

THE COURTS AND TRIBUNALS BILL 2026
EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM

Summary of the Bill

1. This memorandum addresses issues arising under the European Convention on Human Rights (“ECHR”) in relation to the Courts and Tribunals Bill 2026 (“the Bill”). It has been prepared by the Ministry of Justice. On introduction of the Bill in the House of Commons, the Lord Chancellor and Secretary of State for Justice (the Rt. Hon. David Lammy MP) made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with Convention rights. On introduction of the Bill in the House of Lords, Lord Lemos, will also make a section 19(1)(a) statement.
2. Part 1 of the Bill will make the following amendments to criminal procedure:
 - a. Removal of the right of defendants to elect to be tried in the Crown Court when charged with one or more either-way offences, so the decision on allocation is solely one for the magistrates’ court (clauses 1 and 2).
 - b. The introduction of judge-only trials for specified fraud and financial crime offences where a preparatory hearing has been ordered and the trial is deemed exceptionally complex, lengthy and not in the public interest to be heard by a jury (clause 3).
 - c. Amendment of regulation-making powers to permit, in addition to the 6- and 12-month limits, the setting of magistrates’ court’s sentencing powers at 18 months’ or 24 months’ imprisonment for one or more either-way offences (clause 5).
 - d. Amendment of the procedure for appeals against conviction and sentence from the magistrates’ court to the Crown Court so that appeals will now require permission from the Crown Court and the appeal will

proceed as a review of the magistrates' court decision rather than a rehearing (clause 6).

- e. The following amendments to the admissibility of evidence in criminal proceedings:
 - i. Complainant sexual behaviour evidence will only be admitted into evidence, upon an application by a defendant, if it is of substantial probative value in relation to a matter of substantial importance in the proceedings, or if it is important explanatory evidence. This test will apply in all criminal proceedings (clause 7).
 - ii. Evidence that a complainant has applied for compensation will only be admissible in a sexual offence trial if that evidence is of substantial probative value in relation to a matter of substantial importance in the context of the case as a whole (clause 8).
 - iii. Defence assertions that a complainant has lied about being a victim of a sexual offence on a previous occasion will only be admitted into evidence if, in addition to being admissible as bad character evidence, there is also a proper evidential basis for the allegation (clause 9).
 - iv. For the purpose of deciding the admissibility of bad character evidence, a defendant's previous domestic abuse convictions will be specified as capable of demonstrating a propensity to commit offences of the kind charged if a defendant is charged with an offence amounting to domestic abuse (clause 10).
- f. The following amendments to the special measures available to assist eligible witnesses to give evidence in criminal proceedings:
 - i. Screens preventing the witness from seeing the defendant while the witness gives evidence in court must also prevent the defendant from seeing the witness, and there will be a presumption that screens will prevent the witness and accused seeing each other where the witness gives evidence via live link or is pre-recording their cross-examination or re-examination (clause 11).

- ii. A statutory special measure will be created allowing the witness to be accompanied by a supporter when they give their evidence, together with a presumption that the presence of an independent supporter will improve the quality of a witness' evidence (clause 12).
- iii. A special measure directing exclusion of the public will no longer allow the exclusion of accredited members of the press, academics conducting research, or a supporter for the witness (clause 13).
- iv. Legislation will be amended to provide the rules on editing of pre-recorded cross-examination and re-examination (clause 14).
- v. The oral evidence to which special measures can apply will be provided in legislation and will include the reading of a victim personal statement by the victim themselves (clause 15).

3. Part 2 of the Bill will:

- a. Repeal the presumption of parental involvement in the Children Act 1989 (clause 16). The child's welfare must be the court's paramount consideration when making a decision in relation to the child's upbringing (section 1(1) Children Act 1989). In specified circumstances (section 1(4)(6) and (7) of the Act) the court must presume, unless there is evidence to the contrary that the child's welfare will be furthered by the involvement of a parent in their life (section 1(2A) of the Act): this is known as the presumption of parental involvement. The measure repeals the presumption of parental involvement from the Children Act 1989.
- b. Reform the office of Senior President of Tribunals ("SPT") to reallocate leadership responsibilities for tribunals under the Tribunals, Courts and Enforcement Act 2007, namely the First-tier Tribunal, Upper Tribunal, Employment Tribunal and Employment Appeal Tribunal (clause 17). Under the new arrangements, the Lord Chief Justice ("LCJ") assumes

leadership functions for tribunals in England and Wales, while the reformed SPT retains these functions for Scotland and Northern Ireland.

- c. Reform the statutory framework for magistrates' expenses by replacing the existing fixed categories of payments allowed for by section 15 of the Courts Act 2003 with a delegated power enabling the Lord Chancellor to specify in regulations what payments are allowed (clause 18).
 - d. Amend the provision concerning the naming of the Crown Court in the City of London, so that the title of the Central Criminal Court applies only to the premises allocated for it (the Old Bailey), and to make clear that the existing historic sitting entitlement continues to be exercisable when the Crown Court sits in other locations in the City (clause 19).
4. Part 3 of the Bill provides that Clauses 1 to 6 will be subject to an independent review, with a final report to be completed within five years of commencement. The review will consider whether those provisions have created or exacerbated differences in treatment or outcomes between defendants of different racial groups or different socio-economic status, as well as any other matters specified in the reviewer's terms of appointment relating to the effect of the reforms (clause 20). It also contains the final provisions of the Bill and provides the necessary provision for consequential provision under the Bill and for the short title of the Bill, commencement, extent and transitional provisions, and extends the power at section 419(1) of the Sentencing Act 2020 to the state the effect of commencement provisions to amendments to the 2020 Act made by the Bill (clauses 20 – 27).
5. This memorandum concerns those aspects of the Bill which potentially engage one or more articles of the ECHR. Measures which do not engage ECHR articles are not addressed here.

