These notes refer to the Lords Amendments to the Criminal Justice and Courts Bill [Bill 120], as brought from the House of Lords on 11 November 2014

CRIMINAL JUSTICE AND COURTS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These Explanatory Notes relate to the Lords amendments to the Criminal Justice and Courts Bill as brought from the House of Lords on 11 November 2014. The Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. These Explanatory Notes do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes, like the Lords amendments themselves, refer to HL Bill 30, the Bill as first printed for the Lords.

3. These Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords amendments.

4. All the Lords Amendments were in the name of the Minister except for Lords Amendments 48 to 67, 74, 75, 97 to 107 and 124. Lords Amendments 74 and 97 to 107 were opposed by the Government.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendments 1 to 4

5. Lords Amendment 1 would remove references in clause 2(10) to subsections (5) and (6) of that clause. Clause 2 makes changes to the offences listed in Schedule 15 to the Criminal Justice Act 2003, which is a list of the sexual and violent offences which are liable to the dangerous offender sentencing scheme. Subsection (10) makes

transitional provision for the application of the life sentence for dangerous offenders (section 225 of the 2003 Act), which would be imposed on conviction of an offence listed in Schedule 15 to the Criminal Justice Act 2003 which carries a maximum penalty of life, where the court considers that the offence is serious enough to justify a life sentence and there is a significant risk to members of the public of serious harm from further Schedule 15 offences. However, a life sentence is not available for the offences mentioned in subsections (5) and (6) so the provision does not need to refer to them.

6. Lords Amendments 2 and 3 would clarify the application of Schedule 15B to the Criminal Justice Act 2003 to foreign EU member State service offences. Paragraph 49B of Schedule 15B as inserted would provide a new definition of a member State service offence, which would ensure that previous convictions from a foreign EU service court operating outside that EU member State would count as relevant previous convictions for the purposes of eligibility for the life sentence in section 224A of the Criminal Justice Act 2003 and eligibility for imposition of an extended determinate sentence under section 226A of that Act. Currently UK service court convictions where the court was held outside the UK count as relevant previous convictions; as do EU service court convictions where the court was held within the EU state concerned; but the particular convictions dealt with by the amendment do not.

7. Lords Amendment 4 would make provision in relation to the life sentence for a second listed offence under section 224A of the Criminal Justice Act 2003, and the extended determinate sentence under section 226A of that Act.

8. *Subsection (1)* would make provision about determining the date of an offence for the purposes of section 224A of the Criminal Justice Act 2003. It would provide that offences found to have been committed over a period of two or more days, or at an unknown point during a period of two or more days, are to be treated as though committed on the last of those days. *Subsection (3)* would make equivalent provision for the service law equivalent.

9. *Subsection (2)* would extend the provision allowing courts to treat certificates from another court, in respect of a previous conviction, as evidence of the nature of the crime (for example, that an offence of robbery included the use of a firearm), so that it applies for the purpose of determining eligibility for an extended determinate sentence under section 224A of the Criminal Justice Act 2003 as well as a life sentence under section 224A of that Act.

Lords Amendments 5 to 35 and 121 to 123

10. Lords Amendments 5 to 35 and 121 to 123 would provide a power for the Secretary of State to appoint "recall adjudicators" whose function would be to review the detention of recalled determinate sentence prisoners. This function is currently performed by the Parole Board. These amendments would remove the statutory requirements in the Criminal Justice Act 2003 ("2003 Act") for the Secretary of State

to refer determinate sentence recalled prisoners to the Parole Board and replace references to the Board in that context with references to a "recall adjudicator". The Secretary of State would be able to appoint the Parole Board or any other person to be a recall adjudicator.

11. In the new clause inserted by Lords Amendment 5, *subsection (1)* would insert a new section in the 2003 Act after section 239. New section 239A would provide for the Secretary of State to appoint and remunerate recall adjudicators to carry out all or some of the review functions for recalled determinate sentence prisoners. The Secretary of State's power would include power to appoint people to carry out such functions only in a specified geographical area or only in relation to a specified type of case. Such functions would have to be carried out in accordance with any guidance issued by the chief recall adjudicator as appointed by the Secretary of State. The Secretary of State would be able to issue rules about the carrying out of the functions of recall adjudicators. The rules would be made by statutory instrument subject to the negative resolution procedure.

12. *Subsection (2)* of Lords Amendment 5 would explain that the amendments of the 2003 Act in clause 7 of the Bill, which deals with the test for release after recall for determinate sentence prisoners, confer functions on recall adjudicators.

13. *Subsection (3)* introduces the new Schedule (inserted by Lords Amendment 123) which would provide for further consequential changes to other enactments to reflect the appointment of recall adjudicators.

14. Lords Amendments 6 to 34 would amend the references to "the Board" (meaning the Parole Board) in clauses 7 and 8 of the Bill to "recall adjudicator". Clause 7 amends the test for release following recall in Chapter 6 of Part 12 of the 2003 Act and clause 8 amends the power in section 256AZA of the 2003 Act to change that test by order.

15. Lords Amendment 123 would insert a new Schedule containing further provision relating to recall adjudicators.

16. In particular, the new Schedule would amend:

- *Mental Health Act 1983* – There is provision in section 50 of the Act under which Parole Board powers in respect of the release of prisoners may be disregarded in respect of prisoners subject to the Mental Health Act 1983. The same provision would need to be made in respect of recall adjudicators' powers to direct the release of determinate sentence recalled prisoners. Similarly, section 74 of the Act makes references to the Parole Board and restricted patients subject to restriction directions. References to recall adjudicators would need to be added.

- *Criminal Justice Act 2003* – Changes would be needed to the following:

  - Section 250 (licence conditions) would be amended to provide that, in respect of a prisoner serving an extended sentence, where the Parole Board directs the initial release the Board is responsible for setting and varying certain licence conditions (as now) but where a recall adjudicator directs release following recall, the adjudicator would have those responsibilities in respect of the licence. See also the changes to section 250 made by Lords Amendments 35, 121 and 122.
  - Section 260(2B) (early release from prison of extended sentence prisoners who are liable to be removed from the United Kingdom) provides for the usual requirement for a Parole Board direction to release to be disregarded. Equivalent provision would need to be made in relation to recall adjudicators.
  - A definition of "recall adjudicator" would be added to section 268 (interpretation of Chapter 6 of Part 12).
  - For prisoners whose release is subject to the modifications in Schedule 20B of the 2003 Act (transitional provision for certain cases, including those originally dealt with under the Criminal Justice Act 1967 and the Criminal Justice Act 1991), similar amendments would be made in respect of the setting and varying of licence conditions and the early release of prisoners liable to be removed from the UK.

- *Domestic Violence, Crime and Victims Act 2004* – Schedule 9 to this Act would be amended so that recall adjudicators are listed as one of the authorities falling within the remit of the Commissioner for Victims and Witnesses, in the same way as the Parole Board.

- *Offender Management Act 2007* – Section 3(7)(a) (arrangements for the provision of probation services: risk of conflict of interest) would be amended to require the Secretary of State to take steps the avoid the risk that conflicts of interest between the obligations of providers of probation services and their financial interests may adversely affect assistance provided to recall adjudicators. Section 14 would also be amended to provide that the Secretary of State could disclose information to recall adjudicators for offender management purposes.

- *Coroners and Justice Act 2009* – The work of the Parole Board is covered by section 131 (annual report of Sentencing Council for England and Wales: effect of factors not related to sentencing). This would be amended to include reference to the work of recall adjudicators as well.

- *Equality Act 2010* – Schedule 19 lists the public authorities that are covered by the provisions of the Act, which includes the Parole Board. Recall adjudicators would be added to this list.

