

POLICE, CRIME, SENTENCING AND COURTS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Police, Crime, Sentencing and Courts Bill as brought from the House of Lords on 25 January 2022.
- 2 These Explanatory Notes have been prepared by the Home Office, Ministry of Justice, Department for Transport and Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 40, the Bill as first printed for the Lords.
- 4 These Explanatory 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 Lords amendments.
- 5 Lords Amendments 1 to 57, 59 to 69, 74 to 79, 83 to 86, 88, 90 to 106, 108 to 113, 117 to 140, 144, 145 and 147 to 161 were tabled in the name of the Minister.
- 6 Lords Amendment 58 was tabled by Lord Rooker, and was opposed by the Government.
- 7 Lords Amendment 70 was tabled by Lord Ponsonby of Shulbrede, and was opposed by the Government.
- 8 Lords Amendments 71 and 73 were tabled by Lord Rosser, and was opposed by the Government.
- 9 Lords Amendment 72 was tabled by Baroness Newlove, and was opposed by the Government.
- 10 Lords Amendments 80 and 87 were tabled by Lord Paddick, and were opposed by the Government.
- 11 Lords Amendments 81 and 82 were tabled by Viscount Colville of Culross, and were opposed by the Government.
- 12 Lords Amendments 89 and 146 were tabled by Lord Best, and were opposed by the Government.
- 13 Lords Amendment 107 was tabled by Lord German, and was opposed by the Government.
- 14 Lords Amendments 114 to 116 were tabled by Baroness Meacher, and were opposed by the Government.

- 15 Lords Amendments 141 and 142 were tabled by Lord Ponsonby of Shulbrede, and were opposed by the Government.
- 16 Lords Amendment 143 was tabled by Lord Coaker, and was opposed by the Government.
- 17 In the following Commentary, an asterisk (*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Lords Amendments to Part 1: Protection of the police etc.

Lords Amendments 1 and 150: Required life sentence for manslaughter of emergency worker

- 18 Subsection (6) would insert a new section 258A into the Sentencing Act 2020 (“the Code”).
- 19 New section 258A(1) sets out the circumstances in which the provision applies, namely, where a person aged under 18 is convicted of a “relevant offence”; that the offence was committed when the person was aged 16 or over and on or after the date on which the provision comes into force, and the offence was committed against an emergency worker acting in the exercise of functions as such a worker.
- 20 New section 258A(2) provides that where section 258A applies, the court must impose a sentence of detention for life unless the court is of the opinion that there are exceptional circumstances which relate to the offence or the offender and justify not doing so. New section 258A(3) clarifies that if at the time the offence was committed the victim was not at work but was carrying out functions which, if done in work time, would have been in the exercise of their functions, they will be considered to be an emergency worker acting in exercise of their functions for the purposes of subsection (1).
- 21 New section 258A(4) defines “relevant offence” to mean the offence of manslaughter, excluding manslaughter by gross negligence, and manslaughter arising from a partial defence to murder.
- 22 New section 258A(5) defines “emergency worker” by reference to section 68 of the Code. Section 68(1) sets out that “emergency worker” means:
 - a constable;
 - a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;
 - a National Crime Agency officer;
 - a prison officer;
 - a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;
 - a prisoner custody officer, so far as relating to the exercise of escort functions;
 - a custody officer, so far as relating to the exercise of escort functions;
 - a person employed for the purposes of providing, or engaged to provide fire services or fire and rescue services;
 - a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);

- a person employed for the purposes of providing, or engaged to provide—
 - NHS health services, or
 - services in the support of the provision of NHS health services,
 - and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.
- 23 New section 258A(6) provides that the sentence is not to be regarded as an offence “the sentence for which is fixed by law”. New section 258A(7) sets out when an offence is taken to have been committed if it is committed over a period of 2 or more days; namely, on the last of the days.
- 24 Subsection (9) would insert a new section 274A into the Code. New section 274A makes the same provision as the new section 258A but in respect of the sentence of custody for life for persons aged 18 or over but under 21.
- 25 Subsection (11) would insert a new section 285A into the Code. New section 285A makes the same provision as the new section 258A but in respect of the sentence of imprisonment for life for persons aged 21 or over.
- 26 Subsections (7) and (8), (10) and (12)-(16) of the clause would make consequential amendments to the Code, and other relevant legislation, so that new sections 258A, 274A and 285A can function correctly.
- 27 Subsection (13) would provide that the new measure is a ‘mandatory sentence requirement’ under section 399 of the Code, which restricts the way a Court can deal with the offender in various ways.
- 28 Subsections (14) and (15) would make amendments to Schedule 22, which contains pending consequential amendments to the Code in the event that the pre-existing power in section 61 of the Criminal Justice and Court Services Act 2000 were ever used to abolish sentences of detention in a young offender institution. In such an event, the changes in these subsections ensure the new required life sentence for manslaughter of an emergency worker would apply equally to offenders between the ages of 18 – 20 as it does for those who are 21 or over.
- 29 Lords Amendment 150 is consequential on Amendment 1.

Lords Amendments to Part 2: Prevention, Investigation and Prosecution of crime

Lords Amendments to Chapter 1 of Part 2: Functions relating to serious violence

Lords Amendments 2 to 32

- 30 The Serious Violence Duty ("the Duty"), introduced by Chapter 1 of Part 2 of the Bill, will require local authorities, the police, fire and rescue authorities, specified criminal justice agencies and health authorities to work together to formulate an evidence based analysis of the problems associated with serious violence in a local area, and then produce and implement a strategy detailing how they will respond to those particular

issues. Prison, youth custody and educational authorities may also need to work with these core partners.

- 31 Lords Amendment 2 would have the effect that specified authorities are required to publish a strategy to prevent and reduce serious violence prepared under Clause 7. Lords Amendment 3 would provide that specified authorities may not include certain material in a strategy published under Clause 7, as amended. Lords Amendment 4 would clarify that regulations under Clause 7(9) may make further provision about the publication and dissemination of strategies. Lords Amendments 6 to 9 make equivalent provision for strategies under Clause 8.
- 32 Clause 9(2) confers a power on the Secretary of State, by regulations, to create information sharing gateways that permit prescribed persons to disclose information to any person listed in Clause 9(3), for the purpose of preventing or reducing serious violence in a prescribed area. Lords Amendments 11 and 12 would require regulations under Clause 9(2) to provide that they do not authorise the disclosure of patient information or the disclosure of personal information by a health or social care authority. Lords Amendments 31 and 32 is consequential on Amendment 12.
- 33 Lords Amendment 13 would clarify that "violence" for the purposes of Chapter 1 of Part 2 includes domestic abuse and sexual offences (as defined by Lords Amendment 14). Lords Amendment 15 would modify the reference in Clause 12(4) to any offence involved in violence to which Chapter 1 of Part 2 applies so that it is clear that such violence may not involve an offence.
- 34 Clause 13(2) confers on a local policing body (that is, Police and Crime Commissioners and in London the Mayor's Office for Policing and Crime and the Common Council of the City of London as police authority) powers to assist and monitor the exercise by the specified authorities of their functions under the Duty in relation to either a local government area or relevant area which coincides with or falls within their police (force) area. Lords Amendment 16 would provide clarify that references in clause 13(2) to "the police area" are to be taken as the police (force) area of the local policing body mentioned at the start of the clause.
- 35 Clause 15 creates an information sharing gateway to permit the disclosure to a specified authority of information held by specified authorities, local policing bodies and educational, prison or youth justice authorities. Lords Amendments 17 to 20 would have the effect that Clause 15 does not authorise the disclosure of patient information or the disclosure of personal information by a health or social care authority.
- 36 Clause 16 creates a power for local policing bodies to request any specified authority and any educational, prison or youth justice authority within its police force area to supply it with such information as it may specify, for the purposes of enabling or assisting it exercising its functions under Clause 13. The information which may be requested must relate to the person to whom the request was made, a function of that person, or a person in respect of whom a function is exercisable by the person requested to supply the information. Lords Amendment 21 further limits the information that may be requested by a local policing body under Clause 16 to information held by the persons to whom the request is made. Lords Amendments 22 to 25 would have the effect that Clause 16 does not require the disclosure of patient information or the disclosure of personal information by a health or social care authority.
- 37 Where the Secretary of State is satisfied that a relevant authority has failed to discharge the Duty, they may give directions to the authority for the purpose of securing