Convention Article Analysis

Measures arising from Lord Brian Leveson's Independent Review of the Criminal Courts

Clauses 1 and 2: Removal of right to elect trial on indictment and Written indication of guilty plea: removal of right to object to venue

Summary of the measure

6. Clauses 1 - 2 amend the Magistrates' Courts Act 1980, and related legislation to remove a defendant's right to elect trial in the Crown Court in triable either-way case where the magistrates' court accepts summary jurisdiction.
7. Where a not guilty plea is entered, the court will no longer be required to seek the defendant's consent to summary trial. Instead, the court may invite party representations on venue and will determine the appropriate forum based on its sentencing powers.
8. This measure also amends section 46ZA(3) of the Senior Courts Act 1981 so that in all cases sent to the Crown Court after commencement of the reform, the Crown Court will no longer need a defendant's consent to return a triable-either-way case to the magistrates' court for summary trial where it considers trial on indictment is not appropriate.
9. The intention behind this measure is to support the swifter attainment of justice by preventing unnecessary case allocations to the existing Crown Court caseload and enabling cases suitable for summary trial to be resolved more quickly.

Article 6 ECHR – Right to a Fair Trial

10. The right to a fair trial under Article 6 of the ECHR is to an impartial tribunal, not to a tribunal of a specific composition, or a particular chance of such a composition. Jury trial is a matter of domestic policy, not a human rights guarantee; neither UK law nor the Convention provides a statutory, constitutional or Convention right to a jury trial. Removing the option to elect jury trial where a case is suitable for summary trial before magistrates therefore does not breach Article 6, nor does it make a trial unfair. Magistrates' courts and youth courts in England & Wales, as well as courts in other European countries under the same Convention, routinely

conduct fair trials without juries, and Parliament has always had the sovereign ability to limit the availability of trial by jury which it is exercising under this measure.

11. In both courts, the prosecutor is under a duty to disclose all relevant information which supports and undermines its case to the defendant. If a person wishes to challenge their conviction, the appeal processes in both the magistrates' and Crown Courts will be the same following commencement of the reforms in the Bill. These safeguards, and others, ensure that a defendant will have a fair trial regardless of the venue. The Government is therefore satisfied that this measure is compatible with Article 6 ECHR.

Clause 3: Trials on indictment without a jury: complex or lengthy cases

Summary of the measure

12. The default position is that trials in the Crown Court will be heard by a judge and jury, unless the case falls into scope of a trial by judge alone under this reform.

13. Clause 3 will allow the court to direct a judge-only trial in certain particularly complex and lengthy cases, where a preparatory hearing has been ordered under section 7 of the Criminal Justice Act 1987 or section 29 of the Criminal Procedure and Investigations Act 1996. This captures cases that are inherently complex or protracted. The court may direct such a trial only where:

- a. It does not consider it is in the public interest for the trial to be heard by a jury;
- b. At least one offence to be tried is listed on an amendable Schedule of offences commonly complex and lengthy to try (currently those encompassing fraudulent and financial crime activity);
- c. No exempted offence, namely, indictable-only homicide and indictable-only sexual offences, will be tried alongside an offence listed in the Schedule;
- d. It is satisfied that the complexity or likely length of the trial make it appropriate to be tried by a judge alone; and
- e. It does not consider that there are any other reasons why it would be more appropriate for the trial to be conducted with a jury.

14. The measure includes provision for the court to revoke an order for a complex or lengthy case to be heard by a judge alone should circumstances change. If an exempted offence is added to the indictment or if the court considers that it would be in the public interest for the case to be heard by a jury, then the order must be revoked. Where eligible offences are removed from the indictment or the court is no longer satisfied that the likely complexity or length makes it appropriate to be conducted by a judge alone, then the court has a discretion to revoke the order.
15. The reform will apply to all cases in the Crown Court where the trial starts on or after a specified date which will be at least three months after the measure comes into force. This measure confers a discretionary power, meaning that the court is not under a duty to direct trial by judge alone even where the factors suggest a trial will be of burdensome complexity and/or length.
16. A judge sitting alone in the Crown Court under this policy will be required to issue a reasoned judgment for their decision to convict or acquit a defendant.
17. The purpose of this measure is to remove the excessive social, mental, financial, occupational and other burdens placed on jury members by sitting on lengthy or complex trials. These types of trials can last months, and it is anticipated that conducting complex and lengthy trials by a judge alone may also reduce the overall length of such trials, freeing up sitting days in the Crown Court to resolve more cases more swiftly.

Article 6 ECHR – Right to a Fair Trial

18. The default position is that where there is going to be a trial in the Crown Court, the case is heard by a judge and jury, *unless* the case falls within the scope to be heard by a judge alone.
19. Article 6 ECHR guarantees the right to a fair trial but does not require trial by jury. The European Court of Human Rights has consistently held that judge-only trials are compatible with Article 6, provided appropriate procedural safeguards are in

place¹, therefore no such right is breached by allocating a Crown Court case to be heard by a judge alone.

