These notes refer to the Crime and Courts Bill [HL]
as brought from the House of Lords on 19 December 2012 [Bill 115]

CRIME AND COURTS BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Crime and Courts Bill [HL] as brought from the House of Lords on 19 December 2012. They have been prepared by the Home Office and the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

3. A glossary of abbreviations and terms used in these Explanatory Notes is contained in Annex A of these Notes.

SUMMARY

4. The Bill is in three Parts. Part 1 establishes the National Crime Agency ("NCA"). Part 2 contains various provisions in respect of the modernisation of the courts and tribunals system and other provision about the administration of justice. Part 3 contains provisions in relation to border control, public order offences and drug driving as well as standard provisions in respect of, amongst other things, orders and regulations, commencement and extent.

5. Part 1 provides for the NCA. Clauses 1 to 3 and 7 and Schedules 1, 2 and 4 establish the Agency, set out its functions, provide for the appointment of a Director General as the operationally independent head of the NCA, and make provision for the governance of the NCA. Clause 4 and Schedule 3 provide a framework for the NCA and other law enforcement agencies to collaborate in order to assist each other in the discharge of their functions. Clause 5 places a duty on the Director General to publish certain information. Clauses 6 and 11 and Schedule 7 make provision for the disclosure of information by and to the NCA and for the use of information by the Agency. Clauses 8 and 9 and Schedule 5 provide for the powers of the Director General and other NCA officers, including by making provision to enable the Director

General to give designated NCA officers some or all of the powers of a constable, a customs officer or an immigration officer. Clause 10 and Schedule 6 provide for the NCA to be inspected by Her Majesty's Inspectors of Constabulary, and for regulations to make provision for oversight by the Independent Police Complaints Commission. Clauses 12 and 13 place restrictions on certain NCA officers taking industrial action and make provision for the determination of such NCA officers' pay and allowances. Clause 14 and Schedule 8 abolish the Serious Organised Crime Agency ("SOCA") and the National Policing Improvement Agency ("NPIA") and make transitional and consequential provision.

6. Part 2 contains provisions to further modernise courts and tribunals and in respect of judicial appointments. Clause 16 and Schedules 9 to 11 establish a single county court and single family court in England and Wales. Clause 17 provides for applications for gang-related injunctions in respect of young persons to be considered by a youth court rather than the county court or High Court. Clause 18 and Schedule 12 make provision in respect of judicial appointments, including in relation to: the number of Supreme Court Judges; when a selection commission can be convened for the appointment of Supreme Court judges; taking account of diversity considerations to distinguish between candidates who are of equal merit; calculating the maximum number of judges in the Supreme Court, Court of Appeal and High Court by reference to the number of full-time equivalent judges; the composition of the Judicial Appointments Commission; the selection of commissioners and commissioners' terms of office; and the transfer of powers of the Lord Chancellor in relation to judicial appointments to the Lord Chief Justice and Senior President of Tribunals. Schedule 12 also makes provision for the delegation of certain functions of Heads of Division in the event of a vacancy in the office or that the office-holder is incapable of exercising specified functions.

7. Clause 19 and Schedule 14 make provision for court judges to sit in tribunals, and for tribunal judges to sit as court judges. Clause 20 removes the restrictions on the transfer of immigration and nationality applications for judicial review or permission to apply for judicial review from the High Court, the Court of Session and the High Court of Northern Ireland to the Upper Tribunal. Clause 21 provides a power for rules of court to be made to restore the second-tier appeals test when the Court of Session considers an application for permission to appeal from the Upper Tribunal. Clause 22 abolishes the jurisdiction of judges of the High Court to sit as Visitors to the Inns of Court in barristers' disciplinary hearings and instead gives power for Bar regulators to confer rights of appeal to the High Court.

8. Clause 23 facilitates the contracting out of all functions of fines officers and makes provision for the costs of collecting fines and other financial penalties to be recovered from offenders in certain circumstances. Clause 24 provides for the sharing of information in connection with the enforcement of fines and other financial penalties. Clause 25 provides for the sharing of information about social security, earnings and tax credit information in connection with fee-remission applications. Clause 26 provides for the Bailiff and Enforcement Agents Council to be treated as a

regulating body for bailiffs. Clause 27 makes provision for the appointment, training and powers of Supreme Court security officers. Clause 28 allows for the filming and broadcasting of judicial proceedings in specified circumstances. Clause 29 abolishes the offence of scandalising the judiciary in England and Wales. Clause 30 makes further provision about the use of force in self-defence. Clause 31 and Schedule 15 make a number of changes to the framework governing community and other non-custodial sentences for adult offenders. Clause 32 and Schedule 16 provide for deferred prosecution agreements – a new tool to tackle financial and economic crime.

9. Part 3 contains miscellaneous and general provisions. Clause 33 makes a number of amendments relating to immigration appeal rights and facilitating combined appeals in immigration cases. Clause 34 removes full rights of appeal against the refusal of a family visit visa. Clause 35 removes the in-country right of appeal of persons excluded from the UK by the Secretary of State. Clause 36 and Schedule 17 make further provision in respect of the powers of immigration officers. Clause 37 and Schedule 18 create a new offence of drug driving and make further provision for the taking of preliminary tests to determine the level of drugs in a person's blood or urine. Clause 38 removes the insulting limb of the Public Order Act 1986.

10. Clauses 39 to 42 and Schedule 19 deal with the making of orders and regulations under the Bill and provide for the short title, commencement and extent.

BACKGROUND

PART 1: THE NATIONAL CRIME AGENCY

The National Crime Agency

11. In July 2010 the Home Office set out the Government's plans for policing reform in *Policing in the 21st Century*[1], including proposals for a new National Crime Agency ("NCA") to lead the fight against serious and organised crime and strengthen border security. Further details of the Government's proposals for the creation of the NCA were announced by the Home Secretary on 8 June 2011 (House of Commons, Official Report, columns 232 to 234). The accompanying *The National Crime Agency: A plan for the creation of a national crime-fighting capability* (Cm 8097[2]) set out the proposed structure of the NCA comprising:

- Organised Crime Command;
- Border Policing Command;
- Economic Crime Command;
- Child Exploitation and Online Protection Command ("CEOP").

[1] http://www.homeoffice.gov.uk/publications/consultations/policing-21st-century/policing-21st-full-pdf
[2] http://www.homeoffice.gov.uk/publications/crime/nca-creation-plan

12. The four commands would be underpinned by an intelligence hub, tasking and co-ordination arrangements and a National Cyber Crime Unit.

13. The NCA will build on the work of the Serious Organised Crime Agency ("SOCA") which was established by Part 1 of the Serious Organised Crime and Police Act 2005.

14. The establishment of the NCA is part of the Government's wider organised crime strategy, *Local to global: reducing the risk from organised crime*[3], published on 28 July 2011.

15. Part 1 of the Bill provides for the establishment of the NCA and the abolition of SOCA and the National Policing Improvement Agency ("NPIA").

Abolition of National Policing Improvement Agency

16. The NPIA was established by section 1 of the Police and Justice Act 2006. The Agency was formed in April 2007.

17. The Home Office's plans for policing reform set out in *Policing in the 21st Century* included proposals for streamlining the national policing landscape by, amongst other things, phasing out of the NPIA. On 4 July 2011, the Home Secretary announced plans to set up a police information and communications technology company[4] which would take on certain functions of the NPIA. In written statements on 15 December 2011 (House of Commons, Official Report, columns 125WS to 127WS), 26 March 2012 (House of Commons, Official Report, columns 94WS to 95WS) and 16 July 2012 (House of Commons, Official Report, columns 105WS to 107WS), the Home Secretary set out further proposals. Clause 14(2) of the Bill provides for the abolition of the NPIA. The statutory duty conferred on the NPIA by section 3 of the Proceeds of Crime Act 2002 to provide a system for the training, monitoring, accreditation and withdrawal of accreditation of financial investigators will move to the NCA as provided for in paragraph 108 of Schedule 8.

PART 2: COURTS AND JUSTICE

Clause 16: Civil and family proceedings in England and Wales

Single County Court for England and Wales

18. County courts are constituted under the County Courts Act 1984. There are approximately 170 county courts in England and Wales, prescribed by article 6 of and Schedule 3 to the Civil Courts Order 1983[5], as amended. Each county court has a separate legal identity and serves a defined geographical area. Certain civil matters,

[3] http://www.homeoffice.gov.uk/publications/crime/organised-crime-strategy
[4] http://www.homeoffice.gov.uk/media-centre/speeches/acpo-summer?version=1
[5] S.I. 1983/713

for example in respect of proceedings in contract and tort or actions for the recovery of land, can be dealt with by all county courts, whereas other civil cases, for example family proceedings, certain contested probate actions and bankruptcy claims, are handled by designated county courts.

19. In January 2008, the Judicial Executive Board commissioned Sir Henry Brooke to conduct an inquiry into the question of civil court unification. He published his report[6], entitled *Should the Civil Courts be Unified?,* in August 2008. In the report, Sir Henry recommended that consideration should be given to whether the county courts should become a single national court.

20. In March 2011, the Ministry of Justice subsequently published a consultation document (Consultation Paper CP6/2011) entitled *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system*[7]. The consultation paper, which was aimed at reforming the civil justice system in England and Wales, sought views on whether a single county court should be established. On 9 February 2012, accompanied by a written ministerial statement (House of Commons, Official Report, column 53WS)[8], the Government published its response to the consultation (CM 8274)[9], announcing its intention to implement its proposals for the establishment of a single county court. Clause 16(1) of the Bill implements those proposals.

Single family court for England and Wales

21. Family proceedings are currently heard at first instance in the magistrates' courts (family proceedings courts), the county courts and the High Court. While the Family Procedure Rules 2010[10] largely govern the practices and procedures of all courts dealing with family proceedings, each court's family jurisdiction is constituted and governed by a variety of different statues. For example, section 33(1) of the Matrimonial and Family Proceedings Act 1984 allows the Lord Chancellor to designate certain county courts as "divorce county courts", which have jurisdiction to hear and determine any matrimonial matters.

22. In March 2010, the Family Justice Review Panel, chaired by David Norgrove and commissioned by the Ministry of Justice, the Department for Education, and the Welsh Government, began their review of the family justice system in England and Wales. In November 2011 the Family Justice Review Panel published their final report *Family Justice Review – Final Report*[11] in which they recommended that a single family court, with a single point of entry, should replace the current three tiers of court. Prior to publication of the Panel's final report the Government consulted on

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[6] *Should the Civil Courts be Unified?* Sir Henry Brooke, Judicial Office 2008, which is available at: http://www.judiciary.gov.uk/publications-and-reports/reports/civil/civil-courts-unification
[7] http://www.justice.gov.uk/downloads/consultations/solving-disputes-county-courts.pdf
[8] http://www.publications.parliament.uk/pa/cm201212/cmhansrd/chan264.pdf
[9] https://consult.justice.gov.uk/digital-communications/county_court_disputes/results/solving-disputes-in-cc-response.pdf
[10] S.I. 2010/2955
[11] http://www.justice.gov.uk/downloads/publications/moj/2011/family-justice-review-final-report.pdf

the Panel's interim report and recommendation *Family Justice Review – Interim Report*[12]. An analysis of consultation responses was integrated into the Panel's final report; however, in summary the majority of respondents to the consultation (75%) agreed that a single family court should be created.

23. A written ministerial statement on 6 February 2012 (House of Commons, Official Report, column WS3) announced the publication of the Government's response to that Panel's final report (CM 8273)[13]. The response noted "*we* [the Government] *will establish a single Family Court for England and Wales, with a single point of entry, as the Review recommended*". Clause 16(3) of the Bill gives effect to this.

Clause 17: Youth courts to have jurisdiction to grant gang-related injunctions

24. Gang-related injunctions were introduced by the Policing and Crime Act 2009, which made provision for civil injunctions to be granted by the county court (or High Court) on application by the police or local authority in order to prevent gang related violence. This was amended by the Crime and Security Act 2010 to enable gang-related injunctions to be taken out against those aged between 14 and 17 by creating two new penalties for breach.

25. Clause 17, which also introduces Schedule 12, makes amendments to provide for applications for gang-related injunctions for 14 to 17 year olds to be heard in the youth court, sitting in a civil capacity, rather than in the county court (or High Court). The effect of this measure will be to allow the courts with the most appropriate facilities and expertise in dealing with young people to consider these matters.

Clause 18: Judicial appointments

26. The Constitutional Reform Act 2005 ("the CRA") made a number of substantial changes to the process for selecting and appointing various judicial office holders within the United Kingdom. Part 4 of the CRA, which established the Judicial Appointments Commission, now governs the selection and appointment process for appointing judicial office holders to the courts in England and Wales, together with appointments to specified tribunals in the United Kingdom. A Supreme Court of the United Kingdom was also established by section 23 of the CRA. A separate process for selecting and appointing the President, Deputy President and judges of the UK Supreme Court is governed by Part 3 of the CRA.

27. In November 2011, the Ministry of Justice published a consultation document entitled *Appointments and Diversity: A Judiciary for the 21st Century* (CP19/2011)[14]. The consultation sought views on legislative changes to achieve the proper balance between executive, judicial and independent responsibilities and to improve clarity,

[12] http://www.justice.gov.uk/downloads/publications/moj/2011/family-justice-review-interim-rep.pdf
[13] https://www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf
[14] http://www.justice.gov.uk/downloads/consultations/judicial-appointments-consultation-1911.pdf

transparency and openness in the judicial appointments process. In addition the consultation also sought views on creating a more diverse judiciary that is reflective of society. The Government published its response to the consultation on 11 May 2012[15]. Clause 18 of, and Schedule 13 to, the Bill are intended to give effect to the aims outlined above.

Clause 19: Deployment of the judiciary

28. The deployment of the judiciary is a function referred to in the CRA and the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). Section 7 of the CRA includes in the list of the Lord Chief Justice's responsibilities as President of the Courts of England and Wales, the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales. Part 2 of Schedule 4 to the 2007 Act provides that the Senior President of Tribunals has the function of assigning judges and members to the chambers of the First-tier Tribunal and Upper Tribunal.

29. The establishment of Her Majesty's Courts and Tribunals Service ("HMCTS") on 1 April 2011 was designed to provide the Ministry of Justice with the opportunity to manage its resources more flexibly according to changing pressures and demands. However, the Lord Chief Justice and Senior President of Tribunals lack the ability to share judicial resource in order to respond to changes in demands. Clause 19 introduces Schedule 14 which makes amendments that will enable the Lord Chief Justice to deploy judges more flexibly across different courts and tribunals of equivalent or lower status.

Clause 20: Transfer of immigration or nationality judicial review applications

30. Clause 20 removes a restriction in existing legislation so as to allow for the transfer, from the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland to the Upper Tribunal, of applications for judicial review or permission to apply for judicial review. This restriction applies to most types of immigration, asylum and nationality applications, and its removal would allow these to be transferred by a direction from the Lord Chief Justice, with the consent of the Lord Chancellor.

Clause 21: Permission to appeal from Upper Tribunal to Court of Session

31. Clause 21 allows for a rule of court in Scotland that would reintroduce the "second-tier appeals test" for applications for permission to appeal from the Upper Tribunal to the Court of Session. This test requires that an application should demonstrate that the appeal would raise an "important point of principle or practice", or "some other compelling reason for the court to hear the appeal". The test applies in England and Wales and in Northern Ireland and was in place in Scotland before it was recently found to be *ultra vires* in a decision of the Court of Session.

[15] https://consult.justice.gov.uk/digital-communications/judicial-appointments-cp19-2011

Clause 22: Appeals relating to regulation of the Bar

32. Judges have long exercised an appellate jurisdiction in relation to the regulation of barristers. Since 1873 judges of the High Court have been exercising this function as part of their "extraordinary functions" under what is now section 44(1) of the Senior Courts Act 1981. The current regulatory arrangements of the Bar Council (as set out in Bar Training Regulations made by the Bar Standards Board and the Hearing Before the Visitors Rules 2010) provide for disciplinary decisions of the Council of the Inns of Court and decisions taken by the Bar Council's qualifications committee and its panels to be appealed to the Visitors. This includes decisions about, for example, professional misconduct, satisfaction of requirements for a person to be admitted to an Inn or called to the Bar as well as the conduct of students, the registration of pupillages and the approval of pupil supervisors. The historical jurisdiction of the Visitors is quite wide, however, and includes all decisions relating to the conduct of an Inn's affairs, such as the letting of chambers or payment of dues.

33. In December 2009 the Ministry of Justice consulted on a draft Civil Law Reform Bill[16] which included proposals to transfer the jurisdiction of the Visitors of the Inns of Court to the High Court; that draft Bill was not taken forward. Baroness Deech, Chair of the Bar Standards Board, tabled what is now clause 22 of the Bill at Report stage in the House of Lords (Official Report, 4 December 2012, columns 605 to 607) to abolish the jurisdiction of judges to sit as Visitors under section 44(1) of the Senior Courts Act 1981 and enable appeal to the High Court.

Clause 23: Payment of fines and other sums

34. In England and Wales the Lord Chancellor by virtue of section 36 of the Courts Act 2003 ("the 2003 Act") may appoint fines officers for the purpose of managing the collection and enforcement of court fines. Fines officers play a crucial role in the operation of the fine collection scheme detailed in Schedule 5 to the 2003 Act. For example, the role of a fines officer includes chasing payment via texts or letters, and issuing notification to the Department for Work and Pensions for benefit deductions in the event of non-payment of a court fine in certain cases.

35. In 2008 HMCTS launched the Criminal Compliance and Enforcement Blueprint. The fundamental principle of this strategy was to ensure criminal financial penalties imposed by the court were complied with earlier and reduce the use of costly enforcement actions such as issuing a warrant of distress. The costs of collection incurred by HMCTS while attempting the recovery of financial penalties are currently funded via the public purse.

36. To support the implementation of the above strategy and increase the incentive for early compliance, clause 23 of the Bill will enable the imposition and recovery of

[16] http://www.justice.gov.uk/downloads/legislation/bills-acts/draft-civil-law-reform-bill.pdf

a charge imposed on offenders for the costs of collecting or pursuing financial penalties and clarifies the role of the fines officer.

Clause: 24 Disclosure of information to facilitate collection of fines and other sums

37. The current data sharing gateway in Schedule 5 to the Courts Act 2003 ("the 2003 Act") is amended by clause 24 to bring the relevant paragraphs of that Schedule within a new Part 3A of the Schedule 5. New Part 3A enables the Secretary of State (in practice the Department for Work and Pensions) and a Northern Ireland Department and Her Majesty's Revenue and Customs to share "social security information" and "finances information" with Her Majesty's Courts and Tribunals Service for the purpose of the enforcement of unpaid financial penalties.

Clause 25: Disclosure of information for calculating fees of courts, tribunals etc

38. In line with chapter 6 'Fees, Charges and Levies' of HM Treasury's *Managing Public Money*[17], HMCTS, the UK Supreme Court ("UKSC") and the Public Guardian charge fees for the services they provide. To help individuals of limited financial means to gain access to these services, HMCTS, the UKSC and the Public Guardian operate fee remission systems for their users. For example, the Civil Proceedings Fees Order 2008[18] sets out the fees payable in civil proceedings (Schedule 1) and the accompanying remission system for those fees (Schedule 2).

39. Currently, to qualify for certain fee remissions an individual must supply HMCTS, the UKSC or the Public Guardian with a completed application form and up-to-date hard copy proof of state benefit entitlement, issued by either the Department for Work and Pensions ("DWP") or Her Majesty's Revenue and Customs ("HMRC") confirming which benefit they receive. Failure to provide evidence can result in the application being refused.

40. To streamline the fee remission process and ensure that it remains compatible with the reforms to the state benefit system provided for in the Welfare Reform Act 2012, clause 25 allows HMCTS, the UKSC and the Public Guardian to obtain certain information from the DWP, HMRC or a Northern Ireland Department in order to determine whether an individual qualifies for a fee remission. The Government intends that ultimately the information will, in most cases, be disclosed via a shared IT database. This data gateway therefore removes the need for an individual to supply a hard copy of their benefit entitlement notice in order to satisfy their entitlement for certain fee remissions.

[17] http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm
[18] S.I. 2008/1053

Clause 26: Enforcement services

41. Clause 26 amends the Legal Services Act 2007 (the "2007 Act") to enable complaints about enforcement services to be brought under the Ombudsman Scheme established by the Office for Legal Complaints. The Clause inserts a new Section 125A into the 2007 Act, to extend Part 6 (complaints handling) of that Act to bailiffs by seeking to treat the Bailiff Enforcement Agents Council (BEAC) as an approved regulator, regulating the enforcement industry, with the National Standards for Enforcement Agents and the Tribunals, Courts and Enforcement Act 2007 forming the basis of the regulatory arrangements.

Clause 27: Supreme Court Security Officers

42. The Lord Chancellor, in accordance with the Courts Act 2003, appoints and designates security officers for all courts in England and Wales, other than the UK Supreme Court. Security officers are required to comply with training requirements prescribed by secondary legislation. Once the Lord Chancellor designates an individual as a court security officer they have specific powers that they may exercise in court buildings, for example, the power of search, seizure of weapons and other prohibited articles and of restraint and/or removal from a court. Clause 27 inserts into the Constitutional Reform Act 2005 provisions that confer on the President of the Court the power to appoint and designate Supreme Court security officers who will exercise powers identical to those of other court security officers across England and Wales.

Clause 28: Enabling the making, and use, of films and other recordings of proceedings

43. In England and Wales, the recording and broadcasting of the proceedings of a court or tribunal is prohibited by section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981. It is an offence to breach section 41 of the Criminal Justice Act 1925 and it is a contempt of court to breach section 9 of the Contempt of Court Act 1981. By virtue of section 47 of the Constitutional Reform Act 2005, the Supreme Court of the United Kingdom is exempt from the prohibition in the Criminal Justice Act 1925 and proceedings are routinely recorded and broadcast.

44. The Lord Chancellor and Secretary of State for Justice made a written ministerial statement (House of Commons, Official Report, column 17WS and 18WS) on 6 September 2011 stating his intention to allow, in limited circumstances and with certain safeguards, the recording and broadcasting of certain aspects of court proceedings. Further details were set out in a policy paper, *Proposals to allow the broadcasting, filming, and recording of selected court proceedings,* published on 10 May 2012[19]. Clause 28 provides the Lord Chancellor with powers to bring forward secondary legislation, with the consent of the Lord Chief Justice, to give effect to this.

[19] http://www.justice.gov.uk/publications/policy/moj/proposals-for-broadcasting-selected-court-proceedings

Clause 29: Abolition of scandalising the judiciary as a form of contempt of court

45. Scandalising the Judiciary (also referred to as scandalising the court or scandalising judges) is defined by Halsbury's Laws of England as 'any act done or writing published which is calculated to bring a court or a judge into contempt or lower his authority'.

46. The call to abolish the offence arose when, in March 2012, the Attorney General of Northern Ireland obtained leave to prosecute the Rt Hon Peter Hain MP following comments made in his autobiography about a High Court judge. Although the proceedings were withdrawn, the proposed use of the offence caused considerable disquiet in Parliament and more widely. They were perceived by many as a serious attack on free speech.

47. An amendment tabled by Lord Lester of Herne Hill, to abolish the offence in England and Wales and in Northern Ireland was debated at Lords Committee (Official Report, 2 July 2012, columns 555 to 566) but was withdrawn. The topic was not left to rest. The Law Commission subsequently published a consultation paper in August 2012 provisionally concluding that the offence should be abolished without replacement. In November 2012 the Law Commission published a summary of its conclusions, namely that they consider that the retention of the offence serves no practical purpose and accordingly they support its abolition.[20] A further amendment on this issue was tabled at Lords Report stage by Lord Pannick and was agreed by the House (Official Report, 10 December 2012, columns 871 to 876) and now forms clause 29 of the Bill.

Clause 30: Use of force in self-defence at place of residence

48. Clause 30 amends section 76 of the Criminal Justice and Immigration Act 2008 so that the use of disproportionate force can be regarded as reasonable in the circumstances as the accused believed them to be when householders are acting to protect themselves or others from trespassers in their homes. The use of grossly disproportionate force would still not be permitted. The provisions also extend to people who live and work in the same premises and armed forces personnel who may live and work in buildings such as barracks for periods of time. The provisions will not cover other scenarios where the use of force might be required, for example when people are defending themselves from attack on the street, preventing crime or protecting property, but the current law on the use of reasonable force will continue to apply in these situations.

Clause 31: Dealing non-custodially with offenders

49. In March 2012, the Ministry of Justice published a consultation on community sentencing entitled *Punishment and Reform: Effective Community Sentences* (Cm

[20] http://lawcommission.justice.gov.uk/consultations/scandalising.htm

8334). The consultation sought views on a set of proposed reforms to the way sentences served in the community operate in England and Wales. The Government announced its response to the consultation on 23 October 2012 (House of Commons, Official Report, column 50WS to 51WS)[21]. Amongst other things, the Government announced proposals to: require courts to include a punitive requirement in every community order; make greater use of restorative justice; and introduce a new electronic monitoring requirement. Clause 31 and Schedule 15 give effect to these proposals. Proposals in the Government response to *Punishment and Reform* to allow courts to access information held by Her Majesty's Revenue and Customs and the Department for Work and Pensions for the purposes of sentencing and enforcing fines are provided for by Schedule 15 and clause 24 respectively.

Clause 32: Deferred prosecution agreements

50. In May 2012, the Ministry of Justice published a consultation on proposals for a new enforcement tool to deal with economic crime committed by commercial organisations, know as 'deferred prosecution agreements'. The Government published its response to the consultation on 23 October 2012 (House of Commons, Official Report, column 50WS)[22]. Clause 32 and Schedule 16 makes provision for deferred prosecution agreements.

PART 3: MISCELLANEOUS AND GENERAL

Clause 33: Immigration cases: appeal rights; and facilitating combined appeals

51. Section 47 of the Immigration, Asylum and Nationality Act 2006 provides for the Secretary of State to make a decision that a person may be removed from the United Kingdom whilst the person has their leave extended so that they can bring an appeal against a decision on the variation, curtailment or revocation of their leave. By making both decisions and serving them simultaneously, it enables the two appeals to be considered at the same time. However, the Upper Tribunal concluded in the case of both *Ahmadi*[23] and *Adamally and Jaferi*[24] that secondary legislation prevents the simultaneous service of these two decisions because, the removal decision cannot be made until written notice of the decision to refuse to vary a person's leave to remain has been given to that person. To ensure section 47 decisions remain effective, clause 34 clarifies when the decision to remove can be made, so that written notice of this decision and the decision to refuse to vary, or to curtail or revoke, leave may be given in the same document or at the same time.

[21] https://consult.justice.gov.uk/digital-communications/effective-community-services-1
[22] https://consult.justice.gov.uk/digital-communications/deferred-prosecution-agreements
[23] http://www.bailii.org/uk/cases/UKUT/IAC/2012/00147_ukat_iac_2012_ja_afghanistan.html
[24] http://www.bailii.org/uk/cases/UKUT/IAC/2012/00414_ukut_iac_2012_ma_sj_srilanka.html

Clause 34: Appeals against refusal of entry clearance to visit the UK

52. Section 4 of the Immigration Asylum and Nationality Act 2006 substituted a new version of 88A for sections 88A, 90 and 91 of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act"). Under section 88A(1)(a), which was commenced on 9 July 2012, a person may not appeal against a refusal of an application for entry clearance as a visitor unless the application was made for the purpose of visiting a person of a class or description prescribed in regulations. The Immigration Appeals (Family Visitor) Regulations 2012[25] prescribes the class or description of family members and includes, for example, where the applicant is the spouse, civil partner, father, mother, son or daughter of the person in the UK being visited. In July 2011, the Home Office published a consultation document entitled "Family Migration: A Consultation"[26]. The consultation sought views on a wide range of family migration proposals, including whether the full right of appeal for family visitors should be retained. The response to the consultation was published on 13 June 2012[27]. As regards full appeal rights for family visitors it was decided first to restrict (by narrowing the description of the person to be visited and introducing a sponsor status requirement) and then to remove the full right of appeal altogether. Applicants continue to be able to appeal on European Convention on Human Rights ("ECHR") and race discrimination grounds. The first stage was implemented through regulations made under section 88A of the 2002 Act[28], which was further commenced for this purpose[29]; clause 34 of the Bill gives effect to the second stage of these proposals.

Clause 35: Restriction on right of appeal from within the United Kingdom

53. The power to exclude a foreign national from the UK is a prerogative power and the decision to do so must be made personally by the Secretary of State (normally the Home Secretary). The Secretary of State will take such a decision if information presented to her leads her to conclude that the exclusion of a person from the UK would be conducive to the public good. The exclusion decision itself is a direction, provided to officials, requiring a mandatory refusal of all applications for entry clearance or entry to the UK courtesy of paragraph 320(6) of the Immigration Rules[30].

54. In March 2011 the Court of Appeal in the case of *Secretary of State for the Home Department v MK (Tunisia)* [2011] EWCA Civ 333 upheld the decision of Mr Justice Collins in the High Court that, despite being subject to an exclusion order, the claimant had an in country right of appeal against the order of the Secretary of State to cancel his leave to enter under article 13(7)(a) of the Immigration (Leave to Enter and

[25] S.I. 2012/1532
[26] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary
[27] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/cons-fam-mig.pdf
[28] The Immigration Appeals (Family Visitor) Regulations 2012 (S.I. 2012/1532)
[29] The Immigration, Asylum and Nationality Act 2006 (Commencement No. 8 and Transitional and Saving Provisions) (Amendment) Order 2012 (S.I. 2012/1531)
[30] http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/

Remain) Order 2000[31]. The claimant had originally been granted refugee status and indefinite leave to enter the UK in 2001. The claimant had no right of appeal against the exclusion decision itself, but he did have a right of appeal under section 82(2)(e) of the 2002 Act, which gives a statutory right of appeal against a variation of a person's leave to enter or remain in the UK if, when the variation takes effect, the person has no leave to remain. Under section 92(2) of the 2002 Act, this was an in country right of appeal, and under section 3D of the Immigration Act 1971 ("the 1971 Act"), a person has continuing leave while an appeal could be brought under section 82(1) of the 2002 Act. The Court of Appeal found that section 3D of the 1971 Act did not provide a power to exclude a person from entering the UK to exercise an in country right of appeal, and that the claimant had a right to return to the UK from abroad to exercise that right.

55. To ensure exclusion decisions remain effective, clause 35 provides a certification power for the Secretary of State to remove the in country right of appeal against the decision of a Secretary of State to cancel an individual's leave to enter or remain in the United Kingdom where the Secretary of State has decided to exclude that individual from the United Kingdom on the grounds that the individual's presence in the United Kingdom would not be conducive to the public good.

