which is, by virtue of section 20 of the 1996 Act a superior court of record) retains the power to regulate its own practices and procedures, subject to Procedure Rules, practice directions made under section 29A(1) and any other provision made by or under an enactment.

301 Subsection (4) inserts into the 1996 Act a new section 37QA which (together with new Schedule A1 which it introduces into the 1996 Act) provides for the power to make Employment Tribunal Procedure Rules, how such rules are to be made and what they may contain. Subsection (1) of the new clause provides that there are to be Employment Tribunal Procedure Rules made by the Tribunal Procedure Committee; subsection (2) provides that the term "Procedure Rules" used in the Act means such rules; subsection (3) introduces Schedule A1, which makes provision about the making of Employment Tribunal Procedure Rules and what they may contain which corresponds to that made for Tribunal Procedure Rules by Schedule 5 to the Tribunals, Courts and Enforcement Act 2007; and subsection (4) makes it clear that the breadth of the power to make rules is not constrained by any other provision which states what the rules may or must contain.

302 Subsection (5) introduces Schedule 5, which contains further provisions in connection with the provision made by the rest of the clause (including consequential amendments ensuring that things which may be done by or which relate to employment tribunal procedure regulations may be done by, or relate to, Employment Tribunal Procedure Rules).

Clause 34: Composition of tribunals

303 This clause replaces the existing provisions defining the composition of an ET and the EAT with new arrangements that make the Lord Chancellor responsible for regulating the composition of the ET and the EAT.

304 Subsections (1) to (4) amend the 1996 Act to provide for these new arrangements, replacing sections 4 and 28 of the 1996 Act (concerning ETs and the EAT respectively) with new sections, and making minor consequential amendments.

305 Subsection (1) is introductory and provides for the 1996 Act to be amended as provided by the following subsections.

306 Subsection (2) substitutes for section 4 of the 1996 Act, containing the existing provisions on the composition of ETs, a new section 4 containing new arrangements.

307 Subsection (1) of the new section 4 establishes the basic proposition that an employment tribunal is to be composed of a member or members chosen by the Senior President of Tribunals; subsection (2) requires members to be so chosen to belong to a panel that is appointed in accordance with regulations made under section 1(1) of the Act (regulations establishing employment tribunals); subsection (3) provides that the Senior President of Tribunals (or anyone to whom the Senior President of Tribunals has delegated the function of choosing members) must choose members in accordance with regulations made by the Lord Chancellor under subsection (4) and that the Senior President of Tribunals or such delegate may choose themselves if they are eligible by virtue of regulations made under section 1(1); subsection (4) requires the Lord Chancellor to make regulations providing for the number of members composing an ET panel for every category of case which may come before an ET; and subsection (5) provides that where regulations under subsection (4) provide for a panel to be made up of one member, they must provide for that member to be an Employment Judge.(to prevent a non-legal member from sitting alone). Subsection (6) requires regulations that provide for panels to be composed of more than one member to provide that at least one member must be an employment judge, to provide for the numbers of employment judges and other members for each category of case, and to provide for the qualifications which non-judge members of a panel must have for each category of case. Subsection (7) allows for a duty under subsections (4) and (6) to make provision for determining something to be met by providing for that thing to be determined by the Senior President of Tribunals or the President of Employment Tribunals in accordance with provision in the regulations; subsection (8) similarly allows for the requirement to specify qualifications in subsection (6)(c) to be met by giving the Senior President of Tribunals or the President of Employment Tribunals the power to determine those requirements in accordance with provision in the regulations. Subsection (9) permits an ET comprised of more than one member to proceed in the absence of one or more members, as long as a) the parties to the case agree and b) at least one of the remaining members is an Employment Judge; and subsection (10) permits an ET to proceed even where a member does not have the required qualification if the parties agree. Subsection (11) places a duty on the Lord Chancellor to consult the Senior President of Tribunals before making regulations on the composition of ETs; and subsection (12) makes provision for interpretation.

308 Subsection (3) similarly substitutes for section 28 of the 1996 Act, containing the existing provisions on the composition of the EAT, with a new section 28 containing new arrangements. The new section 28 mirrors for the EAT the provision for ETs made by the new section 4.

309 Subsection (4) makes amendments consequential on the substitution of the new sections 4 and 28, to ensure that cross-references to those sections operate correctly.

Clause 35: Saving for existing procedural provisions

310 This clause makes saving provision to ensure that existing procedural regulations and rules are not automatically revoked by the repeal of the provisions under which they are made, so that the transition between the existing provisions and new Employment Tribunal Procedure Rules and composition regulations can be managed appropriately.

Clause 36: Exercise of tribunal functions by authorised persons

311 This clause amends Chapter 2A of Part 1 of the Tribunal, Courts and Enforcement Act 2007 so that the ability of authorised case officers to perform certain judicial functions, where authorised by Tribunal Procedure Rules, which is allowed for by that Chapter, is extended to include case officers so authorised by Employment Tribunal Procedure Rules.

312 Subsection (1) is introductory and provides for Chapter 2A of the 2007 Act to be amended as provided in the following subsections.

313 Subsection (2) makes the main changes to effect the extension. These are to amend the definitions of terms presently used in Chapter 2A so that they are broadened to include references to (for example) a "relevant Procedure Rule", and then providing a definition of the new terms which includes both Tribunal Procedure Rules and Employment Procedure Tribunal Rules (and also include employment tribunals and the Employment Appeal Tribunal as well as the First-tier Tribunal and Upper Tribunal).