20. Exemptions to jury trial already exist in legislation; under section 44 of the Criminal Justice Act 2003, a trial can proceed by judge alone if there is a risk of jury tampering. In *R v Twomey (John)* [2009] EWCA Crim 1035, the Court of Appeal confirmed that the removal of jury trial does not render a trial unfair, stating that, *“the end result is not an unfair trial, but a trial by judge alone, where the necessary procedural safeguards available in a trial by jury are and remain available to the defendant.”*

21. Article 6 requires courts to explain their decisions, so that defendants understand the facts, the law applied, and the reasons for sentencing. English and Welsh law already provides a safeguard supporting this through section 52(2) of the Sentencing Act 2020 and judicial guidance. Magistrates routinely give reasons for convictions and acquittals, and under this reform judges sitting alone in the Crown Court will do the same by issuing a reasoned judgment. This ensures transparency, supports appeals, and fully upholds the right to a fair trial under Article 6. Provision is also made so that, in judge-only trials, the court retains all the powers, authorities and jurisdiction it would have had had the trial been conducted with a jury. The Government is therefore satisfied that this measure is compatible with Article 6 ECHR.

Clause 5: Increase in maximum custodial sentence in magistrates’ court

Summary of the measure

22. Clause 5 amends paragraph 14A of Schedule 23 to the Sentencing Act 2020. Under the current power, the Secretary of State can make regulations under the negative resolution procedure, to amend the maximum sentencing limit of the magistrates’ court for a single triable-either-way offence and set it at either 6 months or 12 months. This is known as the ‘general limit’, and the power has been

¹ See *X and Y v Ireland*, App. No. 8299/78

used to amend the general limit three times. This measure will extend the power so that regulations may also set the general limit at 18 months or 24 months.

23. This measure also amends section 133 of the Magistrates' Courts Act 1980 which governs the aggregate sentencing limit of magistrates when dealing with two or more triable either-way offences. Currently, the aggregate sentence is capped at 12 months. This measure will mean that if the extended power under paragraph 14A of Schedule 23 is used to increase the general sentencing limit to 18 or 24 months, the aggregate limit will increase to match this. Where magistrates' sentencing powers are 6 or 12 months, the aggregate limit will remain at 12 months.
24. This measure will also insert a provision which ensures that, where the maximum penalty for an offence tried on indictment in the Crown Court is lower than the magistrates' general limit, the magistrates cannot impose a sentence exceeding that indictment maximum.
25. The purpose of this measure is to enable the magistrates' court to retain jurisdiction of an increased number of low-sentence cases to assist in reducing the Crown Court caseload.

Article 6 ECHR – Right to a Fair Trial

26. As described above, the right under Article 6 is to an impartial tribunal, not to a tribunal of a specific composition, or a particular chance of such a composition. The right to a fair trial is not interfered with or breached by this measure as a defendant will receive a fair trial whether it takes place in the magistrates' court or in the Crown Court. This measure affects sentencing powers, not trial fairness.
27. This measure will support the reasonable time requirement under Article 6(1) as by increasing the sentencing power of the magistrates' courts, fewer triable either-way cases will be added to the growing Crown Court caseload and so will likely be resolved sooner. The Government is therefore satisfied that this measure is compatible with Article 6 ECHR.

Clause 6: Amendment of Appeals against Conviction and Sentence from the Magistrates' Court to the Crown Court

Summary of the measure

28. Clause 6 of the Bill, together with Schedule 2, amends the procedure by which a defendant may appeal against sentence or conviction from the magistrates' court to the Crown Court. Whereas currently a defendant convicted or sentenced in the magistrates' court has a right to a rehearing in the Crown Court, under the new procedure, permission from the Crown Court will be required to bring an appeal in the Crown Court, and the appeal will proceed as a review of the magistrates' court's decision rather than a full rehearing. Appeals will be allowed in the same circumstances that appeals against conviction and sentence from the Crown Court are allowed in the Court of Appeal.
29. The Crown Court will now be empowered to impose 'loss of time' orders on appellants who are serving a custodial sentence and appeal to the Crown Court against conviction or sentence without merit, allowing the court to direct that all or part of the time the appellant has spent in custody since the commencement of appeal proceedings shall not count towards their custodial sentence. This mirrors the power that the Court of Appeal possesses concerning appeals from the Crown Court.
30. Permission to appeal will generally be decided on the papers. The appellant will not be entitled to renew their application at an oral hearing, albeit that judicial review of the decision to refuse permission will be available. However, the court can list an oral hearing if a hearing is necessary to determine the appeal or a hearing is required because of the need for expedition in determining the appeal.
31. The purpose of this procedural reform is to reduce the time that the Crown Court spends considering unmeritorious appeals from the magistrates' court, thereby allowing greater focus on appeals with merit. Additionally, it aims to reduce the burden on witnesses and victims, who under the current system may be required to give evidence twice, once at trial in the magistrates' court and again at a

rehearing in the Crown Court. Under the new procedure, this will be less likely, although witnesses may still be required to give evidence again if the Crown Court finds a conviction unsafe and orders a retrial.

32. The measure potentially engages Articles 5, 6, and 14 (together with 5 and 6).

Article 5 – Prohibition of Arbitrary Deprivation of Liberty – Loss of Time Orders

33. A loss of time order is a discretionary direction made by the court that all or part of the time spent in custody pending appeal shall not count towards the sentence. Its purpose is to discourage unmeritorious appeals and preserve judicial resources. An appeal is unmeritorious if it is without merit; in other words, no arguable ground of appeal is advanced. Accordingly, a loss of time order is only available if permission to appeal is refused. Loss of time orders potentially engage Article 5 ECHR, as the effect of such an order is that an appellant who brings an unmeritorious appeal may spend a longer period of time in custody.

34. The exercise of the power to make a loss of time order is discretionary, and the legislation does not provide any particular length of time for which a loss of time order may be made. There is therefore nothing in the legislation that obliges a court to impose a loss of time order arbitrarily. A court will also be obliged to give reasons for making a loss of time order.

