Annex A – Measures to Clarify or Resolve Legislative Inconsistencies

1) **Responsibility for setting licence conditions:** The current legislation on responsibility for setting and varying licence conditions when offenders are released from prison on licence will be changed to ensure there is a clear and consistent approach across all types of sentences. Provision will be made so that, in cases where the Parole Board directs the release of a prisoner, the Board is responsible for setting the licence conditions and for any subsequent variation. In cases where the Secretary of State has a duty to release the prisoner at their automatic release date, the responsibility for the licence will sit with the Secretary of State. This will achieve greater consistency between sentence types in how licence conditions are set and create a system which is more straightforward to operate in practice.

2) **Powers for the Parole Board to re-open cases**: In July 2019, a 'reconsideration mechanism' was introduced that allows parole decisions to be re-taken if they are procedurally unfair or irrational. However, only so much could be achieved through secondary legislation and reconsideration does not permit decisions to be re-taken where, for example, the decision is based on inaccurate evidence, or where new evidence comes to light after a decision has been made which suggests an offender's level of risk is higher than assessed by the Parole Board. We will address this by making legislative changes to confer on the Secretary of State the power to make Rules in respect of:

    a) Allowing the Parole Board to set aside a release decision in cases where the Board accepts that the decision was made on the basis of a clear mistake of law or fact. This will enable legally flawed decisions to be corrected without having to get them overturned by the High Court through judicial review;
    b) Allowing the Secretary of State to refer a case back to the Parole Board following a release decision where there is new information or adverse developments which suggest the prisoner cannot safely be released. The Board would have the power to re-open the case and examine the further evidence about the prisoner's risk before making a further decision about release.

3) **Amend the Criminal Justice Act 2003 in order to remove the requirement for a further annual parole review for recalled determinate prisoners where they have 13 months or less left to serve**: We are currently required to refer recalled determinate sentence prisoners to the Parole Board every 12 months and the timing is calculated from the date of their previous parole decision. If a prisoner has between 12 and 13 months left until the end of their sentence at the point of receiving their parole decision, then their next referral would be due to take place only 1 – 4 weeks before their automatic release date and there would be little point in trying to conduct a further Parole Board review in circumstances where the prisoner is shortly to be automatically released anyway. In practice, the review could not be completed before the prisoner has to be released at the end of their sentence. In our view, therefore, a further referral at that point serves no useful purpose and is a waste of resources which is why we intend to amend the legislation, so this is no longer required.

4) Repeal of 'Recall Adjudicator' un-commenced provisions (Section 8, part of section 9 and Schedule 3 of the Criminal Justice and Courts Act 2015): The creation of recall adjudicators had been proposed in the 2015 Act, in order reduce pressure on the Parole Board because of the large and increasing backlog of oral hearings that had

developed since the '*Osborn*' Supreme Court judgment in 2013. However, following Royal Assent, implementation was delayed by the General Election and appointment of a new SoS (Michael Gove). By that point, the position with the Parole Board backlog had been brought under control and new ways of working had enabled the Board to keep on top of the oral hearings it needed to conduct. The new SoS at the time decided the Recall Adjudicator provisions were not needed (he saw no need to set up and appoint a new / separate body of decision makers) so these provisions became redundant and were never commenced.

5) **Create an exemption to prevent the need to refer determinate sentence recalled prisoners to the Parole Board every 12 months where another sentence prevents release. The new provision will allow the next parole review to coincide with the end release point of the new sentence:** As mentioned above, we are currently required to refer recalled determinate prisoners to the Parole Board every 12 months. The legislation does not allow for any exemptions to this, meaning that cases must be referred even where the prisoners have received new sentences and therefore cannot be released regardless of any parole decision. There is no practical benefit to the Parole Board reviewing a case until the prisoner has reached the point when they may potentially be released from all the sentences they are currently serving. These referrals during the custodial element of another sentence serve no useful purpose and are a waste of resources.