Clause 37: Drugs and Driving

56. The Misuse of Drugs Act 1971 ("MD Act") prohibits the production, import, export, possession and supply of "controlled drugs" (subject to regulations made under the MD Act). The definition of the term controlled drugs is set out in section 2 of the MD Act. However, it is not an offence under the MD Act to have a controlled drug in your body. Also in relation to drugs, section 4 of the Road Traffic Act 1988 ("the 1988 Act") makes it a criminal offence to drive, or be in charge of, a mechanically propelled vehicle when under the influence of drink or drugs. The difficulties involved in proving impairment due to drugs means that section 4 of the 1988 Act is not often used in drug driving cases. While section 5 of the 1988 Act makes it a separate offence to drive or be in charge of a motor vehicle with an alcohol concentration above the prescribed limit, no similar offence exists for drugs.

57. In December 2009, Sir Peter North CBE QC was appointed by the then Secretary of State for Transport, to conduct an independent review of the law on drink driving and drug driving. Sir Peter North's *Report of the Review of Drink and Drug Driving Law* was published in June 2010 and made a variety of recommendations in regards to drink and drug driving, including that further consideration should be given to introducing a new specific offence of driving or being in charge of a motor vehicle with a concentration of a controlled drug above a specified limit. Following Sir Peter North's report the Transport Select Committee published, in December 2010, a report on drink and drug driving law (HC 460). The Committee favoured the adoption of a "zero-tolerance" offence for illegal drugs which are known to impair driving.

[31] S.I. 2000/1161

58. The Secretary of State for Transport made a written ministerial statement on 21 March 2011 (House of Commons, Official Report, column 44WS to 46WS) which announced the publication of the Government's response to the reports by Sir Peter North and the Transport Select Committee on Drink and Drug Driving (CM 8050). The response endorsed Sir Peter North's recommendation that the case for a new offence relating to drug driving should be examined further. Clause 37 of the Bill provides for such an offence.

Clause 38: Public Order Offences

59. It is an offence under section 5 of the Public Order Act 1986 to use threatening, abusive or insulting words or behaviour, or disorderly behaviour, within the sight or hearing of a person likely to be caused harassment, alarm or distress. It is also an offence under section 5 to display any writing or other visible representation which is threatening, abusive or insulting and likely to cause harassment, alarm or distress.

60. Clause 38, which was inserted by a non-Government amendment passed during Lords Report stage, removes the word 'insulting' from section 5, thereby decriminalising insulting words, behaviour etc in the hearing or sight of someone likely to be caused harassment.

TERRITORIAL EXTENT AND APPLICATION

61. With the exception of certain provisions in Part 2 which extend to England and Wales only and clause 37 and Schedule 18 (drugs and driving) which extend to Great Britain, the Bill extends to the whole of the United Kingdom. In relation to Wales the provisions largely relate to non-devolved matters. In relation to Scotland and Northern Ireland the Bill addresses both devolved and non-devolved matters.

62. The following provisions in the Bill which extend to Scotland relate to matters which are reserved or otherwise not within the legislative competence of the Scottish Parliament:

- Certain consequential amendments arising from the creation of the single county court and single family court in England and Wales (Schedules 9 to 11);

- The amendments to the Constitutional Reform Act 2005 providing for a maximum full-time equivalent number of Supreme Court judges rather than a fixed number (clause 18 and Part 1 of Schedule 13);

- The amendments to the Constitutional Reform Act 2005 in respect of the procedure for judicial appointments (clause 18 and Part 4 of Schedule 13);

- The provisions in respect of the flexible deployment of judges and

members of tribunals (clause 19 and Schedule 14);

- Provision for the transfer of immigration and nationality judicial reviews from the Court of Session to the Upper Tribunal (clause 20);

- Restoration of the second-tier appeal test in Scotland (clause 21);

- The creation of an information gateway (clauses 24);

- Amendments to immigration legislation, including in respect of appeal rights and the enforcement powers of immigration officers (clauses 33 to 36 and Schedule 17); and

- The creation of a specific offence of drug driving (clause 37 and Schedule 18).

63. In addition, the provisions in Part 1 of the Bill relate to a mix of reserved and devolved matters. The provisions extending the enforcement powers of immigration officers and in respect of drug driving alter the executive competence of Scottish Ministers. The Scottish Parliament's consent has been sought for these provisions in accordance with the Sewel Convention[32]. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to devolved matters which further trigger the Convention, the consent of the Scottish Parliament will be sought for them.

64. In relation to Wales (apart from consequential amendments, the acknowledgement (in clause 16) that Acts of the National Assembly for Wales may already be able to confer jurisdiction on courts) the provisions of the Bill do not relate to devolved matters or confer functions on the Welsh Ministers. In respect of the consequences for section 33B of the Environmental Protection Act 1990 of the removal of the £5,000 cap on the amount of compensation orders made against adult offenders, the Minister for Environment and Sustainable Development submitted a Legislative Consent Memorandum for consideration by the National Assembly for Wales in November 2012. If further amendments are made to the Bill that trigger a requirement for a legislative consent motion, the consent of the National Assembly for Wales will be sought for them.

65. The provisions of the Bill relating to the following excepted or reserved matters also extend to Northern Ireland:

- The amendments to the Constitutional Reform Act 2005 providing for a maximum full-time equivalent number of Supreme Court judges rather than a fixed number (clause 18 and Part 1 of Schedule 13);

[32] A Legislative Consent Motion was agreed by the Scottish Parliament on 28 June 2012.

- The amendments to the Constitutional Reform Act 2005 in respect of the procedure for judicial appointments (clause 18 and Part 4 of Schedule 13);

- The provisions in respect of the flexible deployment of judges and members of Tribunals (clause 19 and Schedule 14);

- Provision for the transfer of immigration and nationality judicial reviews from the High Court to the Upper Tribunal (clause 20);

- The creation of an information gateways (clauses 24 and 25, and Part 7 of Schedule 15);

- Amendments to immigration legislation, including in respect of appeal rights and the enforcement powers of immigration officers (clauses 33 to 36 and Schedule 17).

66. In addition, the provisions in Part 1 of the Bill relate to a mix of excepted or reserved and transferred matters. Insofar as these provisions relate to transferred matters, the Northern Ireland Administration has confirmed that it will seek the necessary legislative consent motion. If amendments are made to the Bill that further trigger a requirement for a legislative consent motion, the consent of the Northern Ireland Assembly will be sought for them.

COMMENTARY ON CLAUSES

Part 1: The National Crime Agency

Clause 1: The National Crime Agency

67. *Subsection (1)* establishes the National Crime Agency ("NCA") which will be made up of NCA officers. *Subsection (2)* provides for the NCA to be headed by a Director General who will also be an NCA officer. The NCA will be under the direction and control of the Director General who will be operationally independent of Ministers.

68. *Subsections (3) to (11)* provide for the functions of the NCA. These consist of the functions conferred by this clause (*subsection (3)(a)*), the functions set out in the Proceeds of Crime Act 2002 (*subsection (3)(b)*) and other functions conferred by this Bill and by other enactments (*subsection (3)(c)*). Those other functions will include, for example, being a protection provider for the purpose of the protection of witnesses and other persons under section 82 of the Serious Organised Crime and Police Act 2005.

69. The NCA's principal functions will be the crime reduction function (*subsection (4)*) and the criminal intelligence function (*subsection (5)*).

70. The crime reduction function relates to securing that efficient and effective

activities to combat organised crime and serious crime are carried out (whether by the NCA, other law enforcement agencies, or other persons). *Subsections (6) to (10)* amplify the nature of this function and how it may, or may not, be discharged. In discharging this function, the NCA may itself undertake activities to combat serious crime and organised crime, including by preventing, detecting or investigating such crime, or otherwise. *Subsection (11)* explains the reference to 'activities to combat crime'. When discharging functions relating to organised or serious crime, the NCA may carry out activities in relation to any kind of crime (paragraph 5 of Schedule 1). This reflects the role of the NCA in the reduction of crime in other ways (*subsection (11)(c)*) and mitigating the consequences of crime (*subsection (11)(d)*). This acknowledges that the investigation and prosecution of organised criminals is only one of the strategies that may be deployed to tackle organised criminality and that there are a range of disruption tactics that will need to be deployed by the NCA in order to reduce the harm and impact caused by organised criminal groups.

71. In addition to undertaking activities of its own, the NCA may discharge its crime-reduction function in other ways by: ensuring that other law enforcement agencies and others also carry out activities to combat serious and organised crime (*subsection (8)*); and by improving co-operation between law enforcement and other agencies to combat serious crime and organised crime and by improving co-ordination of their collective efforts to combat serious crime and organised crime (*subsection (9)*).

72. The role of the NCA in tackling serious crime and organised crime does not include the function of the NCA itself prosecuting offences or, in Scotland, the NCA itself instituting criminal proceedings (*subsection (10)*). In England and Wales the prosecutorial function will be undertaken by the Crown Prosecution Service and the Serious Fraud Office and in Northern Ireland the prosecutorial function will be undertaken by the Public Prosecution Service, whilst in Scotland responsibility for instituting criminal proceedings and prosecuting offences rests with the Crown Office and Procurator Fiscal Service.

73. *Subsection (12)* gives effect to Schedule 1.

Schedule 1: The NCA & NCA Officers

74. *Paragraph 1* provides that the NCA will carry out its functions on behalf of the Crown. In form, the NCA will be a crown body without incorporation. The NCA will be classified as a Non-Ministerial Department.

75. *Paragraph 2* places a duty on the Director General to secure that NCA functions are discharged efficiently and effectively.

76. *Paragraph 3* identifies the financial year of the NCA and includes a transitional provision whereby the first financial year of the Agency begins on the day that the NCA is formally established (by virtue of the commencement of clause 1) and

ends on the following 31 March.

77. *Paragraph* 4 provides that the NCA will be able to charge for any service it provides to a person at their request.

78. *Paragraph 5* provides that for the purposes of the discharge of NCA functions which relate to organised or serious crime, the NCA may carry on activities in relation to any kind of crime (*sub-paragraph (1)*). This enables the NCA to tackle other crimes that are not serious and/or organised where the outcome will support the disruption or other mitigation of an organised crime group or another serious and/or organised crime. *Sub-paragraph (2)* provides that an NCA officer designated with operational powers is not prevented from exercising their powers in relation to a crime that is not serious or organised where they reasonably suspect that an offence is about to be or is being committed.

79. *Paragraph 6* preserves the role of the Lord Advocate in respect of the investigation and prosecution of crime in Scotland. The NCA may only carry out its activities in relation to an offence which it suspects has been committed (or is being committed) in Scotland, if it does so with the agreement of the Lord Advocate (*sub-paragraph (1)*). In carrying out such activities in Scotland an NCA officer must comply with any directions from the Lord Advocate or the procurator fiscal (*sub-paragraph (2)*). And if an NCA officer suspects an offence has been committed or is being committed in Scotland the NCA officer must notify the procurator fiscal as soon as is practicable (*sub-paragraph (3)*).

80. *Paragraph 7* provides for the selection and appointment of the Director General. The Director General is to be appointed by the Secretary of State (in practice, the Home Secretary) following consultation with Scottish Ministers and the Department of Justice in Northern Ireland. The terms and conditions of appointment are to be determined by the Secretary of State, save that *sub-paragraph (6)* provides for a maximum term of up to five years (there is no bar on re-appointment). The provisions in sections 10 to 14 of the Constitutional Reform and Governance Act, which governs the appointment of civil servants, will not apply to this appointment (*sub-paragraph (7)*). Appointment will be on merit and the process will be conducted in accordance with the Code of Practice on Public Appointments as set out by the Commissioner for Public Appointments.

81. *Paragraph 8* provides that the Home Secretary may require the Director General to retire or resign in the interests of efficiency or effectiveness, or by reason of any misconduct. Before calling upon the Director General to retire or resign, the Home Secretary must: write to the Director General setting out his or her reasons for so doing; give the Director General the opportunity to make written representations; and consider any such representations made by the Director General. The Home Secretary must also consult Scottish Ministers and the Department of Justice in Northern Ireland.

82. *Paragraph 9* provides that the Director General is responsible for the selection and appointment of other NCA officers and determining their terms and conditions (with the agreement of the Minister for Civil Service), in accordance with the Civil Service Management Code and any other Civil Service policy set by the Minister for the Civil Service.

83. *Paragraph 10* provides that the Director General may delegate his or her functions to a designated senior NCA officer. A designation may extend to one or more senior NCA officers. A senior officer means an NCA officer who is at, or above, a grade specified for this purpose by the Home Secretary in the framework document. The power to delegate is subject to any restriction or limitation on the exercise of the function, for example, the Director General's functions in respect of directed tasking under clause 4.

84. *Paragraph 11* ensures that the role and responsibilities of the Director General will not be affected by a change in the individual holding the office of Director General. Additionally, it provides that any NCA officer may take up the role and/or responsibilities of any other NCA officer except the Director General.

85. *Paragraph 12* provides that where a person already holds an office with operational powers on becoming an NCA officer – such as the office of constable, officer of Revenue and Customs, or immigration officer – that office is suspended whilst that person remains an NCA officer. The office held is revived once the person ceases to be an NCA officer and returns to his or her previous service. These provisions cease to apply to a person who resigns from or ceases to hold their original office. The effect of the suspension provided for in paragraph 12 is that a person is not bound by their office whilst serving as an NCA officer. The only exception is the office of special constable or a constable in the Police Service of Northern Ireland ("PSNI") Reserve, which a person may continue to hold without suspension while serving as an NCA officer.

86. *Paragraph 13* provides for secondments/attachments to the NCA and establishes that individuals seconded into or attached to the NCA from other organisations will be NCA officers. It further provides that police officers on secondment or attachment to the NCA will be under the direction and control of the Director General. *Paragraph 14* makes equivalent provision for the secondment of NCA officers to UK police forces.

87. *Paragraph 15* provides for the NCA to be able to draw on the expertise and contribution of volunteer officers. *Sub-paragraphs (1) to (3)* provide for the Director General to select such persons for appointment on an unpaid and part-time basis, and for them to be known as "NCA specials". The terms and conditions for the appointment are to be determined by the Director General. *Sub-paragraph (4)* provides that the unpaid nature of NCA specials does not prevent the reimbursement of expenses incurred; or the provision of subsistence, accommodation or training; or the payment of compensation for loss attributable to injury or death resulting from

their activity as an NCA special. *Sub-paragraph (5)* provides that the Director General may designate an NCA special with the powers and privileges of a constable, but not the powers of a customs officer or immigration officer. *Sub-paragraph (6)* provides that an NCA special can only be designated with the powers and privileges of a constable in England and Wales and the adjacent United Kingdom waters, and not in Scotland, Northern Ireland or overseas. *Sub-paragraphs (7)* and *(8)* exclude NCA specials from some provisions applying to other NCA officers. *Sub-paragraphs* (*9*) and (*10*) also exclude NCA specials from the effects of clauses 12 and 13 relating to restrictions on the right to strike in relation to NCA officers holding operational powers. *Sub-paragraph (11)* provides for the suspension of the powers of an NCA special whenever that person acts as special constable or a member of the PSNI Reserve. The effect of this provision is to ensure a person is not able to use the powers of an NCA special when he or she acts as a special constable or a member of the PSNI Reserve. *Sub-paragraph (12)* provides that a person is not a civil servant by virtue of being an NCA special.

Clause 2: Strategic priorities

88. This clause gives the Home Secretary power to determine strategic priorities for the NCA. Such priorities may, for example, include protecting the public against illegal drugs, human trafficking and cyber crime. These 'strategic priorities' are to be set in consultation with "the strategic partners" (who are defined in clause 15), the Director General, and anyone else the Home Secretary considers appropriate.

Clause 3: Operations

89. This clause enshrines the operational independence of the Director General and determines how this relates to the strategic direction set by the Home Secretary. The Home Secretary will set the strategic priorities of the NCA, and will issue a framework document for the NCA (see further below). As part of the annual plan, the Director General will explain how he or she intends that the strategic and operational priorities will be given effect to. It will be for the Director General to determine which operations to mount and how they will be conducted (*subsection (1)*). The Director General must have regard to the strategic priorities, annual plan and framework document in exercising his or her functions *(subsection (2)*).

90. *Subsections (3) to (9)* make provision in respect of the annual plan. They provide that at the beginning of each financial year, the Director General must publish an annual plan setting out how the Director General intends that NCA functions are to be exercised for that year. The plan must include any strategic and operational priorities (operational priorities must be consistent with the current strategic priorities), and explain how the Director General intends to deliver against both sets of priorities *(subsection (4)*). In developing the annual plan, the Director General must consult the "strategic partners" (defined in clause 15(1)) and anyone else he or she considers appropriate (*subsection (6)*). The duty to consult and approve the plan with Scottish Ministers and the Department of Justice in Northern Ireland, as two of the strategic partners, only applies in so far as the plan relates to activities in Scotland and Northern Ireland respectively (*subsections (7) and (8)*). The Home Secretary must

approve the annual plan before it is issued by the Director General (*subsection (8)*).

91. *Subsection (10)* gives effect to Schedule 2.

Schedule 2: The framework document & annual report

92. Part 1 of Schedule 2 makes provision in respect of the NCA framework document. The framework document will in effect be a joint statement of how the Home Secretary and Director General propose to work together, and how they wish the NCA to operate.

93. *Paragraph* 1 provides that the framework document will set out the ways in which the NCA is to operate. In particular it will set out the ways in which NCA functions are to be exercised and the ways in which the NCA is to be administered, for example, the governance and accountability of the Agency including the respective roles of the Home Secretary and Director General; the arrangements in respect of financial and performance management; and the proactive disclosure of information.

94. *Paragraph 2* places a duty on the Secretary of State to issue the framework document and keep it under review and revise it as and when appropriate.

95. *Paragraph 3* provides that the Home Secretary must have regard to the framework document in exercising functions in relation to the NCA. Similarly clause 3(2) provides that the Director General must have regard to the framework document when exercising his or her functions.

96. *Paragraph 4* requires that the Home Secretary must consult and obtain the approval of the Director General before issuing any framework document. *Paragraph 5* requires the Secretary of State to consult Scottish Ministers and the Department of Justice in Northern Ireland in preparing the first framework document or in the Home Secretary's view any significant revision thereof.

97. *Paragraph 6* requires the Secretary of State to lay the framework document (and any subsequent revisions) before Parliament and arrange for it to be published in the manner which the Home Secretary considers appropriate. The Scottish Ministers and the Department of Justice in Northern Ireland are required to lay a copy of the report before the Scottish Parliament and the Northern Ireland Assembly respectively.

98. Part 2 of Schedule 2 makes provision in respect of the NCA annual report.

99. *Paragraph 7* places a duty on the Director General to issue an annual report on the exercise of the NCA functions during that year which must include an assessment of the extent to which the annual plan has been carried out.

100. *Paragraph 8* requires the Director General to arrange publication of the annual report in a manner which he or she considers appropriate but the Director General

must send a copy of it to the strategic partners and the Secretary of State. The Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland are required to lay a copy of the report before Parliament, the Scottish Parliament and the Northern Ireland Assembly respectively.

Clause 4: Relationships between NCA and other agencies: tasking etc

101. *Subsections (1) to (4)* provide for 'voluntary' arrangements to perform a task. *Subsections (1) and (2)* enable the Director General to request a UK police force or a UK law enforcement agency to perform a task if the Director General considers that performance of the task would assist the NCA to exercise functions and explains how performance of the task would assist the exercise of functions.

102. Similar provisions are made for UK police forces and UK law enforcement agencies to request the NCA to perform a task (*subsections (3) and (4)*).

103. *Subsections (5) to (9)* provide for 'directed' arrangements to perform a task. In certain limited and specified circumstances (see below) the Director General may direct the chief officer of an England and Wales police force or the Chief Constable of the British Transport Police to perform a task specified in a direction where the performance of the task would assist the NCA to exercise functions; it is expedient for the directed person to perform that task; and voluntary arrangements cannot be made or made in time (*subsections (5) and (6)*). The directed person must comply with the direction (*subsection (7)*). Directions to the Chief Constable of the British Transport Police will require prior consent from the relevant Secretary of State (*subsection (9)*).

104. *Subsection (10)* gives effect to Schedule 3 (relationships between NCA and other agencies). *Subsection (11)* provides that the arrangements in respect of the apportionment of costs, as set out in Part 5 of Schedule 3, are to apply to these voluntary and directed tasking arrangements. *Subsection (12)* signposts the power in paragraph 33 of Schedule 3 which enables the Secretary of State to amend, by order (subject to the affirmative resolution procedure), the list of partners subject to directed tasking and the persons, if any, from whom the Director General of the NCA is required to seek consent before exercising the power of direction.

Schedule 3: Relationships between NCA and other agencies

Part 1: Co-operation

105. *Paragraph 1* places a duty on NCA officers to co-operate with specified persons in order to assist them in their activities to combat crime. It also places a reciprocal duty on members of the armed forces, coastguard and those specified persons to co-operate with NCA officers in the discharge of NCA functions.

106. *Paragraph 2* enables the NCA to enter into co-operation arrangements with other persons for the purposes of discharging any of its functions, such as Police Collaboration Agreements under the Police Act 1996

Part 2: Exchange of information

107. *Paragraph 3* creates a duty on chief officers of UK police forces (as defined in clause 15(1)) to keep the NCA informed about certain information and when requested to disclose that information to the NCA. *Sub-paragraph (1)* creates a duty on police forces to inform the Director General of the NCA about any information held by them which is considered by the chief officer to be relevant to the exercise by the NCA of any of its core functions (namely, the crime-reduction function, the criminal intelligence function or functions under the Proceeds of Crime Act 2002). This duty applies to chief officers of police forces in England and Wales, Northern Ireland and Scotland, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. *Sub-paragraph (2)* creates a duty on the chief officer to then disclose that information to the NCA if the Director General makes a request for it. *Sub-paragraph (3)* provides that paragraph 3(1) does not require a chief officer to keep the Director General informed of information that appears to the chief officer to be information obtained from the NCA.

108. *Paragraph 4* imposes a duty on the Director General of the NCA to keep chief officers of UK police forces (as defined in clause 15(1)) informed about certain information and is reciprocal in nature to the duty in paragraph 3(1). *Sub-paragraph (1)* creates a duty on the Director General to notify chief officers of any information that the NCA possesses which is considered by the Director General to be relevant to the exercise of a function of the chief officer or any other member of that police force. This duty applies to the Director General in respect of chief officers of police forces in England and Wales, Northern Ireland and Scotland, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. *Sub-paragraph (2)* provides that the duty imposed by paragraph 4(1) does not require the Director General to keep the chief officer informed of information which appears to the Director General to be information obtained from chief officer or any other member of that police force.

109. *Paragraphs 5 to 7* make like provision to that in paragraphs 3 and 4 in respect of other specified bodies, (as defined in paragraph 7) namely the Serious Fraud Office, UKBA, Border Force and the Director of Border Revenue. By virtue of *paragraph 34* the Secretary of State may by order (subject to the affirmative procedure) amend paragraph 7 so as to add further persons to the list of Government bodies who will be subject to the duty to keep the NCA informed of information.

Part 3: Assistance within the UK

110. *Paragraph 8* allows for the Director General of the NCA to provide assistance (in the form of officers and other such support) to operate under the direction and control of a UK police force, a UK law enforcement agency, an Island police force or an Island law enforcement agency if they make a specified request for assistance. If a request is made the Director General of the NCA may provide such assistance as the Director General of the NCA considers appropriate.

111. *Paragraph 9* enables a UK police force or a UK law enforcement agency to

provide assistance (whether in the form of officers to operate under the direction and control of the NCA or other support) if the Director General of the NCA makes a request for assistance. The person providing the assistance may provide such assistance as they consider appropriate.

112. *Paragraph 10* enables the Home Secretary to direct the Director General of the NCA to provide specified assistance to an England and Wales police force and other listed persons if it appears to the Home Secretary that it is appropriate for directed assistance to be given by the Director General of the NCA.

113. *Paragraph 11* enables the Director General of the NCA to direct a listed person in sub-paragraph (1) to provide specified assistance to the NCA. Such directions may only be given if the Director General of the NCA considers it appropriate for the NCA to receive directed assistance and is subject to the prior consent of the relevant minister as specified in paragraph 11(3).

114. *Paragraphs 12 and 13* concern directed assistance to and from the NCA in relation to Scotland. These enable Scottish Ministers to direct the Director General of the NCA to provide specified assistance to the Police Service of Scotland if Scottish Ministers consider it appropriate for the Police Service of Scotland to receive directed assistance from the NCA and the Home Secretary consents. Scottish Ministers will also have the power to direct the Police Service of Scotland to provide specified assistance to the NCA if Scottish Ministers consider it appropriate for the NCA to receive directed assistance from the Police Service of Scotland.

115. *Paragraphs 14 and 15* make corresponding provision in relation to Northern Ireland. This enables the Department of Justice in Northern Ireland to direct the Director General of the NCA to provide specified assistance to the Police Service of Northern Ireland, if the Department of Justice in Northern Ireland considers it appropriate for the Police Service of Northern Ireland to receive such directed assistance and the Home Secretary consents. It also provides the Department of Justice in Northern Ireland with the power to direct the Police Service of Northern Ireland to provide specified assistance to the NCA, subject to the Department of Justice in Northern Ireland considering it appropriate for the NCA to receive such directed assistance and subject to consultation with the Northern Ireland Policing Board and other persons that the Department of Justice in Northern Ireland considers appropriate to consult.

116. *Paragraph 16* provides that directed assistance powers can only be used where there is a special need for assistance and where it is expedient for the directed party to provide it. It must also be the case that voluntary arrangements cannot be made, or cannot be made in time.

117. *Paragraph 17* describes the form that assistance may take, including (but not limited to) the loan of persons or equipment.

118. *Paragraph 18* provides that individuals who are provided under the assistance provisions will fall under the direction and control of the assisted person.

Part 4: Use of police facilities etc by NCA

119. It is not expected that the NCA will maintain its own custody facilities. Accordingly Part 4 of Schedule 3 enables the NCA to use premises, equipment, facilities or services of police forces, and immigration and customs facilities in accordance with an agreement made between the NCA and such bodies.

120. *Paragraph 19* provides for voluntary arrangements to be made between the Director General and police and crime commissioners, or the chief constable of police forces listed in Schedule 1 to the Police Act 1996 (police forces in England and Wales outside London), for the NCA to make use of their police facilities.

121. *Paragraph 20* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the Metropolitan Police Force.

122. *Paragraph 21* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the City of London Police Force.

123. *Paragraph 22* enables the Director General to make voluntary arrangements for the NCA to use immigration or customs facilities.

124. *Paragraph 23* provides that the Secretary of State may direct a police force in England & Wales to make arrangements for the use of facilities under paragraph 19, 20 or 21 of this Schedule, in the absence of satisfactory voluntary arrangement made under those paragraphs.

125. *Paragraph 24* enables the Director General of the NCA to make voluntary arrangements for the NCA to use facilities made available to the Police Service of Northern Ireland. In the absence of a satisfactory voluntary arrangement, under paragraph 24, paragraph 25 enables the Department of Justice in Northern Ireland, with the consent of the Secretary of State, to direct the Director General and the Northern Ireland Policing Board to make arrangements for the NCA to use the facilities made available by the Police Service of Northern Ireland.

126. *Paragraph 26* provides that facility-sharing arrangements must specify or describe the facilities that are the subject of such arrangements (*sub-paragraph (1)*), and may be varied or terminated by the parties (*sub-paragraph (2)*) unless it was made in compliance with a direction, in which case consent must be obtained from the person who gave the direction (*sub-paragraph (3)*).

127. *Paragraph 27* provides that before a person ('D') gives a direction under this Part of the Schedule to a person ('P'), D must notify P of the proposal, and consider representations from P.

128. *Paragraph 28* provides that facilities means premises, equipment and other material, facilities and services.

Part 5: Payment for tasks, assistance or facilities

129. *Paragraphs 29 to 31* make provision for the NCA, police fundholding bodies and law enforcement agencies to pay for tasks, assistance or facilities. However, the parties involved may decide that there should be no such charging.

130. *Paragraph 32* defines the 'appropriate amount' that should be paid as an amount agreed by both parties or, in the absence of such agreement, an amount determined by the Secretary of State. If one of the parties is devolved, the Secretary of State must consult with the appropriate devolved body.

Part 6: General

131. *Paragraph 33* provides an order-making power (subject to the affirmative resolution procedure) by which the Secretary of State may amend the list of partners subject to directed tasking and assistance arrangements (at clause 4 or paragraph 11 of Schedule 3). The Secretary of State may, in particular, add or remove persons (who were added) other than the Commissioners for Her Majesty's Revenue and Customs, the Chief Constable for the Police Service of Scotland, any person operating only in Scotland, the Chief Constable of the Police Service of Northern Ireland, and any person operating only in Northern Ireland. The Secretary of State may also amend the requirements for the Director General to seek prior consent from agencies or bodies before issuing directions. Before using this power, the Secretary of State must consult the affected person.

132. *Paragraph 35* places a duty on a person given a direction to comply with it (*sub-paragraph (1))* and limits the extent of a direction by ensuring that it must not relate to any prosecution function (*sub-paragraph(2)*).

Clause 5: Duty to publish information

133. *Subsection (1)* places a duty on the Director General to publish information about the exercise of the NCA's functions and other matters relating to the NCA. *Subsections (2)* and *(3)* specify that in carrying out this duty, the Director General must comply with any requirements set out in the Framework Document.

134. *Subsection (4)* provides the duty to publish information is subject to Schedule 7. This imposes limits on the information that can be published. For example, information obtained from HM Revenue and Customs can only be published with the consent of the Commissioners for Revenue and Customs.

Clause 6: Information gateways

135. Clause 6 is a broad information gateway. *Subsection (1)* authorises any person to disclose information to the NCA if the disclosure is made for the purposes of the exercise of any NCA function.

136. The only exception to the general power in *subsection (1)* is set out in *subsection (2)* which provides *subsection (1)* does not authorise a person serving in the Security Service, Secret Intelligence Service or GCHQ to disclose information to the NCA so any disclosure of information by such a person to the NCA would be made in accordance with the relevant intelligence service arrangements as defined in *subsection (10)*.

137. *Subsection (3)* provides information obtained by the NCA in connection with the exercise of any NCA function may be used by the NCA in connection with the exercise of any other NCA function. For example, information obtained in the course of gathering criminal intelligence may be used in connection with NCA's crime reduction function.

138. *Subsection (4)* provides that the NCA may disclose information in connection with the exercise of any NCA function if the disclosure is for any "permitted purpose". The term "permitted purpose" is defined in clause 15(1). This would apply in situations where, for example, the NCA has received information on suspected criminal activity (such as a 'Suspicious Activity Report' – which help banks and financial institutions protect themselves and their reputation from criminals and help law enforcement to track down and arrest them) and has decided to share this information with an organisation or person outside the NCA (such as a financial institution) for the purpose of preventing or detecting crime.