compliance with the duty (Clause 17).

- 38 The Bill as introduced includes a requirement to consult the Welsh Ministers before giving a direction to a devolved Welsh authority. Lords Amendment 26 would require the consent of the Welsh Ministers before a direction is given by the Secretary of State to a devolved Welsh authority.
- 39 Lords Amendment 27 would require guidance from the Secretary of State relating to Chapter 1 of Part 2 to be laid before Parliament.
- 40 Lords Amendment 28 would clarify that "violence" for the purposes of Chapter 1 of Part 1 of the Crime and Disorder Act 1998 includes domestic abuse and sexual offences (as defined by Lords Amendment 29). Lords Amendment 30 would modify the reference in section 18(1B) of the Crime and Disorder Act 1998 to any offence involved in violence to which Chapter 1 of Part 1 of that Act applies so that it is clear that such violence may not involve an offence.

Lords Amendments to Chapter 2 of Part 2: Offensive weapons homicide reviews

Lords Amendment 33

- 41 Chapter 2 of Part 2 provides for "relevant review partners" to conduct offensive weapons homicide reviews in certain circumstances. Clause 31(1) places a duty on review partners to have regard to guidance issued by the Secretary of State when carrying out their functions under this Chapter. The guidance will, amongst other things, cover the notification requirements, the conduct of reviews, the content of the report, and information sharing.
- 42 Lords Amendment 33 would place a duty on the Secretary of State to lay a copy of the guidance before Parliament.

Lords Amendments to Chapter 3 of Part 2: Extraction of information from electronic devices

Lords Amendments 34 to 55, 153 and 154

- 43 Chapter 3 of Part 2 introduces a specific legal basis for specified law enforcement and regulatory agencies (referred to as "authorised persons") to extract information from complainants', witnesses' and others' digital devices.
- 44 Clause 36 enables an authorised person to extract information stored on an electronic device for certain specified purposes, including the prevention, detection, investigation and prosecution of crime. Lords Amendment 34 would have the effect that, to use the power in Clause 36(1) for the purposes of preventing etc crime, an authorised person must reasonably believe that information stored on an electronic device is relevant to a reasonable line of enquiry. Lords Amendments 35 to 37 are consequential on Amendment 34.
- 45 Lords Amendment 39 would change the definition of an "adult" for the purposes of Chapter 3 of Part 2 so that it covers a person aged 18 or over (rather than 16 or over). Lords Amendment 40 would similarly change the definition of a "child" so that it covers a person aged under 18 rather than a person aged under 16. Lords Amendment 44 is consequential on Amendment 39.
- 46 Lords Amendment 42 would clarify that the references in Clause 36(3) to a criminal offence include a service offence under the Armed Forces Act 2006 or under any of the Acts that it replaces.

- 47 Lords Amendment 38 would, in circumstances where an electronic device may contain confidential information, require an authorised person to carry out additional steps in new subsection (7B) of Clause 36 in order to be satisfied that the exercise of the power in Clause 36(1) to extract information from the device is proportionate. Confidential information includes categories of information that carry inherent sensitivity and so are subject to certain protections. These include information subject to legal privilege, journalistic material, certain personal records such as medical documents and material acquired as part of a trade deal.
- 48 New subsection (7B) sets out that before exercising the power, where they consider there is a risk of obtaining confidential information in the exercise of the powers, the authorised person must be satisfied that the use of the power remains proportionate. That is, that there are no other means of obtaining the information sought, or if there are, it is not reasonably practicable to use them. In addition, however, in order to be satisfied that the use of the power is proportionate, the authorised person must, under new subsection (7C), have regard to the potential amount of confidential information likely to be held on the device, and also its potential relevance to purpose within Clause 36(2) or 39(2) for which the power can be exercised. Authorised persons will need to make this separate assessment with regard to confidential information in cases involving devices owned by individuals who have since died, as well as devices owned or used by individuals without capacity.
- 49 Lords Amendment 41 is consequential on amendment 38. Lords Amendment 53 is consequential on amendment 41.
- 50 Lords Amendment 47 would make similar provision to amendment 38 in respect of the extraction of confidential information from an electronic device pursuant of the power in Clause 39 for the purpose of investigating a death.
- 51 Lords Amendment 52 is consequential on amendments 38 and 47. It would omit provision requiring the Secretary of State to make regulations about the exercise of the powers under Clauses 36 and 39 in relation to confidential information. Lords Amendment 54 is consequential on amendment 52.
- 52 Lords Amendment 46 would introduce a new clause which would define the conditions that must be met for an individual to be treated as having voluntarily provided a device and agreeing to the extraction of information from it.
- 53 Subsection (2) states that an authorised person must not have placed any undue pressure on the individual to volunteer the device and agree to the extraction of information from it. This is a safeguard to ensure that a condition of voluntary provision and agreement is that it is not following coercion by the authorised person.
- 54 Subsection (3) details the information that an authorised person must provide to an individual, in writing. This includes:
- a. Description of the information sought – for example a copy of an image or messages between the device owner and a suspect,
 - b. Reason why that information is sought – for example the reasonable line of enquiry it relates to and how the authorised person reasonably believes it will assist the purpose for which the powers are being exercised such as locating a missing person,
 - c. How the information will be dealt with once it has been extracted, for example relevant information may be disclosed to the Crown Prosecution Service,