Lords Amendment 36

17. Lords Amendment 36 would amend the Rehabilitation of Offenders Act 1974 ("1974 Act") in order to address a legal competence problem that was identified by the Scottish Government in relation to the exercise of enabling powers in Schedule 3 to the 1974 Act. The amendment would allow the Scottish Ministers to make an order under paragraph 6 of Schedule 3 and section 7(4) (as applied by paragraph 8 of Schedule 3) of the 1974 Act setting out exclusions, modifications and exceptions to the general rules in the 1974 Act concerning spent alternatives to prosecution in relation to reserved matters. Scottish Ministers already have the power to do this in relation to convictions (the powers to do so having been transferred to Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003).

Lords Amendment 37 to 40

18. Clause 19 provides for local authorities in England and Wales, and bodies corporate performing certain functions on their behalf, not to be treated as "care providers" for the purposes of the offence of ill-treatment or wilful neglect that applies to care providers, established in clause 18, where they are exercising functions to which Chapter 4 of Part 8 of the Education and Inspections Act 2006 applies, or the equivalent legislation in Wales.

19. Amendments 37 and 38 would add to clause 19 exclusions from the care provider offence for any person exercising:

- functions of a local authority in England which are functions to which Chapter 4 of Part 8 of the Education and Inspections Act 2006 applies, following a direction by the Secretary of State under section 15(6)(a) of the Local Government Act 1999, or under section 497A(4) or (4A) of the Education Act 1996;

- certain functions of a Welsh local authority referred to in clause 19(3) relating to children and education in respect of which a direction has been given by Welsh Ministers under:

  - section 29(6)(a) of the Local Government (Wales) Measure 2009 (nawm 2);
  - section 25 or 26 of the School Standards and Organisation (Wales) Act 2013 (anaw1); or
  - section 154 or 155 of the Social Services and Well-Being (Wales) Act 2014 (anaw 4).

20. The intention would be to ensure that third parties exercising the specified local authority functions, following a direction from the Secretary of State or (as the case may be) the Welsh Ministers, are excluded from the care provider offence, to the same extent that the local authority would be if it were carrying out the functions

itself.

21. Amendment 39 would extend the exclusions in clause 19 to include registered adoption societies and registered adoption support agencies, to the extent that they provide adoption support services (as defined in section 2(6) of the Adoption and Children Act 2002). Clause 19 already excludes adoption support services provided by local authorities and this amendment would ensure that there is a consistency in the application of the exclusion in clause 19.

22. Amendment 40 would define "registered adoption support agency" and "registered adoption society" for the purposes of clause 19.

Lords Amendments 41 to 47 and 115

23. Clause 23 provides that a police constable commits an offence if he or she exercises the powers and privileges of a constable improperly and knows or ought to know that the exercise is improper. Lords Amendments 41 to 44, 46, 47 and 115 would have the effect of extending the application of the offence to the whole of the United Kingdom and its territorial waters. However, the amendments would not extend the application of the offence to officers of either Police Scotland or the Police Service of Northern Ireland. Responsibility for legislating in relation to those forces is devolved to the Scottish Parliament and the Northern Ireland Assembly respectively.

24. Lords Amendment 45 would make a technical change relating to the Director General of the National Crime Agency. The clause makes provision to the effect that the offence applies to all those officers of the National Crime Agency who are designated by its Director General as having the powers and privileges of a constable. The Director General can also be designated with those powers and privileges by the Secretary of State; the first (and current) holder of that office is so designated with such powers in England and Wales. Lords Amendment 45 would provide that any officer designated as having the powers and privileges of a constable, regardless of who makes the decision to designate them, will be within the scope of the new offence.

Lords Amendments 48 to 67 and 124

25. These amendments would make technical changes to clause 25 (minimum sentence for repeat offences involving offensive weapons or bladed articles).

26. Lords Amendments 48, 55 and 61 would have the effect of applying the minimum sentence to convictions for second or further relevant offences. Currently the minimum sentence only applies on conviction of a second relevant offence and not on conviction of any subsequent relevant offences.

27. Lords Amendments 48, 49, 55, 56, 61 and 62 would clarify that in order to face the minimum sentence the offender must be aged 16 or over when they commit their second or subsequent relevant offence, commit that offence after the commencement of these changes, and have a relevant previous conviction when they

commit it.

28. Lords Amendments 53 and 66 would clarify the meaning of "relevant conviction" and provide that relevant convictions include convictions for equivalent offences in Scotland, Northern Ireland or a member State other than the United Kingdom, as well as convictions for equivalent offences under United Kingdom or member State service law, are taken into account when determining whether the minimum sentence applies.

29. Lords Amendments 54 and 60 would have the effect of restricting the application of the minimum sentence to those convicted of a second or further offence under section 139 or 139A of the Criminal Justice Act 1998 in England and Wales only. As currently drafted it applies to convictions in Northern Ireland as well.

30. Lords Amendment 60 would ensure that the minimum sentence applies where the second or further conviction is for an offence under section 139A(1) or (2) of the Criminal Justice Act 1998; as currently drafted only section 139A(1) is covered.

31. Lords Amendments 50, 57 and 63 would ensure that the court can take into account whether there are particular circumstances relating to the previous offence (as well as to the current offence or the offender) which would be relevant in determining whether it would be unjust in all the circumstances to impose the minimum sentence.

32. In Lords Amendments 51, 58 and 64, new subsections (2CA), (6CA) and (5CA) respectively would ensure that, when considering whether there are particular circumstances which would make it unjust to impose the minimum sentence on a 16 or 17 year old, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.

33. In those Lords Amendments, new subsections (2CB), (6CB) and (5CB) would provide that, if a previous relevant conviction on the basis of which the minimum sentence was imposed is subsequently overturned, the offender has 28 days from the date that conviction was set aside to appeal against the imposition of the minimum sentence to the Court of Appeal.

34. Lords Amendment 124 would insert a new Schedule into the Bill which makes necessary minor and consequential amendments as a result of clause 25. *Paragraph 1* of the Schedule would amend section 37(1A) of the Mental Health Act 1983 to enable the court to impose a hospital order instead of a minimum sentence. *Paragraph 2* would amend section 36(2)(b) of the Criminal Justice Act 1988 to enable the Attorney General to make a reference where the court has failed to impose the minimum sentence (an application to have an unduly lenient sentence revisited). *Paragraph 12* of the Schedule would amend section 144 of the Criminal Justice Act 2003 to allow a court, where a person pleads guilty to a relevant offence in circumstances in which the new minimum sentence would apply, to reduce the sentence of imprisonment it would otherwise have passed; but it may not reduce it to below 80% of the appropriate

custodial sentence in the case of those aged 18 or over when convicted.

35. Other consequential amendments would be made to the Powers of the Criminal Courts (Sentencing) Act 2000, the Criminal Justice Act 2003 and the Coroners and Justice Act 2009.

Lords Amendments 68, 119 and 120

36. Lords Amendments 68, 119 and 120 would amend section 35A of the Road Traffic Offenders Act 1988 and section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 which require a court, when sentencing an offender to immediate custody and imposing a driving ban, to extend the driving ban to take account of the period the offender will spend in custody. The provisions about that extension of the driving ban were inserted by the Coroners and Justice Act 2009 and were designed to avoid a driving ban expiring, or being significantly diminished, during the period in which the offender is in custody.

37. The new clause inserted by Lords Amendment 68 would amend section 35A of the Road Traffic Offenders Act 1988 and section 147A of the Powers of Criminal Courts (Sentencing) Act 2000, both as inserted by Schedule 16 to the Coroners and Justice Act 2009. The amendments would omit the requirement in those sections for the court, when setting the extension period to be added onto a driving ban, to take account of the sentence imposed by the court reduced by deducted time spent on remand. For the purpose of setting the length of the extension period and therefore the length of the driving ban as a whole, the court would only have to have regard to the type and length of sentence it has imposed and not the sentence as adjusted once time spent on remand is deducted.