139. *Subsection (5)* makes it clear that *subsection (4)* only authorises an NCA officer to disclose information obtained under Part 6 of POCA for the purpose of: the exercise of the functions of the Lord Advocate under Part 3 of POCA (Scottish confiscation); the exercise of functions by Scottish Ministers under or in relation to Part 5 of POCA (civil recovery to the proceeds of crime etc).

140. *Subsection (6)* provides that an NCA officer may not disclose information obtained by the NCA under Part 6 of POCA (revenue functions) under *subsection (4)*. An NCA officer may only disclose information obtained under Part 6 of POCA in accordance with the provisions set out in *subsection (7)*.

141. *Subsection (7)* provides that an NCA officer may disclose information obtained under Part 6 of POCA if the disclosure is to the Commissioners for Revenue and Customs; to the Lord Advocate for the purpose of specified functions; to any person for the purpose of civil proceedings which relate to a matter in respect of which the NCA has functions; or to any person in compliance with an order of a court or tribunal.

142. *Subsection (8)* provides that a disclosure of information in accordance with Part 1 of the Bill does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information however imposed (including any statutory restrictions other than those set out in Schedule 7 to the Bill). In practice, this provision allows the police, law enforcement

agencies, banks and other financial institutions to share information with the NCA and vice versa about organised crime activity, which could involve the disclosure of personal banking records.

Clause 7: Other functions etc

143. *Subsections (1) and (2)* add the NCA to the list of bodies subject to the duty in sections 11 (which relates to England) and 28 (which relates to Wales) of the Children Act 2004. Sections 11 and 28 of the Children Act impose a duty on specified agencies to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children. The aim of this duty is to:

- ensure that agencies give appropriate priority to their responsibilities towards the children in their care or with whom they come into contact; and

- encourage agencies to share early concerns about safety and welfare of children and to ensure preventative action before a crisis develops.

144. This duty will be particularly relevant to the work of the NCA in tackling child sex abuse and the human trafficking of children.

145. *Subsections (3) and (4)* provide a general power to the NCA to assist governments or other bodies exercising functions of a public nature outside the British Islands.

146. *Subsection (6)* gives effect to Schedule 4 (NCA General).

Schedule 4: NCA: general

147. *Paragraph 1* allows the Secretary of State to make regulations (subject to the negative resolution procedure) governing the equipment used by the NCA. *Sub-paragraph (2)* enables regulations to be made, for example, in relation to the use of specified equipment. The use of equipment may also be prohibited under the regulations. The NCA is required to comply with any conditions specified in the regulations on the use of equipment. Before making such regulations under paragraph 1, the Secretary of State must first consult the Director General of the NCA and any other persons considered appropriate (*sub-paragraph (3)*).

148. Equipment under paragraph 1 includes vehicles, headgear and protective and other clothing (*sub-paragraph (4)*).

149. *Paragraph 2* establishes the NCA's liability in respect of unlawful conduct of any persons acting under the auspices of the NCA in the same way that an employer is liable for the unlawful conduct of employees in the course of their employment.

150. *Sub-paragraphs (2) to (4)* set out the circumstances under which the NCA will be liable for the unlawful actions of persons carrying out functions in relation to the NCA. *Sub-paragraph (2)* sets out the NCA's liability in relation to constables or

other persons carrying out functions whilst seconded to the NCA or when providing assistance to the NCA under Part 3 of Schedule 3. *Sub-paragraph (3)* covers the NCA's liability in relation to the conduct of a person other than an NCA officer who is a member of an NCA-led international joint investigation team, when that person is carrying out functions as a member of that team. *Sub-paragraph (4)* covers the unlawful conduct of a person carrying out surveillance under section 76A of the Regulation of Investigatory Powers Act 2000.

151. *Sub-paragraph (5)* provides that the NCA will be a joint tortfeasor when the unlawful conduct is a tort.

152. *Sub-paragraph (6)* provides that where the Secretary of State receives reimbursement through an international agreement for any sums of money paid by the NCA by virtue of paragraph 2, the Secretary of State must pay the sum to the NCA by way of reimbursement.

153. *Paragraph 3* sets out various summary offences relating to obstructing or assaulting members of an international joint investigation team led by the NCA, in accordance with obligations under international agreements to which the United Kingdom is a party.

154. *Sub-paragraph (1)* makes it an offence to assault a member of an international joint investigation team led by the NCA and who is carrying out functions as a member of that team and s*ub-paragraph (3)* makes it an offence to resist or wilfully obstruct a member of that team in similar circumstances. S*ub-paragraphs (2)* and *(4)* provide for the penalties for the two offences.

155. *Paragraph 4* is concerned with certain provisions of sex, disability, race and employment discrimination legislation in Northern Ireland and the operation of those provisions in relation to persons seconded to the NCA. S*ub-paragraph (1)* provides that a person seconded to the NCA is to be treated as an employee of the NCA for the purposes of the provisions listed under s*ub-paragraph (2)*. S*ub-paragraph (3)* provides that for the purposes of s*ub-paragraph (4)* the NCA is to be treated as the employer of persons seconded to the NCA.

156. *Paragraph 5* sets out and defines the various terms that have been used in the Schedule.

Clause 8: Director General: customs powers of Commissioners & operational powers

157. This clause provides the Director General with the same powers as the Commissioners of HM Revenue and Customs have in relation to any customs matter (*subsection (1)*) and also provides for the Secretary of State to be able to designate the Director General to hold operational powers (*subsection (2)*) (these include the powers and privileges of a constable, the powers of an officer of Revenue and Customs and the powers of an immigration officer). *Subsection (5)* provides the

mechanism by which the Director General is to be designated (with more detail set out in Part 2 of Schedule 5). *Subsection (6)* provides that the Secretary of State may only exercise the powers of designation if certain conditions are met, that is, where he or she is required to do so under *subsection (5)* or where he or she is required or otherwise authorised to do so by regulations under paragraph 5 of Schedule 5. *Subsection (3)* provides that the Home Secretary may modify or withdraw a designation provided under *subsection (2).*

158. *Subsection (4)* gives effect to Schedule 5 (police, customs and immigration powers).

Clause 9: Operational powers of other NCA officers

159. This clause provides the Director General with the ability to designate other NCA officers with operational powers. These include the powers and privileges of a constable, the powers of an officer of Revenue and Customs, or the powers of an immigration officer (*subsection (1)*).

160. The Director General may only designate an NCA officer with operational powers if the Director General is satisfied that the NCA officer is capable of exercising those powers, has received adequate training and is otherwise a suitable person to exercise them (*subsection (2)*). The Director General is able to modify or withdraw a designation given under *subsection (1)* by giving notice to the NCA officer concerned (*subsection (3)*).

Schedule 5: Police, customs and immigration powers

Part 1: Director General: Commissioners' powers exercisable under section 8(1)

161. *Paragraph 1* sets out a further limitation on the Commissioner powers exercisable by the Director General. Clause 8 sets out that the powers of the Commissioners are exercisable only in relation to any customs matter. Paragraph 1 provides that if a power of the Commissioners is exercisable in relation to both a customs matter and any other matter the power is exercisable by the Director General only in relation to a customs matter (as defined in clause 8).

162. *Paragraph 2* applies to an enactment if it provides for the issuing of warrants which authorise the Commissioners to exercise any power in relation to a customs matter. The paragraph provides that for the purpose of enabling the Director General to exercise that power in relation to a customs matter the enactment has effect as if the Director General were one of the Commissioners.

163. *Paragraph 3* provides that the Director General cannot exercise the power of the Commissioners to consent to a disclosure of HMRC information under paragraph 2(1) of Schedule 7 or the power of the Commissioners to consent to a further disclosure of HMRC information under paragraph 2(2) of Schedule 7.

Part 2: Director General: designation under section 8

164. *Paragraph 4* provides that the Secretary of State must appoint an advisory panel to make recommendations as to the operational powers that the Director General should have (*sub-paragraph (1)*). The panel must be appointed whenever there is an appointment of a Director General, and at any other time that the Secretary of State considers is appropriate. *Sub-paragraph (2)* provides that the requirement to establish an advisory panel is subject to any regulations under paragraph 5. *Sub-paragraph (3)* sets out the membership of the panel which must consist of a person to chair the panel (who must not be a serving civil servant) and other members expert in the training of NCA officers and the respective operational powers – police powers, customs powers and immigration powers. The panel may only consider whether the Director General has received adequate training in respect of the operational powers. The requirements as to capability and suitability for the Director General to exercise operational powers will be addressed as part of the selection and appointment process (paragraph 7(2) of Schedule 1). The chair must consider the information given by the expert members in order to decide whether the Director General has received adequate training in order to exercise the operational powers in question and produce a report with recommendations as to the operational powers the Director General should have (*sub-paragraph (5)*).

165. *Paragraph 5* provides that the Secretary of State may make regulations to set out the circumstances in which the Director General may be designated with operational powers other than on the recommendation of the advisory panel. Regulations may provide that the Secretary of State must designate the Director General with operational powers if specified conditions are met (*sub-paragraph (2)*). *Sub-paragraph (3)* provides that the conditions may relate to the training received by a person in one or more of the operational powers before their appointment as Director General.

Part 3: Further provision about designations under sections 8 or 9

166. *Paragraph 6* provides that a designation of an officer as having operational powers may be subject to limitations specified in the designation. This may include limitations on which operational powers the designated officer has or limitations on the purposes for which an NCA officer may exercise operational powers.

167. *Paragraph 7* provides that the designation of an officer as having operational powers does not have any limitation of time unless the designation specifies a period for which it is to have effect. Any designation, however, remains subject to any subsequent modification or withdrawal and only has effect while a person remains an NCA officer.

168. *Paragraph 8* provides that the Director General or other NCA officer may be designated with operational powers whether or not that person already has, or previously had, any such powers. *Sub-paragraph (3)* provides that if a person is both an NCA officer designated with operational powers and a special constable or a member of the PSNI Reserve none of the powers that a person has as an NCA officer

are exercisable at any time when the person is exercising any power or privilege of a special constable or a constable of the PSNI Reserve.

169. *Paragraph 9* provides that an NCA officer must produce evidence of his or her designation if they exercise or purport to exercise any operational power in relation to another person and the other person requests the officer to produce such evidence (*sub-paragraph (1)*). This paragraph does not specify the form which such evidence should take. A failure to produce evidence of designation does not make the exercise of the power invalid (*sub-paragraph (2)*).

Part 4: Designations: powers and privileges of constables

170. *Paragraph 10* provides that where the Director General is designated with police powers and privileges, the Director General has in England and Wales and adjacent UK waters all the powers and privileges of an English and Welsh constable and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas. The exercise of police powers is subject to any limitations in the designation.

171. *Paragraph 11* further provides that where an NCA officer (other than the Director General) is designated with police powers and privileges, the NCA officer has: in England and Wales and adjacent UK waters, all the powers and privileges of an English and Welsh constable; in Scotland and the adjacent UK waters, all the powers and privileges of a Scottish constable; in Northern Ireland and the adjacent UK waters, all the powers and privileges of a Northern Ireland constable; and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas (*sub-paragraph (1)*). The exercise of police powers is subject to any limitations in the designation. Furthermore, the exercise of the powers and privileges of a constable in Scotland and Northern Ireland are subject to further requirements by virtue of *sub-paragraphs (3) and (6).*

172. *Paragraph 11* further provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer if a Scottish general authorisation is in force between the Scottish Ministers and the Director General (*sub-paragraph (4)*). *Sub-paragraph (5)* provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer if a Scottish operational authorisation (that is an agreement between the Director General and an officer of the Police Service of Scotland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. *Sub-paragraph (7)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer only if a Northern Ireland general authorisation is in force between the Department of Justice in Northern Ireland and the Director General. *Sub-paragraph (8)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer if a Northern Ireland operational authorisation (that is an agreement between the Director General and an officer of the Police Service of Northern Ireland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. A Northern Ireland operational authorisation must conform with a Northern

Ireland general authorisation.

173. *Paragraph 12* provides that the exercise of the powers of a constable by the Director General or other designated NCA officer is subject to the same territorial restrictions as a constable exercising those powers. *Paragraph 13* applies to an enactment if it provides for the issuing of warrants which authorise a constable to exercise any power or privilege of a constable. The paragraph further provides that for the purpose of enabling a designated officer to exercise his or her powers or privileges the enactment has effect as if the designated officer were a constable.

174. *Paragraph 14* provides that when exercising direction and control of the NCA in relation to the exercise by NCA officers of the powers and privileges of a Scottish constable, the Director General must comply with instructions given by the Lord Advocate or procurator fiscal in relation to the investigation of offences.

175. *Paragraph 15* provides that those NCA officers designated with policing powers and privileges will not be regarded as being in police service for the purposes of certain specified employment legislation.

Part 5: Designations: powers of officers of Revenue and Customs

176. *Paragraphs 16 to 18* provide that an NCA officer (paragraph 16) who has been designated with customs powers has the same powers as an officer of Revenue and Customs in relation to any customs matter. The definition of a 'customs matter' is set out in Clause 8 and excludes the matters to which section 7 (former Inland Revenue matters) of the Commissioner for Revenue and Customs Act 2005 applies and taxes and duties. Therefore the exercise of customs powers by the Director General of the NCA and designated NCA officers is in relation to non-revenue matters. In both cases the exercise of customs powers in relation to non-revenue matters is subject to any limitations in the designation. Where a customs power is exercisable in relation to both a customs matter and any other matter, the power is only exercisable by an NCA officer in relation to the customs matter (*paragraph 17*).

177. *Paragraph 18* provides that where an enactment enables a warrant to be issued which authorises an officer of Revenue and Customs to exercise any power in relation to a customs matter, a designated NCA officer is to be treated as if he or she were an officer of Revenue and Customs for the purposes of enabling NCA officers to exercise those powers.

Part 6: Designations: powers of immigration officers

178. *Paragraph 19* enables any NCA officer, designated with the powers of an immigration officer, to exercise all the powers of an immigration officer. The exercise of immigration powers is subject to any limitations in the designation.

179. *Paragraph 20* provides that where an enactment enables a warrant to be issued which authorises an immigration officer to exercise any power of an immigration officer, an NCA officer designated with immigration powers is to be treated as an

immigration officer for the purposes of enabling them to exercise those powers.

Part 7: Offences relating to designations

180. *Paragraphs 21 to 23* set out various summary offences relating to obstructing, assaulting or impersonating designated officers. They parallel similar offences in relation to police officers, officers of Revenue and Customs and immigration officers in various enactments.

181. *Paragraph 21* makes it an offence to resist or wilfully obstruct a designated officer acting in the exercise of an operational power or to resist or wilfully obstruct a person assisting a designated officer in the exercise of such a power. *Paragraph 22* makes it an offence to assault a designated officer acting in the exercise of an operational power or to assault a person assisting a designated officer in the exercise of such a power. *Paragraph 23* makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated officer. It is also an offence for a designated NCA officer to make any statement or act in a way that falsely suggests that he or she has powers above and beyond those he or she in fact has.

182. *Sub-paragraph (2)* of each of *paragraphs 21 to 23* sets out the maximum penalties for the three offences in England and Wales, Scotland, and Northern Ireland respectively.

Part 8: General

183. *Paragraph 25* provides that the Director General shall pay all proceeds of forfeitures under the customs and excise Acts to the Commissioners for Revenue and Customs.

184. *Paragraph 26* provides that, where an enactment relates to a power or privilege of a constable, or a power of an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer and the enactment refers to a constable, an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer, those references should be read as being, or including a reference to, the Director General or other NCA officer as appropriate.

185. *Paragraph 27* confers an order-making power on the 'relevant national authority' (as defined in paragraph 30) to make such provision as considered appropriate in consequence of the Director General having the powers of the Commissioners under clause 8 or designated offices having operational powers.

186. *Paragraph 28* confers an order-making power on the 'relevant national authority' to amend by order the functions of a person so that they can be exercised by that person in relation to the NCA, the Director General or NCA officers.

187. The order-making powers in paragraphs 27 and 28 are subject to the affirmative resolution procedure where they amend primary legislation, but are

otherwise subject to the negative resolution procedure.

188. *Paragraph 29* provides that before the Secretary of State exercises a power under paragraph 27 or 28 in relation to enactments that confer any functions on the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs must be consulted (*sub-paragraph (2)(a)*). Before the Secretary of State exercises the power in relation to an enactment which extends to Scotland or Northern Ireland, the Secretary of State must consult the Scottish Ministers or the Department of Justice in Northern Ireland respectively (*sub-paragraphs (2)(b)* and *(c)*).

189. *Paragraph 30* sets out and defines the various terms that have been used in this Schedule.

Clause 10: Inspections and complaints

190. *Subsection (1)* provides for inspection of the NCA by Her Majesty's Inspectors of Constabulary ("HMIC"). HMIC are appointed under section 54 of the Police Act 1996 for the purpose of independently inspecting and reporting on the efficiency and effectiveness of police forces in England and Wales.

191. *Subsection (2)* enables the Secretary of State to request an inspection by HMIC (under *subsection (1)* HMIC will conduct inspections of the NCA on its own initiative).

192. *Subsection (3)* requires HMIC to report the outcome of their inspections of the NCA to the Secretary of State (in practice the Home Secretary).

193. *Subsection (4)* enables the Secretary of State to direct HMIC to carry out other duties relating to the efficiency and effectiveness of the NCA.

194. *Subsection (5)* provides that paragraphs 2 and 5 of Schedule 4A to the Police Act 1996 (which enable HMIC to draft inspection programmes and frameworks to be approved by the Secretary of State) applies to inspection functions of HMIC in relation to the NCA.

195. *Subsection (6)* inserts a new section 26C into the Police Reform Act 2002. New section 26C(1) requires the Secretary of State to make regulations (subject to the negative resolution procedure) conferring functions on the Independent Police Complaints Commission ("IPCC") in relation to the exercise of functions by the Director General of the NCA and other NCA officers. Under new section 26C(2)(a) such regulations may apply, with or without modifications, the provisions of Part 2 of the Police Reform Act 2002 or of regulations made under it. Part 2 confers functions on the IPCC in respect of complaints about, or matters indicating misconduct or death or serious injury involving, persons serving with police forces in England and Wales; such functions include the examination of police forces' complaint handling procedures and undertaking, management or supervision of investigations into

complaints or other matters. The purpose of these provisions is not simply to replicate Part 2 of the Police Reform Act 2002, because the arrangements will need to be tailored to the circumstances of the NCA, but they will ensure that the IPCC has oversight of the NCA in broadly the same way as it has in relation to the police. Under new section 26C(2)(b), such regulations may make provision for the NCA to make payments to the IPCC in respect of the exercise of its functions under the new section 26C.

196. New section 26C(3) confines the scope of the IPCC's oversight of the NCA to the exercise of its functions in, or in relation to, England and Wales. New section 26C(4) enables the IPCC and the Parliamentary Commissioner for Administration ("PCA") jointly to investigate a matter in relation to which both of them have functions (limited to matters in relation to which the NCA exercises certain asset recovery functions). New section 26C(5) enables an NCA officer to disclose information to the IPCC, or a person acting on its behalf, for the purposes of the IPCC exercising a function conferred under new section 26C. New section 26C(6) enables the IPCC and the PCA to disclose information to each other for the purposes of the exercise of any functions under new section 26C(4) or the Parliamentary Commissioner Act 1967. New section 26C(7) and (8) enable regulations to make further provision about the disclosure of information under new section 26C(5) and (6) or in relation to the onward disclosure of information by the IPCC of information provided to it by the NCA, and disapplies Schedule 7 to the Bill (unless provision is made to the contrary).

197. *Subsection (7)* makes amendments to article 4(4) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 ("the 2007 Order") so as to provide that complaints relating to the acts or omissions of NCA officers exercising functions in Scotland are subject to the oversight of the Police Complaints Commissioner for Scotland as set out in an agreement between the Commissioner and the NCA; such an agreement has been made between the Commissioner and SOCA under article 4(4) of the 2007 Order. The Police and Fire Reform (Scotland) Act 2012 includes provision which renames the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner and confers more extensive investigatory powers on that body.

198. *Subsection (8)* amends section 60ZA of the Police (Northern Ireland) Act 1998 so as to provide that complaints and conduct matters arising from NCA officers exercising functions in Northern Ireland are subject to oversight by the Office of the Police Ombudsman for Northern Ireland as set out in an agreement between the Police Ombudsman and the NCA (which has been made under that section), or as established by order made by the Secretary of State.

199. *Subsection (9)* gives effect to Schedule 6.

Schedule 6: Inspections and complaints

200. *Paragraph 1* requires the Secretary of States to consult Scottish Ministers before requesting an HMIC inspection of NCA activities in Scotland. Sub-paragraph (2) provides that, in relation to any inspection wholly or partly in Scotland, HMIC may conduct the inspection jointly with the Scottish inspectors following consultation with the Scottish inspectors on whether a joint inspection is appropriate (sub-paragraph (3)).

201. *Paragraph 2* requires the Secretary of State to consult the Department of Justice in Northern Ireland before requesting an HMIC inspection of NCA activities in Northern Ireland.

202. *Paragraph 3* places a duty on the Secretary of State to arrange for every HMIC report to be published. However, sub-paragraph (2) provides that parts of an HMIC report may be excluded from publication if the Secretary of State believes that publication would be against the interests of national security, impede the prevention or detection of crime, or jeopardise the safety of any person. Reports must be sent to the NCA and the appropriate Devolved Administration, should the inspection have been carried out in Scotland or Northern Ireland (sub-paragraph (3)).

203. *Paragraph 4* places a duty on the Director General of the NCA to comment on each HMIC report, to publish those comments and to send a copy to the Secretary of State and to the Devolved Administrations where they have an interest.

204. *Paragraph 5* requires the Director General of the NCA to disclose information and documents to HMIC or Scottish inspectors as specified in any notification given by them for the purposes of their exercise of inspection functions in relation to the NCA. Sub-paragraph (4) enables an NCA officer to disclose information to HMIC or Scottish inspectors for the purposes of their exercise of inspection functions in relation to the NCA. Sub-paragraphs (5) and (6) enable the Secretary of State to make regulations to make further provision about the disclosure of information under paragraph 5, or in relation to the onward disclosure of information by HMIC or Scottish inspectors of information provided to them by the NCA, and disapplies Schedule 7 (unless provision is made to the contrary).

205. *Paragraph 6* requires the Director General to give HMIC or Scottish inspectors access to NCA premises and other things on such premises for the purposes of their exercise of inspection functions in relation to the NCA.

206. *Paragraph 7* contains definitions of various expressions used in Schedule 6.

207. *Paragraphs 8 to 17* make consequential amendments to the Police Reform Act 2002, arising from the abolition of the NPIA and SOCA, and the conferral of functions on the IPCC in respect of its oversight of the NCA by virtue of clause 10(6).

208. *Paragraph 18* makes consequential amendments to articles 2 and 4 of the

Police, Public Order and Criminal Justice (Scotland) Act (Consequential Provisions and Modifications) Order 2007 ("the 2007 Order") arising from the provisions in clause 10(7) in relation to the oversight of the NCA by the Police Complaints Commissioner for Scotland. *Sub-paragraph (4)* preserves the powers in the Scotland Act 1998, under which the 2007 Order was made, to amend or revoke the amendments made to the 2007 Order by clause 10 and Schedule 6.

209. *Paragraph 19* makes a consequential amendment to section 61 of the Police (Northern Ireland) Act 1998, requiring the Office of the Police Ombudsman for Northern Ireland to send a copy of its annual report on the discharge of its functions to the NCA if the report concerns the NCA.

Clause 11: Information: restrictions on disclosure etc

210. *Subsection (1)* gives effect to Schedule 7 (information: restrictions on disclosure), which provides for the restrictions on the disclosure of information.

211. *Subsection (2)* provides that Schedule 7 applies to disclosures of information made for the purposes of the NCA's criminal intelligence function. Information relevant to the NCA's criminal intelligence function will predominantly be that which contains information on known or suspected criminal activity (such as crime reports, surveillance logs, suspicious activity records, analytic research on known criminals or locations); or information that when combined with known or suspected criminal activity can lead to the identification of further criminality, or opportunities to protect the public (such as company records, regulated sector memberships and transport manifests).

212. *Subsection (3)* provides that any duty to disclose information imposed on an NCA officer (including the duty on the Director General to keep the police and specified government bodies informed of information) and powers of an NCA officer to disclose information, will have effect subject to the restrictions on disclosure set out in Schedule 7. *Subsection (4)* provides that *subsections (2) and (3)* do not limit Schedule 7.

Schedule 7: Information: restrictions on disclosure

213. This Schedule sets out the restrictions on the disclosure of information to and from the NCA. Part 1 sets out the statutory restrictions; Part 2 sets out the restrictions on disclosure of particular types of information; Part 3 sets out the restriction on further disclosure of information; Part 4 sets out the restrictions on published information; Part 5 sets out the wrongful disclosure offences; and Part 6 sets out the consent and interpretation provisions.

Part 1: Statutory restrictions

214. *Paragraph 1* provides that nothing in Part 1 of the Act (including in particular clause 5(1) and (7) will authorise or require the disclosure of information to or from the NCA which is in contravention of the Data Protection Act 1998 or of Part 1 of the

Regulation of Investigatory Powers Act 2000 ("RIPA").

Part 2: Restrictions on disclosures of particular types of information

215. *Paragraph 2* (HMRC and customs information). *Sub-paragraph (1)* provides that an NCA officer must not disclose HMRC information, personal customs information or personal customs revenue information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information, a person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "HMRC information", "personal customs information" and "relevant authority".

216. *Paragraph 3* (social security information). *Sub-paragraph (1)* provides that an NCA officer must not disclose social security information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information to a person, that person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "relevant authority" and "social security information".

217. *Paragraph 4* (intelligence service information). *Sub-paragraph (1)* provides that an NCA officer must not disclose intelligence service information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information, a person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "intelligence service" and "intelligence service information" and "relevant authority".

218. *Paragraph 5* (arrangements for publishing information) makes provision that the Director General must not disclose information under their duty to make arrangements for the publication of information set out in clause 5 if this would breach a requirement imposed by the framework document.

Part 3: Restrictions on further disclosures of information

219. *Paragraph 6* (onward disclosure restrictions) *Sub-paragraph (1)* provides that if an NCA officer has disclosed information to a person ("the original recipient"), that person must not further disclose the information unless it is for a purpose connected with any relevant function of the original recipient or otherwise for a permitted purpose (as defined in clause 15(1)). The Director General must also consent to the disclosure. *Sub-paragraph (2)* provides that the onward disclosure restrictions set out in *sub-paragraph (1)* will not apply if paragraph 7 or 8 of the Schedule applies, or if the original recipient of the information was the Lord Advocate exercising functions under Part 3 of POCA or Scottish Ministers exercising functions under or in relation to Part 5 of POCA. *Sub-paragraph (3)* defines the term "relevant function" which is referred to in this paragraph.

220. *Paragraph 7* (onward disclosure by the Commissioners). *Sub-paragraph (1)* provides that this provision applies to information disclosed by an NCA officer under clause 6(7) to the Commissioners. *Sub-paragraph (2)* provides that the information

may be further disclosed by the Commissioners only if the disclosure is for a purpose connected with any relevant function of the Commissioners or otherwise for a permitted purpose (as defined in clause 15(1)). *Sub-paragraph (3)* provides that the information may only be further disclosed by a person other than the commissioner if the disclosure is for a purpose connected with any relevant function of the Commissioners or otherwise for a permitted purpose, and if the Director General consents to the disclosure.

221. *Paragraph 8* covers restrictions on the further disclosure of information obtained by the NCA under Part 6 of POCA, which may be disclosed by an NCA officer under clause 6(7) of the Bill.

Part 4: Published information: no restrictions on further disclosure

Paragraph 9 disapplies any restrictions on the further disclosure of information in Part 1 of the Bill if the information was included in an NCA annual plan, framework document or annual report, or was otherwise published by the NCA in accordance with arrangements made under clause 5.

Part 5: Offences relating to wrongful disclosure of information

222. *Paragraph 10* covers the offence of wrongful disclosure of information. *Sub-paragraph (1)* provides that an NCA officer commits an offence by disclosing information in breach of a relevant duty. *Sub-paragraph (2)* provides that any person commits an offence if they disclose information that breached a relevant duty. *Sub-paragraph (3)* provides for the defence by a person charged with this offence that the disclosure was either lawful or that the information had already and lawfully been made available to the public. *Sub-paragraph (4)* covers the consent for a prosecution to be made in England and Wales and Northern Ireland. *Sub-paragraph (5)* provides that this offence does not prejudice the pursuit of any remedy or action taken in relation to a breach of a relevant duty. *Sub-paragraph (6)* states that a person guilty of the offence is liable on conviction on indictment to either a prison term not exceeding 2 years or a fine, or both. *Sub-paragraph (7)* provides that a person guilty of the offence is liable on summary conviction to either a prison term not exceeding 12 months in England and Wales and in Scotland, or 6 months on conviction in Northern Ireland, or a fine not exceeding the statutory maximum, or both. *Sub-paragraph (8)* provides that the maximum prison term in England and Wales is 6 months for an offence committed before the commencement of section 282 of the Criminal Justice Act 2005.

223. *Paragraph 11* provides that consent to a disclosure of information under any provision of Schedule 7 may be given in relation to a particular disclosure or disclosures made in circumstances specified or described in the consent.

224. *Paragraph 12* defines the terms “Commissioners” and “PCA 2002” used in this Schedule.

Clause 12: NCA officers with operational powers: labour relations

225. *Subsections (1) to (3)* prohibit any person (for example, a trade union) from calling a strike by NCA officers designated with operational powers, including the Director General of the NCA, and provide that the Home Secretary may take civil action against any person who calls such a strike.

226. *Subsection (4)* allows the Home Secretary to seek an injunction restraining a threatened strike by NCA officers holding operational powers.

227. *Subsection (5)* provides that, notwithstanding *subsections (1) to (3)*, any trade union representing NCA officers can still be an independent trade union for the purposes of relevant employment legislation.

228. *Subsection (6)* makes it clear that relevant employment legislation cannot prevent the Home Secretary from enforcing the no-strike provisions.

229. *Subsection (7)* provides that the Home Secretary may suspend and subsequently reinstate the no-strike provisions by order (subject to the affirmative resolution procedure).

230. *Subsection (8)* defines terms used in clause 12.

Clause 13: NCA officers with operational powers: pay and allowances

231. *Subsection (1)* enables the Home Secretary to make regulations (subject to the negative resolution procedure) providing for the establishment, maintenance and operation of procedures for determining the pay, allowances and other terms and conditions of NCA officers designated with operational powers including the Director General of the NCA.

