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ISBN 978-0-10-560328-3
9 780105 603283

EXPLANATORY NOTES

Police, Crime, Sentencing and Courts Act 2022

Chapter 32

£31.60

POLICE, CRIME, SENTENCING AND COURTS ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Police, Crime, Sentencing and Courts Act 2022 which received Royal Assent on 28 April 2022 (c. 32).

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

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Overview of the Act

1. In December 2019, the Government was elected with manifesto commitments to make the country safer by empowering the police and courts to take more effective action against crime and delivering a fair justice system. This included specific commitments to: protect and empower the police by enshrining "the Police Covenant into law"; "pass the Police Protection Bill"; and introduce "a new court order to target known knife carriers, making it easier for officers to stop and search those convicted of knife crime". On courts and sentencing, it included commitments to: empower the courts to tackle crime; ensure a fair justice system by introducing "tougher sentencing for the worst offenders and [ending] automatic halfway release from prison for serious crimes"; toughen "community sentences, for example by tightening curfews and making those convicted do more hours of community payback"; and "turn people away from crime and end the cycle of reoffending". This Act contains a number of measures to support the delivery of those commitments.

2. The purpose of the Act is to:

- protect the police and other emergency workers and enhance the wellbeing of police officers and staff;
- protect the public by giving the police the tools needed to tackle crime and disorder, and by addressing the root causes of serious violent crime using multi-agency approaches to prevention;
- ensure that the most serious violent and sexual offenders spend time in prison that matches the severity of their crimes, protects victims and gives the public confidence;
- tackle repeat and prolific offenders through robust community sentences which punish and also address offenders' needs; and
- modernise the delivery of criminal justice by overhauling existing court processes to provide better services for all court users.

3. The Act is in 14 parts.

4. Part 1 contains measures to better protect the police and other emergency workers. In particular, it: places a duty on the Secretary of State to publish an annual report on progress against the delivery of the Police Covenant; doubles the maximum penalty for assault on emergency workers; requires a life sentence for manslaughter of emergency workers; enables special constables to join the Police Federation of England and Wales; and amends the offences relating to dangerous and careless driving so that the enhanced skills and training of police officers and police driving instructors can be taken into account in any prosecution for such an offence arising from their conduct.

5. Part 2 contains measures to prevent, investigate and prosecute crime. Chapter 1 places a duty on specified authorities (including local and health authorities and chief officers of police) to collaborate with each other to prevent and reduce serious violence. Chapter 2 places a duty on relevant authorities to undertake offensive weapons homicide reviews. Chapter 3 establishes a statutory framework for the extraction of information from electronic devices for the purposes of the prevention, detection, investigation or prosecution of crime, safeguarding purposes and the purposes of investigating deaths. Chapter 4 reforms the pre-charge bail system; extends the offence of arranging or facilitating the commission of a child sex offence to cover a wider range of preparatory conduct in respect of sex offences committed against children under 13; extends positions of trust provisions to capture those that lead activities in sporting and religious settings; creates the offence of voyeurism: breastfeeding; extends the time limit for prosecution of common assault or battery in domestic abuse cases; strengthens the courts sentencing powers in relation to criminal damage to memorials; makes amendments to the Crime (Overseas Production Orders) Act 2019; makes further provision for the

taking of photographs, fingerprints and non-intimate samples from persons convicted of an offence; confers powers on the police to obtain information about the location of human remains where there is no on-going criminal investigation; makes provision for a code of practice relating to the police recording of non-crime hate incidents; broadens the circumstances in which the police can investigate and bring charges for hare coursing related activity and increases the powers of the courts for dealing with this activity upon conviction; makes provision for conferring policing powers on food crime officers; and places a duty on the Secretary of State to respond to the Law Commission report on hate crime laws.

6. Part 3 strengthens police powers to tackle non-violent protests. This includes provisions to: extend the powers to place conditions on public processions and assemblies; amend the offence relating to the breaching of conditions placed on a public procession or assembly; replace the common law offence of public nuisance with a new statutory offence; amend the legal framework designed to prevent disruptive activities in the vicinity of the Palace of Westminster to ensure vehicular access to Parliament; and increase the maximum penalty for the offence of wilfully obstructing a highway.

7. Part 4 provides for a new offence to tackle unauthorised encampments and amends existing powers to remove trespassers on land under the Criminal Justice and Public Order Act 1994.

8. Part 5 contains provisions relating to road traffic. These include measures to: increase the maximum penalty and the minimum periods of disqualification from driving for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs; create a new offence of causing serious injury by careless or inconsiderate driving; place on a statutory footing provision for charging fees for courses offered as an alternative to prosecution for low-level driving offences; clarify powers to charge fees for the removal of abandoned vehicles; and remove the obligation on drivers to surrender their driving licence before they can accept a fixed penalty notice or a conditional offer, or before they attend a court hearing for a road traffic offence.

9. Part 6 contains provisions creating two tiers of cautions, replacing the existing six disposals. There will be a lower-tier disposal (community caution) and an upper-tier disposal (diversionary caution).

10. Part 7 contains provisions relating to sentencing and release giving effect to proposals in the Government's white paper - 'A Smarter Approach to Sentencing' – published in September 2019. Chapter 1 includes measures to increase the minimum sentences for particular offences, including making a Whole Life Order the starting point for those convicted of child murder and raising the starting points for those sentenced for committing murder whilst under 18. This Chapter also contains provisions that: increase the penalty for child cruelty; relate to release of offenders on licence; extend the driver disqualification period to reflect minimum periods in custody; and ensure that polygraph conditions can be applied to eligible service offenders and repatriated prisoners. Chapter 2 makes changes to community sentences including increasing the maximum curfew requirements and the piloting of specific amendments to community and suspended sentence orders. Chapter 3 provides for a statutory aggravating factor to be applied by the courts in cases of assault where the offence is committed against those providing a public service.

11. Part 8 contains provisions relating to youth justice. The Sentencing White Paper also set out a number of reforms to the youth justice remand, sentencing and release framework. These provisions include measures to: strengthen the tests to be applied by the courts to remand children to custody; make the Detention and Training Order more flexible; make changes to Youth Rehabilitation Orders; and abolish the Reparation Order.

12. Part 9 contains provisions relating to establishing charitable status for the providers of Secure 16 to 19 Academies and regulating the use of temporary release of children in Secure Children's Homes and Secure 16-19 Academies.

13. Part 10 makes further provision for the management of offenders. Chapter 1 provides for Serious Violence Reduction Orders, which confer on the police new targeted stop and search powers to tackle knife crime offenders. Chapter 2 makes provision for the courts to adjourn proceedings in relation to Knife Crime Prevention Orders. Chapter 3 relates to the management of sex offenders and, in particular, amends the framework in the Sexual Offences Act 2003 and Sentencing Code in respect of Sexual Harm Prevention Orders and Sexual Risk Orders. Chapter 4 relates to the management of terrorist and terrorist risk offenders who have been released on licence and includes new powers for the police to: search the premises of an offender for purposes connected with protecting the public from a risk of terrorism; stop and search a terrorist offender where their licence conditions require them to submit to such a search; and arrest a terrorist offender in urgent cases pending a decision by the probation service to recall them into custody for breach of licence. Chapter 5 makes further provision in respect of Football Banning Orders.

14. Part 11 contains provisions enabling some custodial sentences of over four years to become spent after a certain period of time.

15. Part 12 extends the schemes whereby persons with convictions or cautions for certain now-repealed offences which criminalised homosexual activity can have those convictions or cautions "disregarded" and receive a pardon.

16. Part 13 makes several changes to the procedures in courts and tribunals, specifically in relation to the use of sign language interpreters for deaf jurors, the prohibition on authorised transmission and recording of proceedings, the regulation of remote observations of proceedings, and the use of live links in criminal proceedings.

17. Part 14 contains miscellaneous and general provisions, including in relation to extent and commencement.

Policy background

Police Covenant

18. The Front Line Review announced by the then Home Secretary at the Police Federation Annual Conference in May 2018 invited police officers, police community support officers and police staff in England and Wales to share ideas to change and improve policing. The subsequent report published by the Home Office in July 2019 highlighted the concerns of police officers and staff and the need to do more to help them. Following the publication, on 18 July 2019 the then Home Secretary announced plans to establish a Police Covenant, similar to the covenant that exists for the armed forces, to provide support to those working in policing.

19. The Home Secretary announced in September 2019 a consultation into the Police Covenant, which ran from 26 February to 22 April 2020. The consultation paper sought views on the principle of implementing a Police Covenant in England and Wales, to enhance support for the police and their families. The consultation attracted 1,113 responses with over 90% of respondents either agreeing or strongly agreeing with the idea of establishing a Police Covenant and enshrining it in legislation. A response to the consultation was published in September 2020, setting out the initial focus of the Covenant as:

- Physical Protection;
- Health and Wellbeing;
- Support for Families.

20. The Government's report also proposed that legislation should be brought forward to require the Home Secretary to report annually to Parliament on the Covenant. It was thereafter decided that the scope of the Covenant, and the duty to report, should extend to cover non-Home Office forces – British Transport Police, Civil Nuclear Constabulary, MoD Police, and National Crime Agency officers, meaning the provision extends UK wide, to ensure those forces which operate outside of England and Wales are properly captured by the provisions.

21. The Covenant itself will take the form of a declaration and is not set out in the legislation. The legislative provisions comprise a duty on the Secretary of State to produce a report annually, addressing key issues in respect of the Covenant, specifically the health and wellbeing of members and former members of the police workforce in England and Wales, their physical protection, and the support for members of their families, taking into account any disadvantages experienced by the police workforce as a result of working in policing.

22. Enshrining the Police Covenant report in law is designed to embed the importance of these issues in public consciousness, and to introduce accountability and encourage action to prevent detriment being suffered by members of the police workforce. The report must be laid before Parliament, providing an opportunity to scrutinise the nature of the issues facing those working in policing, and any work being done in these areas. These provisions will be underpinned by a non-statutory governance structure to support the Home Secretary in fulfilling these new duties. Section 1 gives effect to these proposals.

Assaults on emergency workers

23. The Assaults on Emergency Workers (Offences) Act 2018 modified the criminal offence of common assault or battery in instances where it is committed against an emergency worker who is acting in the course of their functions to provide for a maximum custodial penalty on summary conviction or on indictment of 12 months' imprisonment.

24. Section 67 of the Sentencing Code ("the Code") (set by the Sentencing Act 2020 ("the 2020 Act")) provides that more serious assaults committed against emergency workers may be aggravated on sentence within the current statutory maxima for these offences.

25. On 13 July 2020 the Government launched a targeted consultation on doubling the maximum penalty for assaulting an emergency worker to two years. This was in line with the Government's manifesto commitment. This consultation was directed at representative groups of emergency workers and other key stakeholders. The large majority of those who responded were in favour of doubling the maximum penalty from 12 months to two years.

26. Following consultation, on 15 September 2020, the Government announced that it would bring forward legislation to increase the maximum penalty for assaulting an emergency worker from 12 months' to two years' imprisonment.

27. The Act seeks to ensure that the law provides emergency workers with sufficient protection to enable them to carry out their duties, and the maximum penalty reflects the severity of these offences.

28. The current definition of an emergency worker applies to front-line workers who operate in what can sometimes be in life or death situations to protect the public and this may mean they place themselves at personal risk. It is in this context that the law recognises them for special protection.

29. The current maximum penalty for the offence of common assault or battery committed against an emergency worker is 12 months' imprisonment. Section 2 increases the maximum penalty from 12 months to two years' imprisonment and provides the courts with enhanced powers to sentence in a way that reflects the severity of the offence.

Mandatory life sentence for the unlawful act manslaughter of an emergency worker ("Harper's Law")

30. The maximum penalty for manslaughter is life imprisonment, and that is currently imposed at the discretion of the court. However, following the death of PC Andrew Harper and the subsequent campaign by his family and the Police Federation for England and Wales ("the Police Federation"), the Government decided that a life sentence should always be imposed on those who are convicted of the unlawful act manslaughter of an emergency worker who is acting in the exercise of their functions as such a worker, unless there are exceptional circumstances relating to the offence or offender which justify not doing so. Section 3 makes this change in the Code. The court will retain its discretion in setting the minimum term within the life sentence.

31. The policy intention in relation to this change is to ensure that the punishment properly reflects the severity of the offence and reflects the great societal harm that caused when an emergency worker is killed whilst carrying out their role.

32. This sentence will apply in cases where an offender who was aged 16 or over at the time of the offence is convicted of the unlawful act manslaughter of an emergency worker, who was acting in the exercise of their functions of such a worker at the time. "Emergency worker" is defined by reference to section 68 of the Sentencing Code 2020 (which itself reflects the definition set out in the Assaults on Emergency Workers (Offences) Act 2018).

33. This definition of an emergency worker includes police officers; NHS workers such as doctors, nurses and paramedics, whose general activities involve face to face interaction with those receiving NHS services, or other members of the public, and fire fighters, among others.

Special constables – Police Federation membership

34. The Police Federation represents the interests of police officers below the rank of superintendent (namely, constables, sergeants, inspectors and chief inspectors). It was created in 1919 to represent officers, reflecting the fact that police officers are members of a disciplined service with an obligation to protect the public and, as such, are prohibited from joining a trade union or taking industrial action.

35. Membership of the Police Federation is confined to members of a police force (section 59 of the Police Act 1996), that is those who hold the office of constable and are remunerated by their police force. In England and Wales, special constables, that is volunteer police officers, are not "members" of their police force and are therefore ineligible for membership of the Police Federation. While special constables can access insurance, funded by the Home Office, to cover the cost of legal assistance for disciplinary and misconduct proceedings, this does not provide the end-to-end support, advice and pastoral care, for example in the immediate aftermath of an incident, that comes with membership of the Police Federation.

36. In July 2019, the then Home Secretary announced the Government's intention to support the Police Federation offering membership to special constables. Section 4 of the Act amends the Police Act 1996 to enable the Police Federation to represent special constables.

37. Special constables are increasingly fulfilling a range of specialised and frontline roles within police forces and therefore often face the same risks as regular officers. These provisions will ensure special constables in England and Wales have access to the same level of support and representation as regular constables through access to membership of the Police Federation.

Police driving standards

38. The tests set out in the Road Traffic Act 1988 (the "1988 Act") for the offences of careless and dangerous driving apply to police drivers in the same way as any other driver, taking no account of the various exemptions to road traffic legislation (for example, in relation to speed limits and road signs) that apply to the police or of their additional training. Those offences are committed when a person drives in a way that is below (careless) or far below (dangerous) what would be expected of a competent and careful driver, that is a member of the public.

39. Following a campaign by the Police Federation, in September 2017, the then Minister for Policing and the Fire Service, Rt Hon Nick Hurd MP, commissioned a Home Office review of the law, guidance, procedures and processes surrounding police pursuits. The review had a particular focus on identifying the reasons why the current legal framework was seen as falling short, identifying options for improvement and developing recommendations.

40. In May 2018, the Home Office published a consultation, "The Law, Guidance and Training Governing Police Pursuits", which set out the findings of the review and options for changes in the law. In particular, the consultation sought views on:

- whether any legislative change should apply only to police pursuits or to police response driving as well;
- whether to revise the various exemptions from certain areas of road traffic legislation to make them clearer and more consistent;
- amending the definitions in the offences of careless and dangerous driving to take account of the training and experience of police drivers; and
- making clear that a suspect being pursued is responsible for their own decision to drive dangerously and that blame should not be attached to the pursuing police officer.

41. The Home Office received 383 responses to the consultation with two-thirds of respondents (66.6%) agreeing that a police officer responding to an emergency or a pursuit should be compared to the standard of a police driver with similar training and skill. The Government published its response to the consultation and the then Home Secretary issued a Written Ministerial Statement on 2 May 2019 announcing that the Government would seek to introduce a new test to assess the standard of driving of a police officer. The new test, as provided for in sections 5 to 7 of the Act, allows the courts to judge their standard of driving against a competent and careful police constable with the same level of training, rather than being considered as a member of the public. It is vital that the law empowers

officers to carry out their duties effectively. The new test strikes the right balance between giving trained officers the confidence they need to fight crime effectively while holding to account those who drive in an inappropriate manner and put the public at risk.

Serious violence duty

42. In April 2018, the Government published its Serious Violence Strategy to help further tackle knife crime, gun crime and homicide. The Strategy explained that the Government's approach was not solely focused on law enforcement, but depended on partnerships across a number of sectors such as education, health, social services, housing, youth services and victim services. In April 2019, the Home Office published a consultation paper seeking views on options to implement a multi-agency or "public health" approach to preventing and tackling serious violence. This set out three options to achieve this:

- a new duty on specific organisations to have due regard to the prevention and tackling of serious violence;
- a new duty to revise Community Safety Partnerships ("CSPs"), as established under the Crime and Disorder Act 1998 ("the 1998 Act"). Section 6 of the 1998 Act requires CSPs to formulate and implement strategies to reduce crime and disorder, combat the misuse of substances and reduce reoffending;
- a voluntary non-legislative approach to encourage areas to adopt voluntary measures to engage in a multi-agency approach.

43. The consultation closed on 28 May 2019. The Home Office received 288 responses which indicated overall support for a multi-agency public health approach but with differing views on the approach to take. The then Home Secretary issued a Written Ministerial Statement on 15 July 2019 to announce the publication of the Government's response to the consultation. The response proposed a new duty on relevant agencies to collaborate, where possible through existing partnership structures, to prevent and reduce serious violence and to amend the 1998 Act, which sets out the strategies CSPs must formulate and implement, to explicitly include serious violence. Chapter 1 of Part 2 of the Act gives effect to these proposals.

Homicide reviews

44. Reviews of certain deaths currently take place in England and Wales under sections 16M to 16Q of the Children Act 2004, section 9 of the Domestic Violence, Crime and Victims Act 2004, section 44 of the Care Act 2014, section 135(4)(a) of the Social Services and Well-being (Wales) Act 2014, section 70 of the Health and Social Care (Community Health and Standards) Act 2003 and section 1.5.4 of NHS England's Serious Incidents Framework in certain specified circumstances, namely where a person aged under 18 dies, a person dies due to domestic violence, a vulnerable adult dies, or someone in receipt of mental health care commits homicide. The reviews are a formal process bringing together relevant local safeguarding partners to learn lessons and to make recommendations for change and improvement in order to prevent future homicides.

45. In April 2018, the Government published its Serious Violence Strategy to help further tackle knife crime, gun crime and homicide. The then Home Secretary expressed determination to "take action to address serious violence and in particular the recent increases in knife crime, gun crime and homicide". Currently most adult homicides are not subject to a formal review and therefore there is no process for learning lessons and making recommendations for change and improvement in order to help to prevent future homicides.

46. Chapter 2 of Part 2 of the Act introduces a new legal requirement on relevant partners in England and Wales to arrange and conduct homicide reviews in prescribed circumstances for adult homicides involving offensive weapons. This legal requirement is placed on the review partners – the relevant

local authority/authorities, police chief constable and clinical commissioning group/local health board - and there is also requirement for any individual or body asked to provide relevant information to a review to comply.

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

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

48. With so much more of individuals' lives being lived online, important information for the prevention, detection, investigation or prosecution of crime is now held on digital devices, such as mobile phones. This includes information from complainants and witnesses in criminal proceedings. The arrangements by which such information is made available to law enforcement agencies, prosecutors and the defence are critical to confidence in the criminal justice system and to meeting the right to a fair trial. Extraction of information from electronic devices has therefore become a more frequent and routine part of criminal investigations.

49. In June 2020, the Information Commissioner's Office published a report on police practice in England and Wales around the extraction and analysis of data from mobile phones and other electronic communication devices of victims, witnesses and suspects during a criminal investigation. The report identified inconsistencies in the approach taken by police forces to extract digital data and the complex legal framework that governs this practice. It recommended clarifying the lawful basis for data extraction and introducing a code of practice to guide this activity in order to increase consistency and ensure that any data taken is strictly necessary for the purpose of the investigation.

50. Chapter 3 of Part 2 introduce a specific legal basis for the extraction of information from complainants', witnesses' and others' digital devices. This will be a non-coercive power based on the agreement of the routine user of the device. It will be applicable to specified law enforcement and regulatory agencies, such as the police, who extract information to support investigations or to protect vulnerable people from harm. This will provide a nationally consistent legal basis for the purpose of preventing, detecting, investigating or prosecuting criminal offences and for safeguarding and preventing serious harm.

51. These provisions also include sections to ensure authorised persons have proper regard for confidential information that may be on a device and how to deal appropriately with that possibility. Confidential information includes legally privileged material, journalistic material and protected material as defined in section 43. The confidential information sections require that authorized persons use the facts of the case insofar as they have them to assess the likelihood that the device will contain confidential information. This requires the authorised person to give separate consideration to the potential volume of confidential information held on the device, and its potential relevance to the purposes of the investigation, before taking a view as to whether to rely on these powers to extract information. This is intended to strike an appropriate balance between safeguarding against improper access of confidential information, and enabling information to be extracted where it is appropriate to do so.

Pre-charge bail

52. An individual who has been arrested by the police but who has not yet been charged can be released on pre-charge bail or released without bail while the investigation continues. Pre-charge bail means the individual under investigation is released from police custody, with or without conditions, while officers continue their investigation. Individuals on pre-charge bail are required to return to the police station at a specified date and time, known as "answering bail", to either be informed of a final decision on their case or to be given an update on the progress of the investigation.

53. Conditions may be imposed upon the individual if they are deemed necessary to: prevent someone from failing to surrender to custody; prevent further offending; or prevent someone from interfering with witnesses or otherwise obstructing the course of justice. Conditions may also be imposed for the individuals' own protection or, if aged under 18, for their own welfare and interests.

54. The then Government legislated through the Policing and Crime Act 2017 to address concerns that individuals were being kept on pre-charge bail for long periods, sometimes with strict conditions. The reforms introduced:

- a "presumption" against pre-charge bail unless necessary and proportionate in all circumstances to release on bail; and
- clear statutory timescales and processes for the initial imposition and extension of bail, including the introduction of judicial oversight for the extension of pre-charge bail beyond three months.

55. After the reforms came into force in April 2017, the use of pre-charge bail fell, mirrored by an increasing number of individuals released without bail, commonly known as "released under investigation" ("RUI"). This change has raised concerns that bail was not always being used when appropriate, including to prevent individuals from committing an offence whilst on bail or interfering with witnesses. Other concerns focus on the potential for longer investigations in cases where bail is not used and the adverse impacts on the courts.

56. On 5 November 2019 the Government announced a review of pre-charge bail to address the concerns raised around the impact of the current regime on the police, victims, those under investigation and the broader criminal justice system.

57. The Government held a public consultation which ran from 5 February to 29 May 2020 which sought views on proposed reforms that would remove the general presumption against bail and instead introduce a risk-based approach to the use of bail. In addition, the consultation sought views on proposals to amend the statutory framework governing pre-charge bail timescales and authorisations designed to remove disincentives against the use of pre-charge bail whilst supporting the timely progression of investigations.

58. The consultation received 844 responses, with 80% of respondents agreeing with the proposal to remove the presumption against pre-charge bail and 88% strongly agreeing that bail conditions needed to be made more effective to prevent interference with victims and witnesses. The Government's response to the consultation was published on 14 January 2021. Section 45 and Schedule 4 give effect to these proposals.

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

59. The Sexual Offences Act 2003 ("the 2003 Act") contains a number of specific child sex offences. Under the provisions of the Criminal Attempts Act 1981, attempting to commit any of these offences is also an offence in itself.

60. At the Ministerial Digital Industry Roundtable 2019, the Five Country Ministers (the UK together with Australia, Canada, New Zealand and the USA) agreed that "tackling [the online child sexual abuse] epidemic requires an immediate upscaling of the global response to ensure that all children across the globe are protected…and that there is no safe space online for offenders to operate."

61. Section 14 of the 2003 Act provides that it is also an offence to undertake acts preparatory to one of the child sexual offences in sections 9 to 13 (rape and other offences against children under 16). Such preparatory acts might, for example, include the (alleged) offender approaching a person requesting that they procure a child for the purpose of sexual activity, or making plans to meet a child they have communicated with online for the purpose of sexual activity. Section 14 can be applied regardless of

whether the abuse takes place, as the offence is the preparatory acts taken to arrange or facilitate a child sex offence. Section 14 currently does not apply to the child sex offences in sections 5 to 8 of the 2003 Act (rape and other offences against children under 13). Section 46 addresses this gap in the criminal law.

Positions of trust

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

63. The policy intention in relation to creating further positions of trust is to extend protection by preventing other individuals, who are not already in an existing position of trust and who carry out certain activities on a regular basis in a sport or in a religion and know that they do so, from using their position to abuse, exploit or manipulate young people to consent to sex.

64. In Spring 2019, the Ministry of Justice conducted a review of the law in this area, speaking to 45 stakeholders including charities, sports bodies, religious organisations, victims' groups, the police and the Crown Prosecution Service.

65. The review found strong evidence for extending the law to include those individuals who hold influence or authority over 16 and 17-year-olds by virtue of their roles and the activities which they undertake within a sports or a religious setting. Section 47 makes the necessary change to the 2003 Act.

66. Mindful of public concern about the potential for abuse by those individuals who are also considered to be in positions of trust when carry out certain other activities, provision has also been made to enable further positions of trust to be created by the Secretary of State in the future by way of secondary legislation (regulations) should there be evidence of a need to do this.

Breast-feeding voyeurism

67. There has been increasing public concern expressed about situations where women have been photographed, without their consent, while breast-feeding their children. Women in these situations feel harassed and intimidated, and there is a concern that fear of such photography will put women off breast-feeding their children in public. The harm caused to the victims includes harms arising from the act of taking the photograph, the existence of that photograph and the possibility of that photograph being shared and viewed at a later point in time.

68. It is possible that this behaviour may be captured by existing offences, including the offence of voyeurism, harassment and public order offences. However, the Government believes that the existing law does not fully cover all such situations.

69. The Government asked the Law Commission to review the law on taking, making and sharing intimate images without consent. The Commission consulted on proposals in early 2021 and is due to report in Spring 2022. The review is looking at a range of behaviour including taking a photo without consent of someone breast-feeding in a public place where their breasts are exposed, partially exposed or covered only with underwear.

70. Whilst the Government acknowledges that it would be ideal to wait for the Law Commission's recommendations before making any significant changes to the law in this area, it believes it is right to act now to protect breastfeeding parents, and children, from this type of harassment and abuse.

71. Section 48 therefore creates new offences to criminalise recording images of, or operating equipment to observe, a person at a time when they are breast-feeding without that person's consent or a reasonable belief that they consent. For the offences to be made out, the perpetrator must be acting for the purposes of obtaining sexual gratification (their own, or another's) or of humiliating, alarming or distressing the victim. These offences will be punishable by up to two years imprisonment.

Time limit for prosecution of common assault or battery in domestic abuse cases

72. Victims of domestic abuse may understandably take some time to report their abuse to the police, and longer than is often the case in a non-domestic abuse context. As a result, it has been established that the current time limit on bringing prosecutions for common assault or battery in cases relating to domestic abuse, which expires six months after the offence is alleged to have been committed, has prevented some victims from seeking justice and allowed some perpetrators to evade prosecution. Section 49 therefore extends the time limit on bringing prosecutions in these cases to ensure that victims are not unfairly prevented from seeking justice.

Criminal damage to memorials

73. There is concern that the current law does not allow the court to deal effectively with cases of criminal damage or desecration of war memorials and other statues. This issue re-emerged during summer 2020 when many statues and memorials were damaged, causing great public concern. Earlier, during the 2019-21 session, backbench MPs asked the Government to support their Desecration of War Memorials Bill intended to introduce a new and specific offence where a person destroys, damages or otherwise desecrates a war memorial. The Government has adopted an alternative approach through section 50 of this Act which amends the Magistrates' Courts Act 1980 ("the 1980 Act") to remove consideration of monetary value with respect to criminal damage to memorials which would otherwise, in some cases, determine venue and limit sentencing powers. These changes mean the courts can now deal effectively with damage caused to memorials.

Amendments to the Crime (Overseas Production Orders) Act 2019

74. The Crime (Overseas Production Orders) Act 2019 ("COPO Act") grants law enforcement agencies and prosecuting authorities the power to apply for and obtain electronic data directly from service providers (those who create, process, communicate or store electronic data) to support criminal investigations and prosecutions. Such orders may be used only when permitted under an international co-operation arrangement between the UK and the country where the subject of the order is located. Each request will be subject to scrutiny in UK courts, mirroring the existing safeguards and tests already in place for domestic powers to obtain investigatory and evidential material.

75. The COPO Act addresses the constraints of existing domestic court orders and the limits of Mutual Legal Assistance ("MLA") in being able to compel the production of electronic data from another jurisdiction quickly. The COPO Act does this by creating a new overseas production order which has extra-territorial effect, meaning that these orders are granted by UK courts exerting jurisdiction over evidence and persons outside the UK. This jurisdiction may be asserted only where an international co-operation arrangement to which the UK is a party permits this to happen and has been designated for the purposes of the Act. An international co-operation arrangement will be in the form of a treaty with another country or countries, and will relate (in whole or part) to the provision of assistance in connection with the investigation or prosecution of offences. The COPO Act reflects the anticipated framework required to implement such international agreements in future.

76. Work on implementing the COPO Act, which came into force on 9 October 2019, for England, Wales and Scotland and 22 February 2021 for Northern Ireland, identified the need to make a number of amendments to allow the Act to work more effectively. Section 51 and Schedule 5 amend the COPO Act, in particular, to:

- allow law enforcement officers and prosecutors to seek and receive associated or connected communications data attached to content of communications; and
- allow the Secretary of State and Lord Advocate to delegate the service of an overseas production order where it might be more expedient for an appropriate body to take on this function.

Functions of prisoner custody officers in relation to live link hearings

77. As a response to Covid-19, HM Courts and Tribunals Service ("HMCTS") increased the roll-out of Video Remand Hearings ("VRH") from police stations. Although it has been helping the courts respond to the pandemic by reducing the number of defendants travelling to magistrates' courts, police forces have reported resourcing and operational issues with operating VRH.

78. The Government considers it important to continue to make the best use of technology such as VRH to improve future efficiency. Section 58 provides Prisoner Escort and Custody Service ("PECS") officers with the power to have custody over prisoners in police stations, including detainees in legal custody, for the purpose of overseeing any preliminary, sentencing or enforcement hearing taking place by way of live link, in particular VRH, and matters associated with such hearings (such as overseeing pre-trial meetings with solicitors and probation officers).

Proceeds of crime: account freezing orders

79. Account freezing and forfeiture provisions were created by the Criminal Finances Act 2017 ("CFA"), which inserted new provisions into the Proceeds of Crime Act 2002 ("POCA"). Those powers enable certain law enforcement officers to apply to the court for an account freezing order. The court can only make such an order where there are reasonable grounds for suspecting that the money present in an account is the proceeds of crime, or that it is intended for use in unlawful conduct. Once money is subject to an account freezing order, then law enforcement may seek to have it forfeited.

80. The CFA account freezing and forfeiture provisions applied to money held in accounts maintained with banks and building societies. The Financial Services Act 2021 further amended POCA to make provision for money held in accounts maintained by electronic money institutions ("EMIs") and payment institutions ("PIs"), in England and Wales and Scotland, keeping pace with technological advancements in the financial sector. Legislative consent to make similar provision for Northern Ireland in what is now the Financial Services Act 2021 could not be secured within the time available. Section 59 of the Act addresses the outstanding difference. It provides for consistency of powers across the UK by ensuring that they can also be used in respect of EMI and PI accounts in Northern Ireland.

Non-criminal hate incidents

81. Non-crime hate incident (NCHI) recording is a type of police recording which stems from the murder of Stephen Lawrence and is used to collect intelligence on 'hate incidents' occurring in communities which could escalate into more serious harm. The Macpherson Inquiry into that murder called for Codes of Practice to create 'a comprehensive system of reporting and recording of all racist incidents and crimes'; the recording regime has since expanded to cover all the protected characteristics covered by hate crime laws: race, religion, disability, sexual orientation and transgender identity.

82. The police regard the recording of NCHIs as an essential tool to record patterns of individual behaviour or local incident 'hotspots' which could give rise to safeguarding risks or community tensions. The College of Policing currently publish non-statutory Authorised Professional Practice guidance on hate crime, which includes guidance on NCHIs for officers and staff and covers the procedures they should follow when responding to NCHIs. The Court of Appeal ruled, in its judgement in Miller v College of Policing provided on 20 December 2021, that the recording of NCHIs is lawful provided that there are robust safeguards in place so that the interference with freedom of expression is proportionate. Safeguards protecting free speech in the current guidance must be made more explicit to help police officers proportionately implement recording, to ensure lawfulness of the scheme.

83. The Government recognises that there are sensitivities surrounding the recording and retention of such information by the police and also recognises the considerable strength of feeling on this issue amongst Parliamentarians in relation to the lack of democratic oversight that is afforded to the process.

84. To strike the right balance between ensuring that the practice is subject to Parliamentary scrutiny, whilst respecting the operational importance of this type of recording for the police, sections 60 and 61 enable the Home Secretary to issue a statutory Code of Practice to the police about the recording and retention of personal data relating to NCHIs. The Government will work closely with policing partners, including the College of Policing and National Police Chiefs' Council, to draft the Code to ensure that it meets operational requirements. The Code will also reflect the recent Court of Appeal judgment. The Code will subsequently need to be debated and approved by both Houses through the affirmative procedure.

Hare Coursing

85. Successful prosecutions for hare coursing have been hampered by the current low level of penalties available to the courts under the Game Acts (the Game Act 1831 and Night Poaching Act 1828) which are commonly relied on as the basis for such prosecutions. Following consultation with stakeholders and the police, the Act addresses the gaps identified in previous laws relating to hare coursing. Sections 62 to 70:

a. Increase the penalties available to the courts under section 1 of the Night Poaching Act 1828 and section 30 of the Game Act 1831 so that the maximum penalty for offences under these sections are a fine of any amount and/or 6 months imprisonment (increasing to 51 weeks upon the coming into force of section 281(5) Criminal Justice Act 2003)

b. Introduced new offences relating to trespassing with intent to search for or pursue hares with dogs, including being equipped for searching for or pursuing hares with dogs

c. Provided the court with the power to order recovery of expenses incurred from the lawful seizure and detention of dogs upon conviction for the offences referred to in (a) and (b)

d. Provided the court with the power to make a disqualification order upon conviction for the offences referred to in (a) and (b), along with other associated orders and directions.

86. The overarching purpose of these changes is to fulfil the Government's public commitment, made as part of its May 2021 Action Plan for Animal Welfare, to crack down on illegal hare coursing and address the animal cruelty and serious harm to rural communities associated with it.

Administering a substance with intent to cause harm

87. Administering a substance with intent to cause harm ("spiking"). In September 2021, the media began drawing attention to a new phenomenon of reported cases of spiking by needles.

88. In response, the Home Secretary asked the National Police Chiefs' Council ("NPCC") to urgently review the extent and scale of the issue of needle spiking. This has included establishing a reporting mechanism to enable forces to report any reported incidences of needle-spiking in their area to help us to better understand the scale and nature of the problem. It has also led to the development of a rapid testing capability which will enable the Police to broaden the understanding of the substances used by offenders to facilitate spiking.

89. The Government recognises the public's concerns about spiking and their right to feel safe when out in public. Section 71 requires the Home Secretary to set out the Government's assessment of the whole issue of spiking, whether drink spiking or needle-spiking, and will outline the actions that the Government is taking to tackle it.

Response to Law Commission report on hate crime laws

90. The Government recognises that hate crime legislation, having been developed and added to over time, has prompted concerns that it is not sufficiently coherent and is difficult for practitioners and criminal justice agencies to implement. In 2018, the Government therefore commissioned the Law Commission - a statutorily independent body that reviews laws and produces recommendations for their reform in England and Wales - to review hate crime laws. This review examined the coverage and approach of existing hate crime legislation, including consideration of whether sex and/or gender should be added to existing hate crime laws.

91. The Law Commission published its final recommendations in December 2021. Recommendation 8 of the Law Commission report stated: "We [the Law Commission] recommend that sex or gender should not be added as a protected characteristic for the purposes of aggravated offences and enhanced sentencing." Its report highlighted concerns relating to the potential negative consequences of adding sex or gender to hate crime laws, concluding that adding sex or gender to hate crime laws would be "more harmful than helpful, both to victims of violence against women and girls, and also to efforts to tackle hate crime more broadly." The full report can be found here.

92. As a consequence of the Law Commission's recommendation, the Government subsequently disagreed with amendments tabled to the Police, Crime, Sentencing and Courts Bill that sought to add sex and/or gender to hate crime legislation. However, the Government recognises the strength of public feeling in relation to this issue, and violence against women and girls more generally. Section 72 therefore gives effect to the Government's commitment to prepare and publish a response to Recommendation 8 of the report within a year of the Act coming into effect. This response will be laid before Parliament.

93. Under the Law Commissions Act 1965, there is a formal legal requirement for the Government to report to Parliament annually on the extent to which the Government has implemented Law Commission recommendations from the preceding year. The Government's formal response to Recommendation 8 will be included in the full response to the Law Commission report.

Police powers to tackle non-violent protests

94. Current legislation to manage protests provides predominantly for powers to counter behaviours at protests which are violent or distressing to the public. These powers include those under the Public Order Act 1986 (the "1986 Act") which provides the police with powers to manage public processions and assemblies, including protests. Section 12 of the 1986 Act allows the police to impose any type of condition on a public procession necessary to prevent: serious disorder; serious damage to property; serious disruption to the life of the community; or if the purpose of the organiser is to intimidate others into doing or not doing something that they have a right to do, or to not do. Conditions that may be imposed on a public assembly are more limited, being restricted to specifying their maximum duration, maximum attendance and location (section 14(1) of the 1986 Act).

95. The tactics employed by certain protesters, for example gluing themselves to buildings or vehicles, blocking bridges or otherwise obstructing access to buildings such as the Palace of Westminster and newspaper printing works, have highlighted some gaps in current legislation. To address these gaps, Sections 73 to 75 and 79 amend the 1986 Act to:

- allow the police to place any necessary condition on a public assembly, as they can with a public procession;

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

96. Section 76 amends Part 3 of the Police Reform and Social Responsibility Act 2011 so that a police officer may direct an individual to cease, or not start obstructing the passage of a vehicle into or out of the Parliamentary Estate and expands the Palace of Westminster controlled area to ensure that all entrances are included. This measure follows the recommendation of the Joint Committee on Human Rights in their October 2019 Report "Democracy, freedom of expression and freedom of association: Threats to MPs" (First of session 2019, HC37 and HL Paper 5) for further legislation to protect the right of access to the Parliamentary estate for those with business there.

97. Section 77 further provides a power for the Secretary of State to make a provision to define a new controlled area around the temporary locations of Parliament when both Houses relocate as part of the Place of Westminster Restoration and Renewal Programme, or for any reason (e.g. an emergency relocation due to events such as a fire or flood). Some or all of the prohibited behaviours in the existing controlled area, as amended, as provided for in the Police Reform and Social Responsibility Act 2011, will be prohibited in the newly defined controlled area.

98. Section 78 gives effect to recommendations made by the Law Commission in their July 2015 Report on "Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency", that the common law offence of public nuisance should be replaced by a statutory offence covering any conduct which endangers the life, health, property or comfort of a section of the public or obstructs them in the exercise of their rights.

99. Section 80 increases the maximum penalty for willful obstruction of the highway from a level-3 fine to an unlimited fine and/or six-months imprisonment. It also clarifies that the offence can be committed even if the highway in question has been temporarily closed by the relevant authority.

100. Section 82 introduces expedited Public Spaces Protection Orders ("PSPOs"), which allow local authorities to make PSPOs outside schools, vaccine and test and trace centres, where protests are, or are likely to have the effect of harassing, intimidating or impeding those who work and use the services of these sites. Expedited PSPOs can last for a maximum of six-months and are not subject to the usual pre-consultation requirements of normal PSPOs. However, the council must carry out the necessary consultation as soon as reasonably practicable after making an expedited PSPO.

Unauthorised encampments

101. There are a number of powers available to the police and local authorities to tackle unauthorised encampments. Sections 61 to 62E of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") confer powers on the police to direct trespassers to leave land and to remove any vehicles or other property they have with them on the land. Sections 77 to 79 of the 1994 Act confer similar powers on

local authorities in respect of unauthorised encampments.[1] The vast majority of travelling communities reside in caravans on authorised sites. Out of the 24,203 caravans recorded in England in July 2021, only 707 (3%) were on unauthorised sites. Despite this relatively low proportion, there have been long-standing concerns about the disproportionate impact some unauthorised encampments can have. They can infringe upon the settled communities' rights through temporary loss of local amenities and can cause distress to local communities and local businesses.

102. Recognising these concerns, from 5 April to 15 June 2018, the Government ran a consultation on the effectiveness of enforcement against unauthorised encampments. The consultation sought views on the scale of the problem, whether existing powers could be used more effectively and if any additional powers were required. Alongside the Government response to the consultation published on 6 February 2019, the then Home Secretary announced the Government would look to amend sections 61 and 62A of the 1994 Act to enable unauthorised encampments to be tackled more effectively. He also confirmed that Home Office officials would review how the Government could criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales.

103. Following this a second consultation was launched on 5 November 2019 and ran until 4 March 2020. This consultation asked how to strengthen the police's powers to tackle unauthorised encampments. It included proposals to amend the 1994 Act and proposals for the introduction of a new criminal offence of trespass. The Government published its response to this consultation on 8 March 2021, setting out proposals to create a new offence and strengthen the powers in the 1994 Act; Part 4 gives effect to these proposals.

Road traffic

Road traffic offences

104. On 5 December 2016 the Government launched a consultation, "Driving offences and penalties relating to causing death or serious injury". The consultation sought views on specific offences dealing with causing death or serious injury, which had been identified as of the greatest concern to the public. The consultation ran until 1 February 2017.

105. The Government response to the consultation was published on 16 October 2017. The Government committed to bring forward proposals for reform of the law to:

- create a new offence of causing serious injury by careless driving;
- increase the maximum penalty for causing death by dangerous driving from 14 years to life imprisonment; and
- increase the maximum penalty for causing death by careless driving when under the influence of drink or drugs from 14 years to life imprisonment.

106. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 created an offence of causing serious injury by dangerous driving. The Criminal Justice and Courts Act 2015 added a further offence of causing serious injury while driving disqualified. There are therefore two "causing serious injury" driving offences, relating to dangerous driving and disqualified driving, but no offence with respect to serious injury resulting from careless driving.

[1] Count of Traveller Caravans, July 2021 England, Ministry of Housing, Communities and Local Government

107. A new offence of causing serious injury by careless, or inconsiderate, driving means that those who drive carelessly resulting in a person suffering serious injury will be liable to prosecution for a specific offence which carries a maximum penalty of a custodial sentence of 2 years on indictment rather than under the offence of careless, and inconsiderate, driving which has the maximum penalty of a fine. The Government believes that this new offence better reflects the overall seriousness of the careless, or inconsiderate, driving that leads to serious injury.

108. 14 years' imprisonment is the current maximum custodial penalty available for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs. Increasing the maximum penalty to life imprisonment for these offences will provide the courts with enhanced powers to sentence appropriately for the most serious cases.

109. Sections 86 to 88 of and Schedule 8 to the Act give effect to these measures.

110. The 2016 consultation also sought views on whether drivers should be given longer minimum periods of disqualification for offences of causing death by driving. 84% of respondents thought that consideration should be given to a longer minimum period of disqualification, demonstrating strong public support for a change.

111. Previously, section 34(1) of the Road Traffic Offenders Act 1988 provided for a minimum period of 12 months disqualification for an offence involving obligatory disqualification from driving, unless the court thought there were special reasons for disqualifying for less than this minimum or for making no order for disqualification. This minimum period increased to two years in the case of a conviction for the offences mentioned in section 34(4), which include the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs. The minimum period further increased to three years in the case of a conviction for causing death by careless driving when under the influence of drink or drugs, or any of the other offences listed in section 34(3), where the offender had been convicted of any such offence within the ten years immediately preceding the commission of the new offence. This scenario is known as a repeat offence.

112. Section 86 also increases the minimum period of disqualification for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs from two years to five years. This change supplements the increase in custodial sentences for these two offences from 14 years to life. In the case of a repeat offence where both the previous offence and the new offence consisted of causing death by careless driving when under the influence of drink or drugs, the period is increased to six years. This is in recognition of the fact that repeat offences of causing death by careless driving when under the influence are indicative of a pattern of reckless conduct in preparation for driving, with very serious consequences. Section 86 does not remove the discretion that judges and magistrates have to impose a shorter period of disqualification, or not to impose a disqualification, where there are special reasons which make this appropriate.

Courses offered as an alternative to prosecution

113. Persons who commit certain low-level road traffic offences (for example, being caught speeding by a speed camera, driving without due care and attention, traffic light offences or not wearing a seat belt) may be offered educational courses under existing powers (section 1 of the Local Government (Goods and Services) Act 1970 and section 143 of the Anti-Social Behaviour Crime and Policing Act 2014 read in conjunction with paragraph 14 of Schedule 1 to the Police Reform and Social Responsibility Act 2011). Such courses are offered as an alternative to a fixed penalty (www.ukroed.org.uk) and therefore a driver who successfully completes a course is not required to pay a financial penalty in relation to the offence, or to have points endorsed on their driving record. The current fee is around £100 as the exact course fee can vary according to local arrangements. This is charged to a driver who enrolls on a course, which covers the cost of the course, administrative expenses and an element to fund road safety programmes. Section 89 sets out a specific statutory basis

for this charging regime, putting beyond doubt the police's power to charge. It does not change the way in which courses are offered, administered or run, but provides greater transparency over the way that fees are set.

Charges for removal, storage and disposal of vehicles

114. Section 102 of the Road Traffic Regulation Act 1984 (the "1984 Act") enables charges incurred in the removal, storage and disposal of vehicles under sections 99 and 101 of that Act to be recovered. This includes where vehicles are removed:

- On a road in contravention of a statutory prohibition or restriction;
- On a road causing an obstruction to road users or likely to cause danger to them;
- On a road or any land in the open air and appearing to be abandoned without lawful authority;
- From a parking place where a vehicle has been left there in contravention of agreed conditions.

115. Following amendments to section 102(2) of the 1984 Act made by section 68 of the Road Traffic Act 1991 ("the 1991 Act") and paragraph 4(2) of Schedule 11 to the Traffic Management Act 2004 ("the 2004 Act"), section 90 amends section 102(2A) of the 1984 Act, returning the power to charge for the recovery, storage and disposal of vehicles in certain circumstances to a statutory footing. This section ensures that such statutory charging powers extend to the chief officer, local authorities, the Secretary of State and strategic highways companies once again.

Surrender of driving licences

116. The paper counterpart to the driving licence was abolished in June 2015 by the commencement of section 10 of and Schedule 3 to the Road Safety Act 2006. As a result, there is no further need for a physical driving licence to be produced and surrendered (either to the court where proceedings are commenced, or to a constable, vehicle examiner or fixed penalty clerk in relation to fixed penalties or conditional offers) for an endorsement to be recorded on an individual's driving record. Endorsement information is recorded on the electronic driver record held by the Driver and Vehicle Licensing Agency ("DVLA"). The only need for a licence to be produced or surrendered is therefore where the driver may be sentenced to disqualification or is actually disqualified.

117. Sections 91 to 96, and Schedules 9 and 10 update the law in relation to the production and surrender of driving licences so as to streamline the processes for the electronic endorsement of driving licences by removing the need for the physical licence to be produced. They also strengthen the rules for the surrender of driving licences where a driver faces disqualification.

Fixed penalty notices for certain road traffic offences - Scotland

118. Currently, the police throughout Great Britain have the power to issue a conditional offer of fixed penalty notice ("COFPN") under sections 75 to 77A of the Road Traffic Offenders Act 1988 (the "1988 Act"). This scheme was introduced in 1989 as an alternative to prosecution for certain low-level road traffic offences. Once a COFPN is issued, an individual has 28 days to accept the offer and make payment. If, in Scotland, the offer is not accepted or if the recipient fails to take any action, the police will submit a "Standard Prosecution Report" to the Crown Office and Procurator Fiscal Service for consideration of whether a prosecution should take place.

119. In England and Wales, in addition to powers to issue COFPN, section 54 of the 1988 Act allows the police and Driver and Vehicle Standards Agency ("DVSA") vehicle examiners to issue fixed penalty notices ("FPNs") on-the-spot to alleged road traffic offenders. The level of the monetary penalty varies depending on the offence. For example, the penalty is £100 for driving without due care

and attention, £200 for using a hand-held mobile phone while driving and £300 for driving without insurance. If the recipient does not either pay the fixed penalty on time or request a hearing in respect of the FPN, a sum equal to one and a half times the FPN amount becomes a registered fine and is collected and enforced in line with the normal procedures in place for court-imposed fines. There is no need for the police to report the matter to the Crown Prosecution Service, nor for a prosecution to take place. There is no equivalent power for police officers in Scotland to issue FPNs.

120. The Department for Transport, in partnership with the Scottish Government, ran a public consultation from 27 March to 8 May 2018 seeking views on whether to extend the power in section 54 of the 1988 Act to allow the police, traffic wardens and DVSA vehicle examiners to issue on-the-spot FPNs to suspected offenders of road traffic offences committed in Scotland. The consultation received 26 responses with the majority of respondents agreeing to the proposed changes. A response to the consultation was published in September 2020 accepting the Scottish Government's request to enable the police to issue FPNs to suspected offenders of road traffic offences committed in Scotland. Section 97 of the Act gives effect to these proposals.

Cautions

121. Out of Court Disposals ("OOCDs") are sanctions which allow the police to deal swiftly, proportionately and appropriately with low-level offending without the offender coming before court. They can maximise the use of officer time, achieving a satisfactory outcome for the public while allowing officers to spend more time on frontline duties tackling more serious and complex crime.

122. They are also an opportunity to provide intervention and support to offenders at an earlier stage in criminal behaviour, diverting them into rehabilitative services to help reduce escalation of offending. In this way, there is potential for a greater whole-systems approach, in particular diverting those who have mental health issues, health vulnerabilities or other complex needs into appropriate services as a condition of the disposal, getting to the root cause of their offending.

123. Police forces currently have access to up to six OOCDs for adults (Cannabis/Khat warning, Community Resolution, Penalty Notice for Disorder, Simple Cautions and Conditional Cautions). The Act will reduce this to two statutory OOCDs.

124. The Government and the police conducted a joint review of the existing OOCD framework in 2013, and held a public consultation, which ran from November 2013 to January 2014. The consultation responses confirmed that the OOCD framework was in need of reform. The joint Government and police response to the consultation was published in November 2014. It set out plans to reduce the number of disposals from six to two. A new 'two-tier framework' was piloted in three police forces.

125. A two-tier framework, based on the pilot forces, has been voluntarily adopted by a number of police forces to date through the National Police Chiefs' Council OOCD strategy which was published in 2017.

126. Part 6 of the Act gives effect to the Government's commitment to legislate, implementing the new two-tier framework to ensure transparency and consistency of approach for OOCDs across England and Wales. These measures introduce a two-tier legislative framework, comprising community and diversionary cautions to simplify the OOCDs framework. The new framework will still afford the police scope to innovate through local initiatives, such as deferred prosecution; the Ministry of Justice-led programme 'Chance to Change' is piloting such a scheme in two police forces areas as recommended by the Lammy Review.

Custodial Sentences

Penalty for cruelty to children

127. Currently, section 1 of the Children and Young Persons Act 1933 provides that the maximum penalty for cruelty to a person under 16 is 10 years' imprisonment; and section 5 of the Domestic Violence, Crime and Victims Act 2004 provides that the maximum penalty causing or allowing a child or vulnerable adult to suffer serious physical harm is 10 years' imprisonment and the maximum penalty for causing or allowing a child or vulnerable adult to die is 14 years' imprisonment.