38. Lords Amendments 119 and 120 would make the same changes in the consequential provisions in Schedule 1 of the Bill which relate to these driving ban provisions.

Lords Amendments 69, 108, 111 and 125

39. These Lords Amendments would give effect to a proposed new bilateral agreement between the UK and the Republic of Ireland ("RoI") which will permit mutual recognition of driving disqualifications between the two states. They would amend Chapter 1 of Part 3 of the Crime (International Co-operation) Act 2003 ("CICA"). That Chapter was enacted to implement the Convention on driving disqualifications drawn up under the Treaty on European Union on Driving Disqualifications. It has been commenced only in relation to mutual recognition of driving disqualifications between the UK and the RoI.

40. Lords Amendment 69 would insert a new clause in the Bill. *Subsection (2)* of the new clause would amend the heading of Chapter 1 of Part 3 of CICA to "Mutual recognition of driving disqualification in the UK and RoI".

41. *Subsection (3)* would amend the duty on the UK in section 54 of CICA to give notice of a driving disqualification to the authorities in the RoI where a disqualification has been imposed on an offender in the UK. New section 54(1)(aa) of CICA would provide that the obligation arises if the offender is resident in the RoI, or if the offender is not usually resident in the RoI but holds a RoI driving licence. The disqualification would only be notified to the RoI where it related to a qualifying road traffic offence as set out in Schedule 3 to CICA (Great Britain offences) or in new Schedule 3A to CICA (Northern Ireland offences) (inserted by Lords Amendment 125).

42. *Subsection (4)* would amend section 56(1) of CICA to require the UK to recognise a driving disqualification if an offender is disqualified in the RoI following conviction for a qualifying road traffic offence as set out in the new Schedule 3B to CICA. The obligation to recognise the disqualification would only arise where the offender is resident in the UK, or is not normally resident in the UK but holds a Great Britain or Northern Ireland licence.

43. *Subsection (5)* would insert a new section after section 71 of CICA to define the term "the specified agreement on driving disqualifications". This agreement can only be an agreement between the UK and the RoI to mutually recognise driving disqualifications imposed in either state.

44. Lords Amendment 125 would insert a new Schedule to the Bill. The new Schedule would make a number of changes to terminology to reflect the move from the EU Convention to the proposed bilateral agreement between the UK and the RoI.

45. *Paragraph 2* of this new Schedule would amend the provisions in section 54 of CICA relating to the minimum period a disqualification must be imposed for in relation to an offence in Part 2 of Schedules 3 and 3A to CICA before the UK is required to notify the RoI. The minimum period is generally 6 months, but can be less than 6 months where this has been set out in regulations by the Secretary of State or the Department of the Environment in Northern Ireland.

46. Sub-paragraph (4) provides that where the period of disqualification is extended under any of the legislative provisions listed, it would not be counted when calculating whether a person has been disqualified for the minimum period.

47. Sub-paragraph (5) would give the Secretary of State and the Department of the Environment in Northern Ireland the power to amend the list of offences set out in Schedule 3 and the new Schedule 3A of CICA respectively by regulations.

48. *Paragraph 5(2)* would amend section 56(2) of CICA to set out when the driving disqualification condition is met. The condition would be met either when the offender is disqualified for an offence set out in Part 1 of the new Schedule 3B to CICA or when the offender is disqualified from driving for an offence described in

Part 2 of that Schedule for more than the minimum period.

49. *Paragraph 5(4)* would provide that the "minimum period" is the period of less than 6 months specified by the Secretary of State in regulations or where no such period has been specified, 6 months.

50. *Paragraph 5(10)* would confer power on the Secretary of State to amend the list of offences set out in the new Schedule 3B to CICA by regulations.

51. *Paragraphs 11 and 12* would amend sections 68 and 69 respectively to reflect the extension of section 57 to those who hold a licence in Great Britain or Northern Ireland but are not normally resident there.

52. *Paragraph 14* would provide for the affirmative procedure to apply when the Secretary of State makes regulations to amend the offences listed in Schedule 3 or 3B to CICA or to specify an agreement under section 71A of CICA.

53. *Paragraph 15* would provide that regulations made by the Department of the Environment in Northern Ireland to amend the offences listed in Schedule 3A to CICA would be subject to the approval of the Northern Ireland Assembly.

54. *Paragraph 18* would set out the definition of "normally resident" by reference to article 12 of Directive 2006/126/EC of the European Parliament and of the Council of 20th December 2006 on driving licences.

55. *Paragraphs 19 and 20* would amend Schedule 3 to CICA to set out the offences for which driving disqualifications are recognised for the purposes of section 54. Schedule 3 would contain offences under the law of England and Wales and Scotland and new Schedule 3A would contain offences under the law of Northern Ireland. New Schedule 3A lists two offences that do not currently appear in Schedule 3: causing death or grievous bodily injury by careless or inconsiderate driving (Article 11A of the Road Traffic (Northern Ireland) Order 1995) and causing death or grievous bodily injury by driving: unlicensed, disqualified or uninsured drivers (Article 12B of that Order).

56. *Paragraph 21* would insert a new Schedule 3B to CICA which would set out the offences under the law of the RoI for which driving disqualifications are recognised for the purposes of section 56.

57. *Paragraph 22* would remove an amendment which was made in paragraph 93 of Schedule 21 to the Coroners and Justice Act 2009, which would be superseded by the amendment made by paragraph 2(4) of the new Schedule.

58. *Paragraph 23* would define a transitional period which would run from 1 December 2014 until the date when the amendments made in this Bill are in force and

the new bilateral agreement enters into force.

59. *Paragraph 24* would prevent the Secretary of State and the Department from having to comply with sections 55, 57 and 70(3) of CICA during the transitional period, i.e. when there is no international agreement on mutual recognition of driving disqualifications between the UK and the ROI.

60. Lords Amendments 108 and 111 would provide that the transitional provisions set out in paragraphs 23 to 25 of the new Schedule would come into force on the date of Royal Assent. *Paragraph 25* of the new Schedule would provide that paragraphs 23 and 24 are to be treated as having come into force on 1 December 2014, i.e. at the beginning of the transitional period.

61. *Paragraph 26* of the new Schedule states that once the transitional period ends, the Secretary of State and the Department would only be required to comply with sections 55, 57 and 70(3) in relation to offences committed after the end of the transitional period.

62. *Paragraph 27* states that none of the amendments to CICA in this Bill would affect the application of CICA to a case where a notice has already been given to an offender under section 57 of CICA before 1 December 2014.

Lords Amendments 70 to 72, 116, 118, 126 and 142

63. Lords Amendment 70 would create a new offence of disclosing private sexual photographs and films with intent to cause distress.

64. *Subsection (1)* would provide that this offence would be committed if the disclosure was made without the consent of an individual ("the victim") who appears in the photograph or film, and with the intention of causing that victim distress. *Subsection (8)* would make it clear that the defendant would not be taken to have the required intention merely because the distress naturally followed from the disclosure.

65. Subsection (1) is subject to *subsection (2)* which provides that the offence would not be committed if the photograph or film was only disclosed to the victim.

66. *Subsections (3), (4) and (5)* set out the defences which would apply to the offence. The burden of proving, under *subsection (3),* a reasonable belief that the disclosure was necessary to prevent, detect or investigate crime would be on the defendant.

67. However where the defendant provides sufficient evidence to raise an issue in respect to the matters set out in *subsections (4) and (5)* it would be for the prosecution to disprove those matters beyond all reasonable doubt in order to secure a conviction.