- d. Stating that the individual may refuse to provide the device and agree to the extraction of information from it, and
- e. Stating that, if they do decide not to volunteer the device and give agreement this does not automatically result in the closure of the investigation or enquiry.
- 55 The conditions at (d) and (e) would require the individual to have been informed that they can choose not to provide their device or agree to the extraction of information and second, the fact that they have made any such decision would not be a reason for ending any investigation or enquiry. Subsection (4) confirms that the individual should provide this agreement in writing and subsection (5) that alternatives must be arranged if the individual is unable to confirm agreement in writing due to a physical impairment or lack of literacy skills. In those circumstances, agreement should be given orally and confirmation recorded in writing by the authorised person. Subsection (6) asserts that that the individual must get a copy of any agreement in writing either in hard copy or electronically. This ensures that they have a record of the decision to volunteer a device and agree to the extraction of information from it.
- 56 Lords Amendments 43 and 45 are consequential on Amendment 46.
- 57 Lords Amendment 48 would enable a code of practice under Clause 40 to make different provisions for different purposes or areas. Lords Amendment 51 is consequential on amendment 48.
- 58 Lords Amendment 49 would add the Commissioner for Victims and Witnesses, the Domestic Abuse Commissioner and the Commissioner for Victims and Survivors Northern Ireland to the list of persons who must be consulted in the preparation of a code of practice under Clause 40.
- 59 Lords Amendment 50 would provide for the duty to consult the Commissioner for Victims and Survivors Northern Ireland to cease to apply if an order is made revoking the provisions which creates that body.
- 60 Lords Amendment 55 would require the Secretary of State to consult the Scottish Ministers or the Department of Justice in Northern Ireland before making regulations under Clause 42(4) which would be within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly.
- 61 Lords Amendment 153 would provide for an officer of the Department for Business, Energy and Industrial Strategy to be an authorised person for the purposes of Clause 36(2)(a).
- 62 Lords Amendment 154 would provide for the Police Investigations and Review Commission in Scotland, persons designated by the Commissioner in Scotland and persons appointed by the Police Ombudsman for Northern Ireland to be authorised persons for the purpose of Clause 36(2)(a).

Lords Amendments to Chapter 4 of Part 2: Other provisions

Lords Amendment 56: Voyeurism: breast-feeding

- 63 Lord Amendment 56 would insert a new clause which would introduce two new offences of 'breast-feeding voyeurism' into section 67A of the Sexual Offences Act 2003 (the 2003 Act), which prescribes additional voyeurism offences. The new offences are designed to address behaviour involving the non-consensual taking of photographs,

streaming or other avenues of recording or capturing the act of breast-feeding, done for the specified purposes of obtaining sexual gratification, or humiliating, alarming or distressing the victim. The penalty for the offences is already set out in section 67A(4) – that is, 12 months and/or an unlimited fine on summary conviction, or 2 years on indictment. All of the sex offender management provisions contained in the 2003 Act which apply to the existing voyeurism offences (for example, sex offender notification requirements) will apply to the two new offences.

- 64 'Breast-feeding' is not defined in the provision, but given its ordinary and natural meaning;; new subsection 67A(3A) would clarify that it includes where the victim is rearranging their clothing before or after the breast-feeding. New subsection 67A(3B) of the new clause also clarifies that it does not matter whether the victim is in public or private, whether the victim's breasts are exposed at the time, or what part of the body the offender intended to observe by their behaviour.
- 65 New 67A(2A) would provide that the offence will be made out where a person 'operates equipment' for the specified purposes – this would cover, for example, if a landlord arranged a covert webcam to observe a breast-feeding tenant for his own sexual gratification, or to live-stream it online for the sexual gratification of others.
- 66 New section 67A(2B) would provide that the offence will be made out where a person 'records an image' for the specified purposes – this would include the taking of photographs or videos.

Lords Amendment 57: Time limit for prosecution of common assault or battery in domestic abuse cases

- 67 Clause 49 would insert a new section 39A into the Criminal Justice Act 1988 to extend the time limit to bring a prosecution for common assault or battery where the alleged behaviour amounts to domestic abuse as defined by the Domestic Abuse Act 2021.
- 68 Under new subsections 39A(2)-(4), the time limit to commence a prosecution is extended to any time which is both within six months of an offence being formally reported to the police through either a witness statement made with a view to its possible use as evidence in proceedings, or a video recording made with a view to its possible use as evidence in chief, and within two years of the alleged offence occurring. The current time limit of six months from the date of the offence, set out in section 127 of the Magistrates' Court Act 1980, is disapplied by new subsection 39A(5).
- 69 New subsection 39A(7) provides that this provision will not apply in relation to offences alleged to have been committed before the clause is commenced.

*Lords Amendment 58: Application of Police and Criminal Evidence Act 1984 to National Food Crime Unit of Food Standards Agency

- 70 Lords Amendment 58* would confer a power on the Secretary of State, by regulations, to apply any provisions of the Police and Criminal Evidence Act 1984 relating to the investigation of offences to officers of the Food Standards Agency's National Food Crime Unit.

Lords Amendments 59 and 60: Code of practice relating to non-criminal hate incidents

- 71 Lords Amendments 59 and 60 would insert two new clauses making provision for a code of practice relating to non-criminal hate incidents ("NCHIs"). The amendments would ensure that the police's processing of personal data in NCHI records is made subject to a code of practice issued by the Home Secretary. The code would be subject to

Parliamentary scrutiny and approval (through the affirmative procedure) before coming into effect to ensure that there is democratic oversight of this practice. Once in effect, this code will replace the College of Policing's operational guidance on NCHIs.

- 72 Lords Amendment 59 would insert new clause "code of practice relating to non-criminal hate incidents".
- 73 Subsection (1) provides the Home Secretary with a power to publish a code of practice about the police's processing of personal data in NCHI records.
- 74 Subsection (2) defines the term "hate incident". A hate incident is defined as "an incident or alleged incident which involves or is alleged to involve an act by a person ("the alleged perpetrator") which is perceived by a person other than the alleged perpetrator to be motivated (wholly or partly) by hostility or prejudice towards persons with a particular characteristic towards someone with a particular characteristic."
- 75 Subsection (3) provides that the code may include provisions on:
- whether and how personal data relating to a hate incident should be recorded;
 - who can process this personal data;
 - whether and when an individual should be notified that their data will be processed;
 - how long this personal data can be retained for; and
 - the consideration by relevant police officers and police staff of any request made by those about whom the data relates (e.g. if a subject about whom data is stored makes a request for the data to be corrected or deleted, the code might address what the police should do in those circumstances).
- 76 Subsection (4) provides that where the police are carrying out investigations with a view to there being a prosecution, or where they assess a prosecution is likely, the code will not apply.
- 77 Subsection (5) provides that the code may cover provisions other than those mentioned above.
- 78 Subsection (6) provides that when the code is in force, relevant individuals involved in the processing of data relating to hate incidents must have regard to the code.
- 79 Subsection (7) provides the definitions of "data subject", "personal data" and "processing" by referring the reader to the Data Protection Act 2018.
- 80 Subsection (8) provides that the definition of "relevant persons"; the definition covers police officers; special constables, police staff and National Crime Agency officers.
- 81 Lords Amendment 60 would insert new clause " Further provision about a code of practice under section (Code of practice relating to non-criminal hate incidents)".
- 82 Subsection (1) provides that the code must be subject to Parliamentary scrutiny and approval before it enters into effect.
- 83 Subsection (2) provides the Home Secretary with the power to revise and reissue the code from time to time.
- 84 Subsection (3) provides that if the code is reissued, a draft must be laid before

Parliament before it enters into effect.

