

These notes relate to the Lords Amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill as brought from the House of Lords on 28 March 2012 [Bill 327]

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill, as brought from the House of Lords on 28 March 2012. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill [109], the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister except for Lords Amendments 1, 2, 3, 4, 24, 31, 32, 168, 169, 170, 171, 172, 192, 194, 196 and 240 which were opposed by the Government.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendment 1

5. Lords Amendment 1 resulted from a Government defeat. It would place a duty on the Lord Chancellor to secure (within the resources made available and in accordance with Part 1 of the Bill) that individuals have access to legal services that effectively meet their needs.

Lords Amendments 2, 189, 190, 191, 192, 193, 194, 196, 217, 218 and 219

6. Lords Amendment 2 resulted from a Government defeat. It would mean that in exercising the duty under clause 1(1), the Lord Chancellor must ensure that victims of domestic violence are able to access civil legal services in accordance with the financial eligibility criteria in clause 20 (financial resources).

7. Lords Amendments 189, 190, 191, 192, 193, 217, 218 and 219, of which Lords Amendment 192 resulted from a Government defeat, relate to the definition of abuse under Schedule 1. The Government amendments would place in paragraphs 10 (victims of domestic violence and family matters) and 25 (immigration: victims of domestic violence and indefinite leave to remain) of Part 1 of Schedule 1, in place of the definition of “abuse”, a definition of domestic violence which uses the wording of the definition of domestic violence first promulgated by the Association of Chief Police Officers (ACPO). Lords Amendment 192 would insert in paragraph 10 a definition of “abuse” which is similar to the new definition of domestic violence but additionally refers to “any incident ... of abuse” as falling within the definition, as well as to “acts of neglect, maltreatment, exploitation or acts of omission” and makes different provision as to the relationship of the people concerned.

8. Lords Amendments 194 and 196 resulted from Government defeats. Lords Amendment 194 would place on the face of the Bill a list of the forms of evidence that would be accepted as demonstrating domestic violence against an individual for the purpose of that individual’s qualifying for legal aid in private family law proceedings, rather than leaving this matter to be covered in regulations. Lords Amendment 196 would similarly insert a provision on the face of the Bill, rather than leaving the matter to regulations, to the effect that no time limit would apply to any of these forms of evidence, or to any forms of evidence which may be prescribed in regulations for the purposes of an individual’s qualifying for legal aid pursuant to paragraph 11 (protection of children and family matters) of Part 1 of Schedule 1.

Lords Amendments 3, 4 and 5

9. Lords Amendments 3 and 4 resulted from a Government defeat. Lords Amendment 3 would make provision about the terms on which the Director of Legal Aid Casework (designated by the Lord Chancellor under clause 4(1) of the Bill) holds that post. It would provide that the Lord Chancellor must ensure that those terms ensure the Director’s independence from Ministers of the Crown in relation to the carrying out of the Director’s functions under Part 1 of the Bill, subject to any directions or guidance given by the Lord Chancellor to the Director under clause 4(3). Lords Amendment 4 would define Ministers of the Crown.

10. Lords Amendment 5 would require the Director to produce an annual report for the preceding financial year stating how the Director has carried out the functions

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of the office in that period. The Director would be required to send a copy of the annual report to the Lord Chancellor, who would be required to lay a copy of the report before Parliament and arrange for it to be published.

Lords Amendments 6, 173, 174, 183, 195 and 244

11. Lords Amendment 6 would provide the Lord Chancellor with a power at clause 8 to add new civil legal services to Part 1 of Schedule 1 and to vary services described in that Part, in addition to the power to omit services from that Part. Lords Amendments 173, 174, 183, 195 and 244 would make consequential amendments to Schedule 1, omitting certain powers to prescribe additional services.

Lords Amendments 7 and 8

12. Lords Amendments 7 and 8 would change the terminology in clause 10(4) from “description of service” to “form of service”.

Lords Amendments 9, 10 and 12

13. Clause 12 concerns advice and assistance for individuals in custody. Lords Amendment 9 would remove subsection (3) of clause 12. That subsection permits the Lord Chancellor to make regulations requiring the Director to make a determination about advice and assistance under clause 12 in accordance with regulations made under clause 20 about financial resources and in accordance with other criteria. Lords Amendment 12 would, as a consequence, remove the reference to clause 12 from clause 20(8)(b).

14. Lords Amendment 10 would make it clear that initial assistance under clause 12 includes advocacy.

Lords Amendments 11, 13, 14, 17, 18, 19, 20, 21, 22, 251, 252 and 253

15. Lords Amendments 11, 13, 14, 17, 18, 19, 20, 21, 22, 251, 252 and 253 would ensure consistency in language across Part 1. Lords Amendment 11 would add a cross-reference in sub-section (4) of clause 20 to sub-section (3) and would ensure consistency with the language of related provisions at clause 22(6) and (7). The other Lords Amendments would all replace references to legal aid services being provided “for” an individual to the services being provided “to” an individual, in line with the language of Part 1 of the Bill.

Lords Amendments 15 and 16

16. Lords Amendments 15 and 16 would clarify that the broad power under clause 24(4) to make provision by regulations about the statutory charge created by clause 24(1) includes the power to make provision modifying the charge for the purposes of its application in prescribed cases or circumstances. This would make clear that

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the power in clause 24(4) may be used to make provision such as that which currently appears at regulation 49 of the current Community Legal Service (Financial) Regulations 2000. That regulation ensures that where a legal aid certificate ceases and the legally aided person, or their personal representative, trustee in bankruptcy or the Official Receiver, carries on the case, the statutory charge arises over any property recovered at the end of the case.

Lords Amendment 23

17. Lords Amendment 23 would clarify that regulations made under clause 25 (costs in civil proceedings) may provide that a person is to be treated as having or not having particular financial resources, including providing that an individual is to be treated as having financial resources of a person of a prescribed description. This would be consistent with the approach taken in clause 20(3) and (4) (financial resources) and clause 22(6) and (7) (payment for services), where the power to make such regulations is set out expressly within the clause. Existing regulations make provision about treating certain resources as those of the legally aided person when assessing that person's resources for the purpose of the existing rule equivalent to that set out in clause 25(1).

Lords Amendment 24

18. Lords Amendment 24 resulted from a Government defeat. Clause 26 makes provision about an individual's choice of provider of criminal and civil legal aid services. Lords Amendment 24 would place a duty on the Lord Chancellor to secure that a person eligible for legal aid advice is able to access it in a range of forms from the outset, including by securing the provision of initial face-to-face advice.

Lords Amendments 25, 26, 29, 254, 255 and 256

19. Lords Amendments 25, 26, 254, 255 and 256 would enable the Lord Chancellor to abolish the Legal Services Commission in advance of some or all of the provisions of Part 1 of the Bill being brought into force. Any regulations made in exercise of the power that would be conferred by Lords Amendment 25 would be subject to a time limit specified or described in the regulations. Lords Amendment 29 would mean that any regulations made in exercise of the power conferred by Lords Amendment 25 that amend or repeal a provision of an Act would be subject to the affirmative procedure unless they were revoking such regulations or inserting or repealing provision previously repealed or inserted by such regulations, in which case they would be subject to the negative procedure.

Lords Amendments 27, 28 and 30

20. Following a recommendation of the Delegated Powers and Regulatory Reform Committee, Lords Amendments 27 and 28 would make regulations under clause 10(1)(b) subject either to the affirmative procedure or to the urgency procedure

described in the new subsection (9) of clause 40 that would be inserted by Lords Amendment 30. The urgency procedure would apply where the Lord Chancellor has made a statement, in respect of regulations under clause 10(1)(b), that the Lord Chancellor considers that it is desirable for the regulations to come into force without delay for the reasons given in the statement. In that case, the regulations could come into force once the regulations and the urgency statement have been laid before Parliament, but they would cease to have effect if not approved by a resolution of each House of Parliament within a period of 120 days beginning on the day on which the regulations are made.

21. Lords Amendment 28 would also make any regulations made under clause 12(9) (power for the Lord Chancellor to make regulations providing that prescribed advice or assistance is not initial advice or assistance for the purposes of clause 12) subject to the affirmative procedure.

Lords Amendments 31 and 32

22. Lords Amendments 31 and 32 resulted from Government defeats.

23. Lords Amendments 31 and 32 would respectively exempt proceedings which include a claim for damages for respiratory diseases and illnesses or a claim against an employer for damages for a disease, condition or illness (industrial disease cases) from the effects of clauses 43, 45 and 46. This would mean that, in such cases, where a successful party's claim is funded under a conditional fee agreement, success fees, after the event (ATE) insurance premiums and the costs incurred by certain bodies of insuring themselves against the risk of paying costs on behalf of their members to another party in the event of losing a claim would remain recoverable from the losing party. The current situation, whereby success fees and ATE insurance premiums are recoverable from the losing defendant, would continue for these cases. Membership organisations would also be able to recover any self-insurance costs incurred in these cases.

Lords Amendment 33

24. Lords Amendment 33 would amend the savings provisions in clause 43 to ensure that the changes to the recoverability of success fees apply consistently to all conditional fee agreements, including collective CFAs. The effect of this Lords Amendment would be that a success fee payable by a person under a CFA entered into before the Bill's commencement day, or a success fee payable under a collective CFA where advocacy or litigation services were provided to a person in respect of a particular matter before the Bill's commencement day, would still be recoverable from the losing party.

Lords Amendments 34, 35 and 36

25. Lords Amendments 34, 35 and 36 would amend the savings provisions in

clause 46 to ensure that the changes to the recoverability of the costs incurred by certain bodies of insuring themselves against the risk of paying costs to another party in the event of losing a claim apply consistently to all conditional fee agreements, including collective CFAs. The effect of these Lords Amendments would be that such costs would still be recoverable from a losing party where a body has given a specific undertaking to one of its members to meet the costs of other parties to particular proceedings before the Bill's commencement day.

Lords Amendments 37 and 38

26. Lords Amendment 37 would amend the definition of "prescribed legal business" in clause 54(4). This would ensure that the prohibition on the payment of referral fees in personal injury cases cannot be avoided by presenting the referral fee as a payment for the referral of a connected claim (for example, in a road traffic accident, a credit hire claim or a claim for damage to other property), irrespective of when the referral of information relating to that connected claim occurs.

27. Lords Amendment 38 would amend the definition of "payment" in clause 54(8). The effect of this Lords Amendment would be to clarify that the payment of a referral fee to an unregulated third party would still be subject to the prohibition on the payment of referral fees.

Lords Amendment 39

28. Lords Amendment 39 would insert a new clause that would enable the Supreme Court to make costs orders in civil proceedings under section 194 of the Legal Services Act 2007. Section 194 currently allows the "civil courts" (the civil division of the Court of Appeal, the High Court and county courts) to make an order for costs in those cases where a successful party is represented pro bono, with the monies recovered going to a prescribed charity, the Access to Justice Foundation. The Supreme Court supports this proposal to extend its powers so that it can make such orders as well.

Lords Amendment 40

29. Lords Amendment 40 would provide that Criminal Procedure Rules may prescribe cases in which either the duty to state the court's reasons for deciding on the sentence, or the duty to explain the matters mentioned in section 174(3) as inserted by clause 61, does not apply. It would also provide that Criminal Procedure Rules may make provision about how an explanation of the matters mentioned in section 174(3) as inserted by clause 61 is to be given.