128. Since 2016 Members of Parliament have, on several occasions, asked the Government to consider raising the maximum penalties for these offences amid concerns that they are insufficient to reflect the severity of the harm caused in extreme cases. In July 2021, in response to Tom Tugendhat MP raising the issue at Commons Report stage of the Police, Crime, Sentencing and Courts Bill, the Government undertook to consider it and to bring forward proposals for reform as soon as possible.

129. Following such consideration, the government decided to increase the maximum penalties for:

- cruelty to a person under 16 from 10 years' imprisonment to 14 years' imprisonment;
- causing or allowing a child or vulnerable adult to suffer serious physical harm from 10 years' imprisonment to 14 years' imprisonment; and
- causing or allowing a child or vulnerable adult to die from 14 years' imprisonment to life imprisonment.

130. This will ensure that the courts have the fullest range of sentencing powers available to deal appropriately with those who abuse children. Sections 122 and 123 give effect to these changes.

Minimum sentences for particular offences

131. For offenders who commit certain key offences of a serious nature, the law provides minimum custodial sentences. These generally, although not exclusively, apply to repeat offences, such as a third conviction for domestic burglary. These minimum sentences are not technically mandatory; rather they are a mandatory consideration that the court must make before passing a sentence. Courts have the discretion not to impose the minimum when it considers that there are particular circumstances pertaining to the offender and/or the offence which would make it unjust. The court will apply a reduction for an early guilty plea, although the reduction cannot take the sentence length to below 80% of the minimum.

132. A large proportion of repeat offenders do not receive the minimum custodial sentence. The Act aims to reduce the occasions in which the court could depart from the minimum term, by changing the threshold for passing a sentence below the minimum term for offences including: a third class A drug trafficking offence (7 years minimum); a third domestic burglary (3 years minimum); a repeat offence involving a weapon or bladed article (6 months minimum); and threatening a person with a weapon or bladed article (6 months minimum). The changes will also apply to 16- and 17-year-olds who receive a 4-month detention and training order ("DTO") for a repeat offence involving a weapon or bladed article or threatening a person with weapon or bladed article.

133. These changes will also align the criteria used for these offences with section 311 of the Sentencing Code ("the Code") (as introduced by the Sentencing Act 2020 (the "2020 Act")), which states, in relation to offences involving firearms, that the court must impose an appropriate custodial sentence of at least the minimum term unless the court is of the opinion that there are "exceptional" circumstances which relate to the offence or to the offender which would justify not doing so.

134. Section 124 and Schedule 12 amend sections 312 to 315 and 320 of the Code in relation to the offences mentioned above so that it requires the court to impose a custodial sentence of at least the statutory minimum term unless there are exceptional circumstances that relate to any of the offences or to the offender which would make it unjust to do so. Judicial discretion to depart from the minimum is retained.

135. These changes will apply only prospectively, and the court will continue to apply a discount for an early guilty plea, not below 80% of the minimum.

Whole life order as a starting point for premeditated child murder

136. Section 125 expands the existing criteria, set out in Schedule 21 to the Code, so that the premeditated murder of a child should have, as its starting point, a whole life order when it comes to a court passing sentence. This change is being made to reflect the particularly heinous nature of such murders, ensuring they can be met with the most severe punishment that is available.

Whole life orders for young adult offenders in exceptional cases

137. Currently, whole life orders can be imposed only on offenders aged 21 and over. Section 126 will make it possible for judges to impose whole life orders on offenders aged 18 to 20 in exceptional and serious circumstances. The measures will amend provisions in the Code, which deals with whole life orders, so that, although it will remain the case that such sentences cannot ordinarily be imposed on offenders below the age of 21, judges have the option of imposing them in particularly rare and serious cases.

Starting points for murder committed when under 18

138. Detention at Her Majesty's Pleasure ("DHMP") is a mandatory life sentence for offenders who commit the offence of murder when they are a child, as set out in section 259 of the Code. As with all life sentences, the court must set a minimum term to be served in custody before the offender can be considered for release by the Parole Board. Paragraph 6 of Schedule 21 to the Code sets the minimum term starting point at 12 years for all children. Section 127 amends the Code to introduce a sliding scale of starting points for minimum terms. The scale takes into consideration the age of the child and the seriousness of the murder. The older the child and the more serious the murder, the higher the starting point.

139. Those who are sentenced to DHMP can currently apply for a review of their minimum term at the halfway point. The purpose of the review is to determine if the existing minimum term is still appropriate, in light of the individual's progress in custody. The individual can apply for further reviews every two years under current policy. Section 128 enshrines the minimum term review process into legislation. It also removes eligibility for continuing reviews past the age of 18. Those sentenced to DHMP will be eligible for only a single review at the halfway point of their minimum term but no further reviews once they have turned 18. Those who were already age 18 or over at sentencing will no longer be eligible for any minimum term review.

Life sentence not fixed by law: minimum term

140. Discretionary life sentences may be imposed where a serious offence (such as manslaughter, rape or grievous bodily harm with intent) has been committed. When imposing such a sentence, the court must set a minimum term (commonly known as a tariff) that must be served in full in custody before the prisoner can be considered for release by the Parole Board. Section 129 changes the way in which the starting point for discretionary life sentence minimum terms are calculated so that there is greater consistency across the sentencing framework as it applies to serious offences.

141. The change will require courts to base the minimum term on a starting point of at least two-thirds of a notional determinate sentence instead of half of such a sentence as at present. This change is necessary because most serious violent and sexual offenders who receive determinate sentences –

including those who may receive an extended determinate sentence – are required to serve two-thirds of their custodial term before they may be released. The Government has also legislated through the Counter-Terrorism and Sentencing Act 2021, to require that the most serious terrorist offenders given a determinate sentence serve the whole of their custodial term before they can be released. To ensure consistency with that position, where a prisoner receives a discretionary life sentence instead of such a determinate sentence, this change provides that the starting point for the minimum term would be the whole of the custodial term for that notional determinate sentence.

142. The measure will amend section 323 of the Code and will mean that those serving discretionary life sentences should serve longer in prison before being considered for release by the Parole Board.

Abolishing automatic halfway release for certain serious offenders

143. Standard release provisions are set out in section 244 of the Criminal Justice Act 2003 ("CJA 2003"), which before 2020 provided in all cases that offenders in receipt of a standard determinate sentence ("SDS") for any offence would be automatically released from their sentence at the half-way point and they would then serve the remainder of their sentence on licence in the community. The Government's 2019 manifesto committed to "end automatic halfway release from prison for serious crimes".

144. In February 2020, this halfway release requirement was changed for terrorist offenders in receipt of an SDS, by the Terrorist Offenders (Restriction of Early Release) ("TORER") Act 2020, so they would instead have to serve two-thirds of their sentence before the Parole Board would consider if they were safe for early release. This fast-track legislation was brought forward following the terror attacks at London Bridge and in Streatham.

145. In relation to non-terrorist offenders, the Release of Prisoners (Alteration of Relevant Proportion of Sentence) ("ROPARPS") Order 2020 (SI 2020/158) came into force on 1 April 2020. This Order ensured that offenders who receive an adult SDS of 7 years or more, for an offence that attracts a maximum life sentence, must serve two-thirds in custody before they are automatically released on license for the remainder of the sentence.

146. Section 130 further expands on this to deliver the manifesto commitment, providing that offenders sentenced to an adult SDS of between 4 and 7 years for certain serious violent and sexual offences (where that offence attracts a maximum penalty of life) will be required to serve two-thirds of their sentence in custody instead of half. It also enshrines the provisions of the ROPARPS Order 2020 in primary legislation.

147. The release provisions that are set out in section 244 of the CJA 2003 also apply to section 250 sentences (standard determinate sentences for youths). This Act changes the automatic release from half-way to the two-thirds point for those who receive a section 250 sentence of seven years or more for certain serious violent and sexual offences (where that offence attracts a maximum penalty of life).

148. Sections 130 and 131 are required to ensure that the proportion of the sentence served in custody reflects the gravity of the offence committed, and to address concerns about the current automatic halfway release of offenders who have committed very serious violent and sexual offences.

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

149. Offenders who are assessed as dangerous by the sentencing court may be sentenced to an extended determinate sentence and may be released only before the end of their custodial term if the Parole Board assess they no longer pose a public protection risk. The majority of offenders who are not assessed as dangerous by the sentencing court will be given an SDS. They will be automatically released before the end of their sentence – either at the half way point or the two-thirds point of the sentence – to serve the remainder of the sentence on licence in the community.

150. The Government introduced fast-track legislation after the terrorist attack in Streatham in February 2020, the TORER Act 2020, to ensure that those convicted of terrorist or terrorist-connected offences serving standard determinate sentences could not be released before the end of their sentence without the approval of the Parole Board.

151. Section 131 builds on this approach by introducing a new power for the Secretary of State to prevent the automatic early release of prisoners serving an SDS who are identified as a significant public protection concern while they are imprisoned. This measure will ensure that prisoners who become dangerous or are identified as dangerous in prison following conviction and sentencing are not subject to automatic release before the end of their sentence. They will instead be assessed by the Parole Board who will determine if they can be safely released on licence before this point. There will be no provision for holding an offender in custody beyond the end of the sentence handed down by the court.

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

152. A Sentence for Offenders of Particular Concern ("SOPC") must be imposed where there is a conviction for a specified offence (certain terrorist offences and the two most serious child sex offences - rape of a child under 13 and sexual assault of a child under 13) but the offending is not deemed serious enough to attract a life sentence and where the court assesses that the offender is not dangerous and therefore does not require an extended determinate sentence. Under this sentence, an offender may be considered for early release (at either the halfway or two-thirds point of the custodial term) by the Parole Board. If not released early, they must be released at the end of their custodial term to serve a further period of 12 months on licence. The TORER Act 2020 moved the earliest release point for terrorist offenders sentenced to a SOPC from halfway to two-thirds.

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

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

154. The courts have recently found that there is no power in the current legal framework for the Parole Board to re-open a case where they have made a decision, other than under the terms of the reconsideration mechanism which the Government introduced in the Parole Board Rules 2019 (SI 2019/1038). The scope of that mechanism was deliberately restrictive to ensure it was within the power set out in primary legislation to make rules. This means that there is the potential for the Secretary of State to be required by legislation to release a prisoner at the direction of the Parole Board, even where the parole decision may be based on an error of fact or law. In that situation the only recourse available is to apply to the High Court for the decision to be set aside, which is a costly and time-consuming process.

155. To remedy this, section 133 provides that the rules the Secretary of State may make may confer a power on the Parole Board to set aside its own release decisions administratively on application from the Secretary of State without the need for a judicial review of the decision by the High Court.

156. The reconsideration mechanism requires the Parole Board to take decisions which are provisional for 21-days, during which time a reconsideration application may be made. The power for the Board to make provisional decisions currently exists only in secondary legislation. The lawfulness of that approach was tested in the High Court and while the Government successfully defended the claim, section 133 now puts this question beyond doubt by making specific provision for the Parole Board to be able to make provisional decisions and reconsider those decisions.

Responsibility for setting licence conditions for fixed-term prisoners

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

158. The provisions made by section 134 will create a clear, consistent and logical split in responsibility for licence conditions for determinate sentence prisoners. This will be easier to operate in practice and corrects the current inconsistent approach that has evolved through the CJA 2003 following previous changes to the release and recall provisions. Licence conditions for indeterminate prisoners will remain the responsibility of the Parole Board.

Repeal of uncommenced provision for establishment of recall adjudicators

159. The Criminal Justice and Courts Act 2015 ("the 2015 Act") introduced provisions for the creation of a new body of decision makers called 'recall adjudicators'. This was done with the intention of removing from the Parole Board the responsibility for reviewing the detention of recalled fixed-term prisoners and instead have those cases reviewed by recall adjudicators appointed by the Secretary of State. This was conceived in order to reduce pressure on the Parole Board because of the large and increasing backlog of oral hearings that had developed since the 'Osborn' Supreme Court judgment in 2013, which required the Parole Board to direct a higher proportion of cases to an oral hearing as opposed to a decision on the papers.

160. Following Royal Assent of the 2015 Act, implementation was delayed by the General Election. In the intervening time new ways of working enabled the pressure on the Parole Board to be reduced and the backlog of cases awaiting an oral hearing to be eliminated. As a result, it was no longer necessary to implement those provisions and they have become redundant. Section 135 repeals these provisions.

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

161. Section 136 makes a number of minor changes and fixes to the provisions in the CJA 2003 dealing with recall and re-release of fixed-term prisoners. These measures will ensure that the Parole Board applies the same 'public protection' release test as they apply in all other parole cases when considering the re-release of recalled fixed-term prisoners. In practice, the Parole Board already applies this test in these cases so this change will simply fill a gap in the legislation where there is currently no provision for the test the Board should apply.

162. Section 136 also removes the current provision which allows the Parole Board to direct release of a fixed-term prisoner on a specified future date (in section 256 of the CJA 2003). This is undesirable because it creates an expectation of release on that date, which may not be possible if other conditions of release also need to be fulfilled. In those circumstances, applications are required to the Parole Board to change the timing of its release direction. This provision is therefore being removed and replaced with a new provision as to timing (see below).

163. Section 136 also amends the existing provision so that, in a case where a recalled determinate prisoner has less than 13 months remaining on their sentence (at which point they must then be released automatically), there is no requirement on the Secretary of State to make the further annual referral to the Parole Board. This is on the basis that the prisoner will be due for release in any event at the end of their sentence by the time that further review would take place, so such a referral serves no useful purpose.

164. Current legislation also unnecessarily requires a recall case to be referred to the Parole Board to consider re-release even where another sentence is being served from which release is not yet possible. Provision is made (new section 256AZA of the CJA 2003) to remove that requirement and thereby avoid unnecessary referrals to the Parole Board.

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

165. The new measures (contained in section 137) provide that when considering the release of recalled fixed-term prisoners, the Parole Board is required to apply the same test as for any other parole case; that is, that the Parole Board must be satisfied that the prisoner's detention is no longer necessary for the protection of the public.

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

167. In addition, section 137 also makes similar provisions for a power to amend the test in the CJA 2003 that the Secretary of State applies when deciding whether a 'fixed term recall' may be appropriate (under section 255A) and when deciding whether to re-release a recalled prisoner under sections 255B or 255C.

Imprisonment for public protection etc: duty to refer person released on licence to Parole Board

168. Following release from prison, offenders serving Imprisonment for Public Protection ("IPP") (and youth and armed forces equivalents) will remain on licence in the community for the rest of their lives or until their licence is terminated.

169. IPP offenders are entitled to make an application to the Parole Board to have their licence terminated once 10 years has elapsed from their first release from prison.

170. The Parole Board will only direct that the licence should cease to have effect if it is 'satisfied that it is no longer necessary for the protection of the public that the licence should remain in force'. If the Parole Board determines that the licence is no longer necessary, the individual will no longer be subject to the terms of the licence or any supervision under it and cannot be recalled to prison.

171. Typically, the Secretary of State applies to the Parole Board for licence termination on the behalf of eligible offenders; though, as the legislation is framed as a right conferred on the prisoner to make an application, the Secretary of State must first obtain permission from the offender prior to making the application.

172. Section 138 will instead require the Secretary of State to make a referral to the Parole Board for licence termination (instead of the offender) and therefore removes the need for the Secretary of State to seek prior permission from the offender before doing so. This will better enable (and require) the Secretary of State to make referrals on behalf of offenders where their permission may be difficult to obtain; for example, where the offender's supervision has been suspended and the individual is no longer required to maintain contact with a probation office.

173. This section also clarifies that time spent in custody following recall does not affect the calculation of the qualifying period and neither does the fact that the offender is in custody following recall. If this is the case, the Parole Board must instead determine if it is necessary for the protection of the public that, when released, the offender remains under the IPP licence.

174. Section 138 also requires that where the referral for licence termination is rejected by the Parole Board, the Secretary of State must then automatically re-refer them every 12 months for consideration.

Release at direction of Parole Board: timing

175. Section 139 amends existing legislation regarding the timing of a prisoner's release following a direction by the Parole Board. In all cases, when the Parole Board directs release, the Secretary of State must give effect to the direction 'as soon as it is reasonably practicable' to do so. In recall cases, the Parole Board will no longer be able to direct 'immediate' release. The reason for these changes is that in practice, decisions described as requiring 'immediate release' are unhelpful and unnecessary. They may create an expectation that release will take place immediately after the Board decision is made, which may not be possible due to the need to make necessary arrangements for the licence conditions the Board stipulates the prisoner must be subject to on release (for example, a requirement to reside in an approved premises).

Driver disqualification

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

177. Alongside a discretionary disqualification period, which is set at the discretion of the court, a judge must impose the appropriate extension period. This period is imposed to ensure that, as far as is possible, the total disqualification period is equal to the anticipated time actually spent in custody (the extension period) plus the discretionary disqualification period imposed by the court. To achieve this, sections 140 to 142 amend the appropriate extension periods prescribed in Chapter 1 of Part 8 of the Code; section 248D of the Criminal Procedure (Scotland) Act 1995; and the Road Traffic Offenders Act 1988, so the appropriate extension period accurately correlates with the new release provisions. Section 143 amends the equivalent driving disqualification provisions as they relate to Scotland to ensure they continue to operate correctly.

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

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

179. Section 146 makes provision to enable the Secretary of State to add polygraph testing as a licence condition for individuals convicted of sexual offences or domestic abuse offences subject to release on licence, who have been convicted under service law, or who are repatriated to England or Wales from overseas. The Act also updates and extends the list of sex offences eligible for polygraph testing.

180. Section 28 of the Offender Management Act 2007 enables the Secretary of State to impose a polygraph testing licence provision on an offender released on licence in England and Wales. The current arrangements for testing sex offenders commenced in January 2013, following a successful pilot of polygraph for sexual offenders. Polygraph testing is included as an additional licence condition for all serious sexual offenders (in the case of indeterminate sentenced prisoners, with the consent of the Parole Board). In addition, probation officers have the discretion to propose the condition for some less serious offenders, where it is deemed necessary and proportionate to do so.

181. There is currently no ability to impose polygraph conditions on sex offenders and domestic abuse offenders who meet the criteria and are repatriated offenders, or service offenders. It is considered that the Secretary of State's ability to include a polygraph testing condition should be extended to sex offenders and domestic abuse offenders who are repatriated to England and Wales from overseas, or

who are service offenders. This will ensure that the management of those offenders will benefit from the polygraph and will put beyond all doubt who should be made subject to testing. It will also make it consistent with the legislation that applies to terrorist offenders.

182. The section retains existing sexual offences which are eligible for polygraph, and additionally expands the list to include sexual offences listed in Schedule 3 to the 2003 Act (the specified list of sexual offences for which notification requirements must be imposed). This will ensure consistency, both in the management of sex offenders and between jurisdictions when an offender is transferred from Scotland or Northern Ireland to serve their licence period in England and Wales and ensure current offences of concern in all jurisdictions are reflected.

Minor amendments to do with weapons-related offences

183. Section 147 streamlines the release point for two specific (and very rarely charged) offences relating to the use of nuclear material and weapons-related acts overseas, to ensure where the offender is sentenced to a standard determinate sentence of 7 years or more they will be automatically released after two-thirds of their sentence. This is necessary as the offences, though serious, are not inherently terroristic offences and ought properly to be located in Part 1 of Schedule 15 to the CJA 2003 (specified violent offences).

Application of various provisions to service offences

184. The service justice system – the criminal justice system that applies to UK service personnel – uses a modified form of the sentencing law of England and Wales which is set out in the Armed Forces Act 2006. Where changes are made to the England and Wales civilian sentencing and release framework, it is the policy position that, where appropriate, service offences and the sentences they attract should reflect those changes to keep the criminal justice system and the service justice system aligned. Section 148 therefore contains minor amendments to existing service law to ensure that this is the case.

Community Sentences

Strengthening supervision powers for probation practitioners

185. There is currently a lack of clarity in legislation around a Responsible Officer's ability to instruct an offender, who is subject to a community order or a suspended sentence order, to attend supervision appointments. This is problematic in scenarios where additional appointments are required to address non-compliance with a requirement of the court, or where possible public protection concerns have arisen, including post-completion of a requirement of the court.

186. In order to rectify this, section 149 clarifies the scope of supervision powers available to Responsible Officers. This will be achieved by creating a power which will provide Responsible Officers with the ability to require offenders to attend appointments at any stage of a community order or during the supervision period of a suspended sentence order.

187. The measure will also place a duty on offenders to comply with requests for additional appointments given by their Responsible Officer, failure to do so will result in enforcement action.

188. In order to achieve this in legislation, the Act amends the Code by strengthening the existing "keep in touch" duty.

Increases in maximum daily curfew hours and curfew requirement period

189. A curfew is a requirement of a community order or suspended sentence order. It requires that the offender must remain for the periods specified at a place also specified. Chapter 2 of Part 9 and Chapter 5 of Part 10 of the Code are concerned with community orders, suspended sentence orders and the imposition of a curfew requirement. The measures in sections 150 and 151 will make curfews more flexible and allow them to be imposed more creatively by courts.

190. Currently, a community order or suspended sentence order may specify a maximum of 16 hours curfew per day, providing in practice a weekly maximum of 112 hours of curfew. Section 150 will increase the daily maximum to 20 curfew hours per day, whilst maintaining the seven-day period maximum of 112 hours. Paragraph 9 of Schedule 9 to the Code (on curfew requirements) is amended to reflect a new daily maximum of 20 hours and to operate within the seven-day period maximum limit. The purpose of this change is to allow for a curfew to have a greater impact on specified days. This will also allow for the total hours falling in a seven-day period to be used more creatively and flexibly by decision makers, enabling them to target what could be considered 'leisure days' for more punitive hours than is currently available to them.

191. At present, a curfew can be imposed for a maximum of 12 months. This section also increases the maximum length of time a curfew can be imposed for to two years, by amending paragraph 9 of Schedule 9 to the Code. This change will increase the punitive weight of a curfew requirement, but also has the potential to support rehabilitation by providing a longer period during which some of the positive effects of curfew could be established, such as deterring criminal associates. It is envisaged that courts will be able to use longer curfews in particularly serious cases, where a sentence served in the community may be more effective in preventing future re-offending, alongside appropriate consideration of a custodial sentence.

192. Where an offender is brought before the court on or after the commencement of these provisions in the Act for breach of an order which was made before such commencement, the court may impose a curfew according to the new measures.

193. Finally, any changes to the curfew, however small, must currently be approved by the court. Section 151 gives power to the responsible officer (as defined in section 213 and 299 of the Code i.e. probation officers) to vary electronic monitoring requirements within a prescribed range of circumstances limited to such an extent that they do not undermine the weight or purpose of the requirement as imposed by the court. The scope of the power to amend the requirement is limited to two aspects:

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

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

Removal of attendance centre requirements for adults

195. This measure will abolish Senior Attendance Centres ("SACs") by removing SAC requirements from the menu of sentencing options available to sentencers.

196. SACs are rarely used and the Government believes their removal will promote simpler and more consistent sentencing, with the needs of young adult offenders better met by other available community sentence requirements.

197. Section 152 amends the Code so that SACs requirements are no longer available to sentencers, unless the offender was convicted of the offence before the date on which the amendment came into force.

Problem-Solving Courts

198. In 2016 a Problem-Solving Court Working Group, established by the then Lord Chancellor, Rt Hon Michael Gove MP, and the Lord Chief Justice, concluded that a new problem-solving court model that more closely resembles international best practice by incorporating a core set of elements should be tested here.

199. Historically elements of a problem-solving approach have been trialed separately across England and Wales. For example: Liverpool Community Justice Centre, Family Drug and Alcohol Courts, and Greater Manchester's female-focused approach.

200. The Government has committed to piloting Problem-Solving Courts in up to five locations in a way that incorporates previously tried problem-solving approaches. Many of the elements needed to run a problem-solving court approach based on best practice already exist; for instance, the ability for the sentencer to order a detailed pre-sentence report and in some cases to review an individual's progress during the sentence.

201. Some legislative changes are necessary to ensure that the recommendations made by the 2016 Working Group can effectively be put into practice and to ensure that a thorough evaluation can take place:

- giving the court a power to regularly review community and suspended sentence orders and to initiate breach proceedings at a review hearing;
- expand the power to test for illicit substances outside the provisions of drug rehabilitation requirements; and
- enable the court to impose short custodial penalties for non-compliance.

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

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

Unpaid Work consultation duty

204. Currently probation officials have no formal requirement to consult local stakeholders on the design or delivery of Unpaid Work carried out by offenders as part of a community sentence. Section 155 creates a new statutory duty requiring probation officials to consult key local and regional stakeholders on the design and delivery of Unpaid Work.

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

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

Assaults on those providing a public service etc

207. The retail sector and other sectors with staff providing a service to the public have seen an increase in the frequency and severity of violence and abuse experienced by staff and there have been calls for the Government to act. The Crime Survey for England and Wales estimated that in the year to March 2020 there were 688,000 incidents of violence experienced at work by adults in employment. Research by the Institute of Customer Service estimates that customer-facing staff account for 61% of the nation's workforce.

208. In July 2020 the Government published its response to a Call for Evidence on Violence and Abuse toward Shop Staff. The Call for Evidence sought to understand the extent of violence against shop staff, as well as the application of the current legislative framework, and response by the police and wider criminal justice system to enable Government to understand whether there are any gaps in current legislation and consider the case for reform. Responses highlighted that often incidents of violence and abuse are not reported to police. Reasons given included a lack of police response to a previous incident; employers discouraging their workforce from reporting incidents; employers or employees considering incidents were not serious enough to be reported to police; and a general sense that abuse was 'part of the job'. Those in favour of changing the law to increase the penalty for assaulting a shop worker suggested it was required to deter potential offenders and ensure an effective criminal justice response to these crimes when they occur. At that time, whilst the Government recognised the motivations behind this suggestion, it did not consider that a case had yet been made for a change in the law. The Government Response to the Call for Evidence set out a programme of work to address the issues raised.

209. In Summer 2021, the Home Affairs Select Committee (HASC) conducted an inquiry into violence and abuse towards retail workers. The HASC concluded there is a strong case for extra protection in law for retail workers, and recommended the Government should consult urgently on the scope of a new standalone offence. In response to an amendment tabled to the Police, Crime, Sentencing and Courts Act, the Government committed to consider an amendment to legislation.

210. Section 156 seeks to reduce violence and abuse against all workers who provide a service to the public, perform a public duty or provide a public service. The provision places in statute the aggravating factor set out in the Sentencing Council's sentencing guidelines that is applied by the courts in cases of assault where an offence is committed against such workers.

Youth Justice

Remand

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

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

213. Section 157 amends the LASPO framework to tighten the tests the courts must satisfy to decide when to remand a child to custody. The aim of the policy is to encourage courts to impose custodial remand only where absolutely necessary, while ensuring the public remains safe.

214. Section 157 introduces a statutory duty for courts to consider the welfare and best interests of the child when making remand decisions. It amends the tests courts must apply to determine whether to remand a child into custody and makes it a statutory requirement for the courts to record the reasons for their decision, which will also reinforce the existing presumption of non-custodial remand by ensuring the courts consider remand to LAA as a first step. These provisions amend the 'real prospect' test and the 'necessity condition,' so that remand in Youth Detention Accommodation (Young Offender Institution, Secure Training Centre or Secure Children's Home) can be imposed only for the most serious cases, where a custodial sentence appears the only option and the risk posed by the child cannot be safely managed in the community.

Detention and Training Orders

215. A Detention and Training Order ("DTO") is a youth custodial sentence that can be given for 4, 6, 8, 10, 12, 18 or 24 months. This is fixed in section 236(1) of the Code and is the only youth sentence with fixed lengths. Section 158 amends the Code to remove the fixed lengths so that a DTO of any length, from 4 to 24 months can be given.

216. Time spent on remand or bail (where it is subject to a qualifying curfew condition and an electronic monitoring condition) is currently taken into account by the court in their sentence calculation when deciding which of the fixed lengths to impose. Schedule 16 amends the Code so that so that time spent on remand or on qualifying bail is to count as time served under sections 240ZA and 240A of the CJA 2003.

217. When a DTO and another sentence of detention are served consecutively, the order in which the sentences are given, impacts on the amount of early release available. Section 159 removes this inconsistency.

Youth Rehabilitation Orders

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

219. Section 161 will make the following changes to the YRO:

a) a standalone electronic whereabouts monitoring requirement will be added to the list of available requirements;

b) the curfew requirement will be amended to raise the maximum number of daily hours from 16 to 20 while retaining a weekly maximum of 112 hours;

c) youth offending teams or probation staff will be made the Responsible Officers for YROs with electronic compliance monitoring requirements;

d) the maximum length of the extended activity requirement of a YRO with Intensive Supervision and Surveillance will be extended from 180 days to 365 days;

e) a mandatory location monitoring requirement will be added to YROs with Intensive Supervision and Surveillance; and

f) the age limit of the education requirement will be raised so that it is the same as the age of compulsory education and training, rather than compulsory school age.

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

Abolition of Reparation Orders

221. The Reparation Order was introduced in the Powers of Criminal Courts (Sentencing) Act 2000 ("PCC(S)A"), and now set out in sections 109 to 116 of the Code. It requires an offender to make reparation to the victim(s) of the offence or to the community at large. Since the PCC(S)A came into force, other sentences which allow for reparation, such as the YRO, have been introduced and usage of the Reparation Order has declined significantly. As a consequence of this decline, section 162 abolishes the Reparation Order.

Secure Children's Homes and Secure 16 to 18 Academies

Temporary release from secure children's homes

222. Temporary release is an essential part of the successful rehabilitation of children who are sentenced to custody. Some objectives of a child's sentence plan will require them to attend meetings or participate in activities outside the secure establishment.

223. The Youth Custody Service and Secure Children's Homes ("SCHs") providers currently rely on inherent powers to make arrangements for the mobility of children detained in such accommodation to help address their offending behaviour and to support the integration of children back into the community at the end of their sentence. Section 163 places existing provisions on a statutory basis. The Secretary of State and SCH registered managers will be able to temporarily release children detained following a court sentence or breach of a civil order. As secure 16 to 19 academies will be legally constituted as SCHs, this will also have the effect of conferring autonomy on that provider to take decisions about temporary release.

Secure 16 to 19 academies

224. Secure 16 to 19 academies are a new type of custodial provision for children and young people remanded or sentenced to detention in relation to a criminal offence. They will be run by child-focused providers and create a therapeutic environment within a secure setting, in line with international evidence that this is the most successful approach in reducing reoffending.

225. They will be dually established as 16 to 19 academies and SCHs. This means that they must be principally concerned with the provision of education to young people between the ages of 16 and 19. The Government intends that the majority of young people to be accommodated in secure 16 to 19 academies will fall within this age range.

226. Key to the vision for secure 16 to 19 academies is the autonomy of providers. The market for providers consists primarily of charities at the present time. This legislative change aims to provide confidence to future secure school providers regarding their ability to autonomously operate secure schools in line with both their charitable objects and the Government's vision.

Serious Violence Reduction Orders

227. Recorded knife crime has risen over a period of years. Police recorded offences in England and Wales involving knives and sharp instruments totaled 46,265 in the year ending March 2020, up from 43,706 offences in the year ending March 2019.

228. There are a number of existing powers to enable the police to tackle knife crime.

229. Section 1 of the Police and Criminal Evidence Act 1984 allows an officer to search someone if they have reasonable grounds to suspect that they are carrying a knife to commit an offence or carrying an offensive weapon. Section 60 of the 1994 Act allows a constable, on the authorisation of an officer of the rank of inspector or above, where serious violence is anticipated, to search anybody, without suspicion, to see if they are carrying an offensive weapon or dangerous implement. The section 60 powers are strictly limited and can be used only in a specific area and for a short time period.

230. The Offensive Weapons Act 2019 introduced Knife Crime Prevention Orders, which apply to adults and children aged 12 or over, and will allow a court to impose specific requirements or restrictions for example prohibiting a person from being in a certain place, associating with particular people or undertaking certain activities.

231. A number of offenders who carry knives and weapons go on to offend repeatedly. The proportion of offenders for whom a knife related conviction was their first knife or offensive weapon offence has been decreasing and was at 71% for the year ending September 2019, its lowest level since 2009.

232. The Government, in their 2019 manifesto, pledged to make it "easier for officers to stop and search those convicted of knife crime." A public consultation ran from 14 September to 8 November 2020 seeking views on a new order, the Serious Violence Reduction Order ("SVRO"), which would work in conjunction with current stop and search provisions and target individuals who have been convicted of a relevant knife-related offence. The consultation received 549 responses. Of those responding, 77.8% agreed that a new order should be created.

233. The Government published its response to this consultation on 9 March 2021. The response set out proposals for a new order that the courts can make in respect of a person convicted of a knife or offensive weapon related offence. The Government's response also set out that these orders would initially be subject to a pilot in a small number of police forces to build an understanding of the effectiveness of the new orders. Chapter 1 of Part 10 provides for SVROs.

Knife Crime Prevention Orders

234. The Offensive Weapons Act 2019 introduced Knife Crime Prevention Orders, which apply to adults and children aged 12 or over, and allow a court to impose specific requirements or restrictions for example prohibiting a person from being in a certain place, associating with particular people or undertaking certain activities.

235. The provision in Chapter 2 of Part 10 makes it explicit that, if an application for a knife crime prevention order is made following a defendant's conviction for an offence, the court may adjourn proceedings on the application after sentencing the defendant.

Management of sex offenders

236. Under Part 2 of the 2003 Act, offenders who receive a conviction, caution, or finding for specified sexual offences are automatically required to provide the police with a record of (amongst other things) their: name, address, date of birth, national insurance number, any foreign travel, where they are living in a household with a child under the age of 18, their bank account and credit card details, and information about their passports or other identity documents. This must be done annually and whenever their details change.

237. In addition, Part 2 of the 2003 Act provides for various civil preventative orders, including the Sexual Harm Prevention Order ("SHPO") and the Sexual Risk Order ("SRO"), to protect the public from sexual harm. A SHPO may be imposed on someone who has a finding, conviction or caution for a specified sexual or violent offence. A SHPO may be made either by a court on conviction, or by a magistrates' court on application by the police or National Crime Agency. An SRO may be imposed on a person without a conviction but who poses a risk of sexual harm.

238. These orders can include any prohibition the court considers necessary for the purpose of protecting the public from sexual harm, including the prevention of foreign travel to any country or countries specified in the order. Any prohibition must be necessary for protecting the public in the UK from sexual harm or, in relation to foreign travel, protecting children or vulnerable adults from sexual harm outside the UK.

239. In January 2021, the Government published its "Tackling Child Sexual Abuse Strategy" which committed to measures to strengthen these orders. The provisions in Chapter 3 of Part 10 seek to improve the efficiency and effectiveness of these orders and the notification requirements for registered sex offenders by:

- Enabling positive obligations to be imposed through SHPOs and SROs.
- Making it clear that a court may include an electronic monitoring requirement through SHPOs and SROs.
- Providing for the civil standard of proof ('balance of probabilities') to apply when the court is deciding an application for an SHPO or SRO (in determining whether the individual has done the act in question).
- Removing a requirement for the Secretary of State to prescribe a list of police stations where registered sex offenders must notify and enabling the police to determine and maintain the list directly.
- Enabling the police to make sex offenders who are convicted of or cautioned for specified sexual offences abroad subject to notification requirements without the need for a court order.
- Providing for the reciprocal enforcement of SHPOs and SROs throughout the United Kingdom.
- Enabling the British Transport Police and Ministry of Defence Police to apply for an SHPO or SRO.

240. The Independent Inquiry into Child Sexual Abuse (IICSA), chaired by Professor Alexis Jay OBE, was set up in 2014 because of serious concerns that some organisations had failed and were continuing to fail to protect children from sexual abuse. IICSA recommended in its Children Outside the UK report, published in January 2020, that more could be done to protect children outside the UK from sexual abuse. In particular, IICSA recommended greater use of foreign travel restrictions through SHPOs and SROs via the establishment and maintenance of a list of countries where children are considered to be at high risk of sexual abuse and exploitation from overseas offenders to be used by police and the courts when considering foreign travel restrictions for offenders through these orders. Sections 172 and 173 gives effect to this IICSA recommendation.

Management of terrorist offenders

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

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

243. Following the terrorist attack in Fishmongers' Hall, London, in November 2019, (which was committed by a terrorist offender released on licence) the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, was asked to undertake an independent review of MAPPA regarding

the management of terrorist offenders and other offenders of terrorism concern. Under current MAPPA arrangements, offenders convicted of a terrorism offence listed in Part 3 of Schedule 15 to the CJA 2003 must be managed under MAPPA, whilst other terrorism or terrorist connected offenders are managed under the discretionary power in section 325(2)(b) which allows for management of other offenders who are assessed to pose a risk to the public. The outcome of the independent review was published on 2 September 2020 and concluded that MAPPA was a well-established process which did not require wholesale change. Instead, the review recommended a number of legislative changes to the current system including additional powers to better manage offenders who present a risk of committing an act of terrorism, including:

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

244. On 17 December 2020, the Government set out its response to the independent review of terrorist supervision in a Written Ministerial Statement and a letter to Jonathan Hall QC. In the statement, the Government committed to bringing forward legislation to introduce further powers for the police and probation service in line with Jonathan Hall QC's recommendations. Chapter 4 of Part 10 of the Act gives effect to the above recommendations. Other recommendations made by Jonathan Hall QC which require legislation have been implemented through the Counter-Terrorism and Sentencing Act 2021.

Football Banning Orders

245. Football banning orders were introduced in their current form in 2000 as a response to violent and public order offences at football matches. Available court sanctions against low level offences had limited impact preventing repeat offending in a football context. Football banning orders prevent attendance at prescribed matches, can be tailored to address offending behaviour such as setting an exclusion zone or preventing use of the rail network on match days, and the enforcing authority can require a banned individual to surrender their passport to police during a designated time period thus preventing their attendance at overseas matches and tournaments. Following the disgraceful online racist abuse directed at England players after the Euro 2020 Final the Prime Minister committed to

legislating to change the football banning order regime so that it would be possible for a court to impose a football banning order against a person convicted of an online hate crime offence against a footballer[2].

246. Prior to the changes made by this Act, following conviction for a relevant football-related offence a court was required to consider whether the individual met a two-stage test of (i) past involvement in football-related disorder (evidenced by conviction for a relevant offence); and (ii) posing an identifiable ongoing risk of such involvement.

247. Football banning orders were designed to respond to and prevent violence and disorder related to football matches before widespread online communication and the advent of engagement with football through online platforms. Section 190 adds relevant communications offences with a hate element, such as racist or homophobic hate speech, against football players, managers and match officials as well as certain offences relating to race or religion to the schedule of relevant offences for banning order purposes on conviction. The objective of this is to prevent such offenders from exporting their online and remote hate crime to real world football matches and deter such behaviour.

248. Due to the potential for the committing of online and remote hate offences at any time, Chapter 5 of Part 10 removes the geographic and temporal proximity for such offences within the Schedule of relevant offences, by not requiring the offence to have occurred at, on a journey to, or within 24 hours of, a regulated football match. Instead, section 190 establishes a power to prescribe by secondary legislation "relevant football organisations" and persons with "prescribed connections" to a football organisation, to enable hate offences which are football related to be properly covered by football banning orders. For example, a racist tweet against a player, sent two weeks after a match, could be captured. Section 191 includes a power to add, remove or modify the Schedule of relevant offences exercisable by secondary legislation.

Rehabilitation of Offenders

249. A key element in reducing reoffending is access to employment. In order to support these aims, Part 11 amends the Rehabilitation of Offenders Act 1974 to provide for some custodial sentences of over four years to become spent after a certain period of time, meaning when asked, the conviction would not have to be disclosed. The existing rehabilitation periods for certain other disposals given or imposed on conviction are also reduced. This will reduce the number of ex-offenders required to disclose their convictions as part of basic checks for employment and mean that those who have served their time and stopped committing crime are not unfairly discriminated against in the job market.

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

251. Part 11 also clarifies the applicable rehabilitation periods for certain other orders on conviction.

[2] [Hansard Oral Answers to Questions Volume 699: debated on Wednesday 14 July 2021].

Disregards and Pardons

252. The Disregards Scheme ('the Scheme') was established in 2012 to address the historical wrongs that were suffered by individuals who were convicted of, or cautioned for, certain now-repealed offences which in the past criminalised homosexual activity. The Scheme enables those people to apply to the Home Secretary to have their convictions or cautions disregarded, provided that certain conditions are met. If a disregard is granted, the applicant is treated in all circumstances as if the offence had never occurred and it is not disclosed for any purpose (such as in court proceedings or on criminal record certificates).

253. As of November 2021, 198 convictions had been disregarded in this way.

254. In 2017, automatic pardons were introduced for those who obtained a disregard and posthumous pardons were introduced for those who had died before the provisions came into force.

255. The Government recognised that the Scheme, as introduced in 2012, was too narrowly focused, since only convictions or cautions for a list of named offences could be disregarded. The Government recognised that other now repealed and abolished offences were also used to convict or caution people for engaging in, or attempting to engage in, same-sex sexual activity.

256. Part 12 extends the Scheme to enable individuals who have been convicted or cautioned of same-sex sexual activity under any now repealed or abolished offences, including service offences, to apply to the Secretary of State to have those convictions or cautions disregarded, provided that certain conditions are met.

257. The conditions are intended to ensure that convictions are not disregarded for activity that is still unlawful today. For this reason the extended Scheme does not enable the disregarding of any behaviour that would still amount to an offence today, such as where any other party involved in the activity is under 16.

258. Under section 195, the provisions in relation to pardons are extended in parallel. Anyone who is granted a disregard under the extended Scheme will also be automatically pardoned.

259. Anyone who dies before the provisions become law, or before 12 months has elapsed after they become law, is posthumously pardoned, provided that they meet the same conditions as are required for someone to be granted a disregard.

260. In addition, where an offence is repealed or abolished after the provisions come into force, that repealed or abolished offence will fall within the scope of the Scheme. Anyone convicted or cautioned for the offence, who died prior to the repeal or abolishment, or before 12 months has elapsed after the repeal or abolishment, is posthumously pardoned if they meet the conditions.

Procedures in Courts and Tribunals

British Sign Language interpreters for deaf jurors

261. Section 196 amends the common law to permit the presence of a British Sign Language ("BSL") interpreter in the jury deliberation room to assist a profoundly deaf juror in proceedings before a court. The trial judge will have a duty to consider such a reasonable adjustment and, if satisfied the BSL interpreter's services will enable the person to act effectively as a juror, will affirm the summons. Offences relating to research and sharing research during a trial period will apply to BSL interpreters as they apply to jurors, with a new offence created for circumstances where a BSL interpreter intentionally interferes in or influences the deliberations of the jury.

Transmission and recording of court and tribunal proceedings

262. In criminal proceedings, the courts have a duty to deal with cases effectively and expeditiously and that includes making use of technology such as live video and audio links ("live links") where it is in the interests of justice to do so. Live links have been increasingly used across the courts, enabling greater participation in proceedings from remote locations, particularly during the current pandemic.

263. These provisions replace the current temporary provisions in the Coronavirus Act 2020, simplifying the regime and making it clear that a jury as a panel can participate in a trial (but only by live video link). Live links will make proceedings in criminal cases more efficient for all parties by reducing delay and unnecessary travel and the need for physical appearances at court, save where the interests of justice require it.

264. Further measures focus on permitting and facilitating the remote observation of proceedings across all courts and tribunals using video and audio links in order to uphold the principle of open justice. These measures will enable any court, tribunal or other body exercising the judicial power of the State (with the exception of the Supreme Court and devolved courts or tribunals) to provide transmissions of proceedings, by audio or video live link, either to designated premises or to individuals who have requested access and have identified themselves to the court or tribunal. Once enabled in secondary legislation these powers may allow open justice to be upheld in this way in various types of hearings: e.g. wholly remote hearings; hybrid hearings (i.e. those taking place in a court room with some participants joining via audio or video links), and traditional (wholly in-person) hearings. This secondary legislation will be made by the Lord Chancellor in concurrence with the Lord Chief Justice or the Senior President of Tribunals, or both, as appropriate.

265. This legislation will also provide safeguards which prohibit observers or participants from making unauthorised recordings or transmissions of proceedings which involve live links or transmissions. Courts and tribunals will be enabled to make audio or audio-visual recordings of all types of proceedings for their own use. This legislation makes permanent and expands the temporary provisions in the Coronavirus Act 2020 so that the power to direct transmissions, and the associated protections, are applicable for all courts and tribunals (except the Supreme Court and devolved tribunals).

Legal background

266. The Act amends the following legislation:

- Section 41 of the Criminal Justice Act 1925, which relates to photography in court.
- Section 1 of the Children and Young Persons Act 1933, which relates to the offence of cruelty to persons under 16.
- Part 1 of the Criminal Appeal Act 1968, which relate to hearings in criminal appeals.
- Section 5, 6, 7 and 8A of, and Schedule 2 to, the Rehabilitation of Offenders Act 1974, which relates to rehabilitation periods for offenders.
- Juries Act 1974 to permit British Sign Language interpreters for deaf jurors.
- Section 22 of and Schedule 2 to the Magistrates' Court Act 1980, which concern criminal damage to memorials.
- Section 9 of the Contempt of Court Act 1981, which relates to sound recording in court.
- Part 4 of the Police and Criminal Evidence Act 1984, which sets out the statutory regime governing pre-charge bail.
- Sections 64A of and Schedule 2A to the Police and Criminal Evidence Act 1984, which relates to the photographing and fingerprinting of suspects.

- Section 102 of the Road Traffic Regulation Act 1984, which makes provision for charges for the removal, storage and disposals of vehicles.

- Paragraph 2 of Schedule 1 to the Repatriation of Prisoners Act 1984, which provides for application of early release provisions to prisoners repatriated to England and Wales.

- Sections 12 and 14 of the Public Order Act 1986, which set out conditions that can be applied to public processions and public assemblies.

- Section 32 and Part V of the Criminal Justice Act 1988, which relates to giving evidence via television link and jurisdiction in criminal proceedings.

- Sections 7, 27, 34, 35A, 35C, 52, 54, 69, 75, 76, 77A and 103 of and Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988, which makes provision for the prosecution and punishment of road traffic offences, including provision in relation to the imposition of driving disqualification orders and minimum disqualification periods, the production and surrender of driving licences and for the issue of fixed penalty notices.

- Sections 2A and 3ZA of the Road Traffic Act 1988, which set out the meaning of dangerous and careless driving for the purposes of the offences of dangerous and careless driving.

- Road Traffic (New Drivers) Act 1995, which make provision about newly qualified drivers who commit certain offences, including provision about the production and surrender of driving licences.

- Part V of the Criminal Justice and Public Order Act 1994, which, amongst other things, confers powers to remove trespassers on land.

- Section 248D of the Criminal Procedure (Scotland) Act 1995, which provides for the extension of driving disqualifications where a custodial sentence is also imposed.

- Sections 59 and 60 of the Police Act 1996, which makes provision in respect of the Police Federation for England and Wales and the Police Federation for Scotland.

- Chapter 2 of the Crime (Sentences) Act 1997, which relates to life sentences and Schedule 1 which relates to transfer of prisoners within the British Isles.

- Sections 5A, 6, 17 and 18 of the Crime and Disorder Act 1998, which, among other things, makes provision for specified public authorities in England and Wales to formulate and implements crime and disorder reduction strategies.

- Part IIIA of the Crime and Disorder Act 1998, which relate to live links in hearings.

- Part 5 of the Terrorism Act 2000, which sets out counter-terrorism powers.

- Courts Act 2003, which makes a wide range of provision about the operation of courts, to insert provision about transmission and recording of court proceedings.

- Sections 85A and 85B of the Courts Act 2003, which relate to the participation of the public in court proceedings and the offences of transmission and recording of court proceedings.

- Part 5 of the Extradition Act 2003, which relates to conduct of extradition proceedings.

- Part 1 of the Sexual Offences Act 2003 which relates to, among other things, the offence of abuse of position of trust and provides for an offence of arranging or facilitating a child sex offence.

- Part 2 of the Sexual Offences Act 2003 which relates to, among other things, the notification requirements for sexual offenders and provides for Sexual Harm Prevention Orders and Sexual Risk Orders in England and Wales (and equivalent orders in Scotland and Northern Ireland).

- Criminal Justice Act 2003 including: Part 8 which relates to use of video and audio links in criminal proceedings; Chapter 6 of Part 12 relating to release, licences, supervision and recall of offenders; sections 325 and 327 which provide for arrangements for assessing risks posed by certain offenders; section 330 which provides for making of orders under the Act; Schedule 15 which provides a list of specified serious offences for release purposes; and Schedules 19A and 31 which provides for supervision default orders.

- Section 5 of the Domestic Violence, Crime and Victims Act 2004, which provides for the offence of causing or allowing a child or vulnerable adult to die or suffer serious harm.

- Provisions of the Armed Forces Act 2006 which relate to sentencing, service courts and court martials.

- Sections 1 and 28 of the Offender Management Act 2007, which relate to offender management and the use of polygraph as a licence condition.

- Sections 4, 5 and 39 of the Criminal Justice and Immigration Act 2008, which relate to Youth Rehabilitation Orders.

- Sections 1B and 12 of the Academies Act 2010, which relates to secure 16 to 19 academy arrangements.

- Part 3 of the Police Reform and Social Responsibility Act 2011, which relates to activities and access to the Palace of Westminster, Parliament Square and the surrounding area.

- Legal Aid, Sentencing and Punishment of Offenders Act 2012, including Chapter 3 which relates to remand of children otherwise than on bail, and section 128 which sets the test for Parole Board release.

- Sections 92 to 101 of the Protection of Freedoms Act 2012, which makes provisions establishing the disregards and pardons scheme which enables individuals with convictions and cautions for specified repealed offences to apply for their conviction or caution to be disregarded and sets out the procedure for doing so. Sections 164 to 176 of the Policing and Crime Act 2017, which makes provisions for pardons and posthumous pardons associated with the disregards and pardons scheme.

- Chapter 2 of Part 4 and sections 101 and 102 of the Anti-Social Behaviour, Crime and Policing Act 2014, which relate to PSPOs and cautions respectively.

- Sections 8 to 10 of and Schedule 3 to the Criminal Justice and Courts Act 2015, which relate to recall adjudicators.

- Section 1 of the Assault on Emergency Workers (Offences) Act 2018, which provides for the penalty for assault on an emergency worker.

- Crime (Overseas Production Orders) Act 2019, which enables law enforcement officers and prosecutors to access and obtain stored electronic content data direct from service providers based or operating outside the UK to support criminal investigations and prosecutions in the UK.

- Sections 53 at 55 and Schedule 23 to 25 of the Coronavirus Act 2020, which make temporary modifications to courts and tribunal procedures.

- Sentencing Act 2020, relating to a range of sentencing matters.

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

Territorial extent and application

268. Section 207 sets out the territorial extent of the Act, that is the jurisdictions in which the Act forms part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.

269. Subject to the exceptions described below, the provisions in the Act extend and apply to England and Wales only.

270. Section 1(9) includes within the definition of forces covered by the duty to report in respect of the Police Covenant the British Transport Police, who operate in Scotland in respect of police railways. The National Crime Agency and the Ministry of Defence police operate both in Scotland and Northern Ireland as well as within England and Wales, however, the operations of these officers are reserved matters. On that basis, because the duty extends to forces which operate UK wide, section 1 (police covenant report) extends and applies to England, Wales, Scotland and Northern Ireland.

271. The amendments to section 59 of the Police Act 1996 made by section 4 (special constables and Police Federations), to the Public Order Act 1986 made by sections 73 to 75 and 79, to the 1994 Act (powers to remove trespassers from land) by section 84, to the Road Traffic Offenders Act 1988 made by section 89(1) (courses offered as alternative to prosecution) and to the Road Traffic Regulation Act 1984 made by section 90 (charges for removal etc. of abandoned vehicles) extend to England and Wales and Scotland but apply to England and Wales only.