- 85 Subsection (4) provides that if either the House of Lords or the House of Commons decides not to approve the updated draft of the code, the code must not be reissued, and the Secretary of State may instead prepare an alternative version.
- 86 Subsection (5) provides that the code will automatically become law without debate unless there is an objection from either House within the 40-day period.
- 87 Subsection (6) defines the “40-day period” within which both Houses can review the code. The 40-day period begins on the day that the draft is laid before Parliament. If the draft is laid before each House on different days, the 40-day period starts with the later of the days on which it is laid.
- 88 Subsection (7) provides that the 40-day period does not include days where Parliament is dissolved or prorogued or during which both Houses of Parliament are adjourned for more than 4 days.

Lords Amendments 61 to 69: Hare coursing

- 89 Lords Amendments 61 to 69 would insert nine new clauses to broaden the circumstances in which the police can investigate and bring charges for hare coursing related activity and increase the powers of the courts for dealing with this activity upon conviction. The overarching purpose of these changes is to fulfil the Government’s public commitment, made as part of its "Action Plan for Animal Welfare", to crack down on illegal hare coursing and address the animal cruelty and serious harm to rural communities associated with it.
- 90 New clause “Increase in penalty for offences related to game etc” (Lords Amendment 61) amends section 1 of the Night Poaching Act 1828, section 30 of the Game Act 1831 and section 4A of the Game Laws (Amendment) Act 1960.
- 91 Subsections (3) and (4) increase the maximum penalty upon conviction for an offence under section 1 of the Night Poaching Act 1828 (taking or destroying game or rabbits by night or entering land for that purpose) to a fine of any amount and/or a custodial sentence of six months (if the offence is committed prior to the coming into force of section 281(5) of the Criminal Justice Act 2003, after which it will be a term not exceeding 51 weeks).
- 92 Subsections (5) to (8) increase the maximum penalty upon conviction for an offence under section 30 of the Game Act 1831 (trespass in daytime in search of game etc) to a fine of any amount and/or a custodial sentence of six months (if the offence is committed prior to the coming into force of section 281(5) of the Criminal Justice Act 2003, after which it will be a term not exceeding 51 weeks). It applies the same maximum penalty in all cases no matter how many people are involved in committing the offence.
- 93 Subsection (9) amends section 4A of the Game Laws (Amendment) Act 1960 (forfeiture of vehicles) so that the court may now order forfeiture of a vehicle upon conviction for an offence under section 30 of the Game Act 1831 where fewer than 5 people are involved in committing an offence.
- 94 Subsection (10) provides that these amendments do not have retrospective effect and only apply to offences committed on or after the section comes into force.
- 95 New clause “Trespass with intent to search for or to pursue hares with dogs etc” (Lords Amendment 62) creates new offences relating to trespassing on land with the intention

of using a dog to search for or to pursue hares with dogs. Subsection (1) makes it an offence to trespass on land with the intention of using a dog to search for or pursue a hare, to facilitate or encourage the use of a dog to search for or pursue a hare or to enable another person to observe the use of a dog to search for or pursue a hare.

- 96 Subsection (2) provides the defence of proving reasonable excuse for the trespass.
- 97 Subsections (3) and (4) set the maximum penalty for the offence as a fine of any amount and a custodial sentence not exceeding 51 weeks, or six months if the offence was committed before the coming into force of section 281(5) of the Criminal Justice Act 2003.
- 98 New clause "Being equipped for searching for or pursuing hares with dogs etc" (Lords Amendment 63) makes it an offence for a person to have an article with them in a place other than a dwelling with the intention that it will be used in the course of or in connection with the commission by any person of an offence under new clause "Trespass with intent to search for or to pursue hares with dogs etc".
- 99 Subsection (2) provides that proof that a person has with them an article made or adapted for use in committing the offence at in subsection (1) (trespass with intent to search for or to pursue hares with dogs etc) constitutes evidence that they had it with them intending to use in the course of or in connection with that offence.
- 100 Subsections (3) and (4) set the maximum penalty for the offence as a fine of any amount and a custodial sentence not exceeding 51 weeks, or six months if the offence was committed before the coming into force of section 281(5) of the Criminal Justice Act 2003.
- 101 Subsection (5) defines what is an animal and what is a dwelling for the purposes of the offence.
- 102 New clause "Recovery order on conviction for certain offences involving dogs" (Lords Amendment 64) provides the court with the power to make a recovery order on conviction for offences under section 1 of the Night Poaching Act 1828, section 30 of the Game Acts 1831 and the new offences inserted by Lords Amendments 62 and 63. This applies where the dog was used in or present at the commission of the offence and the dog was lawfully seized and detained in connection with the offence.
- 103 Subsection (2) provides the court may make an order that requires the offender to pay all of the expenses incurred as a result of the dog's seizure and detention.
- 104 Subsection (3) provides that the sum required to be paid is to be treated for the purposes of enforcement as if it were a fine imposed on conviction.
- 105 Subsection (4) provides that a recovery order can be made whether or not the court also deals with the offender in another way.
- 106 New clause "Disqualification order on conviction for certain offences involving dogs" (Lords Amendment 65) provides for a court to make a disqualification order preventing an offender from owning or keeping a dog or both where the offender is convicted of certain offences involving dogs. Those offences are: section 1 of the Night Poaching Act 1828; section 30 of the Game Act 1831; the new criminal offence of trespass with intent to search for or to pursue hares with dogs etc set out in Lords amendment 62 above; the new criminal offence of being equipped for searching for or pursuing hares with dogs etc set out in Lords amendment 63 above. Under subsection (2) the court can make the order for such period as it thinks fit.

- 107 Subsection (3) provides that the order may specify a period during which the offender may not seek to terminate it.
- 108 Subsection (4) provides that the operation of the order can be suspended if needed to enable alternative arrangements to be made in relation to the dog.
- 109 Subsection (5) requires that the court gives reasons for making a disqualification order in open court and causes those reasons to be registered in the register of its proceedings.
- 110 Subsection (6) makes it an offence to breach a disqualification order.
- 111 Subsection (7) sets the maximum penalty for a breach of a disqualification order as a fine not exceeding level 3 on the standard scale (currently £1,000).
- 112 Subsection (8) provides that a recovery order can be made whether or not the court also deals with the offender in another way.
- 113 Subsection (1) of new clause "Seizure and disposal of dogs in connection with disqualification order" (Lords Amendment 66) provides that when making a disqualification order, if it appears to a court the person subject to the order owns or keeps a dog contrary to that order, the court may order the dog to be taken into possession
- 114 Subsection (2) provides that a court may also order dogs to be taken into possession when owned or kept in breach of a disqualification order, following a conviction under subsection (6) of new clause "Disqualification order on conviction for certain offences involving dogs".
- 115 Subsection (3) requires an order made for a dog to be taken into possession to make provision for disposal of the dog, where the person subject to that order owns the dog.
- 116 Subsection (4) provides that where the dog is not owned by the person subject to the disqualification order it is to be dealt with in a way ordered by the appropriate court. Subsection (5) provides that the dog cannot be destroyed or disposed of for the purposes of vivisection.
- 117 Subsection (6) requires that, before a court makes an order for disposal of a dog under subsection (4), it must give the owner of the dog the opportunity to be heard or be satisfied it is not reasonably practicable to communicate with the owner.
- 118 Subsection (7) provides that where the order is made against a person who is not the owner, the owner may appeal against the order to the Crown Court.
- 119 New clause "Termination of disqualification order" (Lords Amendment 67) provides that a person can apply for termination of a disqualification order to which they are subject.
- 120 Subsection (2) sets out the timescales within which an application to terminate a disqualification order can be made.
- 121 Subsection (3) sets out what the court can do in response to a termination application: terminate, vary the order or refuse the application.
- 122 Subsection (4) sets out what the court must have regard to in determining an application.
- 123 Subsection (5) provides that where a court refuses an application to terminate a disqualification order or varies the order it may specify a period during which a further

application cannot be made.