Lords Amendment 41

30. Lords Amendment 41 inserts into the Bill a new clause which would amend section 146 of the Criminal Justice Act 2003. Section 146 provides that it is a factor

increasing the seriousness of an offence, which affects the severity of the sentence, if the offender demonstrates, or was motivated by, hostility based on the victim's sexual orientation or disability. The amendment would add transgender identity (or presumed transgender identity) to the personal characteristics which would attract the aggravating factor. The umbrella term "transgender" is not defined but subsection (6) of the new clause (which inserts new subsection (6) into section 146) would make it clear that "being transgender" includes, but is not limited to, being transsexual.

31. The new clause inserted by the amendment would also amend Schedule 21 to the Criminal Justice Act 2003, which sets out the starting points which a court should adopt when determining a minimum term for a mandatory life sentence imposed for murder.

Lords Amendments 42, 43, 44 and 45

32. Lords Amendments 42, 43, 44 and 45 would amend clause 68 (which creates a new "foreign travel prohibition requirement" which may be imposed as a requirement of a community order or suspended sentence order). The amendments would have the effect that the requirement could be used to prohibit the offender from travelling not just to countries but to territories.

Lords Amendments 46 and 47

33. Lords Amendments 46 and 47 would remove references to the drug rehabilitation requirement and the alcohol treatment requirement from the power in section 223(3) of the Criminal Justice Act 2003 to amend specified periods of time for which certain requirements of a community order or suspended sentence order may be imposed. This is as a consequence of clauses 70(1) and 71 which remove the minimum periods of time for drug rehabilitation requirements and alcohol treatment requirements respectively.

Lords Amendment 48

34. Lords Amendment 48 would insert a new clause into the Bill which would insert new section 212A into the Criminal Justice Act 2003. This would have the effect of creating a new alcohol abstinence and monitoring requirement which may be imposed as a requirement of a community order or suspended sentence order.

35. Under new section 212A(1)(a) a court would have the power to order an offender either to abstain from consuming alcohol for a specified period or not to consume alcohol so that they had a level of alcohol higher than a level specified by the order in their body. An offender would have to submit to monitoring for the purposes of ascertaining whether they were complying with the requirement under new section 212A(1)(a).

36. New section 212A(2) would limit the maximum period of the new requirement

to 120 days. (Subsection (7) of the new clause would, however, amend section 223(3) of the Criminal Justice Act 2003 with the effect that the Secretary of State would have a power to amend the maximum period. This power would be exercisable subject to the affirmative resolution procedure, and is common to a number of other requirements.) New section 212A(3) would give the Secretary of State a power to prescribe a minimum period for the requirement.

37. New section 212A(4) would give the Secretary of State a power to prescribe the level of alcohol an offender must not exceed under a requirement set out under new section 212A(1)(a)(ii). Such a requirement would not be able to be imposed unless an order had been made to prescribe alcohol levels. An order which prescribes alcohol levels may do so by reference to the proportion of alcohol in the offender's breath, blood, urine or sweat, or by some other means.

38. New section 212A(6) would give the Secretary of State a power to prescribe arrangements for monitoring of compliance with the requirement. Such an order may prescribe arrangements for monitoring by electronic or other means.

39. New section 212A(8) to (12) would make provision about the conditions for imposing the new requirement. There would be four conditions.

40. The first is that consumption of alcohol must be an element of the offence before the court, or the court must be satisfied that consumption of alcohol was a contributing factor to the commission of the offence.

41. The second is that the court must be satisfied that the offender is not dependent on alcohol.

42. The third is that the court must not include an alcohol treatment requirement (under section 212 of the Criminal Justice Act 2003) in the order.

43. The fourth is that the court must have been notified by the Secretary of State that arrangements for monitoring have been made in the local justice area.

44. Subsections (2) to (11) of the new clause would make further amendments to the Criminal Justice Act 2003 and the Armed Forces Act 2006 as a consequence of the creation of the new requirement. Subsection (6) would amend section 215 of the Criminal Justice Act 2003 to prevent the court from imposing an electronic monitoring requirement in respect of the new requirement. This is because electronic monitoring provisions may be included in the new requirement itself (see new section 212A(7)(a)).

Lords Amendment 49

45. Lords Amendment 49 would insert a new clause into the Bill which would require the provisions creating the new alcohol abstinence and monitoring

requirement to be commenced initially for the purposes of a pilot. Subsection (1) of the new clause would allow the Secretary of State (after having made a piloting order or orders) to make a general commencement order. Under subsection (5)(a) an order made by the Secretary of State could amend the alcohol abstinence and monitoring requirement provisions under the new clause to be inserted by Lords Amendment 48 to enable a general commencement to occur with these amendments, and subsection (5)(b) would allow the Secretary of State to amend other provisions of the Bill in consequence of these changes. Subsection (6)(a) would make it clear that subsection (5)(a) includes a power to confer order or rule making powers on the Secretary of State.

46. Subsection (7) contains a power exercisable by the Secretary of State, after having made a piloting order or orders, to make an order to repeal the new clause that would be inserted by Lords Amendment 48, to amend the Criminal Justice Act 2003 to reverse the effect of that clause on that Act or to make other consequential amendments or repeals.

47. Subsection (9) would provide for an order under the new clause to be made by statutory instrument and subsection (10) would provide that a general commencement order or an order to amend or to repeal the new clause to be inserted by Lords Amendment 48 may not be made unless it is laid before and approved by each House of Parliament.

Lords Amendment 50

48. Lords Amendment 50 would amend clause 72, and would insert a reference to the alcohol abstinence and monitoring requirement into section 182 of the Armed Forces Act 2006, which makes provision for overseas community orders. The effect would be to prevent such an order from imposing the requirement.

Lords Amendment 51

49. Lords Amendment 51 would remove clause 74(10), which would have amended the Armed Forces Act 2011. The amendment to that Act is no longer necessary because the relevant provisions in that Act will be in force before clause 74.

Lords Amendments 52, 53, 54 and 55

50. Lords Amendments 52, 53, 54, 55 would amend clause 79, which makes provision about the removal of the limit on certain fines on conviction by a magistrates' court. Clause 79(1) has the effect that a fine on summary conviction of, or not exceeding, £5,000 (however that limit is expressed) becomes a fine or maximum fine of an unlimited amount. Clause 79(2) has the effect that a power to create an offence punishable by a fine of, or not exceeding, £5,000 (however that limit is expressed) becomes a power to create an offence punishable by a fine or maximum fine of any amount. The amendments would make it clear that clause 79(1) and (2)

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affect offences and powers that are relevant offences and powers on the commencement day (rather than from time to time). Relevant offences and powers are defined in subsection (3).

Lords Amendments 56 and 57

51. Lords Amendments 56 and 57 would amend clause 79(3) and would have the effect that fines for common law offences are affected by the clause.

Lords Amendment 58, 59, 68, 69, 75 and 76

52. Lords Amendments 58 and 59 would amend clause 79(4) and would ensure that the disapplication of the effect of that clause in respect of fines imposed on a person aged under 18 is effective. Lords Amendments 68 and 69 would make equivalent provision in relation to regulations under clause 79. Lords Amendments 75 and 76 would make equivalent provision in clause 80.

Lords Amendment 60

53. Lords Amendment 60 would amend clause 79(5), with the effect that, where the Secretary of State has by regulations disapplied subsection (1) so that a fine does not increase to an unlimited amount, the Secretary of State would be able to substitute an amount specified or described in the regulations.

Lords Amendment 61

54. Lords Amendment 61 would amend clause 79(5)(c) with the effect that the Secretary of State would be able to specify a fine or maximum fine of any amount, not just a higher amount.

Lords Amendments 62, 63, 64, 65, 66 and 67

55. Lords Amendments 62, 63, 64, 65, 66 and 67 would amend clause 79(6) and (7), which make provision about offences punishable by a fine or maximum fine of an amount which is expressed as a proportion of £5,000 or more (however that amount is expressed). Clause 79(7) gives the Secretary of State a power to provide for such offences to be punishable by a fine of that proportion of a higher amount set out in regulations. The amendments would enable the Secretary of State to specify any amount, not just a higher amount, and would enable the Secretary of State to make provision in relation to powers to create offences punishable by a fine or maximum fine of a proportion of £5,000 or more.

Lords Amendments 70 and 77

56. Lords Amendment 70 would clarify the provision enabling regulations made under, or in relation to, clause 79 to include provision amending Acts and

instruments. Lords Amendment 77 would make equivalent provision in clause 80.

Lords Amendments 71 and 78

57. Lords Amendment 71 would make it clear that powers under clause 79 may be exercised from time to time. This would allow any amount specified by the Secretary of State in relation to a maximum fine in respect of which the Secretary of State has disapplied the effect of clause 79(1), to be changed from time to time. The amendment would also make it clear that other powers to modify fines are to continue to be exercisable. Lords Amendment 78 makes equivalent provision in relation to the powers under clause 80.

Lords Amendments 72 and 79

58. Lords Amendment 72 would amend clause 79(15), and would have the effect that clause 79 would apply to offences (or powers or provisions) which are contained in something other than an Act of Parliament or an Act or Measure of the National Assembly for Wales, or an instrument made under such an Act or Measure, and which are applied by, or which extend to, England and Wales by virtue of an Act of Parliament. This would include, for instance, an offence contained in an Act of the Scottish Parliament, which, by virtue of an order under section 104 of the Scotland Act 1998, extends to England and Wales. Lords Amendment 79 would ensure that the effect of Lords Amendment 72 carries through to clause 80.

Lords Amendments 73 and 74

59. Lords Amendments 73 and 74 would amend clause 80 with the effect that the Secretary of State would be able to specify a fine or maximum fine of any amount, not just a higher amount.

Lords Amendments 80 and 81

60. Lords Amendments 80 and 81 would amend clause 81 with the effect that the Secretary of State would be able to substitute for the sums for the time being specified as levels 1 to 4 on the standard scale, sums of any amount, not just a higher amount.

Lords Amendment 82

61. Lords Amendment 82 relates to the withdrawal of warrants of control, as warrants of distress will be termed when the provisions in Part 3 of the Tribunals, Courts and Enforcement Act 2007 come into force together with new terminology (until then, they would continue, by way of transitional saving, to be termed warrants of distress). The amendment would make a number of amendments to Schedule 5 of the Courts Act 2003 including the insertion of four new paragraphs.

62. Lords Amendment 82 would insert a new paragraph 37A into Schedule 5 to

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the Courts Act 2003. Paragraph 37A would allow a fines officer, in certain circumstances, to issue a replacement notice indicating an intention to take further action under paragraph 38 of the Schedule (for example to issue a warrant of distress, which may be a replacement for a warrant previously withdrawn, or to make an attachment of earnings order). Paragraph 37A would also allow for an appeal against the replacement notice to be made to the magistrates' court within 10 working days.

63. Lords Amendment 82 would insert a new paragraph 40A, into Schedule 5 to the Courts Act 2003, which would provide fines officers with the power to withdraw warrants that they have issued, in specified circumstances. A fines officer would be able to withdraw a warrant of control if there is an outstanding sum due and if the fines officer is satisfied that the warrant was issued by mistake (which in this context would include a mistake made in consequence of the non-disclosure or misrepresentation of a material fact).