232. *Subsection (2)* allows such regulations to provide for decisions on the pay, allowances and other terms and conditions of NCA officers designated with operational powers to be made by reference to, for example, non-binding recommendations from an independent pay review mechanism.

233. *Subsection (3)* defines terms used in clause 13.

Clause 14: Abolition of SOCA and NPIA

234. *Subsections (1) and (2)* abolish the Serious Organised Crime Agency and the National Policing Improvement Agency respectively.

235. *Subsection (3)* gives effect to Schedule 8.

Schedule 8: Abolition of SOCA and NPIA

Part 1: Transitional, transitory and saving provision

236. *Paragraph 1* provides for the Secretary of State to make, and lay before Parliament, staff or property transfer schemes.

237. *Paragraph 2* defines a staff transfer scheme as a scheme which provides for a designated member of staff of SOCA or the NPIA, a designated constable or member of civilian staff in an England and Wales police force (for example in the Metropolitan Police E-Crime Unit which will form part of the NCA as set out in the NCA Plan) and a designated member of personnel or staff in any other body (in connection with an order modifying the functions of the NCA) to become NCA officers, and employed in the civil service of the state. A staff transfer scheme may also provide for the transfer of NPIA staff to the Home Office.

238. *Paragraph 3* defines a property transfer scheme. A property scheme may provide for the transfer to the NCA (or, in the case of the NPIA, to the NCA or the Home Office) of designated property, rights or liabilities from SOCA, NPIA, the chief officer of, or the policing body for, an England & Wales police force or any other person. A property transfer scheme may also create rights or impose liabilities. Such a scheme may also make provision to ensure that criminal liability for anything done by SOCA or the NPIA passes to the NCA or the Secretary of State as appropriate.

239. *Paragraph 4* provides a staff or property transfer scheme to make provision for any reference to a transferor in any document, instrument, contract or legal proceedings to have effect as, or as including a reference to the NCA.

240. *Paragraph 6* contains transitional provisions to ensure that the abolition of SOCA and the NPIA does not affect the validity of anything done by those organisations prior to abolition; this will ensure that, for example, the continued validity of surveillance authorisations granted by the Director General of SOCA cannot be challenged. *Paragraph 7* provides for the continued application, with necessary modifications, of certain subordinate legislation made under the Serious Organised Crime and Police Act 2005 where Part 1 of the Bill includes equivalent delegated powers. The three orders that are preserved: modify certain enactments which confer powers on the police (as well as constables) and immigration officers to enable such powers to be exercised by designated members of the staff of SOCA; ensures that the United Kingdom can comply with the obligations under the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters where a joint investigation team (involving SOCA officers) is operating in the UK for the purpose of conducting criminal investigations; and designates further functions (in addition to the functions listed in section 33 of the Serious Organised Crime and Police Act 2005 and in the Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008) for the purposes of the exercise of which SOCA may disclose information.

241. *Paragraph 8* provides for the Secretary of State to pay such an amount (if any) as the Secretary of State thinks appropriate to a person who ceases to be a SOCA board member (that is, the Chair and the ordinary members) at the changeover.

242. *Paragraph 9* provides that the repealing of sections 7 and 20 of the Serious Organised Crime and Police Act 2005 (annual reports and accounts) will not affect the application of those sections after the changeover to times before the changeover.

243. *Paragraph 10* ensures that amendments to pensions legislation consequent upon the abolition of SOCA and the NPIA do not have the effect of extinguishing pension rights accrued before abolition.

244. *Paragraph 11* is required to ensure that transition arrangements are provided for Scottish Police Reform and the creation of the NCA. In particular, it provides a power to make any necessary provisions to ensure that the NCA provisions have full effect depending on the timing of the creation of the Police Service of Scotland and the creation of the NCA.

245. *Paragraph 12* is required to ensure transition arrangements are in place if the NCA is created prior to the planned merger of the offices of the Director of Revenue and Customs Prosecutions and the Director of Public Prosecutions.

246. *Paragraph 13* sets out and defines the various terms that have been used in Part 1 of this Schedule.

Parts 2 to 4: Minor and consequential amendments and repeals

247. Parts 2 to 4 of the Schedule make other amendments to enactments, both primary and secondary, as a consequence of the abolition of SOCA and the NPIA.

248. *Paragraph 26* of the Schedule protects the pension arrangements for those officers of precursor agencies who are eligible for membership of the police pension scheme on moving into the NCA. It also provides for serving police officers (including members of the PSNI Reserve) to retain their eligibility for the police pension scheme on being appointed as Director General of the NCA or on taking up key posts within the NCA designated by the Director General.

249. *Paragraph 89* adds the NCA to the list of organisations specified in section 23 of the Freedom of Information Act 2000. The effect of this amendment is to exempt from the Freedom of Information Act as a class all information held or supplied by the NCA.

250. *Paragraph 184* provides that references to the "Serious Organised Crime Agency", "SOCA", etc in the specified legislation will be substituted with a reference to the National Crime Agency and other equivalent related references.

251. *Paragraph 188* provides that SOCA related references in subordinate

legislation may be read as the corresponding NCA reference listed in the table. This provision is without prejudice to the consequential order making power in clause 31 of the Bill.

252. Clause 15: Interpretation of Part 1: *Subsection (1)* defines various terms used in Part 1, including "chief officer", "functions", "NCA function", "law enforcement agency" and "permitted purpose". The definition of "strategic partners" refers to those other law enforcement agencies and other key bodies to which, for example, the Director General must send a copy of the NCA's Annual Report.

253. *Subsection (2)* clarifies that a reference to the powers and privileges of a constable is a reference to any powers and privileges of a constable. It also provides that references to the "Police Service of Northern Ireland" ("PSNI") are taken to include the PSNI Reserve.

254. *Subsection (3)* provides that any subsequent reference to the "functions" or "officers" of the National Crime Agency should be understood within the terms of Part 1 of the Bill.

255. *Subsection (4)* identifies those terms which are defined elsewhere in Part 1 of the Bill.

Part 2: Courts and Justice

Clause 16: Civil and family proceedings in England and Wales

256. Clause 16(1), (2) and (5) creates a single county court with a national jurisdiction for the whole of England and Wales, sitting at various locations within England and Wales in a similar way to the High Court and the Crown Court. The principal provision is *subsection (1),* which inserts into the County Courts Act 1984 ("the 1984 Act") a new section A1, providing for the establishment of a single county court.

257. *Subsection (1)* of the new section A1 provides for there to be a county court exercising jurisdiction in England and Wales, and for the jurisdiction of that court to be that which is conferred on it by or under the 1984 Act or any other Act, or any Act or measure of the National Assembly for Wales. This mirrors the position for the individual county courts at present, but on a national basis for the single court.

258. *Subsection (2)* of the new section A1 provides for the single county court to be a court of record with a seal. This again mirrors the position for the individual county courts at present (each of which is in its own right a court of record with its own seal), but on a national basis for the single court, with a single seal.

259. *Subsection (2)* repeals sections 1 and 2 of the 1984 Act, which provide for there to be individual county courts, each for its own district and with its own seal. These sections are replaced by the new section A1. With their repeal the geographical

jurisdictional boundaries in the existing county court structure are removed.

260. *Subsection (3)* inserts a new section 31A of the Matrimonial and Family Proceedings Act 1984 to provide for the creation of a family court with jurisdiction throughout England and Wales. The family court will exercise the jurisdiction and powers conferred on it by statute, including the jurisdiction and powers currently exercised by county courts and magistrates' courts in relation to family proceedings. The family court will be a court of record and shall have a seal. Records of the court's proceedings will be maintained (new section 31A(2)).

261. *Subsection (4)* repeals Part 2 of, and associated provisions in, the Children, Schools and Families Act 2010 (which relates to the publication of information relating to family proceedings).

262. *Subsection (5)* introduces Schedule 9, which makes amendments to the 1984 Act and in numerous other statutes in connection with and in consequence of the single county court replacing the existing county courts.

263. *Subsection (6)* introduces Schedules 10 and 11 which make further amendments to the Matrimonial and Family Proceedings Act 1984 and other enactments in connection with and in consequence of the creation of the single family court.

Schedule 9: Single county court in England and Wales

264. Schedule 9 makes amendments, particularly in the 1984 Act itself, but also in a wide range of other legislation referring to the existing county courts, in connection with and in consequence of the establishment of the single county court.

Part 1 of Schedule 9: Amendments of the County Courts Act 1984

265. Part 1 of the Schedule contains amendments to the 1984 Act, other than the principal provisions establishing the single county court which are contained in clause 16. Of particular importance are the amendments made by *paragraphs 2 and 3* in relation to sittings of the single county court, and *paragraphs 4 to 6* in relation to the judges of the single county court.

266. *Paragraph 2* amends section 3 of the 1984 Act by substituting for *subsections (1) and (2)* (which provide for where and when the existing county courts may sit) four subsections which make flexible provision for the single county court to be able to sit anywhere in England and Wales, for sittings to be able to be continuous or intermittent or occasional, for sittings to be able to be simultaneously held in different places, and for the places where the county court sits, and the days and times at which it sits in any place, to be determined in accordance with directions given by the Lord Chancellor after consulting the Lord Chief Justice.

267. *Paragraph 3* amends section 4 of the 1984 Act, which provides for the use of public buildings for individual county courts, so that it provides for the use of such

buildings for sittings of the single county court.

268. *Paragraph 4* substitutes for section 5 of the 1984 Act, which makes provision in respect of those judges (other than district judges) who may sit in the county courts, a new section 5. While, in practice, Circuit judges and district judges will remain the principal judges of the county court, the effect of this amendment and, in particular, *subsection (2)* of the new section 5, will be to enable a wider range of other judges to sit, on a flexible basis, in the single county court as "judges of the county court". The new section 5 does not reproduce those provisions of the present section 5 which provide for the assignment of circuit judges to districts, since, with the establishment of the single county court on a national basis, these are no longer required. *Paragraphs 5 and 6* similarly amend sections 6 and 8 of the 1984 Act to remove those provisions which relate to the assignment to districts of district judges and deputy district judges respectively.

269. *Paragraph 7* amends section 12 of the 1984 Act to replace the provision for the district judge for a district to keep such records as may be prescribed by the Lord Chancellor in regulations with a provision enabling the Lord Chancellor to provide by regulations for the keeping of records for the single county court.

270. *Paragraphs 8 and 9* make amendments to sections 13 (officers of the court not to act as solicitors of that court) and 14 (penalty for assaulting officers) of the 1984 Act, which make provision in relation to district judges of a county court, so that the provision operates instead in terms of judges of the single county court more generally.

271. *Paragraph 10* makes a large number of amendments to the remainder of the 1984 Act. A number of the amendments repeal existing provisions of the 1984 Act which provide for there to be specific county courts to exercise specialist jurisdictions, such as Admiralty and contentious probate jurisdiction (see sub-paragraph (3) in particular). Any such specialist jurisdiction will instead be conferred on the single county court as a whole, and exercised by such judges and in such locations as are determined under existing allocation powers (such as section 1 of the Courts and Legal Services Act 1990).

272. Other provisions in paragraph 10 remove or amend provisions which confer powers or functions specifically on district judges or circuit judges, so that those provisions instead confer the powers or functions on the court or on a judge of the court without specifying whether this is a district judge, circuit judge or other judge (see, for example, *sub-paragraphs (12) to (20)*). The allocation of powers and functions to tiers of judge in the single county court will then be determined under existing powers of direction.

273. Further, other provisions in *paragraph 10* amend or remove provisions in the 1984 Act which operate by reference to an individual county court, or to a court's jurisdiction in relation to a specific district, so that they operate for the single county

court as a whole (see, for example, *sub-paragraphs (35), (36), (42), (48), and (51) to (53)*); and other provisions simply amend references to "a county court" or "a court" or "any court" or to "county courts" or "courts" in the plural so that they refer instead to "the county court" and will operate appropriately in relation to the single county court (see, for example, *sub-paragraphs (63) to (67)*).

Parts 2 to 4 of Schedule 9: Other amendments and repeals

274. Parts 2 and 3 make consequential amendments to other Acts of Parliament which make reference to county courts and the judges who sit in them. The amendments are similar to those made to the 1984 Act by Part 1 of the Schedule. However, in relation to other Acts, by far the most numerous amendments are those which substitute, for references to "a county court", etc., references to "the county court". Other amendments remove or modify provisions which tie jurisdiction to specific county courts or districts and judges for a district, and a small number of amendments repeal provisions which confer specialist jurisdiction on a specific county court or courts - in particular *paragraph 30*, which repeals those provisions of the Copyright, Designs and Patent Act 1988 which establish a Patents County Court (intellectual property jurisdiction will be re-allocated and structured under existing powers). Part 4 contains consequential repeals.

Schedule 10: The family court

275. *Paragraph 1* inserts new sections 31B to 31Q into the Matrimonial and Family Proceedings Act 1984.

276. New section 31B (Sittings) provides that sittings of the family court and any other business of the court may take place anywhere in England and Wales. Sittings of the family court at any place may be continuous, intermittent or occasional (new section 31B(2)) and the court shall have power to adjourn cases from place to place at any time (new section 31B(3)). Under new section 31B(4) the Lord Chancellor, after consulting the Lord Chief Justice, shall direct where the family court shall sit and the days and times at which it will sit. The Lord Chief Justice may nominate a judicial office holder to exercise the Lord Chief Justice's functions under new section 31B (new section 31B(5)). It is expected that any delegation of powers would be to the President of the Family Division as the Head of Family Justice.

277. New section 31C (Judges) lists, at *subsection (1)*, the judges of the family court, and includes (amongst others) all levels of judiciary currently able to deal with family proceedings in the High Court, county courts and magistrates' courts. Decisions of the family court made by judges of the High Court and above and by former Court of Appeal and High Court judges will be binding on those listed at paragraphs (j) to (y) of *subsection (1)*. Such decisions will also be binding on legal advisers and assistant legal advisers except where they are carrying out functions of the court with a judge listed in paragraphs (a), (b) and (c) of *subsection (2)*. *Subsection (3)* ensures that fee-paid, or unsalaried, part-time judges of the family court who are also engaged in legal practice do not sit in cases in which their firm is

acting for a party.

278. New section 31D (Composition of the court and distribution of its business) provides at *subsection (1)* for the Lord Chief Justice or his or her nominated judicial office holder to make rules, with the agreement of the Lord Chancellor, about the composition of the family court and the allocation of the work of the court to the appropriate level of judiciary. Rules about the composition of the family court may provide for the court to be constituted differently for the purpose of deciding different matters (*subsectio*n (2)(a)). For example, such rules may prescribe certain types of proceedings or applications within proceedings that are to be heard by a judge, a single justice of the peace or by a two or three magistrate bench. Rules may also allocate different types of proceedings to specified levels of judiciary and provide that only judges authorised for the purpose may deal with certain proceedings (new section 31D(3)), thereby ensuring that different types of cases are heard by those judges with the relevant expertise. This power to limit the range of proceedings that certain types of judge may deal with does not apply to High Court judges and above (*subsection (4)*). Before making Rules under new section 31D, the Family Procedure Rule Committee, which is the statutory body responsible for making rules of court governing the practice and procedure to be followed in family proceedings, must be consulted.

279. New section 31E (Family court has High Court and county court powers) enables the family court to make any order that could be made by the High Court if the proceedings were in the High Court, or any order that could be made by the county court if the proceedings were there (*subsection (1)*). The family court will be able to issue warrants making provision for anything which, were the matter in the High Court, could be included in a writ (*subsection (2)*). The power in *subsection (1)* will not extend to orders of a type listed in section 38(3) of the County Courts Act 1984 or to other orders prescribed by regulations made under that section (*subsection (3)*). The Lord Chancellor has the power to make provision in regulations dealing with the effect and execution of warrants issued by the family court. The provision in those regulations will mirror existing provision in relation to High Court writs or county court warrants *(subsection (5)).*

280. New section 31F (Proceedings and decisions) bestows on the family court certain powers relating to hearings and orders that mirror existing powers contained in the 1984 Act and the Magistrates' Courts Act 1980. This includes the power to adjourn hearings (*subsection (1)*). Provision is also made regarding the nature of orders of the family court (*subsection (2)*), their effect (*subsection (3)*), what may be contained in orders requiring something to be done, other than the payment of money (*subsection (4)*), what may be included in an order requiring the payment of money (*subsection (5)*) and the ability of the family court to vary, suspend, rescind or revive its orders (*subsection (6)*). The family court will have the ability to proceed in the absence of one or more parties, but this is subject to rules of court (*subsection (7)*) and it will have the same power as the High Court to enforce an undertaking given by a solicitor in relation to any proceedings before it (*subsection (8)*). *Subsection (9)* is a

general provision enabling the family court to adopt and apply the general principles of practice in the High Court.

281. New section 31G (Witnesses and evidence), which is modelled on section 97 of the Magistrates' Courts Act 1980, sets out the circumstances in which the family court may summons a witness to give evidence and produce documents (*subsection (2)*) and specifies the penalties that the court may impose (*subsection (4)*) where a person fails to attend before the court or produce documents, without just excuse (*subsection (3)*). New section 31G(6) provides that where a self representing party appears to be unable to cross-examine a witness effectively, the court may put, or cause to be put, questions to the witness.

282. The family court will have the power to deal with all types of contempt of court that may currently be dealt with in family proceedings in the High Court, county courts and magistrates' courts. New section 31H (Contempt of court: power to limit court's powers) enables the Lord Chancellor, after consulting the Lord Chief Justice, to make regulations limiting or removing any of those powers in specified circumstances (*subsection (1)*). Such regulations may make different provision for different purposes (new section 31Q(1)(b)) and may be used, for example, to impose limits on the penalties imposed for certain types of contempt by specified tiers of judiciary in the family court.

283. New section 31I (Powers of the High Court in respect of family court proceedings), which is modelled on section 41 of the 1984 Act, provides at *subsection (1)* that the High Court may transfer proceedings pending in the family court to the High Court (which will continue to have all jurisdiction to deal with family proceedings that it currently has) where it considers it desirable to do so, without prejudice, and subject to, the matters set out in *subsection* (2).

284. New section 31J (Overview of certain powers of the court under other Acts) sets out for convenience certain powers of the family court contained in the Senior Courts Act 1981 and the 1984 Act.

285. New 31K (Appeals) provides that any party dissatisfied with a decision of the family court may appeal to the Court of Appeal, subject to any order made under section 56(1) of the Access to Justice Act 1999 which may alter the destination of appeals (*subsection* (1)). This provision does not duplicate or remove any right of appeal conferred under any other enactment (*subsection* (2)). Provision may be made by Order (made by the Lord Chancellor after consultation with the Lord Chief Justice or his or her nominee) as to when appeals may be made in relation to decisions on the transfer, or proposed transfer, of proceedings from or to the family court (*subsections* (3), (4) and (8)). Where requested by a party at any hearing where there is a right to appeal, a judge shall make a note of the matters referred to in *subsection* (5) which, when signed by the judge may be provided to the party and be used at any subsequent appeal hearing (*subsection* (6)).

286. New section 31L (Enforcement) makes specific provision at *subsection* (1) mirroring for the family courts the powers contained in section 140 of the Senior Courts Act 1981 in relation to the enforcement of the payment of a fine or penalty imposed by the court. *Subsection* (2) enables rules of court (which will be the Family Procedure Rules made under section 75 of the Courts Act 2003) to make provision for the recovery of periodical payments and the apportioning of payments in circumstances where there are two or more orders under which the same person is required to make periodical payments to the same recipient. *Subsections* (4) to (7) replicate the provisions in section 62 of the Magistrates' Courts Act 1980 allowing a person with whom a child has his or her home to take certain steps in their own name in relation to an order requiring periodical payments or a lump sum to be paid to a child, without affecting the right of the child to proceed in his or her own name.

287. New section 31M (Records of proceedings), which is modelled on section 12 of the 1984 Act, provides for the Lord Chancellor to make regulations, after consulting the Lord Chief Justice, for the keeping of records (*subsections* (1) and (3)). Entries made in a book or other document kept under such regulations or a signed and certified copy of such an entry will be admitted as evidence of the entry (*subsection* (2)).

288. New section 31N (Summonses and other documents) mirrors, for the purposes of the family court, the provisions of section 133(1) of the 1984 Act in relation to proof of service of a summons (*subsection* (1)), and applies sections 133(2) (*subsection* (2)) and 135 and 136 of that Act (*subsection* (3)).

289. New section 31O (Legal advisers and assistants) provides that a person may only be a legal adviser to the family court (or an assistant legal adviser) if he or she is a justices' clerk (or an assistant justices' clerk) (*subsections* (1) and (2)). Provisions based on sections 28, 29, 31 and 32 of the Courts Act 2003 relating to justices' clerks and assistant justices' clerks are made regarding the functions (*subsections* (5) and (6)), independence (*subsection* (7)) and immunity (*subsections* (8), (9) and (10)) of legal advisers and assistant legal advisers.

290. New section 31P (Legal advisers and assistants: costs and indemnity), which is modelled on provisions relating to justices' clerks and assistant justices' clerks under sections 34 and 35 of the Courts Act 2003, gives legal advisers and assistant legal advisers statutory immunity against being ordered to pay the costs of legal actions arising out of the execution of their duties when carrying out the functions of the family court or of a judge of the family court (*subsection* (1)) except in the circumstances set out in *subsection* (2). The section empowers a court instead to order the Lord Chancellor to pay costs that would have been ordered against the legal adviser or assistant legal adviser (*subsection (3)*). The Lord Chancellor may, after consulting the Lord Chief Justice, make regulations covering when the court is to exercise the power under *subsection* (3) to order costs and how those costs are to be determined (*subsection* (4)). *Subsections* (6) and (7) respectively set out the circumstances in which the Lord Chancellor must or may indemnify a legal adviser or

assistant legal adviser in respect of costs incurred or damages awarded in connection with proceedings arising out of the execution of their duties. It is for the Lord Chancellor to determine whether and to what extent a legal adviser or assistant legal adviser is to be indemnified under subsections (6) and (7) (subsection (8)).

291. New section 31Q (Orders, regulations and rules under Part 4A) relates to the various powers of the Lord Chancellor to make provision in secondary legislation which are conferred under Part 4A of the Matrimonial and Family Proceedings Act 1984. The parliamentary procedures to apply to the statutory instruments made under those powers are specified in subsections (2) and (3) of that section. By way of example, the procedure in subsection (2), whereby specified regulations and rules may not be made unless a draft of the statutory instrument containing the regulations or rules has been laid before, and approved by, a resolution of each House of Parliament, will be applied when the Lord Chancellor makes the first rules under new section 31O(4) enabling functions of the family court, or of a judge of the court, to be carried out by a legal adviser and enabling functions of a legal adviser to be carried out by an assistant legal adviser.

292. Part 2 *(paragraphs 2 to 96)* makes amendments to other enactments arising out of the creation of the family court. Principally these amendments are to enable existing family legislation to apply to proceedings in the new family court.

293. *Paragraph 97* contains repeals and revocations to legislation in consequence of Parts 1 and 2 of the Schedule.

Schedule 11: Transfer of jurisdiction to family court

294. *Paragraphs 1 to 209* make amendments to legislation providing for the transfer of jurisdiction to the family court. Principally these amendments reflect the fact that the county court and magistrates' courts will no longer deal with family proceedings and to transfer their family jurisdiction to the new family court.

295. *Paragraph 210* contains repeals and revocations in consequence of Part 1 of the Schedule.

Clause 17: Youth courts to have jurisdiction to grant gang-related injunctions

296. Clause 17 amends the Policing and Crime Act 2009 with the effect that applications for injunctions to prevent gang related violence against persons aged 14 to 17 should be made in the youth court, sitting in a civil capacity, rather than in the county court or High Court. Clause 17 also gives effect to Schedule 12.

Schedule 12: Gang-related injunctions: further amendments

297. Schedule 12 makes consequential amendments, including an amendment to secure that appeals against decisions of the youth court lie to the Crown Court.

298. Schedule 12 also makes a minor change to what may be permitted by rules of court for all gang-related injunctions, regardless of age, so that if a without notice

application is dismissed an appeal may be brought by the applicant without informing the respondent.

Clause 18: Judicial appointments
299. Clause 18 gives effect to Schedule 13.

Schedule 13: Judicial appointments
Part 1: Judges of the Supreme Court: number and selection
300. Part 1 of Schedule 13 amends aspects of the Constitutional Reform Act 2005 ("the CRA") which created the Supreme Court of the United Kingdom. The changes relate to the number of judges who are appointed to the Supreme Court and how they are selected.

301. *Paragraph 2* amends section 23 of the CRA to allow for there to be fewer than 12 full-time equivalent judges at any time. The paragraph provides that rather than specifying that the Court consists of 12 judges, the court will instead consist of those persons appointed as its judges but there may be no more than the full-time equivalent of 12 at any time.

302. *Paragraph 3* amends section 26 of the CRA which makes provision for the selection of Supreme Court judges. *Sub-paragraph (2)* amends section 26(5) and *sub-paragraph (3)* inserts a new subsection (5A) into section 26 of the CRA to provide that the Lord Chancellor must convene a selection commission for a new appointment to the Court if there is a vacancy in the office of President of the Supreme Court or the office of Deputy President of the Court (or if it appears to the Lord Chancellor that there will soon be such a vacancy) or if the Lord Chancellor or the senior judge of the Court in consultation with the other, consider it desirable that a recommendation for appointment be made. The new section 26(5B) provides that the senior judge means the President of the Court or if there is no President, the Deputy President or, if there is no President and no Deputy President, the most senior ordinary judge of the Supreme Court.

303. *Paragraph 4* inserts new subsections (1A) to (1D) into section 27 of the CRA, which deals with the selection process for judges of the Supreme Court. These new subsections set out requirements in relation to the composition of selection commissions for Supreme Court appointments. A selection commission must include:

- a minimum of 5 members and in every case must consist of an odd number of members;
- at least one serving judge of the Supreme Court;
- at least one non-legally-qualified member; and
- at least one member of each of the following bodies:

- the Judicial Appointments Commission ("JAC");
- the Judicial Appointments Board for Scotland; and
- the Northern Ireland Judicial Appointments Commission.

304. Further provisions in relation to the composition of selection commissions for the appointment of the President of the Court and Deputy President of the Court are made; in particular, that they must not be a member of a selection commission convened to select their replacement. Where a selection commission is convened to select a person for appointment as the President of the Court, the Lord Chancellor may be member of the selection commission but cannot chair the selection commission. *Paragraph 4(2)* provides for a definition of "non-legally-qualified".

305. *Paragraph 5* inserts a new section 27A into the CRA, conferring a duty on the Lord Chancellor to make regulations to make further provision about the membership of selection commissions and the selection process to be applied in any case where a selection commission is required. The regulations must also secure that in every case there must come a point where a selection by the selection commission is accepted. These regulations must be made with the agreement of the senior judge and are subject to the affirmative resolution procedure by virtue of paragraph 7(9) of Schedule 13 which amends section 144(5) of the CRA.

306. *Paragraph 6* inserts new section 27B into the CRA. This sets out the procedure which the Lord Chancellor must follow when issuing guidance about the Supreme Court selection process and specifies the circumstances in which such guidance can be revoked. Specifically, it confers a duty on the Lord Chancellor to consult the senior judge of the Supreme Court before laying a draft of the proposed guidance before both Houses of Parliament. The guidance will be subject to the affirmative resolution procedure.

307. *Paragraphs 7 and 8* make consequential amendments, repeals and revocations. In particular, section 27(2) and (3) of, and Parts 1 and 2 of Schedule 8 to, the CRA are repealed, as are sections 28 to 31 and 60(5) of the CRA. *Paragraph 7(4)* inserts a new section 26(7A) into the CRA to define for the purposes of that section and Schedule 8 when a person is considered as having been selected.

Part 2: Diversity

308. Part 2 provides for measures to promote consideration of diversity in the appointments process.

309. *Paragraph 9(3)* amends section 63 of the CRA. New section 63(4) of the CRA provides that neither the requirement to select candidates for judicial office solely on merit, nor Part 5 of the Equality Act 2010, prevents the selecting body from preferring one candidate over another, where two persons are judged to be of equal merit, for the purposes of increasing diversity within the judiciary.

310. *Paragraph 10* introduces a new section 137A to the CRA. The amendment places the Lord Chancellor and Lord Chief Justice under a duty to encourage judicial diversity. This duty is similar to the duty imposed upon the Judicial Appointments Commission detailed in section 64 of the CRA.

311. *Paragraph 12* amends section 2 of the Senior Courts Act 1981 to allow the maximum number of ordinary judges of the Court of Appeal to be made up of a full-time equivalent ("FTE") of 38 ordinary judges, rather than a maximum of 38 individual judges. It also includes reference as to how to calculate the FTE, namely by taking the number of full-time ordinary judges and adding, for each ordinary judge who is not full-time, such fraction as is reasonable.

312. *Paragraph 13* amends section 4 of the Senior Courts Act 1981 to allow the maximum number of puisne judges in the High Court to be made up of a FTE of 108, rather than a maximum of 108 individual puisne judges. It also includes reference as to how to calculate the FTE, namely by taking the number of full-time puisne judges and adding, for each puisne judge who is not full-time, such fraction as is reasonable.

Part 3: Judicial Appointments Commission

313. Part 3 makes changes to the number of members of, and composition of, the JAC by amending Schedule 12 to the CRA. In particular it removes some of the detailed provisions of that Schedule and introduces new regulation-making powers to set out the provisions relating to the areas that have been removed.

314. *Paragraph 15* amends Schedule 12 to the CRA to enable the Lord Chancellor, with the agreement of the Lord Chief Justice, to determine the number of Commissioners of the JAC through regulations. Paragraph 1 of Schedule 12 currently requires that the JAC consist of a chairman and 14 other Commissioners.

315. *Paragraph 16* repeals paragraphs 2(2) to (5) and 4 to 6 of Schedule 12 to the CRA which provide for the composition of the JAC. Currently the JAC must consist of five judicial members, two professional members, five lay members, one member holding an office listed in Part 3 of Schedule 14 to the CRA (which lists members of tribunals and other similar office holders appointed by the Lord Chancellor) or an office listed in paragraph 2(2A) of Schedule 12 to the CRA, and one lay justice member.

316. *Paragraph 17* inserts new paragraphs 3A to 3C into Schedule 12 to the CRA. New paragraph 3A provides that the number of Commissioners who are judicial office holders must be less than the number of non-judicial office holders. New paragraph 3B enables the Lord Chancellor to make provision about the composition of the JAC in regulations agreed with the Lord Chief Justice. These regulations will make provision for the categories of different members of the JAC, but the Lord Chancellor must exercise his or her power so that the JAC includes judicial office holders, employed or practising lawyers and lay members. The regulations may include provisions about the number of Commissioners of any specified category (for

example, the number of lay members) and make provision about the eligibility for appointment as a Commissioner or Chairman. New paragraph 3C enables the Lord Chancellor, with the agreement of the Lord Chief Justice, to make regulations defining the terms:

- "lay member" for the purposes of Part 4 of Schedule 12 to the CRA; and

- "holder of judicial office" for the purposes of the exercise of the regulation making powers in paragraph 3A (number of Commissioners), paragraph 3B(2)(a) (composition of Commission), paragraph 11 (vice-chairman) and also paragraph 20(5) of Schedule 12 to the CRA which provides that Committees of the Commission must include at least one judicial member if exercising the function of selection.