124 Subsection (6) provides that a court may order an applicant to pay all or part of the costs of an application.

125 New clause "Section (Seizure and disposal of dogs in connection with disqualification order): supplementary" (Lords Amendment 68) contains supplementary provisions in relation to a court making an order for seizure and disposal of dogs in connection with disqualification orders under new clause "Seizure and disposal of dogs in connection with disqualification order".

126 Subsection (2) provides that it is an offence to fail to comply with a requirement imposed by the court under subsection (1)(b). This carries a maximum penalty of a level 3 fine.

127 Subsection (4) sets out what the court's directions for carrying out the order may cover and subsection (5) sets out what the court is to have regard to in determining how to exercise its powers to order seizure and disposal of dogs in connection with a disqualification order. Subsection (6) requires a person who has been delegated a decision about how to dispose of a dog to have regard to the same things.

128 Subsection (7) provides that any amount to which the owner of a dog is entitled as a result of its sale may be reduced to account for any expenses they are liable to pay for carrying out the order.

129 Subsection (8) provides that any such sum the person is required to pay is to be treated for the purposes of enforcement as if it were a fine imposed on conviction.

130 New clause "Disqualification orders: appeals" (Lords Amendment 69) makes provision in connection with appeals against disqualification orders under new clause "Disqualification order on conviction for certain offences involving dogs" and against orders for seizure and disposal in connection with a disqualification order.

131 Subsection (1) provides that nothing may be done under such an order until the periods for giving notice of appeal against the order and conviction have expired or any such appeal has been determined or withdrawn.

132 Subsection (2) sets out what can happen where the effect of an order is suspended under subsection (1). Requirements imposed or directions given in connection with the order cannot have effect during the suspension but the court is able to give directions about how any dog to which the order applies is to be dealt with during the suspension. Subsection (3) gives details of what such directions could be.

133 Subsections (4) and (5) provide that failure to deliver up a dog as directed under these provisions will be an offence punishable on conviction by a level 3 fine (currently £1,000).

134 Subsection (6) provides that any sum to be paid in relation to the removal or care of the dog that are incurred in carrying out the directions is to be treated for the purposes of enforcement as if it were a fine imposed on conviction.

[*Lords Amendment 70: Urgent review of offences under section 61 of the Sexual Offences Act 2003](#)

135 Lords Amendment 70* would require the Secretary of State to establish a review into the prevalence of, and the response of the criminal justice system to, the offence of administering a substance with intent under section 61 of the Sexual offences Act 2003

(so called "spiking"), within one month of Royal Assent. A report on the findings of the review must be published within six months of Royal Assent.

***Lords Amendment 71: Accountability of public authorities: duties on police workforce**

136 Lords Amendment 71* would establish a duty on members of the police workforce to act in the public interest, and with transparency, candour and frankness. Police officers and police staff would be subject to a statutory duty to assist court proceedings, official inquiries and investigations. The duty would include requiring police officers and staff to make full disclosure of relevant documents, material and facts.

***Lords Amendment 72: Offences motivated by hostility towards the sex or gender of the victim**

137 Lords Amendment 72* would add sex or gender to hate crime legislation – sometimes described by campaigners as “making misogyny a hate crime”. It would require the Secretary of State to make regulations requiring chief officers of police to provide information relating to: the number of relevant crimes reported to their force and the number of those crimes which, in the opinion of the chief officer of police, would be a domestic abuse or sexual offence. A "relevant crime" is defined as an offence which the victim or other person perceives the alleged offender to demonstrate hostility or prejudice based on sex, or the victim or other person perceives the offence to be motivated by hostility or prejudice towards persons who are of a particular sex. The amendment would also require a court considering the seriousness of an offence arising from a relevant crime (other than a domestic abuse or sexual offence) to treat the fact that the offence is aggravated by hostility or prejudice towards sex or gender as an aggravating factor when determining a sentence. This would have the effect of permitting higher sentences, within the existing sentencing range, for any existing offence where hostility on grounds of sex or gender is proven to be a motivating or demonstrated element of the offence.

Lords Amendments to Part 3: Public order

Lords Amendments 73*, 74 to 79, 80*, 81*, 82*, 83 to 86, 87*, 88, 89* and 146*

138 Lords Amendment 73* would omit subsections (2) and (3) from Clause 55. These subsections broaden the circumstances in which conditions may be imposed on those organising or taking part in a procession to include where the senior police officer reasonably believes that the noise generated by persons taking part in the procession may have a significant relevant impact on persons in the vicinity or may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession.

139 Lords Amendments 74 and 75 would replace the power for the Secretary of State to make regulations about the meaning of serious disruption for the purposes of section 12 of the Public Order Act 1986 (the "1986 Act") with provision on the face of the 1986 Act, subject to a power to amend these provisions. Lords Amendments 76 to 79 are consequential on amendment 75.

140 Lords Amendment 80* would remove Clause 56 which amends section 14 of the 1986 Act to broaden the range of circumstances in which conditions can be imposed on a public assembly in England and Wales, allow for any type of condition to be imposed on such a public assembly, and provide the Secretary of State a power to make provision about the meaning of “serious disruption to the life of the community” and

“serious disruption to the activities of an organisation which are carried on in the vicinity of a public assembly”.

- 141 Lords Amendments 81* and 82* amend Clause 58 which provide powers for a police officer to direct that a person should stop, or not start, obstructing the passage of a vehicle into or out of the Parliamentary Estate. Failure to comply with a direction is an offence. Clause 58 amends Part 3 of the Police Reform and Social Responsibility Act 2011 which provides powers in relation to prohibited activity in the controlled areas of Parliament Square and of the Palace of Westminster. Lords Amendment 81 would provide that it would not be a prohibited activity to obstruct a vehicular access to the parliamentary estate if permission for such obstruction has been given by a relevant person (including the Greater London Authority or Westminster City Council). Lords Amendment 82* provides for the authorisation process.
- 142 Lords Amendments 83 and 84 make it clear that one element of the new offence of intentionally or recklessly causing public nuisance requires a person's act or omission to create a risk of, or to cause, serious harm as defined in Clause 60(2) to the public or a section of the public.
- 143 Lords Amendment 85 would clarify that Clause 60 does not affect the civil liability of any person for the tort of public nuisance. The tort currently tracks the common law offence and this amendment makes it clear that the replacement of the offence does not affect the tort. Lords Amendment 86 is consequential on amendment 85.
- 144 Lords Amendment 87* would leave out Clause 61 which amends the 1986 Act by inserting new section 14ZA, which will allow for the imposing of conditions on a person organising or carrying on one-person protests where it is reasonably believed that the noise generated by the person carrying on the protest may have a significant relevant impact on persons in its vicinity or that such noise may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the protest.
- 145 Lords Amendment 88 would insert new clause "Wilful obstruction of highway" which would increase the penalty for the offence of wilfully obstructing a highway under section 137 of the Highways Act 1980, where that highway is part of the Strategic Roads Network. It would also clarify that for the purposes of the offence it does not matter whether free passage along the highway in question has already been temporarily restricted or prohibited.