35. In *Monnell v UK* (1988) 10 EHRR 205 (*“Monnell”*), the European Court of Human Rights (‘ECtHR’) held that loss of time orders as made by the Court of Appeal are capable of complying with Article 5 ECHR, and concluded that they fall within “*the lawful detention of a person after conviction by a competent court*” (Article 5, paragraph 1(a), and paragraph 37 of *Monnell*). The ECtHR concluded that a loss of time orders was “*an inherent part of the criminal appeal process following conviction of an offender and pursues a legitimate aim under sub-paragraph (a) of Article 5 § 1*”. The same rationale applies to the use of loss of time orders in the Crown Court, and the Government is satisfied that the use of them is therefore compatible with Article 5 ECHR.

Article 6 ECHR – Right to a Fair Trial

36. There are two aspects of the change of appeals procedure that could engage Article 6 ECHR, which are dealt with in turn below.

No Right to an Oral Permission Hearing

14. While Article 6 ECHR provides that hearings should be held in public, including the right of the accused to give evidence in person to an appellate court, the ECtHR has made clear that proceedings concerning permission to appeal can comply with Article 6 ECHR without there being a hearing to determine the issue of permission. In *Monnell*, at § 58, the court stated: “*The limited nature of the subsequent issue of the grant or refusal of leave to appeal did not in itself call for oral argument at a public hearing or the personal appearance of the two men before the Court of Appeal.*” Although the appellant will not be entitled to an oral permission hearing in the Crown Court, the Crown Court will be empowered to list an oral permission hearing where a hearing is necessary to determine the application, or where expedition is required in determining the appeal. The Government is therefore satisfied that the absence of a right to a permission hearing in all circumstances is compatible with Article 6 ECHR.

Loss of Time Orders

15. In *Monnell*, the ECtHR considered the procedure for imposing loss of time orders by the Court of Appeal and concluded that it was sufficient that the appellants were provided “*with a fair procedure enabling them adequately and effectively to present their case against the possible exercise to their detriment of the power under section 29(1) of the 1968 Act.*” Since the same procedural safeguards will in apply in proceedings concerning loss of time orders in the Crown Court as in the Court of Appeal, including an opportunity to make representations against the imposition of a loss of time order, the procedure will, equally, be compatible with Article 6 ECHR.

Measures Concerning the Admissibility of Evidence in Criminal Proceedings

Clause 7: Complainant Sexual Behaviour Evidence

Summary of the Measure

16. Clause 7 amends the test for the admissibility of a complainant's sexual behaviour evidence ("SBE") in all criminal proceedings, provided for in sections 41 – 43 of the Youth Justice and Criminal Evidence Act 1999. Under the new test, where the defence seek to admit a complainant's SBE, permission may only be given if it falls within one of two gateways for admissibility: either it must be of substantial probative value in relation to a matter in issue of substantial importance in the case, or must amount to important explanatory evidence. Evidence is of substantial probative value where it is of 'enhanced' probative value (*Phillips* [2011] EWCA Crim 2935). Evidence will meet the threshold of being important explanatory evidence if it would be difficult or impossible to understand the case without it and its value for understanding the case as a whole is substantial. Permission to admit complainant SBE will now be required in all trials, rather than only in sexual offence trials, as is currently the case. Clause 7 amends the test for the admissibility of SBE following consideration of the recommendations in the Law Commission's 2025 report, 'Evidence in Sexual Offences Prosecutions'.
17. When determining whether SBE is of substantial probative value, the court must have regard to a number of statutory factors. These include the extent to which the probative value of the evidence relies on the drawing of an inference that does not appear to the court to be one which may properly be drawn from the evidence. Inclusion of this factor means that the court should take into account whether SBE sought to be admitted relies on the introduction of myths or misconceptions about those who engage in sexual behaviour.
18. Where SBE is of substantial probative value, the court may also exclude it if:
- a. The probative value of the SBE relies on a matter which is not of substantial probative value in the context of the case;
 - b. that matter is disputed; and

- c. the extent of the evidence that would have to be called in order for the fact finder to properly make a finding on that matter would be disproportionate to the probative value of the evidence.

This provides the court with a discretion to exclude SBE where its inclusion would entail argument on satellite issues of limited importance to the case and thereby divert the focus of the trial from its main issues. This follows the Law Commission's recommendation that the extent to which evidence may distract the factfinder from the main issues in the case should be a relevant factor when deciding whether to admit SBE.

19. The statutory admissibility test for SBE accordingly serves to prevent the tribunal of fact from improperly being influenced by myths and misconceptions associated with sexual behaviour where the sexual behaviour evidence sought to be adduced is of limited relevance to the matters in issue in the trial. It also protects the complainant from having private details of their life unnecessarily made public in the courtroom. As the Law Commission notes in their 2025 report, 'Evidence in Sexual Offence Prosecutions', *'having evidence of one's sexual behaviour introduced in court and being cross-examined on it can be highly distressing, humiliating, and in some cases traumatising'*.

20. The amended test for admission of SBE is simpler than that it replaces. The current test, as set out in section 41 of the Youth Justice and Criminal Evidence Act 1999, is additionally subject to an 'ECHR gloss' so that, when considering the admission of sexual behaviour evidence under certain gateways of section 41, the court must consider whether, even if evidence is inadmissible under the statutory test, it should nevertheless be admitted because a refusal to admit it would render the defendant's trial unfair. This addition was read into the test by the House of Lords in *R v A* [2001] UKHL 25. A simpler test, not subject to an ECHR gloss, is intended to ensure that the test will be easily understood by those involved in the criminal justice system, thereby promoting more consistent application of the test in criminal proceedings.