64. Lords Amendment 82 would insert a new paragraph 40B into Schedule 5 to the Courts Act 2003, which would provide magistrates' courts with a power to discharge a distress warrant issued by fines officers (the court presently has power under section 142(1) of the Magistrates' Court Act 1980 to discharge its own warrant, but not to discharge one issued by a fines officer). If the fines officer has issued a distress warrant and refers the case to the magistrates' court the court would be able to discharge the warrant if there is an outstanding amount to be paid and the power conferred by section 142(1) of the 1980 Act would have been exercisable by the court if the court had issued the warrant. In other words, the court would now be able to reopen the case to rectify mistakes, if the distress warrant had been issued by a fines officer, in the same way it can if the warrant was issued by the court.

65. Lords Amendment 82 would insert a new paragraph 40C into Schedule 5 to the Courts Act 2003, which would place duties on fines officers where a warrant of control has been withdrawn or discharged. Where the warrant has been withdrawn by the fines officer or discharged by the court and the court has not discharged a collection order, then the fines officer would be required to take (or retake) one or more of the steps specified in a further steps notice, or deliver a replacement notice and take one or more steps specified in that notice, or refer the case to (or back to) the magistrates' court.

Lords Amendments 83, 85, 86, 87, 89, 107 and 109

66. Lords Amendments 83, 85 and 86 would amend clause 87 to provide for an electronic monitoring requirement to be available where a child has been remanded and has a recent history of committing imprisonable offences while subject to a custodial remand outside England and Wales. The Bill already provides for an electronic monitoring requirement to be available where (among other things) there is a recent history of committing offences while on bail or remanded to local authority accommodation or youth detention accommodation within England and Wales.

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67. The definition of “custodial remand” is set out in Lords Amendment 87, which would replace clause 87(9). That amendment would also ensure that offences committed whilst an offender was remanded to prison under the current law were taken into account under clause 87. The current law provides for all 17 year olds and some 15-16 year old males to be remanded to prison, but the Bill brings all under 18s within the new regime.

68. Lords Amendment 89 would remove clause 88(8) to (10), which contain interpretative provisions which would be superseded by Lords Amendments 86 and 87. Lords Amendments 107 and 109 are consequential on Amendment 89.

Lords Amendments 84 and 90

69. Lords Amendments 84 and 90 would expand the references to conditions in the context of electronic monitoring in clause 87(8) and clause 89(3) to refer to conditions imposed by the court under clause 86(5) following an application by the local authority. Clauses 87(8) and 89(3) already refer to conditions that could be imposed by the court under clause 86(1) at its own discretion.

Lords Amendments 88, 97 and 98

70. Lords Amendments 88, 97 and 98 would replace references to “the United Kingdom” in clauses 88(4)(a), 93(3) and 94(3) with references to “England and Wales”. The effect of these amendments would be to ensure that the court considers whether an offender’s conduct would constitute an offence of a particular kind under the law of England and Wales, rather than having to consider whether alternatively it would constitute an offence of that kind under the law of Scotland or Northern Ireland.

Lords Amendments 91, 92, 94, 95 and 96

71. Lords Amendments 91, 92, 94, 95 and 96 would amend clause 92 to make similar provision to that made by Lords Amendments 83, 85 and 86.

72. In this instance the amendments would be made in respect of the second set of conditions for a remand to youth detention accommodation. They would alter the first and second history conditions (see clauses 92(5) and (6) respectively) so that those conditions take account of a child’s recent history of absconding or offending while subject to custodial remand outside England and Wales or whilst remanded to prison under the old law. The Bill already provides for the first and second history conditions to apply where a child has a recent history of absconding or offending while remanded to local authority accommodation or youth detention accommodation within England and Wales.

73. Once more, the definition of “custodial remand” is set out in Lords

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Amendment 87, which would amend clause 87(9).

Lords Amendment 93

74. Lords Amendment 93 would re-define “custodial sentence” for the purpose of Chapter 3 of Part 3 of the Bill by adopting the definition in section 76(1) of the Powers of Criminal Courts (Sentencing) Act 2000. The definition in section 76(1) includes a sentence of imprisonment. The amendment therefore ensures that sentences applicable to adults are included. This is to ensure that the sentencing conditions in the tests for remand to youth detention accommodation as set out in clauses 92(3) and 94(3) would apply in respect of a child who will be 18 years of age by the date of conviction (if convicted) and therefore subject to an adult sentence.

Lords Amendments 99 and 102

75. Lords Amendment 99 would widen the definition of youth detention accommodation in respect of youth remand to include accommodation of a type specified by the Secretary of State pursuant to the existing order-making power in section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 to define new forms of youth detention accommodation.

76. Lords Amendment 102 would allow the Secretary of State to make arrangements for or in connection with the accommodation, in such new types of accommodation, of remanded children.

Lords Amendments 100, 103, 104, 105 and 106

77. Lords Amendment 100 would allow for the following functions of the Secretary of State, as set out in clause 95, to be exercisable concurrently with the Youth Justice Board for England and Wales (“the YJB”):

- (1) to place a child or young person remanded to youth detention accommodation by the court in a specific establishment; and
- (2) to consult the designated local authority on that placement decision.

78. The amendment would also allow the Secretary of State to provide by regulations for these functions to be exercised solely by the Secretary of State either generally or in relation to a particular type of case.

79. Lords Amendment 106 would provide for such regulations to be subject to the affirmative procedure.

80. Lords Amendment 104 would allow for the following functions of the Secretary of State, as set out in clause 96, to be exercisable concurrently with the YJB:

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(1) to make arrangements in respect of secure children's homes and any accommodation specified as youth detention accommodation by order of the Secretary of State (pursuant to powers in the Powers of Criminal Courts (Sentencing) Act 2000);

(2) to recover costs from a designated authority in respect of a child remanded to youth detention accommodation, including costs associated with transport; and

(3) to make payments to local authorities to fulfil their duties in respect of a child remanded to local authority accommodation or youth detention accommodation.

81. The amendment would also allow the Secretary of State to provide by regulations for these functions to be exercised solely by the Secretary of State either generally or in relation to a particular type of case. Lords Amendment 106 would provide for such regulations to be subject to the affirmative procedure.

82. Lords Amendments 103 and 105 would remove existing provisions relating to the Secretary of State's regulation-making powers in Chapter 3 so that they may be replaced by the provisions inserted by Lords Amendment 106. This would insert a new clause specifying that regulations made under Chapter 3 are subject to negative procedure except for those detailed in the above paragraphs (to which the affirmative procedure applies).

Lords Amendment 101

83. Lords Amendment 101 would amend the definition of "secure children's home" for the purposes of Chapter 3. It would reflect the different legislative requirements in relation to the registration and approval of secure children's homes that exist in England and Wales. In England a secure children's home must also be approved by the Secretary of State.

Lords Amendments 108, 110 and 111

84. Clause 99 provides for references within Chapter 3 to remand to either local authority accommodation (subsection (3)) or youth detention accommodation (subsection (6)) to be construed in accordance with clause 85(1) and clause 95(1) (respectively); these being the clauses that contain the power for the court to order such remand. Subsection (3) also requires "related expressions" be construed in this way. However this phrase was omitted from subsection (6) on introduction of the Bill. Lords Amendment 110 would correct this omission.

85. Lords Amendment 108 would remove existing subsection (4) of clause 99. Lords Amendment 111 would insert new clause 99(8). The effect of this would be to allow a reference to a remand to local authority accommodation or youth detention accommodation to be read subject to clauses 87(10) and 92(11).

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86. The purpose of clauses 87(10) and 92(11) is to ensure that where a child who falls to be remanded under Chapter 3 has previously been remanded under the old law (repealed and replaced by this Bill), the court may take account of this when establishing whether they have a history of offending or absconding whilst on remand. (See also Lords Amendments 87, 95 and 96.)

Lords Amendments 112 to 127, 272, 273, 276, 282 and 283

87. Lords Amendments 112 to 127 together with Lords Amendments 272, 273, 276, 282 and 283 form a package of changes which would complete the simplification and clarification of the current release and recall provisions and make the Criminal Justice Act 2003 (“the 2003 Act”) the single statutory reference for the release and recall of all determinate sentenced prisoners irrespective of the date of offence.

88. Lords Amendments 112, 113, 117 and 119 of the package would make technical amendments to clauses 100 to 102 which remove the restriction based on the date of offence so that, for sentences passed after commencement, irrespective of the date that the offence was committed, relevant periods of remand time would be credited under section 240ZA (as inserted in the 2003 Act) and periods of remand on tagged bail would be credited under section 240A.

89. Lords Amendment 272 would add consequential amendments to Schedule 13 of the Bill to ensure that references in other statutes to sections 240 and 240A are updated to reflect the new section 240ZA and the amendments made to section 240A.

90. Lords Amendments 114 to 116 and 122 to 124 would make amendments to clauses 100 and 104, and Lords Amendment 125 would insert a new clause into the Bill. These amend the provisions of Chapter 6 of Part 12 of the 2003 Act to ensure that references to sentences of detention in a Young Offender Institution apply appropriately for the purposes of release from those sentences. The amendments do not change the current application of legislation. Lords Amendment 276 would ensure that the amendments of the new clause inserted by Lords Amendment 125 apply from the date of commencement.

91. Lords Amendment 118 is a technical amendment to clause 102 which would ensure that the reference to “want of sufficient distress” in section 305(1A) is reflected throughout Chapter 6 of Part 12 of the 2003 Act. This is necessary because the new section 240ZA inserted by clause 100 includes a reference to that expression.

92. Lords Amendment 120 would amend section 243A of the 2003 Act (inserted by clause 103) by removing the restriction based on the date of offence so that release provisions in the 2003 Act for sentences of under 12 months would apply to all sentences of that kind, irrespective of the date that the offence was committed. Together with Lords Amendment 127, this amendment ensures that, as from the commencement of these provisions, the 2003 Act will govern the release and recall of

all determinate sentence prisoners.

93. Lords Amendment 121 would amend section 243A of the 2003 Act to make clear that the existing supervision and licence arrangements in respect of young offenders and others released from sentences of under 12 month sentences will continue to apply.

94. Lords Amendment 273 would make consequential amendments to Schedule 14 of the Bill to ensure that other statutes reflect the release arrangements for sentences of less than 12 months which are provided for by section 243A of the 2003 Act.

95. As part of this package of amendments, the Government also moved that clause 112 should not stand part of the Bill (see Lords Amendment 126). Clause 112 contained a power for the Secretary of State to make an order, by secondary legislation, to bring the release provisions of the Criminal Justice Acts of 1967 and 1991, including the transitional and savings provisions of those Acts, into the 2003 Act. However, this power to make provision would be replaced by the substantive provision itself, in the new clause which would be inserted by Lords Amendment 127 and the new Schedules which would be inserted by Lords Amendments 282 and 283. This would mean there was no longer the need for a separate power to undertake this consolidation by order at a later date. Clause 112 could, therefore, be removed from the Bill.