***Lords Amendments 89 and 146: Repeal of the Vagrancy Act 1824**

- 146 Lords Amendment 89* would insert new clause "Repeal of Vagrancy Act 1824" which would repeal the Vagrancy Act 1824. The Vagrancy Act 1824 sets out a framework for dealing with a range of offences related to disorderly behaviour. Section 3 (which makes any form of begging a criminal offence) and 4 (which makes it an offence to sleep out or be on enclosed premises for an unlawful purpose) of the Act remain in force, other sections have previously been repealed. The Lords Amendment would repeal the Vagrancy Act 1824 in its entirety and add principles to be used in the exercise of powers under the Anti-Social Behaviour, Crime and Policing Act 2014 (the "2014 Act"), to establish that begging or sleeping rough in and of themselves do not amount to action causing alarm or distress. It aims to clarify that powers under the 2014 Act should only be used in occasional circumstances where there is genuine alarm and distress to a community (e.g. aggressive begging) and in relation to begging where there are no other approaches that are reasonably available.

- 147 The amendment would also place a requirement on the Secretary of State to issue (or

revise) guidance to local authorities and police forces regarding the implementation of the proposed principles. It adds that before issuing or revising the guidance, the Secretary of State must consult with representatives of police forces, representatives of local authorities, and persons representing the interests of homeless persons.

148 Lords Amendment 146* is consequential on Amendment 89.

Lords Amendments to Part 4: Unauthorised encampments

Lords Amendments 90 to 93

149 Clause 62 inserts new sections 60C to 60E into the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). New 60C provides for a new offence of residing or intending to reside on land without consent in or with a vehicle as set out in new section 60C of the Criminal Justice and Public Order Act 1994. Where a constable reasonably suspects that an offence has been committed under new section 60C, new section 60D confers on a constable powers to seize and remove any relevant property that appears to belong to the person who the constable suspects has committed the offence, is in their possession or under their control. This property includes a vehicle, if the constable suspects the person had this with them or intended to have this with them in commission of an offence under new section 60C. Under new section 60E seized property can be forfeited and dealt with in a manner specified by order of the court which convicts a person of an offence under new section 60C. Lords Amendment 90 would clarify that the power under new section 60C(1)(d) of the Criminal Justice and Public Order Act 1994 is a power to require a person to leave the land in question, to remove property from the land or to do both. Lords Amendment 91 clarifies that the powers of seizure in new section 60D(1) of the 1994 Act apply to property that belongs to a person suspected of an offence under new section 60C of that Act, is in their possession or is under their control. Lords Amendment 92 would expand the definition of when proceedings are commenced for the purposes of new section 60D(6) of the 1994 Act to cover when a person is charged under any provision of Part 4 of the Police and Criminal Evidence Act 1984.

150 Lords Amendment 93 would require the Secretary of State to lay any guidance published under Clause 64 before Parliament.

Lords Amendments to Part 5: Road traffic

Lords Amendment 94

151 Lords Amendment 94 would increase the minimum driver disqualification periods from two to five years for the offences of:

- (i) causing death by dangerous driving (section 1 of the Road Traffic Act 1988), and
- (ii) causing death by careless driving whilst under the influence of drink or drugs (section 3A of the Road Traffic Act 1988),

and increase the minimum period for repeat offending in relation to the latter offence from three to six years.

Lords Amendments to Part 6: Cautions

Lords Amendments 95 and 96

152 Lords Amendments 95 and 96 provide that when regulations are laid decreasing the number of hours of unpaid work or attendance, or decreasing the maximum financial penalty which may be imposed in an out of court disposal, these must be approved by affirmative resolution of both Houses, bringing them in line with the requirement for increase in numbers of hours.

Lords Amendments to Part 7: Sentencing and release

Lords Amendments 97, 98 and 151: Penalty for cruelty to children etc

153 Lords Amendment 97 would insert new clause "Penalty for cruelty to children" which would amend section 1 of the Children and Young Persons Act 1933 to increase the maximum penalty, upon conviction on indictment, for the offence of cruelty to a person under 16 from 10 years' imprisonment to 14 years' imprisonment. The increased maximum penalty would apply only to offences committed on or after commencement of this provision.

154 Lords Amendment 98 would insert new clause "Penalty for causing or allowing a child or vulnerable adult to die or suffer serious physical harm" which would amend section 5 of the Domestic Violence, Crime and Victims Act 2004 (the "2004 Act") to increase, for England and Wales, the maximum penalties available, upon conviction on indictment, for the offence of causing or allowing a child or vulnerable adult to die or suffer serious physical harm.

155 Subsection (2) of the new clause increases the maximum penalty under section 5(7) of the 2004 Act from 14 years' imprisonment to life imprisonment if a person dies. Subsection (3) increases the maximum penalty under section 5(8) of the 2004 Act from 10 years' imprisonment to 14 years' imprisonment if a person suffers serious physical harm.

156 Subsection (4) provides that the increased maximum penalties will apply only to offences committed on or after commencement of these provisions.

157 Subsection (5) amends Schedule 19 to the Sentencing Code, which lists offences where, if certain conditions are present, the penalty must be imprisonment for life, to include the offence of causing or allowing a child or vulnerable adult to die.

158 Lords Amendment 151 is consequential on Amendments 97 and 98.

Lords Amendments 99 and 100

159 Lords Amendments 99 and 100 clarify that new section 244ZA of the Criminal Justice Act 2003 will apply only in relation to offences that were punishable with life imprisonment at the time of sentencing (not offences that were later made so punishable).

Lords Amendments 101 to 103 and 152: Imprisonment for public protection etc: duty to refer person released on licence to Parole Board

160 Lords Amendment 101 would insert new clause "Imprisonment for public protection etc: duty to refer person released on licence to Parole Board" which would amend section 31A of the Crime (Sentences) Act 1997. That section relates to licence termination for offenders serving 'preventative sentences', namely sentences of Imprisonment for Public Protection ("IPP"); the youth equivalent - Detention for Public Protection ("DPP"), and the armed forces equivalents.