314 Subsection (3) substitutes in a number of places in Chapter 2A the more broadly defined term "a relevant procedure Rule" for the existing wording which captures only Tribunal Procedure Rules.

Clause 37: Responsibility for remunerating tribunals members

315 This clause amends the 1996 Act to transfer responsibility for the remuneration of members of the ET and the EAT from the Secretary of State for BEIS to the Lord Chancellor. Paragraph (a) does this for remuneration of ET members by amending sections 5(1), (2) and (3) of the 1996 Act, and paragraph (b) for the remuneration of EAT members by amending section 27(1), (3) and (4) of the Act.

Chapter 4: Coroners

Clause 38: Discontinuance of investigation where cause of death becomes clear

316 This is an amendment to section 4 of the Coroners and Justice Act 2009 ("the 2009 Act") which will broaden the circumstances in which an investigation can be discontinued. Subsection (1) is introductory and provides for section 4 to be amended as provided in the following subsections.

317 Subsection (2) substitutes "revealed by post-mortem examination" for "becomes clear before inquest" in the section heading.

318 Subsection (3) sets out the circumstances when the investigation can be discontinued, which are when:

> "(a) the coroner is satisfied that the cause of death has become clear in the course of the investigation,
>
> "(aa) an inquest into the death has not yet begun."

Clause 39: Power to conduct non-contentious inquests in writing

319 This clause will give coroners the flexibility to forgo the need for an inquest in non-contentious cases. Under this provision, the coroner would issue a written ruling like a

judgement. Rule 23 of the Coroners (Inquests) Rules 2013 (the 2013 Rules) provides for a 'documentary' or 'Rule 23 inquest' which comes very close to being entirely on paper, but a limited public hearing must still take place (see Chief Coroner's Guidance 29). This would therefore just be a natural extension of the existing arrangement.

320 Subsection (1) is introductory and states that the 2009 Act will be amended as provided in the following subsections.

321 Subsection (2) inserts new section 9C after section 9B in the 2009 Act.

322 New section 9C(1) provides that where an inquest is to be held without a jury, it can be held at a hearing or in writing if the senior coroner decides that a hearing is unnecessary.

323 New section 9C(2) sets out the circumstances in which the Senior Coroner can decide if a hearing is unnecessary. They are:

> (a) the coroner has invited representations from each interested person known to the coroner,
>
> (b) no interested person has represented on reasonable ground that a hearing should take place;
>
> (c) it appears to the coroner that there is no real prospect of disagreement among interested persons as to the determinations or findings that the inquest could or should make; and
>
> (d) it appears to the coroner that no public interest would be served by a hearing.

324 Subsections (3) to (5) amend sections 10(1), 45(2) and 47(2) of the 2009 Act to in order that those provisions also apply in circumstances where an inquest has been held in writing without attendance.

325 Subsection (6) amends paragraph 11 of Schedule 1 to the 2009 Act to require fresh consideration of whether an inquest resumed after an adjournment should be held at a hearing or in writing.

Clause 40: Use of audio or video links at inquests

326 This clause is to allow pre-inquest reviews and inquests to take place where all participants, including the coroner, participate remotely. Subsection (1) is introductory and provides for the 2009 Act to be amended. Subsections (2) and (3) are to permit the making of rules which may allow coroners to conduct wholly virtual hearings so that they are in the same position as civil courts.

Clause 41: Suspension of requirement for jury at inquest where coronavirus suspected

327 This clause is to continue (on a temporary basis) the provision first enacted in section 30 of the Coronavirus Act 2020 that disapplies the requirement for a coroner to conduct an inquest with a jury in a case where a death is suspected to have been caused by COVID-19, which is a notifiable disease.

328 Subsection (1) amends Section 7(2)(c) of the 2009 Act which requires a coroner to hold an inquest with a jury where the coroner has reason to suspect that the death was caused by a notifiable disease. This subsection inserts a new subsection (5) into the 2009 Act to disapply this requirement in relation to COVID-19.

329 Subsection (2) clarifies that subsection (1) affects any inquest opened on or after the day on which the section comes into force, regardless of the date of death.

330 Subsection (3) provides for the new subsection (5) in section 7 of the 2009 Act to expire after a period of two years. The two-year period begins on the day this section comes into force.

331 Subsection (4) requires the Lord Chancellor to assess the likely effects on the coronial system of the provision expiring.

332 Subsections (5) and (6) allow the Lord Chancellor, having carried out that assessment, to make regulations to prevent the new subsection (5) in section 7 of the 2009 Act from expiring. Subsection (6)(b) allows for the new expiry date to be specified in the regulations, and subsection (7) requires that the date may be no later than two years after the previous expiry day.

333 Subsection (8) requires that regulations made under subsection (6) are subject to the affirmative resolution procedure, as set out in section 45(3) of the 2009 Act.

334 Subsection (9) requires that subsection (2) expires when the new subsection (5) expires, meaning that it cannot be renewed again by subsection (6).

335 Subsection (10) clarifies terms used in the new subsection (5).

336 Subsection (11) omits section 30 of the Coronavirus Act 2020. Subsection (12) provides that subsection (11) does not affect any inquest opened while section 30 of the Coronavirus Act 2020 was still in force.

Clause 42: Phased transition to new coroner areas

337 This clause is to address a point in the 2009 Act that does not permit the merger of pre-existing smaller coroner areas made under previous legislation (and preserved by the 2009 Act), if the merger of those smaller coroner areas would make a new coroner area which is not the entire local authority area.