317. *Paragraph 18* substitutes paragraphs 7 to 10 of Schedule 12 to the CRA which deal with matters relating to the selection of Commissioners with a new paragraph 6A which provides for the Lord Chancellor to make regulations, with the agreement of the Lord Chief Justice, in connection with the selection or nomination of Commissioners. New paragraph 6A(2) provides details of the matters that may be addressed in such regulations, including provision that selection or nomination is to be by a person, or body, specified in or appointed under the regulations; the matters which the selecting body or person is to, or is not to, have regard to; that the selecting body or person can determine its own selection procedure for the purpose of appointing a Commissioner; and requiring that there is a Commissioner who has special knowledge of Wales or of some other area or of a particular matter; and for payment to selectors of remuneration, fees and expenses incurred while carrying out their duties.

318. *Paragraph 19* amends paragraph 11 of Schedule 12 to the CRA which provides for the vice-chairman of the JAC. As now, the vice-chairman is to be the most senior of the judicial members of the Commission. However, the judicial member who ranks as the most senior will now be determined in accordance with regulations made by the Lord Chancellor with the agreement of the Lord Chief Justice (*sub-paragraph (3)*). *Sub-paragraph (4)* amends paragraph 11(3) of Schedule 12 to the CRA which lists those functions of the chairman of the JAC which the vice-chairman may not exercise in the absence of the chairman (on the grounds that, in the absence of the chairman, such functions should not be exercised by a judicial member of the JAC). The functions in question are sitting on the panel for selecting: judges of the Supreme Court; the Lord Chief Justice; a Head of Division; the Senior President of Tribunals; or a Lord Justice of Appeal.

319. *Paragraph 20* replaces paragraph 13 of Schedule 12 to the CRA which deals with the maximum term of office for a Commissioner with a new paragraph 13 providing a regulation-making power for the Lord Chancellor, in agreement with the Lord Chief Justice, to determine the period for which a Commissioner may hold office, and sets out what may be included in any such regulations, including the

number of times a person can be appointed, the length of appointment and the total period for which they may hold office as a Commissioner. Currently a Commissioner may serve a maximum of two terms of up to five years apiece.

320. *Paragraph 21* replaces sub-paragraphs (1) and (2) of paragraph 14 of Schedule 12 to the CRA which deal with circumstances where persons cease to be a Commissioner or Chairman on the basis that they are no longer eligible for the particular appointment that they have been appointed to, with a new sub-paragraph (1). This provides a regulation-making power for the Lord Chancellor, exercisable in agreement with the Lord Chief Justice, to provide when a Commissioner ceases to be a Commissioner or when the Chairman ceases to be the Chairman, and to provide a power to disapply or suspend these provisions in individual cases.

321. By virtue of the amendment made to section 144(5)(e) of the CRA by *paragraph 25*, all regulations made under Part 1 of Schedule 12 to the CRA, as amended, are subject to the affirmative resolution procedure.

322. *Paragraphs 22 to 26* make supplementary and consequential amendments to the CRA and the Tribunals, Courts and Enforcement Act 2007.

Part 4: Judicial appointments: selection, and transfer of powers of Lord Chancellor

323. Part 4 provides for responsibility for certain decisions in relation to judicial appointments to be transferred from the Lord Chancellor to the Lord Chief Justice and Senior President of Tribunals.

324. The Lord Chief Justice will acquire the power to appoint persons to a number of courts-based judicial offices below the High Court and will acquire the power to decide upon selections made by the JAC in relation to appointments to a number of other courts-based judicial offices where Her Majesty The Queen has the power to appoint. The Lord Chancellor will retain the power to decide upon selections by the JAC or selection panel in relation to appointments to the High Court and above and will retain the power to appoint in relation to a number of other courts-based judicial offices.

325. In relation to those offices where the Lord Chief Justice will, in future, have the power to appoint, most if not all of those offices are held by the holders on a renewable fixed-term basis. The power to extend, or to refuse to extend, such fixed-term appointments will also be transferred to the Lord Chief Justice but the Lord Chancellor will retain power to remove persons from office.

326. The Lord Chancellor will retain overall responsibility and accountability for judicial terms and conditions of appointment and service.

327. The Senior President of Tribunals will acquire the power to appoint persons as judges or other members of the First-tier Tribunal, other members of the Upper

Tribunal, Chamber Presidents and Deputy Chamber Presidents of the First-Tier Tribunal or the Upper Tribunal and deputy judges of the Upper Tribunal. The Senior President of Tribunals will also acquire the power to decide upon selections made by the JAC in relation to appointments as judges of the Upper Tribunal for which Her Majesty The Queen has the power to appoint.

328. Where any of the offices for which the Senior President of Tribunals will, in future, have the power to appoint are held by the holder on a renewable fixed-term basis, the Senior President of Tribunals will be responsible for the extension of (or refusing to extend) such fixed term appointments. The Lord Chancellor will retain power to remove a person from office and, again, the Lord Chancellor will retain responsibility for judicial terms and conditions of appointment and service.

329. *Paragraph 27* amends Part 1 of Schedule 14 to the CRA (appointments by Her Majesty) so as to transfer responsibility for deciding upon selections made by the JAC in relation to certain judicial appointments from the Lord Chancellor to the Lord Chief Justice or the Senior President of Tribunals. *Paragraph 28* makes consequential amendments to paragraphs 1(2)(d) and 1(3) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

330. *Paragraph 30* amends section 21 of the Courts Act 1971 which deals with the appointment of Recorders who are fee-paid Crown Court and county court judges who hold office for a renewable fixed-term. Section 21(3) deals with the terms of appointment of a Recorder. Subsection (3)(c) provides that the terms of appointment must specify the circumstances in which the Lord Chancellor may either terminate the appointment or decline to extend the term of the appointment. *Paragraph 30(2)* replaces subsection (3)(c) with a new subsection (3)(c) and (d), the effect of which is that the Lord Chancellor retains the power to remove a person from office as a Recorder (subsection (3)(c)) whilst a refusal to extend the term of an appointment (subsection (3)(d)) becomes a matter for the Lord Chief Justice. *Paragraphs 30(3) to 30(5)* amend section 21(4A) to (4C), to make further provision in respect of the extension of the term of appointment of a Recorder, to reflect the fact that decisions in respect of such extensions are now to be taken by the Lord Chief Justice rather than the Lord Chancellor. *Sub-paragraph (7)* inserts a new subsection (8) to provide that subject to the preceding provisions of section 21 a person holds and vacates office as a Recorder in accordance with the terms of the person's appointment and those terms are to be such as the Lord Chancellor may determine. *Sub-paragraph (7)* also inserts a new subsection (9) into section 21 which enables the Lord Chief Justice to nominate a senior judge to exercise functions under section 21(4) to (4C).

331. *Paragraph 32* relates to the appointment of deputy Circuit judges by the Lord Chief Justice. *Paragraph 32(3)* amends section 24(1)(a) of the Courts Act 1971 to transfer the power to appoint persons as deputy Circuit judges from the Lord Chancellor to the Lord Chief Justice, but any decision to appoint a person must be made with the concurrence of the Lord Chancellor (reversing the current roles). *Paragraph 32(5)* inserts new subsections (5A) to (5D) into section 24 of the Courts

Act 1971 to provide for the circumstances in which a deputy Circuit judge may be removed from office by the Lord Chancellor (new section 21(5A)), the extension of a deputy Circuit judge's fixed-term of appointment by the Lord Chief Justice (new section 21(5B) and (5C)), and the determination of other terms of appointment by the Lord Chancellor (new section 21(5D).

332. *Paragraph 33* amends section 91 of the Senior Courts Act 1981, which deals with the appointment of deputy and temporary Masters, Registrars etc. of the High Court. *Paragraph 33(2)* amends section 91(1) to transfer to the Lord Chief Justice (from the Lord Chancellor) the power to appoint such office holders. *Paragraph 33(3)* substitutes section 91(1ZA) to provide that the Lord Chief Justice cannot appoint a holder of relevant office (as defined in section 91(1ZC)) as a deputy Master etc without the agreement of the Lord Chancellor. *Paragraph 33(4)* inserts new subsections (6A) to (6D) into section 91 to provide for the circumstances in which a deputy or temporary Master etc. may be removed from office by the Lord Chancellor (new section 91(6A)), the extension of a deputy or temporary Master's etc. fixed-term appointment by the Lord Chief Justice (new section 91(6B) and (6C)), and the determination of other terms of appointment by the Lord Chancellor (new section 91(6D)).

333. *Paragraph 33(6) and (7)* makes consequential amendments to the CRA and Tribunals, Courts and Enforcement Act 2007.

334. *Paragraph 34* amends section 102 of the Senior Courts Act 1981 which provides for the appointment of deputy district judges for the High Court. *Sub-paragraph (2)* amends section 102(1) to allow the Lord Chief Justice (rather than the Lord Chancellor) to appoint persons as deputy district judges. *Sub-paragraph (3)* amends section 102(1B) so that the Lord Chief Justice cannot appoint without the agreement of the Lord Chancellor a person who holds the office of district judge or a person who ceased to hold the office of district judge within two years ending with the date when the appointment takes effect. *Sub-paragraph (4)* inserts new subsections (5ZA) to (5ZE) into section 102 to provide for the circumstances in which a deputy district judge may be removed from office by the Lord Chancellor (new section 102(5ZA)), the extension of a deputy district judge's fixed-term of appointment by the Lord Chief Justice (new section 102(5ZB) and (5ZC)), the determination of other terms of appointment by the Lord Chancellor (new section 102(5ZD)) and the delegation of the Lord Chief Justice's functions under section 102 (new section 102(5ZE)). *Paragraph 34(5) and (6)* makes consequential amendments to the Senior Courts Act 1981 and the CRA as a result of the above changes.

335. *Paragraph 35* makes similar provisions to those outlined above, but in relation to deputy district judges for the county court, by amending section 8 of the County Courts Act 1984.

336. *Paragraph 36* makes like provisions for Deputy District Judges (Magistrates'

Courts) by amending section 24 of the Courts Act 2003.

337. *Paragraph 37* amends section 10 of the Courts Act 2003 and provides for the Lord Chancellor's powers of appointment in respect of lay justices (magistrates) to be transferred to the Lord Chief Justice. The appointments themselves will, as now, continue to be made in the name of Her Majesty The Queen. *Sub-paragraph (3)* inserts a new section 10(1A) to provide that a lay justice is to hold and vacate office in accordance with terms of appointment as determined by the Lord Chancellor. *Sub-paragraph (4)* inserts a new section 10(2ZA) to provide that the Lord Chief Justice must ensure that arrangements for the exercise (so far as affecting any local justice area) of functions under subsection (1) include arrangements for the consulting of persons appearing to the Lord Chief Justice to have special knowledge of matters relevant to the exercise of that function in relation to that area. *Sub-paragraph (6)* inserts a new section 10(6A) to enable the Lord Chief Justice to nominate a senior judge (as defined by section 109(5) of the CRA) to exercise his power to appoint lay justices.

338. *Paragraph 38* introduces a requirement into section 94A of the CRA for the Lord Chancellor and the Lord Chief Justice to seek the concurrence of the other before making certain judicial appointments, selection for which is not undertaken by the JAC.

339. *Paragraph 39* amends Part 2 of Schedule 14 to the CRA so that the transfer of the power to appoint in relation to particular courts-based judicial offices from the Lord Chancellor to the Lord Chief Justice is reflected in that Schedule.

340. *Paragraphs 40 and 41* amend the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act") to confer upon the Senior President of Tribunals (in place of the Lord Chancellor) the power to appoint Chamber Presidents for the First-tier Tribunal or the Upper Tribunal.

341. *Paragraph 42(1)* introduces a new subsection (1A) into section 8 of the 2007 Act, which restricts the power of the Senior President of Tribunals to delegate his power to appoint judges and other members to the First-tier Tribunal to a Chamber President of a chamber of the Upper Tribunal. *Paragraph 42(2)* amends section 8(2) of the 2007 Act in order to detail which functions the Senior President of Tribunals may not delegate.

342. *Paragraph 43(2)* amends Schedule 2 to the 2007 Act to confer on the Senior President of Tribunals the power to appoint judges and other members of the First-tier Tribunal. *Paragraph 43* further amends Schedule 2 to set out the grounds on which the Lord Chancellor may remove from office judges and other members of the First-tier Tribunal appointed on a fee-paid basis, and makes provisions regarding the extension of fixed-term appointments by the Senior President of Tribunals.

343. *Paragraph 44* makes similar provisions in relation to the appointment of other

members of the Upper Tribunal by amending Schedule 3 to the 2007 Act, and also confers upon the Senior President of Tribunals the power to appoint deputy judges of the Upper Tribunal by way of amendment to paragraph 7(1) of Schedule 3.

344. *Paragraph 45* amends Schedule 4 to the 2007 Act to transfer certain functions from the Lord Chancellor to the Senior President of Tribunals in relation to the appointment of Chamber Presidents and deputy Chamber Presidents. *Sub-paragraph (14)* inserts new paragraph 5A into Schedule 4 to provide for the removal of Chamber Presidents and deputies from office and extensions of their appointments where they are fixed-term ones.

345. *Paragraph 46(2)* substitutes a new section 94B(1)(b) of the CRA to provide that for certain appointments (where section 94B applies) the Lord Chancellor and the Senior President of Tribunals are not to make an appointment (or recommendation for appointment) without the concurrence of the other.

346. *Paragraph 47* makes consequential amendments to Part 3 of Schedule 14 to the CRA to reflect the transfer of the Lord Chancellor's power to appoint in relation to certain tribunals-based judicial offices to the Senior President of Tribunals.

347. *Paragraph 48* amends section 50 of the Equality Act 2010 to amend the definition of "public office" so as to bring into its scope those judicial offices for which the Lord Chief Justice and the Senior President of Tribunals will, in future, have the power appoint. It will therefore be unlawful for the Lord Chief Justice or the Senior President of Tribunals to discriminate against, harass or victimise persons who are, or wish to be, appointed to those judicial offices for which the Lord Chief Justice and the Senior President of Tribunals will have the power to appoint.

348. *Paragraph 49* makes consequential amendments to section 51 of the Equality Act 2010.

349. *Paragraph 50* amends section 9 of the Senior Courts Act 1981 so that requests may only be made to a Circuit Judge, Recorder or Tribunal judge to sit in the High Court if they are a member of a pool selected by the JAC for such purposes.

350. *Paragraph 51* repeals several sections of the CRA, and inserts a new section 94C into that Act. The new section 94C will require the Lord Chancellor to make regulations with the agreement of the Lord Chief Justice to:

> (a) make further provision about the process to be applied where the Lord Chancellor has requested the JAC to select persons for appointment as a High Court judge or to one of the offices listed in Schedule 14 to the CRA or to a pool mentioned in the amendment made by paragraph 50. Although the JAC will have the power under section 88(1) of the CRA to determine the selection process to be applied by it, the regulations may make further provision about

the entire process;

(b) make further provision about the membership of the selection panels convened for selecting persons for appointment as Lord Chief Justice, Heads of Division, Senior President of Tribunals or ordinary judges of the Court of Appeal;

(c) make further provision about the process to be applied in a case where such a selection panel is required to be convened.

351. The regulations must also secure that in every case there must come a point where a selection by the JAC or selection panel is accepted. New section 94C(2) sets out what the regulations may in particular provide for. Notably, such regulations may give functions to the Lord Chancellor including the powers to require a selection panel to reconsider a selection or any subsequent selection, and to reject a selection. Furthermore, under these regulations the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals (depending upon who has the power to decide upon a selection by the JAC) could be given power to reject or require reconsideration of initial or subsequent selections by the JAC made on a request under section 87, and to require reconsideration by the JAC of a decision where a selection process has not identified candidates of sufficient merit.

352. *Paragraphs 52 to 78* provide for other changes to be made to the CRA in relation to selection processes and complaints about the selection/appointment process. Paragraph 53 amends section 66(1)(a) of the CRA so that before issuing any guidance to the JAC about selection procedures the Lord Chancellor must now obtain the agreement of the Lord Chief Justice.

353. *Paragraph 56(2)* inserts new subsections (1A) to (1D) into section 70, setting out requirements in relation to the composition of selection panels for selecting persons for appointment as Lord Chief Justice or Heads of Division. Similarly, sections 75B and 79 are amended (*paragraphs 58(2) and 61(2))* to set out requirements for the composition of selection panels for selecting persons for appointment as the Senior President of Tribunals and ordinary judges of the Court of Appeal, respectively. The new subsections notably require that the panel must consist of an odd number of members and not less than five, that at least two members must be non-legally qualified (which may be defined in regulations made under new section 94C), that at least two must be judicial members and that at least two must be members of the JAC.

354. *Paragraph 62* provides for the Lord Chancellor, by order and after consulting the Lord Chief Justice for England and Wales, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, to provide that section 85 of the CRA does not apply to appointments to an office listed in Schedule 14 to the CRA that is specified in the order. In essence this will provide that certain offices may be removed from the scope of the JAC. Those offices may only be those that do not

require particular legal qualifications.

355. *Paragraph 63* amends section 86 of the CRA, in relation to the duties to make appointments or recommendations for appointment.

356. *Paragraph 64* amends section 87 of the CRA, which concerns the Lord Chancellor's power to request the JAC to select a person for a recommendation or appointment. *Sub-paragraph (2)* inserts new subsection (1A) which provides that the Lord Chancellor may request the JAC to select a person for membership of a pool from which requests may be made under section 9(1) of the Senior Courts Act 1981 to assist with the business of the Senior Courts.

357. *Paragraph 65* makes consequential amendments to section 88 of the CRA, which deals with the selection process. It amends section 88(4) to provide that only one person may be selected in relation to each request for membership of selection pools for the purposes of section 9(1) of the Senior Courts Act 1981.

358. *Paragraph 66* substitutes a new section 94 into the CRA. If the Lord Chancellor gives the JAC notice of a request which the Lord Chancellor expects to make under section 87, the JAC must seek to identify persons it considers would be suitable for selection on the request. The Lord Chancellor, however, may with the agreement of the Lord Chief Justice make regulations about how the JAC is to comply with this duty. *Paragraph 67* provides further detail and consequential amendments to section 95 of the CRA regarding the Lord Chancellor's power to withdraw or modify a request made under section 69, 78 or 87 of the CRA or paragraph 2(5) of Schedule 1 to the 2007 Act.

359. *Paragraph 68* makes consequential amendments to section 97(1) of the CRA.

360. *Paragraphs 69 to 75* make consequential amendments to sections 99 to 105 of the CRA which concern complaints about the selection/appointment process, including referrals to the Judicial Appointments and Conduct Ombudsman ("Ombudsman"). *Paragraph 69* incorporates a definition of "LCJ complaint" and "SPT complaint" into section 99 of the CRA, and *paragraph 70* imposes a duty upon the Lord Chief Justice and Senior President of Tribunals to investigate complaints made to them. *Paragraphs 71 to 73* concern the duties of the Ombudsman to investigate complaints and submit reports to the Lord Chief Justice, Senior President of Tribunals and the Lord Chancellor. *Paragraph 76* amends section 144(5) of the CRA to add to the list of orders and regulations that are subject to the affirmative resolution procedure. *Paragraphs 77* and *78* make further consequential amendments to the CRA.

Part 5 – Appointment of judge to exercise functions of a head of division in case of incapacity or a vacancy etc

361. *Paragraphs 79 to 84* provide for the Lord Chief Justice, with the concurrence of the Lord Chancellor, to temporarily appoint a judge of the Senior Courts to exercise

relevant functions of a Head of Division where that Head of Division is incapable of exercising those functions or the office is vacant. *Paragraph 80* provides that the appointment must be in writing, specify the functions that may be exercised by the appointed judge and must set out the duration of the appointment. *Paragraph 81* defines "Head of Division". These are the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division and the Chancellor of the High Court. *Paragraph 82* defines "relevant functions" and *paragraph 83* provides that the Lord Chancellor may amend by order the list of relevant functions in *paragraph 82*. *Paragraph 84* amends section 10 of the Senior Courts Act 1981 by inserting a new subsection.(6A) which has the effect that where a Head of Division is incapacitated, that office is to be treated as vacant for the purpose of section 10(6).

Part 6: Abolition of office of assistant recorder

362. From April 2000, appointments to the office of Assistant Recorder (fee-paid judicial office holders with a fixed term of appointment) were no longer made, with all subsequent appointments being made to the office of Recorder. However, residual references to the office of Assistant Recorder still remain in legislation. *Paragraph 85* removes any reference to this office in the Courts Act 1971, and provides for consequential amendments as a result of this removal to be made to that Act, the Judicial Pensions and Retirement Act 1993, the Senior Courts Act 1981, the Courts Act 2003, the CRA and the 2007 Act.

Clause 19: Deployment of the judiciary

363. Section 7(2) of the CRA lists responsibilities of the Lord Chief Justice as President of the Courts of England and Wales. These responsibilities include, at paragraph (c), the "maintenance of appropriate arrangements" for the deployment of the judiciary of England and Wales. Similarly, Part 2 of Schedule 4 to the 2007 Act specifies that the Senior President of the Tribunals has the function of assigning judges and members to the chambers of the First-tier Tribunal and Upper Tribunal.

364. In the tribunals, the scheme of assignment is in part specified in the 2007 Act itself and supplemented by a policy which the Senior President of Tribunals is required to publish (by paragraph 13 of Schedule 4). Within the court system the arrangements for deploying judges are largely uncodified. Each piece of legislation dealing with court jurisdiction specifies which judicial office holders may sit in that court, and arrangements for their deployment to that court is overseen by the Lord Chief Justice.

365. Judges of the First-tier Tribunal and Upper Tribunal cannot at present be deployed into the courts at all. The purpose of clause 19 and Schedule 14 is to resolve these difficulties. See also the provisions inserted by Schedules 9 and 10 about who are to be judges of the county court and family court.

366. Clause 19 expands the Lord Chief Justice's deployment responsibilities insofar as they are not already covered by section 7(2) of the CRA, and requires him or her to have regard to the similar responsibilities of the Senior President of Tribunals. The

responsibilities are to maintain appropriate arrangements for the deployment to tribunals of judiciary who are deployable to tribunals, and for the deployment to courts in England and Wales of judiciary who are deployable to those courts. Further, it provides that Schedule 14 has effect.

Schedule 14: Deployment of the judiciary

367. In summary, Schedule 14 expands the lists in statute of the judicial office holders who are capable of sitting in each type of court and tribunal.

368. Schedule 14 is divided into seven parts:

- Parts 1 and 2 are concerned with the judicial office holders who may sit in the Senior Courts (that is, the Court of Appeal, High Court and Crown Court);

- Part 3 is concerned with the judicial office holders who may sit in the magistrates' courts;

Part 4 is concerned with the judicial office holders who may sit in the Court of Protection;

- Part 5 is concerned with the judicial office holders who may sit in the First-tier Tribunal and Upper Tribunal;

- Parts 6 and 7 are concerned with the judicial office holders who may sit in the Employment Appeal Tribunal and the Employment Tribunal.

Part 1: Deployment under section 9 of the Senior Courts Act 1981

369. Part 1 provides for a wider range of judicial office holders to provide assistance with the transaction of judicial business in the Senior Courts. The intended position is shown in Annex B. It also provides that selection for appointment to the office of deputy judge of the High Court under section 9(4) of the Senior Courts Act 1981 ("the 1981 Act") should be by the JAC.

370. *Paragraph 1* amends section 9 of the 1981 Act. *Sub-paragraph* (2) provides that a person who has been a puisne judge of the High Court or has been a Court of Appeal judge can be requested to sit in the family and county courts. *Sub-paragraph* (3) adds the Senior President of Tribunals to those who may be requested to sit in the Court of Appeal or the High Court. *Sub-paragraphs (4)* and *(5)* provide that the Upper Tribunal judges and the Presidents of the Employment Tribunals are added to the table (in section 9(1) of the 1981 Act) and so are able to be requested to sit in the High Court. *Sub-paragraph* (6) provides that a request to the Senior President of Tribunals may only be made after consulting the Lord Chancellor. *Sub-paragraph* (7) provides for the concurrence of the JAC in relation to a request for a Circuit judge to sit in the Criminal Division of the Court of Appeal. *Sub-paragraph* (8) specifies which judges must comply with a request and those judges that do not have to comply

with a request.

371. New subsections (8A) and (8B) of section 9 of the 1981 Act (inserted by *paragraph 2(3)*) expressly provide the Lord Chancellor with the power to remove deputy judges of the High Court and determine the terms of their appointments.

372. *Paragraph 3(1)* inserts the deputy judge of the High Court into new Table 2 of Part 2 of Schedule 14 to the CRA (as created as a result of the amendments made by paragraph 39 of Schedule 13 to the Bill) which requires appointments made under section 9(4) of the 1981 Act, to be made following a Judicial Appointments Commission selection process.

373. *Paragraph 3(3)* inserts new section 94AA into the CRA which provides for a limited exception to the requirement that the appointments of deputy judges of the High Court are to be made following a JAC selection process. New section 94AA enables the Lord Chief Justice to appoint a person as a deputy judge of the High Court, after consultation with the Lord Chancellor, where: (a) there is an urgent need in respect of particular business of the High Court or Crown Court; (b) it is expedient as a temporary measure to make an appointment to dispose of the particular business and; (c) there are no other reasonable steps that may be taken in the time available (new section 94AA(2)). In such circumstances the normal JAC selection process is dis-applied and a judge may be appointed as a temporary deputy judge of the High Court for a specified period in order to deal with the urgent business or until when the urgent business is expected to conclude (new section 94AA(3)).

Part 2: Deployment of judges to the Crown Court

374. *Paragraph 4* amends section 8 of the 1981 Act which expands the list of judges who are capable of exercising the jurisdiction of the Crown Court. Following the changes, the Senior President of Tribunals, judges of the First-tier and Upper Tribunals, county court and High Court district judges, deputy district judges and Masters, and members of a panel of Employment Judges will all be able to exercise the jurisdiction of the Crown Court if deployed to that court by the Lord Chief Justice.

Part 3: Deployment of judges to the magistrates' court

375. *Paragraph 5* amends section 66 of the Courts Act 2003 to expand the list of judges who have the powers of a justice of the peace who is a District Judge (Magistrates' Courts). The offices which have been added are, the Master of the Rolls, an ordinary judge of the Court of Appeal, the Senior President of Tribunals, judges of the First-tier and Upper Tribunals, county court and High Court district and deputy district judges and Masters, and members of a panel of chairman of Employment Judges.

Part 4: Deployment of judges to the Court of Protection

376. *Paragraph 6* amends section 46 of the Mental Capacity Act 2005 to add to the list of judges who may be nominated by the Lord Chief Justice, or a person acting on

his behalf, to sit as a judge of the Court of Protection.

Part 5: Deployment of judges to the First-tier Tribunal and the Upper Tribunal

377. *Paragraph 8* amends section 4(1) of the 2007 Act to provide that any judge specified in new section 6A of that Act (inserted by *paragraph 10* of Schedule 13) is a judge of the First-tier Tribunal.

378. *Paragraph 9* amends section 6(1) of the 2007 Act to provide that the following judges are also judges of the First-tier and Upper Tribunals: the Lord Chief Justice of England and Wales, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Judge Advocate General and a deputy judge of the High Court.

379. *Paragraph 10* inserts a new section 6A into the 2007 Act which expands the list of judges who are First-tier Tribunal judges to include a deputy Circuit Judge, a Recorder, High Court Masters, county court and High Court deputy district judges, Deputy District Judges (Magistrates' Courts), the Vice Judge Advocate General and Assistant Judge Advocates General.

Part 6: Deployment of judges to the employment appeal tribunal

380. *Paragraph 12* amends section 22 of the Employment Tribunals Act 1996 ("the 1996 Act") by expanding the list of judicial office holders that may be nominated by the Lord Chief Justice to sit in the Employment Appeal Tribunal. Currently, only judges of the Court of Appeal or the High Court may be nominated to sit in the Employment Appeal Tribunal. Following the changes, the Senior President of Tribunals, the Judge Advocate General, deputy judges of the High Court, Circuit Judges, judges of the Upper Tribunal, district judges and District Judges (Magistrates' Courts) will be able to be nominated by the Lord Chief Justice.

Part 7: Deployment of judges to the employment tribunals

381. *Paragraph 13* amends section 5D of the 1996 Act which relates to the provision of judicial assistance in the employment tribunals. The list of judges that may be deployed to the employment tribunals is expanded to include the Lord Chief Justice and (with the Lord Justice's consent) any of the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court in England and Wales, a deputy judge of the High Court, a Recorder, a county court or High Court deputy district judge, a Deputy District Judge (Magistrates' Court), High Court Masters and both the Judge Advocate General and any non-temporary assistants. Lastly, the paragraph makes it possible for the Senior President of Tribunals to sit in employment tribunals.

Part 8: Amendments following renaming of chairmen of Employment Tribunals

382. *Paragraph 14* updates various statutory references to "chairmen of employment tribunals" to "Employment judges". This change of name was given effect to by paragraph 247 of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683)

which in turn amended regulation 8(3)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I. 2004/1861) which provides for the membership of Employment Tribunals.

Clause 20: Transfer of immigration or nationality judicial review applications

383. Currently the only class of immigration and asylum judicial review applications and applications for permission to apply for judicial review that may be transferred to the Upper Tribunal are those which call into question a decision by the Secretary of State not to treat submissions as an asylum or human rights claim (within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002) wholly or partly on the basis that they are not significantly different from material that has been previously considered. Certain other conditions must also be met. These types of cases are commonly referred to as "fresh claim" judicial reviews. *Subsection (1)* amends section 31A of the Senior Courts Act 1981 to remove this limitation in respect of applications for judicial review or for permission to apply for judicial review made to the High Court in England and Wales. Any classes of immigration and nationality judicial reviews will therefore be capable of being designated in a direction made by or on behalf of the Lord Chief Justice under Schedule 2 to the Constitutional Reform Act 2005. *Subsection (2)* amends section 20 of the Tribunals, Courts and Enforcement Act 2007 to remove the same restrictions which apply to the transfer to the Upper Tribunal of applications made to the supervisory jurisdiction of the Court of Session. *Subsection (3*) amends section 25A of the Judicature (Northern Ireland) Act 1978 to remove the same restrictions which apply to transfers from the High Court in Northern Ireland to the Upper Tribunal of applications for judicial review or leave to seek judicial review. *Subsection (4)* repeals section 53 of the Borders, Citizenship and Immigration Act 2009 which introduced the exception for fresh claim cases to the general bar on transferring immigration and nationality cases; given that the generality of such cases may now be transferred there is no need for the exception.