96. Also as part of this consolidation of existing provisions, Lords Amendment 127 would insert a new clause into the Bill to provide that release and recall provisions in the 2003 Act will apply to anyone sentenced for an offence committed prior to 4 April 2005, whenever that sentence is or was imposed. The new provision is subject to the provisions in the new Schedules 20A and 20B, which set out modifications of the 2003 Act as it applies to those prisoners. Those modifications include a re-statement of existing transitional provisions. The new clause also effectively repeals Part 2 of the Criminal Justice Act 1991 (“the 1991 Act”), which currently applies to those prisoners.

97. Lords Amendment 282 would insert a new Schedule in the Bill, which in turn inserts section 267A and Schedule 20A into the 2003 Act. Section 267A would give effect to new Schedule 20A. Schedule 20A would make transitional provisions for sentences where the offence was committed before 4 April 2005 so that provisions of the 2003 Act work properly for prisoners who have already begun to serve sentences under earlier legislation (mainly Part 2 of the 1991 Act). The Schedule ensures that:

- Police custody time can continue to count for those to whom it has already been applied before commencement.
- Those released under the 1991 Act are treated as though they had been released under the 2003 Act, and can be recalled under the 2003 Act provisions, without affecting the length of the 1991 Act licence or the validity

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of the 1991 Act licence conditions.

- Where a 1991 Act recall occurs before commencement, it will be treated as though it was a recall under the 2003 Act, subject to the savings of Schedule 20B.
- If, before commencement, a court suspends a licence in accordance with section 38(2) of the 1991 Act, that suspension continues to apply even though that section is repealed.
- Where a person has been released on licence from a period of imprisonment under section 116 of the Powers of Criminal Courts (Sentencing) Act 2000 that was less than 12 months long, that licence will be deemed to be a licence issued under the 2003 Act; but any breach of it will continue to be dealt with under section 40A of the 1991 Act, even though that section is repealed.
- Future release on Home Detention Curfew from 1991 Act sentences will be under the 2003 Act provisions.
- Added Days awarded on adjudication under the 1991 Act will be treated as though they have been awarded under the 2003 Act.
- Those prisoners removed under the early removal provisions of the 1991 Act (section 46A) will be treated as though they have been removed under the equivalent section of the 2003 Act (section 260).
- Any time spent in custody pending extradition awarded as time to count against a sentence under the 1991 Act provisions will be treated as having been awarded under the 2003 Act provisions.
- The 2003 Act provisions for crediting time spent on tagged bail apply to sentences where the offence was committed prior to 4 April 2005.
- Existing provisions that have been restated in Schedule 20B, or included in the modifications of the 2003 Act, are repealed.

98. Lords Amendment 283 would insert a new Schedule into the Bill, which would insert into the 2003 Act a new Schedule 20B which preserves arrangements made in respect of release dates and licence lengths for certain prisoners who:

- at the time of commencement, are subject to sentences that were imposed before commencement for offences committed prior to 4 April 2005;
- are serving sentences of less than 12 months imposed before commencement;
- are subject to an extended sentence imposed under Section 85 Powers of Criminal Courts (Sentencing) Act 2000 (and subject to the 1991 Act release provisions); or
- are subject to 2003 Act extended sentences imposed before 14 July 2008.

99. The arrangements in question are transitional arrangements which have been made for existing prisoners as changes in the law relating to release and recall have been made. The modifications made to the 2003 Act by the insertion of Schedule 20B

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and other provisions would ensure that, after commencement, the 2003 Act will contain the provisions for the release and recall of all determinate sentenced prisoners.

100. A more detailed explanation of the provisions of new Schedules 20A and 20B to the 2003 Act is in the Annex to these Notes.

Lords Amendment 128

101. Lords Amendment 128 is a drafting amendment which changes the order of two clauses in the Bill.

Lords Amendments 129 and 130

102. Lords Amendments 129 and 130 would amend clause 114. They would replace the “seriousness condition” for the purposes of determining whether the court must, under new section 224A of the Criminal Justice Act 2003, impose a life sentence on a person convicted of a second serious offence.

103. The seriousness condition would be replaced with a “sentence condition” under which the second offence must justify a sentence of 10 years’ imprisonment, taking into account–

- the requirement (in section 152(2) of the Criminal Justice Act 2003) that the court impose a prison sentence only where it is satisfied that a community sentence and fine alone would be insufficient, and
- the requirement (in section 153(2) of that Act) that the sentence should be for the shortest term required by the seriousness of the offence.

104. It follows that the court would need to consider what ordinary determinate sentence it would have given, taking into account any guilty plea and aggravating or mitigating factors, but not including time served on remand.

Lords Amendment 131

105. Lords Amendment 131 would also amend clause 114. It would amend the list of extended sentences imposed as a result of the Armed Forces Act 2006 which count as first strikes for the purposes of the new mandatory life sentence. In particular, a sentence which has been imposed as a result of sections 219A or 221A of that Act would count, as well as sentences imposed under sections 220 or 222.

Lords Amendments 132 and 133

106. Lords Amendment 132 would amend new section 226A of the Criminal Justice Act 2003 (which is to be inserted by clause 115). It would allow the court to impose the new extended sentence on an adult offender who has committed an abolished offence which is equivalent to an offence listed in Schedule 15 to the

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Criminal Justice Act 2003. Lords Amendment 133 would make equivalent provision for offenders aged under 18 by amending the new section 226B of the Criminal Justice Act 2003 that is also to be inserted by clause 115.

Lords Amendments 134 and 137

107. Lords Amendment 137 would insert a new clause introducing Schedule 18, which would be expanded to include provision that is consequential on clauses 113, 115 and 116. Lords Amendment 134 would remove the subsection in clause 115 that currently gives effect to Schedule 18 and would not be needed if the new clause is inserted.

Lords Amendments 135, 136, 284 and 286

108. Lords Amendments 135 and 136 would amend clause 116, which inserts new section 246A into the Criminal Justice Act 2003 (release on licence of prisoners serving extended determinate sentences). The amendments would reflect the fact that section 246A could apply to a prisoner who has been sentenced for an offence listed in any of Parts 1 to 3 of Schedule 15B to the Criminal Justice Act 2003.

109. Lords Amendments 284 and 286 would amend the titles of Parts 2 and 3 of new Schedule 15B to the Criminal Justice Act 2003, to show that the list of offences in those Parts also apply in relation to new section 246A.

Lords Amendments 138, 143 and 318

110. Lords Amendment 138 would introduce the new Schedule that would be inserted by Lords Amendment 318. The Schedule would apply the provision made in respect of civilian offenders in Chapter 5 of Part 3 of the Bill for those who are subject to service law, by amending the Armed Forces Act 2006 (and making provision that is consequential upon that). Lords Amendment 143 would amend clause 117, which includes a power to alter the release test for prisoners serving an extended sentence created by clause 115. The amendment would extend that power to prisoners serving such sentences as a result of provision made by Lords Amendment 318.

Lords Amendments 139 to 142

111. Lords Amendments 139 to 142 would amend clause 117 to extend its remit so that the power to change the Parole Board test for release on licence would apply for all determinate sentences subject to Parole Board release.

Lords Amendments 144, 145, 146, 147 and 148

112. Clause 120 enables the relevant Minister to authorise the transit of a prisoner through a part of Great Britain, where a prisoner is being transferred from one

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State to another for the purpose of enforcing a prison sentence in accordance with a relevant international prisoner transfer arrangement. Lords Amendments 144 to 148 would bring prisoner transits to and from the Channel Islands and Isle of Man within the scope of the clause.

Lords Amendments 149, 150 and 151

113. Lords Amendment 149 would have the effect of ensuring that where someone has received a reprimand or warning under section 65 of the Crime and Disorder Act 1998 this will subsequently be considered a youth caution for the purposes of any enactment or instrument whenever it is passed or made.

114. Lords Amendment 150 would have a similar effect to Lords Amendment 149 for a rehabilitation programme provided under section 66 of the Crime and Disorder Act 1998.

115. Lords Amendment 151 corrects a drafting error whereby section 66ZB was incorrectly identified as section 66ZA.

Lords Amendments 152, 153, 154 and 320

116. Lords Amendments 152 to 154 form a package of changes to the Rehabilitation of Offenders Act 1974 (“the ROA”) to amend the scope of the ROA and its rehabilitation periods.

117. Lords Amendment 152 would extend the scope of the ROA so that custodial sentences of up to and including 4 years may become spent.

118. Lords Amendment 152 would also insert new subsection (2) into section 5 of the Rehabilitation of Offenders Act to amend the times at which different sentences may become spent. The table in section 5(2) would provide -

- a. Custodial sentences of over 30 months and up to and including 4 years would become spent 7 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 would become spent 3 and a half years after the end of the sentence (including any licence period).
- b. Custodial sentences of over 6 months and up to and including 30 months would be capable of being spent 4 years after the end of the sentence (including any licence period). In respect of those who are under 18 at the date of conviction, those sentences would become spent 2 years after the end of the sentence (including any licence period).
- c. Custodial sentences of up to and including 6 months would be capable of being spent 2 years after the end of the sentence (including any

licence period). In respect of those under 18 at the date of conviction, those sentences would become spent 18 months after the end of the sentence

- d. Removal from Her Majesty's service would become spent 12 months after the date of conviction. For those under 18 at the date of conviction the period would be 6 months.
- e. Sentences of service detention would become spent 12 months after the day on which the sentence is completed. For those under 18 at the date of conviction the period would be 6 months.
- f. Fines would become spent 1 year after the date of conviction. In respect of those under 18 at the date of conviction, they would become spent 6 months after the date of conviction.
- g. Compensation orders would become spent when they were paid in full.
- h. Community orders would become spent 1 year after the date provided as the end date of the order. In respect of those under 18 at the date of conviction, the equivalent order would become spent 6 months after the end of the sentence.
- i. Relevant orders would become spent on the day provided for in the order as the end date of the order.

119. Lords Amendment 152 would also insert new subsections (3) to (7) into section 5 of the ROA. Subsection (3) would provide for a rehabilitation period of 24 months from the date of conviction in relation to any community or youth rehabilitation order which otherwise has no specified end date. Subsection (4) would allow an absolute discharge, or other sentence not otherwise dealt with in the provisions, to be spent immediately. Subsection (6) would provide an Order-making power for the Secretary of State to amend the rehabilitation periods set out in section 5(2) and (3), subject to affirmative procedure. Subsection (7) would retain the position in relation to consecutive and concurrent terms of imprisonment so that they are treated as a single term for the purpose of calculating rehabilitation periods. Subsection (8) would define various terms, relating to the sentences that may be subject to rehabilitation according to section 5. These include references to the armed forces and youth equivalents.

120. Lords Amendment 152 would also amend section 6 of the ROA which makes provision for when an offender commits a further offence. All rehabilitation periods applicable would remain for the duration of the longest rehabilitation period.

121. Lords Amendment 152 would also insert a new section 8A into the ROA to deal with spent alternatives to prosecution (a Scottish disposal). The amendment mirrors the law in Scotland so that alternatives to prosecution would be treated in the

same way by the law of England and Wales as they are in Scotland.

122. Paragraph 1 of Schedule 2 to ROA would be amended in relation to cautions and conditional cautions so that they would become spent immediately on being administered (cautions) and up to a maximum of 3 months after being administered (conditional cautions).

123. Lords Amendment 153 relates to immigration and nationality proceedings. It would specifically exclude immigration or nationality decision making, including initial decisions and any subsequent proceedings, from the operation of the ROA.