338 This has caused difficulties because under paragraph 1(2) of Schedule 2 to the 2009 Act, each coroner area is to consist of the area of a local authority or the combined areas of two or more local authorities. Two coroner areas may not be merged into one coroner area if that area will consist in total of less than the area of a local authority.

339 This clause inserts a new paragraph 1A after paragraph 1 of Schedule 22 to the 2009 Act to permit two or more coroner areas each of which is wholly within the area of the same local authority and is specified in either the transitional order (which preserved coroner areas made under previous legislation), or an earlier order made by virtue of the paragraph to combine, by order, without the resulting coroner area having to satisfy paragraph 1(2) of Schedule 2 i.e. not having to be the whole of the area of a local authority.

Example (1): merger of coroner areas

Kent consists of four separate coroner areas. Kent County Council, with the approval of the Chief Coroner, wishes all four areas to be combined into one coroner area, coterminous with the area of Kent County Council and Kent Police Authority. Kent would have liked to achieve this piecemeal, merging one area with another as and when a senior coroner from one of the coroner areas retires. But that is not possible under Schedule 2 to the 2009 Act in its present form. This amendment will permit Kent County Council by order of the Lord Chancellor to combine all four areas into one coroner area.

Chapter 5: Other provisions about courts

Clause 43: Abolition of local justice areas

340 Clause 43 provides for the abolition of local justice areas (LJAs) (see clause 43(1)), which will have a number of effects.

341 Removing the requirement that magistrates' courts in England and Wales must be divided into separate local justice areas will require a great number of consequential amendments to existing legislation to remove and replace references to local justice areas, as well as deal with fines and community orders and additionally to make provision for the appointment deployment, training, development, and appraisal of magistrates who are currently appointed to local justice areas.

342 Clause 43(3) provides the Lord Chancellor with a power to make consequential or supplementary provisions, including provision amending, repealing or revoking provisions made by or under other Acts of Parliament whenever passed or made (see subsection ()). These regulations are to be made by statutory instrument subject to the affirmative procedure in the case of regulations amending Acts, or negative procedure otherwise (subsections (5) and (6)).

Clause 44: The Mayor's and City of London Court: removal of duty to provide premises

343 Subsection (1) establishes that the Bill will make changes to Section 29 of the Courts Act 1971.

344 Subsection (2) makes amendments to section 29(1) of the Courts Act 1971, removing the specific obligation to provide the Mayor's and City of London Court premises.

345 Subsection (3) makes amendments to section 29(2) of the Courts Act 1971 to substitute "courts" for "court" as a result of changes made in subsection (2). This is necessary as the obligation to provide the Central Criminal Court under section 29 will remain.

Clause 45: The City of London Magistrates' Court: removal of duty to provide premises

346 Subsection (1) removes a paragraph from Schedule 2 to the Courts Act 2003, removing the specific obligation to provide the City of London Magistrates' Court premises.

347 Subsection (2) makes consequential changes to paragraph 35 of Schedule 14 to the Access to Justice Act 1999.

Part 3: Final provisions

Clause 46: Regulations

348 Subsection (1) states that any regulations made under the future Act will be made by statutory instrument, and in making such regulations under certain circumstances, subsection (2) provides the power to make incidental, transitional or saving provision and a power to make different provision for different purposes or for different areas.

349 Subsections (3) and (4) sets out the affirmative and negative resolution procedures respectively for statutory instruments made under the Bill.

350 Subsection (5) provides that subsection (4), which relates to regulations subject to the negative resolution procedure, does not apply if a draft of the statutory instrument has been laid before and approved by a resolution of each House of Parliament.

Clause 47: Extent

351 This clause sets out the territorial extent of the Bill. Subsection (1) provides that any amendment or repeal made by the future Act has the same extent as the provision it amends or repeals, subject to subsections (3) and (4).

352 Subsection (2) provides that new sections 1(4), 2(2), and 34 (which make transitional and saving provision) have the same extent as the amendments or repeals to which they relate.

353 Subsection (3) specifically set out certain provisions in the future Act that extend only to England and Wales.

354 Subsection (4) provides that paragraph 3(5) of Schedule 2 extends to England and Wales, Scotland and Northern Ireland.

355 Subsection (5) provides that Part 3 of Schedule 3 extends only to England and Wales and Scotland.

356 Subsection (6) provides that apart from the exceptions set out in this clause, the future Act will extend to England and Wales, Scotland and Northern Ireland.

Clause 48: Commencement and transitional provision

357 This clause sets out when the measures in the Bill will come into force.

358 Subsection (1) states that Part 3 comes into force on the day the future Act is passed.

359 Subsection (2) sets out the specific provisions that will come into force two months after the future Act passes.

360 With the exception of the provisions in subsection (2), which come into force two months after the future Act passes, the remainder of the clauses will come into force by means of commencement regulations made by the Lord Chancellor, as set out in subsections (3) to (6).

Clause 49: Short title

361 Clause 49 provides that the Act may be cited as the Judicial Review and Courts Act 2021.

Schedules

Schedule 1: Documents to be served in accordance with Criminal Procedure Rules

362 Paragraphs 1 to 14 amend references to service requirements in existing legislation to enable service of documents to be in accordance with Criminal Procedure Rules (CrimPRs). As a result, service can be effected by whichever means are prescribed in the Rules, including by electronic means.

Schedule 2: Criminal Procedure: consequential and related amendments

363 This schedule makes various amendments to other legislation consequential on, or related to, clauses 3, 4, 6 to 8, 9, 10, 11, and 12.