6) **Amend the Criminal Justice 2003 and the Crime (Sentences) Act 1997 to remove the requirement for the Parole Board to direct, in respect of recall, 'immediate' release or, for determinate sentences prisoners, release on a fixed date:** All other provisions for release just empower the Board to direct release without the need to differentiate between "immediate" or "fixed date". Parole decisions for recalled prisoners will often describe the decision as requiring 'immediate release' which is unhelpful. It creates false expectations for prisoners because their release is still subject to arrangements being in place, such as approved premises beds. We would resist any accusation that this amendment weakens the Parole Board's powers in any way because they are still directing release and the new provision will just achieve greater consistency across the range of cases the Board deal with. HMPPS strive to release prisoners as quickly as possible in response to PB decisions so this change will not lead to delayed releases.

7) **Make amendments to discretionary driving disqualification provisions:** Following recent changes to release policy for offenders in England and Wales (and, for terrorist offenders, in Scotland as well), we have considered the legislation that provides for an appropriate extension period when a driving disqualification is imposed with a custodial sentence. We are now seeking to amend such legislation to ensure that an appropriate extension period is of a length that accurately correlates with the relevant release point of the associated custodial sentence. The relevant legislative provisions governing driver disqualifications function in a way that ensures the overall disqualification period is to be served, as far as is possible, after release from custody. Without these changes in legislation, part of the driving disqualification will be subsumed by the time the offender spends in custody – i.e. less of the driving ban will be experienced by the offender upon release, lessening its punitive impact.

8) **Streamline release measures for use of nuclear material and weapons-related acts overseas:** We will use this Bill to streamline the release point for two specific (and very

rarely charged) offences relating to the use of nuclear material and weapons-related acts overseas, to ensure where the offender is sentenced to a standard determinate sentence of 7 years or more they will be automatically released after two-thirds of their sentence. This is necessary as the offences, though serious, are not inherently terroristic offences and ought properly to be located in the Violent Offences Part of Schedule 15.

9) **Raise the age limit of the Youth Rehabilitation Order (YRO) education requirement:** Currently an education requirement on a YRO can only be used when the offender is of compulsory school age (under 16). The introduction of the compulsory education or training requirement for children in England up to age 18 in the Education and Skills Act has led to an inconsistency in England where some 16 and 17-year-olds who are given YROs are ineligible for an education requirement, even though they may still be in compulsory education or training. This change will allow a court to impose an education requirement on a YRO for children aged 16 and 17 if they are still in compulsory education or training.

10) **Change of Responsible Officer for Youth Rehabilitation Orders:** The Responsible Officer for YROs with electronic monitoring requirements will be changed from the EM provider to the Youth Offending Team.

11) **Establish a legal power for Secure Children's Homes (SCH) (and future secure schools) to temporarily release children in custody:** This measure introduces a clear statutory power to enable the Secretary of State and SCH providers to temporarily release children in custody in SCHs. As secure schools will be legally constituted as SCHs, this will also confer autonomy to secure school providers to take decisions about temporary release in secure schools. This will contribute to a consistent approach to temporary release across the youth secure estate.

12) **Clarify that a secure 16 to 19 academy can provide secure accommodation for the purpose of restricting liberty as a "secure 16 to 19 academy:"** For the avoidance of doubt, this measure clarifies that the provision of secure accommodation for the purpose of restricting liberty is not fatal to the requirement that 16-19 academies be "principally concerned" with providing education to young people within that age range. It also provides that a secure 16 to 19 academy must receive approval from the Secretary of State to provide secure accommodation for the purpose of restricting liberty. This will ensure that regulations regarding secure 16 to 19 academies are consistent with existing regulations regarding secure children's homes, which must receive approval from the Secretary of State to restrict liberty.

13) **Repeal defunct provisions in Schedule 1 of the Repatriation of Prisoners Act:** The Repatriation of Prisoners Act 1984 has been subject to many amendments over the years. In order to provide clarity to the Schedule, we are repealing defunct provisions as inserted by the Criminal Justice and Immigration Act 2008.