68. The defence in *subsection (4)* would in principle apply to those directly engaged in journalism or to their sources because the defence would apply both to

disclosure in the course of publication of journalistic material and to disclosure with a view to such publication. In either case the defendant would need to show that he or she reasonably believed that there was, in all the circumstances, a public interest in the publication in question. *Subsection (7)(b)* would define "publication" as disclosure to the public at large or to a section of the public.

69. The defence in *subsection (5)* would apply where the defendant could show that he or she reasonably believed that the photograph or film in question had previously been disclosed for reward; for example the defendant might have a reasonable belief that the photograph or film had previously been published on a commercial basis because he or she had seen it in a magazine. The previous disclosure for reward could have been made either by the victim of the offence or by another person. In addition the defendant would need to show that he or she had no reason to believe that this previous disclosure for reward was made without the consent of the victim of the offence. For example, the defence would fail if the prosecution proved that the victim had told the defendant that they did not consent to the previous disclosure for reward.

70. *Subsection (7)(a)* would clarify that, for the purposes of the offence, "consent" to the disclosure of the photograph or film (whether on the occasion to which the offence relates or on a previous occasion for commercial reward) could be general consent covering the disclosure of the material or specific consent to the particular disclosure in question.

71. *Subsection (9)* would provide that the offence of disclosing a private sexual photograph or film with intent to cause distress is triable either way and can therefore be tried in either a magistrates' court or the Crown Court. Until section 154(1) of the Criminal Justice Act 2003 comes into force, the maximum term of imprisonment on summary conviction would be 6 months (*subsection (11)). S*ection 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will remove the limit on fines that can be imposed in the magistrates' court. However, until it comes into force, any fine imposed must not exceed the statutory maximum *(subsection (12)).*

72. Lords Amendment 126 would insert a new Schedule into the Bill to address the position of providers of information society services in respect of clause *(Disclosing private sexual photographs and films with intent to cause distress)*, as inserted by Lords Amendment 70.

73. *Paragraph 1* of the new Schedule would extend liability to a service provider established in England and Wales (an "E&W service provider") in respect of a photograph or film which is disclosed in an EEA state other than the UK.

74. Sub-paragraph (2) of paragraph 1 would make clear that clause (*Disclosing private sexual photographs and films with intent to cause distress*) applies to an E&W service provider who discloses a photograph or film in the course of providing information society services in a European Economic Area state that is not the United

Kingdom.

75. Sub-paragraph (3) of paragraph 1 would provide for proceedings in respect of an offence under clause (*Disclosing private sexual photographs and films with intent to cause distress*) to be dealt with in any place in England and Wales as if it had been committed in that place.

76. *Paragraph 2* of the new Schedule would restrict when proceedings may be instituted against non-UK service providers in the European Economic Area.

77. Sub-paragraph (1) of paragraph 2 would apply paragraph 2 to a service provider established in a European Economic Area state other than the United Kingdom (a "non-UK service provider").

78. Sub-paragraphs (2) to (4) of paragraph 2 would set out the derogation conditions that must be satisfied for proceedings against a non-UK service provider to be instituted. These are where proceedings are necessary for the purposes of the pursuit of public policy, an information society service prejudices or presents a serious or grave risk of prejudice to the pursuit of public policy and is proportionate to the pursuit of public policy.

79. *Paragraph 3* of the new Schedule would set out exceptions for mere conduits.

80. Sub-paragraphs (1) to (3) of paragraph 3 would set out when a service provider is not capable of being guilty of an offence under clause (*Disclosing private sexual photographs and films with intent to cause distress*). The circumstances are where the information society service provided consists of the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service. In such circumstances the service provider is not capable of being guilty of an offence if it does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.

81. Sub-paragraph (4) of paragraph 3 would set out that if a service provider stores the information for longer than is reasonably necessary for the transmission it is capable of being guilty of an offence.

82. *Paragraph 4* of the new Schedule would set out exceptions for caching.

83. Sub-paragraph (1) of paragraph 4 would set out that paragraph 4 applies where an information society service consists of the transmission in a communication network of information provided by a recipient of the service.

84. Sub-paragraphs (2) to (4) of paragraph 4 would set out the circumstances in which a service provider is not capable of being guilty of an offence under clause (*Disclosing private sexual photographs and films with intent to cause distress*)

in respect of the automatic, intermediate and temporary storing of information. The circumstances are where: the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; and the service provider does not modify the information, complies with any conditions attached to having access to the information and expeditiously removes the information or disables access to it. The service provider should expeditiously remove the information where it obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the information has been disabled or a court or administrative authority has ordered its removal or disablement.

85. *Paragraph 5* of the new Schedule would set out an exception for hosting.

86. Sub-paragraphs (1) to (4) of paragraph 5 would set out the circumstances in which a service provider is not guilty of an offence under clause (*Disclosing private sexual photographs and films with intent to cause distress*) where in the course of providing an information society service it stores information provided by a recipient of the service. These circumstances apply where the recipient of the service is not acting under the authority or control of the service provider. The service provider must have no actual knowledge when the information was provided that it consisted of or included a private sexual photograph or film, that it was provided without the consent of an individual who appears in the photograph or film, or that the disclosure of the photograph or film was with the intention of causing distress to that individual. The service provider must, on obtaining such knowledge, expeditiously remove the information or disable access to it.

87. *Paragraph 6* of the new Schedule would define "disclose", "photograph or film", "recipient", "information society services", "service provider", and when a service provider is established in England and Wales or a European Economic Area state.

88. Lords Amendment 71 would define the terms "disclose" and "photograph or film" for the purposes of the offence in Lords Amendment 70.

89. By virtue of *subsections (2) and (3)* a disclosure would take place where a defendant, by any means, gives or shows the photograph or film to another person or makes it available to another person irrespective of whether the material in question had previously been disclosed to that person and whether or not the disclosure was for reward. Disclosure would therefore include electronic disclosure of a photograph or film, for example by posting it on a website or e-mailing to someone. It would also include the disclosure of a physical document, for example by giving a printed photograph to another person or displaying it in a place where other people would see it.

90. *Subsection (4*) would define "photograph or film". *Subsection (4)(a)* would make clear that the offence applies only to material which appears to be, or to contain,

a photographed or filmed image. A photographed or filmed image is a still or moving image (or part of an image) originally captured by photography or by the making of a film recording (*subsections (6) and (7)).* For example, an image, even if derived from a photograph, which has been digitally altered to look entirely like a drawing would not satisfy the test. But if a drawing had a photographed image or part of a photographed image transposed onto it, it would do so.

91. Where an image appears wholly or partly photographic, it will only fall within the terms of the offence if it is in fact derives wholly or partly from one or more photographed or filmed images (as to which see *subsection (4)(b)* and *subsections (6) and (7),* discussed above). The offence would therefore not apply if the disclosed material looked like a photograph but did not in fact contain any photographic element (for example because it had been generated entirely by computer).

92. By virtue of *subsection (5)* an image would still be considered to be a photograph or film for the purpose of the offence if it satisfied the requirement in subsection (4)(b), even if the original photograph or film recording had been altered in any way (for instance by being digitally enhanced). However, this is subject to *subsections (4) and (5)* of Lords Amendment 72 (see paragraphs 99 - 101 below).

93. *Subsection (8)* makes clear that references to a photograph or film include a negative version of a still or moving image that is a photograph or film and stored data that can be converted into such a still or moving image – for instance that which is stored on a hard drive or disc.

94. Lords Amendment 72 would explain the meaning of "private" and "sexual" for the purposes of the offence created by Lords Amendment 70.

95. The effect of *subsection (2)* would be to exclude from the ambit of the offence a photograph or film that shows something that is of a kind ordinarily seen in public. This means that a photograph or film of something sexual (such as people kissing) would not fall within the ambit of the offence if what was shown was the kind of thing that might ordinarily take place in public.