Amendments in connection with Clause 3: Automatic online conviction

364 The Magistrates' Court Act 1980 ("the MCA 1980") is amended as set out in -paragraph 1(2) to (6). This includes amendments to section 16A(1) to provide that a magistrates' court cannot try a case under the Single Justice Procedure (SJP) if the accused has accepted the automatic online conviction option; amendments to section 89 (transfer of fines within England and Wales) and section 90 (transfer of fines to Scotland and Northern Ireland) ensure they apply to a penalty imposed by a virtue of a conviction under 16H of the Act; and amendments to section 150 to clarify the definition of "fine" includes those imposed under the new automatic conviction provisions (paragraph 1(6)).

365 Section 108 of the MCA 1980 is also amended so that any person convicted under section 16H of that Act may not appeal to the Crown Court against the conviction or sentence, unless they have been re-sentenced by a magistrates' court under new section 16M(5)(b).

366 Section 8 of the Road Traffic Offenders Act 1988 (duty to include date of birth and sex in written plea of guilty) which extends and applies to England, Wales and Scotland is amended by paragraph 2 to ensure that this applies appropriately to the new online conviction procedure, which will require the provision of a date of birth by the accused in relation to certain road traffic offences.

367 Schedule 5 to the Courts Act 2003, which deals with arrangements for the collection of fines and other sums imposed on conviction, is amended as set out in paragraph 3(2) to (10) to apply its provisions as appropriate to those individuals who have been given a notice of conviction and penalty (within the meaning of section 16L of the MCA 1980). The intention is that the enforcement powers available in respect of court-imposed fines will also be available in respect of penalties issued under the automatic online conviction procedure.

368 Schedule 6 to the Courts Act 2003, which deals with discharge of fine by unpaid work, is amended in paragraph 3(11) to ensure this provision also applies to those individuals who have been given a notice of conviction and penalty (within the meaning of section 16L of the MCA 1980).

369 The Criminal Justice Act 2003 is amended by paragraph 4(2) to (4) to ensure the provisions apply appropriately to the new automatic online conviction procedure. Section 29 which provides for criminal proceedings to be commenced by way of written charge accompanied either by a requisition or by a SJP notice, is amended by paragraph 4(2) to clarify that a SJP notice may be issued only if the offence is summary-only and non-imprisonable, and where the accused has attained the age of 18 (or is a body corporate).

370 Section 29 of the Criminal Justice Act 2003 is further amended to require that the SJP notice must also explain, if the specific offence is specified in regulations under section 16H(3)(a) of the MCA 1980 and the relevant prosecutor deems it appropriate for the automatic online conviction option to be offered (see new subsection (2C)), the steps the accused can take if they wish to be offered the automatic online conviction option, and that if they are offered and accept that option, the requirements under the SJP will no longer apply (see new subsection (2D)). New subsection (2E) also provides that the Lord Chancellor can make provisions about the factors that should be taken into account by the relevant prosecutor when considering whether a specified offence is appropriate for the automatic online conviction option.

Amendments in connection with clauses 6 to 8

371 Paragraph 6 amends sections 17A, 18, 22 and 23 of the MCA 1980 to take account of the new 'plea before venue' procedures which enable a defendant in an either-way case to indicate a plea (new section 17ZA) and decide allocation (new section 17ZC) in writing or online without the need for a court hearing; and which enable the magistrates' court to 'invite' a defendant, who does not indicate a guilty plea, to indicate whether they would refuse summary trial if this was later offered to them, before the court proceeds with the pending 'allocation decision' procedure under sections 19 to 23 of the MCA 1980 (new section 17BA).

372 Paragraph 6(8) amends section 20 of the MCA 1980 which deals with allocation procedures where a summary hearing is deemed suitable. An indication of guilty plea in writing/online must be confirmed by the defendant at his or her first appearance in person at court. New subsection (7B) provides that, in circumstances where a defendant has indicated a guilty plea online/in writing but then goes on to plead not-guilty at trial, the plea and hearing become void. The court must revisit the allocation decision and ask the defendant whether they would

consent to a summary trial. If the defendant consents the court must adjourn and make arrangements for a summary trial. If the defendant does not consent, the court must send the case to the Crown Court for jury trial.

373 Paragraph 6(11) inserts new subsection (1A) of section 24A of the MCA 1980, which sets out the court process for taking an indication of plea from a child or young person under 18 years appearing before a magistrates' court and deciding whether the defendant should be sent to the Crown Court. New subsection (1A) means that no allocation process is needed at a hearing where allocation has been determined in writing/online, unless the defendant withdraws the written indication on which the written/online allocation proceedings were based in time.

374 Paragraph 6(12) amends section 27A of the MCA 1980 to enable a magistrates' court to transfer a case at any time before or at the beginning of the trial to another magistrates' court.

375 Paragraph 8 amends section 50A of the Crime and Disorder Act 1998 ("the CDA 1998") which sets out the process for allocating either-way cases where a defendant appears before the magistrates' court. It inserts new subsection (6) to disapply this procedure in cases where an adult, or child or young person under 18 years old, chooses to engage with the plea-before-venue process in writing/on-line.

Amendments in connection with clause 9

376 Paragraph 9 makes technical amendments to the MCA 1980 in connection with Clause 9 of the Bill.

Amendments in connection with clause 10

377 The MCA 1980 is amended by paragraph 10(2) and (3) to reflect the changes made to section 51 and 51A of the CDA 1998; this includes section 24A(1)(b) (child or young person to indicate intention as to plea in certain cases).

378 The CDA 1998 is amended by paragraph 11(2) and (3) to amend the provisions in section 50A about when related offences are to be considered, in order to reflect that the rules about related offences will in future be set out in the CrimPRs.