Clause 21: Permission to appeal from Upper Tribunal to Court of Session

384. Clause 21 amends section 13 of the Tribunals, Courts and Enforcement Act 2007 to allow a rule of court in Scotland that would reintroduce the "second-tier appeals test" for applications for permission to appeal from the Upper Tribunal to the Court of Session. This test requires that an application should demonstrate that the appeal would raise an "important point of principle or practice", or "some other compelling reason for the court to hear the appeal". The test applies in England and Wales and in Northern Ireland. The same test, provided for in a rule of court, was in place in Scotland before that rule was recently found to be *ultra vires* in the Court of Session's decision in *KP and MRK v. The Secretary of State for the Home Department*. This clause provides the statutory basis should such a rule be made again in Scotland.

Clause 22: Appeals relating to regulation of the Bar

385. Clause 22 abolishes the jurisdiction of High Court judges to sit as Visitors to the Inns of Court and confers on the Bar Council and the Inns of Court the power to

confer rights of appeal to the High Court in relation to the matters that were covered by the Visitors' jurisdiction. The clause applies to matters relating to, among other things:

- Persons seeking relief from disciplinary decisions of the Council of the Inns of Court and decisions of the Bar Council;
- Aspiring barristers seeking to overturn the decisions of the Qualifications Committee of the Bar Council (these relate primarily to requests for complete or partial exemptions from the Bar qualification criteria); and
- Disputes between an Inn of Court and a member of the Inn, or a dispute between members of the Inn on property matters such as the letting of chambers within the Inns of Court and dues payable to the Inn by its members.

386. This is achieved by repealing section 44 of the Senior Courts Act 1981 in so far as it confers jurisdiction on High Court Judges to sit as Visitors of the Inns of Court (*subsection (1))* and conferring power on the Bar Council and the Inns of Court to confer rights of appeal to the High Court (*subsections (2) and (3)*).

387. The Bar Council, an Inn of Court, or two or more Inns of Court acting collectively (such as in the form of the Council of the Inns of Court), may confer a right of appeal to the High Court in respect of a matter relating to: (a) regulation of barristers; (b) regulation of other persons regulated by the person conferring the right; (c) qualifications or training of barristers or persons wishing to become barristers; or (d) admission to an Inn of Court or call to the Bar (*subsection (2))*. It is drafted in general terms to reflect the historically wide extent of the Visitors' jurisdiction in addition to encompassing how it is currently exercised.

388. An Inn of Court may also confer a right of appeal to the High Court in respect of: (a) a dispute between the Inn and a member of the Inn; or (b) a dispute between members of the Inn (*subsection (3)*). Any reference to a member of an Inn includes a reference to a person wishing to become a member of that Inn. Subsection (3) is in recognition that historically, the Visitors' jurisdiction extended to appeals from all decisions relating to the conduct of an Inn's affairs.

389. A decision of the High Court on an appeal under this clause is final (*subsection (4)*) with the exception of a decision to disbar a person (*subsection (5)*). As a result, such a decision may be appealed to the Court of Appeal (with permission). The High Court may make such order as it thinks fit on an appeal under this section (*subsection (6)*). Subsection (7) provides for the person who confers a right of appeal to remove it, for example, should regulatory arrangements change in future. It also enables any Inn to remove a right of appeal conferred by two or more Inns acting collectively in so far as it relates to that Inn. This reflects the ability of any Inn to cancel or amend on its part the undertaking currently agreed between the Bar Council and the Council of the Inns of Court.

Clause 23: Payment of fines and other sums

390. Clause 23 makes provision: (a) to enable the recovery of charges for some or all of the administrative costs of collecting or pursuing criminal financial penalties from offenders who have defaulted on that sum; and (b) to facilitate the performance of the functions of fines officers by staff provided under contract.

391. *Subsection (1)* inserts a new section 75A into the Magistrates' Courts Act 1980 ("the 1980 Act"), which deals with the recovery of fine collection costs. A charge may be made in relation to the administrative costs incurred for the purpose of collecting or pursuing criminal financial penalties (new section 75A(1)). The charge would be added to the amount outstanding of the financial penalty imposed on conviction and treated in the same way (new section 75A(2)). This also means the charge would be recoverable in the same way and subject to the same sanctions for default. The offender must be notified of the obligation to pay the charge (new section 75A(3)): this will either be done in the collection order where the court has made such an order (a collection order is an order, which the court is required under paragraph 12 of Schedule 5 to the Courts Act 2003 ("the 2003 Act") to make unless it is impracticable or inappropriate to do so, relating to the payment of the financial penalty and containing information about the amount of the financial penalty and how it is to be paid) or via some other form of notice where no collection order is made.

392. The collection costs will not be chargeable where the court has allowed time to pay or where a person is paying by instalments and the sum has been satisfied within the time allowed or the payments are up to date (75A(4) and (5)). The collection costs do not apply to costs related to taking control of goods (75A(6)).

393. *Subsection (2)* inserts a new section 36A into the 2003 Act which makes it clear that the role and functions of the magistrates' court fines officer under that Act are to be treated as not involving the making of judicial decisions or the exercise of judicial discretion. This would facilitate the performance of those functions by staff provided under contract under section 2(4) of the 2003 Act.

394. *Subsections (3) to (8)* make amendments to other legislation consequential on the main changes made by subsections (1) and (2). *Subsection (3)* inserts provision into Schedule 5 to the 2003 Act to ensure that collection orders contain an explanation of the possibility of collection costs being chargeable in the event of default. *Subsection (4)* amends section 85 of the 1980 Act to provide that collection costs may be remitted in the same way as a fine to which they are added. *Subsection (5)* amends section 139 of the 1980 Act, which makes provision for how the balance of receipts on account of fines is to be applied: the amendment makes the provision subject to directions which may be made under section 139A of that Act. *Subsection (6)* inserts that new section 139A into the 1980 Act. The new section 139A enables the Lord Chancellor to give directions for money received in respect of collection costs to be paid to the person who charged the amount, which allows for flexibility in the arrangements for applying that money, for example if fine collection functions were to

be performed under contract.

395. *Subsection (7)* amends section 24(2) of the Criminal Justice Act 1991 to ensure that regulations about applications by courts for benefit reductions for payment of fines may make provision about deductions in connection with the sum being increased on account of collection costs. *Subsection (8)* amends section 56(3) of the Education and Skills Act 2008 (which provides for non-participation fines imposed in respect of failure to attend education or training to cease to be enforceable as fines once the person in question has reached 18, except in so far as necessary to complete enforcement which is already under way) so that it covers amounts in respect of collection costs incurred in relation to such a fine in the same way as amounts in respect of the fine itself.

Clause 24: Disclosure of information to facilitate collection of fines and other sums

396. New paragraphs 9A to 9C of Schedule 5 to the Courts Act 2003, as amended by this clause, will enable the Secretary of State, a Northern Ireland department and Her Majesty's Revenue and Customs to share social security and finances information respectively with Her Majesty's Courts and Tribunals Service for the purpose of facilitating the making of a decision by a court or a fines officer as to whether to make an attachment of earnings order or an application for benefits deductions against the offender, or of facilitating the making of such an order or application.

397. New paragraph 9A(2) of Schedule 5 to the 2003 Act defines finances information to include details about an offender's income, gains or capital and social security information to include information which is held for the purposes of functions relating to social security. The new paragraph 9A(1) refers to a Northern Ireland Department to ensure that social security information on Northern Ireland residents held on the Department for Work and Pension's database can be shared with Her Majesty's Courts and Tribunals Service.

398. *Subsections (6)* to *(8)* amend the criminal offence in paragraph 9B to prevent further disclosure of any information shared with Her Majesty's Courts and Tribunals Service save in the circumstances set out in amended paragraph 9B(3) and (4). *Subsections (9)* and *(10)* increase the maximum penalties in relation to the offence to be imprisonment not exceeding two years and/or a fine if tried on indictment and imprisonment not exceeding 6 months (increasing to 12 months when section 154(1) of the Criminal Justice Act 2003 is brought into force) and/or a fine not exceeding the statutory maximum if tried summarily.

Clause 25: Disclosure of information for calculating fees of courts, tribunals etc

399. Clause 25 makes provision for the disclosure of information about tax credits, social security information and information about a person's income, gains or capital in order to determine a person's eligibility for a remission from paying fees to courts, tribunals or the Public Guardian.

400. Clause 25 makes provision for the disclosure of information about tax credits, social security information and information about a person's income, gains or capital in order to determine a person's eligibility for a remission from paying fees to courts, tribunals or the Public Guardian.

401. *Subsection (1)* provides that the Secretary of State (in practice, the Secretary of State for Work and Pensions), or a relevant Northern Ireland Department, or a person providing services to them, may disclose social security information to a relevant person in order for that person to determine whether an applicant is eligible for a fee remission.

402. *Subsection (2)* enables Her Majesty's Revenue and Customs to disclose tax credit information or information about a person's income, gains or capital to a relevant person in order for that person to determine whether an applicant is eligible for a fee remission.

403. *Subsection (3)* provides that information disclosed to a relevant person under *subsection (1) or (2)* may only be shared with another relevant person who needs the information to assess whether someone is eligible for a fee remission; such information cannot be used for any other purpose.

404. *Subsection (4)* explains the limited circumstances in which information received for the purpose of deciding whether someone is eligible for a fee remission under either *subsection (1)* or *(2)* may be further disclosed. Further disclosure is only permitted where that information has already been disclosed to the public with lawful authority, where it is disclosed in a form such that information about an individual cannot be identified from it or where disclosure is necessary to comply with a court order or statutory duty.

405. *Subsection (5*) provides that it is an offence to disclose or use this information other than for the purposes specified.

406. *Subsection (6)* provides that where a person is charged with an offence under subsection (5), it is a defence that they reasonably believed that the disclosure or use of the information was lawful.

407. *Subsection (7)* sets out the applicable penalties where a person is guilty of the offence under subsection (5). A conviction on indictment may attract a sentence of imprisonment for a term not exceeding two years, a fine or both. On summary conviction a person is liable to a term of imprisonment not exceeding 12 months, a fine not exceeding the statutory maximum, or both.

408. *Subsection (8)* provides that in relation to summary convictions for the offence at *subsection (5)*, a prison sentence not exceeding 6 months applies to offences committed in England and Wales before the implementation of section 154(1) of the Criminal Justice Act 2003 (which provides that a magistrates court does not have the

power to impose a sentence of more than 12 months for one offence) or for offences committed in Northern Ireland.

409. *Subsection (9)* provides that, in England, Wales, and Northern Ireland, a person may only be prosecuted for an offence under this clause by or with the consent of the relevant Director of Public Prosecutions.

410. *Subsection (10)* defines the terms used in this clause. It sets out what is meant by a relevant person and includes a list of court, tribunal and other fee-charging provisions to which the disclosure regime applies.

Clause 26: Enforcement services

411. The new Section 125A provides for the Bailiff Enforcement Agents Council (BEAC) to be treated as an approved regulator (*Subsection (1) (a)*); enforcement serves to be treated as a reserved legal activity (*Subsection 1 (b*)); for enforcement agents to be treated as authorised persons in relation to enforcement services (*Subsection 1 (c)*); for BEAC to be treated as the relevant authorising body for enforcement agents (*Subsection 1 (d)*); for regulations made under the Tribunals, Courts and Enforcement Act 2007 and the National standards for Enforcement Agents to be treated as the regulatory arrangements of BEAC (*Subsection 1 (e)*) and for an enforcement agent to be treated as a relevant authorised person in relation to BEAC (*Subsection 2*).

412. With this new provision, enforcement services would be treated as a reserved legal activity and BEAC would act as the authorising body for individuals and companies carrying out these activities. With BEAC as an approved legal services regulator, the Office for Legal Complaints would have the jurisdiction to deal with complaints about enforcement agents under the Ombudsman Scheme.

Clause 27: Supreme Court Security Officers

413. *Subsection (1)* inserts a new set of sections in the Constitutional Reform Act 2005 entitled court security and provides for Supreme Court security officers who will operate in any building where the business of the UK Supreme Court or the judicial committee of the Privy Council is carried on.

414. *Subsection (2)* amends section 48 of the Constitutional Reform Act 2005 so that the power of the President of the UK Supreme Court to appoint security officers provided in the new provisions on court security (*sections 51A to 51E*) may be delegated to the Chief Executive of the UK Supreme Court

415. *Section 51A* (*Supreme Court Security Officers*) establishes that every Supreme Court security officer must be appointed by the President of the Supreme Court under section 49(1) or provided under a contract. They must also be designated by the President. It is envisaged that there will be a period of training. *Subsection (2)* enables the President to give directions for training and to specify the conditions which must

be met before a person can be designated as a Supreme Court security officer. *Subsection (3)* makes it clear that Supreme Court security officers must be identifiable. For the purposes of these sections "court building" means any building where the business of the Supreme Court, or of the Judicial Committee of the Privy Council, is carried on, and where the public has access.

416. *Section 51B (Powers of search, exclusion, removal and restraint)* gives a Supreme Court security officer power to search a person who is entering, or who is already in, a court building and also any article in such a person's possession. Supreme Court security officers may require only removal of a coat, jacket, headgear, gloves or footwear. *Subsection* (4) provides the Supreme Court security officers with powers to restrain persons or exclude, or remove them from the UK Supreme Court. Officers may exclude or remove where a person has refused to submit to a search, or has refused the officer's request for surrender of an article where the officer reasonably believes that the article ought to be surrendered on the grounds that it may jeopardise the maintenance of order in the UK Supreme Court, may risk the safety of a person, or because the article may be evidence of or in relation to an offence. They also have the power to restrain, exclude or remove a person if it is reasonably necessary to do so to maintain order, secure the safety of people in the UK Supreme Court and to enable its business to be conducted without disruption. *Subsection* (6) provides that a Supreme Court security officer may also remove any person from a courtroom at the request of a judge of the Supreme Court or a member of the Judicial Committee of the Privy Council. *Subsection* (7) provides that the powers to exclude, remove and restrain persons include the power to use reasonable force.

417. *Section 51C (Surrender, seizure and retention of knives and other articles)* requires a Supreme Court security officer to request the surrender of any article that the officer reasonably believes ought to be surrendered. An officer may also seize an article where the officer has requested its surrender but the request has been refused. Specific grounds for surrender and seizure are laid out in *subsection (2)(a) to (c)*; because possession of the article may jeopardise the maintenance of order in the Supreme Court building, or may risk the safety of a person in that building or because the article may be evidence of or in relation to an offence. A Supreme Court security officer may retain an article surrendered or seized until the person from whom it was taken is leaving the court building. However, where the officer reasonably believes that the article may be evidence of or in relation to an offence, the officer may retain it until the person from whom it was taken is leaving the court building, or, for a limited period of up to 24 hours from the time the article was surrendered or seized, to enable the officer to draw it to the attention of a police constable.

418. In conjunction with the Supreme Court security officers' powers to retain an article surrendered or seized under *section 51C* it is important that any items so retained are suitably recorded. The person from whom the article is taken must also be provided with adequate information about the terms of retention and given notice that when an article becomes unclaimed it will be disposed of. *Section 51D (Regulations about retention of knives and other articles)* provides the Lord Chancellor with a

power to make regulations which include provision of written information about the powers of retention; the keeping of records; the period of retention; and the disposal of articles after this period. This section defines an unclaimed article as one that has been retained and which a person is entitled to have returned but which the person has not requested and which has not been returned.

419. *Section 51E (Assaulting and obstructing court security officers)* provides that assaulting a Supreme Court security officer in the execution of the officer's duty is an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale or imprisonment for up to six months. It also provides that resisting or wilfully obstructing a Supreme Court security officer in the execution of the officer's duty is an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

Clause 28: Enabling the making, and use, of films and other recordings of judicial proceedings

420. The purpose of this clause is to permit filming and broadcast of proceedings in courts and tribunals in certain circumstances. It is expected that such circumstances will be set out in secondary legislation and where appropriate in non-statutory operational guidance.

421. *Subsection (1)* provides that the Lord Chancellor may, by order made with the agreement of the Lord Chief Justice, provide that the enactments in *subsection (2)* do not apply. Any such order is subject to the affirmative resolution procedure (see clause 38(4)).

422. *Subsection (2)* contains the enactments that may be disapplied. They are section 41 of the Criminal Justice Act 1925, which prohibits photography or drawing in court, and section 9 of the Contempt of Court Act 1981, which prohibits sound recordings in court without the permission of the court.

423. *Subsection (3)* provides that, where an order has been made, a court or tribunal may direct that the enactments in subsection (2) may continue to apply, or will only be disapplied if certain conditions are satisfied. The court may only give such a direction if this is necessary to ensure the fairness of any particular proceedings or to ensure that any person involved in the proceedings is not unduly prejudiced.

424. *Subsection (4)* provides that any direction under *subsection (3)*, or a decision not to make a direction, is not subject to appeal

425. *Subsection (5)* defines 'recording' and 'prescribed'.

426. *Subsections (6)* and *(7)* amend section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 so as to provide that the restrictions they impose are to be read as being subject to this clause.

Clause 29: Abolition of scandalising the judiciary as a form of contempt of court

427. *Subsection (1)* abolishes the common law offence of scandalising the judiciary (also referred to as scandalising the court or scandalising judges) as a form of contempt of court in England and Wales.

428. *Subsection (2)* clarifies that conduct that is contempt of court (such as abuse of a judge in the face of the court or that otherwise interferes with particular proceedings) and that would also have been scandalising the judiciary remains contempt of court.

Clause 30: Use of force in self-defence at place of residence

429. Section 76 of the Criminal Justice and Immigration Act 2008 applies when the court is considering the question of whether the level of force used by a defendant who claims to have acted in self defence was reasonable in the circumstances as he or she believed them to be.

430. Clause 30 amends section 76 of the 2008 Act to give people who defend themselves or others from intruders in their homes greater legal protection. For the purpose of this clause, these cases are known as householder cases.

431. *Subsection (2)* inserts new subsection (5A) of section 76. This provides that in a "householder case", the level of force used by householders when defending themselves from trespassers (or people they believe to be trespassers) will not be regarded as having been reasonable in the circumstances as they believed them to be if that level of force was grossly disproportionate in those circumstances. In other words, it could be reasonable for householders to use disproportionate force to defend themselves from burglars in their homes.

432. *Subsection (3)* amends section 76(6) to make it clear that in cases other than householder cases (for example, when people are acting for other legitimate purposes such as defending themselves when they are attacked outside their dwellings, defending property or preventing of crime) the current law continues to apply.

433. *Subsection (4)* inserts new subsections (8A) to (8F) of section 76. These subsections define the meaning of "a householder case" for the purposes of subsection (5A).

434. Subsection (8A) states that the heightened defence applies when (a) householders are defending themselves or others; (b) they are in, or partly in, a building or part of a building that is a dwelling or is armed forces accommodation; (c) they are not trespassing at the time the force is used; and (d) they are defending themselves from a person who they believe is in or entering the building as a trespasser. The use of the terms 'partly in' in subsection (8A)(b) and 'entering' in subsection (8A)(d) ensure that a householder could rely on the defence for example if he or she encountered an intruder on the threshold of his or her dwelling. The heightened defence would not apply, however, if the confrontation occurred wholly

outside the building or part.

435. Subsection (8B) ensures that people who live in buildings which serve a dual purpose as a place of residence and a place of work (for example, a shopkeeper and his or her family who live above the shop) can rely on the defence regardless of which part of the building they were in when they were confronted by an intruder, providing that there is internal means of access between the two parts of the building. The defence would not extend to customers or acquaintances in the shop unless they were also residents in the dwelling.

436. Subsection (8C) creates a similar provision for the armed forces whose living or sleeping accommodation may be in the building they work in and where there is internal access between the two parts.

437. Subsection (8D) applies subsections (4) and (5) of section 76 for the purposes of subsection (8A)(d). This means that householders can still rely on the new defence provided they have a genuine belief that the person is a trespasser. This applies even if their belief was mistaken. A person does not, however, cease to be a trespasser just because they have the permission of a trespasser to be on the premises (subsection (8E)).

438. The term 'building' for the purposes of the new clause includes a vehicle or vessel. This means that people who live in caravans or houseboats, for example, could rely on the heightened defence. It also defines the meaning of 'forces accommodation' for the purposes of the section.

439. *Subsection (5),* in amending section 76(9) of the 2008 Act, confirms that these new provisions change the law and are not merely intended to be clarificatory. The clause will not operate retrospectively *(subsection (6))*.

Clause 31: Dealing non-custodially with offenders

440. This clause gives effect to Schedule 15.

Schedule 15: Dealing non-custodially with offenders

Part 1 – Community Orders: punitive elements

441. Part 1 of Schedule 15 amends section 177 of the Criminal Justice Act 2003 ("CJA 2003") so as to require a court imposing a community order either to include a requirement that fulfils the purpose of punishment in the order or to impose a fine (or do both) unless there are exceptional circumstances that would make that unjust.

442. At present, when a court imposes a community order it may choose from a menu of thirteen possible requirements, namely:

- Unpaid work (known as community payback);
- Residence (requiring an offender to reside at a place specified in the court

order);

- Mental health treatment;
- Drug rehabilitation;
- Alcohol treatment;
- Supervision (requiring an offender to attend appointments with probation officer);
- Attendance centre (requiring an offender under 25 to attend a particular centre at specified times);
- Prohibited activity (requiring an offender to refrain from participating in certain activities as set out in the court order);
- Curfew (confining an offender to his or her home for a specified number of hours per day);
- Exclusion (prohibiting the offender from entering a place specified in the court order);
- Programme (requiring the offender to participate in an accredited programme such as anger management courses);
- Activity (requiring the offender to participate in certain activities such as basic skills classes).
- Foreign travel prohibition requirement.

443. Section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provides for a fourteenth community order requirement: an alcohol abstinence and monitoring requirement. Under section 77 of the 2012 Act, this requirement must be piloted before it can be rolled out nationally.

444. When dealing with an offender for his or her offence the court is required to have regard to the five statutory purposes of sentencing (namely: punishment, crime reduction, rehabilitation, public protection and reparation). However, none of the requirements of the community order currently has to fulfil any specific one of these purposes.

445. Under *paragraph 2*, when a court is imposing a community order it must either include in the order at least one requirement that has the purpose of punishment, or impose a fine, or do both (new section 177(2A) of the CJA 2003). New subsection (2A) does not set out which requirements fulfil the purpose of punishment; this will be for the court to decide in all the circumstances of the particular offence and offender before it.

446. The requirement for a community order to include a punitive element applies in all cases except where the court considers that there are exceptional circumstances relating to the offender or to the offence which would make the imposition of a punitive requirement or a fine unjust (new section 177(2B) of the CJA 2003).

447. At present, when a court imposes a community order, the requirements imposed must, in the court's opinion, be the most suitable for the offender and any restrictions on the offender's liberty must be commensurate with the seriousness of

the offending. In future, these conditions will be subject to the new duty on the court to impose a punitive element (by virtue of the amendment made to section 148 of the CJA 2003 by *paragraph 3*).

Part 2: Deferring the passage of sentence to allow for restorative justice

448. Section 1 of the Powers of Criminal Courts (Sentencing) Act 2000 ("the 2000 Act") provides for courts to defer for up to six months passing sentence after an offender has been convicted if the offender consents and undertakes to comply with any requirements that the court considers it appropriate to impose. The current provisions also provide for the offender to be returned to court (in case of breach) before the end of the period of deferment. They also provide for the court to appoint a supervisor.

449. *Paragraph 5* inserts a new section 1ZA into the 2000 Act to make it explicit that the court's existing power to defer sentence after conviction includes a power to defer sentence to allow for restorative justice activities in cases where the offender and every other person who would be a participant in the activity consents (new section 1ZA(1) and (3)).

450. A restorative justice activity is an activity:

- involving the offender and one or more victims;.
- which seeks to bring home to the offender the impact of their offending on the victim or victims; and
- which gives the victim or victims the opportunity to talk about, or otherwise express, the impact of the offending upon them (new section 1ZA(2)).

451. A victim is a victim of, or other person affected by, the offending (new section 1ZA(6)). Such activities might include making some form of reparation to the victim, arranging a meeting with the victim to discuss the crime, or giving the victim an opportunity to explain by any other means to the offender what damage they caused.

452. The court may have regard to the offender's engagement (or lack of engagement) when they pass their sentence. However, the participation of the offender in restorative justice activities will not automatically affect the sentence that he or she receives. It will be for the court to decide on the sentence that is ultimately imposed.

Part 3: Removal of limits on compensation orders made against adults

453. Part 3 makes changes to the current power of magistrates' courts (in section 131 of the 2000 Act) to impose a compensation order on an offender who has caused personal injury, loss or damage to a victim. The maximum value of a single compensation order made by a magistrates' court is currently £5,000. There is no limit

on the value of a compensation order made by the Crown Court.

454. *Paragraph 8* amends section 131 of the 2000 Act to provide that the current £5000 limit will only apply in the case of a compensation order imposed on a young offender (that is an offender under the age of 18). The effect of the amendment is that in future there will be no limit on the value of a single compensation order handed down to an adult offender by a magistrates' court.

455. *Paragraph 9* makes a consequential amendment to section 33B of the Environmental Protection Act 1990, which concerns offences related to the deposit or disposal of waste. The amendment updates the reference to section 131 of the 2000 Act and makes it clear that section 131 will only apply in relation to young offenders.

Part 4: Electronic Monitoring of offenders

456. Part 4 broadens the provisions in the CJA 2003 that enable the courts to impose an electronic monitoring requirement as part of a community order or suspended sentence order.

457. Currently, an electronic monitoring requirement is only available to monitor an offender's compliance with other requirements of a community order or suspended sentence order - so it is always ancillary to another requirement. Courts are required to impose an electronic monitoring requirement when imposing a curfew or exclusion requirement (unless in the particular circumstances of the case the court considers it inappropriate to do so) and have the power to do so when imposing any of the other requirements listed in sections 177(1) and 190(1) of the CJA 2003.

458. *Paragraph 16* extends the definition of "electronic monitoring requirement" to enable the courts to impose the monitoring of an offender's whereabouts as a requirement on its own as well as for monitoring compliance with other requirements. *Paragraphs 12 and 13* amend sections 177 and 190 of the CJA 2003 so as to add "electronic monitoring requirement" to the list of primary requirements that may be imposed as part of a community order or suspended sentence order respectively, so that electronic monitoring will no longer only be ancillary to another requirement. Courts will be able to impose an electronic monitoring requirement for the existing purpose of monitoring compliance with other requirements or for the purpose of monitoring an offender's whereabouts.

459. *Paragraph 16* also makes express provision that an offender subject to an electronic monitoring requirement (whether one imposed for the purpose of monitoring whereabouts or one imposed for the purpose of monitoring compliance) must submit to the fitting, installation, inspection or repair of the tagging equipment and must not interfere with that equipment. Tampering with a tag to the extent that it stops functioning constitutes a breach of an electronic monitoring requirement and the provision simply puts the matter beyond doubt.

460. The use of location data gathered under an electronic monitoring requirement

(whether one imposed for the purpose of monitoring whereabouts or one imposed for the purpose of monitoring compliance) will be subject to the requirements of the Data Protection Act 1998. *Paragraph 17* inserts a new section 215A into the CJA 2003 which imposes a duty on the Secretary of State to issue a code of practice on the retention, use and sharing of such data.

461. Amendments to section 218 of the CJA 2003 restrict the power for courts to impose requirements for the purpose of monitoring whereabouts to cases where the court has been notified by the Secretary of State that the necessary electronic monitoring facilities are available in the local justice area. In addition, courts must be satisfied that the offender can be fitted with any necessary apparatus under the arrangements currently available and that arrangements are generally operational throughout England and Wales under which the offender's whereabouts can be monitored (see *paragraph 18)*.

462. *Paragraph 20* allows for the transfer of electronic monitoring arrangements to Northern Ireland when the offender lives, or intends to move to, that jurisdiction, and where the court is satisfied that necessary arrangements are in place for the requirement to be enforced.

Part 5: Community Orders: Further provision

463. *Paragraph 22* removes uncommenced elements of section 67 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and makes a minor consequential amendment to the CJA 2003. This removes a court's power to take no action if an offender is brought back to court as a consequence of a breach of a community order. The effect is that if a court finds that an offender has breached an order without reasonable excuse, it must make the order more onerous, revoke the order and re-sentence for the original offence, or impose a fine.

464. *Paragraph 23* amends section 150 of the CJA 2003. This section, itself amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, inadvertently prevented the court from giving a 16 or 17 year old a Youth Rehabilitation Order for the new aggravated offence of knife possession. *Paragraph 23* corrects this technical error, so that the new provisions work as they were originally intended to.

Part 6: Statements of assets and other financial circumstances of offenders etc

465. Part 6 makes changes to the current powers of courts to order offenders to provide a statement of their financial circumstances in various contexts. These powers exist in order to support courts in fixing a fine or other financial order that is proportionate and equitable with regard to an offender's circumstances. The provisions in Part 6 make it clear that courts can order such a statement to provide details of an offender's assets as well as their income or outgoings. Courts' powers under existing provisions are broadly framed, and provide them with discretion to require such details as they see fit. As a result, these changes will give courts the discretion to request information about offenders' assets, rather than requiring them to

do so in every case.

466. *Paragraph 24* amends the power of courts under section 162 of the CJA 2003 to order a statement of an offender's financial circumstances before sentencing him or her. The amendments of section 162 will make it clear that a court can order an offender to provide such a statement of his or her assets and other financial circumstances as the court may require.

467. *Paragraph 25* amends the power of magistrates' courts (in section 84 of the Magistrates' Courts Act 1980) to require a statement of an offender's means before considering whether to issue a distress warrant or commit to custody in cases involving offenders who have defaulted on a fine or other sum payable on conviction. The amendments will make it clear that a statement required under section 84 may relate to an offender's assets as well as to the offender's other financial circumstances.

468. *Paragraph 2*6makes consequential amendments to the offence under section 20A of the Criminal Justice Act 1991 of failing to provide information about financial circumstances to a court after an official request. The amendments make it clear that the references in the section to a statement of financial circumstances include references to a statement of assets, of other financial circumstances or of both.

469. *Paragraph 27* amends the power of courts (in section 13B of the Crime and Disorder Act 1998) to order a statement of financial circumstances when considering whether to impose a parental compensation order on the parent or guardian of a child under 10 who, were it not for their age, would by their behaviour have committed an offence. The amendments make it clear that the statement may relate to assets as well as to other financial circumstances.