96. The effect of s*ubsection (3)(a)* is to provide that a disclosure of a photograph or film which shows all or part of an individual's exposed genitals or pubic area would be considered sexual for the purposes of the offence in Lords Amendment 70.

97. Where a photograph or film does not show such an image it would still, by virtue of *subsection (3)(b),* be considered sexual if a reasonable person would regard it as such because what is shown is by its nature sexual.

98. Where what is shown is not by its nature sexual, *subsection (3)(c)* would provide that a photograph or film is nevertheless to be considered sexual where a reasonable person would regard the content of the photograph or film when taken as a whole as sexual. For example, a photograph of someone wearing their underwear is

not necessarily sexual, but a reasonable person might consider it to be so if the content of the picture, including for example what else was (or was not) shown or the manner in which the person was posing, would lead a reasonable person to consider it as such.

99. *Subsections (4) and (5)* would set out the circumstances in which a photograph or film which contains content which is private or sexual is not to be considered private and sexual for the purposes of the offence created by Lords Amendment 70.

100. Those provisions would apply (*subsection (4))* where a photograph or film has been altered in any way (for example by manipulating a part of the image using a computer programme) or where the photograph or film combines a photographed or filmed image with either another such image (for example where two photographs have been spliced together) or another kind of image (for example where a photograph of individuals has been superimposed on a wholly computer generated picture).

101. An image of that kind would not be private and sexual if:

- no part of the photograph or film in question originated from a photographed or filmed image that was itself private and sexual;

- the photograph or film was only private or sexual because the photographed or filmed element has been altered or combined with other material (for example, where a non-sexual photograph or film recording had been altered to make it private and sexual, or where it has been placed next to another image in a way which made the image as a whole appear to be private and sexual);

- the victim of the offence only appeared as part of, or with, whatever made the photograph or film private and sexual because the photograph or film in question has been created in one of the ways set out in paragraph 100 above (for example, where a non-sexual photograph of a person has been merged with a sexual photograph that did not originally feature that person).

102. Lords Amendments 116 and 118 would amend the extent provision in order that the offence and its associated Schedule would extend to England and Wales only.

103. Lords Amendment 142 would amend the long title in consequence of Lords Amendments 70 to 72.

Lords Amendments 73 and 143

104. The new clause inserted by Lords Amendment 73 would amend the "grooming" offence under section 15 of the Sexual Offences Act 2003. The offence currently applies to a person who communicates with a child on at least two occasions, and who subsequently meets or arranges to meet that child in order to commit a sexual offence. This clause reduces the number of occasions on which the defendant must initially meet or communicate with the child, so that a single meeting

or communication will suffice.

Lords Amendment 74

105. Lords Amendment 74 resulted from a Government defeat. It would preclude the placing of any female or of any male under 15 years of age in a secure college provided under section 43 of the Prison Act 1952.

Lords Amendment 75

106. Lords Amendment 75 would change the definition of "arrested juvenile" in the Police and Criminal Evidence Act 1984 ("PACE") to include a person of the age of 17 (currently the definition covers 10 to 16 year olds).

107. The amendment would affect Part 4 of PACE. The effect of this change would be that where a 17 year old who is arrested and charged is not released (either on bail or without bail) then, as with 10 to 16 year olds, the police will be required, where practicable, to transfer them to local authority accommodation, as is required under section 38(6) of PACE. Currently 17 year olds who are denied bail would be kept in police custody before appearing at court.

108. For those 17 year olds where transfer to local authority accommodation is not practicable, the requirement under section 38(6)(a) to complete a certificate by way of explanation of their continued detention overnight at the police station would apply.

109. The amendment would also affect section 39 of PACE, so that a custody officer's responsibility to arrested 17 year olds (as with 10 to 16 year olds) would cease when they were moved to local authority accommodation.

Lords Amendments 76 to 81 and 132 to 139

110. Lords Amendment 76 would provide that a prosecutor must serve a single justice procedure notice on a designated officer for a magistrates' court (the person responsible for administrating the process) and not a specific court. This is already set out in the procedure as described in clause 38.

111. Lords Amendment 77 would fulfil a commitment made during House of Commons Committee to ensure a single justice can consider a defendant's driving record before sentencing. It would enable a single justice to consider documents *described* in the single justice procedure notice sent to the defendant as well as those *served* on the defendant.

112. Lords Amendment 78 would make explicit that where the defendant has indicated their wish to plead guilty in response to the single justice procedure notice, the court can try the case as if they have pleaded guilty. It converts a defendant's indication of a guilty plea into an actual guilty plea before the court.

113. Lords Amendment 79 would clarify two distinct circumstances in which a

single justice may not continue to consider a case under the single justice procedure, i.e. pre-conviction when considering whether the single justice procedure is appropriate for trying the case (see new section 16B(1)) and post-conviction when considering matters which come to light when considering sentencing (see new section 16C(1)).

114. Lords Amendment 80 would explicitly provide for the admissibility of evidence so that any statements served with or described in the single justice procedure notice (see Lords Amendment 77) can be taken as proof of the facts stated. It would make clear that a single justice can consider whether to proceed if the nature of the evidence suggests it would be inappropriate to do so.

115. Lords Amendment 81 would add to the sentencing powers of the single justice enabling them to make an order that the penalty points attributed to an offence are reduced after a certain period for attendance on a driving course. This is a currently uncommenced provision in section 30A of the Road Traffic Offenders Act 1988.

116. Lords Amendment 132 would enable a summons to be served in Scotland or Northern Ireland following a decision by a single justice that it was no longer appropriate to continue trying a case under the single justice procedure.

117. Lords Amendment 133 concerns cases where a single justice has adjourned a case because they are considering imposing a driving disqualification and the defendant wishes to make representations. The amendment would ensure that a traditionally-constituted magistrates' court could decide the case without having to go through the process of adjourning it again.

118. Lords Amendment 134 would introduce a test for dealing with defects in summons for single justice cases so that, where it is "likely" that the defendant has been misled by a variance between the written charge and prosecutor's evidence, the case would be considered unsuitable for the single justice procedure and referred to a traditional magistrates' court.

119. Lords Amendment 135 would clarify at what point under the single justice procedure a defendant subject to a possible driving disqualification would be required to produce their driving licence, i.e. after they have been notified of the court's intention to disqualify or at the hearing at which they intend to make representations.

120. Lords Amendment 136 relates to circumstances where a person has been issued a "receipt" after having surrendered their driving licence following the imposition of a fixed penalty notice. It would provide that in such cases a "receipt" can be produced rather the licence under the arrangements set out in Lords Amendment 135.

121. Lords Amendment 137 would ensure section 68 of the Pension Schemes Act 1993 applies to cases under the single justice procedure enabling a defendant facing

trial for non-payment of pension premiums to admit in writing to failing to pay other premiums allowing the court to sentence as if these other charges had been proven.

122. Lords Amendment 138 would ensure section 55 of the Vehicle Excise and Registration Act 1994 applies to cases tried under the single justice procedure. This section deals with the calculation of additional penalties which can be imposed on persons convicted in their absence of offences relating to keeping an unlicensed vehicle and dishonoured cheques.

123. Lords Amendment 139 would ensure that section 164(5) of the Criminal Justice Act 2003 - which enables a court to fix a fine without sufficient information to make a proper determination of the financial circumstances of a defendant convicted in his or her absence - covered cases tried under the single justice procedure.

Lords Amendment 82

124. Lords Amendment 82 would increase the time limit for bringing prosecutions for offences under section 127 of the Communications Act 2003 from six months from the date of the offence to three years from that date, provided that the prosecution is brought not more than six months after evidence which the prosecutor considers sufficient to justice proceedings comes to the prosecutor's knowledge. This amendment would be in keeping with clause 27 of the Bill which has the effect of extending the time limit for prosecution for the offence in section 1 of the Malicious Communications Act 1988. The effect of this amendment therefore would be to bring the prosecution time limits for these complementary offences into line and allow more time for investigation.