Amendments in connection with clause 11

379 Schedule 3 to the CDA 1998, which deals with the procedure where individuals are sent to the Crown Court for trial, is amended by paragraph 12(2) and (3) so as to remove provisions about circumstances in which an offender can be sent back to a magistrates' court following changes to an indictment. Those provisions are unnecessary in the light of new general power of the Crown Court to remit such cases (as conferred by clause 11).

380 Section 122(1) of the Coroners and Justice Act 2009, which deals with allocation guidelines, is amended by paragraph 13 to reflect that the Crown Court must have regard to any allocation guidelines under new section 46ZA(5)(b) of the Senior Courts Act 1981 and new section 25A(3)(b) of the Sentencing Code.

381 Section 26 of the Sentencing Code (provision about remission by Crown Court) is amended by paragraph 14 to reflect the addition of section 25A into the Sentencing Code which provides the Crown Court with a new power to remit adult offenders to a magistrates' court for sentence .

382 The CDA 1998 is amended as set out in paragraph 15(2) to (4) to clarify that the relevant provisions apply in relation to a case sent to the Crown Court under new subsection (1A) of section 47. This includes section 51D, which deals with the notice to be given on sending to

the Crown Court for trial; section 52, which deals with supplementary provisions about sending to the Crown Court for trial; and, Schedule 3, which deals with the procedure where accused is sent to Crown Court for trial.

Amendments in connection with Clause 13

383 Paragraph 16 amends section 133(1) and (2) of the Magistrates' Courts Act 1980 to ensure that provision about consecutive sentences is read in light of the new general limit in a magistrates' court.

384 Paragraphs 17 and 18 amend section 141(5A) of the Environmental Protection Act 1990 and section 113(10A) of the Scotland Act 1998, both of which contain powers to create offences. The amendments provide that any offences created using those powers should carry a maximum term on summary conviction of the general limit in a magistrates' court.

385 Paragraph 19 (1) and (2) amends section 155(2) of the Criminal Justice Act 2003 to ensure that this power to change the limit on consecutive sentences set out in section 133(1) and (2) is read in light of the general limit in a magistrates' court. Paragraph 19 (3) amends section 283 of the Criminal Justice Act to omit the power to create new offences, which is now contained within subsections (8) and (9) of Clause 13)

386 Paragraph 20 omits paragraph 24 of Schedule 22 to the Sentencing Act 2020 and replaces it with paragraph 24A, namely a power to increase the limit on magistrates' sentencing powers for summary offences only

Schedule 3: Practice directions for online proceedings

387 In relation to Part 2, Chapter 2 of the Bill, Part 1 of this Schedule allows the Lord Chief Justice or his nominee, with the approval of the Lord Chancellor, to issue practice directions in civil and family proceedings governed by Online Procedure Rules. The Lord Chancellor's approval of a practice direction is not required where the practice direction consists of guidance about the application and interpretation of the law or the making of judicial decisions. Such directions require consultation with the Lord Chancellor as well as the approval of the Lord Chief Justice. Part 2 of Schedule 3 sets out similar procedures in respect of the First-tier and Upper Tribunals and Part 3 of Schedule 3 sets out similar procedures in respect of employment tribunals and the Employment Appeal Tribunal – save that it is the Senior President of Tribunals (or in some cases a Chamber President, or the President of the Employment Appeal Tribunal or a territorial President who may make directions, and directions under Parts 2 and 3 which require only consultation with (rather than approval of) the Lord Chancellor will require the approval of the Senior President of Tribunals, rather than the Lord Chief Justice.

Schedule 4: Online Procedure: amendments

388 Schedule 4 makes amendments to the Employment Tribunals Act 1996, Civil Procedure Act 1997, Courts Act 2003 and Tribunals, Courts and Enforcement Act 2007 in relation to the power to make Employment Tribunal Procedure Rules, Civil Procedure Rules, Family Procedure Rules and Tribunal Procedure Rules respectively, and practice directions associated with those Rules, in order to ensure that "standard" Rules and Online Procedure Rules, and their associated practice directions, do not cut across each other. The amendments make similar provision for each Act amended, in each case (a) requiring the Rules to be framed so that they do not govern practice and procedure in "online proceedings" (by which is meant proceedings which have been specified for the purposes of clause 19/OP2) except in so far as those proceedings are not, or cease to be, governed by Online Procedure Rules; and (b) making it clear that practice directions made under the powers in those Acts do not apply in relation to proceedings which are governed by Online Procedure Rules.

Schedule 5: Employment Tribunal Procedure Rules: Further provision

389 Part 1 of Schedule 5 relates to making and content of Employment Tribunal Procedure Regulations. Paragraph 1 inserts into the Employment Tribunals Act 1996 (the Act) the new Schedule A1 which is introduced by subsection (3) of the new section 37QA (inserted by subsection (4) of clause 33). The new Schedule A1 makes a range of additional provision in relation to the making and content of Employment Tribunal Procedure Rules (covering such matters as the objectives of the Tribunal Procedure Committee in making Employment Tribunal Procedure Rules, the things Employment Procedure Rules may contain and the process for making Employment Procedure Tribunal Rules), which mirrors the corresponding provisions of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 in relation to Tribunal Procedure Rules, so that the powers and processes for Employment Tribunal Procedure Rules are appropriately aligned with those for making Tribunal Procedure Rules.