272. Section 4(8) (regulations for Police Federations), sections 5 to 7 (police driving standards), sections 86 to 88 and Schedule 8 (road traffic offences), section 89(3) to (7) (courses offered as alternative to prosecutions: fees etc.) and sections 91 to 96 and Schedules 9 and 10 (surrender of driving licences) extend and apply to England and Wales and Scotland.

273. Section 97 (fixed penalty notices in Scotland), sections 142 and 143 (extension of driving disqualification where custodial sentence imposed and under certain existing orders) and Part 2 of Schedule 18 (variation of order made in England and Wales by court in Scotland) extend to England and Wales and Scotland but apply to Scotland only.

274. Section 177(7) which amends the Abusive Behaviour and Sexual Harms (Scotland) Act 2006, section 169 which amends provisions in the 2003 Act and paragraph 5 of Schedule 19 (management of terrorist offenders: consequential amendment) in respect of notification orders extend and apply to Scotland only.

275. Section 59 (proceeds of crime: account freezing orders), section 89(2) (courses offered as alternative to prosecutions: fees etc.), Part 1 of Schedule 18 (variation of order made in England and Wales or Scotland by court in Northern Ireland) and paragraph 4 of Schedule 19 (management of terrorist offenders: consequential amendment) extend and apply to Northern Ireland.

276. Sections 37 to 44 and Schedule 3 (extraction of information from mobile devices), section 51 and Schedule 5 (overseas production orders), section 148 (application of provisions about minimum terms to service offences), section 179 (positive obligations and electronic monitoring requirements: service courts), section 180(4), 182(7) and 183(2) to (7) (enforcement of orders in another part of the United Kingdom), sections 184 to 188 and Schedule 19 (management of terrorist offenders) extend and apply to England, Wales, Scotland and Northern Ireland.

277. The amendments to sections 92 to 101 of the Protection of Freedoms Act 2012 and sections 164 to 176 of the Policing and Crime Act 2017 (the extension of the disregards and pardons scheme) made by Part 12 extend and apply to England and Wales only, except in relation to service offences, where they extend and apply UK wide.

278. See the table at Annex D for a summary of the position regarding territorial extent and application in the UK.

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

279. The changes that this Act makes to the Armed Forces Act 2006 ("AFA 2006") may be extended to the Channel Islands by Order in Council under section 384(1) of the AFA 2006. If such an Order is made, it can modify those changes (so that the law of the Channel Islands is not the same as that of the United Kingdom).

280. The changes that this Act makes to the AFA 2006 extend directly (i.e. without the need for an Order in Council) to the Isle of Man, and the British Overseas Territories (excluding Gibraltar), but an Order in Council may be made under section 384(2) of the AFA 2006 to modify the Act in its application to any of those territories.

281. The changes that this Act makes to the Reserved Forces Act 1996 may be extended by Order in Council to the Channel Islands or the Isle of Man. If such an Order is made, it can modify those changes (so that the law of the Channel Islands and the Isle of Man is not the same as that of the United Kingdom).

Commentary on provisions of Act

Part 1: Protection of the police etc.

Section 1: Police covenant report

282. Section 1 establishes a new duty for the Secretary of State, in each financial year, to prepare a police covenant report, and lay it before Parliament.

283. Subsection (2) sets out the substantive areas on which the report must focus, namely the health and wellbeing and physical protection of members and former members of the police workforce, and support for their families. The report must address those issues insofar as they relate to individuals' current or previous role in the police workforce.

284. Subsection (2)(d) allows the Secretary of State to also address in the report other areas they consider appropriate to include. This provides an element of flexibility where particular issues arise that the Secretary of State considers ought to receive attention in the report in a given year.

285. Subsection (3) requires that, in putting together the police covenant report, the Secretary of State must have regard in particular to the sacrifices made by and obligations imposed on members of the police workforce. In doing so, subsection (3)(b) also requires the Secretary of State to have regard to the desire to remove any disadvantage that members and former members of the police workforce may experience as a result of their role.

286. Under subsection (4), in preparing the report the Secretary of State must ensure the views of other relevant Government departments and anyone else deemed appropriate by the Secretary of State are sought, and, under subsection (5), either set out in full or summarised.

287. Subsection (6) requires that, before a summary of any views obtained under subsection (4) can be included in the Police Covenant report, the person who provided the view in question must approve that summary.

288. Under subsection (7), the report must state the Secretary of State's view as to whether members or former members of the police workforce, or a particular group within that demographic, are at a disadvantage in comparison to such other people as the Secretary of State considers appropriate. Subsection (8) requires that the Secretary of State's response to any such disadvantage identified under subsection (7) is to be set out in the report.

289. Subsection (9) defines terms for the purpose of this section, including 'members of the police workforce' which includes for these purposes members of police forces in England Wales, special constables appointed under section 27 of the Police Act 1996; staff appointed by the chief officer of police of a police force in England and Wales and persons designated as community support volunteers or policing support volunteers under section 38 of the Police Reform Act 2002 (the "2002 Act"). It also includes constables and special constables (appointed under section 25 of the Railways and Transport Safety Act 2003 (the "2003 Act")) of the British Transport Police Force; employees of the British Transport Police Authority appointed under section 27 of the 2003 Act and under the direction and control of the Chief Constable of the British Transport Police Force; persons designated as community support volunteer or policing support volunteers under s.38 of the 2002 Act as applied by section 28 of the 2003 Act. In addition it includes members of the Civil Nuclear Constabulary; employees of the Civil Nuclear Police Authority employed under paragraph 6 of Schedule 10 of the Energy Act 2004 if, or to the extent that they are employed to assist the Civil Nuclear Constabulary; members of the Ministry of Defence Police and other persons under the direction and control of the Chief Constable of the Ministry of Defence Police; and National Crime Agency officers.

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

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

Section 2: Increase in penalty for assault on emergency worker

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

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

Section 3: Required life sentence for manslaughter of emergency worker

294. Subsection (6) inserts a new section 258A into the Code.

295. New section 258A(1) sets out the circumstances in which the provision applies, namely, where a person aged under 18 is convicted of a "relevant offence"; that the offence was committed when the person was aged 16 or over and on or after the date on which section 3 comes into force, and the offence was committed against an emergency worker acting in in the exercise of functions as such a worker.

296. New section 258A(2) provides that where section 258A applies, the court must impose a sentence of detention for life unless the court is of the opinion that there are exceptional circumstances which relate to the offence or the offender and justify not doing so.

297. New section 258A(4) defines "relevant offence" to mean the offence of manslaughter, excluding manslaughter by gross negligence, and manslaughter arising from a partial defence to murder.

298. New section 258A(5) defines "emergency worker" by reference to section 68 of the Code. Section 68(1) sets out that "emergency worker" means:

a. a constable;

b. a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;

c. a National Crime Agency officer;

d. a prison officer;

e. a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;

f. a prisoner custody officer, so far as relating to the exercise of escort functions;

g. a custody officer, so far as relating to the exercise of escort functions;

h. a person employed for the purposes of providing, or engaged to provide fire services or fire and rescue services;

i. a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);

j. a person employed for the purposes of providing, or engaged to provide—

i. NHS health services, or

ii. services in the support of the provision of NHS health services,

and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.

299. New section 258A(3) expressly provides that if at the time the offence was committed the victim was not at work but was carrying out functions which, if done in work time, would have been in the exercise of their functions, they will be considered to be an emergency worker acting in exercise of their functions for the purposes of subsection (1).

300. New section 258A(7) sets out when an offence is taken to have been committed if it is committed over a period of 2 or more days; namely, on the last of the days. New section 258A(6) provides that the sentence is not to be regarded as an offence "the sentence for which is fixed by law".

301. Subsection (9) inserts a new section 274A into the Code. New section 274A makes the same provision as the new section 258A but in respect of the sentence of custody for life for persons aged 18 or over but under 21.

302. Subsection (11) inserts a new section 285A into the Code. New section 285A makes the same provision as the new section 258A but in respect of the sentence of imprisonment for life for persons aged 21 or over.

303. Subsections (2) to (5) and (12) make amendments to sections 177, 221, 249, 255 and 329 of the Code that are consequential to the introduction of the new section 258A.

304. Subsections (7), (8) and (14) make amendments to sections 267, 272 and 417 of the Code that are consequential to the introduction of the new section 274A.

305. Subsection (10) makes amendments to section 280 of the Code that are consequential to the introduction of the new section 285A.

306. Subsections (13) and (16) make amendments to section 399 of the Code and section 37 of the Mental Health Act 1983 that are consequential to the introduction of the new sections 258A, 274A and 285A of the Code.

307. Subsection (15) makes amendments to Schedule 22 to the Code that are consequential to the introduction of the new sections 274A and 285A.

Section 4: Special constables and Police Federations: amendments to the Police Act 1996

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

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

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

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

312. Subsection (4) amends section 59(1) of the 1996 Act to enable England and Wales special constables to become members of the Police Federation of England and Wales. The amended section 59(1) retains the wording setting out who the Police Federation can represent and on what matters; namely, matters which affect members' welfare and efficiency. Subsections (1)(a) and (b) set out that questions of promotion and discipline affecting individual members are excepted.

313. Subsection (5) inserts section 59(1B) of the 1996 Act, restating the law in Scotland.

314. Subsection (6) amends section 59(1) of the 1996 Act to enable the Police Federation of England and Wales to represent special constables in any proceedings brought under regulations about disciplinary proceedings relating to conduct, efficiency and effectiveness of special constables under section 51(2A) of that Act. Subsection (6) also inserts section 59(2A), restating the law in Scotland.

315. Subsection (7) amends sections 59(3)(a) and (b) of the 1996 Act to specify that special constables may be represented by members of a police force and vice versa. This is because special constables and regular officers work alongside each other, and there is a need for flexibility as to who can provide that representation, depending on the situation and availability of the individual in question. New section 59(3)(c) restates the law in Scotland, making clear that a constable of the Police Service of Scotland may be represented under section 59(2A) only by another constable of the Police Service of Scotland.

316. Subsection (8) amends section 60(2)(e) of the 1996 Act to enable the Secretary of State to make regulations under section 60(1) about the pay, pension or allowance and other conditions of service for any member of a police force or special constable who is the secretary or officer of a Police Federation, and to apply existing regulations with modifications. Whilst special constables are volunteers, were a special constable be elected to a secretary or officer position in the future, this provision enables the Secretary of State to make regulations governing any pay, pension or allowance or other conditions of service.

Section 5: Meaning of dangerous driving: constables etc.

317. Sections 1, 1A and 2 of the Road Traffic Act 1988 (the "1988 Act") provide for offences of causing death by dangerous driving, causing serious injury by dangerous driving and dangerous driving respectively. Section 2A of the 1988 Act defines dangerous driving for the purpose of these offences. This section amends section 2A so that in any prosecution for an offence under section 1, 1A or 2 of the 1988 Act a designated person's standard of driving is compared to that of a competent and careful constable who has undertaken the prescribed training, and therefore has the same skills, where the designated person is driving for police purposes.

318. Subsection (3) inserts new subsections (1A) to (1F) into section 2A of the 1988 Act (meaning of dangerous driving). New section 2A(1A) and (1B) provide that a designated person is to be regarded as driving dangerously if: (a) the way the designated person drives falls far below what would be expected of a competent and careful constable who has undertaken the same prescribed training; and (b) it would be obvious to such a careful and competent constable who had undertaken the same prescribed training that driving in that way would be dangerous. Under the new comparison, a careful and competent police driver is not expected to be a perfect police driver. The new comparison takes into account whether a careful and competent police driver, who has undertaken the same training, would have reasonably made the same decision under the circumstances. This modified test applies where a designated person is driving for police purposes (or, in the case of NCA, law enforcement purposes), and has undertaken prescribed training.

319. New section 2A(1C) defines the term 'designated person' as a constable, a member of staff appointed by the chief officer, a member of staff appointed by a local policing body and employed to assist a police force in England and Wales, a member of staff appointed by the British Transport Police Authority, a member of staff appointed by the Scottish Police Authority, an NCA officer, a driving instructor employed or engaged by a chief officer of police, Scottish Police Authority or NCA to instruct those individuals, and driving instructors employed or engaged by those bodies to instruct those driving instructors

320. New section 2A(1D) sets out that ports constables are not included within the definition of constable.

321. New section 2A(1E) states that the test applies to NCA officers when they are driving for law enforcement purposes rather than for policing purposes.

322. New section 2A(1F) specifies that the test applies to persons engaged by the NCA for the purpose of training NCA officers or to train a person to become an NCA driving instructor.

323. Subsection (4) makes consequential amendments to section 2A(3) of the 1988 Act.

324. Subsection (5) provides that the change to the definition of dangerous driving does not have retrospective effect.

Section 6: Meaning of careless driving: constables etc

325. Sections 2B and 3 of the 1988 Act provide for offences of causing death by careless, or inconsiderate, driving and careless, or inconsiderate, driving respectively. Section 3ZA of the 1988 Act defines careless, or inconsiderate, driving for the purposes of these offences. This Section amends section 3ZA so that in any prosecution for an offence under section 2B or 3 of the 1988 Act, a designated person's standard of driving is compared to that of a competent and careful constable with the same training and, therefore, the same skills.

326. Subsection (3) inserts new subsections (2A) to (2F) into section 3ZA of the 1988 Act. New section 3ZA(2A) and (2B) provide that a designated person is to be regarded as driving without due care and attention if the way the designated person drives falls below what would be expected of a competent and careful constable who has undertaken the same prescribed training and, therefore, the same level of skills. Under the new comparison, a careful and competent police driver is not expected to be a perfect police driver. The new comparison takes into account whether a careful and competent police driver, who has undertaken the same training, would have reasonably made the same decision under the circumstances. This modified test applies where a designated person is driving for police purposes (or, in the case of NCA, law enforcement purposes), and has undertaken prescribed training.

327. New section 3ZA(2C) defines the term 'designated person' as a constable, a member of staff appointed by the chief officer, a member of staff appointed by a local policing body in England and Wales, a member of staff appointed by the British Transport Police Authority, a member of staff

appointed by the Scottish Police Authority, an NCA officer, or a driving instructor employed or engaged by a chief officer of police, Scottish Police Authority or NCA to instruct those individuals and driving instructors employed or engaged by those bodies to instruct those driving instructors.

328. New section 3ZA(2D) sets out that ports constables are not included within the definition of constable.

329. New section 3ZA(2E) states that the test applies to NCA officers when they are driving for law enforcement purposes rather than for policing purposes

330. New section 3ZA(2F) specifies that the test applies to persons engaged by the NCA for the purpose of training NCA officers or to train a person to become an NCA driving instructor.

331. Subsection (4) makes consequential amendments to section 3ZA(3) of the 1988 Act.

332. Subsection (5) provides that the change to the definition of dangerous driving does not have retrospective effect.

Section 7: Regulations relating to sections 5 and 6

333. Section 7 amends section 195 of the 1988 Act to provide that the power to make regulations prescribing training or skills for the purposes of new section 2A(1A)(b) or 3ZA(2A)(b) may make different provision for different persons or areas.

Part 2: Prevention, investigation and prosecution of crime

Chapter 1: Functions relating to serious violence

Section 8: Duties to collaborate and plan to prevent and reduce serious violence

334. Subsection (1) places a duty on specified authorities for a local government area to collaborate with the other specified authorities for that same area to prevent and reduce serious violence. The specified authorities (as listed in Schedule 1) are chief officers of police, specified health authorities, local authorities, probation service providers, youth offending teams and fire and rescue services. Each specified authority must collaborate with every other specified authority in that area, although the scale, scope and nature of that collaboration are likely to differ, depending on local circumstances. A "local government area" for these purposes is, in England, a district council, a London borough, the City of London or the Isles of Scilly, and, in Wales, a county or county borough (see section 11(4)).

335. Subsection (2) states that the duty created in subsection (1) includes a duty to plan with the other specified authorities for that area, to prevent and reduce serious violence in the area, although again, the nature of that planning is likely to differ, depending on local circumstances.

336. Subsection (3) requires specified authorities in a local government area to work with the other specified authorities in that area: to identify the kinds of serious violence that occur in the area; to identify the causes of serious violence in the area so far as is possible; and to prepare and implement a strategy that is aimed at preventing and reducing serious violence in the area. It is expected that this will involve the formulation of a local problem profile/strategic needs assessment, which identifies the main issues and drivers of serious violence in the local area and the cohorts of people most affected or at risk; and the production of a strategy which sets out the proposed local area response to the issues and drivers identified in the local problem profile and describes how the specified authorities will work together to prevent and reduce serious violence in the specified local area.

337. Subsection (4) requires, in preparing a strategy for a local area, that the specified authorities for the area must consult each educational authority, prison authority or youth custody authority in that area (these terms are defined in section 12 and Schedule 2).

338. Subsection (5) states that a strategy prepared for a local area may include actions which are to be carried out by an educational authority, prison authority or youth custody authority in that area. Section 15 includes further provision relating to the duties of such authorities in respect of such actions.

339. Subsection (6) states that the specified authorities, in preparing a strategy for a local government area in England or Wales, may invite participation from a prescribed person who is not subject to the Serious Violence Duty, as specified in an order made by the Secretary of State or the Welsh Ministers (as appropriate) under section 5(3) of the Crime and Disorder Act 1998 (see the Crime and Disorder Strategies (Prescribed Descriptions) (England) Order 2004 (SI 2004/118), as amended, and Crime and Disorder Strategies (Prescribed Descriptions) (Wales) Order 2009 (SI 2009/3050)).

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

341. Subsection (8) states that specified authorities must not include in the strategy any material that they consider— (a) might jeopardise the safety of any person, (b) might prejudice the prevention or detection of crime or the investigation or prosecution of an offence, or (c) might compromise the security of, or good order or discipline within, an institution of a kind referred to in column 1 of a table in Schedule 2

342. Subsection (9) states that a strategy prepared under this section may also cover an area larger than a local government area if it is also prepared in the exercise of powers under section 9. Section 9 is concerned with collaborations between specified authorities in more than one local government area. The effect of this Section is therefore to support such collaborations by providing, for example, for a common strategy to be prepared for multiple local government areas in the same city, county or region.

343. Subsection (10) confers a power on the Secretary of State, by regulations, to make further provision for or in connection with the publication and dissemination of a strategy under this section. Such regulations may specify, amongst other things, the date by which the first strategy must be published.

Section 9: Powers to collaborate and plan to prevent and reduce serious violence

344. Subsection (1) permits two or more specified authorities to collaborate and plan with each other to prevent and reduce serious violence in a relevant area. "Relevant area" is defined (in subsection (13)) as an area including all or part of a local government area or all or part of more than one local government areas (regardless of whether it is also a specified authority for the other area or areas). This provision will also enable specified authorities to work across boundaries where necessary in order to take a co-coordinated approach to serious violence that operates across boundaries. This could be used, for example, in tackling "county lines" activity which often spans more than one local government area.

345. Subsections (2) to (12) contain analogous provisions to those in section 8(2) to (12) which will apply where two or more specified authorities have chosen to collaborate to deliver the serious violence duty.

Section 10: Power to authorise collaboration etc. with other persons

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

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

348. Subsections (4) to (10) make further provision about the scope of the regulation-making power in subsection (2). They provide that any information sharing gateway created by such regulations could enable information to be shared notwithstanding any obligation of confidence or any other restriction on the disclosure of the information. However, any such regulations must provide that a disclosure would not be permitted if it would contravene data protection legislation and the prohibitions on disclosure provided for in any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. Nor may any such regulations authorise the disclosure of patient information, or the disclosure of personal information by a health or social care authority. An example of a case in which confidential information could be so disclosed might arise where a prescribed voluntary organisation has been mapping incidents of serious violence reported to it by its clients and beneficiaries. It may wish to share this map with a specified authority, to support the development of a local problem profile / needs assessment.

349. Subsection (10) defines for the purposes of Chapter 1 of Part 2 the data protection legislation as having the same meaning as in section 3 of the Data Protection Act; "health or social care authority" as meaning a specified authority listed in the first column of the table headed "Health and social care" in Schedule 1; "patient information" as meaning personal information (however recorded) which relates to an individual's physical or mental health or condition, their diagnosis or care or treatment, or is to (to any extent) derived directly or indirectly from information relating to any of those matters and "personal information" as meaning information which is in a form that identifies any individual or enables any individual to be identified (either by itself or in combination with other information).

350. Any new information sharing gateway created by regulations made under subsection (2) is intended to augment rather than replace existing powers to collaborate or disclose information for the purpose of preventing or reducing serious violence, accordingly subsection (7) preserves such existing powers.

Section 11 and Schedule 1: Specified authorities and local government areas

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

352. Subsection (4) defines a "local government area" (that is, the area in respect of which the serious violence duty in section 8 applies) as a district, a London borough, the City of London or the Isles of Scilly when in England, and as a county or county borough when in Wales.

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

Section 12 and Schedule 2: Educational, prison and youth custody authorities

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

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

Section 13: Preventing and reducing serious violence

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

357. Subsection (3) provides that "violence" for the purposes of this Chapter includes violence against property and threats of violence (in addition to violence against a person), domestic abuse within the meaning of the Domestic Abuse Act 2021 and sexual offences, but does not include terrorism. Subsections (4) and (5) define the meaning of sexual offences.

358. Subsection (6) provides that in considering what amounts to serious violence for the purposes of this Chapter particular factors must be taken into account. It will be for specified authorities in each local area to decide what amounts to serious violence in their particular locality, but in making any such determinations, the following factors must be considered: the maximum penalty that could be imposed for any offence involved in the violence; the impact of the violence on any victim; the prevalence of the violence in the area; and the impact of the violence on the community in the area. It is anticipated that work to answer these questions will form part of the development of the strategy required under section 8 or 9.

Section 14: Involvement of local policing bodies

359. Subsection (1) provides a power to a local policing body (namely, a police and crime commissioner, the Mayor's Office for Police and Crime and the Common Council of the City of London in its capacity as a police authority) in a police area to assist a specified authority in the exercise of its function to prevent and reduce serious violence.

360. Subsection (2) enables a local policing body to monitor the exercise by specified authorities of their functions under section 8 or 9, as the case may be.

361. Subsection (3) allows a local policing body to report its findings under subsection (2) to the Secretary of State. The Secretary of State may use evidence from such monitoring by a local policing body in deciding whether to exercise the direction-making power in section 18.

362. Subsection (4) enables the Secretary of State, by regulations, to confer functions on a local policing body for the purposes of enabling it to assist specified authorities in discharging their functions under section 8 or 9. A non-exhaustive list of the type of assistance that may be provided for in such regulations is set out in subsection (5), including the provision of funding and a convening role. Subsection (6) requires a specified authority to cooperate with a local policing body where that body decides to provide assistance to the specified authority under subsection (1), monitor in accordance with subsection (2) the discharge of the serious violence duty by the specified authority or exercise other functions in relation to the specified authority conferred by regulations made under subsection (4).

Section 15: Involvement of educational, prison and youth custody authorities

363. Subsections (1) and (2) enable an educational, prison or youth detention authority (as defined in Schedule 2 and collectively referred to as a "relevant authority") for a local government area to collaborate with a specified authority for that area in order to prevent and reduce serious violence in that area, and vice versa.

364. Subsection (3) requires that a relevant authority and a specified authority must collaborate with each other as detailed in subsections (1) and (2) if either the relevant authority or specified authority requests such collaboration.

365. Where a strategy prepared under section 8 or 9 specifies an action to be carried out by a relevant authority (see section 8(5) and 9(5)), subsection (4) places a duty on the relevant authority to carry out that action. For example, a serious violence reduction strategy may require local schools to provide the specified authorities with management information about exclusions from school.

366. Subsection (5) enables a relevant authority for a local government area to collaborate with another relevant authority for that area to prevent and reduce serious violence in that area and places a duty on a relevant authority to collaborate with another relevant authority for those purposes if requested to do so by that other relevant authority. For example, a local young offenders' institution may choose to collaborate with a secure children's home located in the same area if they are experiencing similar issues with serious violence within their institutions.

367. Subsection (6) enables a relevant authority to collaborate with another relevant authority for the purpose of preventing and reducing serious violence across local government areas where their area of operation is not coterminous with that area.

368. Subsections (7) and (8) qualify the duties to collaborate placed on relevant authorities by this section. The duty does not apply to the extent that the relevant authority considers that compliance with the duty would be incompatible with any other duty of the authority imposed by an enactment (other than the duty imposed by subsection (5)(b)), would have an adverse effect on the exercise of the authority's functions would be disproportionate to the need to prevent and reduce serious violence in the area to which the duty relates. or would mean that the authority incurred unreasonable costs. In determining whether those reasons apply the cumulative effect of complying with the duties under this section must be taken into account.

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

Section 16: Disclosure of information

370. Subsections (1) and (2) create an information sharing gateway, to permit the disclosure to a specified authority of information held by specified authorities, local policing bodies and educational, prison or youth custody authorities, this does not authorise the disclosure of patient information or the disclosure of personal information by a health or social care authority. Such disclosures would be made to allow the specified authority receiving any such information to exercise its functions under Chapter 1 of Part 2. This would be a permissive gateway. It would permit but would not require the sharing of information.

371. Subsections (3) to (4) make further provision about the disclosure of information under this Section. They provide that a disclosure of information under this section may be made notwithstanding any obligation of confidence or any other restriction on the disclosure of the information, save that disclosure would not be permitted if the information disclosed were patient information or personal information disclosed by a specified authority which is a health or social care authority, nor would a disclosure be permitted if it would contravene the data protection legislation or the prohibitions on disclosure provided for in any Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

372. Subsections (5) and (6) disapplies any conditions or limitations on the disclosure of information that would apply if the disclosure was one that could be made under an information sharing gateway provided for in regulations made under section 6(2) of the Crime and Disorder Act 1998 or in section 115 of that Act as well as one that could be made under this Section.

373. Subsection (7) provides that this information sharing gateway does not otherwise affect any existing power to disclose information.

Section 17: Supply of information to local policing bodies

374. Subsections (1) and (2) create a power for local policing bodies to request any specified authority, educational authority, prison or youth custody authority within its police force area, or any other local policing body, to supply it with such information as it may specify, in order to exercise its functions under section 14.

375. Subsection (3) specifies that information requested under subsection (1) must be held by the person to whom the request is made and must relate to: the person or body to which the request was made; a function of that body or person; or a person or body in respect of whom a function is exercisable by the person or body requested to supply the information. That is to say, the request cannot be for information held by the body or person in question about a third party – it must be about that body or person. It cannot be about functions that that body or person does not actually have – it must be about things they do themselves, rather than things that are done by others. It can however be about third parties where such parties are carrying out a function on behalf of the person or body to whom the request is made.

376. Subsection (4) states that where a request is made under subsection (1), the person or body to whom it relates must comply and supply the requested information (subject to subsection (6)).

377. Subsections (5) to (6) provides that in discharging an obligation under this section a person does not breach any obligation of confidence or any other restriction on the disclosure of the information, save that disclosure would not be permitted if the information disclosed were patient information or personal information disclosed by a specified authority which is a health or social care authority, nor would a disclosure be permitted if it would contravene data protection legislation or the prohibitions on disclosure provided for in Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

378. Subsection (7) provides that any information supplied to a local policing body under this section must be used only by that body for the purpose of enabling or assisting it to perform its functions under section 14. That is to say, it could be used only for purposes connected with preventing or reducing serious violence. Nor could it be further disseminated outside of that policing body. For example, it could not be shared with the police or other law enforcement agency.

Section 18: Directions

379. Subsections (1) and (2) gives the Secretary of State a power to issue directions to a specified authority or educational, prison or youth custody authority for the purpose of securing compliance where it has failed to discharge specified duties under Chapter 1 of Part 2. Directions given under this Section may require the relevant specified authority to take such steps as in the opinion of the Secretary of State are necessary, for the purpose of securing compliance with the duty.

380. Subsection (3) provides for a direction under subsection (1) to be enforced by a mandatory order, that is an order granted on application to the Administrative Court in England and Wales, to compel a public body to comply with a legal duty.

381. Subsection (4) provides that the Secretary of State must consult the Welsh Ministers before giving a direction under subsection (1)s to a devolved Welsh authority.

382. Subsection (5) provides that the direction power does not apply in relation to probation services provided by the Secretary of State or publicly run prisons, young offender institutions, secure training centres or secure colleges.

Section 19: Guidance

383. This section confers a power on the Secretary of State to issue guidance to specified authorities, prescribed persons and bodies, educational authorities, prison and youth custody authorities and local policing bodies. Such bodies must have regard to any such guidance in

exercising their functions under Chapter 1 of Part 2. There is a requirement for the Secretary of State to consult the Welsh Ministers before issuing guidance which relates to the exercise of functions by a devolved Welsh authority. There is also a requirement the Secretary of State lays a copy of guidance issued under this Section before Parliament.

Section 20: Amendments of the Crime and Disorder Act 1998

384. Section 20 amends the Crime and Disorder Act 1998 (the "1998 Act"). The 1998 Act introduced Community Safety Partnerships ("CSPs") (formerly known as Crime and Disorder Reduction Partnerships) to help tackle crime and reduce offending. This Section amends the 1998 Act to ensure preventing and reducing serious violence is a priority for CSPs.

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

386. Subsections (3) to (7) amend section 6 of the 1998 Act. Subsection 6(1) of the 1998 Act requires responsible authorities – again, the members of the CSP – to formulate and implement strategies for: (a) the reduction of crime and disorder in the area (including anti-social behaviour adversely affecting the local environment); (b) combatting the misuse of drugs, alcohol and other substances in the area; and (c) the reduction of re-offending in the area. Subsection 6(2) of the 1998 Act creates a power for the "appropriate national authority" to make regulations in connection with the formulation and implementation of strategies made under section 6(1). Section 6(3)(e) provides that such regulations may include provision in respect of the objectives to be addressed in a strategy and performance targets in respect of those objectives, while section 6(6) provides that regulations made under section 6(3)(e) may require a strategy to be formulated so as to address (in particular) two things: (a) the reduction of crime or disorder of a particular description; and (b) the combatting of a particular description of misuse of drugs, alcohol or other substances. The "appropriate national authority" is defined at section 6(9) as the Secretary of State in England, Welsh Ministers in relation to strategies for combatting the misuse of misuse of drugs, alcohol or other substances in areas in Wales; and the Secretary and State and Welsh Ministers acting jointly, in relation to strategies for combatting crime and disorder or re-offending in Wales.

387. Subsection (4) amends section 6(1) of the 1998 Act to require the crime and disorder reduction strategies prepared by responsible authorities to address two further matters, namely preventing people from becoming involved in serious violence in the area; and reducing instances of serious violence in the area.

388. Subsection (5) amends section 6(6) of the 1998 Act so that regulations made under section 6(3)(e) may in addition require a strategy to be formulated so as to address (c) the prevention of people from becoming involved in serious violence of a particular description; and (d) the reduction of instances of serious violence of a particular description. Subsection (6) makes a consequential amendment to the definition of the appropriate national authority in section 6(9) to provide that the Secretary of State is the appropriate national authority for the purposes of making such regulations.

389. Subsection (7) inserts a new subsections (10) and (11) into section 6 of the 1998 Act. New section 6(10) requires the Secretary of State to consult the Welsh Ministers before making regulations under section 6 which relate to a strategy for preventing people from becoming involved in serious violence in the area; and reducing instances of serious violence in the area, if and to the extent that such provision applies in relation to a devolved Welsh authority within the meaning of section 157A of the Government of Wales Act 2006. New section 6(11) includes provision relating to the interpretation of the term serious violence (when read with the amendments to section 18 of the 1998 Act made by subsection (12)).

390. Subsections (8) to (11) amend section 17 of the 1998 Act. Section 17 imposes on specified public authorities a duty to consider crime and disorder implications when exercising their functions. The authorities in question include: local authorities; fire and rescue authorities; local policing bodies; national park authorities; the Broads Authority; the Greater London Authority and Transport for London. Each of these authorities must exercise their various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that they can reasonably do, to prevent: (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drug, alcohol and other substances in its area; and (c) re-offending in its area. Subsections (9) to (11) add a fourth requirement on these bodies to exercise their various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that they can reasonably do, to prevent and reduce serious violence in their areas.

Section 21: Amendment to the Police and Justice Act 2006

391. This section amends section 19 of the Police and Justice Act 2006. Section 19 requires every local authority to have a crime and disorder committee. The crime and disorder committee has powers to oversee the work of 'responsible authorities' – that is, the members of a CSP. In particular, crime and disorder committees have powers in connection with the work of the local CSP to address local crime and disorder matters under section 19. As the law stands, there are two statutory local crime and disorder matters, namely: (a) crime and disorder (including forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment); and (b) the misuse of drugs, alcohol and other substances. This Section adds a third statutory local crime and disorder matter, namely serious violence, within the meaning of the 1998 Act (as amended by section 20).

Section 22: Regulations

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

Section 23: Index of defined expressions

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

Chapter 2: Offensive Weapons Homicide Reviews

Section 24: Duty to arrange a review

394. This Section places a duty on "relevant review partners" to conduct offensive weapons homicide reviews in certain circumstances.

395. Subsection (1) provides for a review to be arranged by the relevant review partners in certain cases. Review partners are defined in section 25(2) as a chief officer of police for a police area in England and Wales; a local authority in England and Wales, a clinical commissioning group (in relation to England); or a local health board (in relation to Wales). Section 25 makes provision about relevant review partners.

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

397. Subsection (6) defines a qualifying homicide as being where the person who died was aged 18 or over, and the death, or the events surrounding the death, involved the use of an offensive weapon, as defined by subsection (8). Homicide is not defined for the purposes of this Chapter, and the reference to that term is not limited to cases where an offence has been committed, for example, a case where a person is attacked by another with a knife, but also covers cases where an offence may not have been committed, for example, where an individual while acting in self defence, kills their attacker using an offensive weapon. By referencing 'the events surrounding' the homicide, an offensive weapon homicide review could be conducted if an offensive weapon was involved in the homicide, though may not have been the decisive factor in the death; for example, if a victim was stabbed with a knife, but subsequently died from being strangled.

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

399. Subsections (2) to (5) provide that the duty to arrange an offensive weapons homicide review does not apply where the death may be subject to an existing review, as set out in section 26, or where an offensive weapons homicide review has already been started or taken place; and that the duty to arrange an offensive weapons homicide review ceases to apply if, on further information a review partner considers the conditions in subsection (1) are no longer satisfied; however subsection (4) provides that where a review has already started it cannot be discontinued if further information indicates a change in which review partners are the relevant review partners.

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

Section 25: Relevant review partners

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

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

Section 26: Relationship with other review requirements

403. This section and section 24(2) disapply the duty in section 24(1) to arrange a review in certain cases.

404. Subsections (1) and (3) disapply the duty if the death is one that must or may be subject to a child death review in England (see sections 16M(1)(and (2) of the Children Act 2004), may be subject to a domestic homicide review in England or Wales (see section 9 of the Domestic Violence, Crime and Victims Act 2004), may or must be subject to a safeguarding adults review in England (see section 44(1)(and (4) of the Care Act 2014), or if regulations under section 135(4)(a) of the Social Services and Well-being (Wales) Act 2014 require a Safeguarding Board to review the death of a child or adult.

405. Subsection (2) provides that the Secretary of State may make regulations to disapply the duty to arrange an offensive weapons homicide review in the case of a death which may or must be investigated by NHS bodies (in England, as defined in section 36(1)) where a death was caused by persons who are receiving or have received any health services relating to mental health. Subsection (4) provides an equivalent power to make regulations to disapply the duty to arrange an offensive weapons homicide review in respect of a death caused by a person who is receiving or has received any mental health services in Wales where there may be a review of, or investigation into, the provision of that health care under section 70 of the Health and Social Care (Community Health and Standards) Act 2003.

Section 27: Notification of Secretary of State

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

407. Subsection (1) provides that notification must be either that the review partner is under a duty to arrange an offensive weapons homicide review, that the review partner is not under that duty, or that the review partner has not been able to take a decision as to whether they are under that duty. By virtue of subsection (7) a review partner becomes aware of qualifying circumstances when they become aware of such facts as make it likely that the conditions in section 24(1)(a) (that the death was, or is likely to have been, a qualifying homicide) and section 24(1)(b) (the death occurred, or is likely to have occurred, in England or Wales) are satisfied in relation to the death, and they are one of the relevant review partners in respect of the death. Subsection (2) provides that the duty to notify does not, however, apply if when they become aware of qualifying circumstances, they are also aware that no duty to arrange a review arises because a review has already started or is taking place (see section 24(5)) or the death falls within a review set out in section 26.

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

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

Section 28: Conduct of review

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

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

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

Section 29: Information

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

414. Subsection (1) provides that a review partner may request a person to provide information to them, or to any of the other review partners. Subsections (2) to (4) provide that such a request may only be made if it is made for the purpose of enabling or assisting the performance of functions conferred by sections 24 to 28 (including considering whether or not to establish a review) and that the recipient of the request is, due to their functions or activities, considered by the review partner to be likely to have information that would enable or assist the performance of those functions. Other individuals or organisations that may have relevant information could include, but is not limited to, British Transport Police, probation services, schools, universities, colleges, GP practices, hospitals and third-sector organisations.

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

416. Subsection (7) provides review partners with a power to share information with another review partner if that information is shared for the purpose of enabling or assisting the performance of functions under sections 24 to 28. This ensures review partners are able to share either information they already hold, or information they receive via a request made under subsection (1) with other review partners for those purposes.

Section 30: Information: supplementary

417. As per paragraph 413, the collection and analysis of information relevant to the death will be essential in learning lessons to prevent future deaths. This section makes supplementary provision in relation to the disclosure of information. Subsection (1) provides that a person cannot be required by section 29 to disclose information they could not be compelled to disclose in proceedings before the High Court, meaning information that is subject to legal professional privilege cannot be required to be disclosed.

418. Subsections (2) and (3) provide that a disclosure of information required or authorised by sections 27 to 29 (being information contained in notifications to the Secretary of State, contained in the report of the review, and information disclosed under section 29) does not breach any obligation of confidence owed by the person making the disclosure, or any other restriction on the disclosure of information, but sections 27 to 29 do not require or authorise a disclosure that would contravene the data protection legislation (as defined in subsection (5)) or that is prohibited by any parts of Part 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. Subsection (4) provides that this information sharing gateway does not otherwise affect any existing powers or duties of review partners to disclose information.

Section 31: Delegating functions

419. Subsections (1) and (2) provide a power for the Secretary of State to make regulations enabling the relevant review partners to act jointly to delegate one or more of the functions specified in the regulations (which may be some or all of a review partners functions under sections 28 and 29 relating to a review or a report on the review) to either one of themselves, or another person. Such regulations could enable relevant review partners to decide one review partner or one individual should conduct the review and / or author the report on behalf of all the relevant review partners.

420. Subsections (3) and (4) provide a further power for the Secretary of State to make regulations enabling a county council and a district council for an area that is within the area of the county council, to agree to delegate one or all of the functions specified in the regulations (which may be some or all of the functions of a review partner under sections 24 to 29) to one of them. Such regulations could enable county and district councils for the same area to agree that one acts on behalf of the other in respect of one or more of the functions of a review partner in sections 24 to 29.

Section 32: Guidance

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

422. Subsection (2) places a duty on the Secretary of State to consult those appearing to represent review partners, the Welsh Ministers so far as the guidance relates to a devolved Welsh authority, and any other person the Secretary of State considers appropriate. Subsection (3) also places a duty on the Secretary of State to lay a copy of the guidance before Parliament.

Section 33: Power to pay grant: local health boards

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

Section 34: Piloting

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

Section 35: Regulations

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

Section 36: Interpretation

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

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

Chapter 3: Extraction of information from electronic devices

Section 37: Extraction of information from electronic devices: investigations of crime etc.

428. Subsection (1) provides that an authorised person can extract information stored on an "electronic device" if three conditions are met. First, that the device has been provided voluntarily by a user of the device, and, second, that that user has given their agreement for information stored on the device to be extracted, third that an authorised person must reasonably believe that information stored on an electronic device is relevant to a reasonable line of enquiry.

429. Subsection (2) sets out the purposes for which the power in subsection (1) can be used, namely the prevention, detection, investigation or prosecution of crime; helping to locate a missing person; or protecting a child or at-risk adult (as defined in subsection (4)) from neglect or harm. So far as the first of these purposes goes, an example is where a victim of a crime has kept texts on their mobile phone which may have a bearing on the investigation of the offence. If the victim voluntarily provides their mobile phone to the police and gives their agreement for the extraction of information from the phone, the police can use this power to review the text messages during the criminal investigation (provided the other provisions of section 37 are adhered to).

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

431. Subsection (5) sets out conditions which must be satisfied for an authorised person to extract information from an electronic device under subsection (1). Subsection (5)(a) describes that if exercising the powers for the purpose of the prevention, detection, investigation, or prosecution of a crime the authorised person must reasonably believe that information on the device is relevant to a reasonable line of enquiry. Subsection (5)(b) applies where an authorised person is exercising the powers for the purpose of helping to locate a missing person or protecting a child or at-risk adult from neglect or harm and specifies that the powers may only be exercised if the authorised person reasonably believes that information stored on the device will be relevant to that purpose. Subsection (5)(c) confirms that in all cases where an authorised person seeks to use these powers they must also be satisfied that extraction of that information is necessary and proportionate to achieve the purpose.

432. Subsection (7) applies where the authorised person thinks there is a risk of obtaining information in excess of that which is required for the purposes of subsection (2) or section 41(2). In such a case, in order to be satisfied that extraction is proportionate, the authorised person must be satisfied that there

are no other ways of obtaining the required information which avoid that risk or, if there are, that it is not reasonably practicable to rely on them. This means that, for example, a police constable should not use this power to extract video evidence from a witness's digital device if there is a risk of extracting other information and it is possible and practical to obtain the same video evidence another way which doesn't carry that risk. There may be instances where the information required exists elsewhere, such as in CCTV, but it is not reasonably practicable to obtain it, as doing so would take an excessive amount of time. The authorised person must demonstrate that these issues and alternatives for obtaining the information have been considered before undertaking the extraction activity.

433. Subsection (8) is intended to ensure that authorised persons have due regard for confidential information (that is, legally privileged information, journalistic material and other protected material, as defined in Section 43) in the course of exercising these powers. Confidential information includes categories of information that carry inherent sensitivity and so are subject to certain protections. These include information subject to legal privilege, journalistic material, certain personal records such as medical documents and material acquired as part of a trade deal.

434. Subsection (9), similar to (7), sets out that before exercising the power, where they consider there is a risk of obtaining confidential information in the exercise of the powers, the authorised person must be satisfied that the use of the power remains proportionate. That is, that there are no other means of obtaining the information sought, and if there are, it is not reasonably practicable to use them. In addition, however, in order to be satisfied that the use of the power is proportionate, the authorised person must, under subsection (10), have regard to the potential amount of confidential information likely to be held on the device, and also its potential relevance to purpose within section 37(2), or 41(2) (i.e. the purposes with regard to which the power can be exercised – the prevention, detection, investigation or prosecution crime; to help locate a missing person or to protect a child or at-risk adult). Authorised persons will need to make this separate assessment with regard to confidential information in cases involving devices owned by individuals who have since died, as well as devices owned or used by individuals without capacity.

435. Subsection (11) requires authorised persons to have regard to the code of practice issued by the Secretary of State under section 41 when exercising, and when considering whether to exercise, the power in subsection (1).

436. Subsection (12) provides that the power conferred by subsection (1) is without prejudice to other statutory or common law powers to extract information or to seize any item or information – for example, the general powers of seizure conferred by section 19 of PACE, exercisable where a constable is lawfully on any premises (this provision allows the constable to seize anything on the premises if the constable has reasonable grounds for believing it is evidence relating to an offence and it is necessary to seize it in order to prevent the evidence being concealed etc).

437. Subsection (13) defines various terms used in this Chapter, including:

- "adult" is a person aged 18 or over
- "authorised person", which means a police constable or other law enforcement agency/officer listed in Schedule 3;
- "information", which includes photographs and video or sound recordings;
- "electronic device", which means any device, such as a mobile phone, on which information is capable of being stored electronically (and includes a component part of such a device);

- "user", which means an individual who ordinarily uses a device (who may not necessarily be the owner of the device or the person in whose name a contract with a telecommunications service provider is held). Typically, for the purposes of this power, the user will be the victim or witness of a crime which is being investigated by the police or other authorised person.

Section 38: Application of section 37 to children and adults without capacity

438. Subsections (1) and (6) set out that children and adults without capacity, respectively, are not capable of deciding whether to provide a device or agree to the extraction of information from it, for the purposes of the power in section 37.

439. A child is defined as a person aged under 18 (see section 37(13)). Section 38(10) defines 'adult without capacity' by reference to the Mental Capacity Act 2005 (for England and Wales), the Adults with Incapacity (Scotland) Act 2000 and the Mental Capacity Act (Northern Ireland) 2016.

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

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

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

443. Subsection (11) defines terms relevant for these purposes (e.g. "registered social worker").

Section 39: Requirements for voluntary provision and agreement

444. This section defines the conditions that must be met for an individual to be treated as having voluntarily provided a device and agreeing to the extraction of information from it.

445. Subsection (2) states that an authorised person must not have placed any undue pressure on the individual to volunteer the device and agree to the extraction of information from it. This is a safeguard to ensure that a condition of voluntary provision and agreement is that it is not following coercion by the authorised person.

446. Subsection (3) details the information that an authorised person must provide to an individual, in writing. This includes:

a) Description of the information sought – for example a copy of an image or messages between the device owner and a suspect;

b) Reason why that information is sought – for example the reasonable line of enquiry it relates to how the authorised person reasonably believes it will assist the purpose for which the powers are being exercised such as locating a missing person;

c) How the information will be dealt with once it has been extracted, for example, relevant information may be disclosed to the Crown Prosecution Service;

d) Stating that the individual may refuse to provide the device and agree to the extraction of information from it;

e) Stating that, if they do decide not to volunteer the device and give agreement this does not automatically result in the closure of the investigation or enquiry.

447. The conditions at (d) and (e) require the individual to have been informed that they can choose not to provide their device or agree to the extraction of information and second, the fact that they have made any such decision would not be a reason for ending any investigation or enquiry. Subsection (4) confirms that the individual should provide this agreement in writing and subsection (5) that alternatives must be arranged if the individual is unable to confirm agreement in writing due to a physical impairment or lack of literacy skills. In those circumstances agreement should be given orally and confirmation recorded in writing by the authorised person. Subsection (6) provides that that the individual must get a copy of the agreement in writing either in hard copy or electronically. This ensures that they have a record of the decision to volunteer a device and agree to the extraction of information from it.

Section 40: Application of section 37 where user has died etc.

448. Subsection (1) sets out that in three special cases an authorised person may exercise the power in section 37 to extract information from a device even though a user has not voluntarily handed over the device or agreed to extraction.

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

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

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

452. In these cases, there is no requirement on the police or other authorised person to obtain the agreement of the deceased's next of kin or user's parent, guardian etc., albeit that the police or other authorised person may inform the next of kin or parent, guardian etc. that they are in possession of the device and have extracted information from it for the purposes of a criminal investigation or another purpose specified in section 37(2).

Section 41: Extraction of information from electronic devices: investigations of death

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

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

455. Subsection (4)(a) sets out the equivalent provisions to sections 37(5)(b) that the powers may only be exercised if the authorised person reasonably believes that information stored on the device will be relevant to the purpose in subsection (2) and subsection (4)(b) sets out the equivalent to section 37(5)(c) that they also be satisfied that extraction of that information is necessary and proportionate to achieve the purpose.

456. Subsection (6) applies where the authorised person thinks there is a risk of obtaining information in excess of that which is required for the purposes of subsection (2) or section 37(2). Subsection (6) sets out the equivalent provisions to section 37(7) that in order to be satisfied that extraction is

proportionate, the authorised person must be satisfied that there are no other ways of obtaining the required information which avoid that risk or, if there are, that it is not reasonably practicable to rely on them.

457. Subsections (8) and (9) sets out equivalent provisions to sections 37(9) and (10) – in effect, the obligations to consider the risk of a device containing confidential information and the steps that must be taken to ensure use of the powers is proportionate with regard to such information. These obligations are the same as those set out in Section 37(9) and (10) but here apply where the information is sought for the purpose of the investigation of death.

Section 42: Code of practice about the extraction of information

458. Subsection (1) imposes a requirement on the Secretary of State to prepare a code of practice which provides guidance on the exercise of the powers in sections 37(1) and 41(1). The code will give practical guidance to authorised persons on how and when it is appropriate to use the powers. This will ensure they exercise their functions in accordance with the law. The code will ensure a greater understanding on the use of the powers and their application in real life.

459. Subsection (2) specifies that the code may make different provisions for different purposes or areas. The powers can be exercised by a number of different bodies (as detailed in Schedule 3) and across all parts of the UK and this subsection ensures that the code can contain guidance specific to the uses of the powers by different bodies or areas if required.

460. Subsection (2) requires the Secretary of State to consult with the Information Commissioner, the Scottish Ministers, the Department of Justice in Northern Ireland, the Commissioner for Victims and Witnesses and the Domestic Abuse Commissioner and Commissioner for Victims and Survivors Northern Ireland (and such other persons as the Secretary of State thinks appropriate) in preparing the code.

461. Subsections (3) to (9) set out the process for issuing the code of practice. Subsection (6) allows the Secretary of State to revise the code of practice from time to time. For example, as the needs of society and the law could change in the future, the code can be revised to remain relevant and applicable for the exercise of this power.

Section 43: Confidential Information

462. Section 43 defines 'confidential information' for the purposes of Chapter 3 of Part 2.

Section 44 and Schedule 3: Authorised persons

463. Section 44 and Schedule 3 define "authorised persons" for the purposes of Chapter 3 of Part 2. The list of authorised persons set out in Schedule 3 covers law enforcement agencies and certain regulatory bodies. The Schedule recognises that an authorised person may contract with another person (for example, a forensic science provider) to extract information from an electronic device on their behalf.

464. Schedule 3 is split into three parts, recognising the different responsibilities of the various bodies:

- The persons listed in Part 1 of the Schedule may exercise the power under section 37(1) for all the purposes listed in subsection (2) of that section, and the power in section 41(1).
- The persons listed in Part 2 of the Schedule may exercise the power in section 37(1) for all the purposes listed in subsection (2) of that section. They may not exercise the power in section 41(1).
- Lastly, the persons listed in Part 3 of the Schedule may only exercise the power in section 37(1) for the purposes of preventing, detecting, investigating or prosecuting crime. They may not exercise that power for other purposes or the power in section 41(1)

465. Subsections (4) and (5) confer a power on the Secretary of State, by regulations, to amend Schedule 3, including by adding or removing persons to/from the list.

466. Subsection (6) requires the Secretary of State to consult Scottish Ministers before making changes to Schedule 3 to add, rename or remove a body that has functions that are within legislative competence of the Scottish Parliament.

467. Subsection (7) requires the Secretary of State to consult the Department of Justice in Northern Ireland before making changes to Schedule 3 to add, rename or remove a body that has functions that are within legislative competence of the Northern Ireland Assembly.

Chapter 4: Other provisions

Section 45 and Schedule 4: Pre-charge bail

468. This section introduces Schedule 4 which amends provisions in the Police and Criminal Evidence Act 1984 ("PACE"), the Bail Act 1976 and the Criminal Justice Act 2003 relating to pre-charge bail. The amendments relate to the granting of pre-charge bail and the factors to be taken into account when doing so. These amendments also introduce a duty to seek views of alleged victims regarding the imposition or variation of pre-charge bail conditions and the nature of these conditions. Section 45 and Schedule 4 also includes amendments to the time limits and levels of authorisation of pre-charge bail and the effect on the maximum detention period under Part 4 of PACE where a person is arrested for breach of bail conditions or failure to answer bail, as well as introducing a power for the College of Policing to issue statutory guidance relating to pre-charge bail.