Lords Amendment 83, 108 and 109

125. Lords Amendment 83 would clarify the effect of section 22A of the Magistrates' Courts Act 1980, inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014, which made theft from a shop of property valued at £200 or less a summary offence.

126. The defendant's right to elect to be tried in the Crown Court was retained. Lords Amendment 83 would make it clear that a low-value shoplifting case in which the defendant elects to be tried in the Crown Court is to be treated in the same manner as an either-way offence in which the defendant has so elected. Lords Amendments 108 and 109 would amend the Bill's commencement provisions so that these changes take effect two months after the Bill is passed.

Lords Amendment 84

127. Lords Amendment 84 would replace *subsection (5)* of clause 45 (personal injury claims: cases of fundamental dishonesty) with a new subsection. The amendment is intended to clarify that when assessing costs in the proceedings, a court which dismisses a claim under this clause must deduct the amount recorded in accordance with *subsection (4)* from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant. For example, if the

amount of damages which the court records that it would have awarded but for the finding of fundamental dishonesty were £50,000, and (but for subsection (5)) the claimant would have been ordered to pay the defendant's costs in the sum of £100,000, the court must order the claimant to pay the defendant only £50,000 in total.

Lords Amendment 85 to 88 and 117

128. Lords Amendment 85 would ban the offer of a benefit by a regulated person (as defined in Lords Amendment 87) to a potential claimant where the benefit offered is an inducement in respect of a personal injury claim and is not related to the provision of legal services in connection with the claim. *Subsection (2)* would provide that the offer of a benefit is an inducement if that benefit is intended to encourage, or is likely to have the effect of encouraging, a person either to make a personal injury claim or to seek advice from a legal service provider with a view to making such a claim. *Subsection (4)* would prevent such offers being routed via a third party. Lords Amendment 87 would define "benefit" as any benefit, whether or not in money or other property and whether temporary or permanent, and any opportunity to obtain a benefit (for example, the offer to be entered in a draw for a prize).

129. Lords Amendment 86 would require relevant regulators to have arrangements in place to monitor and enforce the ban on offering inducements to make personal injury claims. *Subsections (2) and (3)* would permit regulators to make rules and to use existing powers to enable them to monitor and enforce the ban. *Subsection (4)* would provide that a breach of the ban would not make a person guilty of an offence or give rise to a right of action for breach of statutory duty.

130. Under *subsection (6),* rules would be able to provide for the offer of a benefit to be treated as an inducement to make a claim unless the regulated person can show that the benefit was not offered as an inducement, either because it was offered for a reason other than encouraging the person to make a claim or to seek advice from the regulated person about making a claim, or because the benefit offered was related to the provision of legal services in connection with the claim. *Subsection (5)* defines the circumstances in which *subsection (6*) applies.

131. In Lords Amendment 87, *subsection (1)* would list both the regulators who are required to monitor and enforce the ban on offering inducements to potential claimants in respect of personal injury claims (including the General Council of the Bar, the Law Society and the Chartered Institute of Legal Executives) and those legal service providers to whom the ban would apply ("regulated persons", namely barristers, legal executives, solicitors and alternative business structures). The Lord Chancellor would have power by regulations to extend the prohibition and the duty to monitor and enforce it to other regulators and regulated persons, if required. *Subsection (2)* provides relevant definitions.

132. Lords Amendment 88 would provide that regulations made under the new

clauses inserted by Lords Amendment 85 *(Rules against inducement to make personal injury claims)* and Lords Amendment 87 *(Inducements: interpretation)* would be made by statutory instrument. Regulations made under the new clause inserted by Lords Amendment 85 would be subject to the affirmative procedure and regulations made under the new clause inserted by Lords Amendment 87 would be subject to the negative procedure.

133. Lords Amendment 117 would provide for the new clauses inserted by Lords Amendments 85 to 88 to extend to England and Wales only.

Lords Amendments 89 and 110

134. Section 53 of the Mental Capacity Act 2005 ("2005 Act") sets out the routes of appeal for cases in the Court of Protection. The general position is that appeals from any level of judge of that Court must lie to the Court of Appeal (see section 53(1)). However, section 53(2) provides that rules of court may make provision for appeals from certain levels of judge in the Court of Protection to lie to another judge within that Court.

135. The Crime and Courts Act 2013 added to the categories of judge in section 46 of the 2005 Act who are eligible for nomination to sit in the Court of Protection, but did not expand section 53(2) of the 2005 Act to enable appeals from any of the new categories of judge to lie within the Court of Protection. The result of this is that appeals from decisions of these additional categories of judge lie automatically to the Court of Appeal. This is likely to create additional work for that Court when the new categories of judge are deployed.

136. Lords Amendment 89 would enable rules of court to be made allowing appeals to be heard, where appropriate, within the Court of Protection rather than by the Court of Appeal. The rule-making power at section 53 is amended to permit appeals from decisions of any judge sitting in the Court of Protection, or of authorised officers, to lie to a specified description of judge in the Court of Protection. The power would be exercisable in relation to further appeals from decisions on appeal by judges.

137. Lords Amendment 110 would provide that the new clause inserted by Lords Amendment 89 comes into force on the day in which the Bill receives Royal Assent.

Lords Amendments 90, 91 and 113

138. Lords Amendments 90 and 91 would remove clauses 51 and 52 from the Bill. Clause 51 amends the Contempt of Court Act 1981 to give a defence to publishers where they first made material available to the public prior to active proceedings, even if that material could prejudice a trial. The defence is available to publishers or distributors unless and until the Attorney General has given notice to the publisher or distributor that proceedings are active and that the material could prejudice it. Clause 52 provides a related right of appeal against court injunctions. Removing these clauses would mean that the operation of the strict liability rule under the Contempt of Court Act 1981 was unchanged. Lords Amendment 113 would remove subsection (2) in

clause 76, which provides for most of clauses 51 and 52 to extend to England and Wales only.

Lords Amendments 92 to 94, 112, 114 and 141
Lifetime reporting restrictions in criminal proceedings for witnesses and victims under 18

139. Lords Amendment 92 would insert a clause to make provision in respect of lifelong reporting restrictions ('a reporting direction') for victims and witnesses under the age of 18 involved in criminal proceedings or proceedings before a service court.

140. *Subsection (2)* of the clause would insert a new section 45A into the Youth Justice and Criminal Evidence Act 1999. Section 45A would apply in any criminal proceedings in any court in England and Wales and any proceedings in any service court in the United Kingdom or elsewhere. The power to make a reporting direction would be exercisable in respect of a witness or victim who was under 18 when those proceedings commenced.

141. Under new section 45A, the court would be able to make a reporting direction lasting for the lifetime of a victim or witness. It would be able to do so if satisfied that the quality of the evidence given, or the level of co-operation given to any party to the proceedings in connection with the preparation of that party's case, is likely to be diminished by reason of fear or distress at being identified as a person concerned in the proceedings.

142. In determining whether to make a reporting direction the court would have to have regard to the welfare of the person, whether it would be in the interests of justice to make the reporting direction and the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.

143. Either at the same time as a reporting direction is made or subsequently, the court would be able to make an excepting direction to dispense, to any extent specified, with the restrictions imposed. However, an excepting direction could only be made if the court is satisfied that it is necessary in the interest of justice to do so or if it is satisfied that the effect of the reporting direction is to impose a substantial and unreasonable restriction on the reporting of proceedings and it is in the public interest to remove or relax that restriction.