Article 6

21. Article 6 ECHR does not lay down any rules on the admissibility of evidence, which is primarily a matter for regulation under national law (*Yüksel Yalçınkaya v. Türkiye* [GC], 2023, paragraph 302); the question for the court is instead whether, in light of the test for admissibility, the criminal proceedings as a whole remain fair (*Ayetullah Ay v. Turkey*, 2020, paragraphs 123-130).
22. While the test for admitting SBE provides a higher bar for admissibility than that of 'bare' relevance, the Supreme Court have accepted that SBE of limited relevance can properly be excluded from a trial where the court's fact-finding process would be distorted by evidence whose probative value to the defence is outweighed by the risk its admission presents to the fact-finding process (*Daly v HM Advocate* ([2025] UKSC 38, at paragraph 176). The statutory gateways for admissibility of SBE serve to prevent SBE of limited relevance from being admitted where, in light of the nature of the evidence, there is an inherent risk that its introduction would cause the jury to adopt a censorious approach towards that behaviour.
23. In *Judge v United Kingdom* (2011, app. no. 35863/10), the ECtHR considered the test governing the admissibility of complainant sexual behaviour evidence in Scotland in qualifying proceedings which, requires, amongst other things, that such evidence be of "*significant*" probative value, as well as being "*relevant to establishing whether the accused is guilty of the offence with which he is charged.*" The test was praised by the court as "*careful and nuanced*" given that, rather than amounting to complete prohibition on SBE, it allowed it to be admitted when "*relevant and probative*" (paragraph 29). That case establishes that legislation which imposes a threshold for admissibility of SBE beyond bare relevance, but which instead ensures that the evidence which is insufficiently probative of relevant matters in the case cannot be admitted into evidence, due to its potential to improperly affect the fact-finding process, can be compatible with Article 6 ECHR.

24. The requirement that SBE be of substantial probative value to a matter of substantial importance to the case as a whole replicates one of the gateways for admissibility that must be satisfied before non-defendant bad character evidence can be admitted into evidence in criminal proceedings under section 100(1) Criminal Justice Act 2003. The courts have endorsed this formulation as an appropriate means of preventing the admission of extraneous evidence that could unfairly prejudice the fact-finding exercise. The Court of Appeal in *Phillips* [2011] EWCA Crim 2935 provided (at [40]) that: *“The purpose of the requirement is to ensure so far as possible that the probative strength of the evidence removes the risk of unfair prejudice (...) it is important, in our view, that sight is not lost of the rigour of the statutory test of substantial probative value upon a matter in issue (...) which is of substantial importance in the context of the trial as a whole.”* Indeed, the court went on to provide that rigorous application of the test was particularly important where the court had no residual discretion to exclude the evidence once it was admitted. We consider that this analysis applies equally to the gateway when it is applied to the admissibility of SBE, particularly in light of the fact that, once a complainant’s SBE is admitted into evidence, there is equally no residual discretion to exclude it.
25. Even where SBE is insufficiently probative to merit admission on the basis of its probative value, it may be admitted into evidence where it is important explanatory evidence if without that evidence it would be difficult or impossible to properly understand the evidence in the case. Evidence that the complainant was in a sexual relationship with the accused might be admitted through this gateway if such evidence was necessary to make sense of the defendant’s account of their actions, even where relationship evidence was not otherwise substantially probative of an important matter in issue in the case. This additional gateway serves to prevent the defendant from being unable to present their case if that case relies on SBE as necessary explanatory evidence, and hence provides an additional safeguard to ensure that the statutory test for admissibility is capable of being applied in a manner compliant with Article 6 ECHR.
26. For the above reasons, the Government is satisfied that this measure is compatible with Article 6 ECHR.

Clause 8: Compensation Claim Evidence in Sexual Offence Trials

Summary of the measure

27. This measure introduces a statutory test for the admissibility of evidence that a complainant in a sexual offence prosecution has made a claim for compensation (e.g. to the Criminal Injuries Compensation Scheme). Under the new test, such evidence will only be admissible if it has 'substantial probative value in relation to a matter in issue in the proceedings that is of substantial importance in the context of the case as a whole.' This threshold will apply to evidence sought to be admitted by any party to proceedings. Currently there is no statutory test that applies when determining whether to admit evidence that a complainant has made a claim for compensation.
28. This measure implements Recommendation 24 of the Law Commission's 2025 report, 'Evidence in Sexual Offences Prosecutions'. The Law Commission noted concerns that evidence of a compensation claim is sometimes used to suggest that a complainant has fabricated or exaggerated their account for financial gain. Consultees expressed concern that such evidence can introduce pejorative and misleading inferences, undermining the fairness of the trial. The measure will ensure that such evidence is only admitted where it is genuinely probative in relation to an important issue in the case, recognising that all victims of crime have a right to seek compensation, and that the mere fact of a claim should not, without more, be taken as evidence of dishonesty.

Article 6 ECHR – Right to a Fair Trial

29. Article 6 ECHR is potentially engaged by this measure since relevant evidence that a complainant made a compensation claim could be excluded from evidence if it did not meet the probative value threshold.
30. The test for the admissibility of compensation claim evidence reflects that which applies to non-defendant bad character evidence under section 100(1)(b) of the

Criminal Justice Act 2003, and the test for the admissibility of bad character evidence which a defendant seeks to adduce against a co-defendant under section 101(1)(e) of the Act. The courts have endorsed this test as an appropriate means of preventing the admission of extraneous evidence that could unfairly prejudice the tribunal of fact and cause them to rely on a misconception in reaching their verdict. The Court of Appeal in *Phillips* [2011] EWCA Crim 2935 provided (at paragraph 40) that “*The purpose of the requirement is to ensure so far as possible that the probative strength of the evidence removes the risk of unfair prejudice (...) it is important, in our view, that sight is not lost of the rigour of the statutory test of substantial probative value upon a matter in issue (...) which is of substantial importance in the context of the trial as a whole.*” The court held that this was particularly important where the court had no discretion to exclude evidence once it met the test for admissibility. As with non-defendant bad character evidence, there is no discretion to exclude evidence that a complainant has made a claim for compensation once that evidence has been admitted. Approval of this threshold for admissibility by the Court of Appeal, which is obliged to act in a manner compatible with Article 6 ECHR by virtue of section 6 of the Human Rights Act 1998, demonstrates the appropriateness of this threshold for compensation claim evidence, given admission of the evidence might have a similar effect on proceedings to admissibility of bad character evidence.