124. Lords Amendment 154 contains the transitional and consequential provisions relating to these amendments. These would 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 Act before commencement of these provisions would continue to be treated as such. However, the exemption for immigration and nationality decisions would not apply to any proceedings begun but not completed, or applications made but not finally determined, before the commencement of the provision.

125. Lords Amendment 320 would insert a new Schedule into the Bill. Part 1 of the Schedule would make minor and technical amendments to the ROA to ensure that the amendments apply to England and Wales only. It would also amend the order making power in section 10 of the ROA to give the Secretary of State the power to make incidental, consequential, supplementary, transitional, transitory or savings provisions when making an order under that section.

126. Part 2 of the Schedule would make repeals consequential to the amendments.

Lords Amendment 155

127. Lords Amendment 155 would amend section 17 of the Police and Criminal Evidence Act 1984 to give uniformed police officers the power to enter and search premises for the purpose of arresting a person for the offence of squatting in a residential building. It would also make a consequential amendment to Schedule 10 to the Criminal Justice and Public Order Act 1994 by removing a reference to a previous amendment to section 17(3) of the Police and Criminal Evidence Act 1984.

Lords Amendments 156, 157 and 158

128. Lords Amendment 156 would raise the level of fines available for certain offences under the Scrap Metal Dealers Act 1964 by two levels on the standard scale.

129. Lords Amendment 157 would make provision for a new criminal offence of buying scrap metal for cash. This offence would prohibit scrap metal dealers paying for scrap metal other than by cheque or by electronic transfer. For the purpose of the

offence paying includes payments in kind using goods or services. In order to ensure there is sufficient evidence to prosecute the offence the existing record keeping provisions under section 2 of the Scrap Metal Dealers Act 1964, breach of which is a criminal offence, have been amended. These amendments include a requirement for the dealer to record the method of payment and keep a copy of any cheque or any receipt identifying the transfer. The offence would apply to all payments for scrap metal by scrap metal dealers, with the exception of payments made by itinerant collectors who are registered as scrap metal dealers and who are subject to an order under section 3(1) of the Scrap Metal Dealers Act 1964 made by their local authority in consultation with the local chief officer of the police. Lords Amendment 157 would also amend the rights of entry and inspection in section 6 of the Scrap Metal Dealers Act 1964 so as to provide a constable with a right of entry, exercisable by warrant, to a scrap metal store where scrap metal paid for contrary to the prohibition on cash payments has been received or kept, or to a place to which admission is reasonably required to ascertain whether the prohibition on cash payments is being complied with.

130. Lords Amendment 158 would place a duty on the Secretary of State to review the offence of buying scrap metal for cash within five years of the offence coming into force. The purpose of this review is to assess whether the offence has achieved the objectives that it was set out to achieve and whether it is appropriate to retain the offence.

Lords Amendment 159

131. Lords Amendment 159 would ensure that the amendments to section 76 of the Criminal Justice and Immigration Act 2008 made by clause 131 will apply whether the alleged offence took place before, or on or after, the date on which the amendments come into force. The amendments will not apply, however, in relation to a trial on indictment or any proceedings in respect of that trial where the arraignment took place before the date on which the amendments come into force, nor will they apply to a summary trial or any proceedings in respect of that trial which began before the commencement date. Similar transitional provision will apply where the alleged offence is a service offence.

Lords Amendment 160

132. Lords Amendment 160 would amend clause 132 to ensure that the power to make regulations which make consequential and supplementary provision would include making regulations which amend, repeal, revoke or otherwise modify this Bill.

Lords Amendments 161, 162, 163, 274 and 281

133. Lords Amendments 161 and 162 would amend clause 134 (commencement) so that provisions in clause 110 which provide a power to the Secretary of State to

remove from the UK certain foreign national prisoners serving indeterminate sentences at the expiry of their tariff and the provisions relating to the piloting of alcohol abstinence and monitoring (see Lords Amendment 49) will come into force on Royal Assent. Lords Amendment 163 provides that the new provisions about alcohol abstinence and monitoring are to be brought into force in accordance with the arrangements for piloting (see Lords Amendments 48 and 49), rather than by order under clause 134. Lords Amendments 274 and 281 would make changes to Schedule 15 consequential on clause 110 coming into force on Royal Assent.

Lords Amendments 164, 165, 166 and 167

134. Lords Amendments 164, 165, 166 and 167 would amend clauses 135 and 136 (which make provision about the territorial extent of the Bill) to reflect changes made to the Bill during its progress through Parliament and to clarify the extent of certain provisions.

Lords Amendments 168, 169 and 240

135. Lords Amendments 168, 169 and 240 resulted from Government defeats. Lords Amendments 168 and 169 would insert new paragraphs into Part 1 of Schedule 1 to bring within the scope of civil legal aid, civil legal services in respect of a social welfare decision relating to a benefit, allowance, payment, credit or pension under certain social security legislation. Sub-paragraph (2) of the new paragraph inserted by Lords Amendment 168 would provide that in this context civil legal services include independent advice and assistance for a review, or appeal to a first-tier tribunal, of such a decision. Sub-paragraph (2) of the new paragraph inserted by Lords Amendment 169 would specify that the civil legal services in this context include (a) independent advice or assistance for an appeal of such a decision to a second-tier tribunal and (b) independent advice, assistance and representation for an appeal to a higher court of such a decision. Lords Amendment 240 would remove the general exclusion in paragraph 15 of Part 2 of Schedule 1 to the Bill for civil legal services provided in relation to a benefit, allowance, payment, credit or pension under certain social security legislation.

Lords Amendments 170, 172, 177 to 181 and 206 to 216

136. Lords Amendments 170 and 172 resulted from Government defeats. Lords Amendment 170 would bring into the scope of civil legal aid services for obtaining one or more expert reports in clinical negligence cases. This Lords Amendment would mean that funding was available to fund all medical expert reports from the beginning of the case to the conclusion. Lords Amendment 172 would bring into the scope of civil legal aid services in respect of clinical negligence cases involving children.

137. Lords Amendment 216 would bring within the scope of civil legal aid services provided in relation to claims where clinical negligence has caused a neurological injury as a result of which a child is severely disabled. The time period in which the

negligence must have occurred is from the point of the mother's pregnancy until the end of a period of eight weeks starting with the child's birth. Where the child is born before the beginning of the 37th week of pregnancy, the eight week period will be taken to start from the first day of what would have been the 37th week of the mother's pregnancy. Lords Amendments 177 to 181 and 206 to 215 would make clear that all clinical negligence claims are excluded under paragraphs 3, 19 and 20 of Part 1 of Schedule 1.

Lords Amendment 171

138. Lords Amendment 171 resulted from a Government defeat. It would bring into the scope of civil legal aid services for a number of areas of law where a child is a party to proceedings or is represented by a legal guardian.

Lords Amendments 175 and 176

139. Lords Amendments 175 and 176 would enable the provision of advice and assistance in relation to Learning Difficulty Assessments made under section 139A and section 140 of the Learning and Skills Act 2000.

Lords Amendments 182 and 184

140. Lords Amendments 182 and 184 would bring within the scope of civil legal aid legal services provided in relation to section 2 of the Carers and Disabled Children Act 2000, under which community care services for carers may be provided, including the provision of respite care, and Part 1 of the Housing Grants, Construction and Regeneration Act 1996, under which local authority grants may be provided to disabled persons to help them to adapt their homes to help them to live independently.

Lords Amendments 185 to 188

141. Lords Amendments 185 to 188 relate to civil legal services for action to combat the unlawful removal of children, both where the child is removed from the United Kingdom and where the removal is to a place in the United Kingdom. The principal amendment is Lords Amendment 187, which would amend Part 1 of Schedule 1 to bring within the scope of civil legal aid services provided to an individual in relation to various orders and applications where the individual is seeking to secure the return of a related child who has been unlawfully removed to a place within the United Kingdom. The orders and applications covered are a specific issue or prohibited steps order under section 8 of the Children Act 1989, an application under section 27 of the Family Law Act 1986 ("the 1986 Act") for registration of an order relating to the child, an order under section 33 of the 1986 Act for disclosure of the child's whereabouts (a "seek and find" order) and an order under section 34 of the 1986 Act for the child's return (a "recovery order"). Lords Amendment 188 would make these services subject to the exclusions in Parts 2 and 3

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of Schedule 1.

142. Lords Amendments 185 and 186 relate to civil legal services provided to an individual in connection with the unlawful removal of a related child from the United Kingdom. Lords Amendment 185 would extend the purposes for which civil legal services may be made available to include securing the child's return. Lords Amendment 186 would bring within the scope of civil legal aid services provided in relation to an order under section 34 of the 1986 Act.

Lords Amendment 197

143. Lords Amendment 197 would have the effect that civil legal services would be capable of being provided for a judicial review concerning personal injury or death, damage to property and compensation under the Criminal Injuries Compensation Scheme, and would allow for civil legal services to be provided in relation to a claim for damages made in the context of a judicial review.

Lords Amendments 198 to 205

144. Lords Amendments 198 to 205 would make changes to the provisions at paragraph 17 of Part 1 of Schedule 1 about civil legal services that may be made available in relation to judicial review.

145. Lords Amendment 198 would ensure that the exclusion at sub-paragraph (5) of paragraph 17 does not apply if the prior judicial review or appeal was determined in the applicant's or appellant's favour or by a decision by the UKBA to withdraw its decision. Lords Amendment 204 would add a definition of "an issue relating to immigration", consequential on Lords Amendment 196.

146. Lords Amendment 203 would provide that the exclusions at sub-paragraphs (5) and (6) of paragraph 17 of Part 1 of Schedule 1 to the Bill do not prevent civil legal services from being provided in relation to judicial review of removal directions in prescribed circumstances. These circumstances would be prescribed in regulations and must relate to the period of notice given of removal and/or the reasons for proposing that period.

147. Lords Amendments 199 to 202 and 205 would make further minor and technical changes to the drafting of paragraph 17 of Part 1 of Schedule 1. Lords Amendments 199, 200 and 205 would change references in paragraph 17 to removal directions to the plural. Lords Amendments 201 and 202 would clarify the extent of the exclusion in sub-paragraph (6) of paragraph 17.

Lords Amendments 220 and 243

148. Lords Amendments 220 and 243 would provide that civil legal services, including advocacy in the First-tier Tribunal, Upper Tribunal and higher courts, are

capable of being provided for an individual in relation to a residence card application where, amongst other things, the individual satisfies the condition in regulation 10(5)(d)(iv) of the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) on the ground that the individual or a family member of the individual was the victim of domestic violence while the marriage or civil partnership of the qualified person was subsisting.

Lords Amendments 221 and 243

149. Lords Amendments 221 and 243 would bring within the scope of civil legal aid services provided to an individual who is a victim of human trafficking in relation to an application by that individual for leave to enter or remain in the United Kingdom. It would also bring within the scope of civil legal aid services provided to such an individual (or their personal representative) in relation to a claim under employment law arising in connection with the individual's exploitation, and civil legal services provided to such an individual (or their personal representative) in relation to a claim for damages arising in connection with the trafficking or exploitation of the individual.

Lords Amendments 222 to 224

150. Lords Amendments 222 to 224 are technical amendments to paragraph 28(10) of Part 1 of Schedule 1. They would clarify, in accordance with the original intention, that paragraph 28(10) only excludes persons from receiving civil legal services under paragraph 28 (loss of home) where they both (a) unarguably are occupying their place of residence as a trespasser; and (b) unarguably began their occupation as such.