144. *Subsection (3)(a)* of the clause inserted by Lords Amendment 92 would amend section 49 of the Youth Justice and Criminal Evidence Act 1999 to provide that breach of a direction under new section 45A would be a criminal offence under section 49. On summary conviction a person guilty of an offence under section 49 is currently liable to a fine not exceeding level 5 on the standard scale.

145. *Subsection (4)* of the new clause would amend section 50 of the Youth Justice and Criminal Evidence Act 1999 to provide that it would be a defence to prove that written consent to the publication had been given by the witness or victim concerned.

That defence would not apply to the extent that the person was aged under 18 at the time consent was given or that the peace or comfort of the person giving consent had been interfered with.

146. *Subsection (3)(b)* would insert a new subsection (7) into section 49 of the Youth Justice and Criminal Evidence Act 1999 to introduce new Schedule 2A to that Act, which would deal with the position of persons providing information society services in respect of contravening a direction under new section 45A. New Schedule 2A would be inserted by the new Schedule to the Bill provided by Lords Amendments 94 and 141.

Reporting restrictions in proceedings other than criminal proceedings

147. Lords Amendment 93 would insert a new clause which amends section 39 of the Children and Young Persons Act 1933. The effect of *subsection (2)(a)* of the new clause would be to limit the application of section 39 to any proceedings other than criminal proceedings. Section 39 would also be amended to provide that a court may direct that particulars calculated to lead to the identification of a child or young person may not be included in what is defined as a publication. Currently, section 39 applies only in respect of newspapers and sound and television broadcasts; *subsection (7)* of the new clause would insert a new subsection (3) into section 39 to provide a definition of publication, which would include publication by on-line means, in substantially the same terms as that applicable to new section 45A of the Youth Justice and Criminal Evidence Act 1999, inserted by Lords Amendment 92 (see the definition in section 63 of that Act).

148. *Subsection (9)* would insert a new section 39A into the Children and Young Persons Act 1933 to introduce new Schedule 1A to that Act, which would deal with the position of persons providing information society services in respect of contravening a direction under section 39. New Schedule 1A would be inserted by the new Schedule to the Bill provided by Lords Amendments 94 and 141.

149. *Subsection (10)* would amend section 57(3) of the Children and Young Persons Act 1963 to preserve the effect of section 39 of the Children and Young Persons Act 1933 as regards Scotland. The amendment would provide that references to "publication" in section 39 have effect in Scotland as if they were references to a newspaper. (Section 57(4) of the 1963 Act would continue to provide that section 39 of the 1933 Act also applies to sound and television broadcasts.)

150. *Subsection (11)* would make consequential amendments to Schedule 2 of the Youth Justice and Criminal Evidence Act 1999.

151. *Subsection (12)* would ensure that in respect of criminal proceedings instituted the day before the clause inserted by Lords Amendment 93 comes into force, section 39 of the Children and Young Persons Act 1933 would continue to have effect as if the amendments had not been made.

152. *Subsection (13)* would define when proceedings and proceedings on appeal are "instituted" by reference to the Prosecution of Offences Act 1985 and the Criminal Appeal Act 1995.

Reporting restrictions: information society services

153. Lords Amendment 94 would insert a new clause into the Bill to introduce the new Schedule to be inserted by Lords Amendment 141.

Reporting restrictions: providers of information society services

154. Lords Amendment 141 would insert a new Schedule into the Bill to address the position of providers of information society services in respect of the offences under section 39 of the Children and Young Persons Act 1933, as amended by the clause inserted by Lords Amendment 93, and under section 49 of the Youth Justice and Criminal Evidence Act 1999, as amended by the clause inserted by Lords Amendment 92.

155. *Paragraph 1* of the new Schedule inserted by Lords Amendment 141 would insert new Schedule 1A into the Children and Young Persons Act 1933.

156. Paragraph 1 of the new Schedule 1A would extend liability to a service provider established in England and Wales (a "domestic service provider") in respect of matter published in an EEA state other than the UK.

157. Sub-paragraph (2) of paragraph 1 would make it clear that section 39 of the Children and Young Persons Act 1933 applies to a "domestic service provider" who includes a matter in a publication in the course of providing information society services in a European Economic Area state that is not the United Kingdom.

158. Sub-paragraph (3) of paragraph 1 would provide for proceedings in respect of offences under section 39 of the Children and Young Persons Act 1933 to be dealt with in any place in England and Wales as if it had been committed in that place.

159. Paragraph 2 would restrict when proceedings may be instituted against non-UK service providers in the European Economic Area.

160. Sub-paragraph (1) of paragraph 2 would apply paragraph 2 to a service provider established in a European Economic Area state other than the United Kingdom (a "non-UK service provider").

161. Sub-paragraphs (2) to (4) of paragraph 2 would set out the derogation conditions that must be satisfied for proceedings against a non-UK service provider to be instituted. These are where proceedings are necessary for the purposes of the pursuit of public policy, an information society service prejudices or presents a serious or grave risk of prejudice to the pursuit of public policy and is proportionate to the pursuit of public policy.

162. Paragraph 3 would set out exceptions for mere conduits.

163. Sub-paragraphs (1) to (3) of paragraph 3 would set out when a service provider is not capable of being guilty of an offence under section 39 of the Children and Young Persons Act 1933. The circumstances are where the information society service provided consists of the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service. In such circumstances the service provider is not capable of being guilty of an offence if it does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.

164. Sub-paragraph (4) of paragraph 3 would set out that if a service provider stores the information for longer than is reasonably necessary for the transmission it is capable of being guilty of an offence.

165. Paragraph 4 would set out exceptions for caching.

166. Sub-paragraph (1) of paragraph 4 would set out that paragraph 4 applies where an information society service consists of the transmission in a communication network of information provided by a recipient of the service.

167. Sub-paragraph (2) to (4) of paragraph 4 would set out the circumstances in which a service provider is not capable of being guilty of an offence under section 39 of the Children and Young Persons Act 1933 in respect of the automatic, intermediate and temporary storing of information. The circumstances are where: the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; and the service provider does not modify the information, complies with any conditions attached to having access to the information and expeditiously removes the information or disables access to it. The service provider should expeditiously remove the information where it obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the information has been disabled or a court or administrative authority has ordered its removal or disablement.

168. Paragraph 5 would set out an exception for hosting.

169. Sub-paragraphs (1) to (4) of paragraph 5 would set out the circumstances in which a service provider is not guilty of an offence under section 39 of the Children and Young Persons Act 1933 where in the course of providing an information society service it stores information provided by a recipient of the service. These circumstances apply where the recipient of the service is not acting under the authority or control of the service provider. The service provider must have no actual knowledge when the information was provided that it consisted of or included matter whose inclusion in a publication is prohibited by a direction under section 39 of the Children and Young Persons Act 1933. The service provider must, on obtaining

knowledge that the matter is so prohibited, expeditiously remove the information or disable access to it.

170. For the purposes of Schedule 1A, paragraph 6 would define "publication", "information society services", "recipient", "service provider", and when a service provider is established in England and Wales or a European Economic Area state.

171. *Paragraph 2* of the new Schedule inserted by Lords Amendment 141 would insert new Schedule 2A into the Youth Justice and Criminal Evidence Act 1999.

172. Paragraph 1 of new Schedule 2A would extend liability to a service provider established in England and Wales, Scotland or Northern Ireland (a "domestic service provider") in respect of matter published in an EEA state other than the UK.

173. Sub-paragraph (2) of paragraph 1 would apply section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication falling within section 49(1A)(a) of that Act, to a "domestic service provider" who includes a matter in a publication in the course of providing information society services in a European Economic Area state.

174. Sub-paragraph (3) of paragraph 1 would provide for proceedings in respect of offences under section 49 of the Youth Justice and Criminal Evidence Act 1999 to be dealt with in any place in England and Wales, Scotland and Northern Ireland as if it had been committed in that place.