31. Since the ‘substantial probative value’ test has been endorsed as an appropriate means of limiting the admission of evidence which is potentially prejudicial to the factfinding exercise in a criminal trial, the Government is satisfied that this measure is compatible with Article 6 ECHR.

Clause 9: Allegations of Previous False Complaints that the Complaint was a Victim of a Sexual Offence

Summary of the measure

32. Where a defendant seeks to admit evidence, or to ask questions in cross-examination, alleging that the complainant has previously made a false complaint that they were a victim of a sexual offence, the evidence must normally first meet the test for admission of non-defendant bad character evidence, at section 100 of the Criminal Justice Act 2003 (*AM* [2009] EWCA Crim 618).
33. This measure provides that, in addition to satisfying this test, there must be a proper evidential basis for the allegation that the previous complaint was (a) made and (b) untrue before questions or evidence concerning the allegation can be introduced in criminal proceedings. The Law Commission, in its 2025 report, 'Evidence in Sexual Offences Prosecutions', recommends that a similar measure be adopted (recommendation 22).

Article 6 – Right to a Fair Trial

34. As with restrictions on the admissibility of sexual behaviour evidence, Article 6 ECHR is potentially engaged since the defendant may be prevented from asking questions, or adducing evidence, that may be relevant to their defence if there is no proper evidential basis for the assertion. A measure restricting the admissibility of evidence is compatible with Article 6 ECHR if criminal proceedings as a whole remain fair (*Ayetullah Ay v. Turkey*, 2020, paragraphs 123-130).
35. The intention behind the measure is to prevent myths and misconceptions from being improperly introduced into a trial by introducing allegations that a complainant previously engaged in sexual behaviour or fabricated a prior complaint. These narratives can unfairly influence the factfinding exercise in a criminal trial. The measure ensures that only allegations of previous false complaints that have a proper evidential basis may be admitted. That threshold requires the defence to demonstrate that there is material before the court on the basis of which it could properly be concluded that the complainant made

the previous complaint alleged, and material from which it could properly be concluded that the previous complaint was false.

36. Under the current law, courts have established, at common law, that in order for the evidence to be admissible as bad character evidence, rather than sexual behaviour evidence, there must be a proper evidential basis that the previous complaint was (a) made and (b) untrue (*R v T & H* [2002] 1 WLR 632, affirmed in *AM*). The Court of Appeal in *T & H* provided that this test amounted to an important safeguard against abuse of the criminal trial process, and assisted in ensuring that a complainant's reputation was not unnecessarily maligned. This measure preserves this legal test and places it on a statutory footing.
37. The appellate courts have given no indication that requiring evidence or questioning to meet this threshold would render a trial unfair, despite applying it in numerous cases (e.g. *R v All Hilly* [2014] EWCA Crim 1614; *Davison* [2015] EWCA Crim 1907; *Conn* [2018] EWCA Crim 1752; *Gabbai* [2019] EWCA Crim 2287; *TG* [2020] EWCA Crim 939), and despite the fact that, by virtue of section 6 of the Human Rights Act 1998, it is unlawful for a court to act in a way which is incompatible with a Convention right unless primary legislation obliges the court to do so.
38. The requirement that evidence or questioning has a proper evidential basis provides a modest but essential hurdle to admission that ensures that the complainant's rights are respected within the trial process and the process is not abused. The exclusion of evidence or questioning without any proper evidential basis does not prevent a defendant from defending themselves; it instead prevents speculative questioning which might otherwise negatively and unfairly malign the complainant in the eyes of the jury or court.
39. The Government is therefore satisfied that this measure is compatible with Article 6 ECHR.

Clause 10: Explicit Provision that Domestic Abuse Offences Can Demonstrate Propensity

Summary of the measure

40. This measure introduces a statutory provision providing that, where a defendant is charged with an offence amounting to domestic abuse, as defined in section 1 of the Domestic Abuse Act 2021, a previous domestic abuse conviction may demonstrate a propensity to commit offences of the kind charged for the purpose of determining its admissibility as defendant bad character evidence. The court may decline to infer propensity if, by reason of the length of time since the previous offending behaviour, or for any other reason, it would be unjust to do so.
41. Section 101(d) of the Criminal Justice Act 2003 provides that a defendant's bad character evidence may be admitted into evidence where it is "*relevant to an important matter in issue between the defendant and the prosecution.*" The defendant's propensity to commit offences of the kind charged is a matter in issue between the defendant and the prosecution, unless that propensity makes it no more likely that the defendant has committed the offence (section 103(1)(a)).

Article 6 ECHR – Right to a Fair Trial

42. Since this measure might result in evidence of a defendant's bad character being introduced in criminal proceedings where it would otherwise not be, Article 6 ECHR is arguably engaged.
43. However, any risk that undue reliance on such bad character evidence might result in an unfair trial for the defendant is removed by virtue of s.101(3) Criminal Justice Act 2003, which provides "*The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to*

admit it.” Since the court remains obliged not to admit propensity evidence where it would unduly affect the fairness of the trial, the Government is satisfied that this measure is compatible with Article 6 ECHR.