390 Part 2 of Schedule 5 relates to other amendments of the Employment Tribunals Act 1996.

391 Paragraph 2 is introductory and provides for the Employment Tribunals Act 1996 to be amended as provided in the subsequent paragraphs, many of which simply amend existing provision which operates by reference to Employment Tribunal Procedure Regulations so that it operates instead by reference to "Procedure Rules" (i.e. Employment Tribunal Procedure Rules).

392 Paragraph 3 makes amendments to provisions about practice directions. Sub-paragraphs (1) to (5) amend the Act to provide for the Senior President of Tribunals and the territorial Presidents to make practice directions about the practice and procedure of employment tribunals. It also provides the power to vary or revoke directions made in exercise of the power, and the power to make different provision for different purposes (including different provision for different areas). Sub-paragraph (6) provides that directions made by the territorial Presidents may not be made without the approval of the Senior President of Tribunals, and the Lord Chancellor.

393 Paragraph 4 amends the Act to make provision about mediation. Sub-paragraphs (1) and (2) amend the Act to provide that anyone making Procedure Rules or practice directions must give regard to the principles that a) mediation can only take place by agreement between parties and b) the outcome of mediation should not affect the outcome of the proceedings. Sub-paragraph (3) sets out that practice directions may provide for members to act as mediators in relation to disputed matters in a case that is the subject of proceedings; and sub-paragraph (4) that a member may act as a mediator in a case even though the member has been selected to decide matters in the case.

394 Paragraph 5 makes provision about preliminary hearings. Sub-paragraphs (1) and (2) make amendments to the Act to provide that if Procedure Rules authorise an employment tribunal to carry out a preliminary hearing, Procedure Rules may make provision for enabling the powers prescribed by the Procedure Rules to be exercised in connection with the preliminary hearing; and sub-paragraph (3) makes provision that the Procedure Rules may include provision for authorising any tribunal carrying out a preliminary hearing under the regulations to require a party to the proceedings to pay a deposit of an amount not exceeding £1,000 as a condition of: continuing to participate in those proceedings, or pursuing any specified allegations or arguments; and for prescribing the manner in which the amount of the deposit is determined, the consequences of non-payment, and the circumstances in which a deposit may be refunded or be paid over to another party. Sub-paragraph (4) sets out that Procedure Rules cannot increase the deposit above £1,000; sub-paragraph (5) sets out that Procedure Rules may not enable a power of striking out to be exercised in a preliminary hearing on a ground which does not apply outside a preliminary hearing; and sub-paragraph (6) transfers the power to increase the maximum deposit from the Secretary of State for BEIS

to the Lord Chancellor. Sub-paragraph (7) omits the power to include in ET procedure regulations provision for authorising an employment tribunal to hear and determine separately any preliminary issue meeting a description set out by the regulations. Sub-paragraph (9) defines 'preliminary hearing' as a hearing in proceedings before an employment tribunal which takes place at a time before a hearing held for the purpose of determining them.

395 Paragraph 6 makes provision in relation to proceedings in which issues concerning national security arise, so that provision which may presently be made in Employment Tribunal Procedure Regulations by the Secretary of State is made instead in regulations made by the Lord Chancellor.

396 Paragraph 7 repeals section 10A of the Act, relating to the ability of employment tribunals to sit in private where confidential information is involved, which is covered by more general provisions about the things Employment Tribunal Procedure Rules may (like Tribunal Procedure Rules) contain.

397 Paragraphs 8 and 9 amend provisions permitting Employment Tribunal Procedure Regulations to restrict publicity in cases involving sexual misconduct and disability respectively so that they permit this to be done by "Procedure Rules"; paragraph 10 similarly amends provisions about Employment Tribunal Procedure Regulations regulating matters relating to costs and expenses so that they refer instead to "Procedure Rules" regulating those matters; and paragraph 11 likewise amends provisions permitting Employment Tribunal Procedure Regulations to make provision for payments in relation to preparation time to refer to "Procedure Rules" making such provision.

398 Paragraph 12 makes amendments with the effect of transferring the power to make orders in respect of interest payable in pursuance of decisions of employment tribunals from the Secretary of State for BEIS to the Lord Chancellor.

399 Paragraph 13 amends provisions permitting the recovery through the county court of sums payable in pursuance of a decision of an employment tribunal in accordance with employment tribunal procedure regulations, to refer to this being in accordance with "Procedure Rules".

400 Paragraph 14 amends provisions permitting Employment Tribunal Procedure Regulations to make provisions relating to the requirement to contact ACAS before instituting proceedings, to refer instead to regulations made by the Secretary of State.

401 Paragraph 15 amends provisions requiring Employment Tribunal Procedure Regulations to make provisions relating to conciliations procedures, so as to refer to "Procedure Rules"; and paragraph 16 similarly amends provisions permitting Employment Tribunal Procedure Regulations to provide time limits for an application for a declaration that a settlement sum is not be recoverable under the general law of contract, so they refer to "Procedure Rules".

402 Paragraph 17 amends provisions relating to Practice Directions for the EAT so that they describe the power to make directions (as to practice and procedure) consistently with other powers to make practice directions.

403 Paragraph 18 inserts into the Act a new section 30A making provision about EAT proceedings in which issues relating to national security arise. Subsection (1) of the new section permits the Lord Chancellor to make provisions about the composition of the EAT where the proceedings meet the criteria set out in subsections (2) and (3) - subsection (2) covering particular Crown employment proceedings where a Minister considers it expedient in the interests of national security, and subsection (3) providing that an order under this section may be made by a

judge of the EAT if the judge considers it expedient in the interests of national security. Subsection (4) sets out that the Lord Chancellor has the power to make the same regulations for the EAT as those under the national security provisions contained in sections 10(5), (6) and (7) for ETs; and subsection (5) permits references to things done under the national security provisions contained in sections 10(5) and (6) to be read across to the things done under subsection (4). Subsection (6) sets out that the powers set out in Section 10B to restrict publicity in ET cases involving national security also apply to the EAT. Subsection (7) sets out that references in the national security provisions contained in section 10B are to be read across to subsection (4) where applicable.