470. *Paragraph 28* makes consequential amendments to the offence under Schedule 5 to the Courts Act 2003 of making a false statement in response to a request for information about financial circumstances. It also amends the power of magistrates' courts under Schedule 6 to that Act to order a statement of financial circumstances from a fine defaulter in respect of whom the court is considering making a work order. The amendments make it clear that the statements concerned may relate to assets as well as to other financial circumstances.

Part 7: Provision for Female Offenders

471. *Paragraph 29* provides that contracts made by the Secretary of State with probation trusts are to require each probation trust to make appropriate provision for the delivery of services to female offenders (*subsection 1*). *Subsection 2* requires contracts referred to in *subsection 1* to make provision for women to carry out unpaid work (where appropriate), and to participate in rehabilitative programmes, with the needs of women in mind. At present, Probation Trusts are required by the National Offender Management Service Commissioning Intentions document 2013/14 to demonstrate how they will ensure the appropriate provision of women's services.

472. *Paragraph 29* was inserted as a result of a successful non-Government amendment at Third Reading of the Bill in the House of Lords.

Part 8: Information to enable a court to deal with an offender

473. Part 8 creates a new data sharing gateway to enable the Secretary of State (in practice the Department for Work and Pensions) and a Northern Ireland Department and Her Majesty's Revenue and Customs to share social security information and finances information on defendants with Her Majesty's Courts and Tribunals Service and the Service Prosecuting Authority ("the SPA") for service court proceedings.

474. *Paragraph 30(9)* defines terms used in *paragraph 30*, including "finances information" and "social security information". "Finances information" is certain information about a defendant's income, gains or capital and "social security information" is certain information which is held for the purposes of functions relating to social security. *Paragraph 30* refers to a Northern Ireland Department to ensure that social security information on Northern Ireland residents held on the DWP's database can be shared with HMCTS and the SPA.

475. *Paragraph 30(1) and (2)* enable the Secretary of State and a Northern Ireland Department and HMRC to share social security and finances information respectively with a "relevant person", which will be a person in HMCTS or the SPA because of the definition of "relevant person" in *paragraph 30(9)*. *Paragraph 30(3) and (6)* secure that information can be further disclosed by a relevant person to a court or service court at any time after a defendant has been charged with an offence but only where the court or service court is inquiring into or determining a person's financial circumstances in connection with dealing with the person for an offence. This will assist the court when it is imposing a fine or compensation order. *Paragraph 30(5)* prohibits further disclosure of any information shared with HMCTS or the SPA (except to a court or service court as mentioned above or to relevant persons who want the information so that it can be put before a court or service court as mentioned above). *Paragraph 30(5)* does not apply in the circumstances set out in *paragraph 30(7)* (for example, where disclosure is to the defendant or his or her representative; where disclosure is of summary information from which the defendant cannot be identified; where disclosure is of information that has already been disclosed to the public with lawful authority; and where disclosure is necessary to comply with a duty imposed by or under any Act or with an order of a court or tribunal).

476. *Paragraph 30* makes it an offence to disclose or use any information shared with HMCTS or the SPA in contravention of paragraph 30(5). *Paragraph 30(3)* provides for the maximum penalties to be imprisonment not exceeding two years and/or a fine if tried on indictment, and imprisonment not exceeding 6 months (increasing to 12 months when section 154(1) of the CJA 2003 is brought into force) and/or a fine not exceeding the statutory maximum if tried summarily.

Part 9: Related amendments in Armed Forces Act 2006

477. Part 9 makes amendments in relation to the sentencing powers available to service courts under the Armed Forces Act 2006. It makes provision equivalent to or consequential on, the amendments to criminal courts' sentencing powers in Part 1 (punitive elements), Part 3 (compensation orders), Part 4 (electronic monitoring) and Part 6 (statements of assets and other financial circumstances).

478. *Paragraph 33* amends section 178 of the Armed Forces Act 2006 so that the duty on courts to include a punitive element in a community order or to impose a fine applies to service courts imposing a service community order.

479. *Paragraph 35* amends section 182 of the Armed Forces Act 2006 so that that duty also applies to service courts imposing an overseas community order on an offender who is aged 18 or over when convicted. *Paragraph 33* amends section 270 of the Armed Forces Act 2006 so that existing restrictions on the requirements that may be included in a service community order or overseas community order are subject to that duty.

480. *Paragraph 37* amends section 284 of the Armed Forces Act 2006 so that the £5,000 limit to which the Service Civilian Court is currently subject when imposing a service compensation order applies only where the offender is aged under 18 on conviction.

481. *Paragraph 38* amends sections 182 and 183 of the Armed Forces Act 2006 to provide that an electronic monitoring requirement may not be included in an overseas community order.

482. *Paragraph 39* amends section 266 of the Armed Forces Act 2006 to make it clear that a service court's power to make a financial statement order includes power to require information about an offender's assets as well as other financial circumstances.

Clause 32: Deferred prosecution agreements

483. This clause gives effect to Schedule 16.

Schedule 16: Deferred prosecution agreements

Part 1: General

484. *Paragraph 1* of Schedule 16 sets out the principal characteristics of a deferred prosecution agreement ("DPA"). A DPA is an agreement between a prosecutor and an organisation facing prosecution for an alleged economic or financial offence set out in Part 2 of the Schedule. *Paragraph 1(2)* sets out the two sides of this agreement. The organisation agrees to comply with a range of terms and conditions (*paragraph 1(2)(a)*) and the prosecutor agrees to institute but then defer criminal proceedings for the alleged offence in accordance with paragraph 2.

485. *Paragraph 2* details the court process once a DPA has been approved –

essentially, the prosecution is commenced but is then deferred. Paragraph 2(1) provides that a prosecutor must commence proceedings by bringing charges against an organisation for the alleged offence in the Crown Court by way of a modified procedure for preferring a voluntary bill of indictment. This means that there is no need for any prior involvement of a magistrates' court in the DPA process. Once the proceedings have been instituted in this way, they are automatically suspended (*paragraph 2(2)*). *Paragraph 2(3)* provides that the suspension of the proceedings can only be lifted upon application by the prosecutor which may not occur whilst the DPA is force (that is, the suspension of the proceedings may only be lifted following the DPA's termination as a consequence of a breach of the Agreement). The suspension of the proceedings is the means by which the prosecution is deferred. The threat of the prosecution proceeding in the event of breach hangs over the organisation to make compliance with the DPA more likely.

486. *Paragraph 2(4)* provides that no other person (this would include a private prosecutor), may bring charges against the organisation for the same alleged offence whilst the prosecution is deferred.

487. *Paragraph 3(1)* specifies the prosecutors who may enter into a DPA. These are the Director of Public Prosecutions ("DPP") and the Director of the Serious Fraud Office ("DSFO"). Paragraph 3(1)(c) gives the Secretary of State a power, exercisable by order (subject to the affirmative procedure), to designate additional prosecutors who can enter into a DPA.

488. *Paragraph 3(2)* provides that the decision to enter into a DPA must be exercised personally by the DPP or the DSFO. However, *paragraph 3(3)* provides that, if the DPP or DSFO is unavailable, another person who has been designated in writing by the Director to exercise the power to enter into a DPA may do so, but they must do so personally.

489. *Paragraph 4* sets out those organisations which may enter into a DPA with a prosecutor. It also provides that an individual may not enter into a DPA.

490. *Paragraph 4(2) and (3)* provide that when the organisation that is a party to the DPA is a partnership or an unincorporated association, the DPA must be entered into in the name of the partnership or association (and not in the names of the partners or members) and any money payable under the DPA must be paid out of the funds of the partnership or association.

491. *Paragraph 5* outlines the content of a DPA. *Paragraph 5(1)* provides that every DPA must contain a statement of facts relating to the alleged offence which may include admissions made by the organisation. There is no requirement for admissions to be made by an organisation but any that are made will be included in the statement. The statement will have been agreed by the organisation before inclusion in the DPA. The inclusion of a statement of facts in every DPA is to ensure openness and transparency. If the organisation subsequently breaches the DPA, and

criminal proceedings are brought, this statement of facts will be treated as an admission by the organisation (*see paragraph 13(2)*).

492. *Paragraph 5(2)* sets out the only other mandatory requirement for every DPA: each agreement must specify an expiry date upon which it will cease to have effect (unless, in a particular case, it has already been terminated following breach – see *paragraph 9*). This is to ensure that both parties have clarity about the duration of the deferral period. There is no prescribed maximum or minimum period as the term of each DPA will depend on the particular facts of the case.

493. *Paragraph 5(3)* provides a non-exhaustive illustrative list of potential terms and conditions that may be included in a DPA. This list is not prescriptive. This is to ensure that each DPA can be tailored to the particular facts of an individual case. *Paragraph 5(3)* also provides that the DPA can set time limits for the organisation to comply with specific terms of the agreement within the deferral period. For example, the agreement could specify dates for the payment of compensation (*paragraph 5(3)(b)*) or of a financial penalty (*paragraph 5(3)(a)*). Any financial penalty will be collected by the prosecutor and paid into the Consolidated Fund (as set out at *paragraph 14*). Any disgorgement of profits under the Agreement (*paragraph 5(3)(d)*) will also be collected by the prosecutor and paid into the Consolidated Fund in the same way. Alongside or instead of monetary conditions, a DPA could also include terms such as the implementation of a compliance programme which could require, for example, revisions to an organisation's anti-corruption or anti-fraud policies and procedures and additional training provision for staff (*paragraph 5(3)(e)*); or cooperation with any related investigations, either of individuals or other organisations (*paragraph 5(3)(f)*). It may also include the appointment of an independent monitor to scrutinise the implementation of any compliance.

494. A DPA can also provide for the payment of reasonable prosecution costs (*paragraph 5(3)(g)*). The expectation is that the amount of the costs negotiated and agreed by the parties will be clearly set out on the face of the agreement, and they will be treated independently of any financial penalty, that is the prosecutor will not able to defray any of its costs from a financial penalty paid by the organisation. This provision mirrors the position regarding the payment of costs in criminal prosecutions.

495. *Paragraph 5(4)* provides that the amount of the financial penalty agreed by the parties under a DPA must broadly reflect the likely fine that a court would have imposed on the organisation on conviction for the alleged offence following a guilty plea. When setting this amount, both parties will need to take into account all the relevant factors that would be considered by a sentencing court. These would include relevant Sentencing Guidelines covering specific offences and other matters such as the principle of a reduction of sentence following the entry of a guilty plea at the first reasonable opportunity (the guideline currently provides a sliding scale of up to a one third reduction for the most timely indication of a guilty plea). Consideration would also need to be given to the means of the organisation, any compensation or charitable

donations payable, the extent of any disgorgement of profits, and prosecutor's costs that would be payable.

496. *Paragraph 5(5)* states that the DPA itself may provide for the consequences of an organisation's failure to comply with the agreement. For example, the DPA may include a term specifying a punitive rate of interest for a late payment of a financial penalty. In the event that such a term were to be engaged, the prosecutor would have the option of either: (i) settling the failure to comply in accordance with the term provided in the agreement; or (ii) applying to the court under paragraph 9 (breach of a DPA).

497. *Paragraph 6* provides for a DPA Code of Practice for prosecutors setting out guidance on the DPA process. The Code must be issued jointly by the DPP and DSFO. Paragraph 6(1)(a) explains that this Code must give guidance on general principles to be applied by prosecutors in determining whether a DPA is likely to be appropriate in a given case. The Code must also include guidance on the disclosure of information by a prosecutor to the organisation both in the course of DPA negotiations and after a DPA has been agreed (paragraph 6(1)(b)). It is expected that guidance on disclosure in the DPA process included in the Code will reflect existing guidance on this subject (such as the Attorney General's Guidelines on Plea Discussions and the Attorney General's Guidelines on Disclosure) and general common law principles. Paragraph 6(2) sets out other relevant matters that may be included in the Code, including guidance on variation, breach and termination of a DPA. Prosecutors must take account of the Code when exercising their functions throughout the DPA process (paragraph 6(6)).

498. The DPP is obliged to set out this Code in his or her annual report to the Attorney General which is laid before Parliament (paragraph 6(3)). This is consistent with the process for publishing the Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985. Paragraph 6(4) requires that any alterations to the Code must be agreed between the DPP and DSFO and any other designated prosecutor. Following any amendments to the Code, paragraph 6(5) provides that any alterations to the Code or any new Code must be set out in the DPP's annual report to the Attorney General.

499. *Paragraph 7* outlines the court's role at the preliminary hearing. Following a prosecutor's indication that it is minded to enter into a DPA, and having negotiated outline terms with the organisation, paragraph 7(1) provides that the prosecutor must seek a declaration from the Crown Court that entering into a DPA with the organisation is likely to be in the interests of justice and that the proposed terms are fair, reasonable and proportionate.

500. *Paragraph 7(2)* provides that the court must give reasons for its decisions at a preliminary hearing. The court's declaration and reasons would remain confidential to the judge, prosecutor and the organisation under paragraph 7(4), but would be made publicly available under paragraph 8(7) in the event that a DPA were to be approved

(subject to any restrictions necessary to protect ongoing or future prosecutions).

501. *Paragraph 7(3)* allows flexibility for there to be several preliminary hearings if for whatever reason the court has declined to declare that a DPA is likely to be in the interests of justice, and/or, its terms are fair reasonable and proportionate.

502. *Paragraph 7(4)* provides that the preliminary hearing must be held in private and any declarations also made in private. This is to avoid jeopardising any future prosecution of the organisation, and to limit any potential damage to the organisation's commercial interests at this stage. For example, if the detail of a preliminary hearing were made public, particularly where a judge considered that the alleged conduct was such that a DPA would not be in the interests of justice, it may be prejudicial to future criminal proceedings, whether against the organisation or another person.

503. *Paragraph 8* outlines the court's function at the final hearing. Once the court has approved the DPA in principle at a preliminary hearing and the terms have been agreed by both parties, paragraph 8(1) provides that the prosecutor must apply to the Crown Court for a final declaration that the DPA is in the interests of justice and that its terms are fair, reasonable and proportionate. Paragraph 8(3) provides that the DPA only takes effect when the court has made this final declaration. Paragraph 8(4) provides that the court must give reasons for its decision whether or not to make a declaration.

504. *Paragraph 8(5)* provides that the final hearing may be held in private: this is to allow the final proposed DPA to be set out before the judge and any final issues to be resolved in a free and frank environment. But if the court decides to approve the DPA and make a declaration, the court must do so in open court, giving reasons for its decision (paragraph 8(6)). Upon approval of the DPA, the prosecutor will be obliged to publish the final Agreement and all declarations made by the court at the preliminary and final hearings, including the reasons for these decisions (paragraph 8(7)). The publication of these documents should be immediate, subject to any necessary protections in respect of ongoing or future related proceedings as ordered by the court and set out at paragraph 12 of the Schedule.

505. *Paragraph 9* makes provision for any instances where an organisation fails to comply with any term of the DPA. Following any breach of the Agreement (including any instances of breach provided for in the DPA as outlined at paragraph 5(5)), the prosecutor may seek a factual determination from the court as to whether or not there has been a breach (paragraph 9(1)). Paragraph 9(2) provides that the court must then decide whether, on the balance of probabilities, the organisation has failed to comply with the terms of the Agreement. If the court determines that a breach has occurred, paragraph 9(3) provides that the court may either: (i) invite the parties to agree proposals to remedy the breach; or (ii) decide to terminate the Agreement. The court must give reasons for the decision it has made (paragraph 9(4)).

506. If the Agreement is terminated, whether on the court's own motion or on application by the prosecutor, then the prosecutor may seek to have the suspension of the criminal proceedings against the organisation lifted (see *paragraph 2(3)*).

507. *Paragraph 9(5)* provides that in cases where the court finds that the organisation has not failed to comply with terms of the DPA, the prosecutor must publish the court's decision and the reason for this decision (subject to any necessary protections in respect of ongoing or future related proceedings as ordered by the court and set out at paragraph 12).

508. The prosecutor will be required to publish the court's decision and reasons to invite the parties to agree proposals to remedy the organisation's failure to comply with the Agreement *(paragraph 9(6))*. Similarly, *paragraph 9(7)* ensures that, upon termination of a DPA following breach, the prosecutor must publish both the fact of the termination and the court's reasons for its decision. Both these publication requirements following a finding of breach are subject to any necessary protections in respect of ongoing or future related proceedings as ordered by the court and set out at paragraph 12.

509. There is also an obligation on the prosecutor, set out at *paragraph 9(8)*, to publish a decision not to bring a suspected breach of a DPA before the court. This would include any instance of breach for which the consequences were provided for in the Agreement (as set out at *paragraph 5(5))*. In these cases the prosecutor will have to publish reasons both for their belief that the organisation has failed to comply and for their decision not to bring the suspected breach before the court. These reasons might include the prosecutor's view that the matter was capable of being dealt with adequately through the mechanism provided in the DPA. This might be the case in particular where the organisation agrees that a breach has occurred, and is content to settle the matter with the prosecutor without involving the court. This provision is to ensure there is transparency as to the prosecutor's decision making process in respect of breach.

510. *Paragraph 10* deals with variation of the DPA. Variation of the DPA may occur where the court has invited the parties under *paragraph 9(3)(a)* to remedy a breach of the DPA through varying its terms *(paragraph 10(1)(a))*. *Paragraph 10(1)(b)* provides that variation will otherwise be permissible only in exceptional cases. These are limited to situations where variation is necessary to avoid a breach of the DPA, and the circumstances giving rise to the potential breach could not have been foreseen at the time that the DPA was agreed. *Paragraph 10(2)* provides that the court must approve any application to vary the Agreement. By virtue of *paragraph 10(3)*, any variation will only take effect once the court gives its approval. The court will have discretion whether to approve the proposed variation and will apply the same tests as for the original terms of the DPA, that is, whether the variation is in the interests of justice and the terms as varied are fair, reasonable and proportionate. The court must give reasons for the decision made *(paragraph 10(4))*. Where it refuses to

approve the variation the original Agreement will stand.

511. *Paragraph 10(5)* provides that the hearing for an application for variation may initially be held in private to allow the proposed variation and the reasons for it to be set out before the judge confidentially. This may be necessary, in particular, if the reasons giving rise to the proposed variation are commercially, or otherwise, sensitive. However, if the judge decides to approve the variation and make a declaration to that effect, the judge must do so in open court, and must give reasons for its decision. The prosecutor is required to publish the varied DPA and the court's declaration, subject to the necessary restrictions to protect future or ongoing related proceedings. *Paragraph 10(7)* provides that, if the court does not decide to approve the variation, the prosecutor must also publish this decision and the reasons for it (subject to the same restrictions).

512. If the organisation complies with the terms of the DPA throughout, the DPA will expire on the expiry date set out in the Agreement in accordance with *paragraph 5(2)*. *Paragraph 11* provides that the criminal proceedings against the organisation that were instituted under *paragraph 2* are to be discontinued on expiry of the Agreement. Once the prosecutor has discontinued proceedings in this way, *paragraph 11(2)* provides a bar to any further criminal proceedings being brought against the organisation for the same offence (but not in relation to any other person). This gives certainty to the organisation that, upon complying with the terms of the Agreement, it will not be vulnerable to future prosecution for the same alleged offending. However, this bar will not apply if the prosecutor finds that during negotiations for the DPA the organisation provided inaccurate, misleading or incomplete information to the prosecutor *(paragraph 11(3))*.

513. *Paragraph 11(4) to (7)* provide that if, in the particular circumstances of a case, there are ongoing breach proceedings and the Agreement's expiry date has been reached, the DPA will not be considered to have expired until the entire process for dealing with the breach has been completed, including full compliance with any remedy for the breach agreed by the parties.

514. Following full compliance with the Agreement**,** *paragraph 11(8)* provides that the prosecutor must publish the fact of the discontinuance and details of how the organisation complied with the DPA (subject to any necessary restrictions relating to future or ongoing related proceedings).

515. *Paragraph 12* provides that the court may order the postponement of the publication of information relating to the DPA process. This will cover the obligations on the prosecutor to publish the final Agreement and all court rulings upon approval of the Agreement; details of the facts and approach taken in the event of any breach or variation of the Agreement and details of how the terms and conditions of the DPA have been complied with by the organisation at the end of the DPA process. This is to ensure there is no prejudice to any ongoing or future proceedings by the publication of such material. The court may make such an order on its own motion or following an

application.

516. *Paragraph 13* concerns the use of material arising out of the DPA process in criminal proceedings. Where a DPA has been entered into (subject to any necessary publication restrictions to avoid prejudice to future prosecutions) the final Agreement, including the statement of facts, will be a matter of public record. Once a DPA has been approved, *paragraph 13(1) and (2)* provide that the statement of facts, having been agreed by the organisation, can be treated as a formal admission in any future criminal proceedings against the organisation.

517. Where a DPA has not been approved *(paragraph 13(3)),* a prosecutor will not be able to rely either on the fact that it conducted DPA negotiations with the organisation, or on any draft DPA created during the negotiations in any future criminal proceedings, save in the circumstances set out at *paragraph 13(4).* These circumstances would be: (i) any criminal proceedings against the organisation for an offence consisting of the provision of inaccurate, misleading or incomplete information; or (ii) for another offence where the organisation makes a statement in evidence that is inconsistent with a statement it made in the course of the DPA process. *Paragraph 13(6)* sets out the range of material created in the course of unsuccessful DPA negotiations (a draft DPA, draft statement of facts and any statement indicating that the organisation entered into DPA negotiations) that cannot be used against the organisation except in these circumstances. However, prosecutors will still be able to rely on evidence obtained from investigations pursued as a result of anything said in any unsigned statement of facts or draft DPA. Further, any pre-existing material provided by the organisation during the DPA process would be admissible in proceedings for any offence (subject to existing rules on admissibility of evidence).

518. *Paragraph 14* provides that any money received by a prosecutor under a term of a DPA (that is, either a financial penalty or disgorged profits) must be paid into the Consolidated Fund.

Part 2: Offences in relation to which a DPA may be entered into

519. *Paragraphs 15 to 30* specify each offence of economic and financial crime in relation to which a DPA will be available, including common law, statutory and ancillary offences.

520. *Paragraph 31* confers a power on the Secretary of State, exercisable by order made by statutory instrument (subject to the affirmative resolution procedure), to amend Part 2, either by adding an offence of economic or financial crime or removing an offence from Part 2.

Part 3: Deferred prosecution agreements: consequential and transitional provision

521. *Paragraphs 32 to 38* make consequential amendments to other enactments.

522. *Paragraph 39* provides that DPAs will be available for conduct that took place before the commencement of this Schedule, where no proceedings have yet commenced against the organisation. *Paragraph 39(2)(b)* ensures that this general provision for the retrospective application of DPAs also applies to any new offences added by order made by the Secretary of State to Part 2 of the Schedule.

Clause 33: Immigration cases: appeal rights; and facilitating combined appeals

523. *Subsection (1)* amends the Nationality, Immigration and Asylum Act 2002 (the "2002 Act") to reinstate race discrimination as a ground of appeal against an immigration decision by inserting a reference into section 84(1)(b) to section 29 of the Equality Act 2010 so far as it relates to race, as defined in section 9(1) of the Equality Act 2010. Prior to the Equality Act 2010, it was possible to bring an immigration appeal on the grounds that an immigration decision was unlawful under the Race Relations Act 1976. However, the Equality Act 2010 repealed the Race Relations Act and related consequential amendments removed the associated ground of appeal. This subsection therefore restores the position that existed prior to the commencement of the Equality Act.

524. *Subsection (2)* amends the 2002 Act by deleting a reference in section 99 of that Act to section 96 of the 2002 Act so that where a case is certified under section 96, which means that an appeal cannot be brought against a refusal decision, that certification will have no effect on an appeal that is already underway.

525. *Subsection (3)* amends section 47 of the Immigration, Asylum and Nationality Act 2006 by inserting new subsections (1) and (1A) so as to clarify when an appealable decision to remove a person from the United Kingdom can be made. Where the Secretary of State gives a person notice of a "pre-removal" decision, new section 47(1) allows the Secretary of State to give the person notice that the person is to be removed from the United Kingdom. In particular, it allows the removal notice to be given alongside the notice of the pre-removal decision. New section 47(1A) defines a "pre-removal" decision.

Clause 34: Appeals against refusal of entry clearance to visit the UK

526. Clause 33 amends section 88A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), and section 4 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act") so as to remove full rights of appeal for persons refused a visa for a family visit to the United Kingdom.

527. The original section 88A of the 2002 Act, as inserted by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act"), restricted rights of appeal against refusal of entry clearance if the decision to refuse was taken

on certain grounds specified by an order of the Secretary of State.

528. Sections 90 and 91 of the 2002 Act restrict rights of appeal against refusal of entry clearance by non-family visitors (those visiting family members, as specified in an order of the Secretary of State, retain an appeal right) and students respectively.

529. Section 4 of the 2006 Act was intended to substitute sections 88A, 90 and 91 of the 2002 Act with one provision (a new section 88A) which would restrict all appeals against refusal of entry clearance to limited grounds (human rights and race discrimination), with the exception of those in the categories listed. The categories of applicant who would retain a full right of appeal were certain family visitors (new section 88A(1)(a)) and dependants of persons in the United Kingdom (new section 88A(1)(b)) to be prescribed by regulations.

530. Section 4 of the 2006 Act has been commenced, so far as it relates to applications of a kind identified in immigration rules[33] as requiring to be considered under a "Points Based System". That partial commencement resulted in the substitution of the original section 88A inserted by the 2004 Act, whilst sections 90 and 91 remained in force. Section 4 of the 2006 Act was further commenced, with effect from 9 July 2012, in so far as it relates to appeal rights for family visitors. The Immigration Appeals (Family Visitor) Regulations 2012 made under section 88A(1) specify the type of family member to be visited and the immigration status the person to be visited must have. That partial commencement for the purposes of family visitors superseded the existing section 90. Section 91 will be superseded when section 4 of the 2006 Act is further commenced in relation to appeal rights for dependants.

531. Clause 33 amends the partially commenced section 88A (*subsection (1)*) and the yet to be fully commenced section 4 of the 2006 Act *(subsection (2))* by deleting paragraph (a) from both versions of section 88A(1), thus removing family visitors from the categories of applicant who retain a full right of appeal (*subsection (3)*). The clause also removes from both sections the supplementary provisions to make regulations under section 88A(1)(a) contained in sections 88A(2)(a) and (c) (*subsections (4) and (5)*). When commenced clause 33 will replace the provisions of the Immigration Appeals (Family Visitor) Regulations 2012.

532. *Subsection (6)* ensures correct referencing across the 2006 Act and *subsection (7)* ensures that the power to make commencement orders under section 62 of the 2006 Act allows section 4(1) to be commenced as amended by this clause.

Clause 35: Restriction on right of appeal from within the United Kingdom

533. Clause 34 amends the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") by inserting a new subsection (2A) into section 92 (*subsection (2)*) and a new section 97B (*subsection (3)*), which provides for a certification power for the

[33] http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/

Secretary of State, acting in person, to remove the application of the in-country right of appeal provisions in section 92 of the 2002 Act where:

- A person's leave is cancelled under section 82(2)(e) of the 2002 Act wholly or partly on the grounds that it would not be conducive to the public good to allow them to have leave to enter or remain in the UK; and

- That decision is taken whilst the individual is outside the UK.

In such cases, the affected person will still be able to exercise an out-of-county appeal.

Clause 36: Powers of immigration officers

534. *Subsection (1)* amends section 93(5) of the Police Act 1997, to extend the list of "authorising officers" who can authorise applications to interfere lawfully with property and wireless telegraphy. Property interference within the Code of Practice[34] is taken to include entry on, or interference with property or interference with, wireless telegraphy. Therefore, whilst not defined in the Police Act 1997 property interference is any activity which, if not authorised, would be illegal or actionable in the civil courts such as a trespass to land or to goods such bag searching or installing recording equipment on possessions, vehicles and premises. Wireless telegraphy includes radio, TV and mobile telephone communications and Global Positioning System information.

535. The purpose of the amendment to section 93(5) is to provide for immigration officers working in Criminal and Financial Investigation teams in the UK Border Agency ("UKBA") to be able to apply to exercise property interference powers equivalent to those already used by customs officials pursuant to section 93(5)(h) of the Police Act 1997. Criminal and Financial Investigation teams have responsibility for investigating smuggling of drugs, firearms and weapons and organised immigration and customs crimes. At present, only customs officials within UKBA can apply for authorisation to interfere with property from a senior official, designated by the Secretary of State, for the purpose of investigating customs offences. In practice, the amendment to section 93(5) will enable the UKBA's Chief Operating Officer, who is the authorising officer for customs purposes, to be further designated to authorise applications from immigration officers for the purpose of investigating organised immigration crime.

536. *Subsection (2)* similarly amends section 32(6) of the Regulation of Investigatory Powers Act 2000 ("RIPA") to extend the list of "senior authorising officers" who can authorise applications for intrusive surveillance to include a senior official in the department of the Secretary of State by whom functions relating to immigration are exercisable. At present, the UKBA is able to authorise applications

[34] Covert Surveillance and Property Interference Revised Code of Practice http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert?view=Binary

from immigration officers investigating serious organised immigration for directed surveillance and Covert Human Intelligence Sources ("CHIS"), and the "senior authorising officer" can authorise applications for intrusive surveillance from customs officials for customs investigations. This amendment will enable the UKBA's Chief Operating Officer, who is "senior authorising officer" for customs purposes, to be designated to authorise applications from immigration officers for organised immigration crime investigations. "Intrusive surveillance" is defined under RIPA as covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle. This kind of surveillance may take place by means either of a person or device located inside the residential premises or private vehicle of the person who is subject to the surveillance, or by means of a device placed outside which consistently provides a surveillance product of equivalent quality product that which would be obtained from a device located inside.

537. *Subsection (3)* introduces amendments to the Proceeds of Crime Act 2002 ("POCA") made by subsections (4) and (5).

538. *Subsection (4)* provides for immigration officers to be "appropriate officers", as defined in section 47A of POCA, for the purposes of the search and seizure powers set out in sections 47B to 47S of that Act. This will enable immigration officers to seize property and search people, vehicles and premises, subject to certain conditions, with a view in particular to preventing the dissipation of property that may be used to satisfy a confiscation order, actual or anticipated. These powers are currently restricted to customs officers, constables and accredited financial investigators.