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

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

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

471. Paragraph 3 removes the presumption against pre-charge bail in section 34 of PACE. Section 34 deals with the release of a person from police detention. Where the custody officer determines that the conditions in section 34(5A) are met, which include the pre-conditions for bail under section 50A of PACE (mirroring the necessary and proportionate criteria in section 30A(1A)), the person must be released on bail under the amended section 34(5). Where the conditions in section 34(5A) do not apply, the person must be released without bail under new section 34(5AA).

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

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

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

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

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

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

478. Paragraph 10 removes the presumption against pre-charge bail in section 43 of PACE, which deals with warrants of further detention. Section 43 is amended to provide that where an application to a magistrates' court for a warrant of further detention (for up to 72 hours from the "relevant time") has been refused, the person to whom the application relates must, unless charged, be released on bail under new section 43(15)(a) if the pre-conditions are met and without bail under new section 43(15)(b) if the pre-conditions are not met. Similarly, where a warrant of further detention is issued by a magistrates' court, the person to whom the warrant relates must, unless charged, be released from police detention on or before the expiry of the warrant on bail under new section 43(18)(a) where the pre-conditions are met and without bail under new section 43(18)(b) where the pre-conditions are not met.

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

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

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

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

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

Part 2 of Schedule 4: risk factors

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

Part 3 of Schedule 4: duty to seek views

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

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

486. Paragraph 21 of Schedule 4 amends section 30CA of PACE to establish a duty to seek views of alleged victims where a person is released on "street bail" under section 30A of PACE. Where a person has requested that a relevant officer vary their pre-charge bail conditions under section 30CA, these provisions insert a new subsection (4A), which requires a person in charge of the investigation of an offence (the "investigating officer") , if it is reasonably practicable to do so, to seek the views of the alleged victim of the relevant offence (defined in new section 30CA(5) of PACE) on whether any of a person's relevant bail conditions should be varied and, if so, what that variation should comprise of. The fact that this duty must be adhered to where reasonably practicable aims to provide investigating officers with operational flexibility, helping to mitigate the risks of the duty impacting significantly on the time taken to release a suspect on bail. "Relevant conditions", under new section 30CA(5) is limited to conditions relating to the safeguarding of the alleged victim, to help ensure that this duty is proportionate and that victims' views are sought only in relation to conditions relevant to their particular safeguarding needs. New section 30CA(4B) confers a separate duty on an investigating officer to inform the relevant officer, defined in new section 30CA(5), of any views obtained, ensuring that any information provided by the alleged victim is fed back to the officer with the power to vary. Under new section 30CA(4C), if the conditions are varied, the investigating officer must notify the alleged victim of that variation, again where reasonably practicable to do so. New section 30CA(4D) sets out how the person in charge of the investigation should discharge this notification duty where the alleged victim is a vulnerable person. New section 30CA(6) defines the term "alleged victim". New section 30CA(7) sets out the circumstances in which an alleged victim may be considered vulnerable.

487. Paragraph 22 inserts new section 47ZZA into PACE. As set out in new section 47ZZA(2) this imposes a duty to, where reasonably practicable, seek views from alleged victims on whether relevant conditions should be imposed on the release of a person on pre-charge bail under Part 4 of PACE (except under sections 37C(2)(b)) and, if so, the nature of those conditions. A duty is not imposed on the investigating officer to seek views as to whether to release a suspect on bail as the constable/custody officer where relevant is required to consider the full range of circumstances in determining whether the pre-conditions for bail are met, not just the views of an alleged victim. Under new section 47ZZA(1), this duty will apply where a person has been arrested for an offence and a custody officer proposes to release the person on bail. Release on bail under section 37C(2)(b) or section 37CA(2)(b) of PACE is not subject to this duty, given that release on bail under these provisions must be with the same conditions as those originally imposed. There is therefore no need to notify the alleged victim of these conditions again.

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

489. New sections 47ZZA(7) to (10) impose an equivalent duty on the investigating officer where a person requests to vary their bail conditions under section 3A(8) of the Bail Act 1976. New section 47ZZA(8) requires the investigating officer to, where reasonably practicable, seek the views of the alleged victim in the same way as under section 30CA, that is regarding whether any of the relevant conditions should be varied and, if so, what variations should be made. Under new section 47ZZA(9), the investigating officer must inform the custody officer of any views obtained. Under new section

47ZZA(10), where the conditions have been varied, the investigating officer must notify the alleged victim of that variation, where reasonably practicable. New section 47ZZA(11) sets out how the person in charge of the investigation should discharge this notification duty where the alleged victim is a vulnerable person. New section 47ZZA(12) defines the "investigating officer". New section 47ZZA(13) defines the term "alleged victim". New section 47ZZA(14) sets out the circumstances in which an alleged victim may be considered vulnerable.

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

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

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

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

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

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

495. Paragraph 26 of Schedule 4 amended section 47ZB of PACE which currently sets out that the initial bail period is three months from the bail start date for SFO cases, or 28 days from the bail start date in all other (that is, standard) cases (a person's bail start date is the day after the day on which the person was arrested for the relevant offence, under section 47ZB(4)(a)). The longer initial bail period for SFO cases recognises that such cases have added complexity and therefore take longer to investigate and reach a charging decision. The changes made by paragraph 26 are two-fold. First, they extend the initial bail period for standard cases from 28 days from the bail start date to three months from the bail start date. Second, they expand upon the categories of non-standard cases to which an extended initial bail period applies. In addition to SFO cases, the extended initial bail period applies to FCA cases, NCA cases and HMRC cases. In such cases the initial bail period is six months from the bail start date. The extension of the longer initial bail period for FCA, NCA, HMRC and SFO cases

recognises the increased level of complexity and longer investigation times of these cases. Section 47ZB(4) includes amended definitions of an "FCA case" and an "SFO case" and inserts definitions of an "HMRC case" and "NCA case". This enables these cases to be determined as such where the relevant offence is being investigated by that authority and is confirmed by a member of that agency on whom power is conferred to do so, as listed in the amended subsection (4). Confirmation can be given in an SFO case, HMRC case or NCA case by any member of the SFO, officer of HMRC or NCA as the case may be, and in an FCA case by a member of staff of the FCA who has been designated for this purpose.

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

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

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

499. New section 47ZDB creates an extension point for non-standard cases and enables the appropriate decision-maker within the agencies listed at section 47ZB to authorise an extension of the applicable bail period where conditions A to D set out in section 47ZC are met. The appropriate decision-maker in an FCA case is a member of staff of the FCA designated as such by the Chief Executive of that Authority, an officer of the grade equivalent to superintendent or above in a HMRC case, an NCA officer of the rank equivalent to that of superintendent or above in an NCA case, and a

member of the SFO who is of the Senior Civil Service in an SFO case. These authorisation levels reconcile with the equivalent ranks of police officer required to authorise extensions of the applicable bail period in standard cases beyond six months. The applicable bail period can be extended under this provision from six months to 12 months from the bail start date. As with sections 47ZD and 47ZDA, the appropriate decision-maker must arrange for the person or their legal representative to be invited to make representations and must consider any that are made before making a decision. The person (or their representative) must be informed of the outcome.

500. Paragraph 30 amends section 47ZE of PACE which currently provides for an exception to the general position that the extension of the applicable bail period beyond three months from the bail start date must be authorised by a magistrates' court. The amendments remove references to the SFO and the FCA as extensions involving these agencies are addressed in new section 47ZDB. Section 47ZE, as amended, is only concerned with cases that have been granted an extension under new section 47ZDA (i.e. standard cases which have been extended to nine months from the bail start date by a senior officer). Where a case has been designated as being exceptionally complex, a qualifying police officer (defined as a police officer of at least the rank of assistant chief constable (or Commander in the Metropolitan or City of London forces)) may extend the applicable bail period to twelve months from the bail start date where they are satisfied that conditions A to D in section 47ZC are met. The qualifying police officer must consult the Director of Public Prosecutions before authorising an extension under section 47ZE(5). As with an extension under section 47ZD and new sections 47ZDA and 47ZDB, the qualifying police officer must consider representations from the person (or their legal representative) before reaching a decision and must arrange for the person to be informed of the decision.

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

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

considers it in the interests of justice to require an oral hearing. Section 47ZI(3), as amended, enables an oral hearing to be required where the application would result in a person's applicable bail period being extended beyond 24 months and either party has requested a hearing.

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

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

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

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

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

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

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

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

Section 46: Arranging or facilitating commission of a child sex offence

509. Section 14 of the 2003 Act provides for the preparatory offence of arranging or facilitating the commission of a child sexual offence. It effectively criminalises acts preparatory to the substantive offences provided for in sections 9 to 13 of the 2003 Act (including the offences of sexual activity with a child and inciting a child to engage in such activity). Subsection (2) of section 46 extends the section 14 offence so that it also covers acts preparatory to the offences in sections 5 to 8 of the 2003 Act, namely rape of a child under 13, assault of a child under 13 by penetration, sexual assault of a child under 13, and causing or inciting a child under 13 to engage in sexual activity.

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

Section 47: Positions of trust

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

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

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

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

515. New section 22A(3) makes clear that a person is not in a position of trust where a person (A) is already considered to be in a position of trust in relation to another person (B) by virtue of circumstances within section 21 of the 2003 Act.

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

Section 48: Voyeurism: breast-feeding

517. Section 48 adds to the voyeurism offences in section 67A of the 2003 Act.

518. Subsection (2) inserts new subsections (2A) and (2B) into section 67A which provide for two new offences.

519. New section 67A(2A)(a) states that it will be an offence if a person (A) operates equipment under certain circumstances.

520. New section 67A(2A)(b) gives the required intention for this offence: that A or a third party (C) will observe, for a particular purpose, another person (B) whilst they are breast-feeding a child.

521. New section 67A(2A)(b) also sets out that the purposes referred to are those set out in the existing section 67A(3), namely to obtain sexual gratification or to humiliate, alarm or distress the person who is breastfeeding.

522. New section 67A(2A)(c) sets out a requirement that person A must act without B's consent or without a reasonable belief that B consents to the actions described in new section 67A(2A)(a) and (b).

523. New section 67A(2B)(a) states that it will be an offence if a person (A) records an image of another (B) whilst they are breast-feeding a child.

524. New section 67A(2B)(b) gives the required intention for this offence: that A or a third party (C) will observe, for a particular purpose, B.

525. New section 67A(2B)(b) also sets out that the purposes referred to are those set out in the existing section 67A(3).

526. New section 67A(2B)(c) sets out a requirement that person A must act without B's consent or without a reasonable belief that B consents to the actions described in new section 67A(2B)(a) and (b).

527. Subsection (3) makes a consequential amendment to section 67A(3).

528. Subsection (4) inserts new subsections (3A) and (3B) into section 67A to clarify the language used in new subsections (2A) and (2B).

529. New section 67A(3A)(a) and (b) state that any references to breast-feeding a child include rearranging B's clothing whilst preparing to breastfeed or having just finished breast-feeding the child.

530. New section 67A(3B)(a) and (b) set out that it is irrelevant whether B is in a public place or whether B's breasts are exposed whilst breast-feeding the child for the purposes of new subsections (2A) and (2B).

531. New section 67A(3B)(c)(i) and (ii) clarify that it is irrelevant which parts of B's body are, or are intended to be visible in the recorded image, or are intended to be observed for the purposes of new subsections (2A) and (2B).

532. The penalty for these new offences is as set out in the existing section 67A(4) and (5) which provides that on summary conviction imprisonment shall not exceed 6 months (rising to 12 months when paragraph 24(2) of Schedule 22 to the Code is commenced), or an unlimited fine, or both, and on indictment, imprisonment shall not exceed 2 years.

Section 49: Time limit for prosecution of common assault or battery in domestic abuse cases

533. Section 49 inserts a new section 39A into the Criminal Justice Act 1988 to extend the time limit to bring a prosecution for common assault or battery where the alleged behaviour amounts to domestic abuse as defined in section 1 of the Domestic Abuse Act 2021.

534. Under new section 39A(2) to (4), the time limit to commence a prosecution is extended to any time which is both within six months of an offence being formally reported to the police through either a witness statement made with a view to its possible use as evidence in proceedings or a video recording made with a view to its possible use as evidence in chief, and within two years of the alleged offence occurring. The current time limit of six months from the date of the offence, set out in section 127 of the 1980 Act, is disapplied by new section 39A(5)

535. New section 39A(7) provides that this provision does not have retrospective effect, and that it will not apply in relation to offences alleged to have been committed before the section is commenced.

Section 50: Criminal damage to memorials: mode of trial

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

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

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

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

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

Section 51 and Schedule 5: Overseas production orders

541. This Section gives effect to Schedule 5 which makes amendments to the COPO Act.

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

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

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

545. Paragraph 3 amends section 5 of the COPO Act which sets out what an overseas production order must or must not contain, in terms of specifying the electronic data that is to be produced, or to which access is to be given, where the judge is satisfied that, based on the application before them, an order should be made.

546. Section 5(3) of the COPO Act provides that a judge, when making an overseas production order, must only include electronic data that meets the requirements of the legal tests as set out in section 4 of the COPO Act. Where only part of the data sought satisfies those requirements the judge cannot specify or describe in the order any reference to electronic data that does not meet the requirements of that section. Section 4(5) sets out the requirement that all or part of the evidence is likely to be of

substantial value. Section 4(7) sets out a further requirement that all or part of the evidence is in the public interest to be produced or accessed. The amendment made to section 5(3) by this paragraph requires that section 4(6) also be considered. Section 4(6) requires that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely to be relevant evidence in respect of the offence to which the application relates.

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

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

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

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

Section 52: Power to photograph certain persons at a police station

551. Section 64A of PACE confers a power on the police to take photographs from a person who has been detained in a police station and/or arrested. If a person is arrested, charged or convicted without a photograph being taken, there is no power to require them to attend a police station later for this to be done, although there is such a "recall" power in Schedule 2A to PACE relating to taking of fingerprints and DNA samples. More suspects are now interviewed voluntarily in the first instance and then arrested, or charged later, so the absence of a recall power increasingly means that photographs of suspects and offenders are not taken. This may make it more difficult to detect crimes the person may have committed in the past or may commit in the future.

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

553. New section 64A(1C) provides that the power only applies if there is no power to photograph the person under existing section 64A (1) or (1A), so that the powers do not overlap.

554. New section 64A(1D) provides that the power applies where the individual in question has been arrested for a recordable offence and released, charged with a recordable offence or informed they will be reported for such an offence and where they meet the requirements in the new section 64A(1E). New section 64A(1E) provides the power applies where the person has not been photographed in the course of the investigation, or where a photograph taken is unavailable (i.e. where it is lost or destroyed) or inadequate (i.e. where it is unclear, incomplete or no longer an accurate representation) and it is considered that a further photograph is required to assist in the prevention or detection of crime. This is similar to existing provisions relating to fingerprints in section 49 of PACE.

555. New section 64A(1F) and (1G) provide that the power applies where the individual in question has been convicted of a recordable offence or given a caution relating to a recordable offence, and they meet the requirements in the new section 64A(1G). The conditions in the new section 64A(1G) provide that the power applies where the person has not been photographed since they were convicted or cautioned, where a photograph taken is unavailable or inadequate and it is considered a further photo is needed to assist in the prevention and detection of crime. This is similar to existing provisions relating to fingerprints in section 61 of PACE.

556. New section 64A(1H) and (1I) apply where the person has been convicted in a jurisdiction outside England and Wales and where the act constituting the offence would also constitute a "qualifying offence" in England and Wales as defined in section 65A(1) (i.e. a serious offence, generally sexual and violent offences). This also mirrors comparable existing provisions relating to fingerprints in section 61 of PACE. New section 64A(1I) provides that, as with new section 64A(1F) and (1H), this power applies if the person has not been photographed already or if they have, but the photograph is unavailable or inadequate, and it is considered a new photo is necessary to assist in the prevention or detection of crime.

557. New section 64A(1J) provides that the authorisation of an inspector is required before taking a photograph of a person falling within new section 64A(1G) or (1I). New section 64A(1K) provides that the officer must be satisfied taking is necessary to assist in the prevention or detection of crime. These also mirror comparable existing provisions relating to fingerprints in section 61 of PACE.

558. New section 64A(1L) defines the meaning of 'unavailable' and 'inadequate'.

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

560. Subsection (5) adds a new Part 3A to Schedule 2A (comprising paragraphs 14A to 14E), following on from the existing Parts 1, 2, and 3, which deal with fingerprints, intimate samples, and non-intimate samples (in practice, these are almost always DNA samples) respectively. These provisions mirror those in the existing provisions relating to fingerprints and non-intimate samples.

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

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

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

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

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

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

Section 53: Power to specify date of attendance at police station for fingerprinting etc.

567. People who are arrested and taken to a custody suite can have fingerprints, DNA samples and a photograph taken straight away. If this is not done, there is a recall power to require those who have been arrested, charged or convicted to attend a police station so that their fingerprints and DNA sample can be taken (but not photographs – this is addressed by section 52 as described above). Currently, the person can be required to attend a police station at a particular time but not a particular day, only any day within a seven-day period. Police forces find this makes the power difficult to use, as they cannot deploy an officer or staff member to take the biometrics at a specific time. In practice, this results in opportunities to take fingerprints, DNA or photographs being missed. This means that opportunities may be missed to detect crimes the person may have committed in the past or may commit in the future.

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

Section 54: PACE etc powers for food crime officers

569. This section allows the Secretary of State to apply, by regulations, certain powers available to the police to food crime officers of the Food Standards Agency ("FSA") for their use in relation to their investigations of offences, including into serious fraud and related activity in the food supply chain, and enables Independent Office for Police Conduct oversight of food crime officers' use of these powers.

570. Subsection (1) inserts a new section 114C into PACE allowing the Secretary of State to apply, by regulations, any provisions of PACE which relate to investigations of offences conducted by the police to food crime officers, with any modification necessary (new section 114C(2)). It defines a food crime officer as an officer of the FSA who is acting for the purposes of the performance by the FSA of its functions under the Food Standards Act 1999 or any other enactment (including functions relating to the investigation of offences) and is authorised by the Secretary of State for the purposes of new section 114C. It sets out that this regulation-making power applies to investigations of offences committed, or suspected of having been committed, before the provisions of this Act came into force, and that the regulations applying the provisions of PACE will be made by statutory instrument subject to the negative procedure. Further, it clarifies that such regulations may make different provision for different purposes, consequential, supplementary, incidental, transitional, transitory or saving provision.

571. Subsection (2) inserts a new section 39A into the 1994 Act allowing the Secretary of State, by regulations, to apply any provision of section 36 or 37 of that Act that applies in relation to a constable to food crime officers as defined in new section 114C of PACE, with any modifications. It sets out that the regulations cannot apply any provision of section 36 or 37 in relation to a failure or refusal which took place before the regulations come into force, and that the regulations will be made by statutory instrument subject to the negative procedure. Sections 36 and 37 of the 1994 Act make provision for courts to draw adverse inference where an accused person fails or refuses to account for objects, substances or marks on their person, on their clothing or footwear, otherwise in their possession, or in the place they are in at the time of their arrest or fails or refuses to account for their presence at a particular place.

572. Subsection (3) inserts a new section 25A into the Food Standards Act 1999 to make it an offence for a person to obstruct a food crime officer who is exercising their functions under PACE, the maximum penalty for which is an unlimited fine or imprisonment of up to three months or both.

573. Subsection (4) amends the Police Reform Act 2002 to enable oversight by the Independent Office for Police Conduct ("IOPC") over food crime officers' exercise of police powers. It inserts new section 26E in that Act which allows the Secretary of State to make regulations conferring functions on the Director General of the IOPC in relation to food crime officers exercising functions conferred on them by new section 114C of PACE and new section 39A of the 1994 Act, including provision for the FSA to make payment to the IOPC. It also allows for the IOPC and Parliamentary Commissioner for Administration to jointly investigate food crime officers and for food crime officers, the IOPC and Parliamentary Commissioner for Administration to disclose information as part of any complaints procedure.

574. Subsection (5) sets out that the amendments in subsections (1) to (3) and any subsequent regulations made under subsections (1) and (2) bind the Crown.

575. Subsection (6) clarifies that a contravention of new section 25A of the Food Standards Act 1999 by the Crown would not make the Crown criminally liable, but that the High Court may declare any act or omission of the Crown which constitutes such a contravention to be unlawful.

576. Subsection (7) clarifies further that new section 25A of the Food Standards Act 1999 applies to persons in the public service of the Crown as it applies to other persons.

577. Subsection (8) allows the Secretary of State to certify that any powers of entry conferred by regulations made under new section 114C of PACE should not be exercisable in relation to any Crown premises in the interests of national security.

578. Subsection (9) defines "Crown premises" as premises held or used by or on behalf of the Crown.

579. Subsection (10) clarifies that these provisions do not affect Her Majesty in her private capacity.

Section 55: Entry and search of premises for human remains or material relating to human remains

580. The purpose of sections 55 to 57 is to help the police to locate human remains in situations where it is not currently possible to do so. This legislation enables a justice of the peace, on an application by a constable, to issue a search warrant or production order with a view to facilitating access to material and information that may indicate the location of a deceased person's body or remains (provided certain conditions are met).

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

582. Section 55 enables a justice of the peace in England and Wales to issue a search warrant, on an application by a constable, authorising an officer to enter and search premises (subsection (1)) if the following conditions are met:

- that there are reasonable grounds for believing that the premises contain relevant human remains or material that may relate to the location of relevant human remains (subsection (2));
- that there are reasonable grounds for believing that the material does not consist of or include items subject to legal privilege, excluded material, or special procedure material (subsection (3)); and

- in respect of each set of premises set out in the application, it is not practicable to speak to a person entitled to either grant entry to the premises or access to the material; that entry will not be granted without a warrant being produced or that there is a risk that, unless a constable can gain immediate access to the premises, the purpose of the search will be frustrated or seriously prejudiced (subsection (4)). This could cover a situation, for example, where there is a concern that, in the absence of a warrant, the material in question might be destroyed or removed.

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

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

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

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

587. Subsection (10) provides that the power to issue a warrant under this section is in addition to any other existing power to issue a search warrant. Subsection (11) defines the term "relevant human remains" for the purposes of these provisions (this section, section 56 and Schedule 6). Warrants applied for under this section can only be issued with a view to locating relevant human remains.

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

589. Subsection (12) provides that certain terms, namely "items subject to legal privilege", "excluded material", "special procedure material" and "premises" used in this section, section 56 and Schedule 6 have the same meaning as in PACE.

Section 56 and Schedule 6: Special procedure for access to material relating to human remains

590. Section 56 introduces Schedule 6 which allows officers to apply to access excluded material or special procedure material that either constitutes, or relates to the location of, relevant human remains as defined in section 55(11), provided the specified conditions are met.

591. Section 56(2) makes clear that the position in respect of the cross-border execution of warrants and orders granted under Schedule 1 to PACE (set out in section 4 of the Summary Jurisdiction (Process) Act 1881 in respect of Scotland and section 29 of the Petty Sessions (Ireland) Act 1851 in respect of Northern Ireland) is mirrored in respect of warrants and orders granted under Schedule 6. This provision therefore replicates insofar as possible section 9(2A) of PACE.

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

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

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

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

595. Paragraph 4 requires in effect that where a constable has been given access to material under this Schedule, they must follow the provisions in sections 21 and 22 of PACE. In effect this requires a constable, within a reasonable time period, if so requested by the individual appearing to occupy the premises on which the material was held, or to have had custody or control the information or material at the point access was given, to provide that person with a record of what they accessed or took away. Similarly, should such a person or anyone acting on their behalf request access to anything taken away under this Schedule, access will be granted under the supervision of a constable. It makes similar provision where such an individual requests a copy or a photograph of any such material. These are subject to certain conditions.

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

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

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

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

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

- That there are reasonable grounds to believe that there is material on the premises that may consist of human remains or relate to the location of relevant human remains;
- That the conditions set out in paragraphs 1(3) to (6) of Schedule 6 are met in relation to the material in question (paragraph (3)), namely:
    i. that there are reasonable grounds to believe this material includes or consists of excluded material or special procedure material (para 1(3)), but does not include or consist of material subject to legal privilege (paragraph 1(4));
    ii. that other methods of obtaining the material have been tried without success or have not been tried because it appeared that they were bound to fail (paragraph 1(5)), for example because necessary conditions under other powers have not been met; and
    iii. that it is in the public interest for access to be given to this material having regard to the need to ensure human remains are found and disposed of lawfully (paragraph 1(6)(a)), for example to enable burial or cremation; and to the circumstances under which the person in possession comes to hold it (paragraph 1(6)(b)); and
- That there are reasonable grounds to believe that, in relation to each of the sets of premises specified in the application:
    i. that it is not practicable to communicate with any person entitled to grant entry to the premises; or where communication with such a person is practicable, it is not practicable to communicate with any person entitled to grant access to the material;
    ii. that the material is subject to restrictions or a legal obligation of secrecy which are or is likely to be breached if disclosure is made without a warrant being issued; or
    iii. that there is a risk the purpose of the search may be seriously prejudiced if notice of an application for an order is given, for example where evidence may be removed or disposed of unless an officer can secure immediate access to it.

601. Paragraph 8(5) confirms that a search warrant issued under this Schedule may be for specified premises (known as a 'specific premises warrant') or all premises owned or occupied by a particular individual (an "all premises warrant").

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

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

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

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

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

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

Section 57: Additional seizure powers

608. This section amends Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001, to make clear that section 50 of that Act applies to the powers of seizure conferred by section 55 of or Schedule 6 to this Act. This in effect makes provision for seizure, where a constable is on any premises as a result of a warrant or order issued under section 55 or Schedule 6 and finds anything for which they have reasonable grounds to consider they are authorised to search for, but it is not reasonably practicable on particular premises either to determine whether the material or information in question is indeed within scope of the warrant or order; or for something they consider to be within scope to be separated from something else located on the premises.

Section 58: Functions of prison custody officers in relation to live link hearings

609. Section 58 amends sections 80 and 82 of the Criminal Justice Act 1991 ("the 1991 Act") to enable specially authorised prisoner custody officers (commonly known as PECS officers) to have custody over prisoners in police stations for purposes connected with certain hearings taking place by way of live link, including VRH.

610. Section 80 of the 1991 Act provides the Secretary of State may make arrangements, including contractual arrangements, for named functions to be performed by prisoner custody officers authorised to do so in accordance with that section. Subsection (3) inserts new section 80(1)(ba) of the 1991 Act which provides for a new function to be performed by PECS. The new function for which arrangements may be made concerns the custody of prisoners at a police station for any purpose connected with the prisoners' participation in a preliminary, sentencing or enforcement hearing taking place by way of live audio link or live video link. Subsection (4) inserts new section 80(1)(1B) which clarifies that the new function applies whether the hearing is yet to take place, is taking place or has taken place. Subsection (4) amends section 80(4) to provide for the terms "enforcement hearing", "live audio link"," live video link", "preliminary hearing" and "sentencing hearing" to have the meaning given to them in section 56(1) of the Criminal Justice Act 2003, as amended by paragraph 1(6) of Schedule 20.

611. Section 82 of the 1991 Act sets out the powers and duties of prisoner custody officers acting in pursuit of arrangements made under section 80, which include powers of search and use of reasonable force where necessary. Subsection (7) inserts new subsections (4A) to (4C) into that section. New section 82(4A) provides that section 82(4B) and (4C) apply where an officer is acting pursuant to arrangements at a police station for the purpose of the new function. New section 82(4B) provides that it is the officer's duty to give effect to, in relation to the prisoner, any order of the Crown Court under section 142 of the Powers of Criminal Courts (Sentencing) Act 2000 (concerning a power of the Crown Court to order a search of a person before it) or any order of a magistrates' court under section 80 of the 1980 Act (concerning a similar power of a magistrates' court). New section 82(4C) provides that the fact an officer is exercising, or may exercise, the new function does not prevent a constable from exercising any powers in relation to the prisoner that are otherwise available to the constable.

Section 59: Proceeds of crime: account freezing orders

612. Section 59 provides for consistency of account freezing and forfeiture provisions across the UK by ensuring that they can be used in respect of accounts maintained with Electronic Money Institutions (such as PayPal) and Payment Institutions (such as Revolut) in Northern Ireland.

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

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

615. Subsections (3) and (4) amends the Financial Services Act 2021 to remove sections that are now obsolete, in light of the other amendments made in section 59.

Section 60: Code of practice relating to non-Criminal hate incidents

616. Subsection (1) provides the Home Secretary with a power to publish a Code of Practice about the police's processing of personal data in non-crime hate incident (NCHI) records.

617. Subsection (2) defines the term "hate incident". A hate incident is defined as "an incident or alleged incident which involves or is alleged to involve an act by a person ("the alleged perpetrator") which is perceived by a person other than the alleged perpetrator to be motivated (wholly or partly) by hostility or prejudice towards persons with a particular characteristic towards someone with a particular characteristic."

618. Subsection (3) provides that the Code may include provisions on:

- whether and how personal data relating to a hate incident should be recorded;
- who can process this personal data;
- whether and when an individual should be notified that their data will be processed;
- how long this personal data can be retained for; and
- the consideration by relevant police officers and police staff of any request made by those about whom the data relates (e.g. if a subject about whom data is stored makes a request for the data to be corrected or deleted, the Code might address what the police should do in those circumstances).

619. Subsection (4) provides that where the police are carrying out investigations with a view to there being a prosecution, or where they assess a prosecution is likely, the Code will not apply.

620. Subsection (5) provides that the Code may cover provisions other than those mentioned above.

621. Subsection (6) provides that when the Code is in force, relevant individuals involved in the processing of data relating to hate incidents must have regard to the Code.

622. Subsection (7) provides the definitions of "data subject", "personal data" and "processing" by referring the reader to the Data Protection Act 2018.

623. Subsection (8) defines "relevant persons", the definition includes police officers, police staff and National Crime Agency officers.

Section 61: Further provision about the code of practice under section 60

624. Subsection (1) provides for the first edition of the code of practice to be subject to the affirmative procedure.

625. Subsection (2) enables the Home Secretary to revise and reissue the Code from time to time.

626. Subsections (3) to (7) provides for the draft negative procedure to apply to any reissue of the code of practice.

Section 62: Increase in penalty for offences related to game etc

627. Section 62 amends section 1 of the Night Poaching Act 1828, section 30 of the Game Act 1831 and section 4A of the Game Laws (Amendment) Act 1960.

628. Subsections (3) and (4) increase the maximum penalty upon conviction for an offence under section 1 of the Night Poaching Act 1828 (taking or destroying game or rabbits by night or entering land for that purpose) from a fine not exceeding level 3 on the standard scale to a fine of any amount and/or a custodial sentence of six months (if the offence is committed prior to the coming into force of section 281(5) of the Criminal Justice Act 2003, after which it will be a term not exceeding 51 weeks).

629. Subsections (5) to (8) increase the maximum penalty upon conviction for an offence under section 30 of the Game Act 1831 (trespass in daytime in search of game etc.) from a fine not exceeding level 3 on the standard scale (where fewer than five people are involved in committing the offence) and a fine not exceeding level 4 on the standard scale (where five or more people are involved in committing the offence) to a fine of any amount and/or a custodial sentence of six months (if the offence is committed prior to the coming into force of section 281(5) of the Criminal Justice Act 2003, after which it will be a term not exceeding 51 weeks). It applies the same maximum penalty in all cases no matter how many people are involved in committing the offence.

630. Subsection (9) amends section 4A of the Game Laws (Amendment) Act 1960 (forfeiture of vehicles) so that the court may now order forfeiture of a vehicle upon conviction for an offence under section 30 of the Game Act 1831 where fewer than five people are involved in committing an offence (the forfeiture power currently applies only where five or more persons are involved in committing the section 30 offence).

631. Subsection (10) provides that these amendments do not have retrospective effect and only apply to offences committed on or after the section comes into force.

Section 63: Trespass with intent to search for or to pursue hares with dogs etc

632. Section 63 creates new offences relating to trespassing on land with the intention of using a dog to search for or to pursue hares with dogs. Subsection (1) makes it an offence to trespass on land with the intention of (a) using a dog to search for or to pursue a hare, (b) facilitating or encouraging the use of a dog to search for or to pursue a hare or (c) enabling another person to observe the use of a dog to search for or to pursue a hare.

633. Subsection (2) provides the defence of proving reasonable excuse for the trespass.

634. Subsections (3) and (4) set the maximum penalty for the offence as six months' imprisonment (rising to 51 weeks when section 281(5) of the CJA 2003 comes into force), an unlimited fine, or both.

Section 64: Being equipped for searching for or pursuing hares with dogs etc

635. Subsection (1) makes it an offence for a person to have an article with them in a place other than a dwelling with the intention that it will be used in the course of or in connection with the commission by any person of an offence under section 63.

636. Subsection (2) provides that proof that a person has with them an article made or adapted for use in committing the offence at in subsection (1) (trespass with intent to search for or to pursue hares with dogs etc) constitutes evidence that they had it with them intending to use in the course of or in connection with that offence.

637. Subsections (3) and (4) set the maximum penalty for the offence as six months' imprisonment (rising to 51 weeks when section 281(5) of the CJA 2003 comes into force), an unlimited fine, or both.

638. Subsection (5) defines what is an animal and what is a dwelling for the purposes of the offence.

Section 65: Recovery order on conviction for certain offences involving dogs

639. Section 65 provides the court with the power to make a recovery order on conviction for offences under section 1 of the Night Poaching Act 1828, section 30 of the Game Acts 1831 and the new offences inserted by sections 63 and 64 of this Act. This applies where the dog was used in or present at the commission of the offence and the dog was lawfully seized and detained in connection with the offence.

640. Subsection (2) provides the court may make an order that requires the offender to pay all of the expenses incurred as a result of the dog's seizure and detention.

641. Subsection (3) provides that the sum required to be paid is to be treated for the purposes of enforcement as if it were a fine imposed on conviction.

642. Subsection (4) provides that a recovery order can be made whether or not the court also deals with the offender in another way.

Section 66: Disqualification order on conviction for certain offences involving dogs

643. Section 66 provides for a court to make a disqualification order preventing an offender from owning or keeping a dog or both where the offender is convicted of certain offences involving dogs. Those offences are: section 1 of the Night Poaching Act 1828; section 30 of the Game Act 1831; the new criminal offence of trespass with intent to search for or to pursue hares with dogs etc set out in section 63; and the new criminal offence of being equipped for searching for or pursuing hares with dogs etc set out in section 64. Under subsection (2) the court can make the order for such period as it thinks fit.

644. Subsection (3) provides that the order may specify a period during which the offender may not seek to terminate it.

645. Subsection (4) provides that the operation of the order can be suspended if needed to enable alternative arrangements to be made in relation to the dog.

646. Subsection (5) requires that the court gives reasons for making a disqualification order in open court and causes those reasons to be registered in the register of its proceedings.

647. Subsection (6) makes it an offence to breach a disqualification order.

648. Subsection (7) sets the maximum penalty for a breach of a disqualification order as a fine not exceeding level 3 on the standard scale (currently £1,000).

649. Subsection (8) provides that a recovery order can be made whether or not the court also deals with the offender in another way.

Section 67: Seizure and disposal of dogs in connection with disqualification order

650. Subsection (1) provides that when making a disqualification order, if it appears to a court the person subject to the order owns or keeps a dog contrary to that order, the court may order the dog to be taken into possession

651. Subsection (2) provides that a court may also order dogs to be taken into possession when owned or kept in breach of a disqualification order, following a conviction under section 66(6) .

652. Subsection (3) requires an order made for a dog to be taken into possession to make provision for disposal of the dog, where the person subject to that order owns the dog.

653. Subsection (4) provides that where the dog is not owned by the person subject to the disqualification order it is to be dealt with in a way ordered by the appropriate court. Subsection (5) provides that the dog cannot be destroyed or disposed of for the purposes of vivisection.

654. Subsection (6) requires that, before a court makes an order for disposal of a dog under subsection (4), it must give the owner of the dog the opportunity to be heard or be satisfied it is not reasonably practicable to communicate with the owner.

655. Subsection (7) provides that where the order is made against a person who is not the owner, the owner may appeal against the order to the Crown Court.

Section 68: Termination of disqualification order

656. Section 68 provides that a person can apply for termination of a disqualification order to which they are subject.

657. Subsection (2) sets out the timescales within which an application to terminate a disqualification order can be made.

658. Subsection (3) sets out what the court can do in response to a termination application, namely: terminate the order, vary the order or refuse the application.

659. Subsection (4) sets out what the court must have regard to in determining an application.

660. Subsection (5) provides that where a court refuses an application to terminate a disqualification order or varies the order it may specify a period during which a further application cannot be made.

661. Subsection (6) provides that a court may order an applicant to pay all or part of the costs of an application.

Section 69: Section 67: supplementary

662. Section 69 contains supplementary provisions in relation to a court making an order for seizure and disposal of dogs in connection with disqualification orders under section 67.

663. Subsection (2) provides that it is an offence to fail to comply with a requirement imposed by the court under subsection (1)(b). This carries a maximum penalty of a level 3 fine (currently £1,000).

664. Subsection (4) sets out what the court's directions for carrying out the order may cover and subsection (5) sets out what the court is to have regard to in determining how to exercise its powers to order seizure and disposal of dogs in connection with a disqualification order. Subsection (6) requires a person who has been delegated a decision about how to dispose of a dog to have regard to the same things.

665. Subsection (7) provides that any amount to which the owner of a dog is entitled as a result of its sale may be reduced to account for any expenses they are liable to pay for carrying out the order.

666. Subsection (8) provides that any such sum the person is required to pay is to be treated for the purposes of enforcement as if it were a fine imposed on conviction.

Section 70: Disqualification orders: appeals

667. Section 70 makes provision in connection with appeals against disqualification orders under section 66 and against orders for seizure and disposal in connection with a disqualification order under section 67.

668. Subsection (1) provides that nothing may be done under such an order until the periods for giving notice of appeal against the order and conviction have expired or any such appeal has been determined or withdrawn.

669. Subsection (2) sets out what can happen where the effect of an order is suspended under subsection (1). Requirements imposed or directions given in connection with the order cannot have effect during the suspension but the court is able to give directions about how any dog to which the order applies is to be dealt with during the suspension. Subsection (3) gives details of what such directions could be.

670. Subsections (4) and (5) provide that failure to deliver up a dog as directed under these provisions will be an offence punishable on conviction by a level 3 fine (currently £1,000).

671. Subsection (6) provides that any sum to be paid in relation to the removal or care of the dog that are incurred in carrying out the directions is to be treated for the purposes of enforcement as if it were a fine imposed on conviction.

Section 71: Administering a substance with intent to cause harm

672. Section 71 requires the Secretary of State to prepare, publish and lay before Parliament a report about the nature and prevalence of administering a substance with intent to cause harm (commonly referred to as "spiking") within 12 months of the Act receiving Royal Assent. The report must include actions that the Government has taken to address the issue of spiking, and what actions it intends to take following the report being published.

Section 72: Response to Law Commission report on hate crime laws

673. Subsection (1) provides that within 12 months of the passing of the Act, the Secretary of State must :

a. prepare and publish a Government response to Recommendation 8 of the Law Commission's report on hate crime, which concerned adding sex or gender as a protected characteristic for the purposes of aggravated offences and enhanced sentencing in hate crime laws; and

b. lay the Government's response before Parliament.

674. Subsection (2) clarifies that "the Law Commission report on hate crime" means the Law Commission report "Hate Crime Laws" that was published on 7 December 2021. Recommendation 8 of the report stated that: "We recommend that sex or gender should not be added as a protected characteristic for the purposes of aggravated offences and enhanced sentencing".

Part 3: Public order

675. Sections 73 to 75 and 79 amend Part 2 of the Public Order Act 1986 (the "1986 Act") which provides various powers to manage processions and assemblies. In particular, sections 12 and 14 give the police a power to impose conditions on people organising and taking part in public processions and public assemblies, respectively. Part 2 of the 1986 Act extends and applies to England and Wales, and Scotland, but sections 73 to 75 and 79 have been drafted so that the changes apply to England and Wales only.

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

a. may result in:

   i. serious public disorder,

   ii. serious damage to property,

   iii. or serious disruption to the life of the community,

b. or the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

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

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

a. may result in:

   i. serious public disorder,

   ii. serious damage to property, or

   iii. serious disruption to the life of the community.

b. or the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do.

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

678. A "public procession" means a procession in a public place (section 16 of the 1986 Act).

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

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

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

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

Section 73: Imposing conditions on public processions

683. This section amends section 12 of the 1986 Act to broaden the circumstances in which conditions can be imposed on a public assembly in England and Wales, and clarifies the meaning of "serious disruption to the life of the community" and "serious disruption to the activities of an organisation which are carried out in the vicinity of a public procession".

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

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

686. Subsection (3) also inserts new subsections (2A) to (2C) into section 12 of the 1986 Act which make provision about the meaning of "serious disruption to the life of the community" such that it includes where the procession may result in a significant delay to the delivery of a time-sensitive product or disruption to the delivery of an essential service, and "serious disruption to the activities of an organisation" includes where the noise generated by a procession can reasonably prevent persons associated with the organisation in question from carrying out their activities.

687. Subsection (4) inserts new subsections (12) to (15) into section 12 of the 1986 Act, which provide the Secretary of State with a power by regulations to amend new section 12(2A) to (2C) to make provision about the meaning of "serious disruption to the life of the community" and "serious disruption to the activities of an organisation which are carried on in the vicinity of a public procession".

688. Subsection (5) places a duty on the Secretary of State to prepare and publish a report on the operation of section 12 of the 1986 Act as amended by section 73 of this Act; such a report must be published and laid before Parliament within two years of the commencement of section 73.

Section 74: Imposing conditions on public assemblies

689. This section amends section 14 of the 1986 Act to broaden the range of circumstances in which conditions can be imposed on a public assembly in England and Wales, allow for any type of condition to be imposed on such a public assembly, and clarifies the meaning of "serious disruption to the life of the community" and "serious disruption to the activities of an organisation which are carried on in the vicinity of a public assembly".

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

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

692. Subsection (5) also inserts new subsections (2A) to (2C) into section 14 of the 1986 Act which make provision about the meaning of "serious disruption to the life of the community" such that it includes where the procession may result in a significant delay to the delivery of a time-sensitive product or disruption to the delivery of an essential service, and "serious disruption to the activities of an organisation" includes where the noise generated by a procession can reasonably prevent persons associated with the organisation in question from carrying out their activities.

693. Subsection (6) inserts new subsections (11) to (14) into section 14 of the 1986 Act, which provide the Secretary of State with a power by regulations to amend new subsections (2A) to (2C) to make provision about the meaning of "serious disruption to the life of the community" and "serious disruption to the activities of an organisation which are carried on in the vicinity of a public assembly".

694. Subsection (7) places a duty on the Secretary of State to prepare and publish a report on the operation of section 14 of the 1986 Act as amended by section 74 of this Act; such a report must be published and laid before Parliament within two years of the commencement of section 74.

Section 75: Offences under sections 12 and 14 of the Public Order Act 1986

695. Subsections (3) to (6) amend section 12 of the 1986 Act to remove the need for an organiser or participant to have "knowingly" breached a condition placed on a procession in England and Wales for an offence to have been committed. New subsection (5A) provides that a person is guilty of an offence if at the time they failed to comply with the condition they know or ought to have known that the condition had been imposed.

696. Subsection (6) increases the maximum sentence in England and Wales for an organiser who fails to comply with a condition from three months' imprisonment to six months' imprisonment and/or a fine not exceeding level 4 (currently £2,500), for a participant who fails to comply with a condition to a fine not exceeding level 4 (as against the current maximum penalty of a level 3 fine), and a person who incites a participant to commit an offence to six months' imprisonment (as against the current maximum penalty of three months' imprisonment) and/or a fine not exceeding level 4. On the coming into force of the increase in magistrates' courts sentencing powers provided for in the Criminal Justice Act 2003, the maximum term of imprisonment would rise to 51 weeks' imprisonment. Subsections (8) to (11) makes the same changes described above to the offences of breaching conditions imposed on an assembly in England and Wales, in section 14 of the 1986 Act.

697. Subsection (11) makes the same changes described above to the maximum sentences for the offences of breaching conditions imposed on an assembly in England and Wales, in section 14 of the 1986 Act.

698. It remains a defence for a person to prove that the breach of the condition arose from circumstances beyond their control, in relation to both processions and assemblies. These remain in subsections (4) and (5) of section 12, for processions, and section 14, for assemblies, of the 1986 Act.

Section 76: Obstruction of vehicular access to Parliament

699. This section makes it an offence for an individual to fail to comply with the direction of a police officer to stop, or not start, obstructing the passage of a vehicle into or out of the Parliamentary Estate. It does so by amending Part 3 of the Police Reform and Social Responsibility Act 2011 (the "PRSRA").

700. Part 3 (comprising sections 141 to 149) of the PRSRA provides powers in relation to prohibited activity in the controlled areas of Parliament Square and of the Palace of Westminster, defined in sections 142 and 142A respectively (see also the map annexed to the guidance available here).

701. Section 143 of the PRSRA provides that a constable or other authorised person who has reasonable grounds for believing that a person is doing, or is about to do, a prohibited activity, may direct the person to cease doing that activity or not to start doing it. Failure to comply with the direction without reasonable excuse is a criminal offence and is punishable on summary conviction by an unlimited fine.

702. Subsection (2) extends the Palace of Westminster controlled area as defined in section 142A of the PRSRA. The controlled area is extended to include Canon Row, Parliament Street, Derby Gate, Parliament Square and part of Victoria Embankment.

703. Subsection (3) adds obstructing of the passage of a vehicle into or out of the Parliamentary Estate as a prohibited activity in the Palace of Westminster controlled area.

704. Subsections (4) and (5) provide that the extension of the Palace of Westminster controlled area does not affect directions, orders, or authorisations made or given in relation to that area before this Section comes into force, which will continue to apply in relation to the Palace of Westminster controlled area as originally defined.

Section 77: Power to specify other areas as controlled areas

705. Section 77 inserts new section 149A into the PRSRA.

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

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

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

Section 78: Intentionally or recklessly causing public nuisance

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

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

711. Subsection (3) provides for a reasonableness defence, allowing for a person to prove that they had a reasonable excuse for the act or omission. The burden of proof is placed on the defendant as the facts as to whether they have a reasonable excuse will be within their knowledge. The prosecution will still

need to have proved all the elements of the offence to the criminal standard of proof, including the serious harm or obstruction that arises as a result of the act or omission, and the defendant intended or was reckless as to serious harm or obstruction. Although not explicit set out, the standard to which the defendant will be required to prove the defence is the balance of probabilities.

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

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

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

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

Section 79: Imposing conditions on one-person protests

716. Subsection (1) amends the 1986 Act by inserting new section 14ZA, which will allow for the imposing of conditions on a person organising or carrying on one-person protests where it is reasonably believed that the noise generated by the protest may have a significant relevant impact on persons in its vicinity or that such noise may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the one-person protest.

717. New section 14ZA(1) to (3) set out the circumstances in which conditions can be imposed on a person organizing or carrying on one-person protests. Where a senior police officer reasonably believes, having had regard to various factors, that the noise generated by a one-person protest may have a relevant impact on persons in its vicinity or may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the one-person protest, the senior police officer may give directions imposing on the person organising or carrying on the protest such conditions as appear to them necessary to prevent such disruption or impact.

718. New section 14ZA(4) and (5) provide the definition of "one-person protest" and "the senior police officer". "One-person protest" means a protest carried on by one person in a public place; "the senior police officer" means in relation to a one-person protest being held, the most senior in rank of the police officers present at the scene, and in relation to a one-person protest intended to be held, the chief officer of police.

719. New section 14ZA(6) makes provision about "serious disruption to the activities of an organisation" such that it includes where the noise generated by a one person protest can reasonably prevent persons associated with the organisation in question from carrying out their activities.

720. New section 14ZA(7) and (8) provide for a two-stage test of what is a significant relevant impact on persons in the vicinity. The relevant impacts are where the noise generated may result in intimidation or harassment of persons of reasonable firmness with the characteristics of persons likely to be in the vicinity, or it may cause such persons to suffer alarm or distress. When considering whether the relevant impact is significant, the senior police officer must have regard to the likely number of persons in its vicinity who may experience any of the relevant impacts, the likely duration of that impact on such persons, and the likely intensity of that impact on such persons.

721. New section 14ZA(9) provides that any directions given by a chief officer by virtue of subsection (5)(b) must be done so in writing.

722. New section 14ZA(10) sets out where a person is guilty of breaching a condition imposed under subsection (2).

723. New section 14ZA(11) provides the defence of proving that the breach of the condition arose from circumstances beyond their control as it is in section 12 of the 1986 Act, for public processions, and section 14 of the 1986 Act, for public assemblies.

724. New section 14ZA(12) makes it an offence to incite someone to commit an offence under subsection (9).

725. New section 14ZA(13) and (14) set the maximum penalty for the offence in subsection (10) as a fine not exceeding level 4 on the standard scale, and subsection (12) as imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale or both.

726. New section 14ZA(15) provides that the penalty under subsection (14) for the offence under subsection (12) is to be read as 6 months instead of 51 weeks if the offence has been committed before the increase in magistrates' courts sentencing powers provided for in the CJA 2003 come into force.

727. New section14ZA (16) to (19) provide the Secretary of State with a power by regulations to amend subsection (6) to make provision about the meaning of "serious disruption to the activities of an organisation which are carried on in the vicinity of a one-person" for the purposes of new section 14ZA of the 1986 Act.

728. Subsection (2) places a duty on the Secretary of State to prepare and publish a report on the operation of new section 14ZA of the 1986 Act as inserted by this section; such a report must be published and laid before Parliament within two years of the commencement of section 79.

Section 80: Wilful obstruction of highway

729. This section amends section 137 of the Highways Act 1980 which makes it an offence for a person, without lawful authority or excuse, to wilfully obstruct a highway. Section 137(1) is amended to increase the maximum penalty for the offence from a level 3 fine (currently £1,000) to 51 weeks imprisonment, a level 3 fine or both. New section 137(1A) provides that the maximum custodial penalty is to be read as 6 months instead of 51 weeks if the offence has been committed before the increase in magistrates' courts sentencing powers provided for in the CJA Act 2003 come into force.

730. New section 137(1B) provides that for the purposes of the offence in section 137 it does not matter whether free passage along the highway in question has already been temporarily restricted or temporarily prohibited (whether by a constable, a traffic authority (as defined in new section 137(1C)) or otherwise).

Section 81: Repeal of the Vagrancy Act 1824 etc

731. Subsection (1) repeals the Vagrancy Act 1824. Much of the Vagrancy Act 1824 has already been repealed but substantive provisions remain in sections 3 and 4. Section 3 criminalises begging ("[every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do…") and section 4 ('Persons committing certain offences to be deemed rogues and vagabonds') creates a range of offences including persons who sleep in the open air, or in any deserted or unoccupied building.

732. Subsections (3) to (7) make consequential amendments and repeals to other enactments.

733. Subsection (8) provides that the amendments and repeals made by this section do not apply to an offence committed before this section comes into force.

Section 82: Expedited public spaces protection orders

734. This section amends the Anti-social Behaviour, Crime and Policing Act 2014 to introduce a process by which the implementation of a Public Spaces Protection Order ("PSPO") can be expedited under specific circumstances.

735. New section 59A provides the powers to make an expeditated PSPO. New subsection 59A(1), provides that a local authority may make an expedited PSPO (an "expedited order") in relation to a public place within the local authority's area if satisfied on reasonable grounds that three conditions are met.

736. New subsections 59A(2) to (4) stipulate the three conditions. Firstly, the public spaces where an expedited order can be applied – schools (including a 16 to 19 Academy), vaccination, and NHS Test & Trace/Test, Trace, Protect sites. Secondly, what activities must be or likely to be carried out in the public spaces – the harassment, intimidation or impediment of those who provide or access the services of the site. Finally, what effect or likely the qualifying activities must be – is, or likely to be, persistent or continuing; make, or likely make, the activities of the site unreasonable; and justify the restrictions imposed by the expedited order.