Special Measures to Assist in Giving Evidence in Criminal Proceedings

Special Measures Amendments Generally (Clauses 11 – 15)

Summary of the measure

44. The Bill makes a number of amendments to the special measures framework in Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (“YJCEA”). This chapter provides statutory powers to the court to direct that specified measures are taken to assist eligible non-defendant witnesses to give evidence in criminal proceedings.
45. A witness may be eligible for special measures either by virtue of section 16 YJCEA (‘Witnesses eligible for assistance on grounds of age or incapacity’) or section 17 YJCEA (‘Witnesses eligible for assistance on grounds of fear or distress about testifying’).
46. Where a witness is eligible for special measures, and unless the legislation provides a different test for imposing a special measure, the court must first determine which of those measures would be likely to improve the quality of the witness’ evidence. The court must then make a direction for the measure, or combination of measures, that would maximise as far as practicable the quality of the witness’ evidence (section 19(2) YJCEA). This is known as a special measures direction.

Article 6 – Equality of Arms

47. The fact that statutory special measures apply only to non-defendant witnesses, and not to defendants, could arguably give rise to unfairness through unequal treatment of the defendant as compared to eligible witnesses in a criminal trial if there were an inequality of arms as between the defence and prosecution.

48. This point was considered by the House of Lords in *R(D) v Camberwell Green Youth Court* [2005] UKHL 4 in relation to child defendants and witnesses. The court concluded that there was no breach of Article 6 ECHR on equality of arms grounds since the court has wide and flexible inherent powers to ensure that defendants receive a fair trial, and this includes a fair opportunity of giving the best evidence they can. The court can use their inherent powers to direct that a defendant be given assistance while giving evidence. For example, the court can direct that a defendant be assisted by an intermediary or interpreter (paragraph 59). A defendant may need assistance to give their best evidence, and that is something that the court can facilitate using their inherent powers; in any event, the fact that the accused may need assistance to give their best evidence cannot justify excluding the best evidence of others ([63]). For these reasons, the Government is satisfied that the statutory special measures scheme is compatible with the requirement of equality of arms between the parties provided in Article 6 ECHR.

Clause 11: Screening of the Witness from the Defendant

Summary of the measure

49. Clause 11 amends provisions concerning special measures to provide the following:

- a. A special measures direction under section 23 YJCEA preventing the witness from seeing the accused by virtue of a screen or other arrangement must also have the effect of preventing the accused from seeing the witness.
- b. Screens will be available to prevent the witness from seeing the accused, and vice versa, when the court directs that the witness gives their evidence via livelink (section 24 YJCEA) and when the witness' cross-examination or re-examination is pre-recorded (section 28 YJCEA). Where the witness is eligible for special measures by virtue of

section 17 YJCEA – on the grounds of fear or distress about testifying – and the relevant party makes an application for screens, there shall be a presumption that a screen will be directed when evidence is given under section 24 or section 28 YJCEA.

Article 6 ECHR – Right to a Fair Trial

50. Article 6 ECHR requires that, in respect of prosecution evidence (or indeed evidence provided by a co-defendant against a defendant) the defendant is given an adequate and proper opportunity to challenge the witness against them (*Al-Khawaja and Tahery v. the United Kingdom* [GC], 2011). The ECtHR has held that the capacity to observe the demeanour of the witness under direct questioning can be relevant to the question of whether the defendant has had a fair trial, since observing the demeanour of a witness might give an impression as to their reliability (*Bocos-Cuesta v. the Netherlands*, 2005, paragraph 71). In particular cases, in order to have a fair trial, the defendant may need to see the witness in order to determine whether they recognise them, and thus to determine whether the witness might have some motivation for fabricating their account (as in *Pope* [2010] EWCA Crim 2113).
51. Although this measure provides a presumption in favour of ordering screens, the court retains a discretion to depart from that presumption if the measure would be contrary to the interests of justice. Indeed, in respect of all special measures, the court retains the power to disapply the measure by virtue of section 20(2) YJCEA if in its opinion it would be in the interests of justice to do so. It is therefore the position that, should screens distort the trial process so that the defendant's trial would be unfair, it remains within the court's power to adapt the process at trial to prevent that happening and thereby ensure a fair trial. On this basis, the Government is satisfied that this measure is compatible with Article 6 ECHR.

Clause 12: Presence of a Supporter While Giving Evidence and Presumed Entitlement to an Independent Supporter

Summary of the measure

52. Clause 12 creates a statutory special measure so that a witness may be accompanied by a professional or non-professional supporter while they give their evidence. Section 24 YJCEA already provides that a witness may have a supporter while giving evidence via live link. The court can and does use its inherent powers to allow a witness a supporter in other cases, and rules concerning this are already included in the Criminal Procedure Rules (currently at rules 3.3(2)(g), and 3.8(6) - (8) of the Criminal Procedure Rules 2025). However, the Law Commission identifies inconsistent practice in the allowing of witness supporters as problematic, and has recommended the creation of a presumed entitlement to a supporter to address this.

53. The Bill also creates a presumption that, where applied for, accompaniment by an independent supporter will improve the quality of a witness' evidence. It remains a matter for the court to determine whether accompaniment of a non-professional supporter will be likely to improve the quality of a witness' evidence.

Article 6 ECHR – Right to a Fair Trial

54. The role of a supporter is limited to sitting with or near the witness while they give their evidence. A supporter must not discuss the evidence with the witness, advise the witness on how to answer a question, give the witness legal advice, address the court unless asked to do so, or interrupt the hearing. In the event that a supporter does act in a way proscribed by the rules, the court can discharge or vary the direction directing a supporter. Depending on the nature of the breach, it remains open to the court to direct that the defendant have a new trial if, in light of the supporter's actions, the trial could no longer be fair. Given the limits on the role that a supporter can play, the fact that a witness may be accompanied by a supporter does not give rise to an interference with

the defendant's Article 6 ECHR right to a fair trial. The Government is therefore satisfied that this measure is compatible with Article 6 ECHR.