404 Paragraphs 19 and 20 update provisions permitting Appeal Tribunal procedure rules to restrict publicity in cases involving sexual misconduct or disability respectively so that they refer to "Procedure Rules".

405 Paragraph 21 updates provisions relating to permitting Appeal Tribunal procedure rules to regulate matters relating to costs and expenses so that they refer to "Procedure Rules".

406 Paragraphs 22 to 25 make amendments to Part 3 of the Act, centred on a new section 37QB of the Act, providing powers for the Lord Chancellor to amend legislation in connection with Procedure Rules (on a similar model to that provided for Tribunal Procedure Rules. Paragraph 22 simply amends the heading of Part 3 to refer to "General and Supplementary". Paragraph 23 inserts the new section 37QB, providing powers for the Lord Chancellor to amend, repeal or revoke any enactment in order to facilitate the making of Procedure Rules or in consequence of the provisions set out in Schedule A1 on the making of Procedure Rules or of any Procedure Rule. It also defines "enactment" as meaning any enactment whenever passed or made, including an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978. Paragraph 24 makes amendments to ensure that any order making amendments to primary legislation must be by the affirmative procedure. Paragraph 25 updates section 42(1) to remove definitions of Appeal Tribunal procedure regulations" and "employment tribunal procedure regulations" and replace them with the definition of Procedure Rules for the ET and EAT. It also removes an extraneous 'and' immediately prior to the definition of "trade union". It also inserts a definition of "Tribunal Procedure Committee" to mean the committee of that name constituted under Part 2 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

407 Part 3 of the Schedule outlines related amendments of other legislation. Paragraph 26 amends the Employment Rights Act 1996 to provide that, where an ET determines a complaint related to unfair dismissal in the same proceedings as a question around eligibility for or the amount of a redundancy payment, the provisions setting out that the employee shall not, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy have no effect insofar as it relates to the unfair dismissal proceedings.

408 Paragraph 27 amends the Tribunals, Courts and Enforcement Act 2007 to set out that the Senior President of Tribunals cannot delegate the functions set out in paragraph 2 of Schedule A1 of the Employment Tribunals Act 1996.

409 Paragraph 28 amends the Tribunals, Courts and Enforcement Act 2007 to provide for additional members to be added to the TPC, increasing the number of persons who may be appointed by the Lord Chancellor to four and requiring that at least one of the appointees must have experience of practice in the ET and the EAT or experience of advising persons involved in ET and EAT proceedings. It also increases the number of persons appointed by the Lord Chief Justice from three to four, one of whom must be a judge, or other member, of the Employment Appeal Tribunal or a member of a panel of members of employment tribunals (whether or not a panel of Employment Judges).

Commencement

410 Clause 48 outlines the commencement of the Bill. Clause 48(2) provides for the following provisions to come into force two months after the day the future Act is passed: section 14 (removal of certain requirements for a hearing in procedural matters), section 15 (and Schedule 1) (documents to be served in accordance with Criminal Procedure Rules), Chapter 4 of Part 2 (Coroners).

411 The remainder of the Bill will be brought into force by means of commencement regulations made by the Lord Chancellor (Clause 48(3)).

Financial implications of the Bill

412 The main public sector financial implications of the Bill fall to criminal and civil justice agencies, particularly HM Courts and Tribunals Service. However, the measures will result in increased efficiencies for the court system, with estimated net benefit of £37.4m over a 10 year period. 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 are set out in the impact assessments published alongside the Bill.

Parliamentary approval for financial costs or for charges imposed

413 A money resolution is needed for the Bill. A money resolution is needed where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. There is potential Government expenditure under some provisions of the Bill. Clauses 3, 6, 8 and 19 will introduce new online procedures in courts and tribunals, and this will require investment in technology and training. Clause 28 will require support to be provided for those who would otherwise have difficulty making use of the new online procedures. The House of Commons agreed on 28 October that expenditure arising from these clauses is to be paid out of money provided by Parliament.

Compatibility with the European Convention on Human Rights

414 Lord Wolfson of Tredegar has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

"In my view the provisions of the Judicial Review and Courts Bill are compatible with the Convention Rights".

415 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 and the UK Parliament website.

Related documents

416 The following documents are relevant to the Bill and can be read at the stated locations:

- The Independent Review of Administrative Law Report, March 2021,
- Judicial Review Reform, Government Consultation, March 2021
- Judicial Review Reform Response, Government Response, July 2021
- The Coroner Service, Justice Select Committee Report, May 2021