Lords Amendment 225

151. Lords Amendment 225 is a technical amendment to the definition of "home" in paragraph 30(4) of Part 1 of Schedule 1 (risk to health or safety in rented home) that would ensure consistency between language used in that definition and that used in the definition of "home" in paragraph 28(9) (loss of home).

Lords Amendments 226 to 228

152. Lords Amendments 226 to 228 would ensure that civil legal services are capable of being provided in relation to incitement to commit a sexual offence, encouraging or assisting a sexual offence which the person intended or believed would be committed, conspiracy to commit a sexual offence, and an attempt to commit a sexual offence. Lords Amendments 226 to 228 would amend paragraph 34 to ensure that civil legal services are capable of being provided in relation to conduct which would be a sexual offence under the Sexual Offences Act 2003 or under section 1 of the Protection of Children Act 1978 but for the fact the conduct occurred before those provisions were in force. Finally, Lords Amendments 226 to 228 would ensure that conduct falls within the definition of a sexual offence for the purposes of

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paragraph 34 of Part 1 of Schedule 1 to the Bill whether or not there have been criminal proceedings in relation to the conduct and whatever the outcome of any such proceedings.

Lords Amendments 229 and 230

153. Lords Amendments 229 and 230 would bring within the scope of civil legal aid services provided in relation to claims arising under previous discrimination enactments.

Lords Amendment 231

154. Lords Amendment 231 would bring within the scope of civil legal aid services provided in relation to Terrorism Prevention and Investigation Measures (TPIM) notices to an individual to whom the notice relates. TPIM notices have replaced control orders. This Lords Amendment also brings into scope civil legal services provided in relation to certain control order proceedings that were subject to savings provisions in the Terrorism Prevention and Investigation Measures Act 2011.

Lords Amendment 232

155. Paragraph 40 of Part 1 of Schedule 1 provides a power for the Lord Chancellor to prescribe when issues not listed in Part 1 of Schedule 1 to the Bill may be funded because of their connection with services that are listed in Part 1 of Schedule 1. Paragraph 40(2) makes the prescribed services subject to the exclusions in Parts 2 and 3 of Schedule 1, subject to prescribed exceptions. Lords Amendment 232 would provide a slightly broader power to apply and disapply those exclusions, and to apply other exclusions, in relation to prescribed services.

Lords Amendments 233 to 237

156. Lords Amendments 233 to 237 would clarify that the exclusions at paragraphs 2, 3, 4, 5 and 8 of Part 2 of Schedule 1 of the Bill exclude a claim in tort in respect of the matters set out in those paragraphs, and do not exclude these general subject matters from the scope of civil legal aid.

Lords Amendments 238 and 239

157. Lords Amendments 238 and 239 would clarify that paragraph 12 of Part 2 of Schedule 1 only excludes a claim for damages for a breach of Convention rights which is brought in reliance on section 7 of the Human Rights Act 1998.

Lords Amendment 241

158. Lords Amendment 241 would mean that it would be possible to include within Part 1 of Schedule 1 a matter for which a type of advocacy referred to in Part 3 of

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Schedule 1 is not available. Lords Amendment 241 would continue to allow for a matter included within Part 1 of Schedule 1 to make specific provision bringing other types of advocacy within scope for that particular matter which are not listed in Part 3 of the Schedule.

Lords Amendments 242, 245, 246, 247, 248, 249 and 250

159. Lords Amendment 242 would make the wording of paragraph 10 of Part 3 of Schedule 1, which is about advocacy for the Mental Health Review Tribunal for Wales, consistent with the wording of the rest of Part 3 of Schedule 1.

160. Lords Amendment 246 would clarify that advocacy for an in-scope area will be available in relation to bail proceedings and enforcement proceedings in any venue. As a consequence of adding these paragraphs, Lords Amendment 243 would amend paragraph 24 of Part 3 of Schedule 1 so that it refers to other paragraphs of that Part.

161. Lords Amendments 247 to 250 would clarify the intention that advocacy should only be available for preliminary and incidental proceedings where those preliminary and incidental proceedings take place in the same venue as the proceedings that are in scope.

Lords Amendment 257

162. Lords Amendment 257 removes paragraph 20 of Schedule 9 to the Bill, which would have amended the Armed Forces Act 2011. The amendment to that Act is no longer necessary because the relevant provisions in that Act will be in force before clause 74.

Lords Amendment 258

163. Lords Amendment 258 would insert definitions of violent, sexual and imprisonable offences into section 2(2) of the Bail Act 1976. These expressions are used in section 3AA of the Bail Act 1976 and in the section 3AAA of that Act that would be inserted by Lords Amendment 258. Violent and sexual offences are defined by reference to Schedule 15 to the Criminal Justice Act 2003 and these additional definitions are consistent with the definitions in Chapter 3 of Part 3 of the Bill.

Lords Amendments 259 to 261

164. Lords Amendment 260 would insert a new subsection 3AAA into the Bail Act 1976 which sets out the conditions for the imposition of electronic monitoring requirements in respect of children and young people released on bail whilst subject to extradition proceedings. The conditions specified are broadly equivalent to those set out for domestic cases in section 3AA of the same Act.

These notes relate to the Lords Amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill as brought from the House of Lords on 28 March 2012 [Bill 327]

165. Lords Amendments 259 and 261 would be consequential on Lords Amendment 260.

Lords Amendments 262 and 263

166. Lords Amendment 262 would amend the Bail (Amendment) Act 1993 to enable the prosecution to appeal to the High Court against the decision of a judge of the Crown Court to grant bail to a person charged with or convicted of an imprisonable offence. Currently, that Act only provides the prosecution with a right of appeal to the Crown Court against the grant of bail by a magistrates' court. The new route of appeal would be restricted to a decision of a judge of the Crown Court that was not, itself, made on appeal from the magistrates' court under the 1993 Act. Lords Amendment 263 would make a consequential amendment to the Extradition Act 2003.

Lords Amendment 264

167. Lords Amendment 264 would amend section 23B of the Children and Young Persons Act 1969 to deal with cases where a child is remanded on bail in extradition proceedings. The section currently applies where a child charged with or convicted of a serious offence is remanded on bail. It enables the court to order a local authority to report on where the child would be placed if remanded to local authority accommodation. The amendment would apply this in the extradition context in two ways: firstly it would provide that the reference to "serious offence" in section 23B includes, in that context, an offence committed outside England and Wales where it would, if committed in England and Wales, be a serious offence; secondly it would provide that the reference in section 23B to being charged includes a reference to being accused of an offence.

Lords Amendments 265, 266 and 267

168. Section 3AA of the Bail Act 1976 defines conditions that must be met to allow the court to require electronic monitoring of children and young persons granted bail. Lords Amendments 265, 266 and 267 would amend section 3AA of the Bail Act to allow for imprisonable offences (1) committed whilst previously remanded to youth detention accommodation, (2) committed whilst remanded under the old law, or (3) committed outside England and Wales (on bail or in custody) to be taken into account by the court when determining whether a child or young person has a history of offending on remand. This is one of the conditions that must be met before a court can impose electronic monitoring requirements as part of a bail package. These Lords Amendments would make the conditions in the Bail Act 1976 consistent with those in clause 87 of the Bill relating to electronic monitoring of a child remanded to local authority accommodation.

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Lords Amendment 268

169. Lords Amendment 268 would repeal only section 133(1) of the Criminal Justice and Police Act 2001 rather than the entirety of section 133, the remainder of which would otherwise be repealed in error. The repeal of section 133(1) is a tidying up amendment, as that provision amends section 23 of the Children and Young Persons Act 1969 which is repealed by the Bill.

Lords Amendments 269 and 270

170. Lords Amendments 269 and 270 to Schedule 13 would make a minor technical amendment following other changes in the Bill, to ensure that the provisions about crediting of time in service custody apply to sentences of detention in a young offender institution.

Lords Amendments 271

171. Lords Amendment 271 is a drafting amendment consequential on the amendment of section 373 of the Armed Forces Act 2006 by the Armed Forces Act 2011.

Lords Amendments 275

172. Lords Amendment 275 would make provision about the commencement and application of the amendments of the Armed Forces Act 2006 made by Part 1 of Schedule 13.

Lords Amendment 277, 278, 279 and 280

173. Lords Amendments 277, 278, 279 and 280 would amend Schedule 15 and relate to the transitional arrangements for crediting time spent in custody. They would extend to the Armed Forces the transitional provisions which apply in the civilian courts. The effect of the change would be to preserve any direction that had already been given, if the effect of that direction was that more custody days count towards the sentence than would be the case under the new calculation

Lords Amendments 285 and 287

174. Lords Amendment 285 amends Schedule 16, which contains new Schedule 15B to the Criminal Justice Act 2003. That Schedule lists the offences the commission of which will be relevant in determining whether a court will impose a new mandatory life sentence (see clause 114) or extended determinate sentence (see clause 115). It is also the list of offences which are relevant for determining whether an extended sentence prisoner will be automatically released or will have his release determined by the Parole Board under new section 246A of the Criminal Justice Act

2003 (see clause 116).

175. Lords Amendment 285 would amend the list to include offences which have been abolished before Schedule 15B is brought into force but which, if the person committed the offence on the relevant day, would constitute an offence listed in Part 1 of that Schedule. The “relevant day” is defined differently depending on the purpose for which the list is being used, but would in all cases be a day after Schedule 15B is brought into force.

176. Lords Amendment 287 is a technical amendment to new Schedule 15B. It would ensure that consistent language is used in paragraph 51 of that Schedule and the provision that would be inserted by Lords Amendment 285.

Lords Amendment 288

177. Lords Amendment 288 would remove paragraph 9 of Schedule 17 to the Bill. That would mean that no express provision would be inserted into section 108 of the Criminal Justice Act 2003 providing that evidence of a previous conviction of a defendant when a child is admissible for the purpose of determining the applicability of the life sentence requirement in new section 224A of that Act (inserted by clause 114). The amendment reflects the view that there is no need to make express provision to that effect.

Lords Amendment 289

178. Lords Amendment 289 would put it beyond doubt that, when considering whether the seriousness condition (see clause 114(1), which inserts new section 224A(3) of the Criminal Justice Act 2003) applies for the purposes of determining whether a life sentence must be imposed, the court is required under section 156 of that Act to obtain and consider a pre-sentence report.

Lords Amendment 290

179. Lords Amendment 290 would have the effect that an offence would not fall within the definition of a “serious offence” in section 224 of the Criminal Justice Act 2003 on the sole basis that it is punishable by life imprisonment only by virtue of new section 224A of that Act (inserted by clause 114).

Lords Amendments 291 and 292

180. Lords Amendments 291 and 292 are drafting amendments.

Lords Amendments 293 and 294

181. Lords Amendments 293 and 294 are technical amendments of the existing transitory provision in Schedule 17. Lords Amendment 293 would put it beyond

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doubt that when the transitory provision refers to custody for life it means custody for life under section 94 of the Powers of Criminal Courts (Sentencing) Act 2000. Lords Amendment 294 extends transitory provision about custody for life to the provision inserted by paragraph 21 of Schedule 17.