- 161 A person serving a preventative sentence who has been released on licence after having served the custodial part of that sentence is entitled to make an application to the Parole Board to have their licence terminated once the 'qualifying period' has expired. The qualifying period is 10 years from the offender's first release from prison. If the Parole Board is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force, it will direct the Secretary of State to make an order that the licence is to cease to have effect and is therefore terminated.
- 162 Subsections (2) and (6) clarifies that time spent in prison following recall under section 32 does not affect the calculation of the 10-year qualifying period for licence termination.
- 163 Subsection (3) of the new clause substitutes section 31A(3). In place of the existing application by the prisoner to the Parole Board for consideration of termination of the licence, the Secretary of State must refer the prisoner's case to the Parole Board for such consideration. That reference must be made where the prisoner has been released on licence in respect of the preventative sentence and the qualifying period has expired and, if a previous reference has been made, 12 months have expired since the Parole Board disposed of the reference.
- 164 Subsection (4) makes consequential amendments to section 31A(4) changing an application (by a prisoner) to a reference (by the Secretary of State).
- 165 Subsections (5) provides for the position where the automatic referral falls when an offender is recalled under section 32 of the 1997 Act. In such a case the offender will not be on licence so the licence cannot be revoked by the Parole Board, so instead provision is made for the Parole Board to instead determine whether it is satisfied that it is no longer necessary for the protection of the public that, when released, the offender remains under the IPP licence. If the Parole Board is satisfied to that effect, it will direct the Secretary of State to release the offender unconditionally.
- 166 Subsections (7) to (8) make transitional provision for applications made but not determined by the Parole Board before commencement, providing the application is to be dealt with as if it had been a reference by the Secretary of State instead of an application by the offender. Subsections (9) and (10) make transitional provision for applications dismissed by the Parole Board before commencement to allow for the trigger for the next referral to count from the date of the last disposal.
- 167 Lords Amendments 102, 103 and 152 are consequential on Amendment 101.

Lords Amendment 104: Assaults on those providing a public service etc

- 168 Lords Amendment 104 would insert new clause "Assaults on those providing a public service etc" inserting new section 68A into the Sentencing Code. New section 68A(1) provides that the aggravating factor applies where the court is considering the seriousness of the assault offences listed in subsection (3) for the purposes of sentencing and the aggravating factor under section 67(2) of the Sentencing Code, which applies where the offence was committed against an emergency worker acting in the exercise of functions as such a worker, does not apply.
- 169 New section 68A(2) provides that if the offence listed in subsection (3) was committed against a person: (i) providing a public service, (ii) performing a public duty, or (iii) providing services, goods or facilities to the public, the court must treat that fact as an aggravating factor, and must state in open court that the offence is so aggravated.
- 170 New section 68A(4) provides that references to providing services to the public in the

section include providing goods or facilities to the public, and that references to the public include a section of the public.

171 New section 68A(5) ensures that the courts are not prevented from treating the fact that an offence was committed against a person providing a public service, performing a public duty or providing services to the public as an aggravating factor in relation to offences that are not listed in subsection (3).

172 New section 68A(6) provides that the aggravating factor will apply only where the person is convicted of an offence listed in subsection (3) on or after the date on which the section comes into force.

Lords Amendment 155: Community and suspended sentence orders

173 Lords Amendment 155 would require regulations under new section 395A of the Sentencing Code to be subject to the affirmative resolution procedure if they apply indefinitely.

Lords Amendments to Part 9: Secure children's homes and secure 16 to 19 academies

Lords Amendments 105 and 106

174 Lords Amendments 105 and 106 make minor and technical amendments in order to refer to the children within secure 16 to 19 academies as students rather than pupils to ensure the clause works with the definitions set out in education legislation.

***Lords Amendment 107: Secure 16 to 19 academies**

175 Secure 16 to 19 academies are a new type of custodial provision for children and young people remanded or sentenced to detention in relation to a criminal offence. They will be dually established as 16 to 19 academies and Secure Children's Homes. This means that they must be principally concerned with the provision of education to young people between the ages of 16 and 19.

176 While under the Academies Act 2010 the Secretary of State may enter into Academy arrangements with any person, Lords Amendment 107* would amend this legislation to make explicit that a local authority may establish and maintain a secure 16 to 19 Academy.

Lords Amendments to Part 10: Management of offenders

Lords Amendments to Chapter 1 of Part 10: Serious Violence Reduction Orders

Lords Amendments 108 to 113, 114*, 115* and 116*

177 Clause 140 introduces a new civil order in the Sentencing Code, the Serious Violence Reduction Order ("SVRO"). Lords Amendment 108 would make it explicit that, if an application for a SVRO is made, the court may adjourn proceedings on the application after sentencing the offender.

178 Lords Amendment 109 would provide a definition of "home address" for the purposes of the notification requirements which must be included in a SVRO.

179 Lords Amendment 110 would widen the power to issue guidance in new section 342J of the Sentencing Code so that the guidance may be issued on any matter relating to SVROs. Lords Amendment 112 is consequential on Amendment 110.

- 180 Lords Amendment 111 would provide a non-exhaustive list of the matters that may be covered by guidance issued under new section 342J of the Sentencing Code.
- 181 Lords Amendment 113 would apply a negative resolution procedure to the power to issue guidance under new section 342J of the Sentencing Code.
- 182 Lords Amendments 114* and 115* would provide that SVROs may only be implemented throughout England and Wales once the Secretary of State has laid before Parliament a response addressing any issues identified in the report of the pilot and both Houses have approved the relevant commencement regulations through the affirmative procedure. Lords Amendment 116* would require the Secretary of State to obtain, record and publish all reasonably available data which is relevant to the effect of SVROs over a period of no less than 12 months before making the report on the pilot, and that certain specified matters must be addressed in the report of the pilot of SVROs; such matters include the equalities impacts, the extent to which the pilot has reduced serious violence crime and reoffending and impacts on survivors and victims of domestic abuse and criminal exploitation.

Lords Amendment inserting new Chapter 1A of Part 10: Knife Crime Prevention Orders

Lords Amendments 117 and 147

- 183 Lords Amendment 117 would make it explicit that, if an application for a knife crime prevention order is made following a defendant's conviction for an offence, the court may adjourn proceedings on the application after sentencing the defendant.
- 184 Lords Amendment 147 is consequential on Amendment 117.

Lords Amendment inserting new Chapter 4 of Part 10: Football Banning Orders

Lords Amendments 118 to 120 and 148

- 185 Lords Amendment 118 would insert new clause "Football banning orders: relevant offences".
- 186 Subsections (1) to (2) introduce the amendments to the Football Spectators Act 1989 ("the 1989 Act"), and Schedule 1 of that Act, respectively.
- 187 Subsections (3) to (7) amend Schedule 1 to the 1989 Act, the list of relevant offences which, on conviction, may attract a football banning order preventing further attendance at regulated football matches.
- 188 Subsections (3) to (5) add to Schedule 1 to the 1989 Act the offence under section 4 of the Public Order Act 1986 (fear or provocation of violence) when committed at any premises during a period relevant to a football match, on a journey to or from a football match and where the court makes a declaration that the offence related to a football match, or otherwise committed during a period relevant to a football match and where the court makes a declaration that the offence related to a football match.
- 189 Subsection (6) adds to Schedule 1 any offence under Part 3 or 3A of the Public Order Act 1986 (racial hatred or hatred against persons on religious grounds or grounds of sexual orientation) and any offence under section 31 of the Crime and Disorder Act 1998 (racially or religiously aggravated public order offences) where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection to a football organisation.