737. New subsection 59A(5) provides that an expedited order can prohibit and/or require specific activities within a "restricted area" in the public space the order applies to.

738. New subsections 59A(6) and (7) specify the scope of prohibitions and requirements. Subsection (6) requires that prohibitions or requirements are reasonable to prevent or reduce the activities specified in subsection (3). Subsection (7) enables prohibitions and requirements to apply to all or specific categories of persons, all or specified times, all or specified circumstances.

739. New subsection 59A(8) provides that an expedited order must identify the activities it seeks to address and specify how long the order has effect. It must also explain the effects of section 63 of the Anti-social Behaviour, Crime and Policing Act 2014 (consumption of alcohol) if applicable and section 67 of the Act (failing to comply with an order). Under section 67 it is an offence, without reasonable excuse, to fail to comply with a PSPO; the offence carries a maximum penalty of a level 3 fine (currently £1,000).

740. New subsections 59A(9) to (11) provide that an expedited order may not be made in relation to a public place if that place or a part of it has been subject to a PSPO, expedited or otherwise, in the past year. This only applies to regular PSPOs which prohibited or required activity which could have been prohibited or required by an expedited PSPO.

741. New subsection 59A(12) requires that an expedited order be published in accordance with regulations made by the Secretary of State.

742. New section 60A stipulates that an expedited order can last no longer than six months. The Local Authority that made the expedited order may reduce or extend the duration of the expedited order, as many times as necessary, provided it does not exceed the maximum duration of six months. To extend the period, the Local Authority must be satisfied that it is necessary to prevent the activities identified in the order. Similarly to when making the order, any variation must be published in accordance with regulations made by the Secretary of State.

743. New section 72A makes provision about convention rights and consents relating to expediated orders. Local authorities must have particular regard to the rights of freedom of expression and freedom of assembly when making a decision about an expeditated order. The necessary consents must be obtained before a decision is made about an expediated order. In call case, consent must be obtained from the chief officer for the police of the area impacted. For expedited PSPOs related to schools, the consent of the appropriate authority is also needed. For expedited PSPOs related to vaccination sites, the appropriate NHS body. For expedited PSPOs related to test and trace site in England, the UK Security Agency must give consent, and for a test and trace site in Wales, the Local Health Board for the area in which the site is located must give consent.

744. New section 72B provides detail on the consultation and notifications after making an expediated order. Local authorities must carry out the necessary consultation as soon as reasonably practicable after making an expedited order. The necessary consultation means consulting with the chief officer of

police, the Police and Crime Commissioner (or the equivalent in London), the owner or occupier of the land, and any representatives of the local community they consider appropriate – for example the leadership team of the school impacted. These requirements also apply to decisions to extend the period of, vary or discharge an order. In addition, the county council and any parish or community council must be informed.

Part 4: Unauthorised encampments

Section 83: Offence relating to residing on land without consent in or with a vehicle

745. Section 83 inserts new sections 60C to 60E into the 1994 Act. New section 60C introduces a criminal offence of residing or intending to reside on land without consent in or with a vehicle. An offence is committed if a person aged 18 or over ("P") is residing or is intending to reside on land without the consent of an occupier of the land and they have or intend to have at least one vehicle with them on the land, one or more of the conditions mentioned in subsection (4) is satisfied; and P, without reasonable excuse, fails to comply as soon as reasonably practicable with a request made by an occupier of the land, a representative of an occupier, or a constable, to leave the land and remove from the land property which is in P's possession or under P's control. P also commits an offence if, without reasonable excuse, they enter or re-enter the land within 12 months of a request to leave with an intention of residing there without the consent of the occupier and they have or intend to have at least one vehicle with them on the land.

746. The person must be residing in or intending to reside in, or with, a vehicle. This means that the provisions do not capture ramblers or prevent those who wish to enjoy the countryside from doing so.

747. The conditions in the new section 60C(2) are: (a) in a case where P is residing on the land, that significant damage or significant disruption has been caused or is likely to be caused as a result of P's residence; (b) where P is not yet residing on the land, it is likely that significant damage or significant disruption would be caused as a result of P's residence if P were to reside on the land; (c) that significant damage or significant disruption has been caused or is likely to be caused as a result of conduct carried on, or likely to be carried on, by P while P is on the land; or (d) that significant distress has been caused or is likely to be caused as a result of offensive conduct carried on or likely to be carried on by P while P is on the land.

748. An offence is therefore committed, and powers of arrest available, (provided the other conditions above are met) where a person has first been asked to leave by an occupier, their representative or a constable (so it is made clear to the person that they do not have permission to be on that land). This means there is no requirement for a constable to first issue a direction for the person to leave before an arrest can be made (senior officers have powers to direct trespassers away from land in section 61 of the 1994 Act before an arrest can be made and may only arrest if the person, without reasonable excuse, fails to leave the land as soon as reasonably practicable following a request to do so or they, having left, enter the land again as a trespasser within a specified period).

749. The offence applies where significant damage, disruption or distress has been caused or is likely to be caused and, without reasonable excuse, the person does not leave when asked to do so, removing their property. The qualifying condition of 'significant' means that a higher threshold must be met than that under section 61 of the 1994 Act for tackling trespassers on land, where a power to direct can be caught by P causing a lower level of harm (to note, as below, these provisions amend section 61 to broaden the types of harm that can be caught by the power to direct). This qualification in the new offence helps to ensure that the offence and powers of arrest, seizure and forfeiture (see below) are proportionate.

750. New section 60C(6) provides a reasonable excuse defence, allowing a person to show that they had a reasonable excuse for failing to comply as soon as reasonably practicable with a request from an occupier, their representative or a constable or, after receiving such a request, for entering or re-

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

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

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

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

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

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

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

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

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

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

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

Section 84: Amendments to existing powers

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

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

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

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

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

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

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

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

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

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

Section 85: Guidance on exercise of police powers in respect of trespassers on land etc

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

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

773. The Secretary of State may from time to time revise the guidance issued under new section 62F(1). Police officers and constables in England and Wales must have regard to the guidance issued under this Section when exercising any of their functions under sections 60 to 62E of the 1994 Act and under the Regulations made under section 67. The Secretary of State must arrange for the guidance and any revised guidance issued under this section to be published in such manner as the Secretary of State considers appropriate (new section 62F(5)). The Secretary of State must lay before Parliament a copy of any guidance or revised guidance published under new section 62F(5) (new section 62F(6)).

Part 5: Road traffic

Section 86: Causing death by dangerous driving or careless driving when under the influence of drink or drugs: increased penalties

774. Section 86 increases the maximum penalties and minimum periods of disqualification from driving for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs. Subsections (1) to (3) amend the table at Part 1 of Schedule 2 to the Road Traffic Offenders Act 1998 (the "RTOA 1988") to increase the maximum penalties for these offences from 14 years' imprisonment to imprisonment for life.

775. Subsections (4) to (8) increase the minimum periods of disqualification from driving for these offences. Subsection (5) amends section 34(3) of the RTOA 1988 so that it no longer envisages that the same minimum period of three years disqualification from driving will apply in respect of a repeat offence under that subsection. See paragraph 111 of these notes for the meaning of 'repeat offence' in this context.

776. Subsection (6) inserts new subsection (3A) into section 34 of the RTOA 1988. Paragraph (a) of this new subsection provides for an increased minimum disqualification period of six years where a person is convicted of a repeat offence in circumstances where both the initial offence and the new offence were ones of causing death by careless driving when under the influence of drink or drugs. Paragraph (b) of the new subsection retains the existing three year minimum period of disqualification where a person is convicted of a repeat offence in any other circumstances, subject to new subsection (4ZA) inserted by subsection (7), the effect of which is that a five year minimum period applies where the new offence is causing death by careless driving when under the influence of drink or drugs.

777. Subsections (7) and (8) increase the minimum period of disqualification from two to five years where a person is convicted of an offence of causing death by dangerous driving or causing death by careless driving when under the influence of drink or drugs unless the latter is a repeat offence in circumstances where both the initial and the new offence were the same.

778. Subsection (7) amends section 34(4) of the RTOA 1988 by adding a reference to the new subsection (4ZA) inserted by subsection (8) which specifies these new minimum periods. Subsection (7) removes the above mentioned offences from the list of offences in section 34(3) which are subject to the current two year minimum, and makes various textual amendments to that subsection to reflect this change.

779. Subsection (8) inserts new subsection(4ZA) into section 34 of the RTOA 1988. This new subsection provides for a minimum disqualification period of five years for the two offences mentioned above, except in relation to a repeat offence of causing death by careless driving when under the influence of drink or drugs where the initial and new offences are the same, in which case the period is six years. The subsection also clarifies that the existing period of two years is retained for the others listed in section 34(4).

780. Subsection (9) provides that the increase in the maximum penalties and minimum disqualification periods for the two offences to which this section relates does not apply to offences committed before the commencement of these provisions.

Section 87: Causing serious injury by careless, or inconsiderate, driving

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

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

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

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

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

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

Section 88 and Schedule 8: Road traffic offences: minor and consequential amendments

787. Section 88 introduces Schedule 8 which makes minor and consequential amendments in relation to sections 86 and 87.

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

789. Paragraph 1(2)(b)-(c) amends the table at section 12E(3) so that it refers to the current section 3ZB offence (causing death by driving: unlicensed or uninsured drivers) and inserts the section 3ZC offence (causing death by driving: disqualified drivers). This update reflects that section 3ZB and section 3ZC are now separate offences, as made by the Criminal Justice and Courts Act 2015. This Act had the effect of separating out the offence of causing death by driving: disqualified drivers, from the

offence of causing death by driving: unlicensed or uninsured drivers. The table is also amended to include the section 3ZD offence (causing serious injury by driving: disqualified drivers) to avoid an anomaly whereby a competitor could otherwise be charged with causing serious injury by driving whilst disqualified, but not with the offence of causing death by driving whilst disqualified.

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

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

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

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

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

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

Section 89: Courses offered as an alternative to prosecution: fees etc

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

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

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

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

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

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

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

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

Section 90: Charges for removal, storage and disposal of vehicles

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

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

806. The section does this by enabling removals from within and outside a civil enforcement area under new section 102(2). Subsection (2) therefore amends section 102 of the Road Traffic Regulation Act 1984 so that an 'appropriate authority' (as defined by section 102(8) of the Road Traffic Regulation Act 1984), which includes the police, local authority, Secretary of State and Strategic Highways Company, can charge for section 99 and section 101 removal, storage and disposal of vehicles from both within and outside a civil enforcement area.

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

Section 91: Production of licence to the court

808. This section adjusts the requirements for the production of a driving licence to a court.

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

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

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

812. Subsection (2) removes the options of delivering or posting the licence to the court in advance in all these cases. As for taking it to the hearing, the Section imposes a duty on the accused to bring the licence to the hearing only where there is a hearing and where the accused attends. These adjustments

are intended to minimise the extent to which a court needs to handle the physical licence administratively.

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

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

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

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

816. These changes prevent a court having to handle the physical licence administratively where a driver faces endorsement but not disqualification. In disqualification cases it is envisaged that where the convicted driver is present in court with their licence the court will collect it there and then, but otherwise the court can pass the issue of collection of the licence over to the DVLA under their new enforcement power in Section 71. The changes also clarify that the court's power to require licence production not only applies where a court proposes to disqualify but also where it orders disqualification (and the same sanction applies, that is, non-compliance is a summary offence subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000)).

Section 92: Surrender of licence to Secretary of State where disqualified

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

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

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

Section 93: Removal of requirement to surrender licence where fixed penalty notice

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

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

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

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

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

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

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

Section 94: Removal of requirement to deliver up licence where conditional offer

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

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

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

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

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

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

Section 95 and Schedule 9: Surrender of licence and test certificates by new drivers

832. Section 95 introduces Schedule 9.

833. Schedule 9 amends the Road Traffic (New Drivers) Act 1995 ("NDA"). The NDA provides that persons who pass their driving test are subject to a probationary period of two years, from the date of their test, during which they are subject to being disqualified, and having to retake their test, if they are allocated six or more penalty points for road traffic offences within that period.

834. Paragraphs 2 and 3 amend sections 2 and 3 of the NDA, which relate to the revocation of new drivers' licences. Under those sections, the Secretary of State is required to revoke a new driver's licence by written notice. This must be done upon receipt of an official notification indicating that the new driver has been given penalty points by a court, or through the fixed penalty or conditional offer process, which bring the total allocated to the driver to six or more. Currently this notice is accompanied by the driver's licence. Licence revocation must be undertaken where the offence was committed during the driver's probationary period, and the responsibility for checking this lay with the court, the fixed penalty clerk or the Secretary of State, as appropriate

835. Sections 2 and 3 of the NDA are amended to remove any references to the production and handling of the new driver's licence as part of the process, and to provide that, where the relevant notices of endorsement are received, it is for the Secretary of State to check if the offence was committed during the new driver's probationary period. In addition, various minor drafting amendments are made.

836. Paragraph 4 inserts a new section 3A into the NDA which provides that where the Secretary of State serves a notice on a new driver revoking their licence the notice may also require surrender of the licence to the Secretary of State within 28 days. It makes it an offence not to do so without reasonable excuse. Where the licence received is a Northern Ireland one the Secretary of State must send it to the Northern Ireland licensing authority. The offence is a summary offence subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

837. Paragraph 5 substitutes for section 9(5) of the NDA slightly revised provision in relation to the address of the Secretary of State to which notices, or revoked licences or test certificates, must be sent for consistency in language with the other amendment made to the NDA.

838. Paragraph 6 amend Schedule 1 (newly qualified drivers holding test certificates) to the NDA. Schedule 1 to the NDA makes similar provision for driving test pass certificates as apply to full driving licences (e.g. requirements to produce, surrender and revoke test certificates, and any associated full licences where applicable). This covers the scenarios where a new driver has to be disqualified for being allocated six or more penalty points within their probationary period before actually receiving their full driving licence. This would happen where they have a provisional licence plus a test pass certificate or where they have a test pass certificate for a class of vehicle for which their full licence is either treated as, or is, a provisional licence for that class.

839. Paragraph 6(2) omits the current duties to produce test certificates to the court, or for their production and handling in relation to the giving of fixed penalty notices and the making of conditional offers, or for courts or fixed penalty clerks to send confiscated test certificates to the Secretary of State. These adjustments minimise the extent to which test certificates need to be handled administratively by the courts and fixed penalty clerks.

840. Paragraph 6(3) provides for the Secretary of State by notice to revoke a new driver's test certificate upon receipt of an official notice indicating that the new driver has been allocated penalty points by a court, or through the fixed penalty or conditional offer process, which bring the total

allocated to the driver to six or more within the driver's probationary period. These changes make the language of the test certificate revocation power match the other NDA amendments, and dispense with any reference to the Secretary of State being supplied with the new driver's test certificate in advance of serving a revocation notice.

841. Paragraph 6(4) inserts a new paragraph 5A into Schedule 1 to the NDA which provides that where the Secretary of State serves a notice on a new driver revoking their test certificate the notice may also require surrender of the test certificate to the Secretary of State within 28 days. It makes it an offence not to comply with the notice without reasonable excuse. Where the test certificate received is a Northern Ireland one the Secretary of State must send it to the Northern Ireland licensing authority. The offence is a summary offence subject to a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

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

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

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

Section 96 and Schedule 10: Minor and consequential amendments

845. Section 96 introduces Schedule 10.

846. Part 1 of Schedule 10 makes minor and consequential amendments to the RTOA 1988.

847. Part 2 of Schedule 10 makes minor and consequential amendments to the RTOA 1988 and the Crime (International Co-operation) Act 2003.

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

849. Part 3 of Schedule 10 makes consequential repeals of amending enactments.

Section 97: Power to issue fixed penalty notices on-the-spot in Scotland

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

851. Subsection (1) repeals the words "England and Wales" from section 54 of the RTOA 1988, as a result the power to issue FPNs on-the-spot under section 54 applies throughout Great Britain.

852. Subsection (2) applies to Scotland and prevents the police or the Procurator Fiscal in Scotland from issuing a conditional offer of fixed penalty notice to a person who has already received an FPN for the same offence. The offender can make up their mind whether to accept the FPN or dispute it in court, confident in the knowledge that they will not receive any further direct measure aimed at diverting them from court. This accords with the position in England and Wales currently.

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

Part 6: Cautions

Section 98: Diversionary and community cautions

854. Section 98 makes provision for diversionary and community cautions.

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

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

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

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

Section 99: Giving a diversionary caution

859. Section 99 establishes the process and requirements for giving a diversionary caution, and sets out those requirements at subsection (2)(a)-(e). Those requirements are that an authorised person or prosecution authority decides that there is sufficient evidence to charge the offender with the offence and that a diversionary caution should be given to the offender, that the offender admits the offence and that they accept the caution. An authorised person must explain the effect of the caution to the offender and warn them that non-compliance may result in prosecution for the offence. The offender must also sign a document that contains details of the offence, their admission to having committed that offence and their consent to both being given the caution and the conditions attached to that caution.

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

Section 100: Deciding on the conditions

861. Section 100 sets out what conditions can be attached to diversionary cautions and who sets them. Subsection (1)(a) and (b) state that the conditions attached to diversionary cautions are to be decided by either (a) the authorised person giving the caution or (b) a prosecuting authority that is giving the

caution. Subsection (2)(a) – (c) states which conditions may apply to a discretionary caution. Those conditions may be rehabilitation and reparation conditions, financial penalty conditions and the foreign national offender condition.

862. Subsection (3)(a) and (b) and (4) state that when deciding what conditions to attach to a diversionary caution the person giving the caution must make reasonable efforts to obtain the views of any victims, in particular their views as to whether any of the actions listed in the community remedy document ought to be applied and then take those views into account. (Following the introduction of the Anti-social Behaviour, Crime and Policing Act 2014 each police force in England and Wales is required to publish a community remedy document which provides victims with a choice of activities and sanctions for offenders to complete). If the victim or victims select a condition that is listed in the community remedy document, that condition must be attached unless, as provided for in subsection (5)(a) and (b), it is not an action that can be attached as a condition to a diversionary caution, or it would not be appropriate to attach it.

Section 101: Rehabilitation and reparation conditions

863. Section 101 makes detailed provision for attaching conditions to diversionary cautions which must have the objective of facilitating the rehabilitation of the offender and/or ensure that the offender makes reparation for the offence (subsections (1) and (2)). Under subsection (3), these conditions may be restrictive conditions, unpaid work conditions and attendance conditions.

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

865. Subsection (5) requires the offender to carry out unpaid work of a specified description for no more than 20 hours where there is an unpaid work condition attached to the caution.

866. If an attendance condition is included subsection (6)(a) and (b) require the offender to attend a specific place for a specific purpose, which may not exceed 20 hours where the condition is to make reparation for the offending behaviour.

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

868. Subsection (8) states that the maximum number of hours that can be required for the purposes of either unpaid work or attendance conditions can be amended by regulations.

869. Subsection (9) states that conditions authorised by this section may contain details of how the condition must be complied with, including times at which something must or must not be done. Under subsection (9)(b), these details can be provided after the caution has been given. Subsection (10) provides that curfew conditions may not be attached to a diversionary caution. Subsection (11) defines the meaning of 'specified'.

Section 102: Financial penalty conditions

870. Section 102 establishes how financial penalty conditions can be attached to a diversionary caution. Subsection (1) states that a condition requiring the offender to pay a financial penalty can be attached to a diversionary condition with the purposes of punishing the offender.

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

872. Subsection (4) requires a person, who is not a designated officer for a magistrates' court and who has received payment of a financial penalty in accordance with a financial penalty condition, to give that payment to a designated officer for a magistrates' court. This has the practical effect of ensuring that money paid in respect of a financial penalty is received into central funds.

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

Section 103: Foreign offenders' conditions

874. Section 103 enables the foreign offenders' conditions to be attached to diversionary cautions. This condition can only be attached to a diversionary caution given to a 'relevant foreign offender', as defined by subsection (4)(a) and (b).

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

Section 104: Variation of conditions

876. Section 104 enables an authorised person or prosecution authority to, with the consent of the offender, vary conditions attached to a diversionary caution by either modifying or omitting any of the conditions under subsection (a) or adding a condition under subsection (b).

Section 105: Effect of diversionary caution

877. Section 105(1) establishes that if an offender to whom a diversionary caution was given does not comply with the conditions attached to this without reasonable excuse, then they may be prosecuted. Subsection (2) establishes that the document signed by the offender as set out in section 99(2)(e) above, in which they accept the caution and the conditions attached to it, is admissible evidence in any such proceedings. Subsection (3) states that the diversionary caution ceases to have effect in the event of any proceedings being started.

Section 106: Arrest for failure to comply

878. Section 106 provides constables with a power of arrest without warrant. Subsection (1) applies when a constable has reasonable grounds for believing that the offender has failed without reasonable excuse to comply with any of the conditions attached to a diversionary caution.

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

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

881. Subsection (6) provides for circumstances where an offender arrested under this section, or any other person in whose case subsection (2) applies, may be kept in police detention in order to be dealt with in accordance with subsection (2) or in order to appoint a different or additional time for answering bail under section 47(4A) of PACE (as modified by section 107). If a person is not in a fit state to be dealt with in these way, they may be kept in police detention until they are.

882. Subsection (7) sets out that the power under section (6)(a) includes the power to keep an offender in police detention if it is necessary to do so for the purpose of investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the diversionary caution.

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

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

885. Subsection (10) states that the pre-conditions for bail referred to in this section are as set out in section 50A of PACE.

Section 107: Application of Police and Criminal Evidence Act 1984

886. Section 107 provides that the provisions of PACE set out in subsection 2(a) to (j) apply, with the modifications identified in subsection (3), to offenders arrested for suspected breach of a diversionary caution. This ensures that the diversionary caution operates effectively within the existing framework of police powers. Without this modification, police powers to deal with breaches of a diversionary caution would be limited and this would undermine the effect of non-compliance.

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

888. Subsections (4) to (7) set out further provisions of PACE which apply to suspected breach of diversionary cautions as they would in the case of a person arrested for an offence, which enables consistency and accountability. They ensure that someone arrested and detained by the police under these circumstances is subject to the same treatment as any detained person, and periodic reviews of their detention are carried out.

Section 108: Giving a community caution

889. Section 108 establishes the process and requirements for giving a community caution and sets out those requirements at subsection (2)(a) - (e). Those requirements are that an authorised person decides that there is sufficient evidence to charge the offender with the offence and that a community caution should be given to the offender, that the offender admits the offence and accepts the caution. The authorised person must explain to the offender the effect of the caution and non-compliance with the conditions attached to it. The offender must also sign a document that contains details of the offence, their admission to committing that offence, their consent to being given the caution and the conditions attached to that caution.

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

Section 109: Deciding on the conditions

891. Section 109 sets out what conditions can be attached to community cautions and who sets them. Subsection (1) states that the conditions attached to community cautions are to be decided by either (a) the authorised person giving the caution, or (b) a prosecuting authority that is giving the caution. Subsection (2)(a) and (b) state that conditions authorised by sections 110 and 111 may be attached. Those conditions may be rehabilitation and reparation conditions and financial penalty conditions.

892. When setting conditions subsections (3)(a) and (b) and (4) require that, when deciding what conditions to attach to a community caution, the person giving the caution must make reasonable efforts to obtain the views of any victims, in particular their views as to whether any of the actions listed in the community remedy document ought to be applied and then take those views into account. If the victim or victims select a condition that is listed in the community remedy document, that condition must be attached unless, as provided for in subsection (5)(a) and (b), it is not an action that can be attached as a condition to a community caution, or it would not be appropriate to attach it.

Section 110: Rehabilitation and reparation conditions

893. Section 110 makes detailed provision for attaching conditions to a community caution which must have the objective of facilitating the rehabilitation of the offender and/or ensure that the offender makes reparation for the offence (subsections (1) and (2)). Under subsection (3), these conditions may be restrictive conditions, unpaid work conditions and attendance conditions.

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

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

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

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

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

899. Subsection (9) states that conditions authorised by section 110 may contain details of how the condition must be complied with, including times at which something must or must not be done. These details can under subsection (9)(b) be provided after the caution has been given. Subsection (10) provides that curfew conditions may not be attached to a community caution. Subsection (11) defines the meaning of 'specified'.

Section 111: Financial penalty conditions

900. Section 111 establishes how financial penalty conditions can be attached to a community caution. Subsection (1) states that a condition requiring the offender to pay a financial penalty can be attached to a community condition with the purposes of punishing the offender.

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

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

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

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

Section 112: Enforcement of financial penalties: registration

905. Section 112 provides the framework for the registration process for enforcing financial penalties as part of the community caution regime. It enables the chief officer of police to issue a certificate in respect of monies outstanding and registerable under section 112(7). Subsection (1)(a)-(c) states that the registration certificate should contain the particulars of the financial penalty, the outstanding amount, confirm that the amount is registerable for enforcement against the offender as a fine, and the last known address of the offender. Subsection (2) requires this certificate to be sent to the designated officer for the local justice area in which the offender appears to reside.

906. Subsection (3) places duties on the designated officer on receipt of a registration certificate. They must (a) register the amount for enforcements as a fine in the register of a magistrates' court acting for that area or (b) cause the certificate to be sent to the designated officer for the local justice area in which the offender resides if the offender does not live in their area.

907. Subsection (4) states that the designated officer registering the outstanding amount for enforcement as a fine must give the offender notice of the registration, specify the amount registered and provide the other details set out in the registration certificate. Under subsection (5), any enactment referring to a fine or other sum to be paid following conviction by a magistrates' court applies in the same way to an amount registered under this section.

Section 113: Enforcement of financial penalties: court proceedings

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

Section 114: Variation of conditions

909. Section 114 enables an authorised person or prosecution authority to, with the consent of the offender, vary conditions attached to a community caution by either modifying or omitting any of the conditions under subsection (1)(a) or adding a condition under subsection (1)(b). Subsection (2) refers to the ability under section 115(2) to rescind a condition imposed under section 110 which has not been complied with and instead attach a financial penalty.

Section 115: Effect of community caution

910. Subsection (1) establishes that if an offender to whom a community caution is given does not comply with the conditions attached to this without reasonable excuse, then they may be not prosecuted. Subsection (2)(a) and (b) provide that in these circumstances, the authorised person or prosecution authority may rescind any conditions not complied with and instead attach a condition imposing a financial penalty under section 111.

Section 116: Code of practice

911. Section 116 makes provision for the Secretary of State to prepare a Code of Practice setting out further detail in relation to the criteria and circumstances for giving diversionary and community cautions.

912. Subsection (2)(a)-(k) sets out the types of matters in relation to which the Code of Practice can include provisions such as the circumstances in which cautions may be given, the procedure to be followed in connection with the giving of cautions, the conditions which may be imposed and the period of time for which they can be imposed, who may give cautions, the form and manner in which they are to be given, the places where they may be given, who the financial penalty should be paid to, arrangements for monitoring compliance with conditions, the circumstances where a power of arrest may arise for non-compliance and who decides how a person should be dealt with under section 106(2) and (3).

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

Section 117: Restriction on multiple cautions

914. Section 117 enables the Secretary of State to make regulations that place restrictions on the multiple use of diversionary and community cautions. Subsection (1) provides for regulations to be made to prohibit the giving of either type of caution where a person has already been cautioned on one or more occasions. Subsection (2)(a) – (d) state that restrictions can be referenced by the kinds of caution the person has already received, the number of times they have received cautions, the time period prior to the offending behaviour for which a caution is being considered or the types of offending behaviour for which the offender has already received a caution.

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

Section 118: Abolition of other cautions and out-of-court disposals

916. Section 118 has the practical effect of abolishing previously existing cautioning regimes and the regime setting out on the spot penalties for disorderly behavior for adult offenders. Subsection (1) sets out that no cautions other than diversionary or community cautions should be given to offenders aged 18 or over who admit having committed an offence. Subsection (2) repeals Part 3 of the CJA 2003 which established the conditional caution regime, and subsection (3) repeals Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 which established the Penalty Notice for Disorder regime. Subsection (4) is a savings provision which has the effect of continuing the operation of the provisions referred to in subsections (2) and (3) in relation to offences committed before this Part comes into force.

Section 119: Consequential amendments relating to Part 6

917. Section 119 and Schedule 11 make consequential amendments to other legislation and repeal certain legislation in consequence of the creation of the diversionary and community caution.

Schedule 11: Cautions: consequential amendments

918. Schedule 11 makes consequential amendments to legislation to reflect the introduction of diversionary and community cautions and that existing cautions will no longer be in use.

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

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

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

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

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

924. Paragraphs 20 to 22 amend the Crime and Disorder Act 1998 in relation to youth conditional cautions so that the provisions on the power of arrest for failure to comply with conditions attached to a youth conditional caution without a reasonable excuse refer to the relevant section of Part 6 and not to Part 3 of the CJA 2003 which sets out the conditional caution regime and is repealed by section 118.

925. Paragraphs 23 to 26 amend the Police Reform Act 2002 to remove the provision for granting to specified persons the power to give penalty notices for disorder under Part 1 of the Criminal Justice and Police Act 2001 which is repealed by section 118 of this Act.

926. Paragraph 27 amends section 147A of the Licensing Act 2003 which deals with the offence of persistently selling alcohol to children. The amendment removes reference to the receiving of a penalty under Part 1 of the Criminal Justice and Police Act 2001 which is repealed by section 118.

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

928. Paragraph 31 makes an amendment to the CJA 2003 to remove a subsection which relates to Part 3 of this Act which is repealed by section 118.

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

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

931. Paragraph 37 removes sections 17 and 18 of the Criminal Justice and Courts Act 2015 that refer to restrictions on the use of simple cautions as such cautions will no longer be in use on the basis of section 118.

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

Section 120: Regulations under Part 6

933. Subsection (1) sets out that regulations under this Part are to be made by statutory instrument. Subsection (2) states that these regulations can contain different provision for different purposes and can make consequential, supplementary, transitional and transitory provision and savings. Subsections (3) to (5) detail the parliamentary procedure applicable to the making of regulations under this Part.

Section 121: Interpretation of Part 6

934. Section 121 sets out definitions of terminology used in this Part.

Part 7: Sentencing and release

Chapter 1: Custodial sentences

Section 122: Penalty for cruelty to children

935. Subsection (1) amends section 1 of the Children and Young Persons Act 1933 to increase the maximum penalty, upon conviction on indictment, for the offence of cruelty to a person under 16 from 10 years' imprisonment to 14 years' imprisonment.

936. Subsection (2) provides that the increased maximum penalty applies only to offences committed on or after commencement of this provision.

Section 123: Penalty for causing or allowing a child or vulnerable adult to die or suffer serious physical harm

937. Section 123 amends section 5 of the Domestic Violence, Crime and Victims Act 2004 to increase, for England and Wales, the maximum penalties available, upon conviction on indictment, for the offence of causing or allowing a child or vulnerable adult to die or suffer serious physical harm.

938. Subsection (2) increases the maximum penalty under section 5(7) of the 2004 Act from 14 years' imprisonment to life imprisonment if a person dies. Subsection (3) increases the maximum penalty under section 5(8) of the 2004 Act from 10 years' imprisonment to 14 years' imprisonment if a person suffers serious physical harm.

939. Subsection (4) provides that the increased maximum penalties applies only to offences committed on or after commencement of these provisions.

940. Subsection (5) amends Schedule 19 to the Code, which lists offences where, if certain conditions are present, the penalty must be imprisonment for life, to include the offence of causing or allowing a child or vulnerable adult to die.

Section 124: Minimum sentences for particular offences

941. Section 124 amends the criteria for passing a sentence below the minimum term for particular offences. Subsection (1) provides that the Code is amended in accordance with subsections (2) to (7).

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

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

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

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

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

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

948. Subsection (10) introduces Schedule 12 which contains the consequential amendments. Subsections (10) and (11) make clear that these amendments apply to offences committed on or after the commencement of these provisions and that where an offence is found to be committed over several days, it is taken to be committed on the last of those days.

Schedule 12: Minimum sentences for particular offences: consequential amendments

949. Schedule 12 amends section 37 of the Mental Health Act 1983 so that subsection (2A) will apply for offences committed on or after commencement of the Act.

950. Schedule 12 also makes amendments to sections 225(2), 226(2) and 227A(1A) and (2) of the Armed Forces Act 2006 Act, plus several minor consequential amendments to that Act, to ensure that the armed services justice regime is aligned with the civilian system.

Section 125: Whole life order as starting point for premeditated child murder

951. Section 125 amends Schedule 21 to the Code to extend the application of whole life orders. Whole life orders are the most severe penalty available in the justice system and requires that a prisoner spend the rest of his or her life in prison without the possibility of release on parole, unless there are compassionate grounds for possible release.

952. Section 125 inserts a new subparagraph (ba) in paragraph 2(2) of Schedule 21 to the Code. Section 322 of the Code requires the court to have regard to the principles in Schedule 21 when assessing the seriousness of murder cases and in deciding on the appropriate minimum term for a mandatory life sentence. Paragraph 2(2) of Schedule 21 deals with exceptionally serious cases in which the court should normally consider a whole life order as its starting point and gives examples of circumstances where a whole life order should be the starting point. New paragraph 2(2)(ba) adds the murder of a child if it involves a substantial degree of premeditation or planning to such circumstances. This additional criterion applies to offences committed on or after the date on which these provisions in the Act come into force.

Section 126: Whole life orders for young adult offenders in exceptional cases

953. Section 126 amends the Code. Subsection (2)(a) amends section 321(3)(a) of the Code to add a reference to new subsections (3A) and (3B) and subsection (2)(b) inserts new subsections (3A) to (3C) into section 321. New subsection (3A) restates the current position which is that when imposing a life sentence, a whole life order may be imposed where the offender was aged 21 or over when the offence was committed.

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

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

956. Section 322 of the Code makes further provision in relation to mandatory life sentences. Subsection (3) amends section 322(3)(a) which sets out the considerations for the court to make in determining seriousness. Subsection (3) amends this provision to include a reference to new subsection (3C) so that the new test to impose whole life orders for 18 to 20-year-olds is considered by courts on determining the seriousness of the offence or offences. Section 146 inserts new subsection (5) in section 261A of the Armed Forces Act 2006 to ensure that the changes to the provisions on whole life orders in sections 321 to 322 and Schedule 21 to the Code will also apply to life sentences imposed by Court Martial.

Section 127: Starting points for murder committed when under 18

957. This section inserts new paragraph 5A into Schedule 21 to the Code in place of the existing paragraph 6. It replaces the 12-year starting point for all children who commit murder with different starting points based on the age of the child and the seriousness of the offence.

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

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

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

Section 128: Sentences of detention during Her Majesty's pleasure: review of minimum term

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

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

963. The application for a review is made to the Secretary of State. The Secretary of State considers the application and, unless they decide the application is frivolous or vexatious, refers it to the High Court.

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

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

966. Subsection (7) of new section 27A defines a DHMP sentence as one that has been imposed either before or after this section comes into force and was made under one of the provisions listed in column 1 of the table at subsection (8).

967. It defines the minimum term as the term that was given for the DHMP sentence or if there have been reductions made (under the tariff review process), the term after the most recent of those reductions has been made.

968. It defines the minimum term order is the order made under the provision listed in column 2 of the table at subsection (8) that corresponds to the appropriate provision in column 1.

969. The application for a minimum term review is determined either when the High Court makes the decision to reduce the minimum term or not, or when the Secretary of State informs the eligible life prisoner that their application will not be referred to the High Court.

970. Where an eligible life prisoner made an application for a minimum term review before this new section comes into force, if they had served at least half of their minimum term when they made their application, it should be treated as though it was made under this new section.

971. Subsection (11) removes the right from anyone sentenced to DHMP from requesting a review unless the requirements of this new section are met.

972. New section 27B (Power of High Court to reduce minimum term) sets out the process when the Secretary of State refers an application for a tariff review to the High Court. The High Court can decide to either reduce the minimum term or confirm that the original minimum term length remains. The decision of the High Court is final. The High Court decides on the appropriate length of any reduction.

973. New section 27B(4) sets out the evidence that the High Court must particularly take into account when deciding on whether to reduce a minimum term. This can be amended by regulations made by the Secretary of State (subject to the affirmative resolution procedure).

974. Subsection (2) amends section 28 of the Crime (Sentences) 1997 Act to ensure that the release of life prisoners takes into account any reductions made to a minimum term under the tariff review process.

975. Subsection (3) provides for transitional cases so that where an eligible life prisoner made an application for a minimum term review before this new section comes into force, if they had served at least half of their minimum term when they made their application, the application should be considered under the policy that existed prior to the new section coming into force.

976. This section also applies the review of the minimum term process to service personnel who are sentenced to DHMP under section 218 of the Armed Forces Act 2006.

Section 129: Life sentence not fixed by law: minimum term

977. Section 129 amends section 323 of the Code. That section sets out the approach the court must take to determine a minimum term when it is required to make a minimum term order (rather than a whole life order) for those persons given a discretionary life sentence. A discretionary life sentence is a life sentence for offences other than murder where the judge has a discretion to impose a life sentence if the seriousness of the offence or the previous criminal record of an offender warrants it. The minimum term order must specify a minimum term, commonly referred to as a tariff, which the person is required to serve in custody before being considered for release by the Parole Board. The amendments change the starting point for the determination of the minimum term to at least two-thirds of the equivalent determinate sentence or custodial term of such sentence. The changes will apply to any sentence that is imposed after the provision comes into force, including in respect of offences committed before the provision comes into force.

978. Subsection (1)(a) inserts new subsections (1A) to (1C) into section 323 of the Code.

979. New subsections (1A) and (1B) of section 323 set out that the starting point in determining the minimum term is the relevant portion of the notional determinate sentence. The notional determinate sentence is the custodial sentence that the court would have imposed if the court had not imposed a discretionary life sentence.

980. New subsection (1C) of section 323 defines the relevant portion depending on the notional determinate sentence. Paragraph (a) provides that if the notional determinate sentence would be a determinate sentence that attracts no early release before the end of the appropriate custodial term, then the relevant portion is the whole of the appropriate custodial term that the court would have determined for such a sentence. Determinate sentences that attract no early release in this regard are extended determinate sentences (imposed under sections 254, 266 or 279 of the Code) and serious terrorism sentences (imposed under sections 268A or 282A of the Code) where, in accordance with section 247A(2) of the CJA 2003, the early release provisions of that section do not apply. Paragraph (b) provides that if the notional determinate sentence would be any other extended determinate sentence that is not within paragraph (a) or a sentence of particular concern (imposed under sections 252A, 265, or 278 of the Code) then the relevant portion is two-thirds of the appropriate custodial term that the court would have determined for that sentence. Paragraph (c) provides that if the notional determinate sentence is any other custodial sentence, then the relevant portion is two-thirds of the term that the court would have determined for that sentence.

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

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

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

Section 130: Increase in requisite custodial period for certain violent or sexual offenders

984. Section 130 makes amendments to the automatic release provision for certain violent or sexual offenders sentenced to a standard determinate sentence ("SDS") set out in section 244 of the CJA 2003.

985. Subsection (3) inserts new section 244ZA in the CJA 2003 which makes special provision for the release on licence of certain violent or sexual offenders serving standard determinate sentences.

986. New section 244ZA (1) provides that the Secretary of State has a duty to release a prisoner on licence to whom this section applies once they have served the requisite custodial period, which is defined in new section 244ZA(8) as two-thirds of the sentence.

987. New section 244ZA(2) to (7) prescribe which offenders and offences the two-thirds release point will apply to.

988. New section 244ZA(4) and (9) replace the Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 (S.I. 2020/158) and will apply to prisoners if they are subject to a sentence of imprisonment or detention under section 96 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 262 of the Code, that was imposed on or after 1 April 2020 where the term is 4 years or more, for an offence that is specified in Part 1 (violent offences) or Part 2 (sexual offences) of Schedule 15 to the CJA 2003 which attract a maximum penalty of life imprisonment.

989. New section 244ZA(5) will apply to prisoners who are subject to a sentence of imprisonment or a sentence of detention under section 262 of the Code for a term of at least 4 years but less than 7 years, imposed on or after the day on which this section comes into force in respect of an offence listed in subsection (7).

990. New section 244ZA(6) will also apply to young offenders who are subject to a sentence of detention under section 250 of the Code for a term of seven years or more, in respect of an offence listed in subsection (7).

991. Subsection (4) amends section 260(5) of the 2003 Act to ensure that any prisoner subject to new section 244ZA who has been removed from prison for the purposes of deportation (under the Early Removal Scheme ("ERS")) but remains in the United Kingdom is still subject to the duties and powers of the Secretary of State in the same way as if the prisoner remained in custody.

992. Subsection (5) amends section 261(5) of the CJA 2003 to provide that where an offender subject to those release provisions has been removed from prison to be deported under the ERS and then re-enters the UK before their sentence expiry date, they are still liable to serve the outstanding custodial part of their sentence.

Section 131: Increasing in requisite custodial period for certain other offenders of particular concern

993. Section 131 amends the CJA 2003 by inserting a new subsection into section 244A and consequentially amending section 264, which deals with consecutive sentences of imprisonment. Section 131 provides that offenders serving a SOPC (including service offenders under section 224A of the Armed Forces Act 2006) imposed after commencement of the provision cannot be considered for discretionary release by the Parole Board until they have served two-thirds of their custodial term (replacing one-half). Subsection (3) provides for the same change for those serving a SOPC consecutively along with another term of imprisonment.

Section 132: Power to refer high-risk offenders to Parole Board in place of automatic release

994. Section 132 inserts new provision into the CJA 2003 for high-risk offenders who would otherwise be due for automatic release at the halfway or two-thirds point of their sentence. This section will also apply to service prisoners by virtue of sections 237(1) and (1B) of the CJA 2003.

995. The Secretary of State has a duty under the CJA 2003 to automatically release certain fixed term prisoners from custody. Under section 243A, prisoners must be released unconditionally before the end of their sentence. Under section 244 and new 244ZA (inserted by section 132, prisoners must be released once they have served the requisite custodial period to serve the remainder of their sentence on licence. The date on which this would occur is known as their automatic release date. The new provision, to be inserted as sections 244ZB and 244ZC of the CJA 2003, would enable the Secretary of State to refer certain prisoners to the Parole Board instead of automatically releasing them. The prisoner would then not be released until the Board decides it is safe to do so or the offender reaches the end of their sentence. The power may be exercised if the Secretary of State believed on reasonable grounds that the release of the prisoner would pose a significant risk of serious harm to the public by committing murder or certain 'specified' offences within the meaning of section 306 of the Code (mainly of a violent, sexual or terrorist nature).

996. New section 244ZB(4)-(8) provide for the notice procedure, which has the effect of overriding the automatic release date whilst in force. This procedure places a duty on the Secretary of State to notify the prisoner of the intention to refer the prisoner to the Board instead of automatically releasing them. Under new section 244ZB(5), such notice must be given before their automatic release date. New section 244ZB(6) specifies that the notice must explain the effect of the referral in relation to the prisoner's release, the Secretary of State's reasons for making the referral and the prisoner's right to make representations, which can be made at any time up until the Board decides on the prisoner's case under new section 244ZB(11).

997. Under new section 244ZB(7), the notice takes effect from when it is received by the prisoner (or when it would ordinarily be expected to be received by the prisoner) and remains in force until the Secretary of State refers the case to the Parole Board, or the notice is revoked.

998. In a case where the Secretary of State no longer believes that the prisoner would pose a significant risk of harm to the public if released, new section 244ZB(8) places a duty on the Secretary of State to revoke the notice, in which case the prisoner's automatic release entitlement will be restored and they will be automatically released under the relevant section of the CJA 2003.

999. Under new section 244ZB(9), a prisoner to whom this mechanism applies will be able to apply to the High Court if their automatic release date has passed and their release has been delayed for longer than is reasonably necessary for the Secretary of State to carry out the referral to the Board. The High Court must revoke the notice if unreasonable delay is made out.

1000. New section 244ZB(10) and (11) provide that the Secretary of State may cancel a referral to the Board, and must do so if they no longer consider the prisoner to pose a significant risk to the public. This may happen at any time until the Parole Board has concluded its consideration of the prisoner's case. As with a revoked notice, if the Secretary of State rescinds a referral, the prisoner is to be treated as if they were never referred and will be automatically released under the relevant section of the CJA 2003.

1001. New section 244ZB(12) provides for the prisoner to make representations to the Secretary of State following the notice under new section 244ZB(4). It also makes it clear that if representations have not been received from the prisoner, this will not delay the referral to the Board.

1002. Section 132 also inserts new section 244ZC which provides for offenders referred to the Board under new section 244ZB. New section 244ZC(2) states that where the Board do not release a prisoner referred under new section 244ZB, the Secretary of State must refer them to the Board again no later than a year after the last referral and then annually thereafter.

1003. New subsections 244ZC(3)-(6) provide for the release of a prisoner referred under new section 244ZB from custody. New section 244ZC(3) places a duty on the Secretary of State to release these offenders on licence once the requisite custodial period has been served (defined in new section 244ZC(6) as the period which the prisoner would have been eligible for release had they not been referred under new section 244ZB), and the Board has directed it. New section 244ZC(4) provides the Board must not direct release unless it is no longer necessary for the protection of the public that the prisoner should be confined.

1004. New section 244ZC(5) excludes prisoners who have been referred to the Parole Board under new section 244ZB from early release subject to home detention curfew.

1005. New section 244ZC (6) and (7) exclude prisoners who have been recalled from being considered for automatic release under section 255A(2) of the CJA 2003. This means that 're-release' will be considered by the Parole Board under section 255C.

1006. New section 244ZC(8) provides that an offender who has been removed from prison as part of the early removal scheme for foreign national offenders remains subject to new section 244ZB whilst in the UK.

1007. New section 244ZC(9) provides that an offender who has already been removed from the UK for deportation purposes who would have fallen into scope of new section 244ZC if they had not been removed is subject to those provisions if they return before the end of the sentence.

1008. New section 244ZC(10) establishes the definition of "the requisite custodial period" in the Interpretation provision for Chapter 6 of Part 12 of the CJA 2003.

1009. New section 244ZC(11) ensures that new sections 244ZB and 244ZC continue to apply to prisoners who are transferred on a restricted basis to Scotland or Northern Ireland, in keeping with other relevant provisions of the CJA 2003.

1010. New section 244ZC(12) adds new sections 244ZB and 244ZC to the list of provisions in section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which allows for the tests to be applied by the Parole Board when considering initial release on licence to be altered by secondary legislation.

Section 133: Power to make provision for reconsideration and setting aside of Parole Board decisions

1011. Section 133 expands the rules the Secretary of State may make under section 239(5) of the CJA 2003, concerning proceedings of the Parole Board, by inserting new subsections (5A) to (5C).

1012. New section 239(5A) provides that such rules may make provision requiring or permitting the Parole Board to make provisional decisions which must or may be reconsidered before they become final. The rules may also confer a power on the Parole Board to be able to set aside its decisions and directions if they fall within new section 239(5B). These rules may be concerned with Parole Board cases dealt with under Chapter 6 of Part 12 of the CJA 2003 (which deals with release of fixed-term prisoners) or under Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (release of life and indeterminate prisoners).

1013. New section 239(5B) sets out two instances where provision may be made in the rules for the Parole Board to set aside a decision or direction. The first is concerned with both decisions not to release or directions to release where the Parole Board determines that it would not have given or made its decision or direction but for an error of law or fact. The second is only concerned with directions to release where the Parole Board determines it would not have made the direction if either:

- information that was not available to the Board when the direction was given had been so available; or
- a change in circumstances relating to the prisoner that occurred after the direction was given had occurred before it was given.

1014. New section 239(5C) provides that the power to set aside a direction to release cannot apply where the prisoner has already been released from prison in accordance with that direction and is in the community on licence. It also provides that the rules may suspend any requirement on the Secretary of State to release a prisoner following a direction from the Board in cases where a decision of the Board is pending on whether to set aside the release direction.

Section 134: Responsibility for setting licence conditions for fixed-term prisoners

1015. Section 134 amends section 250 of the CJA 2003 which deals with the setting and variation of licence conditions for fixed term prisoners when they are released and subsequently when in the community. The section substitutes existing subsections (5A) to (5B) with new subsections (5A) to (5C) to provide that the Secretary of State must not include, vary or cancel certain licence conditions on the licences of certain prisoners released in accordance with certain provisions unless the Board has directed their inclusion, variation or cancellation.

1016. The section also makes provision to treat any condition of a licence in force before commencement which required a direction of the Board but had not received one as if from commencement such a direction had been given.

Section 135: Repeal of uncommenced provision for establishment of recall adjudicators

1017. Sections 8 to 10 of, and Schedule 3 to, the Criminal Justice and Courts Act 2015 introduced provisions, that have not been commenced, for the creation of a new body of decision makers called 'recall adjudicators'. This was with the intention of removing from the Parole Board the responsibility for reviewing the detention of recalled fixed-term prisoners and instead have those cases reviewed by recall adjudicators appointed by the Secretary of State.

1018. Section 135 repeals those uncommenced provisions.

Section 136: Release at direction of Parole Board after recall: fixed-term prisoners

1019. Section 136 amends the provisions dealing with the recall and further release of prisoners in Chapter 6 of Part 12 of the CJA 2003.

1020. Subsection (2) amends section 255B of the CJA 2003 which deals with recalled prisoners who are subject to automatic release after a fixed period. New subsection (4A) is inserted to specify that when considering whether to direct the re-release of a prisoner early within that fixed period, the Board must not direct release unless satisfied that the public protection test (being the test specified for all other parole release cases) is met.

1021. Subsection (3) amends section 255C of the CJA 2003 which deals with recalled prisoners who are not subject to automatic release. New subsection (4A) is inserted to specify that when considering whether to direct re-release following the recall, the Board must not direct release unless satisfied that the public protection test is met.

1022. Subsection (4) omits section 256 of the CJA 2003. That section concerns prisoners who have been recalled to custody and their case referred by the Secretary of State to the Parole Board for a decision on whether to direct the prisoner's re-release on licence. The section provides that where the Parole Board does not direct the prisoner's immediate release it must either fix a specific date for release or determine the reference by making no direction for release. The ability for the Parole Board to fix a specific date for release, and consequentially section 256 of the CJA 2003, is no longer needed as a consequence of the amends made by this section to sections 255B, 255C and 256A of the CJA 2003 and the new provision for timing of release made by section 137.

1023. Subsection (5) amends section 256A of the CJA 2003 dealing with the further review of recalled prisoners. Subsection (1) of that section is substituted for new subsections (1) and (1A) to provide where release of a prisoner is not directed following their initial recall, the Secretary of State is required to refer their case back to the Parole Board for a decision on release within one year of the Parole Board decision. New subsection (1B) provides that referral is not required if the date on which the Secretary of State is to automatically release the prisoner is less than 13 months from the previous Parole Board decision. Subsections (4) and (5) are substituted to provide that following the referral the Parole Board must not direct release of the prisoner unless satisfied that the public protection test is met and if such a direction is given the Secretary of State must give effect to that direction.

1024. Subsection (6) inserts a new section 256AZA into the CJA 2003 dealing with release after recall where an offender recalled to custody is serving two or more terms of imprisonment or detention. In those circumstances the new section provides that nothing in the release after recall provisions (sections 255A to 256A of the CJA 2003) requires the Secretary of State to release the recalled offender in respect of any of his terms of imprisonment or detention unless and until the Secretary of State is required to release the offender in respect of each of the terms. The section also provides that nothing in those provisions requires the Secretary of State to refer the recalled offender's case to the Parole Board in respect of any of the terms unless and until the Secretary of State is required either to refer the offenders case to the Board, or release the offender, in respect of each of the terms. As a consequence, a recalled offender may not have their case referred to the Parole Board in accordance with the release after recall provisions if at the point a referral is otherwise required to be made they are serving another term of imprisonment or detention which does not then require such referral.

1025. Subsection (7) removes a transitional provision for prisoners subject to earlier release provisions which becomes redundant on the omission of section 256 of the CJA 2003.