Lords Amendments 295, 299, 300, 301 and 302

182. Lords Amendments 295, 299, 300, 301 and 302 would all substitute references in existing enactments to the old extended sentences abolished by clause 113 with references to the new extended sentences created by clause 115.

183. Lords Amendment 295 deals with section 35A of the Road Traffic Offenders Act 1988 (which is uncommenced).

184. Lords Amendments 299, 300 and 301 deal with sections 100, 106A, and 147A of the Powers of Criminal Courts (Sentencing) Act 2000.

185. Lords Amendment 302 deals with section 153 of the Criminal Justice Act 2003.

Lords Amendment 296

186. Lords Amendment 296 would amend Schedule 1 to the Crime (Sentences) Act 1997 to add references to the new section 246A of the Criminal Justice Act 2003 inserted by clause 116.

187. Lords Amendment 296 would also amend section 51A of the Crime and Disorder Act 1998 to the effect that a magistrates' court would be required to send a child or young person for trial in the Crown Court if the offence is one for which a new extended sentence would be imposed.

Lords Amendment 297

188. Lords Amendment 297 would amend sections 3A and 3C of the Powers of Criminal Courts (Sentencing) Act 2000 to require magistrates' courts, where a person is convicted of an offence in a summary trial and it appears that the criteria for imposing a new extended sentence are met, to commit the person to the Crown Court for sentence. That is the case with the current provisions concerning dangerous offenders.

Lords Amendment 298

189. Lords Amendment 298 would amend section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 to remove reference to indeterminate sentences for public protection (which are to be abolished by clause 113). Section 82A sets out the

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court's obligations in setting minimum terms for life sentences.

Lords Amendment 303

190. Lords Amendment 303 would amend paragraph 16 of Schedule 18 so that references in section 156 of the Criminal Justice Act 2003 to the extended sentences that are to be abolished by clause 113 are replaced with references to the extended sentences that are to be created by clause 115.

191. It would also put it beyond doubt that a court is to obtain and consider a pre-sentence report when it decides whether a new extended sentence should be imposed.

Lords Amendments 304 and 305

192. Lords Amendments 304 and 305 would insert amendments of the Criminal Justice Act 2003 that are consequential upon the abolition of indeterminate sentences for public protection and extended sentences by clause 113 and the creation of new extended sentences by clause 115.

Lords Amendment 306

193. Lords Amendment 306 would amend the Counter-Terrorism Act 2008 to provide that the notification requirements for terrorism offences set out in that Act apply where a person under 18 receives a new extended sentence.

194. It would also amend section 126 of the Coroners and Justice Act 2009 to deal with the interaction between sentencing guidelines and the new extended sentences created by clause 115, which would be the same as the interaction with the current sentences for dangerous offenders. It would also amend that section to reflect the abolition of indeterminate sentences by clause 113.

195. It would also repeal various enactments that amend provisions that the Bill repeals.

Lords Amendment 307

196. Lords Amendment 307 is a drafting amendment which changes the order of the Schedules in the Bill.

Lords Amendments 308 to 317

197. Lords Amendments 308 to 317 would amend Schedule 19 which in turn amends the release and recall provisions of Chapter 6 of Part 12 of the Criminal Justice Act 2003 to insert references to the new extended sentences (created by clause

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115) so that the release and recall arrangements would apply to such sentences.

Lords Amendment 319

198. Lords Amendment 319 would have the effect of making a further consequential amendment in Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 where there is a reference to “reprimands and warnings”. This reference would be removed, but clause 124(5) would have the effect that the existing reference in the Act to a caution covered reprimands and warnings.

Lords Amendments 321, 322 and 323

199. Lords Amendments 321, 322 and 323 relate to the application of a minimum custodial sentence of a 4 month detention and training order to 16 and 17 year olds convicted of the offences created by clause 128.

200. Lords Amendments 321 and 322 change the references in paragraph 11 of Schedule 22 to the Bill to section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, with the effect that they refer to the specific subsections applying the minimum custodial sentence to 16 and 17 year olds.

201. Lords Amendment 323 would amend the uncommenced provisions in the Criminal Justice and Immigration Act 2008 which set out the purposes of sentencing and factors to be considered when sentencing an under-18, in order to exclude from these considerations the minimum sentence requirement in respect of a 16 or 17 year old who is convicted of one of the offences created by clause 128.

Lords Amendments 324, 325 and 326

202. Lords Amendments 324, 325 and 326 would amend the long title of the Bill to include reference to provisions about the collection of fines, the rehabilitation of offenders and scrap metal.

ANNEX

New Schedule 20A to the Criminal Justice Act 2003 (application of Chapter 6 of Part 12 of that Act to pre-4 April 2005 cases) (inserted by Lords Amendment 282)

203. Paragraphs 1 and 2 of Schedule 20A set out definitions for, and the application of, the Schedule.

204. Paragraph 3 of Schedule 20A provides that the old rules for counting days spent in custody before sentence (which included time spent in police custody) continue to have effect, as a modification to the new rule in section 240ZA.

205. Paragraph 4 of Schedule 20A modifies the Home Detention Curfew provisions under the Criminal Justice Act 2003 (“the 2003 Act”) so that those provisions can apply to prisoners who previously fell to be released under the Criminal Justice Act 1991 (“the 1991 Act”).

206. Paragraph 5 of Schedule 20A provides that those offenders who have been released on licence under the 1991 Act, whether release on ordinary licence, release on Home Detention Curfew, or compassionate release, are to be treated as though they have been released under the 2003 Act provisions. Any specified 1991 Act licence conditions remain valid even where there is no equivalent condition in the 2003 Act.

207. Paragraph 5(6) of Schedule 20A provides that any suspension of the licence by the court under the 1991 Act provision of section 38(2) will continue to apply even though that section has been repealed.

208. Paragraph 5(7) of Schedule 20A provides that any supervision licence issued under section 40A of the 1991 Act (that is, on release from a period of return to custody by the courts in accordance with section 116 of the PCC(S)A 2000) will continue to apply as though it was a licence issued under the 2003 Act, but should the conditions of the supervision be breached the offender continues to be liable to be dealt with by the court in accordance with section 40A(4) to (6) of the 1991 Act and not in any other way.

209. Paragraph 5(8) of Schedule 20A ensures that the length of the licence period that would be applicable under the 1991 Act is not affected by treating such persons as though they have been released under the 2003 Act provisions.

210. Paragraph 6 of Schedule 20A provides that where an offender has been recalled under the provisions of the 1991 Act before the commencement date, the recall is to be treated as though it was a recall under the 2003 Act provisions and references to, and decisions of, the Parole Board will be treated accordingly. However, treating the recall under the 2003 Act provisions will not affect the licence lengths and re-release arrangements to which the offender was subject under the 1991 Act. These arrangements have been saved under Schedule 20B and will continue to

apply.

211. Paragraph 7 of Schedule 20A ensures rules made in respect of Added Days awarded on prison adjudications under the 1991 Act provisions have effect if they had been made under the 2003 Act provisions, so that the awarding of added days can be carried forward.

212. Paragraph 8 of Schedule 20A provides that any person removed from prison early for the purposes of removal from the UK under the 1991 Act provisions is to be treated as though they have been removed under the 2003 Act provisions; and that references in the relevant section of the 2003 Act to extended sentences and their relevant custodial periods include section 85 of the PCC(S)A 2000.

213. Paragraph 9 of Schedule 20A provides that any time spent in custody awaiting extradition, awarded by the court under the 1991 Act provisions, is to be treated as having been awarded under the 2003 Act provisions.

214. Paragraph 10 of Schedule 20A defines the custodial period of a 1991 Act extended sentence, imposed in accordance with section 85, as being one half of the custodial term for the purposes of section 264 of the 2003 Act.

New Schedule 20B to the Criminal Justice Act 2003 (modifications of Chapter 6 of Part 12 of that Act in certain transitional cases) (inserted by Lords Amendment 283)

215. Paragraph 1 of Schedule 20B sets out the definitions of the various terms referred to in Schedule 20B and determines that, where an offence has been committed between two dates, the offence is deemed to have been committed on the latest of those dates. Schedule 20B applies to those who were sentenced before the commencement date. For sentences of 12 months or more, excluding offences sentenced under section 85 of the PCC(S)A 2000, the offence would also need to be committed prior to 4 April 2005. However, 2003 Act sentences are defined for the purposes of calculating concurrent and consecutive sentences. Where there are no provisions in Schedule 20B for sentences imposed before the commencement date then the provisions in Chapter 6 of Part 12 of the 2003 Act will apply unmodified.

216. Paragraph 2 of Schedule 20B lists the relevant dates when previous legislation brought changes to release and recall arrangements into effect; this explains the reference to those dates in the rest of the Schedule.

217. Paragraph 3 of Schedule 20B applies the provisions of Part 2 of Schedule 20B to those prisoners who are serving:

- 1991 Act sentences
- extended sentences imposed under section 85 of the 2000 Act
- extended sentences imposed under section 227

or 228 of the 2003 Act before 14 July 2008

and disapplies those provisions in respect of those 1991 Act prisoners who have been released on licence from their sentence, recalled, but are unlawfully at large at the date of commencement. Such prisoners, once returned to custody, will no longer retain the 1991 Act re-release arrangements at the three-quarter point of the sentence but will fall to be treated as if recalled under section 254 of the 2003 Act and liable to detention to end of sentence.

218. Paragraph 4 of Schedule 20B identifies the prisoners still in custody at the point of commencement to whom the release provisions in paragraphs 5 and 6 apply. These are commonly referred to as the DCR (Discretionary Conditional Release) prisoners who were long term prisoners under the 1991 Act and not converted to automatic release at the half way point of sentence.

219. Paragraph 5 of Schedule 20B applies a duty to automatically release on licence, at the two-thirds point of the sentence, any of those prisoners serving a sentence (or custodial period of an extended sentence) specified in paragraph 4. The duty to release at the two-thirds point applies in place of section 244 of the 2003 Act.

220. Paragraph 6 of Schedule 20B provides eligibility for release by the Parole Board at one half of the sentence (or one-half of the custodial period of extended sentences) for prisoners falling into the criteria in paragraph 4 (those subject to automatic release on licence at the two thirds point of the sentence under paragraph 5). Paragraph 6 applies the duty to release on the direction of the Parole Board in place of the release provisions of section 244 of the 2003 Act.

221. Paragraph 7 of Schedule 20B applies to those prisoners serving an extended sentence imposed in accordance with section 85 of the PCC(S)A 2000 who do not fall within paragraph 4. Paragraph 8 of Schedule 20B applies a duty on the Secretary of State to release a person to whom paragraph 7 applies automatically on licence at the half way point of the custodial term. The duty to release at the half- way point is in place of section 243A or section 244 of the 2003 Act.

222. Paragraph 10 of Schedule 20B provides the duty on the Secretary of State to re-release a prisoner to whom paragraph 9 applies, unconditionally, at the three-quarter point of the sentence. Prisoners to whom paragraph 9 applies are those who were convicted of an offence committed before the Crime and Disorder Act 1998 came into force who have been released and recalled before the changes made by the Criminal Justice and Immigration Act 2008 came into force. This does not include those sentenced under section 86 of the PCC(S)A 2000 as section 86 requires the offender to be on licence to the end of the sentence on initial release and any subsequent release following recall.