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	No	No	No	No
Clause 2	Yes	Yes	No	In part	No	In part	No
Clause 3	Yes	Yes	No	In part	No	In part	No
Clause 4	Yes	Yes	No	No	No	No	No
Clause 5	Yes	Yes	No	No	No	No	No
Clause 6	Yes	Yes	No	No	No	No	No
Clause 7	Yes	Yes	No	No	No	No	No
Clause 8	Yes	Yes	No	No	No	No	No
Clause 9	Yes	Yes	No	No	No	No	No
Clause 10	Yes	Yes	No	No	No	No	No
Clause 11	Yes	Yes	No	No	No	No	No
Clause 12	Yes	Yes	No	No	No	No	No
Clause 13	Yes	Yes	No	No	No	No	No
Clause 14	Yes	Yes	No	No	No	No	No
Clause 15	Yes	Yes	No	No	No	No	No
Clause 16	Yes	Yes	No	No	No	No	No
Clause 17	Yes	Yes	No	No	No	No	No
Clause 18	Yes	Yes	No	No	No	No	No
Clause 19	Yes	Yes	No	In part	No	In part	No
Clause 20	Yes	Yes	No	In part	No	In part	No
Clause 21	Yes	Yes	No	In part	No	In part	No
Clause 22	Yes	Yes	No	In part	No	In part	No
Clause 23	Yes	Yes	No	In part	No	In part	No
Clause 24	Yes	Yes	No	In part	No	In part	No
Clause 25	Yes	Yes	No	In part	No	In part	No
Clause 26	Yes	Yes	No	In part	No	In part	No
Clause 27	Yes	Yes	No	In part	No	In part	No
Clause 28	Yes	Yes	No	In part	No	In part	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 29	Yes	Yes	No	In part	No	In part	No
Clause 30	Yes	Yes	No	In part	No	In part	No
Clause 31	Yes	Yes	No	In part	No	In part	No
Clause 32	Yes	Yes	No	In part	No	In part	No
Clause 33	Yes	Yes	No	Yes	No	No	No
Clause 34	Yes	Yes	No	Yes	No	No	No
Clause 35	Yes	Yes	No	Yes	No	No	No
Clause 36	Yes	Yes	No	Yes	No	No	No
Clause 37	Yes	Yes	No	Yes	No	No	No
Clause 38	Yes	Yes	No	No	No	No	No
Clause 39	Yes	Yes	No	No	No	No	No
Clause 40	Yes	Yes	No	No	No	No	No
Clause 41	Yes	Yes	No	No	No	No	No
Clause 42	Yes	Yes	No	No	No	No	No
Clause 43	Yes	Yes	No	In part	No	In part	No
Clause 44	Yes	No	No	No	No	No	No
Clause 45	Yes	No	No	No	No	No	No
Clause 46	N/A	N/A	No	N/A	No	N/A	No
Clause 47	N/A	N/A	No	N/A	No	N/A	No
Clause 48	N/A	N/A	No	N/A	No	N/A	No
Clause 49	N/A	N/A	No	N/A	No	N/A	No
Schedule 1	Yes	Yes	No	No	No	No	No
Schedule 2	Yes	Yes	No	In part	No	In part	No
Schedule 3	Yes	Yes	No	In part	No	In part	No
Schedule 4	Yes	Yes	No	In part	No	In part	No
Schedule 5	Yes	Yes	No	Yes	No	No	No

Minor or consequential effects

417 The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

Clause 3: Automatic online conviction and standard statutory penalty

418 This measure introduces a new online process for dealing with summary-only, non-imprisonable offences, without the need for involvement of a court. (The offences will be

specified in regulations.) It means that offenders can choose to plead guilty, be convicted and sentenced to the specified penalty online. The sum payable will be treated as a fine imposed by a court. If not paid and the offender resides in Scotland or Northern Ireland it can be transferred to a court there for enforcement as with other fines.

Subject matter and legislative competence of devolved legislatures

419 The provisions in the Bill relate to Judicial Review and court procedure.

420 Overturning the Cart judgment by removing the ability of the senior courts to review Upper Tribunal decisions to refuse permission to appeal from the First-tier Tribunal will apply UK-wide. For Scotland and Northern Ireland, these proposals will, in large part, remove the jurisdiction of the Court of Session and High Court of Northern Ireland over decisions of the Upper Tribunal (as established by the Tribunals, Courts and Enforcement Act 2007 ('TCEA')) on applications for permission to appeal from the First-tier Tribunal. The relevant provision will incorporate a "carve-out" so that it does not apply to cases which relate to devolved policy. Because the TCEA is reserved (insofar as the tribunals therein are dealing with reserved matters), any changes required to Scottish or Northern Ireland legislation will be consequential.

421 In relation to Cart and the Tribunals in Wales, the functioning of the TCEA Upper Tribunal is a reserved matter. The measure does not affect devolved tribunals or their decisions, only decisions of the Upper Tribunal made in relation to applications for permission to appeal decisions of the First-tier Tribunal under section 11(4)(b) of the Tribunals, Courts and Enforcement Act 2007.

422 The provisions relating to powers in respect of quashing orders in the Bill will only affect the powers of the High Court of England and Wales, again a reserved matter as regards Wales.

423 The Online Procedure Rule Committee measure relates in part to the UK (with regard to the First-tier and Upper Tribunals), in part to England, Wales and Scotland (for Employment Tribunals), and in part to England and Wales only.

424 One of the criminal court measures, introducing an Automatic Online Conviction and Standard Statutory Penalty Procedure, will involve consequential amendments for Scotland and Northern Ireland, as set out above.

425 The Employment Tribunals measures extend to England, Wales and Scotland. Responsibility for Employment Tribunals in Scotland is due to transfer to the Scottish Government following the Government's acceptance of the recommendations of the Smith Commission. Until that point, the rule making Committee would have rule-making powers for the Employment Tribunal and Employment Appeal Tribunal in England and Wales and the equivalent Tribunals in Scotland.

426 The City of London Courthouses measure will apply to England only.

JUDICIAL REVIEW AND COURTS BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Judicial Review and Courts Bill brought from the House of Commons on 26 January 2022 (HL Bill 102).

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