Section 137: Power to change test for release of fixed-term prisoners following recall

1026. Section 137 inserts a new section 256AZB in Chapter 6 of Part 12 of the CJA 2003. This provides an order-making power (subject to the affirmative procedure) to change the test to be applied when the Secretary of State decides whether automatic release from a recall is suitable (as prescribed in section 255A) and the tests applied by the Secretary of State and Parole Board for release following recall (as prescribed in sections 255B, 255C and 256A of the CJA 2003).

Section 138: Imprisonment for public protection etc: duty to refer person released on licence to Parole Board

1027. Section 138 amends section 31A of the 1997 Act. That section relates to licence termination for offenders serving 'preventative sentences', namely sentences of Imprisonment for Public Protection ("IPP"); the youth equivalent - Detention for Public Protection ("DPP"), and the armed forces equivalents.

1028. A person serving a preventative sentence who has been released on licence after having served the custodial part of that sentence is entitled to make an application to the Parole Board to have their licence terminated once the 'qualifying period' has expired. The qualifying period is 10 years from the

offender's first release from prison. If the Parole Board is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force, it will direct the Secretary of State to make an order that the licence is to cease to have effect and is therefore terminated.

1029. Subsections (2) and (6) clarifies that time spent in prison following recall under section 32 does not affect the calculation of the 10-year qualifying period for licence termination.

1030. Subsection (3) substitutes section 31A(3) of the 1997 Act. In place of the existing application by the prisoner to the Parole Board for consideration of termination of the licence, the Secretary of State must refer the prisoner's case to the Parole Board for such consideration. That reference must be made where the prisoner has been released on licence in respect of the preventative sentence and the qualifying period has expired and, if a previous reference has been made, 12 months have expired since the Parole Board disposed of the reference.

1031. Subsection (4) makes consequential amendments to section 31A(4) of the 1997 Act changing an application by a prisoner to a reference by the Secretary of State.

1032. Subsections (5) provides for the position where the automatic referral falls when an offender is recalled under section 32 of the 1997 Act. In such a case the offender will not be on licence so the licence cannot be revoked by the Parole Board, so instead provision is made for the Parole Board to instead determine whether it is satisfied that it is no longer necessary for the protection of the public that, when released, the offender remains under the IPP licence. If the Parole Board is satisfied to that effect, it will direct the Secretary of State to release the offender unconditionally.

1033. Subsections (7) to (8) make transitional provision for applications made but not determined by the Parole Board before commencement, providing the application is to be dealt with as if had been a reference by the Secretary of State instead of an application by the offender. Subsections (9) and (10) make transitional provision for applications dismissed by the Parole Board before commencement to allow for the trigger for the next referral to count from the date of the last disposal.

Section 139: Release at direction of Parole Board: timing

1034. Section 139 amends Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 ("the 1997 Act") (which deals with the release of life and indeterminate sentenced prisoners) and Chapter 6 of Part 12 of the CJA 2003 (release and recall of fixed-term prisoners) to make provision for the timing of a prisoner's release following a direction by the Parole Board.

1035. Subsection (1)(a) removes the reference to 'immediate' in section 32(5) of the 1997 Act, which otherwise provides on a reference to the Board by the Secretary of State of a recalled life prisoner, the Secretary of State must give effect to any direction for immediate release of that prisoner by the Board.

1036. Subsection (1)(b) inserts a new section 32ZB into the 1997 Act. The new section provides that where the Parole Board directs the initial release of a life prisoner under section 28 of the 1997 Act, or their release after recall under section 32 of the 1997 Act, the Secretary of State must give effect to the direction as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the licence of the life prisoner. The duty to give effect to the direction is also noted as being subject to any provision to suspend that requirement in rules concerning the setting aside of Parole Board directions.

1037. Subsection (2)(a) removes the reference to 'immediate' in section 255B(5) and 255C(5) of the CJA 2003, which otherwise provide, similar to the above, that on a reference to the Board by the Secretary of State of a recalled fixed-term prisoner, the Secretary of State must give effect to any direction for immediate release of that prisoner by the Board.

1038. Subsection (2)(b) inserts a new section 256AZC into the CJA 2003. Similar to the above, the new section provides that where the Parole Board direct the release of any fixed-term prisoner under Chapter 6 of Part 12 of the CJA 2003 (that is, on initial release where relevant or release after recall), the

Secretary of State must give effect to the direction as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the licence of the prisoner. As for life prisoners, the duty to give effect to the direction is also noted as being subject to any provision to suspend that requirement in rules concerning the setting aside of Parole Board directions.

Section 140: Extension of driving disqualification where custodial sentence imposed: England and Wales

1039. Section 140 makes amendments to section 35A of the Road Traffic Offenders Act 1988 ("RTOA 1988") and to section 166 of the Code to ensure that where there have been changes to release provisions in England and Wales through recent legislation this is accurately reflected in the appropriate extension period required when a driver disqualification is imposed with a custodial sentence.

1040. Subsection (1) amends section 35A(4) of the RTOA 1988. Subsections (1)(a) and (b) amend, respectively, paragraph (e) and (f) of section 35A(4) of the RTOA 1988, and subsection (1)(c) inserts a new section 35A(4)(fza) of the RTOA 1988. Together, they provide for imposition of an appropriate extension period equal to the appropriate custodial term for terrorist offenders serving an extended sentence who are subject to section 247A(2A) of the CJA 2003, for whom no early release is possible.

1041. Subsection (1)(d) makes provision for the correct appropriate extension period for special sentences for offenders of particular concern ("SOPC") by adding reference to the new youth terrorism SOPC (section 252A of the 2020 Act) and changing the period from half to two-thirds of the custodial term.

1042. Subsection (1)(e) inserts new section 35A(4)(fb) to (fd). New section 34A(4)(fb) makes provision for the correct appropriate extension period for serious terrorism sentences (imposed under section 268A and 282A of the 2020 Act) of the whole custodial term imposed by the Court in those cases.

1043. New section 35A(4)(fc) makes provision for the appropriate extension period in the case of a sentence to which new section 244ZA of the CJA 2003 will apply to be two-thirds of the sentence. New section 34A(4)(fd) makes provision for the correct appropriate extension period for terrorist offenders sentenced to an SDS and subject to release under section 247A of the CJA 2003 of two-thirds of the sentence.

1044. Subsection (2) amends section 166 of the Code which prescribes the relevant appropriate extension periods for offenders convicted after 1 December 2020. Subsection (2)(a) updates the table in section 166(5) to provide for a two-thirds appropriate extension period for all SOPC sentences.

1045. New entries 6B and 6C to the table in section 166(5) of the Code provide for an appropriate extension period of two-thirds of the sentence for terrorist offenders serving a standard determinate sentence, and for serious offenders subject to the new release provisions under section 244ZA of the CJA 2003 (as inserted by this Act).

1046. New section 166(5A) of the Code clarifies where section 247A(2A) of the CJA 2003 would apply in respect of extended sentences for terrorist offenders who are not eligible for early release, the appropriate extension period is equal to the whole custodial term imposed.

1047. Subsection (3) ensures that the amendments made by subsection (2)(a)(i) do not apply to a person who is sentenced between the passing of the Act (when this section comes in to force) and the coming in to force of section 131 two months later and who will be a person to whom section 244A of the CJA 2003 applies.

1048. Subsection (4) provides for prospective consequential amendments to these provisions, should the sentence of detention in a young offender institution be repealed.

1049. Section 116 Subsection (4) repeals paragraph 34 of Schedule 22 to the Coroners and Justice Act 2009, which is a now-defunct order-making power relating to appropriate extension periods for old sentences imposed under the Criminal Justice Act 1991.

Section 141: Increase in driving disqualification periods under certain existing orders: England and Wales

1050. Section 141 makes provision to amend the appropriate extension period for certain offenders whose appropriate extension period does not align with the release provision of their sentence.

1051. Section 141 applies where a driving disqualification order was imposed before commencement in accordance with the provisions specified in subsection (3). Where an offender is subject to section 244ZA (or SI 2020/158 before commencement of that section) or 247A of the CJA 2003, has been made subject to an incorrect appropriate extension period as part of their disqualification order, and they are yet to be released, new subsection (2) of this Section (section 141) applies to adjust the appropriate extension period to the length it would be had it been imposed after commencement of section 140.

1052. Subsection (5) ensures that any sentence imposed under a provision that may then be repealed by the 2020 Act that are referenced in subsection (1)(d), (2)(d) and (4) are read as referring to an equivalent sentence imposed under corresponding provision in the 2020 Act.

Section 142: Extension of driving disqualification where custodial sentence imposed: Scotland

1053. Section 142 makes amendments to section 35C of the RTOA 1988 and to section 248D of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") to ensure that release provisions in Scotland are accurately reflected in the appropriate extension period required when a driver disqualification is imposed with a custodial sentence. The measures provide for the appropriate extension period to reflect the earliest potential release point of the relevant sentence.

1054. Subsections (2)(a) and (d) amend section 35C(4) of the RTOA 1988. Subsection (2)(a) inserts new paragraphs (aa), (ab) and (ac), which provide for the appropriate extension period lengths for those who receive a serious terrorism sentence or an extended sentence. Subsection (2)(d) inserts new paragraphs (ca) and (cb) which provide the appropriate extension period lengths for those serving a terrorism sentence and all other terrorist offenders.

1055. Subsections (2)(b) and (c) remove references in section 35C to the Custodial Sentences and Weapons (Scotland) Act 2007 ("the 2007 Act"), which is yet to be commenced.

1056. Subsections (3) and (4) make provision in subsections (7) and (8) of section 35C to provide that, if the proportion of sentence to be served under the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) is changed by the Scottish Ministers by amending order, the Secretary of State for Justice may by further order provide that the appropriate extension period may be read as that new proportion.

1057. Subsection (5) inserts new definitions and replaces definitions from the uncommenced 2007 Act with existing definitions from the 1993 and 1995 Acts.

1058. Subsections (6) to (10) make the same amendments to section 248D of the 1995 Act.

1059. Subsection (11) repeals the power to make interim arrangements pending commencement of the 2007 Act which is rendered unnecessary by the changes.

Section 143: Increase in driving disqualification periods under certain existing orders: Scotland

1060. Section 143 makes provision to amend the appropriate extension period for certain terrorist offenders whose appropriate extension period does not align with the release provision of their sentence.

1061. Section 143 applies where a driving disqualification order was imposed before commencement of this Act in relation to a sentence of imprisonment to which section 1AB of the 1993 Act applies, where the appropriate extension period for the purposes of the order would have been longer had the sentence been imposed after the commencement of Section 140 but where the offender has not yet been released in respect of that sentence.

1062. In such circumstances, subsection (2) applies to adjust the appropriate extension period to the length it would be had it been imposed after commencement of section 140.

Section 144: Calculation of period before release or Parole Board referral where multiple sentences being served

1063. Section 144 provides clarification on when automatic release will take place and when referral to the Parole Board is required where a prisoner is serving concurrent or consecutive sentences.

1064. Subsection (1) inserts new section 33A in the Crime (Sentences) Act 1997 ("the 1997 Act") to deal with release where fixed-term sentences are concurrent with or consecutive to life sentences and makes consequential amendments.

1065. New section 33A(2) provides that release cannot take place from the life sentence until the prisoner must also be released from the fixed-term sentence.

1066. New section 33A(3) provides that referral to the Parole Board in respect of the life sentence does not take place before the parole referral date or automatic release date (whichever is applicable) of the fixed-term sentence is reached.

1067. New subsection 33A(4) provides that, for the purposes of the above provisions, the existence of the life sentence is to be ignored when considering what the release provisions which apply to the fixed-term sentence required. (That is to avoid circularity with new section 267C of the CJA 2003 – see below.)

1068. New subsection 33A(5) defines the "fixed-term provisions" as those set out in Chapter 6 of Part 12 of the CJA 2003.

1069. Subsections (2)-(8) amends Chapter 6 of Part 12 of the CJA 2003 to substitute references to subsection (2) of section 264 with references to the new subsections (2B), (2D) and (2E) of that section as inserted by subsection (10) of Section 142 in relation to requisite custodial periods – as below.

1070. Subsection (9) inserts new subsection (2)(aza) in section 263 of the CJA 2003 – dealing with concurrent terms – to provide that referral to the Parole Board, where there are concurrent fixed-term sentences, does not take place until the latest referral date on each of the sentences, or automatic release date where relevant, is reached.

1071. Subsection (10)(a) replaces subsection (2) of section 264 of the CJA 2003 – dealing with consecutive terms – with new subsections (2A) to (2F).

1072. New subsection (2A) applies new subsection (2B) where none of the consecutive sentences are subject to the parole process.

1073. New subsection (2B) requires an offender to serve the aggregate of all the relevant consecutive custodial periods before being released on licence.

1074. New subsection (2C) applies new subsections (2D) and (2E) where at least one of the consecutive sentences is subject to the parole process.

1075. New subsection (2D) provides that referral to the Parole Board does not take place until the aggregate of the minimum custodial period of the non-parole sentence(s) and the minimum custodial period(s) of the sentences that are subject to the parole process have been served.

1076. New subsection (2E) provides that release cannot take place until it has been directed by the Board or, the offender has reached the point at which the aggregate of all the minimum custodial periods of the non-parole sentences and maximum custodial periods of the sentences that are subject to the parole process have been served.

1077. New subsection (2F) sets out:

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

1078. Subsection (10)(b) amends subsections (6) and (6A) of section 264 of the CJA 2003 to create a new definition of 'minimum custodial period' in relation to sentences where the initial release is automatic.

1079. Subsection (10)(c) inserts new subsection (6B) in section 264 of the CJA 2003. New subsection (6B) provides the definition of the 'maximum custodial period' (in relation to sentences where the initial release is subject to Parole Board referral.

1080. Subsection (11) inserts new section 267C in the CJA 2003 which deals with release where life sentences are concurrent or consecutive to fixed-term sentences.

1081. New section 267C(2) provides that release cannot take place from the fixed-term sentence unless the prisoner must also be released in accordance with the life sentence release provisions.

1082. New section 267C(3) ensures that referral to the Parole Board on the fixed-term sentence does not take place before the prisoner must also be referred to the Board or released in accordance with the life sentence release provisions.

1083. New section 267C(4) ensures, for the purposes of the above provisions, that the presence of the fixed-term sentence is to be ignored when considering what the release provisions which apply to the life sentence require. (That is to avoid circularity with new section 33A of the 1997 Act – see above).

1084. New section 267C(5) defines the "life sentence provisions" as those set out in Chapter 2 of Part 2 of the 1997 Act.

1085. Subsection (12) repeals section 11(1) and (4) of the Criminal Justice and Courts Act 2015. Those provisions (which have not been commenced) deal with the referral of a life sentenced prisoner's case to the Parole Board where they are also serving a fixed-term sentence. They are no longer necessary because the position of such prisoners is now dealt with by new section 33A, as inserted by this Section.

Section 145: Application of release provisions to repatriated prisoners

1086. Section 145 amends paragraph 2 of the Schedule to the Repatriation of Prisoners Act 1984 ("the 1984 Act") (which modifies the operation of domestic release provisions in relation to prisoners repatriated from overseas jurisdictions to serve their sentences in England or Wales). The intention is that repatriated prisoners will be treated in the same manner as equivalent domestic offenders for the provisions relating to release on licence, where the application of those provisions depends on the nature or circumstances of the prisoner's offence.

1087. The Counter-Terrorism and Sentencing Act 2021 includes provision along similar lines specifically directed at terrorist offenders. This section replaces that provision with more general provision.

1088. Eligibility for polygraph testing as a condition of a release licence (under section 28 of the Offender Management Act 2007), restricted eligibility for release on licence for terrorist and terrorist-connected offenders (under section 247A of the Criminal Justice Act 2003), and later release points for offenders who commit certain violent or sexual offences as introduced by section 146 of this Act, all depend on the offence committed by the prisoner. In terrorism cases, polygraph testing and restricted eligibility for release may also depend on findings made by the Court when sentencing an offender (under section 69 of the Code). Polygraph testing also depends, in the case of offences involving domestic abuse, on the offence committed, and in some cases on the circumstances of the individual offence. The section will enable these provisions, and any similar provisions that may be enacted in the future, to operate in relation to corresponding cases involving overseas offenders repatriated to England and Wales and those sentenced in military court. Section 146 also creates a list of polygraph-eligible sexual offences which are applicable to offenders in England and Wales, and those who are transferred to England and Wales from Scotland or Northern Ireland.

1089. The main provisions are found in subsection (1)(b) and (c). Subsection (1)(b) inserts new sub-paragraphs (3ZA) to (3ZF) of paragraph 2 of the Schedule to the 1984 Act. Of those provisions:

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

1090. Subsection (1)(c) brings section 28 of the Offender Management Act 2007 (inclusion of polygraph testing conditions in licences) within the provisions relating to release on licence to which paragraph 2 of the Schedule to the 1984 Act applies.

1091. Subsections (1)(a) and (3) repeal obsolete provisions of, or amends, the 1984 Act, to do with historic sentencing and release regimes.

1092. Subsection (2) makes saving provision in relation to the more limited provision (referred to above) made by the Counter-Terrorism and Sentencing Act 2021, which is expected to be in force for a period before its replacement by the provisions inserted by this section.

Section 146: Sentences and offences in respect of which polygraph conditions may be imposed

1093. Section 146 amends section 28 of the Offender Management Act 2007, which provides for certain offenders to have a condition included in their licence on release requiring them to undergo polygraph testing. Currently the section applies only to sex offenders, domestic abuse perpetrators and terrorist offenders.

1094. Paragraph (a) restates the types of custodial sentence that make an offender eligible for a polygraph condition, being custodial sentence of life or a term of 12 months of more. The new wording will ensure, in particular, that all custodial sentences passed by a service court or a court in Scotland or Northern Ireland will be caught. While section 28 extends only to England and Wales, service offenders sentenced to imprisonment generally serve their sentences in England and Wales, and offenders convicted in Scotland or Northern Ireland may be transferred to England and Wales to serve their sentences.

1095. Paragraph (b) clarifies the definition of relevant sexual offence for offenders convicted in Scotland and Northern Ireland, following the repeal of the relevant Schedules, and extends the definition of relevant sexual offence for those convicted in England and Wales, Scotland and Northern Ireland to include offences listed in Schedule 3 to the 2003 Act.

1096. Schedule 3 to the 2003 Act contains references to length, type of sentence and age of offender, as well as the offence committed. Paragraph (c) prevents these references from being taking into account in determining whether an offence is a 'relevant sexual offence'.

1097. Armed forces legislation provides for acts that are, or would be, offences under English and Welsh law to be prosecuted as "service offences". Paragraph (f) provides for such service offences to be treated in the same way as the underlying offence in English and Welsh law for the purposes of section 28. Paragraphs (d) and (e) remove similar provision, to be inserted by the Counter-Terrorism and Sentencing Act 2021, relating specifically to terrorism cases (which will be superseded).

Section 147: Minor amendments to do with weapons-related offences

1098. This section moves two offences from Part 3 (Specified Terrorism Offences) of Schedule 15 to the CJA 2003 to Part 1 (Specified Violent Offences) of Schedule 15. This section also makes the equivalent change to Schedule 18 to the Code.

Chapter 2: Community Sentences

Section 149: Supervision by responsible owner

1099. Section 149(2) amends sections 215 and 301 of the Code, which obliges offenders who are subject to a community order or suspended sentence order to keep in touch with their Responsible Officer (the probation practitioner managing the order an offender is serving).

1100. Subsection (2)(a) inserts a new subsection (1A) into section 215 of the Code. This provides Responsible Officers with the power to require an offender serving a community order to attend an appointment, for the purposes of ensuring the offender complies with rehabilitative requirements or where public protection concerns exist. It also clarifies that this power only applies to community orders made on or after this section comes into force.

1101. Subsection (2)(a) also inserts a new subsection (1B) which imposes a duty on the offender to comply with any instruction given by a Responsible Officer in accordance with the power in new section 215(1A).

1102. Subsection (2)(b) amends section 215(2) to clarify that new subsection (1A) is applicable in the case of a community order, whenever it was made.

1103. Subsection (2)(c) inserts a new section 215(2A) which clarifies that the additional powers detailed by subsections (1A) and (2) apply until the end date specified on the community order has been reached, even where all associated community requirements have been concluded.

1104. Subsection (2)(d) amends section 215(3) to specify that an offender who is under an obligation to comply with an instruction given by a Responsible Officer under section 215 is liable to breach proceedings if he does not.

1105. Subsection (3)(a) inserts a new subsection (1A) into section 301 of the Code. This provides Responsible Officers with the power to require an offender serving a suspended sentence order to attend an appointment, for the purposes of ensuring the offender complies with rehabilitative requirements or where public protection concerns exist. It also clarifies that this power only applies to suspended sentence orders made on or after the commencement of this Act.

1106. Subsection (3)(a) inserts a new subsection (1B) which imposes a duty on the offender to comply with any instruction given by a Responsible Officer in accordance with the power in subsection (1A).

1107. Subsection (3)(b) amends section 301 (2) to clarify that subsection (1A) is applicable in the case of a suspended sentence order, whenever it was made.

1108. Subsection (3)(c) inserts a new subsection (2A) which clarifies that the additional powers detailed by subsections (1A) and (2) apply until the end date of the supervision period on the suspended sentence order has been reached, even where all associated community requirements have been concluded.

1109. Subsection (3)(d) amends section 301(3) to specify that an offender who is under an obligation to comply with an instruction given by a Responsible Officer under section 301 is liable to breach proceedings if he does not.

Section 150: Increases in maximum daily curfew hours and curfew requirement period

1110. Section 150 makes amendments to the Code and the CJA 2003 in respect of the maximum daily curfew hours and the maximum curfew requirement period which can be imposed as part of a curfew requirement under a community order or suspended sentence order.

1111. Subsection (1) introduces amendments made to paragraph 9 of Schedule 9 to the Code by subsections (2) to (5). This relates to the curfew requirements for a community order and suspended sentence order.

1112. Subsection (2) amends sub-paragraph (4) on the maximum daily curfew hours that can apply in any one day and also provides that the maximum number of curfew hours that may be imposed for a seven-day period. It replaces the "16 hours" maximum with a new measure known as "the relevant number of hours", which is defined in new sub-paragraph (4A) (see subsection (3)) and also provides that the maximum number of curfew hours that may be imposed for a seven-day period is 112 hours.

1113. Subsection (3) inserts new sub-paragraphs (4A). Sub-paragraph (4A) defines the meaning of "the relevant number of hours". This provides that the maximum daily curfew which can be imposed as part of a community order or suspended sentence order on someone convicted of an offence before these provisions came into force is 16 hours. For someone convicted of an offence on or after these provisions came into force, the maximum daily curfew is 20 hours (subject to the weekly limit set out in new sub-paragraph (4)(c)).

1114. Subsection (4) amends sub-paragraph (5) on the maximum curfew requirement period that can apply. It replaces the "12 months" maximum with a new measure known as "the relevant period", which is defined in new sub-paragraph (6) (see subsection (5)).

1115. Subsection (5) inserts a new sub-paragraph (6) and defines the meaning of "the relevant period". This provides that the maximum curfew requirement period which can be imposed as part of a community order or suspended sentence order on someone convicted of an offence before these provisions came into force is 12 months, and for someone convicted of an offence on or after these provisions came into force is two years.

1116. Subsection (6) amends paragraph 13 of Schedule 23 to the Code. Paragraph 13 gives the Secretary of State the power to amend limits for certain community requirements by regulations, such as the curfew requirements.

1117. Subsection (6) updates sub-paragraphs (1)(b) and (2)(a) of paragraph 13 so that the Secretary of State's power to amend limits on the curfew requirements are updated to account for the changes made to paragraph 9 of Schedule 9 to the Code.

1118. Subsection (7) introduces consequential amendments made to the CJA 2003 by subsections (8) and (9), concerning supervision default orders and default orders.

1119. Subsection (8) amends Schedule 19A to the CJA 2003 which relates to supervision default orders. Subsection (8) updates the curfew provisions relating to supervision default orders to account for the changes made to paragraph 9 of Schedule 9 to the Code.

1120. Subsection (9) amends Schedule 31 to the CJA 2003 which relates to default orders. Subsection (9) updates the curfew provisions relating to default orders to account for the changes made to paragraph 9 of Schedule 9 to the Code.

Section 151: Power for responsible officer to vary curfew requirements etc

1121. Section 151 amends the Code by inserting a new power for a responsible officer to vary a curfew requirement made under a community order or suspended sentence order. Specifically, it makes amendments to Part 5 of Schedule 9 (community orders and suspended sentence orders: curfew requirements) and consequentially to Part 4 of Schedule 10 (amendment of community order) and Part 3 of Schedule 16 (amendment of suspended sentence order).

1122. Subsection (2) inserts a new paragraph 10A into Schedule 9 of the Code, introducing a new power for the responsible officer to vary a curfew requirement.

1123. New paragraph 10A(1)(a) to (c) set out the conditions that must be met for the power to apply: that a relevant order must include a curfew requirement, that it must be in force, and it is in respect of a conviction made on or after these provisions came into force. New paragraph 10A(1)(d) provides that the power can only be exercised where the responsible officer considers that the variation condition under new paragraph 10A(2) is met.

1124. New paragraph 10A(2) provides that the variation condition is satisfied if there has been a change in the offender's circumstances since the relevant order was made which the responsible officer considers affects the offender's ability to reasonably comply with the order, and it is appropriate to amend the curfew arrangements. The power for the responsible officer is limited at new paragraph 10A(2)(a) to varying the start time of any of the curfew periods and at new paragraph10A (2)(a) to varying the place of the curfew in relation to any of those periods.

1125. New paragraph 10A(3) provides a discretionary power for the responsible officer to make changes to the curfew, with the changes specified in a "variation notice". This must be with the consent of the offender. Under new paragraph 10A(3)(a) and (b) the variation notice must specify as applicable: a new start time for the curfew periods, and a new relevant place for the curfew periods.

1126. New paragraph 10A(4) provides that the effect of a variation notice is to change the relevant order, with effect from the date specified on the notice.

1127. New paragraph 10A(5) provides that a variation notice may specify different variations of the start time, or of the relevant place, for different days.

1128. New paragraph 10A(6) requires the responsible officer to obtain and consider information about each place proposed to be specified in the notice, before giving a variation notice, which under new paragraph 10A(7) must include information from those likely to be affected by the offender's enforced presence.

1129. New paragraph 10A(8) provides limitations to the power to vary the curfew. Sub-paragraph (8)(a) prohibits a variation to the length of any of the offender's curfew periods. New paragraph 10A(8)(b) provides that where the relevant order includes a residence requirement (under Part 7, paragraph 13) the place for the curfew periods may not be varied in a way that is inconsistent with that requirement. New paragraph 10A (8)(c) prohibits variation in the circumstances set out in sub-paragraph (9).

1130. New paragraph 10A(9) prohibits a variation to the curfew if the original order includes an electronic compliance monitoring requirement, and variation by the responsible officer if the responsible officer considers that the court would not impose a monitoring requirement or would have imposed a different monitoring requirement.

1131. New paragraph 10A(10) requires the responsible officer to give the appropriate court details of the variation (namely, under new paragraph 10A(10)(a) and (b) a copy of a variation notice and evidence of the offender's consent to the notice) so that the court record can be updated.

1132. New paragraph 10A(11) defines what is meant by "appropriate court", "curfew periods", "relevant place", and "start time" for the purposes of new paragraph 10A.

1133. Subsection (3) inserts a new sub-paragraph (3) into paragraph 16 of Schedule 10 to the Code which relates to amendment of the court order due to changes of residence outside of the local justice area. New paragraph 16(3) provides that, where a responsible officer has varied the relevant place for the curfew, under paragraph 10A, they must notify the appropriate court, and the court must update the community order.

1134. Subsection (4) inserts a new paragraph 17A to Schedule 10 to the Code relating to the amendment of a community order because of the variation of a curfew requirement by the responsible officer.

1135. New paragraph 17A(1) requires the responsible officer to give the court a copy of the community order curfew variation notice and evidence of the offender's consent to the variation notice. New paragraph 17A(2) provides that the court must amend the community order to reflect the changes set out in the variation notice.

1136. Subsection (5) amends paragraph 23 of Schedule 16 to the Code by inserting a new sub-paragraph (3). It requires the responsible officer to notify the appropriate court where a relevant order has been varied under new paragraph 17A, and the court to update the suspended sentence order.

1137. Subsection (6) inserts a new paragraph 24A into Schedule 16 to the Code relating to the amendment of a suspended sentence order because of the variation of a curfew requirement by the responsible officer.

Section 152: Removal of attendance centre requirements for adults

1138. Section 152 has the effect of removing the attendance centre requirement from the list of requirements that a court can impose on an offer as part of a community order or suspended sentence order. It does so by amending sections 207 and 291 of, and Schedule 9 to, the Code.

1139. Subsection (2) amends section 207(3) of the Code to specify that an attendance centre requirement is only available as a requirement of a community order if the offender was convicted of an offence before this section comes into force, and if the offender was under 25 years old when convicted of the offence.

1140. Subsection (3) amends section 291(3) of the Code to specify that an attendance centre requirement is only available as a requirement of a suspended sentence order if the offender was convicted of an offence before this section comes into force, and if the offender was under 25 years old when convicted of the offence.

1141. Subsection (4) amends Schedule 9 to the Code, in relation to community orders and suspended sentence order requirements. It amends the heading to Part 13 (the section of the Code covering attendance centre requirements) to make clear they are not available to courts as a requirement if an offender has been convicted after this section comes into force.

1142. Subsection (5) introduces Schedule 13 to the Act which outlines related amendments to the Code and other relevant Acts.

Schedule 13: Removal of attendance centre requirements for adults: related amendments

1143. Schedule 13 makes consequential amendments to section 60 of the Powers of Criminal Courts (Sentencing) Act 2000, sections 221 and 300 of the CJA 2003 and Schedule 11 and 17 to the Code.

1144. Paragraph 1 of Schedule 12 introduces amendments to section 60 to the Powers of Criminal Courts (Sentencing) Act 2000.

1145. Paragraph 2 (2) and (3) amend section 60 of the 2000 Act and specify that attendance centre orders are only available for offenders under 18 years old.

1146. Paragraph 2(4) confirms that subparagraphs (1) to (3) will not apply if other amendments to section 60 are commenced before this section comes into force.

1147. Paragraph 4 introduces amendments to sections 221 and 300 of the CJA 2003.

1148. Paragraphs 5 make amendments to section 221 of the CJA 2003. Paragraph 5(2) omits "aged under 25", and paragraph 5(3) inserts a new section 221(4) to define what is meant by "relevant order".

1149. Paragraph 6 amends section 300(2) of the CJA 2003 (power to impose attendance centre requirements on fine defaulter). Paragraph 6(1)(a) and (b) amends section 300(2)(c) if the relevant amendment is in force when this section comes into force, in which case all reference to attendance centre requirements can be removed. Paragraph 6(2) defines what is meant by "relevant amendment" in sub-paragraph (1).

1150. Paragraph 7 amends paragraph 102 of Schedule 32 to the CJA 2003 to ensure that an attendance centre requirement can only apply to those under 18 if the provisions in paragraph 102(2)(b) of Schedule 32 to and section 61(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 are uncommenced when this Act comes into force.

1151. Paragraph 9(1) introduces the amendments to Schedule 11 to the Code, which makes provision for the transfer of community orders to Scotland or Northern Ireland.

1152. Paragraph 9(2) amends paragraph 12(2)(g) and (h) of Schedule 11 to the Code in relation to the availability of attendance centre requirements.

1153. Paragraph 9(3) amends paragraph 25 (3) (b) of Schedule 11 to the Code in relation to the availability of attendance centre requirements.

1154. Paragraph 10(1) introduces the amendments to Schedule 17 to the Code, which makes provision for the transfer of suspended sentence orders to Scotland or Northern Ireland in subsection (2) and (3).

1155. Paragraph 10(2) amends paragraph 9(2)(g) and (h) in relation to the availability of attendance centre requirements.

1156. Paragraph 10(3) amends paragraph 32 (2) and (5) in relation to the availability of attendance centre requirements.

Section 153 and Schedule 14: Special procedures relating to review and breach

1157. Section 153 introduces Schedule 14 which makes provision for courts to have powers to review community and suspended sentence orders and to commit an offender to custody for breach of a community or suspended sentence order. This section and Schedule form the legislative basis of the problem-solving court approach.

1158. Paragraph 1 of Schedule 14 introduces the amendments to the Code.

1159. Paragraph 2 of Schedule 14 inserts a new section 395A into the Code. New section 395A(1) provides a power for the Secretary of State to make regulations specifying that community orders or suspended sentence orders of a specified description and made within a specified period or after a specified time, may qualify for special procedures for the purpose of one of the provisions set out in subsection (2).That is, the amendments made by one or more of the provisions specified in subsection (2) may apply. Subsection (3) provides that the description specified in regulations may be framed by reference to the courts by which the orders are made, the persons who are subject to the orders, and/or the offences to which the orders relate. Subsection (4) provides that where a description of a community or suspended sentence order is specified in regulations for the first time, those regulations must specify a period of 18 months beginning with the day on which the regulations come into force. This is the pilot period.

1160. New section 395A(6) specifies which legislative process is required for regulations made by the Secretary of State under that subsection. It requires that where the regulations have the effect of specifying a time-limited extension, this will be subject to the negative resolution procedure and where the extension is for an indefinite period, the affirmative resolution procedure is required.

1161. Paragraphs 3 to 5 relate to the review of community orders subject to special procedures, i.e. orders to which the amendments made by these provisions apply by virtue of inserted section 395A.

1162. Paragraph 3 amends section 211 of the Code by disapplying the Crown Court's power to direct an offender to be supervised by a magistrates' court where the community order qualifies for special procedures.

1163. Paragraph 4 amends section 217 of the Code by inserting new subsection (2A) which provides that regulations made under section 217 may not make provision in respect of community orders which qualify for special procedures.

1164. Paragraph 5 inserts new sections 217A, 217B and 217C into the Code.

1165. New section 217A(1) confers a discretion on courts to provide that a community order that imposes one or more community requirements, and qualifies for special procedures, may be subject to periodic review. Subsection (2) specifies what must be included in a community order with a review requirement. Subsection (3) specifies that the 'responsible court' is the court by which the order was made. Subsection (4) provides that more information about community orders that qualify for special procedures may be found at section 395A.

1166. New section 217B makes provision for what is to happen at a review hearing. Subsection (1) states that the section applies to review hearings for community orders. Subsection (2) to (3) provide for what the court may and may not do upon review of a community order. Subsection (2) provides that after considering the progress report the court may amend the community order requirements or any provision of the order relating to those requirements. Subsection (3) prohibits the court from

making certain amendments of the community order requirements unless the offender expresses willingness to comply with the amended requirement. Subsection (4) makes further provision for the purposes of subsection (3)(a) and has the effect of allowing the court to add an electronic monitoring requirement to an existing requirement (if the offender is willing to comply). Subsection (5) empowers the court to adjourn the review hearing where it considers that an offender has breached a community requirement of an order without reasonable excuse, and to deal with the case forthwith under paragraph 10 or 11 of Schedule 10 to the Code (which set out the powers of the magistrates' court and Crown Court in breach proceedings). Subsection (6) provides that where a court does not deal with the case forthwith, paragraph 9A of Schedule 10 should be referred to. Subsection (7) is an interpretation provision.

1167. New section 217C makes provision to allow the court to alter the review arrangements. Subsection (1) states that where the court reviews the progress report and forms the opinion that the offender's progress in complying with the order is satisfactory, subsections (2) and (3) will apply. Subsection (2) provides that where the court forms the opinion that the offender is making satisfactory progress before a review hearing is held, it can dispense with a review hearing. It may also amend the community order to provide that subsequent reviews can be held on the papers, and without a review hearing.

1168. Subsection (3) provides that where a review hearing is held, the court may amend the community order to provide that subsequent reviews are to be held on the papers. Subsection (4) applies where the court is holding a review on the papers (without a review hearing) and forms the opinion that the offender's progress is no longer satisfactory. In that case, the court may require the offender to attend a hearing of the court at a specified time and place in the future. Subsection (5) states that at a review hearing the court may amend the community order so as to vary the intervals at which review hearings must take place. Subsection (6) specifies whom these powers are exercisable by. Subsection (7) is an interpretation provision.

1169. Paragraphs 6 to 10 relate to the review of suspended sentence orders subject to special procedures, i.e. orders to which the amendments made by these provisions apply by virtue of inserted section 395A.

1170. Paragraph 6 amends section 293 of the Code to provide that nothing in that section applies to orders which qualify for special procedures.

1171. Paragraph 7 inserts section 293A to the Code which provides for the review of suspended sentence orders which qualify for special procedures.

1172. New section 293A confers a discretion on courts to provide that a suspended sentence order that imposes one or more community requirements, and qualifies for special procedures may be subject to periodic review. Subsection (2) specifies what must be included in a suspended sentence order with a review requirement. Subsection (3) specifies that the 'responsible court' is the court by which the order was made. Subsection (4) provides that more information about suspended sentence orders that qualify for special procedures may be found at new section 395A.

1173. Paragraph 8 amends section 294 of the Code. Subparagraph (2) ensures that the section applies to reviews of suspended sentence orders subject to special procedures. Subparagraph (3) amends section 294(5) to enable the court to immediately initiate breach proceedings under paragraph 13 of Schedule 16 to the Code where it is of the opinion that the offender has breached a community requirement of a suspended sentence order subject to special procedures without reasonable excuse. Subparagraph (4) inserts new subsection (5A) which provides that where a court does not deal with the case forthwith, paragraph 9A of Schedule 16 should be referred to.

1174. Paragraph 9 amends section 295 of the Code to apply that provision to reviews of suspended sentence orders qualifying for special procedures.

1175. Paragraph 10 amends section 297 of the Code by disapplying the Crown Court's power to direct an offender to be supervised by a magistrates' court where the suspended sentence order qualifies for special procedures.

1176. Paragraph 11 amends Schedule 9 to the Code by disapplying the provisions relating to review of orders imposing drug rehabilitation requirements from community orders and suspended sentence orders qualifying for special procedures.

1177. Paragraph 12 amends Schedule 10 to the Code to provide the court with a power to commit an offender to custody for breach of a community order which qualifies for special procedures.

1178. Paragraph 12(2) and (3) amends Schedule 10 to the Code to ensure that the offender will be brought before the court which made the order. Paragraph 12(4) inserts new paragraph 9A in Schedule 10 to ensure that a court may initiate breach proceedings even where it does not do so forthwith under section 217B(5) and makes provision for the court to issue a summons or warrant to require the appearance of an offender.

1179. Paragraph 12(5) amends paragraph 10 of Schedule 10 to the Code which deals with the powers of the magistrates' court following a breach of a community requirement of an order. This sub-paragraph amends the provision such that it applies where the court is of the opinion that the offender has breached a community order to which special procedures apply. It also inserts new sub-paragraph (ba) which creates an additional power for magistrates' courts dealing with a community order which qualifies for special procedures, being the power to commit the offender to prison for a period not exceeding 28 days.

1180. Paragraph 12(6) makes amendments similar to those made by sub-paragraph 12(5) in relation to the powers of the Crown Court.

1181. Paragraph 12(7) inserts new paragraph 13A into Schedule 10 to the Code. Paragraph 13A provides that a committal to prison under inserted paragraphs 10(5)(ba) or 11(2)(ba) of Schedule 10 may be a committal to a young offender institution in the case of a person under the age of 21. Committal to a young offender institution is to be regarded as legal custody for these purposes. Paragraph 13A(3) provides that no more than three orders for committal to prison under inserted paragraphs 10(5)(ba) and 11(2)(ba) may be made in relation to the same community order.

1182. Paragraph 12(8) amends paragraph 14 of Schedule 10 to the Code to clarify that if a community order qualifies for special procedures then the 'appropriate magistrates court' for the purpose of that paragraph is the court that made the order.

1183. Paragraph 13 makes amendments to Schedule 16 to the Code to provide the court with a power to commit an offender to custody for breach of a suspended sentence order which qualifies for special procedures.

1184. Paragraph 13(3) inserts new paragraph 9A to Schedule 16 which mirrors for suspended sentence orders qualifying for special procedures the insertion of paragraph 9A to Schedule 10.

1185. Paragraph 13(6) amends paragraph 13 of Schedule 16 to the Code which provides powers for the court to deal with the offender for breach of requirements or subsequent convictions. It inserts new paragraph 13(1)(d) and (da) which creates an additional power for courts dealing with a suspended sentence order which qualifies for special procedures, being the power to commit the offender to prison for a period not exceeding 28 days where there has been a breach of a community requirement of the order. This power is only available to the court where the offender is aged 18 or over.

1186. Paragraph 13(7) amends paragraph 14 of Schedule 16 which provides a duty to activation a suspended sentence order following a breach, where it would not be unjust to do so. It inserts a new paragraph 14(2)(c) to require that where a suspended sentence order qualifies for special procedures,

and a community requirement of the order has been breached, the court must consider the possibility of making a committal to custody under paragraph 13(1)(da) when considering whether activating the suspended sentence would be unjust.

1187. Paragraph 13(8) inserts a new paragraph 16A into Schedule 16 to the Code.

1188. New paragraph 16A makes provision such that a committal to prison under paragraph 13(1)(da) of Schedule 16 to the Code may be a committal to a young offender institution in the case of a person under the age of 21. Committal to a young offender instruction is to be regarded as legal custody for these purposes. New paragraph 16A(3) provides that no more than three orders for committal to prison under paragraph 13(1)(da) may be made in relation to the same suspended sentence order.

1189. Part 2 of Schedule 14 introduces prospective amendments to the Code. Paragraph 14(2) would amend paragraph 21 of Schedule 22 to the Code. This ensures that powers to imprison an offender for wilful and persistent breaches of an order, if they were to come into force in the future, would not apply to orders which are subject to special procedures for the purposes of these provisions. Paragraphs 14(3) and 14(4) insert new paragraphs 75A and 78A respectively. These omit references in these provisions to detention in a young offender institution should sentences of detention in a young offender institution be abolished in the future.

Section 154 and Schedule 15: Drug testing requirement

1190. Section 154 introduces Schedule 15 which amends the Code to enable notified courts to impose drug tests as part of community and suspended sentence orders.

1191. Paragraphs 2 and 4 of Schedule 15 insert drug testing requirements into section 201 (community orders) and into section 287 (suspended sentence orders) of the Code.

1192. Paragraph 3 inserts new section 207(3A) of the Code and prohibits the drug testing requirement from being applied to a community order of an offender who was convicted of the offence before the date on which section 154 comes into force.

1193. Paragraph 5 inserts new section 291(3A) into the Code and prohibits the drug testing requirement from being applied to a suspended sentence order of an offender who was convicted of the offence before the date on which section 154 comes into force.

1194. Paragraph 6 inserts the details of the Drug Testing Requirement into (Part 10A) of Schedule 9 to the Code at new paragraphs 22A and 22B.

1195. New paragraph 22A(1) defines a drug testing requirement as a requirement for the offender to provide samples as directed by the responsible officer, during a timeframe specified in the order, to determine if they have any drug or psychoactive substance in their body.

1196. New paragraph 22A(2) requires that the order itself must specify that if the offender provides samples to a person other than a responsible officer, the results of the tests carried out on the samples are to be communicated to the responsible officer and provides that the order may make provision about the specific provision of samples by virtue of sub-paragraph (1).

1197. New paragraph 22A(3) sets out the powers of the responsible officer to give directions about the provision of samples which include: specifying the types of samples the offender must give, at which time and in which circumstances.. This paragraph also makes the responsible officer's powers under paragraph 22A(1) subject to provisions of the order and guidance issued by the Secretary of State.

1198. New paragraph 22A(4) provides for the Secretary of State to revise any guidance issued.

1199. New paragraph 22A(5) provides that the definitions of "drug" and "psychoactive substance" have the same meanings given in section 2 of the Misuse of Drugs Act 1971 and section 2(1) of the Psychoactive Substances Act 2016 respectively.

1200. New pragraph 22B restricts the courts ability to impose the drug testing requirement unless two conditions are met; the misuse condition and the availability of arrangements condition.

1201. New paragraph 22B(2) requires that in order for the misuse condition to be satisfied, the misuse of a controlled drug or psychoactive substance must have contributed to the offence to which the relevant order relates or it is likely to contribute towards further offending behaviour.

1202. New paragraph 22B(3) requires that, in order for the availability of arrangements condition to be met, the Secretary of State must have notified the court that arrangements for implementing drug testing requirements are available in the offender's home local justice area.

Section 155: Duty to consult on unpaid work requirements

1203. Section 155 inserts a new section 10A of the Offender Management Act 2007 which creates a duty on the organisation responsible for the management and delivery of unpaid work requirements to consult with key stakeholders on the delivery of unpaid work.

1204. New section 10A(1) requires a probation provider to consult, the frequency of the consultation (annually), and who must be consulted (prescribed persons) by a probation provider in relation to unpaid work.

1205. New section 10A(2) defines "prescribed person" as a person or persons prescribed by the Secretary of State by regulations (such regulations shall be subject to negative resolution procedure).

1206. New section 10A(3) defines "unpaid work requirements".

1207. New section 10A(4) defines "a person is supervised by a provider of probation services" in subsection (1) sub-paragraph (b). It has the effect that a person is supervised by a provider of probation services under subsection (1)(b) if an officer of that provider has functions relating to the person's compliance with an unpaid work requirement.

Chapter 3: Assaults on those providing a public service etc

Section 156: Assaults on those providing a public service etc

1208. This section inserts new section 68A into the Code. New section 68A(1) provides that the aggravating factor applies where the court is considering the seriousness of the assault offences listed in subsection (3) for the purposes of sentencing and the aggravating factor under section 67(2) of the Code, which applies where the offence was committed against an emergency worker acting in the exercise of functions as such a worker, does not apply.

1209. New section 68A(2) provides that if the offence listed in subsection (3) was committed against a person: (i) providing a public service, (ii) performing a public duty, or (iii) providing services, goods or facilities to the public, the court must treat that fact as an aggravating factor, and must state in open court that the offence is so aggravated.

1210. New section 68A(4) provides that references to providing services to the public in the section include providing goods or facilities to the public, and that references to the public include a section of the public.

1211. New section 68A(5) ensures that the courts are not prevented from treating the fact that an offence was committed against a person providing a public service, performing a public duty or providing services to the public as an aggravating factor in relation to offences that are not listed in subsection (3).

1212. New section 68A(6) provides that the aggravating factor will apply only where the person is convicted of an offence listed in subsection (3) on or after the date on which the section comes into force.

Part 8: Youth justice

Section 157: Youth remand

1213. Section 157 amends the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act"), which provide the legislative framework governing bail hearings and the tests courts must satisfy to remand a child or young person (i.e. aged under 18) to Youth Detention accommodation. The relevant sections are sections 91, 98, 99 and 102 and equivalent provisions for extradition proceedings under sections 100 and 101.

1214. Subsection (2) amends section 91 of the 2012 Act to introduce a statutory duty for the court to consider the welfare and best interests of the child when applying the sets of conditions that must be met in order to remand a child to custody. This reflects the welfare principle set out in section 44 of the Children and Young Persons Act 1933 and promotes a 'child first' approach to decision-making.

1215. Subsection (3) amends section 98 of the 2012 Act, the 'first set of conditions' so that when assessing whether the likelihood that the alleged offence would result in a custodial sentence, the court must be of the opinion that the prospect of custody is 'very likely'. This will ensure that the mere possibility of a custodial sentence is not enough to warrant secure remand.

1216. Subsection (3) also adds the sentencing condition to the first set of conditions under section 98 of the 2012 Act, where it only applies to section 99 under current provisions.

1217. Subsections (3)(c) and (4)(d) amend the "necessity condition" which must be satisfied under both section 98 and 99 of the 2012 Act. The necessity condition is intended to ensure that, where the other conditions are satisfied, a child can only be remanded to custody in order to protect the public from death or serious harm or prevent the commission of an imprisonable offence. These sections introduce an additional consideration, which is that for the necessity condition to be satisfied, the court must be of the opinion that no alternative is available to manage the risk posed by the child safely in the community.

1218. Subsection (4) amends the "history condition" so that only a recent and significant history of breaching bail, or offending while on bail, should justify custodial remand.

1219. Subsections (5) and (6) make the corresponding amendments to sections 100 and 101 which provide the first and second set of conditions for extradition proceedings.

1220. Subsection (7) amends section 102 (remands to youth detention accommodation) to introduce a duty for the court to provide the reasons for the decision to remand the child to Youth Detention Accommodation and to require the court to state that they have considered the welfare of the child and remand to local authority accommodation in making their decision.

Section 158: Discretion as to length of term

1221. This section amends section 236 of the Code to remove the fixed lengths of the DTO and prescribe that any length of DTO can be given which is at least 4 months and no longer than 24 months.

Section 159: Consecutive detention and training and sentence of detention: effect of early release decision

1222. This section amends the Code and the CJA 2003. It makes amendments to fix an existing discrepancy in relation to early release which meant that different lengths of early release were available for offenders sentenced to a DTO and another sentence consecutively, depending on the order in which they received those sentences. The amendments make it so that where an offender is serving a DTO and another sentence consecutively, the offender is able to benefit from the same amount of early release regardless of the order in which the sentences are given.

Section 160 and Schedule 16: Detention and training orders: time to count as served

1223. Section 160 introduces Schedule 16 which makes amendments to ensure that time on remand or bail (subject to a qualifying curfew condition and an electronic monitoring condition) is counted as time served.

1224. Schedule 16 amends sections 240ZA and 240A of the CJA 2003 so that time spent on remand or qualifying bail is counted as time served and credited against the custodial part of the DTO.

1225. It amends section 240ZA so out that where an offender is given two or more sentences (one of which being a DTO), those sentences are to be treated as a single term for the purposes of crediting days spent in custody or on qualifying bail.

1226. It amends the Code to remove the distinct approach for DTOs in sections 239 and 240 where time on remand and bail was taken into account when determining the term of the DTO.

1227. Schedule 16 also amends the Armed Forces Act 2006 to preserve the current provisions for the consideration of remand so where a DTO is made under the Armed Forces Act 2006, time spent on remand continues to be taken into account when setting the term of the DTO.

Section 161: Youth rehabilitation orders

1228. Section 161 makes amendments to youth rehabilitation order ("YRO") provisions set out in the Criminal Justice and Immigration Act 2008 ("the 2008 Act") and the Code. These amendments are set out in Schedule 17.

1229. The section allows certain provisions, those making changes to electronic monitoring requirements and YROs with intensive supervision and surveillance ("ISS") to be brought into force for specific purposes i.e. for the purposes of a pilot. The Section also gives the Secretary of State a power to make amendments by an affirmative statutory instrument to any piloted provisions before bringing them fully into force.

Schedule 17: Youth rehabilitation orders

1230. Schedule 17 makes multiple amendments to the Code to replace the term "electronic monitoring requirement" in the Code with "electronic compliance monitoring requirement." This is to distinguish electronic monitoring for the purposes of compliance from the electronic whereabouts monitoring requirement and to mirror the language used for electronic monitoring for adult community sentences.

1231. Part 1 of the Schedule introduces general requirements that an offender who is given an electronic monitoring requirement must comply with, including allowing the apparatus to be fitted and monitored, not interfering with its operation and keeping it in working order. New section 43A of the Code will apply to any electronic monitoring requirements imposed after the section comes into force and the new section 43A will be further amended (paragraph 12(9) and (10)) when piloted provisions come into force to reflect the change of language of electronic monitoring requirements to electronic compliance monitoring requirements.

1232. Part 2 of the Schedule makes amendments to the YRO provisions in the Code and in the 2008 Act.

1233. Paragraph 2 amends section 39 (youth default orders), replacing the term "electronic monitoring requirement" with "electronic compliance monitoring requirement" to ensure that the cross-reference to paragraphs of Schedules to the Code reflect the change in language which distinguishes electronic monitoring for the purposes of compliance from the new electronic whereabouts monitoring requirement.