175. Sub-paragraphs (4) and (5) of paragraph 1 would set out that section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication falling within section 49(1A)(b) of that Act, applies to a domestic service provider established in England and Wales who in the course of providing information society services includes a matter in a publication in a European Economic Area state other than the UK. Proceedings in respect of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999 would be dealt with in any place in England and Wales as if it had been committed in that place.

176. Paragraph 2 would restrict when proceedings may be instituted against non-UK service providers in the European Economic Area.

177. Sub-paragraph (1) of paragraph 2 would apply paragraph 2 to a service provider established in a European Economic Area state other than the United Kingdom (a "non-UK service provider").

178. Sub-paragraphs (2) to (4) of paragraph 2 would set out the derogation conditions that must be satisfied for proceedings against a non-UK service provider to be instituted in respect of a publication that includes matter in contravention of a direction under section 45A(2) of the Youth Justice and Criminal Evidence Act 1999. These are where proceedings are necessary for the purposes of the pursuit of public

policy, an information society service prejudices or presents a serious or grave risk of prejudice to the pursuit of public policy and is proportionate to the pursuit of public policy.

179. Paragraph 3 would set out exceptions for mere conduits.

180. Sub-paragraphs (1) to (3) of paragraph 3 would set out when a service provider is not capable of being guilty of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999 in respect of a publication that includes matter in contravention of a direction under section 45A(2) of that Act. The circumstances are where the information society service provided consists of the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service. In such circumstances the service provider is not capable of being guilty of an offence if it does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.

181. Sub-paragraph (4) of paragraph 3 would set out that if a service provider stores the information for longer than is reasonably necessary for the transmission it is capable of being guilty of an offence.

182. Paragraph 4 would set out exceptions for caching.

183. Sub-paragraph (1) of paragraph 4 would set out that paragraph 4 applies where an information society service is the transmission in a communication network of information provided by a recipient of the service.

184. Sub-paragraphs (2) to (4) of paragraph 4 would set out the circumstances in which a service provider is not capable of being guilty of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication that includes matter in contravention of a direction under section 45A(2) of that Act, in respect of the automatic, intermediate and temporary storing of information. The circumstances are where: the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; and the service provider does not modify the information, complies with any conditions attached to having access to the information and expeditiously removes the information or disables access to it. The service provider should expeditiously remove the information where it obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the information has been disabled or a court or administrative authority has ordered its removal or disablement.

185. Paragraph 5 would set out an exception for hosting.

186. Sub-paragraphs (1) to (4) of paragraph 5 would set out the circumstances in which a service provider is not guilty of an offence under section 49 of the Youth

Justice and Criminal Evidence Act 1999, so far as it relates to a matter in contravention of section 45A(2) of that Act, where in the course of providing an information society service it stores information provided by a recipient of the service. These circumstances apply where the recipient of the service is not acting under the authority or control of the service provider. The service provider must have no actual knowledge when the information was provided that it consisted of or included matter whose inclusion in a publication is prohibited by a direction under section 45A(2) of the Youth Justice and Criminal Evidence Act 1999. The service provider must, on obtaining knowledge that the matter is so prohibited, expeditiously remove the information or disable access to it.

187. For the purposes of new Schedule 2A, paragraph 6 would define "information society services", "recipient", "service provider", and when a service provider is established in England and Wales, Scotland or Northern Ireland or a European Economic Area state. "Publication" is defined in section 63(1) of the Youth Justice and Criminal Evidence Act 1999 (for the purposes of Part 2 of that Act).

188. Lords Amendments 112 and 114 would amend clause 76 (extent) to provide that the new section 39A of, and the new Schedule 1A to, the Children and Young Persons Act 1933 extend to England and Wales only.

Lords Amendments 95 and 96

189. Lords Amendment 95 would introduce in section 5 of the Constitutional Reform Act 2005 the ability for the President of the UK Supreme Court to have the power to make written representations to Parliament in relation to the Supreme Court and the jurisdiction it exercises.

190. Lords Amendment 96 would enable senior judges from England and Wales, Scotland and Northern Ireland who are under 75 to be added to the supplementary panel of the Supreme Court within two years of their retirement.

Lords Amendments 97 to 102

191. Lords Amendments 97 to 102 resulted from a Government defeat. Lords Amendments 97 and 98 would provide that the High Court has a discretion to refuse to grant a remedy, including an award of damages, restitution or the recovery of a sum due pursuant to section 31(4) of the Senior Courts Act 1981, where it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.

192. This change to clause 64(1) would affect the Upper Tribunal's "judicial review" jurisdiction in England and Wales, because the provision added to section 31 of the Senior Courts Act 1981 by clause 64(1) is applied to the Upper Tribunal by the provision added to section 15 of the Tribunals, Courts and Enforcement Act 2007 by clause 64(4).

193. Lords Amendments 99 and 100 relate to the stage when the High Court

considers whether to grant leave to make an application for judicial review.

194. Lords Amendment 99 would give the High Court discretion, if asked to do so by the defendant, to consider whether it was highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of in the application for judicial review had not occurred.

195. Lords Amendment 100 would give the High Court discretion to refuse permission to apply for judicial review where it is satisfied that it is highly likely that the outcome for the applicant would not have been substantially different had the conduct complained of in the application for judicial review not occurred.

196. Lords Amendments 101 and 102 would make equivalent provision in respect of consideration by the Upper Tribunal of whether to grant permission to make an application for relief under section 15 of the Tribunals, Courts and Enforcement Act 2007.

Lords Amendments 103 to 106

197. Lords Amendments 103 to 106 resulted from a Government defeat. Lords Amendment 103 would give the High Court a discretion to grant permission on an application for judicial review under the law of England and Wales, even though the claimant had not provided the information about the financing of the judicial review that is otherwise required by clause 65.

198. Lords Amendment 104 would make equivalent provision in relation to the Upper Tribunal.

199. Lords Amendments 105 and 106 would give the High Court, the Upper Tribunal and the Court of Appeal discretion, when making costs orders in connection with judicial review proceedings, to consider information about the financing of the proceedings and to consider whether to order costs to be paid by a person who, although not a party to the judicial review, is identified in that information as financially assisting the proceedings.

Lords Amendment 107

200. Lords Amendment 107 resulted from a Government defeat. It would remove the proposed requirement for the High Court and the Court of Appeal to order an intervener in judicial review proceedings to pay their own costs and the costs that other parties have incurred as a result of their intervention (unless there are exceptional circumstances). Instead, it would give the High Court and the Court of Appeal a discretion to require those who intervene to pay the costs of the other parties to the judicial review and discretion to require the other parties to the judicial review to pay any costs of the intervener.

Lords Amendments 127 to 130

201. Lords Amendments 127 to 130 would add references to secure colleges in

provisions of the Welsh language text of the Social Services and Well-being (Wales) Act 2014, consistent with amendments made by Schedule 5 to the English language text.

Lords Amendment 131

202. Lords Amendment 131 would amend section 52 of the Prison Act 1952 and make any rules which authorise secure college custody officers performing custodial duties at a secure college to use reasonable force, or which otherwise make a substantive change to the circumstances in which secure college custody officers are authorised to use reasonable force, subject to the affirmative resolution procedure.

Lords Amendment 140

203. Lords Amendment 140 would amend section 13(3)(a) of the Proceeds of Crime Act 2002. Section 13(2) of that Act provides that a court must take account of a confiscation order before it imposes a fine on the defendant or makes another order listed in subsection (3). The list in subsection (3) includes an order involving payment by the defendant, subject to certain exceptions. Lords Amendment 140 would provide that an order imposing the criminal courts charge is one of the exceptions, so that the court does not have to take account of any confiscation order before imposing the charge.