Measures in Part 2 of the Bill

Clause 16: Repeal of the Presumption of Parental Involvement in Section 1(2A) of the Children Act 1989

Summary of the measure

55. The child's welfare must be the court's paramount consideration when making a decision in relation to the child's upbringing (section 1(1) Children Act 1989). In specified circumstances (section 1(4)(6) and (7) of the Children Act 1989) the court must presume, unless there is evidence to the contrary, that the child's welfare will be furthered by the involvement of a parent in their life (section 1(2A) of the Children Act 1989): this is known as the presumption of parental involvement. Clause 16 repeals the presumption of parental involvement from the Children Act 1989.

Article 8 ECHR – Right to a private and family life

56. Article 8 ECHR provides that everyone has the right to respect for his private and family life, his home and his correspondence. There can be no interference, other than in the circumstances set out in Article 8(2) ECHR.

57. Whether "family life" exists in a given case is a question of fact, depending on the real existence of close personal ties (*K v UK*, App. No. 11468/85). It is accepted that Article 8 ECHR rights will be engaged in proceedings where a court is making decisions in relation to parental involvement in a child's life.

58. Prior to the introduction of the statutory presumption, it was already well established in case law (which included consideration of the Article 8 ECHR rights of parties and children) that the involvement of both parents in a child's life would usually further the child's welfare and that compelling reasons must be demonstrated for the court to suspend contact between a child and their parent (see for example, *Re C (A Child)* [2011] EWCA Civ 521; and *Re W*

(Children) (Contact Order) [2012] EWCA Civ 999 and *J-M (A Child) (Contact proceedings: Balance of Harm)* [2014] EWCA Civ 434).

59. It is anticipated that the decision-making process the court goes through when making decisions in relation to parental involvement will change upon the repeal of the presumption of parental involvement from the Children Act 1989 to ensure that courts adopt an open-minded enquiry into the child's best interests rather than starting from a presumption.

60. However, given the obligation on the courts stemming from section 6 Human Rights Act 1998 to act in a way that is compatible with Convention rights, it is considered that the repeal of the statutory presumption of parental involvement will not lead to the breaching of Article 8 rights of parties and children involved in proceedings under the Children Act 1989 to which the presumption of parental involvement applied before its repeal. The remaining provisions of the Children Act 1989, together with ECHR considerations, mean that repealing the presumption is, of itself, unlikely to mean courts making orders which are substantively different to those that would have been made when applying the presumption. However, when paired with further ongoing work, this measure will form part of a package of family court reforms aimed at ensuring decisions are made on the basis of a deep understanding of risks of harm and of individual needs of the child. The Government therefore considers that the measure is compatible with Article 8.

Clause 17: Reform of the Office of Senior President of Tribunals

Summary of the measure

61. Clause 17 reforms the statutory office of the Senior President of Tribunals ("SPT"), established by the Tribunals, Courts and Enforcement Act 2007 ("TCEA"). It reallocates leadership responsibilities for the TCEA tribunals in England and Wales from the SPT to the Lord Chief Justice of England and Wales ("LCJ") so that tribunal leadership in England and Wales is brought within the LCJ's wider leadership of the courts of England and Wales.

62. The reconstituted SPT will continue to provide leadership for TCEA tribunals in Scotland and Northern Ireland and will retain a role in respect of TCEA tribunals in England and Wales equivalent to a Head of Division role, whereby the LCJ may delegate leadership functions to the SPT. The measure also introduces limited consent requirements involving the Lord President of the Court of Session (“LP”) and the Lord Chief Justice of Northern Ireland (“LCJ NI”) in relation to certain decisions affecting TCEA tribunals in Scotland and Northern Ireland. The measure does not alter the structure or leadership of devolved tribunals in Wales, Scotland or Northern Ireland, which remain part of their separate devolved tribunal systems.

Article 6 – Right to a Fair Trial

63. Article 6 ECHR is engaged in a broad sense because the measure concerns the senior leadership of tribunals that hear cases which determine civil rights/obligations arising in Northern Ireland and/or Scotland.

64. The measure does not, however, remove or restrict access to any tribunal, alter the jurisdiction or powers of tribunals, change procedural safeguards, or affect rights of appeal or review. TCEA tribunals will continue to operate with the same statutory jurisdiction and procedural framework as before. The reforms concern only the internal allocation of leadership and administrative responsibilities between existing senior judicial office holders (the LCJ and SPT, and more limitedly, the LP/ LCJ NI), all of whom are senior members of the judiciary and exercise their functions independently.

65. Accordingly, the independence and impartiality of TCEA tribunals are preserved and the essence of the right to a fair and public hearing under Article 6 is unaffected.

66. To the extent that Article 14 (prohibition on discrimination) read with Article 6 is engaged, the right not to be discriminated against in the enjoyment of Convention rights is relevant because claimants, such as asylum seekers,

before the TCEA tribunals may allege discrimination in the enjoyment of their rights. While the measure will require consequential amendments to various statutes, it does not alter the substantive protections provided by legislation, nor does it affect who may bring a claim, differentiate between claimants or respondents on any protected ground, nor alter what substantive rights they can rely on, or the remedies available.

67. The Government is therefore satisfied that the measure is compatible with Article 6 ECHR (and, so far as relevant, with Article 14 read together with Article 6).

Ministry of Justice

14 October 2026