1234. Paragraph 9 confirms that the code of practice issued by the Secretary of State will apply to data gathered from electronic compliance and whereabouts monitoring requirements imposed as part of YROs.

1235. This Schedule makes a number of amendments that introduce the new electronic whereabouts monitoring requirement for the YRO. Paragraph 12(13) defines this as a requirement to submit to electronic monitoring of the offender's whereabouts and specifies how the requirement will function.

1236. Part 3 of the Schedule amends provisions relating to YROs with ISS in the Code, adding a mandatory electronic whereabouts monitoring requirement to the YRO with ISS and changing the maximum length of the extended activity requirement from 180 to 365 days.

1237. Paragraph 19 amends the YRO curfew requirement to change the maximum daily curfew hours from 16 to 20 and introduce a new weekly maximum of 112 hours.

1238. Paragraph 21 amends the YRO education requirement to specify that it can be imposed on offenders beyond compulsory school age, provided they are still of the age where they must participate in compulsory education or training as set out in Part 1 the Education and Skills Act 2008. Part 1 of that Act only applies to offenders who are resident in England when sentenced to the YRO. The amendment to the section makes clear that for offenders who are resident in Wales, the education requirement can still only be imposed on offenders who are still of compulsory school age.

1239. Part 5 of the Schedule amends the 2008 Act and the Code so that the electronic monitoring provider can no longer be the responsible officer for a YRO with electronic monitoring requirements and the responsible officer in these cases must be a member of a youth offending team or probation officer.

Section 162: Abolition of reparation orders

1240. This section amends section 110(1) of the Code (availability of reparation order) to remove reparation orders as a sentencing option from the date this Section comes into force.

Part 9: Secure Children's Homes and Secure 16 to 19 Academies

Section 163: Temporary release from secure children's homes

1241. Section 163 introduces a statutory power for the temporary release of persons detained in secure children's homes following sentences of detention, detention and training orders and detention orders following breach of certain civil orders.

1242. Subsection (1) describes those to whom the temporary release power will apply. Subsection (2) provides that the Secretary of State or the registered manager of the home may temporarily release a person to whom the Section applies.

1243. Subsection (3) provides that temporary release under this section may be granted under conditions.

1244. Subsection (4) provides that the Secretary of State and registered managers will have concurrent powers to recall persons temporarily released under this section.

1245. Subsection (5) provides that the registered managers of secure children's homes must have regard to any guidance issued by the Secretary of State about the use of powers of temporary release under this Section. Subsection (6) provides various definitions in respect of the application of this Section, including "detention and training order," "further detention order," "secure children's home" and "registered manager."

1246. Subsection (7) inserts a new subsection 49(5) into the Prison Act 1952 providing that a person shall be deemed to be unlawfully at large if the period for which he is temporarily released has expired or if he has been recalled under this section.

Section 164: Secure 16 to 19 academies

1247. Subsection (1) amends section 1B of the Academies Act 2010 (16 to 19 Academies), to clarify that 16 to 19 academies can provide secure accommodation for the purpose of restricting liberty but only if approved to do so by the Secretary of State. A 16 to 19 academy which provides secure accommodation is to be known as a "secure 16 to 19 academy".

1248. Subsection (2) amends section 12 of the Academies Act 2010 (charitable and trust corporation status of Academy Proprietors, etc.) to make express provision that the setting up, establishment and running of a secure 16 to 19 Academy is to be treated as a charitable purpose, within the meaning of section 2 of the Charities Act 2011 ("the 2011 Act"), falling within the advancement of education description of purposes. The effect is that preparatory steps, and the establishment and running of a secure 16 to 19 academy will be charitable for the purposes of the Academies Act, so that they fall within the definition of QAPs, and for the purposes of any other enactment.

1249. New section 12(6) clarifies that this charitable purpose is to be disregarded in determining whether other purposes may be charitable by virtue of being regarded as analogous in accordance with section 3(1)(m) of the 2011 Act.

1250. Subsection (3) inserts secure 16 to 19 academies into the definition of youth detention accommodation in section 248 of the Code so that a person detained following a detention and training order made by a court may be placed within a secure 16 to 19 academy. Subsection (4) makes amendments to the Children's Homes (England) Regulations 2015 so as to apply the provisions of those Regulations to secure 16 to 19 academies.

Part 10: Management of offenders

Chapter 1: Serious Violence Reduction Orders

Section 165: Serious violence reduction orders

1251. This section introduces a new civil order in the Sentencing Code, the Serious Violence Reduction Order ("SVRO"). Subsection (1) inserts a new Chapter 1A, comprising of sections 342A to 342L, into Part 11 of the Sentencing Code.

1252. New section 342A provides the power to make a SVRO. Subsection (1) provides that SVROs can be made on application from the prosecution in relation to a person aged 18 or over, and convicted of an offence (as described in section 342A(3) and (4)) after the provisions in relation to SVROs come into force (that is, the first appointed day as defined in subsection (14)).

1253. New section 342A(2) sets out the conditions in either subsection (3) or (4) and the condition in subsection (5) must be met in order for the court to be able to make an SVRO.

1254. New section 342A(3) provide that an SVRO can be made if the court is satisfied on the balance of probabilities that a bladed article or offensive weapon was used by the offender in the commission of the offence, or that the offender had a bladed article or offensive weapon with them when the offence was committed. New section 342A(4) provides that an SVRO can be made if the offender convicted of the offence did not use the weapon or have the weapon with them, but another person used a bladed article or offensive weapon, or had a bladed article or offensive weapon with them when the offence was committed, and the offender knew, or ought to have known, that would be the case. By virtue of new section 342A(15) references to an offence in subsection (4) include any offence arising out of the same facts as the offence which the offender was convicted of.

1255. These provisions set out that those convicted of any offence involving where a bladed article or offensive weapons was used in the commission of the offence or was present when the offence was committed can be considered for SVROs, including, for example, a conviction for unlawful possession of such weapons or for using someone to mind a weapon. They also provide that if an offence

involving a bladed article or an offensive weapon is committed by more than one person (or one set of facts gives rise to a number of individuals being convicted of different offences relating to that set of facts), every offender involved in the offence or offences, who knew, or ought to have known of the weapon can be considered for an SVRO, even if only one of them used the bladed article or offensive weapon, or had it with them during the commission of the offence.

1256. New section 342A(5) provides that in order to make an SVRO, the court must be satisfied that the order is necessary: (i) to protect the public from harm involving a bladed article or an offensive weapon; (ii) to protect any particular member of the public (including the offender) from such harm; or (iii) to prevent the offender from committing an offence involving a bladed article or offensive weapon. As a result, an SVRO can be made not only to protect the community from the risk posed by the offender but also to protect the offender themselves from the risk of harm involving a bladed article or offensive weapon by helping to deter them from committing knife or offensive weapons related offences.

1257. New section 342A(6) provides that the court may make a SVRO only if the court is also dealing with the offender for the offence that may result in an SVRO made. New section 342A(6)(b) provides that SVROs cannot be made if the court gives an absolute discharge to the offender.

1258. New subsection 342A(7) provides that the court may hear evidence from both the offender and the prosecution when considering whether to make an SVRO.

1259. New section 342A(8) provides that court may consider evidence (in relation to whether to make an SVRO) that would not have been admissible in the proceedings in which the offender was convicted.

1260. New subsection 342A(9) provides that if an application for a serious violence reduction order is made, the court may adjourn proceedings on the application after sentencing the offender. New subsections (10) to (12) make further provision in relation to any adjourned proceedings.

1261. New section 342A(13) provides that the court must explain in plain language to the offender the powers that a constable has in respect of the offender while the order is in effect, and the effects of the order, that is, any requirements imposed by the order, the consequences of breaching an SVRO and what constitutes a breach.

1262. New section 342B provides for the requirements and prohibitions imposed by an SVRO.

1263. New section 342B(1) defines serious violence reduction order for the purposes of new Chapter 1A of Part 11 of the Code. Serious violence reduction order means an order made in respect of an offender that imposes on the offender the requirements set out in section 342B(2) and (4) (in relation to notification of information) and any other requirement or prohibitions specified in regulations made by the Secretary of State.

1264. New section 342B(2) and (3) set out the information that the offender must provide to the police within three days of the order taking effect. This information is the name, or names, of the offender on the day the notification is given, the offender's home address on that day and any other address where the offender regularly stays.

1265. New section 342B(4) and (5) provide that the offender must notify the police if they change their name or home address, or if they decide to live for a period of one month or more at an address not previously notified to the police. This information must be provided to the police within three days of such change.

1266. New section 342B(6) specifies that the offender must provide the information required in person by attending a police station in a police area in which the offender lives and by giving an oral notification to a police officer, or any person authorised by the officer in charge of the station.

1267. New section 342B(7) provides that any regulations made by the Secretary of State under subsection (1)(b) to add further restrictions or prohibitions to an SVRO can be made only after a report on the pilot under section 166 is laid before Parliament and if the Secretary of State considers that it is appropriate to make the regulations for the purpose of assisting police constables to exercise the power to search the offender conferred by new section 342E.

1268. New subsection 342B(8) provides that regulations made by the Secretary of State under subsection (1)(b) are subject to the affirmative resolution procedure.

1269. New section 342B(9) provides a definition of "home address" for the purposes of the notification requirements.

1270. New section 342C(1) provides that a court may impose on the offender any additional requirement or prohibition specified in regulations made by the Secretary of State, subject to the condition in subsection (2).

1271. New section 342C(2) describes the condition as one that would assist police constables to exercise the power to search the offender conferred by section 342E. For example, any additional condition that would assist the police with identification of any individual subject to an SVRO would in turn assist with the exercise of the stop and search power.

1272. New section 342C(3) provides that regulations made by the Secretary of State in relation to this section can only be made after a report on the pilot under section 166 is laid before Parliament.

1273. New section 342C(4) sets out that the regulations are subject to the affirmative resolution procedure.

1274. New section 342D(1) sets out that the order takes effect on the day it is made. New section 342D(3) and (4) allow for the order not to take effect until the offender is released from custody or ceases to be subject to a custodial sentence.

1275. New section 342D(2) sets out that an SVRO must contain a start date and will be for a fixed period of a minimum of six months and a maximum of two years.

1276. New section 342D(5) provides that where a court makes an SVRO and the offender had already been subject to an order, the earlier SVROs ceases to have effect. This will ensure that an offender is not subject to more than one SVRO at the same time.

1277. New section 342E provides the police with a power to search a person subject to an SVRO, and to detain them for the purpose of carrying out that search, provided that such person is in a public place. The purpose of this power is to check if the person has a bladed article or an offensive weapon with them.

1278. New section 342E(4) provides that the police office may seize and retain items found in the course of the search which they reasonably suspect to be a bladed article or an offensive weapon.

1279. New section 342E(6) provides that a constable may use reasonable force, if necessary, in order to exercise the powers conferred in this section.

1280. New section 342E(7) provides that this power may be used in addition to existing powers held by the police under common law or by virtue of any other enactment, for example the power to stop and search under section 1 of PACE.

1281. New section 342F confers a power for the Secretary of State to make regulations regulating the retention, safe keeping, disposal and destruction of any items retained by constable under the power in new section 342E. New section 342F(3) provides that such regulations are subject to the negative procedure.

1282. New section 342G(1) provides that an offender who is subject to an SVRO commits an offence if they:

- fail to comply with any requirements or prohibitions set out in the order, without reasonable excuse;
- knowingly provides false information to the police when purporting to comply with the requirements of the order (for example compliance with the notification requirements in new section 342B);
- tell a police constable that they are not subject to an SVRO, when in fact they are; or
- intentionally obstructs a police constable exercising the stop and search power under new section 342E.

1283. The maximum penalty for each of these offences is on summary conviction, imprisonment for 12 months, or in relation to an offence committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, six months, a fine or both. The maximum penalty for each of these offences on conviction on indictment is imprisonment for two years, a fine, or both.

1284. New section 342G(4) provides that where a person is convicted of an offence under this section, an order for conditional discharge is not a sentencing option available to the court.

1285. New section 342H(1) and (2) provide that an application to the appropriate court (as defined by new section 342H(9)) may be made for variation, renewal or discharge of an SVRO by the offender, or by the police force in which the offender lives, has committed the offence where the police believe that the offender intends to come to or by the chief constable of the British Transport Police force where the offence on the basis of which the SVRO was made is an offence committed within the jurisdiction of British Transport Police. This provision allows for an application to be made to modify an SVRO to reflect changing circumstances.

1286. New section 342H(4) and (5) provide that the application must be made in accordance with the rules of court, and that the court must hear the person making the application and any other person as provided by subsection (2) who wishes to be heard before making a decision.

1287. New section 342H(5) provides that the court may vary, renew or discharge an order as it sees appropriate, subject to subsection (7). New section 342H(7) provides that the court may renew an order, or vary an order so as to lengthen its duration, only if it considers doing so is necessary to protect the public or any particular member of the public from the risk of harm involving a bladed article or offensive weapon, or to prevent the offender from committing an offence involving a bladed article or offensive weapon.

1288. New section 342H(8) provides that the court must explain in plain language to the offender the effects of the variation or renewal of the order, and the powers that a police constable has under the stop and search power in section 342E.

1289. New section 342I(1) provides that an offender issued with a SVRO can appeal against a decision to make the order as if the order were a sentence passed on the offender for an offence.

1290. New section 342I (2) to (5) provide rights of appeal following a decision on an application for an order varying, renewing, or discharging an SVRO, including provisions as to which court an appeal can be made to, and that the Crown Court may make such orders as may be necessary and such incidental and consequential orders as appears to it to be appropriate.

1291. New section 342J provides that the Secretary of State may issue guidance to the police constables, Chief Officers of police and the Chief Constable of the British Transport Police Force in relation to SVROs. . Such guidance may be revised, and the Secretary of State must arrange for it to be

published. The guidance may include guidance about the exercise by police of their functions under Chapter 1A of Part 11 of the Sentencing Code; guidance about identifying offenders in respect of whom it may be appropriate for applications for SVROs to be made; and guidance about providing assistance to prosecutors in connection with applications for SVROs.

1292. New section 342J(4) provides that police constables, Chief Officers of police and the Chief Constable of the British Transport Police Force must have regard to any such guidance..

1293. New section 342K provides that before issuing guidance under new section 342J, the Secretary of State must lay a draft of the guidance before parliament. If, within the 40-day period (as defined in new section 342K(4) and (5)), either House of Parliament resolves not to approve the draft guidance, the guidance may not be issued. If no such resolution is made within that period, the Secretary of State may issue the guidance.

1294. New section 342L defines terms used in new Chapter 1A of Part 11 of the Code.

1295. Subsections (2) and (3) make consequential amendments as a result of new Chapter 1A of Part 11 of the Code. Subsection (2) amends section 80(3) of the Sentencing Code to include a reference to offences in section 342G (offences relating to an SVRO) in a list of circumstances where an order for conditional discharge is not available. Subsection (3) amends the Prosecution of Offences Act 1985 to provide for the Director of Public Prosecutions to conduct applications for SVROs under new section 342A of the Sentencing Code.

Section 166: Serious violence reduction orders: Piloting

1296. This section makes provision for two conditions which must be met before the provisions relating to SVROs in section 165 can be brought into force across the whole of England and Wales for all purposes. Firstly, SVROs must be piloted in one or more area in England and Wales for one or more specified purposes; and secondly, the Secretary of State must lay a report before Parliament on the operation of the pilot. Subsection (4) provides that report must in particular include information about the number of offenders in respect of whom an SVRO has been made; information about the offences that were the basis for applications as a result of which SVROs were made; information about the exercise by constables of the stop and search powers in section 342E of the Code; an assessment of the impact of the operation of Chapter 1A of Part 11 of the Code on people with protected characteristic (within the meaning of the Equality Act 2010); an initial assessment of the impact of SVROs on the reoffending rates of offenders in respect of whom such orders have been made; an assessment of the impact on offenders of being subject to a SVRO; information about the number of offences committed under section 342G of the Code (offences relating to an SVRO) and the number of suspected offences under that section that have been investigated.

1297. Subsections (5) and (6) provide that regulations made under section 208(1) bringing into force section 165 for the purpose of piloting may provide for a specified period for the pilot and that subsequent regulations may continue the pilot for a further specified period.

Chapter 2: Knife Crime Prevention Orders

Section 167: Knife crime prevention order on conviction: adjournment of proceedings

1298. The section inserts subsections (9A) to (9D) into section 19 of the Offensive Weapons Act 2019 (knife crime prevention orders made on conviction), making it explicit that, if an application for a knife crime prevention order is made following a defendant's conviction for an offence, the court may adjourn proceedings on the application after sentencing the defendant.

Chapter 3: Management of sex offenders

Section 168: Locations for sexual offender notification

1299. Registered sex offenders must notify certain personal details to the police, including their name and home address, and notify the police of any changes to those details. Section 87 of the 2003 Act provides a power for the Secretary of State to make regulations specifying the police stations at which an offender may notify the police of the relevant information. Section 168 amends section 87 to remove the requirement for the Secretary of State to prescribe a list of police stations for this purpose and makes this the responsibility of the chief officer of police. The requirement for the annual statutory instrument is withdrawn, in lieu of this, chief officers of police will publish a list of police stations in their area, where an offender may notify.

Section 169: Offences outside the United Kingdom: notification requirements

1300. Where an offender convicted, cautioned or having had a relevant finding made against them in respect of a relevant sexual offence overseas currently lives in, or intends to travel to, the United Kingdom, section 97 of the 2003 Act provides a power for the police to make an application to the courts for a Notification Order, which makes them subject to the notification requirements for registered sex offenders as if they had been convicted in the UK.

1301. Subsection (1) inserts new sections 96ZA, 96ZB and 97ZC into the 2003 Act which replace sections 97 to 103 of that insofar as they apply to England and Wales (sections 97 to 103 are repealed by subsection (5)).

1302. New sections 96ZA and 96ZB remove the need for the police to seek a court order to place notification requirements on an individual convicted of an equivalent, relevant sexual offence (Schedule 3 offences in the 2003 Act) in a foreign court. The requirement for a court order will be replaced with a power for the police to serve a notice requiring the relevant offenders to notify when authorised by an officer of the rank inspector or above.

1303. A notice may be withdrawn in writing by the police but the withdrawal must be authorised by an officer of the rank inspector or above.

1304. Where an offender is under the age of 18 the police may serve a parental notice in addition to a notice on the offender. Such a notice will place the obligations of the offender on the parents until the offender reaches the age of 18 or the notice is withdrawn.

1305. Enabling the police to make an individual who committed a relevant offence outside of the United Kingdom subject to the notification requirements without the involvement of the court will streamline the process, supporting better management of those who pose a risk of sexual harm

1306. New Section 96ZC provides modifications and clarifications to the notification requirements insofar as they apply to a person to whom this section applies.

1307. New section 96ZD provides a route of appeal to a magistrates' court retaining the broad grounds for appeal which are in place in current legislation.

Section 170: Notification orders: Scotland

1308. Subsections (1) to (5) amend sections 97 to 100 of the 2003 Act to reflect the fact that as a result of the provisions in section 169 these provisions will now only apply to Scotland; no substantive changes are made to the law in Scotland. Sections 97 to 100 currently operate in Scotland subject to the modifications made by section 103 of the 2003 Act which is repealed by subsection (6).

1309. Subsection (6) also repeals section 101 (notification orders and interim notification orders: appeals in England and Wales) of the 2003 Act in consequence of the repeal of sections 97 to 100 insofar as they apply to England and Wales.

Section 171: Applications by British Transport Police and Ministry of Defence Police

1310. This section amends sections 103A, 103F, 103J, 122A, 122B, 122E and 122J of the 2003 Act to enable the chief constable of the British Transport Police and Ministry of Defence Police to apply for SHPOs or SROs and interim SHPOs and SROs in respect of individuals who pose a risk of sexual harm within their jurisdiction. If an application is made by the chief constable of the British Transport Police or Ministry of Defence Police, that person must notify the chief officer of police for the relevant police force area as soon as practicable.

Section 172: List of countries

1311. Section 172 makes provision for the establishment of a list of countries and territories considered to be at high risk of child sexual exploitation or abuse by UK nationals and residents.

1312. Subsection (1) confers the power on the Secretary of State to prepare such a list or direct a relevant person to do so on their behalf. A relevant person is defined at subsection (11) as a person whose statutory functions relate to the prevention or detection of crime, or other law enforcement purposes. This could include for example, the National Crime Agency.

1313. Subsections (2) and (3)(b) provides that the Secretary of State must lay the list before Parliament and subsection (4) provides that as soon as practicable thereafter the person who prepared the list must publish it.

1314. Subsection (5) provides that the list of countries has effect for the purposes of the provisions of the Sentencing Code and 2003 Act relating to an application for or making of an SHPO, interim SHPO, SRO or interim SRO and the variation, renewal or discharge of such orders. Through these orders a court may restrict an individual's travel to any country or countries, where proportionate and necessary to protect children and vulnerable adults outside the UK from sexual harm.

1315. Subsection (6) provides that the person who prepared the list must keep it under review and may prepare a revised list. A revised list might be necessitated, for example, by a change in intelligence about the risk of child sexual exploitation or abuse posed by UK nationals and residents towards a given country.

1316. Subsection (9) provides that the Secretary of State may withdraw the list at any time.

Section 173: Requirement for the court and certain persons to have regard to the list of countries

1317. Section 173 provides for a requirement upon applicants (including the police and National Crime Agency) and the courts to have regard to the list of countries in respect of applications for SHPOs and SROs and in particular whether a prohibition on foreign travel is necessary to protect children from sexual harm from the defendant outside the United Kingdom.

1318. New section 346(2) of the Code and, new section 103A(3A) of the 2003 Act (as inserted by subsection (1) and (4) respectively) require courts to have regard to the list in considering whether an SHPO is necessary and in particular whether a foreign travel restriction as part of an SHPO is necessary for these purposes. Such a decision would not be based on the list itself; instead, the list would be considered alongside the merits of the civil order application and any representations made by the defendant.

1319. New section 103A(4B) of the 2003 Act (as inserted by subsection (4)) requires the applicant of an SHPO to have regard to the list in considering whether a defendant has acted in a way such that an SHPO would be necessary and whether a prohibition on foreign travel should be included in the SHPO.

1320. Subsection (5) requires the court and applicant to have regard to the list when applying for or making applications to vary or renew a SHPO.

1321. Subsections (6) to (9) replicate these provisions for the SRO and the interim versions of SHPOs and SROs.

Section 174: Standard of proof

1322. This section amends sections 103A(3) and 122A(6) of the 2003 Act to provide that the court when considering an application for a SHPO and SRO respectively should apply the civil standard of proof ('balance of probabilities'), rather than the criminal standard of proof, when determining whether the individual the application is made in respect of has done the act of a sexual nature specified in the application. This amendment brings these orders in line with other civil orders, for example Domestic Abuse Protection Orders as introduced by the Domestic Abuse Act 2021.

Section 175: Sexual harm prevention orders: power to impose positive requirements

1323. Sections 103A to 103K of the 2003 Act, provide a route via an application to the court for a chief officer of police or the Director General of the National Crime Agency to obtain a SHPO in respect of a qualifying offender who has since acted in such a way as to give reasonable cause to believe it is necessary for such an order to be made. These orders currently place a range of restrictions, or negative requirements, on individuals depending on the nature of the case. These can include restrictions on contact with specific persons and restrictions on travel.

1324. This section amends the 2003 Act and the Code to enable the courts to impose positive obligations as conditions of an SHPO. Positive obligations allow the courts to require individuals made subject to an order to engage in specified activity. This can include a requirement to attend a behaviour change programme, alcohol or drug treatment, or to take a polygraph test. Enabling the courts to impose positive obligations as well as restrictions will strengthen the management of those who pose a risk of sexual harm and increase prevention through rehabilitation.

1325. Subsections (5) and (11) amend section 350 of the Code and section 103E of the 2003 Act respectively to enable an SHPO to be renewed or varied so as to include additional positive obligations (for example, where an individual's circumstances have changed).

1326. Subsection (12) amends section 103F(3) of the 2003 Act to enable the court to impose positive obligations in interim SHPOs.

1327. Subsection (13) amends section 103I of the 2003 Act, the effect of which is to make a failure to comply with a positive obligation without reasonable excuse a criminal offence, in line with the current provisions on breaching negative obligations, a conviction for which is punishable by up to five years' imprisonment.

Section 176: Sexual risk orders: power to impose positive requirements

1328. This section makes equivalent amendments to the provisions of the 2003 Act relating to SROs to those made by section 175 in relation to SHPOs to enable the courts to impose positive obligations as conditions of an SRO. This can include a requirement to attend a behaviour change programme, alcohol or drug treatment, or to taking a polygraph test. Subsection (6) amends section 122H of the 2003 Act, the effect of which is to make a failure to comply with a positive obligation without reasonable excuse a criminal offence, in line with the current provisions on breaching negative obligations. A conviction for a breach is punishable by up to five years' imprisonment and that individual becoming subject to the notification requirements for sex offenders.

Section 177: Positive requirements: further amendments

1329. This section amends the Code, the 2003 Act and the Abusive Behaviour and Sexual Harm (Scotland) Act 2006 so that positive obligations in an SHPO or SRO can be enforced and varied in other parts of the United Kingdom.

1330. Subsection (1) amends section 351 of the Sentencing Code, which provides for variations of a SHPO by a court in Northern Ireland, to enable such variations to include positive obligations.

1331. Subsections (2) and (3) amend sections 113 and 128 of the 2003 Act so that a breach of a positive requirement under an SHPO or SRO will constitute a breach in Northern Ireland.

1332. Subsection (4) amends section 136ZA of the 2003 Act to provide that positive requirements of SHPOs and SROs apply throughout the United Kingdom.

1333. Subsections (5) and (6) amend sections 136ZC and 136ZD of the 2003 Act so that courts in Northern Ireland can vary positive requirements of SHPOs and SROs.

1334. Subsection (7) amends section 37 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2006 to make it an offence in Scotland to breach a positive requirement under a SHPO, SRO or an equivalent order made elsewhere in the United Kingdom.

Section 178: Electronic monitoring requirements

1335. This section amends the Code and the 2003 Act to make express provision for a court to impose electronic monitoring conditions as a positive requirement, as part of an SHPO or SRO. Electronic monitoring requirements enable the person who is responsible for the monitoring, "the responsible person", to monitor and record, via an electronic tag, information on a subjects compliance with an order's conditions, for instance curfews or exclusion zones.

1336. Subsection (2) amends section 343 of the Code to provide that an electronic monitoring requirement may be imposed to support the monitoring of an individual's compliance with other requirements of an SHPO (for example, the operation of an exclusion zone).

1337. Subsection (4) inserts new section 348A and 348B into the Code. New section 348A sets out the conditions that must be satisfied to enable an electronic monitoring requirement to be attached to an SHPO.

1338. New section 348A(2) specifies that where another person's cooperation is required in order to secure the electronic monitoring, the monitoring cannot be required without that person's consent. This may include, for example, the occupier of the premises where the perpetrator lives or other persons living in the same premises as the offender.

1339. New section 348A(3) obliges the court to ensure that electronic monitoring arrangements are available in the relevant local area (as defined in subsection (4)) before imposing an electronic monitoring requirement. In practice, the court would be notified of the availability of such arrangements by the Ministry of Justice.

1340. New section 348A(5) provides that an SHPO which includes an electronic monitoring requirement must specify the person who is responsible for the monitoring ("the responsible person") and new section 348A(6) provides that the responsible person must be of a description specified in regulations made by the Secretary of State (such regulations are not subject to any parliamentary procedure).

1341. New section 348A(6) provides that the responsible person must be of a description specified in regulations made by the Secretary of State (such regulations are not subject to any parliamentary procedure).

1342. New section 348A(7) sets out the requirements for installation and maintenance of the electronic monitoring apparatus, including the requirements for the offender to submit to monitoring apparatus being fitted or installed, inspected or repaired. This subsection also prohibits the perpetrator from interfering with the monitoring apparatus and requires the perpetrator to take steps to keep the apparatus in working order, including keeping the equipment charged as directed. Failure to adhere to these requirements would constitute a breach of the SHPO.

1343. An electronic monitoring requirement may not apply for more than 12 months, but this may be extended for a further period of no more than 12 months each time (new section 384A(8) and (9)).

1344. New section 348B requires the Secretary of State to issue a code of practice relating to the processing of data gathered in the course of electronic monitoring of individuals under electronic monitoring requirements imposed by SHPOs. The processing of such data will be subject to the requirements of the General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under new section 348B is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance of the data protection legislation. For example, information such as the length of time for retaining data and the circumstances in which it may be permissible to share data with the police to assist with crime detection.

1345. Subsection (10) inserts new sections 103FA and 103FB which make equivalent provisions for SHPOs made under the 2003 Act as for those made under the Code set out above.

1346. Subsections (11) to (16) amend sections 122A, 122D, 122E, 136ZA and 138(3) of the 2003 Act and insert new sections 122EA and 122EB, these changes have the effect of making equivalent provisions for electronic monitoring of SROs as for SHPOs.

Section 179: Positive requirements and electronic monitoring requirements: service courts

1347. This section amends section 137 of the 2003 Act which modifies the provisions in Part 2 of the 2003 Act relating to court orders, convictions, findings, offences and proceedings to apply in the context of service courts. The amendments to section 137(3) make further modifications to Part 2 to reflect the amendments made in Chapter 2 of Part 10 in relation to SHPOs.

Section 180: Enforcement of requirements of orders made in Scotland or Northern Ireland

1348. This section amends sections 103I, 113, 122, 122H and 128 of the 2003 Act to enable orders created in Scotland under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 to be enforceable in England and Wales and Northern Ireland. This enables SHPOs or SROs imposed by a Scottish court to be enforced by courts in England and Wales or Northern Ireland when these orders are made following the commencement of the provisions enabling them in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. These amendments will ensure that a Scottish SHPO or SRO is enforceable in other jurisdictions.

1349. Subsection (7) amends section 136ZA of the 2003 Act to enable Scottish SHPOs and SROs to apply throughout the United Kingdom.

Section 181: Effect of conviction for breach of Scottish order etc

1350. This section amends sections 122I and 129 of the 2003 Act so that an offender who is convicted of a breach of a Scottish SHPO or SRO is made subject to notification requirements where they were not already under such requirements.

Section 182: Orders superseding, or superseded by, Scottish orders

1351. This section amends section 136ZB of the 2003 Act and section 349 of the Sentencing Code to enable Scottish SHPOs and SROs to supersede other sex offender management orders in the United Kingdom when made at a later date.

Section 183 and Schedule 18: Variation of order by court in another part of the United Kingdom

1352. Section 183 introduces Schedule 18 which provides for the mutual recognition of all sex offender management orders throughout the United Kingdom, by enabling the courts to vary an order in respect of an offender in their jurisdiction regardless of where the order originated.

1353. Part 1 of Schedule 18 makes provision for the variation of a SHPO or SRO made in England, Wales or Scotland by a court in Northern Ireland by amending sections 136ZC and 136ZD of the 2003 Act and section 351 of the Code.

1354. Part 2 makes provision for the variation of a SHPO or SRO made in England or Wales, or a sexual offences prevention order, risk of sexual harm order or foreign travel order made in Northern Ireland by a court in Scotland by inserting new sections 136ZE and 136ZF to the 2003 Act and new section 351A of the Code.

1355. Part 3 makes provision for the variation of a SHPO or SRO made in Scotland or a sexual offences prevention order, risk of sexual harm order or foreign travel order made in Northern Ireland by a court in England and Wales by inserting new sections 136ZG, 136ZH, 136ZI and 136ZJ to the 2003 Act and new section 351A of the Code.

Chapter 4: Management of terrorist offenders

Section 184: Terrorist offenders released on licence: arrest without warrant pending recall decision

1356. Subsection (1) inserts new section 43B into the Terrorism Act 2000 (the "2000 Act"), which enables the police to arrest a terrorist offender who has been released on licence, and is suspected to have breached their licence conditions, where there is a terrorism risk and it is considered necessary to detain the offender until a recall decision is made by the probation service.

1357. New section 43B(1) limits the use of the power to quite specific circumstances in practice. If an offender commits a terrorism offence, they can be arrested under section 41 of the 2000 Act. If they breach their licence conditions but can be recalled before a terrorism risk develops, urgent arrest will not be necessary. This power could be used, for example, when a terrorist offender refuses to go with the police to their Approved Premises after release from prison, where arrest would not be possible under existing legislation. Section 114(2) of the 2000 Act allows the reasonable use of force in making such an arrest.

1358. The power of arrest applies only to offenders on licence convicted of terrorism or terrorism-connected offences (see new section 43B(4) and (5)). This safeguards against its misuse by limiting the cohort in scope and addresses the threat posed by particularly high-risk individuals. Section 247A of the 2003 Act and the equivalents for Scotland and Northern Ireland define offences under counter-terrorism legislation and offences with a terrorism connection, including service offences.

1359. New section 43B(2), read with the definition of "relevant period" in new section 43B(6), limits the detention period (to six hours in England and Wales and 12 hours in Scotland or Northern Ireland) following arrest to prevent infringement of the offender's rights while allowing a necessary period for a decision on recall to be processed. It is expected that the police and probation will co-operate to facilitate this process, including by the police only making arrests when probation intend to recall. New section 43B(3) further protects the offender's rights by applying the relevant detention conditions in Schedule 8 to the 2000 Act, as modified by subsection (2) of the Section, as for other terrorism-related arrests, in proportion to the relatively short length of the detention.

1360. New section 43B(7) enables a constable in one part of the UK to exercise the power of arrest in any part of the UK. The cross-agency co-operation informing exercise of the power will generally occur within rather than across jurisdictions.

Section 185: Power to search terrorist offenders released on licence

1361. Section 185 inserts new section 43C into the 2000 Act, which enables the police to make a personal search of a terrorist offender on licence.

1362. New section 43C(1) specifies that the stop and search may be conducted for purposes connected with protecting the public from a risk of terrorism and new section 43C(2), (8), and (9) provide that the offender must be required to submit to the search by their licence conditions (in the case of England and Wales, see the Criminal Justice (Sentencing) (Licence Conditions) Order 2015). In practice, it is expected that the relevant licence condition will only be applied to a limited cohort of terrorist offenders who pose a high risk of serious harm. It provides a deterrent for offenders on licence to take weapons with them when travelling and exposes offender managers to less danger during meetings with high risk offenders. This is not possible under the normal stop and search powers in section 43 of the 2000 Act or, in exceptional circumstances, section 47A, which are not designed for compliance or assurance purposes.

1363. New section 43C(3) allows a search to be conducted in locations where the police have lawful access but the public may not. This will include probation premises.

1364. New section 43C(7) allows anything carried by the offender to be searched. This allows for the identification of weapons, as well as phones -which may be possessed contrary to licence conditions – that could be used to contact terrorist networks and thus pose a terrorism risk. Under section 2(9) of PACE, it is not permitted to require the removal of any clothing in public apart from an outer coat, jacket, or gloves.

1365. New section 43C(4) to (6) allow a vehicle to be searched and follow section 43(4A), (4B), and (4C) of the 2000 Act. Section 116(2) of the 2000 Act provides for a vehicle to be stopped and section 114(2) provides for the reasonable use of force. This addresses the possibility of vehicle attacks and prevents offenders in scope from avoiding being searched by travelling in a vehicle.

1366. New section 43C(10) enables a constable in one part of the UK to exercise the power of search in any part of the UK. The cross-agency co-operation informing exercise of the power will generally occur within rather than across jurisdictions.

Section 186: Search of premises of offender released on licence for purposes connected with protection from a risk of terrorism

1367. Section 186 inserts new section 43D into the 2000 Act, which enables the police to enter and search the premises of an offender released on licence.

1368. New section 43D(1) stipulates that the police first obtain a warrant from a court. New section 43D(2) provides the requirements for this, including that the court be satisfied that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for the police to enter and search the premises specified in the application. New section 43D(7) and (8) define the offenders in scope. Chapter 6 of Part 12 of the CJA 2003 and Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 and the equivalents in Scotland and Northern Ireland capture any offender serving a custodial sentence imposed in any part of the UK who has been released on licence. This includes offenders convicted of a non-terrorism offence who are nevertheless thought to pose a terrorism risk, for example if they are known to have associated with terrorist offenders in prison and intelligence suggests they may engage in terrorist activity shortly after release. This is not possible under other premises search powers, including paragraph 1 of Schedule 5 to the 2000 Act, which is limited to terrorist investigations, and section 56A of the Counter-Terrorism Act 2008, which is limited to convicted terrorist offenders subject to notification requirements. Cross-agency consideration of the terrorism risk posed is expected before submission of an application for a warrant by the police.

1369. New section 43D(3) to (6) provide for the access to enter and search premises afforded by the warrant. This includes multiple occupancy premises, which may apply for example in searching an offender's Approved Premises, and entry on multiple occasions, for example when new intelligence of a terrorism risk comes to light. When deciding whether to apply for and use a warrant the police will consider the necessity and proportionality of doing so in all cases.

1370. The definition of "premises" at section 121 of the 2000 Act applies here. This is any place and includes vehicles. As per section 116(1), the power to search premises confers the power to search containers.

Section 187: Powers of seizure and retention

1371. Section 187 inserts new section 43E into the 2000 Act, which governs the seizure and retention of items found when the search powers in new sections 43C and 43D are exercised.

1372. New section 43E(1) links the section to the powers of personal and premises search. New section 43E(7) applies it to the cohorts stipulated there: terrorist offenders with a specific licence condition for the personal search and any offenders with a terrorism risk for the premises search. The powers of seizure and retention help ensure public protection, including by allowing the confiscation of weapons, and supporting investigation, such as by reviewing phones that may be used to contact terrorist networks.

1373. New section 43E(2) sets out the grounds for seizure, including at subsection (2)(b) to check an offender's compliance with licence conditions and then to consider the risk of terrorism this entails. This addresses scenarios in which items are found that could be of terrorism risk but which require further investigation to confirm this, and which would not necessarily result in automatic recall. Ascertaining both breach of licence and terrorism risk is expected to be conducted through cross-agency agreement. Items that may be seized include computerised information, by virtue of section 20 of PACE. For the avoidance of doubt, computerised information can be seized in Scotland.

1374. New section 43E(3) to (6) govern retention. New section 43E(5) sets a seven day limit on the retention on anything that is not required for the purposes set out in subsection (4); this gives a proportionate time for the item to be investigated where the terrorism risk is not immediately clear.

1375. New section 43E(8) preserves the ability of a court to deliver property to a person after it has come into police possession under section 1 of the Police (Property) Act 1897.

Section 188 and Schedule 19: Sections 184 to 187: consequential provision

1376. Section 188 introduces Schedule 19, which makes consequential amendments to sections 158 to 161 to PACE, the Criminal Justice and Police Act 2001, the Counter-Terrorism Act 2008, and equivalent enactments in Scotland and Northern Ireland.

Section 189: Arrangements for assessing etc risks posed by certain offenders

1377. Section 189 makes amendments to the multi-agency public protection arrangements ("MAPPA") regime set out in sections 325 to 327 of the CJA 2003 to ensure MAPPA management of certain terrorist offenders once released on licence, or for the duration they are subject to terrorism notification requirements, and to enable other offenders considered to pose a terrorist risk to be managed in that way. It also expands the potential for information-sharing as part of MAPPA.

1378. Subsection (2) and (3)(a) amend section 325 of the CJA 2003 to create a new MAPPA category of "relevant terrorist offenders". The term 'relevant terrorist offenders' is to be defined by provision inserted into section 327 of the CJA 2003 by subsection (10). It includes those convicted of offences listed in Schedule 19ZA to the CJA 2003 (which is proposed to be substituted by the Counter-Terrorism and Sentencing Act 2021), equivalent service offences or offences found to have been aggravated by a terrorist connection, and given a custodial sentence of 12 months or more. It also includes persons who carried out acts amounting to such an offence but who were found unfit to plead or not guilty by way of insanity.

1379. Subsection (3)(b) inserts new subsection (2)(c) into section 325 of the CJA 2003, so that any convicted person who is considered by the responsible authority to pose a risk of involvement in terrorism-related activity can also be managed under MAPPA.

1380. Subsection (4) replaces the existing information-sharing power contained in section 325(4) of the CJA 2003. It does not restrict or displace any other existing information-sharing powers used by MAPPA agencies. New section 325(4) and (4A) provide a new power for the disclosure of information between the responsible authority, duty to cooperate agencies and other persons whom the responsible authority considers may contribute to the assessment and management of risk as defined under section 325(2).

1381. New section 325(4B) provides clarity in relation to disclosure of information about a person subject to MAPPA. Disclosure under section 325 will not breach any obligation of confidence owed by a person disclosing information, or any other restriction on the disclosure of information. This means that any information held by MAPPA agencies, or by other relevant persons, can be disclosed, for the purposes of MAPPA.

1382. New section 325(4C) places a limit on disclosure of information to confirm that subsection (4) does not permit disclosure which would contravene data protection legislation or would be prohibited by the Investigatory Powers Act 2016.

1383. New section 325(4D) to (4F) provide that a person who is permitted to disclose or receive information under MAPPA arrangements to be treated as a competent authority for the purposes of Part 3 of the Data Protection Act 2018, with the exception of intelligence services.

1384. New section 325(4G) clarifies that the new power created by new subsection (4) does not affect other information-sharing powers used by MAPPA agencies.

1385. Subsection (5) includes the new parties defined in subsection (4A) within the list of 'duty to cooperate' agencies.

1386. Subsection (6) inserts new definitions.

1387. Subsections (7) to (10) amend section 327 of the CJA 2003 which covers interpretation of section 325.

1388. Subsections (8) and (9) make minor amendments to section 327(3) and (4) to clarify the definition of relevant sexual or violent offender and ensure that those sentenced to life fall under this definition.

1389. Subsection (10) amends section 327 of the CJA 2003 to provide the definition of "relevant terrorist offender" referred to above. This new category is defined largely by reference to the notification requirement provisions of the Counter-Terrorism Act 2008.

Chapter 5: Football banning Orders

Section 190: Football Banning Orders: relevant offences

1390. Subsections (1) and (2) introduce the amendments to the Football Spectators Act 1989 ("the 1989 Act"), and Schedule 1 of that Act, respectively.

1391. Subsections (3) to (7) amend Schedule 1 to the 1989 Act which sets out the list of relevant offences which, on conviction, may attract a football banning order preventing further attendance at regulated football matches.

1392. Subsections (3) to (5) add to Schedule 1 the offence under section 4 of the Public Order Act 1986 (fear or provocation of violence) when committed:

- at, or when entering or leaving, any premises during a period relevant to a football match;
- on a journey to or from a football match and where the court makes a declaration that the offence related to a football match; or

- otherwise committed during a period relevant to a football match and where the court makes a declaration that the offence related to a football match.

1393. Subsection (6) adds to Schedule 1 any offence under Part 3 or 3A of the Public Order Act 1986 (racial hatred or hatred against persons on religious grounds or grounds of sexual orientation) and any offence under section 31 of the Crime and Disorder Act 1998 (racially or religiously aggravated public order offences) where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection to a football organisation.

1394. Subsection (6) also adds to Schedule 1 communications offences under section 1 of the Malicious Communications Act 1988 (offence of sending letter, electronic communication or article with intent to cause distress or anxiety) and under section 127(1) of the Communications Act 2003 (improper use of public telecommunications network), not otherwise covered in the Schedule, where the court has stated on sentencing that the offence is aggravated by racial or religious hostility, or hostility related to disability, sexual orientation or transgender identity (the grounds set out in section 66(1) of the Code) and where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection to a football organisation.

1395. Subsections (7) and (8) define a "football organisation" for the purposes of Schedule 1 as a "regulated football organisation" for the purposes of Part 2 of the 1989 Act, being an organisation that relates to association football and which is prescribed, or it's description is prescribed, by order made by the Secretary of State. Subsection (7) also provides that an order setting out where a person has a "prescribed connection" to a football organisation can include a past or future connection, such as a player announced as having agreed to sign for a team but not yet employed by that team or a football manager who has recently retired.

1396. Subsections (9) to (11) amend subsections (1) and (5) of section 23 of the 1989 Act whereby a "declaration of relevance", which the court must make for offences committed away from a football stadium to be "relevant offences" for the purposes of section 14A and Schedule 1, can now relate not only to football matches but also football organisations, or persons with a prescribed connection to a football organisation. This encompasses, for example, the remote hate offences against football organisations or persons connected to football, such as a racist tweet against a football team or player. The court will now be able to make a declaration of relevance that an offence is football-related in those circumstances.

1397. Subsection (12) provides that this section does not apply in relation to offences committed before the provision comes into force.

Section 191: Football banning orders: power to amend list of relevant offences

1398. Subsection (1) creates a new power for the Secretary of State to add, modify or remove a reference to an offence or a description of offence to Schedule 1 to the 1989 Act (the list of relevant offences for banning orders on conviction), and make related consequential amendments to that Act. The power is subject to the affirmative resolution procedure.

1399. Subsections (2) to (4) make amendments to section 22A of the 1989 Act, to enable regulations or orders made under Part 2 of the Act (such as prescribing a football related organisation) to make supplementary provision.

Section 192: Football banning orders: requirement to make order on conviction etc

1400. Subsection (1) amends the test in section 14A of the 1989 Act under which a court may impose a banning order on an individual convicted of a relevant football related offence (as defined in Schedule 1 to that Act). New section 14A(2) sets out that the court must make a banning order in respect of the offender unless it considers that there are particular circumstances relating to the offence or to the offender which would make it unjust in all the circumstances to do so. Where the court does not make

a banning order, it must state in open court the reasons for not doing so, under section 14A(3).

1401. Subsections (2) to (4) make equivalent amendment to section 22 of the 1989 Act (banning orders arising out of offences outside England and Wales). Section 22 provides the courts with the power to impose a banning order on persons convicted of an offence in a country or territory outside England and Wales if that offence has been specified in an Order in Council as corresponding to an offence in Schedule 1 to the 1989 Act. The new subsections (4) and (5) provide that a court must make a banning order in respect of an offender convicted of a corresponding offence overseas unless the conviction is the subject of legal proceedings in that country questioning the conviction, or the court considers that there are particular circumstances relating to the offence or to the person which would make it unjust to make a banning order in all the circumstances. If the court decides not to make a banning order on these grounds, it must state in open court the reasons for not doing so, per new subsection (5A).

1402. Subsection (5) provides that this section does not apply in relation to offences committed before the provision comes into force.

Part 11: Rehabilitation of offenders

Section 193: Rehabilitation of offenders

1403. Section 193 extends the scope of the Rehabilitation of Offenders Act 1974 ("ROA") as it applies to England and Wales so that certain custodial sentences of over four years currently excluded from rehabilitation may become spent, unless imposed in respect of certain offences. It also amends the times at which different sentences may become spent and makes provision on the face of the ROA for the rehabilitation periods that apply to certain orders on conviction.

1404. Subsections (3) to (12) amend section 5 of the ROA. That section determines whether a particular sentence is excluded from rehabilitation and sets out the rehabilitation periods for particular sentences.

1405. Subsection (3)(a) substitutes a new paragraph (b) in section (5)(1) of the ROA. That paragraph (b) excludes from rehabilitation certain sentences imposed for a term exceeding 48 months. The substituted paragraph (b) excludes from rehabilitation the sentences listed in that paragraph when imposed for either an offence specified in Schedule 18 to the Code or an offence imposed under service law corresponding to such offence. An offence specified in Schedule 18 to the Code is a serious violent, sexual or terrorism offence. An offence imposed under service law corresponding to such an offence is interpreted in accordance with new subsections (1ZA) and (1ZB) of section 5 of the ROA, as inserted by subsection (4) of this section. The sentences listed in the new paragraph (b) are a sentence of imprisonment, a sentence of youth custody, a sentence of detention in a young offender institution, a sentence of corrective training, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18 convicted of certain serious offences), a sentence of detention under section 250 or 252A of the Code (sentence of detention for those convicted of certain serious offences or special custodial sentence for terrorist offenders), a sentence of detention under section 209 or 224B of the Armed Forces Act 2006 (offenders under 18 convicted of certain serious offences or special custodial sentence for terrorist offenders) or a sentence of detention under section 205ZC(5) or 208 of the Criminal Procedure (Scotland) Act 1995 (terrorism sentence with fixed licence period or detention of children convicted on indictment) and, in each case, for a term exceeding four years.

1406. Subsection (6)(a) amends the table in section 5(2) of the ROA. That table sets out the end of the rehabilitation periods for certain sentences. The amendment provides for the following:

- Custodial sentences of over four years become spent seven years after the end of the sentence (which would include any licence period). In respect of those under 18 at the date of conviction, those sentences become spent 42 months after the end of the sentence (including any licence period).

- Custodial sentences of over one year and up to and including four years become spent four years after the end of the sentence (including any licence period). In respect of those under 18 at the date of conviction, those sentences become spent two years after the end of the sentence (including any licence period).
- Custodial sentences of up to and including one year become spent 12 months after the end of the sentence (including any licence period). In respect of those under 18 at the date of conviction, those sentences become spent six months after the end of the sentence (including any licence period).

1407. Subsections (6)(b) and (12)(a) make changes to the rehabilitation period for community and youth rehabilitation orders. The separate entry for such orders is removed from the table in section 5(2) of the ROA. Instead, the definition of "relevant order" in section 5(8) of the ROA is amended to include community and youth rehabilitation orders. Accordingly, the rehabilitation period for community and youth rehabilitation orders is determined in the same way as that applicable to relevant orders.

1408. Subsection (7) inserts new subsections (2A) and (2B) in section 5 of the ROA. Those new subsections make provision about the rehabilitation period that applies to a person who is subject to a relevant order where the last day on which the order is to have effect is not provided for by or under the order. Where provision is made by or under such order for the order to have effect until further order, until the occurrence of a specified event or otherwise for an indefinite period, the rehabilitation period for such order begins with the date of conviction in respect of which the order was imposed and ends when the order ceases to have effect.

1409. Subsection (8) replaces section 5(3) of the ROA, which determines the rehabilitation period for certain orders where the last day on which the order is to have effect is not provided for in the order. The replacement provision removes the redundant reference to community and youth rehabilitation orders and reflects new subsections (2A) and (2B). Accordingly, new section 5(3) provides that where the last day on which a relevant order is to have effect is not provided for by or under the order or is not otherwise dealt with under new subsections (2A) and (2B), the rehabilitation period will be 24 months beginning with the date of conviction.

1410. Subsection (10) amends section 5(7) of the ROA and subsection (11) inserts a new subsection (7A). These subsections are concerned with sections 5(7)(a) and (b) of the ROA. Paragraph (a) provides consecutive terms of imprisonment are to be treated as a single term and paragraph (b) provides terms of imprisonment which are wholly or partly concurrent (imposed in respect of offences of which a person was convicted in the same proceedings) are also treated as a single term. The changes in subsections (10) and (11) disapply those paragraphs for the purposes of determining whether a sentence is excluded from rehabilitation under subsection 5(1)(b) of the ROA, as amended by this section. By disapplying these provisions, a sentence for an offence described in section 5(1)(b) of the ROA is only to be excluded from rehabilitation if the term for that sentence, taken individually, exceeds four years. If the sentence is not excluded from rehabilitation, those paragraphs may still be relevant to the determination of the rehabilitation period.

1411. Subsection (11) also inserts a new subsection (7B) to section 5 of the ROA. That new subsection provides a sentence imposed for an offence outside of England and Wales which would constitute a Schedule 18 offence if committed in England and Wales is to be treated as a Schedule 18 offence for the purposes of section 5 of the ROA.

1412. Subsection (12)(b) replaces paragraph (g) of the definition of "relevant order" set out in section 5(8) of the ROA. The replacement paragraph provides that in addition to its previous scope, a "relevant order" will also include an order which imposes requirements or restrictions on the person or is otherwise intended to regulate the person's behavior.