223. Paragraph 12 of Schedule 20B applies the duty on the Secretary of State to re-release a prisoner to whom paragraph 11 applies, on licence, at the three-quarter point

of the sentence. Prisoners to whom paragraph 11 applies are those who were convicted of an offence committed after the Crime and Disorder Act 1998 came into force who have been released and recalled before the changes made by the Criminal Justice and Immigration Act 2008 came into force. However, it does not apply to those who have been released and recalled more than once; such prisoners would be liable to be detained until the end of the sentence in accordance with Chapter 6 of Part 12 of the 2003 Act. Nor does it apply to those prisoners recalled from an extended sentence that had been imposed in accordance with section 85 of the PCC(S)A 2000. Such sentences have their own re-release arrangements in the Schedule.

224. Paragraph 13 of Schedule 20B identifies the prisoners to whom the release provisions of paragraph 14 apply. These are prisoners in custody at the time of commencement who were sentenced to an extended sentence in accordance with section 85 of the PCC(S)A 2000 and who were recalled before the changes made by the Criminal Justice and Immigration Act 2008 came into force. It does not apply if the prisoner has been released and recalled more than once; such prisoners would be liable to be detained until the end of sentence in accordance with Chapter 6 of Part 12 of the 2003 Act.

225. Paragraph 14(1) of Schedule 20B applies a duty on the Secretary of State, in respect of those prisoners to whom paragraph 13 applies, where the custodial period of the extended sentence was one of less than 12 months, to release on licence once the prisoner has served the aggregate of half the custodial term plus the extension period. The licence period would thereafter continue to end of sentence.

226. Paragraph 14(2) of Schedule 20B applies the duty on the Secretary of State, in respect of those prisoners to whom paragraph 13 applies, where the custodial period of the extended sentence was one of 12 months or more, to release on licence once the prisoner has served the aggregate of three-quarters of the custodial term and the extension period. The licence period would thereafter continue to end of sentence.

227. Paragraph 15 of Schedule 20B provides release provisions for those prisoners serving extended sentences in accordance with section 227 or 228 of the 2003 Act that were imposed before changes made by the Criminal Justice and Immigration Act 2008 came into force. Release is in accordance with section 247 of the 2003 Act at the half way point but only where the Parole Board make a direction for release. Such prisoners are only automatically released once the custodial period has been served, provided there has been no recall from licence following earlier release by the Parole Board. This paragraph replaces the transitional provision made when parts of section 247 were repealed by the Criminal Justice and Immigration Act 2008.

228. Paragraph 17 of Schedule 20B provides for a licence to remain in force to the three-quarters point of the sentence for those prisoners identified under paragraph 4 (DCR prisoners) and also to those identified under paragraph 16(2) and (3) – namely, (i) those who were short term prisoners under the 1991 Act who have not previously been released from sentence and (ii) 1991 Act prisoners serving sentences of 12

months or more who have been released and recalled before changes made by the Criminal Justice and Immigration Act 2008 came into force. Paragraph 16(4) and 16(5) exclude from paragraph 16 those prisoners who have been released and recalled more than once, those prisoners serving a section 85 extended sentence and those where the provisions of section 86 have been applied to the sentence. Section 249 of the 2003 Act (duration of licence) is disapplied unless there is a subsequent recall from licence in accordance with section 254 of that Act.

229. Paragraph 16(6) of Schedule 20B provides that release on Home Detention Curfew and a subsequent recall for inability to monitor, will not affect the expiry date of the licence at the three-quarter point when the person is re-released at the half way point of the sentence; such a recall does not count under paragraph 16(4) for the purposes of working out whether a prisoner has been released and recalled more than once.

230. Paragraph 18 of Schedule 20B identifies the prisoners to whom the licence period in paragraph 19 is to apply. These are prisoners serving an extended sentence imposed in accordance with section 85 of the PCC(S)A 2000 where the prisoner has not yet been released on licence. In accordance with paragraph 19 where the custodial term is less than 12 months, the licence shall expire at the end of the aggregate of half the custodial term and the extension period. However, where the custodial term is one of 12 months or more, the licence shall expire at the end of the aggregate of three-quarters of the custodial term and the extension period. Section 249 of the 2003 Act (duration of licence) is disapplied unless there is a subsequent recall from licence in accordance with section 254 of that Act.

231. Paragraph 20 of Schedule 20B applies the concurrent or consecutive term provisions in paragraphs 21 and 22 to those prisoners serving two or more sentences of imprisonment imposed on or after 1 October 1992 (the commencement of the 1991 Act), where the sentences were imposed at the same time or, where they were imposed at different times but there has been no release from one sentence before the imposition of the next.

232. Paragraph 21 of Schedule 20B provides that where there are two or more sentences and all sentences are 1991 Act sentences, the concurrent and consecutive provisions of the 2003 Act are disapplied because the sentences form a single term with one another. Where one of those sentences is a section 85 extended sentence it is the custodial term of the extended sentence that is used to create the single term. In such a case, the licence period of the single term is defined by paragraph 21(5).

233. Paragraph 22 of Schedule 20B provides that where there are two or more sentences that are imposed consecutively and some of the sentences are 1991 Act sentences and some are 2003 Act sentences, the sentences are aggregated in accordance with section 264 of the 2003 Act, but the aggregation under section 264 does not affect the length of the custodial period in respect of the 1991 Act sentence. Release does not take place until all the custodial periods relevant to each of the

sentences have been served. Paragraph 22 is disapplied where one or more of the concurrent or consecutive sentences is subject to the release provisions of the Criminal Justice Act 1967 (“the 1967 Act”); for such cases paragraphs 32 and 33 will apply.

234. Paragraph 23 of Schedule 20B sets out the application of Part 3 of Schedule 20B which applies to those prisoners who are subject to sentences imposed prior to 1 October 1992 (“1967 Act sentences”). But that Part does not apply to prisoners who have been released from a 1967 Act sentence, recalled from licence and are unlawfully at large on the date of commencement. Such prisoners, once returned to custody, will no longer retain the 1967 Act re-release arrangements at the two-thirds point of the sentence but will fall to be treated as if recalled under section 254 of the 2003 Act and liable to detention to end of sentence.

235. Paragraph 25 of Schedule 20B provides for automatic unconditional release at the two-thirds point of the sentence to persons to whom paragraph 24 applies - 1967 Act prisoners who have not already been released or have been released and recalled before changes made by the Criminal Justice and Immigration Act 2008 came into force. Where a prisoner has served six months or one third of the sentence (whichever is longer) the Parole Board can direct release. These paragraphs do not apply where an extended sentence certificate was issued when the 1967 Act sentence was imposed – release from such sentences is as provided by paragraph 27.

236. For the purposes of working out whether a person has been recalled paragraph 24(4) provides that release on Home Detention Curfew and a subsequent recall for inability to monitor are to be discounted.

237. Paragraph 26 of Schedule 20B applies where a person, identified in paragraph 24, is released on licence by the Parole Board. The licence will expire at the two-thirds point of the sentence, provided that there is no recall from licence in accordance with section 254 of the 2003 Act (in which case the provisions of the 2003 Act will apply without modification). Paragraph 26 applies in place of the provisions of section 249 of the 2003 Act in respect of the duration of the licence.

238. Paragraph 27 of Schedule 20B identifies prisoners who are subject to an extended sentence certificate. Such a certificate extended the licence period to the end of the sentence.

239. Paragraph 28 of Schedule 20B provides for the automatic release of prisoners identified under the criteria of paragraph 27 after they have served two thirds of their sentence. They will be eligible for release by the Parole Board once they have served six months or one third of the sentence, whichever is longer.

240. Paragraph 29 of Schedule 20B provides for Prison Rules to be able to provide for the loss of remission awarded against 1967 Act sentences to be treated in the same way as added days awarded against 1991 Act and 2003 Act sentences - so that any

date on which the offender becomes entitled to or eligible for release and any licence expiry date will be deferred by the number of days so awarded.

241. Paragraph 30 of Schedule 20B applies the concurrent or consecutive terms provisions in paragraphs 31 and 32 to those prisoners serving two or more sentences of imprisonment where at least one of those sentences is a 1967 Act sentence where the sentences were imposed at the same time or, where they were imposed at different times but there has been no release from one sentence before the imposition of the next.

242. Paragraph 31 of Schedule 20B provides that where there are two or more sentences that are all 1967 Act sentences the concurrent and consecutive provisions of the 2003 Act are disapplied because the sentences form a single term with one another.

243. Paragraph 32 of Schedule 20B disapplies the concurrent and consecutive provisions of the 2003 Act where there are concurrent and consecutive sentences where one or more sentence is a 1967 Act sentence and one or more sentence is a 1991 Act sentence, because the sentences form a single term with one another and the single term is treated as though it was a 1967 Act sentence. Where one of the sentences is a section 85 extended sentence it is the custodial term of the extended sentence that is used to create the single term. In such a case, the licence period of the single term is defined by paragraph 32(5).

244. Paragraph 32(6) of Schedule 20B provides that where a prisoner is subject to a sentence comprising a 1967 Act sentence, a 1991 Act sentence and a 2003 Act sentence, the 1967 Act sentence and the 1991 Act sentence must be single termed before either the provisions of section 263(2)(c) of the 2003 Act are applied to determine how long the licence period will be on release or paragraph 33(3) is applied to determine how long the prisoner must remain in custody before being entitled to release.

245. Paragraph 33 of Schedule 20B provides for the treatment of consecutive sentences where one or more of the sentences are 1967 Act sentences and one or more of the sentences are 2003 Act sentences. The Secretary of State cannot release the prisoner until the aggregate of the custodial periods in respect of each sentence have been served. The length of the custodial period that must be served in respect of the 1967 Act sentence is not affected by the application of section 264 of the 2003 Act.

246. Paragraph 34 of Schedule 20B provides that where a prisoner is granted discretionary release by the Parole Board (that is, before any automatic obligation to release), it is the Parole Board who have the responsibility for setting, varying or cancelling any licence conditions. It also provides that where the Board had responsibility for a prisoner's licence conditions before 2 August 2010, that responsibility continues.

These notes relate to the Lords Amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill as brought from the House of Lords on 28 March 2012 [Bill 327]

247. Paragraph 35 of Schedule 20B provides a person who is committed to prison before 4 April 2005 for a term of 12 months or more in respect of default of payment of a fine, or for contempt of court, to be unconditionally released at the two-thirds point of the term.

248. Paragraph 36 of Schedule 20B sets the criteria for application of paragraph 37 referring to those prisoners who are in custody at the time of commencement, who have passed the half way point of their sentence (or the half way point of the custodial term in respect of those serving extended sentences), but not yet been released.

249. Paragraph 37 provides a power for the Secretary of State in respect of those prisoners identified in paragraph 36, who are liable to removal from the UK, but have not been removed under the Early Removal Scheme, to be removed after the half way point of the sentence (or of the custodial term in the case of extended sentences). The Secretary of State has the power to remove such prisoners with or without a release direction from the Parole Board.

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

*These notes refer to the Lords Amendments to the Legal Aid, Sentencing and
Punishment of Offenders Bill as brought from the House of Lords on 28
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Enquiries to The National Archives, Kew, Richmond, Surrey, TW9 4DU;
email: psi@nationalarchives.gsi.gov.uk*

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