539. *Subsection (5)* amends section 378 of POCA (which lists the appropriate officers and senior appropriate officers who may apply for the orders and warrants set out in set out in Chapter 2 of Part 8 of that Act) by including immigration officers as "appropriate officers" for the purposes of confiscation, detained cash and money laundering investigations under POCA. This will allow immigration officers to apply as part of any such investigations for production, disclosure and account monitoring orders (and customer information orders if they are sufficiently senior or authorised to do so by a senior officer), as well as for search and seizure warrants. At present, only accredited financial investigators, constables or customs officers (and, in the case of confiscation investigations, employees of the Serious Organised Crime Agency) are "appropriate officers" for these purposes. This provision will also allow immigration officers, who are of an equivalent rank to a police superintendent, to act as a "senior appropriate officer" in a confiscation investigation, which will permit them to apply for, or to vary, a customer information order or to authorise another to do so. The amendment will, therefore, provide immigration officers with powers equivalent to those used already by other law enforcement officers when conducting investigations of the sort referred to above.

540. *Subsection (6)* amends section 24 of the UK Borders Act 2007. It provides a new definition of "unlawful conduct", covering both immigration and nationality offences, for the purposes of the exercise by immigration officers of the power to

search for cash under section 289 of POCA. This will address the problem which immigration officers currently encounter whereby if, when on premises, they discover cash which is known to be the product of, for example, drug dealing, they are unable to seize it as it is not related "unlawful conduct" as defined in section 24(2)(b) of the UK Borders Act 2007.

541. *Subsection (7)* applies sections 136 to 139 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") to immigration officers (subject to the restrictions contained in *subsection (8)* and paragraphs 41 to 43 of Schedule 17 to the Bill). Sections 136 to 139 of the 1994 Act allow various law enforcement powers applicable in one country of the UK to be exercised in another country of the UK. The relevant powers are those concerning the execution of warrants, arrest or detention of suspects, and search powers available on arrest. At the moment these provisions apply to police constables, officers of Revenue and Customs and designated customs officials.

542. *Subsection (8)* provides that an immigration officer may only exercise powers under sections 136 to 139 of the 1994 Act when exercising a function: (i) relating to the entitlement of non-UK nationals to enter, transit across or be in the UK (including a function relating to conditions or other controls on any such entitlement); (ii) under or for the purposes of one or more of the nationality-related enactments mentioned in *subsection (8)(b)*; or (iii) in connection with the prevention, investigation or prosecution of an offence of refusal or failure to submit to examination or to furnish information, or obstruction of an immigration officer, or assaulting an immigration officer.

543. *Subsection (9)* introduces the amendments made to the Criminal Law (Consolidation) (Scotland) Act 1995 ("the 1995 Act") by subsections (10) to (12). *Subsection (10)* amends section 24 of the 1995 Act so that it applies to immigration officers as it does Revenue and Customs officials. Section 24 relates to the detention and questioning of those suspected of committing a criminal offence. The amendment provides an immigration officer in Scotland with powers to detain and question when the officer suspects that a person has committed or is committing an immigration or nationality offence punishable by imprisonment.

544. *Subsection (11)* amends section 26A of the 1995 Act which provides a power of arrest in Scotland. The amendment enables an authorised immigration officer to arrest without warrant someone whom the officer reasonably suspects to be guilty of an immigration or nationality offence or immigration enforcement offence which the officer has reasonable grounds to suspect has been, or is being, committed. This provision further provides that an 'authorised immigration officer' means an immigration officer acting with the authority (general or specific) of the Secretary of State.

545. *Subsection (12)* amends 26B of the 1995 Act. Section 26B is an interpretation section. *Subsection (12)* inserts definitions of 'immigration enforcement offence', 'immigration offence' and 'nationality offence', thus limiting the range of matters in

relation to which immigration officers may use the substantive provisions within the 1995 Act pursuant to the Bill.

546. *Subsection (13)* amends the definition of 'officer of law' in section 307 of the Criminal Procedure (Scotland) Act 1995 to include immigration officers acting with the authority (general or specific) of the Secretary of State. It also provides that such immigration officers shall only be "officers of law" in relation to immigration offences and nationality offences, as defined in Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995. In particular, the 'officer of the law' status allows immigration officers to seek, obtain and execute common law search warrants in Scotland.

547. *Subsection (14)* gives effect to Schedule 17.

Schedule 17: Power of immigration officers: further provision

548. *Paragraphs 1 to 4* make further amendments to Part 3 of the Police Act 1997 to provide for immigration officers to apply for authorisation to interfere with property and wireless telegraphy. Authorisation will be sought from a senior official, who is also an immigration officer within the UKBA and designated for this purpose.

549. The amendments make the necessary changes to Part 3 of that Act so that:

- the senior UKBA official designated for the purpose must not grant an authorisation for property and wireless interference save where the application is made by an immigration officers *(paragraph 2(3));*

- an authorisation for property and wireless interference may only be granted for the purpose of preventing or detecting an immigration or nationality offence *(paragraph 2(4) to (6));*

- a deputy, who is also designated for this purpose, may authorise urgent applications in the absence of the authorising officer *(paragraph 3);*

- the Prime Minister may exclude from a copy of any report of the Chief Surveillance Commissioner to be laid before Parliament any matters which may prejudice the functions of the Secretary of State relating to immigration *(paragraph 4).*

550. Guidance will be produced by the UK Border Agency in due course stipulating that applications for authorisation for intrusive surveillance are to be made only by immigration officers working in Criminal and Financial Investigation teams.

551. *Paragraphs 5 to 13* make further amendments to RIPA to bring the powers of immigration officers under that Act into line with those of customs officers. The changes to the powers of immigration officers include:

- the senior UKBA official designated for the purpose must not grant an authorisation for carrying out intrusive surveillance save where the application is made by an immigration officers *(paragraph 7);*

- a deputy, who is also designated for this purpose, may authorise urgent applications in the absence of the senior authorising officer *(paragraph 8)*;

- any grant, renewal or cancellation of an authorisation for intrusive surveillance must be notified to a Surveillance Commissioner *(paragraph 9);*

- except in urgent cases, authorisations granted for intrusive surveillance will not take effect until they have been approved by a Surveillance Commissioner and written notice of the Commissioner's decision has been given to the person who granted the authorisation *(paragraph 10);*

- a Surveillance Commissioner may quash or cancel an authorisation *(paragraph 11);*

- immigration officers are subject to the obligation to comply with any request of a Surveillance Commissioner to supply documents or information required by that Commissioner for the purpose of enabling him or her to carry out the Commissioner's functions *(paragraph 12);* and

- an authorisation by a senior official within the UKBA is not subject to the prohibition on authorisations extending to Scotland *(paragraph 13).*

552. Guidance will be produced by the UKBA to restrict applications for authorisation for intrusive surveillance only to those immigration officers working in Criminal and Financial Investigation teams.

553. *Paragraphs 14 to 38* make further amendments to POCA to bring the powers of immigration officers under that Act into line with those of customs officers. The changes to the powers of immigration officers include:

- Introducing a power for an immigration officer to seize property, and to retain such property pursuant to a restraint order, when exercising an immigration function;

- Granting senior immigration officers (that is, those of an equivalent rank to a senior police officer) the power to approve seizures of property, and to search premises, people and vehicles;

- Conferring on senior immigration officers (that is, those of an equivalent rank to a senior police officer) the power to give notice for the forfeiture of cash without a court order (so as to avoid wasting public funds in going to

court where cash is unclaimed);

- Allowing immigration officers to release cash that is the subject of a forfeiture notice;

- Allowing immigration officers to apply for search and seizure warrants for the purposes of confiscation, money laundering, and detained cash investigations. In the context of detained cash investigations, the amendments will also allow immigration officers to retain relevant material seized under such a warrant;

- Enabling immigration officers to apply for production orders, customer information orders (so long as they are sufficiently senior/have the appropriate authorisation) and account monitoring orders for the purposes of confiscation and money laundering investigations;

- Enabling immigration officers to apply for production orders and customer information orders for detained cash investigations;

- Allowing senior immigration officers to apply for, or to vary, a customer information order or to approve such an application by an immigration officer;

- In exercising these functions, immigration officers will be subject to a code of practice made under section 377 of POCA *(paragraph 37);*

- In cases of serious default by an immigration officer during an investigation, compensation may be payable to the victim by the Secretary of State *(paragraph 19).*

554. *Paragraph* 39 amends section 24 of the UK Borders Act 2007 to provide that approval for a search for cash by an immigration officer, under POCA, may only be given by a person who is of an equivalent rank to a police inspector (namely a senior immigration officer).

555. *Paragraph 40* contains a saving provision so that sections 1(4), 3(5), 7(5) and 11(4) (the glossing provisions) of the Borders, Citizenship and Immigration Act 2009 ("BCIA") continue to apply to the provisions of any Act amended by clause 35 of, or Schedule 17 to, the Bill. The glossing provisions of the BCIA taken together ensure that references in relevant legislation to Her Majesty's Revenue and Customs, the Commissioners for HMRC or an officer of Revenue and Customs are construed as including a reference to the Secretary of State, the Director of Border Revenue or a designated customs official or designated customs revenue official as the case may be. This is necessary to facilitate the machinery of government change introduced by BCIA as a result of which HMRC has the lead responsibility for customs matters in-country and, in operational terms at least, the Home Office (through UKBA and the UK Border Force) has the lead responsibility for the same customs matters at the

border.

556. *Paragraphs 41 to 43* modify the application of the Criminal Justice and Public Order Act 1994 so that immigration officers have the same powers as a constable when exercising cross border powers under sections 136 to 139 of the Criminal Justice and Public Order Act 1994.

557. *Paragraphs 44 to 49* amend the Criminal Law (Consolidation) (Scotland) Act 1995 so that the provisions in that Act relating to the questioning and detention and treatment of suspects apply to immigration officers and their investigations.

558. *Paragraph 50* makes consequential amendments relating to legal aid in Scotland. The consequential amendments add immigration and nationality offences to section 8A of the Legal Aid (Scotland) Act 1986 so that legal advice and assistance will be available in certain circumstances. The provision also amends regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011[35] (criminal advice and assistance: automatic availability in certain circumstances) and regulation 3 of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 so that they also include immigration or nationality offences. These modifications are necessary to ensure that those detained, questioned or arrested have access to legal aid and legal advice (subject to certain restrictions).

Clause 37: Drugs and driving

559. *Subsection (1)* introduces an offence of driving, attempting to drive or being in charge of a motor vehicle with a specified controlled drug in the blood or urine in excess of the specified limit for that drug. The new offence is inserted as a new section 5A in the Road Traffic Act 1988 ("the 1988 Act"). A "controlled drug" is defined in section 11 of the 1988 Act, as amended by *subsection (2)(a)*, by reference to the Misuse of Drugs Act 1971 ("MD Act"). The definition of a controlled drug is set out in section 2 of the MD Act, which in turn refers to drugs listed in Schedule 2 to that Act (and also to drugs subject to temporary control by virtue of the making of a temporary class drug order). Legal controls apply over controlled drugs to prevent them being misused, for example being obtained or supplied illegally.

560. It is already an offence under section 4 of the 1988 Act to drive whilst impaired by drugs (or alcohol), and the section 4 offence will remain in place alongside the new offence. Unlike the section 4 offence, the new offence will not require proof of impairment. In this respect it is similar to the offence in section 5 of the 1988 Act of driving, attempting to drive or being in charge of a motor vehicle with an alcohol concentration above the prescribed limit. The penalties available for the new offence, set out in *subsection (4)* (which amends Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988), are the same as those for the offence in section 5 of the 1988 Act (i.e. the penalties set out in Schedule 2 to the Road Traffic Offenders Act

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1988 as increased, for England and Wales, by certain provisions of the Criminal Justice Act 2003 which are not yet in force).

561. New section 5A(8) of the 1988 Act introduces a regulation-making power (exercisable by the Secretary of State in relation to England and Wales and by the Scottish Ministers in relation to Scotland) to specify which controlled drugs are covered by the offence, and the specified limit in relation to each. Such regulations will be subject to the affirmative resolution procedure (by virtue of the amendment to section 195 of the 1988 Act made by *subsection (3)*). There is already a requirement in section 195(2) and (2A) of the 1988 Act to consult before making regulations under the 1988 Act.

562. New section 5A(2) of the 1988 Act allows for different specified limits to be set for different controlled drugs. Specified limits could be set based on evidence of the road safety risk posed by driving after taking the drug, or based on an approach whereby it is not acceptable to drive after taking any appreciable amount of the drug. New section 5A(9) provides that specified limits could be zero, though this does not mean that limits would in fact be set at zero.

563. New section 5A(3) of the 1988 Act provides for a defence if a specified controlled drug is prescribed or supplied in accordance with the MD Act and taken in accordance with medical advice. The offence in section 4 of the 1988 Act would continue to be used to deal with those whose driving is impaired by specified controlled drugs taken in such circumstances. It would also continue to be used to deal with those whose driving is impaired by drugs which are not specified for the purposes of the offence (including other prescribed drugs and 'legal highs'). New section 5A(4) of the 1988 Act provides that the defence is not available if medical advice about not driving for a certain period of time after taking the drug has not been followed.

564. New section 5A(6) of the 1988 Act provides for a defence for someone who is accused of being in charge of a motor vehicle with a specified controlled drug in the blood or urine above the specified limit for that drug, if it can be shown that there was no likelihood of the person driving the vehicle while over the specified limit. This is similar to the defence in section 5(2) of the 1988 Act.

565. *Subsections (5) and (6)* make transitional provision for the period before the coming into force of certain provisions of the Criminal Justice Act 2003 that increase, for England and Wales, the maximum terms of imprisonment for summary offences.

566. *Subsection (7)* introduces Schedule 18.

Schedule 18: Drugs and driving: minor and consequential amendments

567. *Paragraph 2* amends section 3A of the 1988 Act so that if the person had a controlled drug in the blood or urine in excess of the specified limit for that drug, the person could be charged with the more heavily penalised offence in that section of

causing death by careless driving when under the influence of drink or drugs.

568. *Paragraph 3* amends section 6C of the 1988 Act so as to allow up to three preliminary tests of saliva or sweat to be taken when testing for drugs. The current position is that one test can be taken, but this would be insufficient for the purposes of the new offence, given that current drug screening technology can test for a limited range of drugs only using a single preliminary test. Evidential testing for drugs would continue to be through blood or urine samples. Saliva or sweat tests would therefore not be used in the same way as evidential breath tests are for drink driving and indeed sweat tests are not under consideration even as preliminary tests. For drink driving breath tests are the most frequent method used for both preliminary and evidential testing.

569. *Paragraph 4* amends section 6D of the 1988 Act to allow for a power of arrest after a preliminary drug test relating to the new section 5A offence.

570. *Paragraph 10* amends section 15 of the Road Traffic Offenders Act 1988 to provide for certain assumptions to be made about the level of a drug in the body at the time of a suspected offence compared to the time when an evidential test is taken. The amendments parallel provisions related to the prescribed drink drive limit.

Clause 38: Public order offences

571. Clause 37 removes the 'insulting' limb from section 5 of the Public Order Act 1986 ("the 1986 Act"), thereby making the use of insulting words, behaviour etc which is likely to cause harassment, alarm or distress no longer a criminal offence.

572. Subsection (2) removes the word 'insulting' from section 5(1) of the 1986 Act, which sets out the offence.

573. Subsection (3) removes the word 'insulting' from section 6(4) of the 1986 Act, which provides that a person is guilty of an offence under section 5 only if they intend their words, behaviour etc to be threatening, abusive or insulting, or are aware that their words, behaviour etc may be threatening, abusive or insulting.

Clause 39: Orders and regulations

574. This clause sets out the parliamentary procedure in respect of various order- and regulation-making powers provided for in the Bill. *Subsection (3)* introduces Schedule 19 which sets out the super-affirmative procedure which applies to orders made under what was clause 2 of the Bill on Introduction in the House of Lords. That clause, which would have enabled the Secretary of State, by order, to make further provision about NCA counter-terrorism functions, was removed from the Bill on an Opposition amendment at Lords Report stage.

Schedule 19: Super-affirmative procedure

575. *Paragraph 1* requires the Secretary of State to consult the persons who would be affected by an order. If following consultation the Secretary of State wishes to

proceed with the making of an order, *paragraph 2* requires the Secretary of State to lay a draft order and explanatory document before Parliament, but he or she may not do so for 12 weeks from the beginning of the consultation process. *Paragraph 3* provides that any orders must be approved by Parliament through the use of the affirmative procedure (approval by a resolution of each House of Parliament) unless the procedure described in the following paragraph applies.

576. *Paragraph 4* sets out that affirmative procedure, which is to be followed if either House of Parliament so requires, or a Committee of either House so recommends (and the recommendation is not rejected by the House). Such a resolution or recommendation must be made within 30 days of the laying of a draft order. This procedure extends the scrutiny period for an order to 60 days, and requires the Secretary of State to have regard to any recommendations or representations made by Parliament during this period. Following the conclusion of the scrutiny period, the Secretary of State would have the option of laying a revised draft order.

Clause 40: Consequential amendments

577. This clause enables the Secretary of State and Lord Chancellor, by order, to make provision consequential upon the Bill, including consequential amendments to other enactments. Any such order which amends primary legislation is subject to the affirmative resolution procedure; otherwise the negative resolution procedure applies.

Clause 41: Transitional, transitory or saving provisions

578. This clause enables the Secretary of State and Lord Chancellor, by order, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Bill. Such an order is not subject to any parliamentary procedure.

Clause 42: Short title, commencement and extent

579. *Subsection (1)* sets out the short title for the Bill.

580. *Subsections (2) to (7)* provide for commencement. The provisions in Part 4 of Schedule 15 (electronic monitoring of offenders) may be brought into force at different times in different areas thereby enabling the piloting of these provisions. Such a pilot may be time limited, but may be extended by a further order (*subsection (6)*).

581. *Subsections (8) to (13)* set out the extent of the provisions in the Bill.

582. *Subsection (14)* enables the provisions in clause 32, 33, or 34 (immigration matters) to be extended to the Channel Islands and Isle of Man by Order in Council; such an order is not subject to any parliamentary procedure.

583. *Subsection (15)* enables the provisions in Part 8 (armed forces) of Schedule 15 to be extended to any of the Channel Islands, the Isle of Man or any of the British

overseas territories by Order in Council.

584. *Subsection (16)* enables the provisions in Schedule 15 which amend the Criminal Justice Act 2003 to be extended to any of the Channel Islands or the Isle of Man by Order in Council.

COMMENCEMENT

585. Clauses 38 to 41 of the Bill (general) come into force on Royal Assent.

586. Clause 23(2) (which enables all functions of fines officers to be contracted out) and clause 28 (abolition of offence of scandalising the judiciary) come into force two months after Royal Assent.

587. All other provisions will be brought into force by means of commencement orders made by the Secretary of State or, in the case of the provisions in clauses 16, 18 to 22, 23(1) and (3) to (8) and 24 to 27 and Schedules 9, 10, 11, 13 and 14, by the Lord Chancellor.

FINANCIAL EFFECTS OF THE BILL

588. The main financial implications of the Bill for the public sector lie in the following areas. The figures set out in the paragraphs below are based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the impact assessments published alongside the Bill.

Part 1: The National Crime Agency

589. The government is committed to delivering the NCA within the budget of its precursor organisations (principally SOCA, which has a Home Office delegated budget of £425 million in 2012/13 including the budget related to NPIA functions that were transferred on 1 April 2012, and which is abolished by clause 14) reduced in line with the plans in the 2010 Spending Review. In 2013/14, SOCA's indicative budget is £416 million, which will transfer to the NCA on vesting. The budget for the NCA in 2014/15, the first full financial year of operation, which includes functions transferred from the NPIA, is provisionally estimated to be £407 million. These figures have been updated to reflect project funding that the Home Office has been providing to SOCA and in support of Organised Crime Coordination more broadly, that it will continue to provide as direct grant funding. Although the priority must be to protect frontline operations as far as possible, the 2014/15 figure does not yet allow for the 2% reduction in the Home Office budget for 2014/15 announced in the Chancellor's Autumn Statement 2012. It is intended to scrutinise all Home Office budgets during the next year before determining 2014/15 allocations.

590. As with SOCA, there are likely to be supplementary funding streams and the NCA may receive additional funds for undertaking specific projects. As the NCA

evolves it may take on additional functions on behalf of law enforcement; the cost of these functions will be met from existing budgets.

591. Clause 14 also abolishes the NPIA. The Agency had a budget of £390 million in 2011/12. As a prelude to its abolition, the Agency is being wound down and its functions have been transferred to successor organisations or been discontinued as of December 2012. As part of this process its budget is being apportioned between its successor organisations.

Part 2: Courts and Justice

592. Clause 23 of the Bill will allow the imposition of a charge on offenders for the costs of collecting or pursuing financial penalties, such as fines or compensation orders. The actual charges would depend on future cost structures of compliance and enforcement activities and the final choice of charging mechanism. However, based on an illustrative charging mechanism, it is estimated that clause 23 could raise annual revenue of around £3 million in 2013/14, £4 million in 2014/15 and rising to £5 million in future years.

593. Clause 25 of the Bill establishes an information sharing gateway allowing social security, earnings and tax credit information to be disclosed for the purpose of calculating certain fees charged by HMCTS, the Office of the Public Guardian and the UK Supreme Court to users who are also recipients of various state benefits. It is estimated that there will be a one-off cost of some £1 million at nominal prices in 2013/14 to establish the IT information sharing gateway and annual running costs of around £0.1 million per year. Compared to what would have happened otherwise, the IT gateway is estimated to deliver a quantifiable financial saving to the Ministry of Justice that increases from effectively zero in 2013/14 to about £0.3 million per year at nominal prices when reforms to the state benefit system as provided for in the Welfare Reform Act 2012 are fully implemented in 2017/18.

594. Clause 31 and Schedule 15 make a number of changes to the framework governing community and other non-custodial sentences for adult offenders. It is estimated that provisions, primarily in relation to Part 2 of Schedule 15 (restorative justice), will require investment in 'start up' funds to deliver training to staff and volunteers of around £10m for local probation trusts. The total cost to the Ministry of Justice for the whole Community Sentencing package is estimated between £35 million and £60 million per year once these measures have been fully implemented. There will be increased costs from the use of location monitoring technology to track offenders (Part 4 of Schedule 15), which depend on the offenders that the location monitoring is used for and the future unit costs of this technology.

595. Clause 32 and Schedule 16 provides for the establishment of Deferred Prosecution Agreements (DPAs) in England and Wales. The Government may see an increase in net penalty income as a result of the introduction of DPAs, although as this is a new tool it is difficult to be certain about the potential magnitude of any income. Three potential scenarios for the net income from the financial penalty elements of

DPAs have therefore been modelled. The increase in net penalty income could be £3 million to £4 million (based on penalties data for completed Serious Fraud Office (SFO) cases involving organisations); £10 million to £20 million (based on penalties imposed for competition offences by the Office of Fair Trade in 2010 and 2011, as a proxy for the sorts of cases that could be suitable for DPAs); or £30 million to £60 million (based upon DPA penalties in England and Wales being at best, around 50% of the levels seen in the US) per year. It is also estimated that DPA cases will be shorter and less expensive than most current prosecution routes, potentially leading to lower annual average costs for the SFO and CPS, resulting in net savings of between £0.8 million and £1.2 million per year for the SFO. It is expected that the CPS will enter into fewer DPAs than the SFO but it has not been possible to quantify this potential benefit. HMCTS is also expected to benefit as a result of the introduction of DPAs and net savings are expected to be between £0.03 million and £0.06 million per year.

Part 3: Miscellaneous and general

596. By limiting appeal rights in family visit visa cases, clause 34 of the Bill is predicted to deliver savings in nominal prices of around £13 million to HMCTS and the UKBA in 2014/15 and an annual saving of some £18 million in future years from reduced appeal volumes. It is estimated that UKBA will also benefit from an increase in application fees of approximately £0.3 million in 2013/14 and £1 million in future years. A reduction in the number of appeal cases may result in a loss of fee income for HMCTS of an estimated £3 million in 2014/15 and £4 million annually thereafter in nominal prices. The cost to UKBA of processing additional visit visa applications is estimated to be £0.6 million in 2013/14 and around £2 million in future years. The net annual saving to HMCTS is some £5 million in 2014/15 and £6 million in future years. The net annual saving to UKBA is -£0.3 million in 2013/14, £4 million in 2014/15 and £6 million in future years.

597. Clause 37 and Schedule 18 create a new offence of driving with a specified controlled drug above the specified limit in the body and makes further provision for the taking of preliminary tests to determine the level of drugs in a person's blood or urine. It is estimated that the enforcement of the new offence will lead to the CPS, criminal justice system and police incurring additional net costs of £18 million per year. However, the Government also expects fines income to increase by £1 million per year as a result of the introduction of the new offence.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

598. The NCA is expected to have a staff of some 4000 officers (full time equivalents) once it is established in 2013. Existing staff of the precursor organisations will be transferred to the Agency on its establishment, the biggest contingent being from SOCA, which had 3806 staff on 1 April 2012 including those transferred from NPIA. The creation of the Agency will not, of itself, lead to a net change in public sector manpower.

599. The NPIA had a staff of 1449 on 1 April 2012. The majority of its remaining staff transferred to successor organisations on or before 1 December 2012. However, the abolition of the NPIA may lead to a net reduction in public sector manpower given the budget reductions agreed for the 2010 Spending Review and the reduced overall requirement for corporate services staff as successor bodies take on NPIA functions.

600. No other provisions of the Bill are expected to have an impact on public sector manpower.

SUMMARY OF IMPACT ASSESSMENTS

601. The Bill is accompanied by two overarching impact assessments (in respect of Parts 1 and 3, and Part 2) which have been placed in the Commons Vote Office. A further nine impact assessments are available on individual provisions. The impact assessments, signed by Ministers, are available on the Bill website[36]. The individual impact assessments deal with the following provisions:

- The establishment of the NCA (Part 1);
- Single county court (clause 16);
- Single family court (clause 16);
- Judicial appointments (clause 18);
- Payment of fines and other sums (clause 23);
- Disclosure of information for calculating fees of courts, tribunals etc (clause 25);
- Community sentencing (clause 31);
- Deferred prosecution agreements (clause 32);
- Appeals against refusal of entry clearance to visit the UK (clause 34); and
- Drugs and driving (clause 37).

602. A full equality impact assessment has been produced in relation to the provisions in respect of judicial appointments and community sentencing, and is also published on the Bill website.

[36] www.homeoffice.gov.uk/crime-courts-bill

603. Privacy impact assessments have also been published on the Bill website for the following provisions:

- NCA use and disclosure of information (Part 1); and

- Disclosure of information for calculating fees of courts, tribunals etc (clause 25).

604. The provisions of the Bill impact mainly on the public (in particular, persons refused a visa to visit family members in the UK and persons eligible for fee remission in respect of certain legal proceedings) and public sector (primarily the staff of SOCA and the NPIA, the police and other law enforcement agencies, the probation service, the Crown Prosecution Service, the Serious Fraud Office, the UK Border Agency and Border Force, the UK Supreme Court, HM Courts and Tribunals Service, the Office of the Public Guardian, the judiciary, the Judicial Appointments Commission and the BBC). Part 2 of the Bill will also impact on the Bar Council and other broadcasters including ITN and BSkyB.

EUROPEAN CONVENTION ON HUMAN RIGHTS

605. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Secretary of State for the Home Department, the Rt. Hon. Theresa May MP, has made the following statement:

"In my view the provisions of the Crime and Courts Bill are compatible with the Convention rights."

606. The Government has published separate ECHR memorandums with its assessment of the compatibility of the Bill's provisions with the Convention rights; the memorandums are available on the Bill webpage of the Home Office website[37].

[37] www.homeoffice.gov.uk/crime-courts-bill

ANNEX A

GLOSSARY

1971 Act	Immigration Act 1971
1981 Act	Senior Courts Act 1981
1984 Act	County Courts Act 1984
1986 Act	Public Order Act 1986
1988 Act	Road Traffic Act 1988
1994 Act	Criminal Justice and Public Order Act 1994
1995 Act	Criminal Law (Consolidation) (Scotland) Act 1995
1998 Act	Data Protection Act 1998
2000 Act	Powers of Criminal Courts (Sentencing) Act 2000
2002 Act	Nationality, Immigration and Asylum Act 2002
2003 Act	Courts Act 2003
2006 Act	Immigration, Asylum and Nationality Act 2006
2007 Act	Tribunals, Courts and Enforcement Act 2007
BCIA	Borders, Citizenship and Immigration Act 2009
BEAC	Bailiff Enforcement Agents Council
CJA 2003	Criminal Justice Act 2003

CRA	Constitutional Reform Act 2005
DPA	Deferred prosecution agreement
DPP	Director of Public Prosecutions
DSFO	Director of the Serious Fraud Office
DWP	Department for Work and Pensions
ECHR	European Convention on Human Rights
HMCTS	Her Majesty's Courts and Tribunals Service
HMRC	Her Majesty's Revenue and Customs
IPCC	Independent Police Complaints Commission
JAC	Judicial Appointments Commission
MD Act	The Misuse of Drugs Act 1971
NCA	National Crime Agency
NPIA	National Policing Improvement Agency
PCA	Parliamentary Commissioner for Administration
POCA	Proceeds of Crime Act 2002
PSNI	Police Service of Northern Ireland
RIPA	Regulation of Investigatory Powers Act 2000
SOCA	Serious Organised Crime Agency

SPA	Service Prosecuting Authority
UKBA	UK Border Agency
UKSC	UK Supreme Court

ANNEX B

DEPLOYMENT OF THE JUDICIARY

Judge	Competent to sit on request	Authorisation required	Duty to comply with request?
A judge of the Court of Appeal	The High Court and the Crown Court	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes
A person who has been a judge of the Court of Appeal	The Court of Appeal, the High Court, the family court, the county court and the Crown Court	Lord Chief Justice request to sit with the concurrence of the Lord Chancellor	No
A puisne judge of the High Court	The Court of Appeal	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes
A person who has been a puisne judge of the High Court	The Court of Appeal, the High Court, the family court, the county court and the Crown Court	Lord Chief Justice request to sit with the concurrence of the Lord Chancellor	No
The Senior President of Tribunals	The Court of Appeal and the High Court	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes, unless holder of office is a judge of the Court of Session or of the High Court or Court of Appeal in Northern Ireland

Circuit Judge	The Criminal Division of the Court of Appeal and the High Court	For Criminal Division of the Court of Appeal: Lord Chief Justice request to sit with the concurrence of the Judicial Appointments Commission For High Court: Lord Chief Justice request to sit from judges within Judicial Appointments Commission selected pool after consulting Lord Chancellor	Yes
Recorder	The High Court	Lord Chief Justice request to sit from judges within Judicial Appointments Commission selected pool after consulting Lord Chancellor	Yes
Judge of the Upper Tribunal and President of Employment Tribunals	The High Court	Lord Chief Justice request to sit from judges within Judicial Appointment Commission selected pool after consulting Lord Chancellor	Yes

CRIME AND COURTS BILL [HL]

EXPLANATORY NOTES

These notes refer to the Crime and Courts Bill [HL] as brought from the House of Lords on 19 December 2012 [Bill 115]

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