1413. Subsections (13) to (15) contain consequential amendments to other provisions of the ROA relating to the amendments made to section 5 by this Section.

1414. Subsections (16) to (18) apply the changes to the ROA retrospectively so that existing convictions will become spent according to the new rehabilitation periods. Anyone treated as rehabilitated for the purpose of the ROA before commencement of these provisions will continue to be treated as such.

Part 12: Disregards and pardons for certain historical offences

Section 194: Disregards and Pardons

1415. Section 194 amended sections 92 to 101 of the Protection of Freedoms Act 2012 ("the 2012 Act") to extend the scope of the disregard schemes.

1416. Subsection (3) amends section 92(1) of the 2012 Act to clarify that the Scheme applies only to sexual activity between individuals of the same sex.

1417. Subsection (4)(a) specifies that any other party to the sexual activity must have been aged 16 years or over.

1418. Subsection (4)(b) brings into the scope of the Scheme any offences that have been repealed in statute or abolished by enactment in common law.

1419. As set out at subsection (4)(b), a conviction or caution is not eligible for a disregard where the activity would amount to an offence at the time the decision is made on the application, or where any other party to the same-sex sexual activity was not aged 16 years or over.

1420. Subsection (5) sets out the definition of 'sexual activity'. This new definition is broader than that covered by the specified offences in the current Scheme and is intended to reflect the broader range of behaviour covered by the extended scope of the Scheme. Subsection (5) makes clear that the Scheme now covers conduct intended to lead to sexual activity as well as sexual activity itself.

1421. Subsections (6) to (9) make amendments to the decision-making and appeal processes to apply them to the expanded Scheme.

1422. Subsection (10) updates the definitions in section 101 of the 2012 Act to reflect the expanded Scheme, including definitions relating to service offences, and subsection (11) makes clear that the new provisions do not affect disregards which have been granted prior to the new provisions coming into force.

Section 195: Pardons for certain convictions or cautions

1423. Subsection (3) inserts new section 164(A1) of the 2017 Act which extends the provisions for posthumous pardons to align with the extension of the disregard Scheme's scope. This provides posthumous pardons for those individuals who die prior to the commencement of the extended Scheme or within the twelve months after the commencement. Where an offence is repealed or abolished after the commencement of the extended Scheme, provision is made for those who have died prior to, or within twelve months after, the date of repeal or abolishment, if they fulfil the criteria for a disregard.

1424. Subsection (4) sets out the conditions which must be met for a person to be pardoned.

1425. Subsections (7) to (9) make provision to ensure that the extended Scheme encompasses all historical service offences.

1426. Subsection (10) inserts section 164(11) to ensure that persons who have already received a pardon under section 164 or 165 cannot receive another pardon for the same offence.

1427. Subsection (11) ensures that the provisions for automatic pardons to reflect the extension of the Scheme.

1428. Subsection (12) repeals the power in section 166 of the 2017 Act for the Secretary of State to add further offences to the list of eligible offences within the scope of the original Scheme. This power is no longer necessary because there is no longer a list of eligible offences; rather, all repealed and abolished offences now fall within scope of the Scheme.

Part 13: Procedures in courts and tribunals

Section 196: British Sign Language interpreters for deaf jurors

1429. Section 196 inserts new sections 9C, 20H and 20I into the Juries Act 1974 and makes a minor related amendment to section 22(A1) of the same Act. It makes provision for British Sign Language ("BSL") interpreters to be present in the jury deliberation room, meaning that profoundly deaf jurors will no longer be automatically excluded from completing jury service simply because they require the assistance of a BSL interpreter.

1430. New section 9C(1) and (2) place a duty on the judge to consider whether the assistance of a BSL interpreter would enable a profoundly deaf person to act as a juror and, if so, to appoint one or more interpreters and to affirm the summons in the exercise of their discretion.

1431. New section 9C(3) and (4) permit an interpreter appointed under new subsection (2) to remain with the jury in the course of their deliberations in proceedings before a court, and make clear that the interpreter must not interfere in or influence the deliberations of the jury.

1432. New section 20H addresses those existing provisions in the Juries Act 1974 which are to apply to BSL interpreters as they already apply to jurors, with a necessary modification being made to the meaning of "the trial period" for these purposes. New section 20H(1) deals with challenge for cause; new section 20H(2) deals with surrender of electronic communication devices; new section 20H(3) deals with the offence of research; new section 20H(4) deals with the offence of sharing research; and new section 20H(5) deals with exceptions to the offence of disclosing jury deliberations.

1433. New section 20I makes it an offence for an interpreter appointed under new section 9C(2) intentionally to interfere in or influence jury deliberations, and sets out the penalty where proceedings have been instituted by or with the consent of the Attorney General and a person is found guilty of this offence.

1434. A reference to new section 20I is inserted alongside existing references to sections 20A, 20B and 20C within section 22(A1) (offences which do not affect contempt of court at common law) to confirm that nothing in new section 20I affects what constitutes contempt of court at common law.

Section 197: Continuation of criminal trial on death or discharge of a juror

1435. Section 197 makes a minor, technical amendment to section 16 of the Juries Act 1974 (continuation of criminal trial on death or discharge of juror) to omit subsection (2) which references trials for offences punishable with death.

Section 198: Remote observation and recording of court and tribunal proceedings

1436. This section makes provision for the remote observation of court and tribunal proceedings using audio and/or audio-visual transmissions. These measures (together with Section 197) replace the temporary and more limited modifications made by Schedule 25 to the Coronavirus Act 2020.

1437. Subsection (1) inserts into the Courts Act 2003 a new section 85A, which makes provision to enable the public to remotely observe proceedings by the direction of the judge in any court, tribunal or body exercising the judicial power of the State, with the exception of the Supreme Court and devolved courts or tribunals, in order to satisfy the principle of open justice.

1438. New section 85A(1) of the Courts Act 2003 defines the scope of the new section, which applies to proceedings in any "court" within the meaning of the Contempt of Court Act 1981. "Court" in the Contempt of Court Act 1981 (see section 19 of that Act) means "any court, tribunal or other body exercising the judicial power of the State". This is subject to the exceptions set out in new sections 85A(12) and (13).

1439. New section 85A(2) empowers the court to direct that proceedings are to be transmitted electronically for the purpose of enabling persons not taking part in the proceedings to watch or listen to the proceedings – but only if the proceedings are ones which are specified under new section 85A(8)(a).

1440. New section 85A(3) sets limits on the power to direct transmission, ensuring that it does not extend to directing any general broadcast of the proceedings (broadcasting of proceedings being the province of section 32 of the Crime and Courts Act 2013, which is unaffected by these provisions).

1441. The court may only direct transmissions either to designated livestreaming premises (defined in new section 85A(4)) or to individuals who have been given access only after first having identified themselves to the court (or to a person acting on behalf of the court).

1442. New section 85A(5) makes it clear that a direction for transmission of proceedings can include provision about the method of transmission (for example, to fit it to the particular platform used by the court for conducting proceedings by virtual means) and the persons who are permitted to watch or listen to it (so that, for example, if only certain people would be allowed to be present in court if the proceedings were being held in a courtroom in the normal way, only those people would be allowed to watch or listen to the transmission).

1443. New section 85A(6) makes it clear that a recording can be made by the court of a transmission of any proceedings which are conducted "virtually", to ensure that an appropriate record is kept for such proceedings in the same way as proceedings may be recorded when conducted in a courtroom in the normal way.

1444. New section 85A(7) makes it clear that a direction for transmission or recording can, as appropriate in the court's discretion, relate to part of the proceedings rather than the whole, and be varied or revoked.

1445. New section 85A(8) enables the Lord Chancellor to make regulations to specify the proceedings in relation to which a direction for transmission may be made, any matters of which the court must be satisfied before making, or must take into account in making, any direction, and any provision for matters under new section 85A(5) which a direction must cover.

1446. New section 85A(10) provides that regulations under subsection (8) may only be made with the concurrence of the Lord Chief Justice, the Senior President of Tribunals, or both of them, as determined by the Lord Chancellor, and new section 85A(9) requires the Lord Chancellor first to have determined whether the function in subsection (10) of giving or withholding concurrence would most appropriately be performed by the Lord Chief Justice, the Senior President of Tribunals, or both of them.

1447. New section 85A(11) allows for greater flexibility in making clear that regulations may make different provision for different purposes (so that, for example, different factors would be taken into account by the court for particular types of proceedings).

1448. New section 85A(12) and (13) set out exceptions from the scope of application of new section 85A, making provision so that section 85A does not apply to the Supreme Court of the United Kingdom (subsection (12) and to devolved courts and tribunals (subsection (13)).

1449. Subsection (3) amends section 41 of the Criminal Justice Act 1925 to make it clear that section 41 does not apply to anything done in accordance with a direction made under the new section 85A; and so no offence is committed by any filming necessary to deliver the transmission pursuant to such a direction.

1450. Subsection (4) amends section 29 of the Criminal Justice (Northern Ireland) Act 1945 to make similar provision to that made by subsection (3) but with regard to UK tribunals in Northern Ireland.

1451. Subsection (5) makes a similar amendment to that of subsection (3) to section 9 of the Contempt of Court Act 1981, so that any sound recording necessary to deliver that transmission is not a contempt.

1452. Subsection (6) amends section 108(3) of the Courts Act 2003, which lists the secondary legislative powers under that Act which are subject to affirmative resolution procedure, to add to the list the power to make regulations under the new section 85A(8).

1453. Regulations under section 85A(8) are accordingly subject to affirmative resolution procedure (but see Section 200 for provision about procedure for the first set of regulations to be made under that power).

1454. Section 199: Offence of recording or transmission in relation to remote proceedings

1455. This section makes provision, corresponding broadly to the prohibitions in section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981, prohibiting unauthorised recording or transmission of an image or sound that has been transmitted to a person who is remotely attending court proceedings.

1456. Subsection (1) inserts a new section 85B into the Courts Act 2003, making provision prohibiting unauthorised recording or transmission in relation to such "remote proceedings", as both an offence and, alternatively, a contempt of court.

1457. New section 85B(1) of the Courts Act 2003 sets out the offence (which by virtue of new section 85B (8) is a summary-only offence for which the penalty is a fine not exceeding level 3 on the standard scale) of unauthorised recording or transmission of an image or sound covered by new section 85B(2) (an image or sound of proceedings which is received remotely) or new section 85B(3) (an image or sound of a person who is remotely attending proceedings).

1458. New section 85B(4) defines what is meant by remotely attending proceedings, to include remote participation in, or watching or listening to, proceedings. So, for example, making an unauthorised recording of a witness giving evidence by live link would be captured.

1459. New section 85B(5) defines an "unauthorised" recording or transmission as being one which is not authorised, either specifically or generally, either by the court conducting the proceedings in question, or by the Lord Chancellor.

1460. New section 85B(6) provides a defence for a person who, when making an unauthorised recording or transmission of an image or sound, was not in designated live-streaming premises (defined in new section 85B(7)) and did not know that the image or sound in question was one within new section 85B (2) or (3).

1461. New section 85B(9) provides for unauthorised recording or transmission to be a contempt as well as an offence, and makes provision to avoid double jeopardy, so that a person may not be punished by way of contempt for conduct for which that person has been convicted of an offence new section 85B(1), and vice versa.

1462. New section 85B(10) makes it clear that unauthorised recording or transmission is an offence or contempt regardless of whether the person in question intended the recording or transmission in question to be seen or heard by anyone else.

1463. New section 85B(11) and (12) set out exceptions from the scope of application of new section 85B in the same way as new section 85A(12) and (13) do for the scope of application of new section 85A, so that section 85B does not apply to the Supreme Court of the United Kingdom (subsection (11) and to devolved courts and tribunals (subsection (12)).

1464. New section 85B(13) defines specific terms used throughout the new section.

Section 200: Expansion of use of video and audio links in criminal proceedings

1465. Subsection (1) amends the CJA 2003 to extend the circumstances in which a criminal court can make a direction for the use of live links during "eligible criminal proceedings".

1466. It expands the courts' powers to use technology across a wider range of hearings and participants so that any person (including members of the jury in a criminal trial) may take part in criminal proceedings through a live link. New section 51(2) of the CJA 2003 makes clear that any live link directions relating to the jury must apply to all members of the jury, who must all take part through live video link while present at the same place, at the same time; a direction for a live audio link cannot be made for a jury panel.

1467. New section 51(3) of the CJA 2003 defines "eligible criminal proceedings" as encompassing preliminary hearings, summary trials, Crown Court trials, appeals to the Crown Court and appeals to the Court of Appeal (criminal division) and proceedings that are preliminary or incidental to such appeals, bail hearings following conviction, sentencing hearings, enforcement hearings and others.

1468. New section 51(4) of the CJA 2003 provides that the court must be satisfied that a live link direction is in the interests of justice before making one. By way of an additional safeguard, it also provides for the parties, and the relevant youth offending team in youth cases, to be given the opportunity to make representations to the court before the court determines whether to make a live link direction.

1469. Section 51(5) of the CJA 2003 places a duty on the court to consider all the circumstances of the case when deciding whether to make a live link direction, as well as any relevant guidance from the Lord Chief Justice. Section 51(6) lists those circumstances, including the views of the person to whom the direction would apply, the suitability of facilities that they would need to use, whether the person would be able to take part in the proceedings effectively through a live link, and the arrangements that would need to be made for the public to see or hear the proceedings if a live link is to be used.

1470. Subsection (2) amends the Crime and Disorder Act 1998 ("the CDA 1998") to omit Part 3A (live links in preliminary, sentencing and enforcement hearings), as the provisions governing live links in those types of hearing are now dealt with under the CJA 2003.

1471. Subsection (3) introduces Schedule 20 which makes further provision relating to the changes introduced by this section.

Schedule 20: Further provision about video and audio links in criminal proceedings

1472. Paragraph 1(2) inserts new sections 52 and 52A into the CJA 2003, setting out the supplementary procedural matters around the giving, variation and rescinding of live link directions.

1473. New section 52 provides that the court may direct the use of live link to several, or all, persons participating in "eligible criminal proceedings" (as defined in new section 51 of the CJA 2003 – see paragraph 1221 above) and may also give a direction which only applies to a particular person for certain aspects of the proceedings, such as the giving of evidence. Persons outside of England and Wales may be directed to participate through a live link if the court so directs.

1474. Under new section 52(2) and (3) of the CJA 2003, the court may vary or rescind a live link direction at any time, but only if this is in the interests of justice and only after the parties to the proceedings have been given the opportunity to make representations (including the relevant youth offending team in youth cases).

1475. New section 52(4) provides that, where the court varies a live link direction, other provisions in the CJA 2003 will apply. If another person is to be added to the direction, the test for and the effect of making the original direction apply. If the effect of the variation is such that a person can no longer take part in the proceedings, the test and conditions for rescinding a direction apply.

1476. New section 52(5) ensures that any decision to vary or rescind a live link direction is subject to the same considerations as a decision to give such a direction, namely any relevant guidance from the Lord Chief Justice and the circumstances of the case.

1477. New section 52(6) states that a live link direction may be given, varied or rescinded either by the court's own motion or on application by a party to the proceedings but specifies that a party may only apply for a variation or rescinding of a live link order if there has been a material change of circumstances since the direction was originally made.

1478. New section 52(7) requires the court to state, in open court, its reasons for refusing any application from a party to give, vary or rescind a live link direction. It also requires magistrates' courts to enter the reasons in the register of their proceedings.

1479. Under new section 52(8), any hearings taking place in relation to the giving, varying or rescinding of a live link direction can themselves involve a live link, either upon application to the court or by order of the court.

1480. New section52 (9) clarifies that requirements for the relevant youth offending team to have an opportunity to make representations before a live link direction is made only apply in cases where the defendant is a party to the proceedings and is either not yet 18 years old or is 18 years old but the court is dealing with the case as if they were still under 18.

1481. New section 52A makes further provision about the effect of live link directions made under section 51 of the CJA 2003. Under new section 52A(1) and (2), participation in eligible criminal proceedings through a live link as directed by the court will be treated as complying with any requirement to attend or appear before court, or to surrender to the custody of the court, and such persons will be treated as present in court for the proceedings.

1482. New section 52A(3) states that any eligible criminal proceedings occurring in accordance with a live link direction will be regarded as taking place at the court where at least one member of the court taking part in the proceedings is in a courtroom. If no member of the court, but one other participant, is taking part in proceedings in a courtroom, then that court is deemed to be the court where the proceedings take place. If nobody taking part in proceedings is doing so from a courtroom or if more than courtroom is involved, then the proceedings will be regarded as taking place wherever the court directs (which will be a place where the court can lawfully sit for the purposes of the proceedings).

1483. New section 52A(4) defines "courtroom" for the purposes of subsection (3), as any place where proceedings of the sort in question might ordinarily be held.

1484. New section 52A(5) clarifies that any statement made by a witness outside the United Kingdom through a live link is treated as having been made in the proceedings (just as it would were they to have made their statement whilst physically present in court).

1485. Paragraph 1(3) amends current section 53 of the CJA 2003 (magistrates' courts permitted to sit at other locations) to accommodate any participation through live link, rather than only the giving of evidence. It inserts a new subsection (4) into section 53 which allows a single justice to give, vary or rescind live link directions, and to require or permit a person taking part in a hearing about the giving, varying or rescinding of a live link direction to participate in that hearing by live link.

1486. Paragraph 1(4) amends section 54 of the CJA 2003 (Warning to jury) to explicitly refer to the defendant as a person who may take part in proceedings by live link. Paragraph 1(5) amends section 55 of the CJA 2003 (Rules of court) in accordance with the expanded power to use live links and to enable the Criminal Procedure Rules to provide for contested live link applications to be determined without a hearing. (Uncontested live link applications can already be determined without a hearing.)

1487. Paragraph 1(6) amends section 56 (Interpretation of Part 8) in accordance with the expanded power to use live links, to define the key terms used in these provisions, including the different types of hearing to which they apply. This section defines "live audio link" and "live video link" and states these two matters shall be disregarded (i) the extent to which a person may be unable to see or hear proceedings by reason of impairment of eyesight or hearing, and (ii) the effect of any other direction or order which prevents a person from seeing another person taking part in proceedings.

1488. Paragraph 2 amends the Extradition Act 2003 to enable live links to be used in extradition proceedings.

1489. Paragraph 3 amends the Criminal Appeal Act 1968 in accordance with the expanded powers to use live links under sections 51 and 52 of the CJA 2003 in relation to appeals to the criminal division of the Court of Appeal. It also provides for a single judge of the Court of Appeal and the Registrar of Criminal Appeals to be able to exercise these powers.

1490. Paragraph 4 amends PACE to reflect the omission of Part 3A (live links in preliminary, sentencing and enforcement hearings) from the CDA 1998 (see paragraph 1203 above), which previously governed the use of live links for the purposes of this Act. Reference is now made to live link directions made under section 51 of the CJA 2003.

1491. The Criminal Justice Act 1998, the Youth Justice and Criminal Evidence Act 1999 and the Crime (International Co-operation) Act 2003 are also amended in accordance with the expanded powers to use live links.

Section 201: Repeal of temporary provisions

1492. Section 201 repeals sections 53 to 55 and Schedule 23 to 25 of the Coronavirus Act 2020 which are temporary modifications that are superseded by the provisions made by sections 198 to 200 and Schedule 20.

Section 202: Expedited procedure for initial regulations about remote observation of proceedings

1493. Section 202 makes provision to enable the first set of regulations made under the power conferred by new section 85A(8) of the Courts Act 2003 inserted by section 198 to be made subject to the made affirmative procedure, rather than the draft affirmative procedure for which the amendment made by section 198(6) provides. This will enable regulations to be in place to ensure that there is no gap in coverage for transmission of remote proceedings between the expiry of the Coronavirus Act provisions which sections 198 and 199 will replace, and the coming into force of the new provisions, should that prove necessary.

1494. Subsection (1) provides that section 202 applies to the first regulations under new section 85A(8) of the Courts Act 2003 (and so will not apply to any subsequent regulations under that power, which will be subject to the draft affirmative procedure for which the amendment made by section 198(6) provides). Subsection (2) provides that the first regulations may (but do not have to be) made without first having been laid in draft before each House of Parliament. This, taken with the following subsections, allows for the "made affirmative" procedure to be adopted should that be necessary to avoid a gap in coverage, but for the draft affirmative procedure to be used instead if there is no risk of such a gap.

1495. Subsections (3) and (4) provide for the made affirmative procedure for the regulations should the option provided by subsection (2) be taken: the regulations must be laid before Parliament after being made (subsection (3)) and will cease to have effect after 28 days beginning with the day on which they are made if they have not before then been approved by a resolution of each House of Parliament (subsection (4)). Subsection (5) makes provision for calculating the 28-day period (days during prorogation or dissolution, or any period of recess for either House which lasts more than four

days are disregarded); and subsection (6) provides for a saving for anything done under the regulations should they cease to have effect under subsection (4), and makes it clear that should the regulations cease to have effect, that will not prevent the making of fresh regulations (which would be subject to draft affirmative procedure).

Part 14: Final provisions

Section 208 and Schedule 21: Minor amendments in relation to the sentencing consolidation

1496. Section 208 introduces Schedule 21 which makes a number of minor and technical amendments to the 2020 Act, the CJA 2003, and the Counter-Terrorism and Sentencing Act 2021, subsequent to the consolidation of sentencing procedural law into the Code by the 2020 Act. The amendments are contained in Schedule 21.

1497. Some of these amendments correct typographical errors, such as the amendment at paragraph 2 which substitutes the word 'Part' in section 108(4) of the 2020 Act with 'Chapter'. Other typographical amendments include those at paragraphs 4, 5, 8, 9, 10(2) and 10(3).

1498. Paragraph 3 updates the table in section 122(1) of the 2020 Act to reflect the correct maximum amounts of fines at each level of the standard scale, that apply for summary offences committed on or after 1 May 1984 and before 1 October 1992.

1499. Paragraph 6 amends subsection (6)(a) and (b) of section 414 of the 2020 Act to provide that references in that section to provisions applied by the Armed Forces Act 2006 also include provisions applied under that Act.

1500. Paragraph 7 amends paragraphs 7(2)(b), 9(1) and 9(6) of Schedule 5 to the 2020 Act (which makes provision concerning the breach, revocation and amendment of reparation orders) to reflect the fact that someone who is subject to a reparation order may be 18 or over at the time they are brought before a court under Schedule 5; in such cases, they should be dealt with by a magistrates' court other than a youth court.

1501. Paragraph 10(4) inserts a prospective amendment into paragraph 43 of Schedule 22 to the 2020 Act. If this specific amendment is commenced, it would confine the application of section 226(3) of the 2020 Act (which states that the court may not pass a sentence of imprisonment unless certain conditions are met) to those aged 21 or over. This would be in addition to the existing amendment in respect of section 226(2) of the 2020 Act.

1502. Paragraphs 11 and 13 respectively omit redundant provisions in paragraph 154(f) of Schedule 24 to the 2020 Act and paragraph 44 of Schedule 13 to the Counter-Terrorism and Sentencing Act 2021.

1503. Paragraph 12 inserts a reference to sentences of detention under section 262 of the 2020 Act into section 237(1B) of the CJA 2003, and clarifies that such references include sentences of detention in a young offender institution under section 210B of the Armed Forces Act 2006 - thereby ensuring such sentences are covered by the release provisions in Chapter 6 of Part 12 of the CJA 2003.

Commencement

1504. Section 208(4) provided for the following substantive provisions to come into force on Royal Assent: sections 13, 22 and 23 (functions relating to serious violence); sections 31 and 34 to 36 (offensive homicide reviews); section 71 (administering a substance with intent to cause harm); section 72 (response to Law Commission report on hate crime laws); section 132 (power to refer high-risk offenders to the Parole Board); sections 140 to 143 (driving disqualifications: extension in connection with custodial period); section 161(2)-(9) (youth rehabilitation orders); sections 163 and 164 (secure schools and secure 16 to 19 academies); section 166 (serious violence reduction orders: piloting); section 167(2) to (4) (knife crime prevention order on conviction: adjournment of proceedings); section 189 (arrangements for assessing risk etc posed by certain offenders); section 191 (football banning orders: power to amend list of relevant offences); sections 198 and 199 (transmission and recording of court and tribunal proceedings); section 202 (expedited procedure for initial regulations about remote observation of proceedings); Part 14 (final provisions with the exception of Section 204 and Schedule 21). Certain regulation-making powers and powers to issue guidance also come into force on Royal Assent.

1505. Section 208(5) provides for the following provisions to come into force two months after Royal Assent: section 2 (increase in penalty for assault on emergency workers); section 3 (required life sentence for manslaughter of emergency worker); section 47 (positions of trust); section 50 (criminal damage to memorials); section 51 and Schedule 5 (overseas production orders); section 54 (PACE etc powers for food crime offices); section 58 (functions of prisoner custody officers in relation to live link hearings); section 59 (proceeds of crime: account freezing orders); sections 83 to 85 (unauthorised encampments); sections 86 to 88 and Schedule 8 (road traffic offences); section 122 and 123 (penalties for offences involving children or vulnerable adults); section 124 and Schedule 12 (minimum sentences for particular offences); sections 125 to 128 (life sentences: time to be served); sections 130 and 131 (release on licence); section 135 (repeal of uncommenced provision for establishment of recall adjudicators); sections 144 to 148 (custodial sentences: minor amendments); sections 150, 151, 153 and 154 and Schedules 14 and 15 (community and suspended sentence orders); sections 157 to 160 and 161(1) and Schedule 16 and Parts 1, 4 and 5 of Schedule 17 (youth rehabilitation orders); section 162 (abolition of reparation orders); sections 184 to 188 and Schedule 19 (management of terrorist offenders); sections 196 and 197 (juries); sections 200 and 200(1) and Schedule 20 (video and audio links in criminal proceedings); and section 204 and Schedule 21 (minor amendments arising out of sentencing consolidation).

1506. The remaining provisions will be brought into force by means of commencement regulations made by the Secretary of State (section 208(1)). Sections 34, 161 and 166 enable the provisions in Chapter 2 of Part 2 (homicide reviews), Parts 2 and 3 of Schedule 17 (youth rehabilitation orders) and Chapter 1 of Part 10 (SVROs) respectively to be piloted.

Related documents

1507. The following documents are relevant to the Act and can be read at the stated locations:

- Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence – Government Consultation, April 2019
- Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence – Government Response, July 2019
- The Front Line Review, Recommendation Report, July 2019
- Serious Youth Violence, Home Affairs Select Committee, July 2019

- Democracy, freedom of expression and freedom of association: Threats to MPs, Joint Committee on Human Rights, October 2019
- Police Covenant for England and Wales – Government Consultation, February 2020
- Serious Youth Violence: Government Response to the Committee's Sixteenth Report of Session 2017 – 2019 – Government Response, March 2020
- Police Covenant for England and Wales – Government Response, September 2020
- The Law, Guidance and Training Governing Police Pursuits: Current Position and Proposals for Change – Government Consultation, May 2018
- The Law, Guidance and Training Governing Police Pursuits – Government Response, May 2019
- Police Powers: Pre-charge Bail – Government Consultation, February 2020
- Police Powers: Pre-charge Bail – Government Response, January 2021
- Prosecuting road traffic offences in Scotland, Fixed Penalty Notice reform – Department for Transport and Scottish Government Consultation, March 2018
- Prosecuting road traffic offences in Scotland, fixed penalty notice reform -Government Response, March 2018
- Children Outside the United Kingdom Investigation – Independent Inquiry into Child Sexual Abuse
- Guidance on Part 2 of the Sexual Offences Act 2003 – Home Office Guidance, September 2018
- Criminal Procedure and Investigations Act 1996 (section 23(1)) Code of Practice – Ministry of Justice Guidance, March 2015
- Mobile phone data extraction by police forces in England and Wales – Information Commissioner's Office Investigation Report, June 2020
- Powers for dealing with unauthorised development and encampments – Government Consultation, April 2018
- Government response to the consultation on powers for dealing with unauthorised development and encampments, February 2019
- Strengthening police powers to tackle unauthorised encampments – Government Consultation, November 2019
- Strengthening police powers to tackle unauthorised encampments – Government Response, March 2021
- Terrorist Risk Offenders: Independent Review of Statutory Multi-Agency Public Protection Arrangements – Jonathan Hall QC Report, May 2020
- Serious Violence Reduction Orders: A new court order to target known knife carriers – Government Consultation, September 2020

- Serious Violence Reduction Orders: A new court order to target know knife carriers – Government Response, March 2021
- Serious Violence Strategy – Government Strategy, April 2018
- Simplification of Criminal Law: Public Nuisance and Outraging Public Decency – Law Commission Report, June 2015
- Democracy, freedom of expression and freedom of association: Threats to MPs – The Joint Committee on Human Rights, October 2019
- Government Response to Charlie Taylor's Review of the Youth Justice System, December 2016
- A Smarter Approach to Sentencing, - Government Strategy, September 2020
- Response to the consultation on driving offences and penalties relating to causing death or serious injury – Government Consultation Response, October 2017

Annex A – Glossary

AFA 2006	The Armed Forces Act 2006
BSL	British Sign Language
CAT	Competition Appeal Tribunal
CFA	Criminal Finances Act 2017
CJA 2003	Criminal Justice Act 2003
COFPN	Conditional Offer of Fixed Penalty Notice
COPO Act	The Crime (Overseas Production Orders) Act 2019
CSPs	Community Safety Partnerships
DHMP	Detention at Her Majesty's Pleasure
DVLA	Driver and Vehicle Licensing Agency
DVSA	Driver and Vehicle Standards Agency
DYOI	Detention in a Young Offenders Institution
DPN	Digital Processing Notice
DTO	Detention and Training
EAT	Employment Appeal Tribunal
EMI	Electronic Money Institutions
ERS	Early Removal Scheme
ET	Employment Tribunal
FCA	Financial Conduct Authority
FPNs	Fixed Penalty Notices
HMRC	Her Majesty's Revenue and Customs
IICSA	The Independent Inquiry into Child Sexual Abuse
IPP	Imprisonment for Public Protection
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
MAPPA	Multi-Agency Public Protection Arrangements

MLA	Mutual Legal Assistance
NCA	National Crime Agency
NDA	Road Traffic (New Drivers) Act 1995
PACE	Police and Criminal Evidence Act 1984
PCC(S)A	Powers of Criminal Courts (Sentencing) Act 2000
PI	Payment Institution
Police Federation	Police Federation of England and Wales
PRSA	Police Reform and Social Responsibility Act 2011
ROA	Rehabilitation of Offenders Act 1974
ROPARPS	Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020
RTOA 1988	Road Traffic Offenders Act 1988
RUI	Released under investigation
SCHs	Secure Children's Homes
SDS	Standard Determinate Sentence
SFO	Serious Fraud Office
SHPO	Sexual Harm Prevention Order
SOPC	Sentence for Offenders of Particular Concern
SRO	Sexual Risk Order
SVRO	Serious Violence Reduction Order
The 1971 Act	Criminal Damage Act 1971
The 1980 Act	Magistrates' Court Act 1980
The 1984 Act	Repatriation of Prisoners Act 1984
The 1986 Act	Public Order Act 1986
The 1988 Act	Road Traffic Act 1988
The 1991 Act	Criminal Justice Act 1991

The 1993 Act	Prisoners and Criminal Proceedings (Scotland) Act 1993
The 1994 Act	Criminal Justice and Public Order Act 1994
The 1995 Act	Criminal Procedure (Scotland) Act 1995
The 1996 Act	Police Act 1996
The 1997 Act	Crime (Sentences) Act 1997
The 1998 Act	Crime and Disorder Act 1998
The 2000 Act	Terrorism Act 2000
The 2003 Act	Sexual Offences Act 2003
The 2007 Act	Custodial Sentences and Weapons (Scotland) Act 2007
The 2008 Act	Criminal Justice and Immigration Act 2008
The 2011 Act	Charities Act 2011
The 2015 Act	The Criminal Justice and Courts Act 2015
The 2020 Act	Sentencing Act 2020
The Code	The Sentencing Code
TORER	Terrorist Offenders (Restriction of Early Release) Act 2020
VRH	Video Remand Hearing
YCS	Youth Custody Service
YRO	Youth Rehabilitation Order

Annex B – Pre-charge bail authorisation requirements

<table>
<tr><th>Months</th><th>Previous pre-charge bail arrangements - standard cases[3]</th><th>Current pre-charge bail arrangements – standard cases (as set out in this Act)</th><th>Previous pre-charge bail arrangements - SFO cases</th><th>Current pre-charge bail arrangements – non-standard cases[4] (as set out in this Act)</th></tr>
<tr><td>1
(28 days)</td><td>Initial bail period
Inspector</td><td rowspan="2">Initial bail period
Custody Officer</td><td rowspan="2">Initial bail period
Inspector – confirmed by Superintendent</td><td rowspan="4">Initial bail period
Custody officer – confirmed by relevant authorised agency member as indicated below</td></tr>
<tr><td>2</td><td rowspan="2">First extension
Superintendent</td></tr>
<tr><td>3</td><td rowspan="3">First extension
A member of the Serious Fraud Office who is of the Senior Civil Service[6]</td></tr>
<tr><td>4</td><td rowspan="3">Second extension[5]
Magistrate</td><td rowspan="3">First extension
Inspector</td></tr>
<tr><td>5</td><td rowspan="2">Second extension
Magistrate</td><td rowspan="3">First extension
Relevant authorised agency member as indicated below</td></tr>
<tr><td>6</td><td rowspan="2">Second extension[7]
Superintendent</td></tr>
<tr><td>7</td><td rowspan="3">Third extension
Magistrate</td><td rowspan="3">Third extension
Magistrate</td></tr>
<tr><td>8</td><td rowspan="2">Third extension
Magistrate</td></tr>
<tr><td>9</td><td rowspan="2">Fourth extension
Magistrate</td></tr>
<tr><td>10</td><td>Third extension
Magistrate</td></tr>
<tr><td>11</td><td>Fourth extension
Magistrate</td><td>Third extension
Magistrate</td><td>Third extension
Magistrate</td></tr>
</table>

[3] Under previous authorisation requirements, all cases other than Serious Fraud Office ("SFO") cases (known as "standard cases")

[4] New pre-charge bail arrangements provide for a longer initial bail period to be granted to three other agencies (alongside the SFO), namely Her Majesty's Revenue and Customs ("HMRC"), the Financial Conduct Authority ("FCA") and National Crime Agency ("NCA"), as they tend to be complex in nature and tend to take considerably longer to investigate than more "standard cases", these cases are referred to as "non-standard" cases'.

[5] Cases that meet the requirements under section 47ZE of the Police and Criminal Evidence Act 1984 can be granted a further extension of up to 6 months from the bail start date before coming before a Magistrates' Court.

[6] This is provided that the case meets the requirements under section 47ZE.

[7] Cases that meet the requirements under section 47ZE of the Police and Criminal Evidence Act 1984 could be granted a further extension of up to 12 months from the bail start date before coming before a Magistrates' Court.

12				
13	Fifth extension **Magistrate**	Fourth extension **Magistrate**	Fourth extension **Magistrate**	Second extension **Magistrate**
14				
15				
16	Sixth extension **Magistrate**	Fifth extension **Magistrate**	Fifth extension **Magistrate**	
17				
18				

Authorisation levels for agency cases

- **NCA** – Authorised by Custody Officer, confirmed by a National Crime Agency officer
- **FCA** – Authorised by Custody Officer, confirmed by a member of staff designated for this purpose by the Chief Executive
- **SFO** – Authorised by Custody Officer, confirmed by a member of the Serious Fraud Office
- **HMRC** – Authorised by Custody Officer, confirmed by an officer of Revenue and Customs

First extension

- **NCA** - a National Crime Agency officer who is of a grade equivalent to the rank of Superintendent or above
- **FCA** - a member of staff of the Financial Conduct Authority who is of the description designated for this purpose by the Chief Executive
- **SFO** - a member of the Serious Fraud Office who is of the Senior Civil Service
- **HMRC** – an officer of Revenue and Customs who is of a grade equivalent to the rank of Superintendent or above

Annex C - Changes to the Rehabilitation of Offenders Act 1974

Existing Regime (England & Wales)			Proposals for New Rehabilitation Periods (England & Wales)		
Sentence	**Adults**	**Under 18s**	**Sentence**	**Adults**	**U18s**
Community order	12 months	6 months	Community Order	At end of order	At end of order
Custody of 6 months or less	2 years	18 months	Custody of under 1 year	12 months	6 months
Custody of between 6 months and 30 months	4 years	2 years	Custody of between 1 year and 4 years	4 years	2 years
Custody of between 30 months and 4 years	7 years	3.5 years	Custody of more than 4 years†	7 years	3.5 years
Custody of more than 4 years	Conviction is never spent	Conviction is never spent			

- † = Excluding serious violent, sexual or terrorist offences, that continue to never be spent.

Annex D - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1	Yes	Yes	Yes	Yes
Section 2	Yes	Yes	No	No
Section 3	Yes	Yes	No	No
Section 4	Yes	Yes	Yes	No
Sections 5 to 7	Yes	Yes	Yes	No
Sections 8 to 23	Yes	Yes	No	No
Sections 24 to 36	Yes	Yes	No	No
Sections 37 to 44	Yes	Yes	Yes	Yes
Section 45	Yes	Yes	No	No
Section 46	Yes	Yes	No	No
Section 47	Yes	Yes	No	No
Section 48	Yes	Yes	No	No
Section 49	Yes	Yes	No	No
Section 50	Yes	Yes	No	No
Section 41	Yes	Yes	Yes	Yes
Sections 52 and 53	Yes	Yes	No	No
Section 54	Yes	Yes	No	No
Section 55	Yes	Yes	No	No
Section 56	Yes	Yes	In part	In part
Section 57	Yes	Yes	No	No
Section 58	Yes	Yes	No	No
Section 59	No	No	No	Yes
Section 60 and 61	Yes	Yes	No	No
Section 62 to 70	Yes	Yes	No	No
Section 71	Yes	Yes	No	No
Section 72	Yes	Yes	No	No
Section 73-82	Yes	Yes	No	No
Section 83 to 85	Yes	Yes	No	No
Sections 86 to 88	Yes	Yes	Yes	No

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 89	In part	In part	In part	In part
Section 90	Yes	Yes	No	No
Sections 91 to 96	Yes	Yes	Yes	No
Section 97	No	No	Yes	No
Sections 98 to 121	Yes	Yes	No	No
Sections 122 to 139	Yes	Yes	No	No
Sections 140 and 141	Yes	Yes	No	No
Sections 142 and 143	No	No	Yes	No
Section 144	Yes	Yes	No	No
Section 145	Yes	Yes	No	No
Section 146	Yes	Yes	No	No
Section 147	Yes	Yes	No	No
Section 148	Yes	Yes	Yes	Yes
Sections 149 to 155	Yes	Yes	No	No
Section 156	Yes	Yes	No	No
Sections 157 to 163	Yes	Yes	No	No
Section 164	Yes	In Part	No	No
Sections 165 and 166	Yes	Yes	No	No
Section 167	Yes	Yes	No	No
Sections 168 and 169	Yes	Yes	No	No
Section 170	No	No	Yes	No
Section 171	Yes	Yes	No	No
Section 172 to 176	Yes	Yes	No	No
Section 177	In part	In part	In part	No
Section 178	Yes	Yes	No	No
Section 179	Yes	Yes	Yes	Yes
Section 180	Yes	Yes	In part	In part
Section 181	Yes	Yes	No	No
Section 182	Yes	Yes	In part	In part
Section 183	In part	In part	In part	In part

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 184 to 187	Yes	Yes	Yes	Yes
Section 188	In part	In part	In part	In part
Section 189	Yes	Yes	No	No
Sections 190-192	Yes	Yes	No	No
Section 193	Yes	Yes	No	No
Sections 194 and 195	Yes	Yes	No	No
Section 196 to 197	Yes	Yes	No	No
Section 198 to 201	Yes	Yes	In part	In part
Section 202	Yes	Yes	Yes	Yes
Schedules 1 and 2	Yes	Yes	No	No
Schedule 3	Yes	Yes	Yes	Yes
Schedule 4	Yes	Yes	No	No
Schedule 5	Yes	Yes	Yes	Yes
Schedule 6	Yes	Yes	No	No
Schedule 7	Yes	Yes	No	No
Schedule 8	Yes	Yes	Yes	No
Schedule 9 and 10	Yes	Yes	Yes	No
Schedule 11	Yes	Yes	No	No
Schedule 12	Yes	Yes	No	No
Schedule 13	Yes	Yes	No	No
Schedules 14 and 15	Yes	Yes	No	No
Schedule 16 and 17	Yes	Yes	No	No
Schedule 18	In part	In part	In part	In part
Schedule 19	In part	In part	In part	In part
Schedule 20	Yes	Yes	In part	In part
Schedule 21	Yes	Yes	In part	In part

Annex E – Hansard References

Stage	Date	Hansard Reference
House of Commons		
Introduction	09 March 2021	
Second Reading	15 March 2021	Vol. 691. Col. 59-132
	16 March 2021	Vol. 691. Col. 198-277
Public Bill Committee – 1st sitting	18 May 2021	Col. 1-34
Public Bill Committee – 2nd sitting	18 May 2021	Col. 35-94
Public Bill Committee – 3rd sitting	20 May 2021	Col. 95-120
Public Bill Committee – 4th sitting	20 May 2021	Col. 121-174
Public Bill Committee – 5th sitting	25 May 2021	Col. 175-208
Public Bill Committee – 6th sitting	25 May 2021	Col. 209-262
Public Bill Committee – 7th sitting	27 May 2021	Col. 263-292
Public Bill Committee – 8th sitting	27 May 2021	Col. 293-352
Public Bill Committee – 9th sitting	08 June 2021	Col. 353-386
Public Bill Committee – 10th sitting	08 June 2021	Col. 387-432
Public Bill Committee – 11th sitting	10 June 2021	Col. 433-460
Public Bill Committee – 12th sitting	10 June 2021	Col. 461-496
Public Bill Committee – 13th sitting	15 June 2021	Col. 497-534
Public Bill Committee – 14th sitting	15 June 2021	Col. 535-574
Public Bill Committee – 15th sitting	17 June 2021	Col. 575-600
Public Bill Committee – 16th sitting	17 June 2021	Col. 601-644
Public Bill Committee – 17th sitting	22 June 2021	Col. 645-686
Public Bill Committee – 18th sitting	22 June 2021	Col. 687-742
Public Bill Committee – 19th sitting	24 June 2021	Col. 743-762
Public Bill Committee – 20th sitting	24 June 2021	Col. 763-822
Report and Third Reading	05 June 2021	Vol. 698. Col. 598-707

		Vol. 698. Col. 528
House of Lords		
Introduction	06 July 2021	Vol. 813. Col. 1274
Second Reading	14 September 2021	Vol. 814. Col.1280-1378
Committee	20 October 2021	Vol. 815. Col. 148-189
		Vol. 815. Col. 215-250
Committee	25 October 2021	Vol. 815. Col. 550-577
		Vol. 815. Col. 602-632
Committee	27 October 2021	Vol. 815. Col. 804-852
		Vol. 815. Col. 866-892
Committee	01 November 2021	Vol. 815. Col. 1005-1067
		Vol. 815. Col. 1078-1102
Committee	03 November 2021	Vol. 815. Col. 1220-1272
		Vol. 815. Col. 1295-1336
Committee	08 November 2021	Vol. 815. Col. 1449-1510
		Vol. 815. Col. 1525-1580
Committee	10 November 2021	Vol. 815. Col. 1731-1750
		Vol. 815. Col. 1772-1836
Committee	15 November 2021	Vol. 816. Col. 28-87
		Vol. 816. Col. 99-146
Committee	17 November 2021	Vol. 816. Col. 242-277
		Vol. 816. Col. 296-396
Committee	22 November 2021	Vol. 816. Col. 593-662
		Vol. 816. Col. 676-726
Committee	24 November 2021	Vol. 816. Col. 856-1000
Report	08 December 2022	Vol. 816. Col. 1932-1956
		Vol. 816. Col. 1970-2000
Report	13 December 2022	Vol. 817. Col. 25-81

		Vol. 817. Col. 94-128
Report	15 December 2022	Vol. 817. Col. 306-361
		Vol. 817. Col. 372-418
Report	10 January 2022	Vol. 817. Col. 822-898
		Vol. 817. Col. 911-954
Report	12 January 2022	Vol. 817. Col. 1089-1190
Report	17 January 2022	Vol. 817. Col. 1328-1486
Third Reading	25 January 2022	Vol. 818. Col. 142-163
Commons Consideration of Lords Amendments	28 February 2022	Vol.. 709. Col. 752-872
Lords consideration of commons amendments	22 March 2022	Vol 820. Col. 763-807
		Vol 820. Col. 821-855
Commons consideration of Lords messages	28 March 2022	Vol 711. Col. 623-651
Lords consideration of Commons amendments	31 March 2022	Vol 820. Col. 1689-1717
Commons consideration of Lords messages	25 April 2022	Vol 712. Col. 500-521
Lords consideration of Commons amendments	26 April 2022	Vol 821. Col. 243-258
Royal Assent	28 April 2022	House of Commons Vol 712. Col. 890
		House of Lords Vol 821. Col. 382

Annex F – Progress of Bill Table

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3					Clause 3
Section 4	Clause 3	Clause 3	Clause 3	Clause 3	Clause 4
Section 5	Clause 4	Clause 4	Clause 4	Clause 4	Clause 5
Section 6	Clause 5	Clause 5	Clause 5	Clause 5	Clause 6
Section 7	Clause 6	Clause 6	Clause 6	Clause 6	Clause 7
Section 8	Clause 7	Clause 7	Clause 7	Clause 7	Clause 8
Section 9	Clause 8	Clause 8	Clause 8	Clause 8	Clause 9
Section 10	Clause 9	Clause 9	Clause 9	Clause 9	Clause 10
Section 11	Clause 10	Clause 10	Clause 10	Clause 10	Clause 11
Section 12	Clause 11	Clause 11	Clause 11	Clause 11	Clause 12
Section 13	Clause 12	Clause 12	Clause 12	Clause 12	Clause 13
Section 14	Clause 13	Clause 13	Clause 13	Clause 13	Clause 14
Section 15	Clause 14	Clause 14	Clause 14	Clause 14	Clause 15
Section 16	Clause 15	Clause 15	Clause 15	Clause 15	Clause 16
Section 17	Clause 16	Clause 16	Clause 16	Clause 16	Clause 17
Section 18	Clause 17	Clause 17	Clause 17	Clause 17	Clause 18
Section 19	Clause 18	Clause 18	Clause 18	Clause 18	Clause 19
Section 20	Clause 19	Clause 19	Clause 19	Clause 19	Clause 20
Section 21	Clause 20	Clause 20	Clause 20	Clause 20	Clause 21
Section 22	Clause 21	Clause 21	Clause 21	Clause 21	Clause 22
Section 23	Clause 22	Clause 22	Clause 22	Clause 22	Clause 23
Section 24	Clause 23	Clause 23	Clause 23	Clause 23	Clause 24
Section 25	Clause 24	Clause 24	Clause 24	Clause 24	Clause 25
Section 26	Clause 25	Clause 25	Clause 25	Clause 25	Clause 26

Section 27	Clause 26	Clause 26	Clause 26	Clause 26	Clause 27
Section 28	Clause 27	Clause 27	Clause 27	Clause 27	Clause 28
Section 29	Clause 28	Clause 28	Clause 28	Clause 28	Clause 29
Section 30	Clause 29	Clause 29	Clause 29	Clause 29	Clause 30
Section 31	Clause 30	Clause 30	Clause 30	Clause 30	Clause 31
Section 32	Clause 31	Clause 31	Clause 31	Clause 31	Clause 32
Section 33	Clause 32	Clause 32	Clause 32	Clause 32	Clause 33
Section 34	Clause 33	Clause 33	Clause 33	Clause 33	Clause 34
Section 35	Clause 34	Clause 34	Clause 34	Clause 34	Clause 35
Section 36	Clause 35	Clause 35	Clause 35	Clause 35	Clause 36
Section 37	Clause 36	Clause 36	Clause 36	Clause 36	Clause 37
Section 38	Clause 37	Clause 37	Clause 37	Clause 37	Clause 38
Section 39				Clause 38	Clause 39
Section 40	Clause 38	Clause 38	Clause 38	Clause 39	Clause 40
Section 41	Clause 39	Clause 39	Clause 39	Clause 40	Clause 41
Section 42	Clause 40	Clause 40	Clause 40	Clause 41	Clause 42
Section 43	Clause 41	Clause 41	Clause 41	Clause 42	Clause 43
Section 44	Clause 42	Clause 42	Clause 42	Clause 43	Clause 44
Section 45	Clause 43	Clause 43	Clause 43	Clause 44	Clause 45
Section 46	Clause 44	Clause 44	Clause 44	Clause 45	Clause 46
Section 47	Clause 45	Clause 45	Clause 45	Clause 46	Clause 47
Section 48					Clause 48
Section 49					Clause 49
Section 50	Clause 46	Clause 46	Clause 46	Clause 47	Clause 50
Section 51	Clause 47	Clause 47	Clause 47	Clause 48	Clause 51
Section 52	Clause 48	Clause 48	Clause 48	Clause 49	Clause 52
Section 53					Clause 53
Section 54					
Section 55	Clause 50	Clause 50	Clause 50	Clause 51	Clause 55
Section 56	Clause 51	Clause 51	Clause 51	Clause 52	Clause 56

Section 57	Clause 52	Clause 52	Clause 52	Clause 53	Clause 57
Section 58	Clause 53	Clause 53	Clause 53	Clause 54	Clause 58
Section 59	Clause 54	Clause 54	Clause 54	Clause 55	Clause 59
Section 60					Clause 60
Section 61					Clause 61
Section 62					Clause 62
Section 63					Clause 63
Section 64					Clause 64
Section 65					Clause 65
Section 66					Clause 66
Section 67					Clause 67
Section 68					Clause 68
Section 69					Clause 69
Section 70					Clause 70
Section 71					
Section 72					
Section 73		Clause 55	Clause 55	Clause 56	Clause 74
Section 74	Clause 55	Clause 56	Clause 56	Clause 57	
Section 75	Clause 56	Clause 57	Clause 57	Clause 58	Clause 75
Section 76	Clause 57	Clause 58	Clause 58	Clause 59	Clause 76
Section 77	Clause 58	Clause 59	Clause 59	Clause 60	Clause 77
Section 78	Clause 59	Clause 60	Clause 60	Clause 61	Clause 78
Section 79	Clause 60	Clause 61	Clause 61	Clause 62	
Section 80					Clause 79
Section 81					Clause 81
Section 82					
Section 83	Clause 61	Clause 62	Clause 62	Clause 63	Clause 82
Section 84	Clause 62	Clause 63	Clause 63	Clause 64	Clause 83
Section 85	Clause 63	Clause 64	Clause 64	Clause 65	Clause 84
Section 86	Clause 64	Clause 65	Clause 65	Clause 66	Clause 85

Section 87	Clause 65	Clause 66	Clause 66	Clause 67	Clause 86
Section 88	Clause 66	Clause 67	Clause 67	Clause 68	Clause 87
Section 89	Clause 67	Clause 68	Clause 68	Clause 69	Clause 88
Section 90	Clause 68	Clause 69	Clause 69	Clause 70	Clause 89
Section 91	Clause 69	Clause 70	Clause 70	Clause 71	Clause 90
Section 92	Clause 70	Clause 71	Clause 71	Clause 72	Clause 91
Section 93	Clause 71	Clause 72	Clause 72	Clause 73	Clause 92
Section 94	Clause 72	Clause 73	Clause 73	Clause 74	Clause 93
Section 95	Clause 73	Clause 74	Clause 74	Clause 75	Clause 94
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Section 103	Clause 81	Clause 82	Clause 82	Clause 83	Clause 102
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Section 107	Clause 85	Clause 86	Clause 86	Clause 87	Clause 106
Section 108	Clause 86	Clause 87	Clause 87	Clause 88	Clause 107
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