- 190 Subsection (6) also adds to Schedule 1 communications offences under section 1 of the Malicious Communications Act 1988 (offence of sending letter, electronic communication or article with intent to cause distress or anxiety) and under section 127(1) of the Communications Act 2003 (improper use of public telecommunications network) not otherwise covered in the Schedule where the court has stated that the offence is aggravated by racial or religious hostility, or hostility related to disability, sexual orientation or transgender identity (the grounds set out in section 66(1) of the Sentencing Code) and where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection to a football organisation.
- 191 Subsections (7) and (8) define a “football organisation” for the purposes of Schedule 1 as a “regulated football organisation” for the purposes of Part 2 of the 1989 Act, being an organisation that relates to association football and which is prescribed, or its description is prescribed, by secondary legislation (an order made by the Secretary of State). Subsection (7) also provides that an order setting out where a person has a “prescribed connection” to a football organisation can include a past or future connection, such as a player announced as having agreed to sign for a team but not yet employed by that team or a football manager who has recently retired.
- 192 Subsections (9) to (11) amend subsections (1) and (5) of section 23 of the 1989 Act whereby a “declaration of relevance”, which the court must make for offences committed away from a football stadium to be “relevant offences” for the purposes of section 14A and Schedule 1, can now relate not only to football matches but also football organisations, or persons with a prescribed connection to a football organisation. This encompasses, for example, the remote hate offences against football organisations or persons connected to football, such as a racist tweet against a football team or player. The court will now be able to make a declaration of relevance that an offence is football-related in those circumstances.
- 193 Subsection (12) provides that this provision does not apply in relation to offences committed before the provision comes into force.
- 194 Lords Amendment 119 would insert new clause "Football banning orders: power to amend list of relevant offences".
- 195 Subsection (1) creates a new power for the Secretary of State to add, modify or remove a reference to an offence or a description of offence to Schedule 1 to the 1989 Act (the list of relevant offences for banning orders on conviction), and make related consequential amendments to that Act. The power is subject to the affirmative resolution procedure.
- 196 Subsections (2) to (4) make amendments to section 22A of the 1989 Act, to enable regulations or orders made under Part 2 of the Act (such as prescribing a football related organisation) to make supplementary provision.
- 197 Lords Amendment 120 would insert new clause "Football banning orders: requirement to make order on conviction etc".
- 198 Subsection (1) amends the test in section 14A of the 1989 Act under which a court may impose a banning order on an individual convicted of a relevant football related offence (as defined in Schedule 1 to that Act). New section 14A(2) sets out that the court must make a banning order in respect of the offender unless it considers that there are particular circumstances relating to the offence or to the offender which would make it unjust in all the circumstances to do so. New section 14A(3) provides that where the court does not make a banning order, it must state in open court the reasons for not

doing so.

199 Subsections (2) to (4) make equivalent amendment to section 22 of the 1989 Act (banning orders arising out of offences outside England and Wales). Section 22 provides the courts with the power to impose a banning order on persons convicted of an offence in a country or territory outside England and Wales if that offence has been specified in an Order in Council as corresponding to any offence in Schedule 1 of the 1989 Act. The new subsections (4) and (5) provide that a court must make a banning order in respect of an offender convicted of a corresponding offence overseas unless the conviction is the subject of legal proceedings in that country questioning the conviction, or the court considers that there are particular circumstances relating to the offence or to the person which would make it unjust to make a banning order in all the circumstances. If the court decides not to make a banning order on these grounds, it must state in open court the reasons for not doing so, per new subsection (5A).

200 Subsection (5) provides that the provision does not apply in relation to offences committed before the provision comes into force.

201 Lords Amendment 148 is consequential on Amendments 118 and 119. It would have the effect that the powers to make an order or regulations under the relevant new clauses come into force on Royal Assent.

Lords Amendments creating new Part 11A: Disregards and pardons for certain historical offences

Lords Amendments 121 and 122

202 Lords Amendment 121 would insert new clause "Disregard of certain convictions or cautions" which would extend the scheme for disregarding convictions and cautions for historical offences that regulated sexual activity between people of the same sex as provided for in sections 92 to 101 of the Protection of Freedoms Act 2012 (the "2012 Act").

203 Subsection (3) of the new clause amends section 92(1) of the 2012 Act to clarify that the Scheme applies only to sexual activity between individuals of the same sex.

204 Subsection (4)(a) amends section 92(3) to specify that any other party to the sexual activity must have been aged 16 years or over.

205 Subsection (4)(b) amends section 92(3) to bring into the scope of the scheme any offences that have been repealed in statute or abolished by enactment in common law.

206 Subsection (4)(b) further amends section 92(3) to provide that a conviction or caution is not eligible for a disregard where the activity would amount to an offence at the time the decision is made on the application, or where any other party to the same-sex sexual activity was not aged 16 years or over.

207 Subsection (5) inserts new section 92(7) which sets out the definition of 'sexual activity'. This new definition is broader than that covered by the specified offences in the current scheme and is intended to reflect the broader range of behaviour covered by the extended scope of the scheme. Subsection (5) makes clear that the scheme now covers conduct intended to lead to sexual activity as well as sexual activity itself.

208 Subsections (6) to (9) make amendments to the decision-making and appeal processes to apply them to the expanded scheme.

209 Subsection (10) updates the definitions in section 101 of the 2012 Act to reflect the expanded scheme, including definitions relating to service offences, and subsection (11)

makes clear that the new provisions do not affect disregards which have been granted prior to the new provisions coming into force.

- 210 Lords Amendment 122 would insert new clause "Pardons for certain convictions or cautions" which would extend the scheme for posthumously pardoning people convicted of or cautioned for historical offences that regulated sexual activity between people of the same sex as provided for in sections 164 to 167 of the Policing and Crime Act 2017 (the "2017 Act").
- 211 Subsection (3) inserts new section 164(A1) of the 2017 Act which extends the provisions for posthumous pardons to align with the extension of the scope of the disregard scheme. This provides posthumous pardons for those individuals who die prior to the commencement of the extended scheme or within the twelve months after the commencement. Where an offence is repealed or abolished after the commencement of the extended scheme, provision is made for those who have died prior to, or within twelve months after, the date of repeal or abolishment, if they fulfil the criteria for a disregard.
- 212 Subsection (4) inserts new section 164(1) to (1C) of the 2017 Act which set out the conditions which must be met for a person to be pardoned.
- 213 Subsections (7) to (9) make further amendments to section 164 to ensure that the extended scheme encompasses all historical service offences.
- 214 Subsection (10) inserts section 164(11) to ensure that persons who have already received a pardon under section 164 or 165 cannot receive another pardon for the same offence.
- 215 Subsection (11) amends section 165(1) of the 2017 Act to ensure that the provisions for automatic pardons to reflect the extension of the disregard scheme.
- 216 Subsection (12) repeals the power in section 166 of the 2017 Act for the Secretary of State to add further offences to the list of eligible offences within the scope of the original scheme. This power is no longer necessary because there is no longer a list of eligible offences; rather, all repealed and abolished offences now fall within scope of the scheme.

Lords Amendments to Part 12: Procedures in courts and tribunals

Lords Amendments 123 to 135 and 145: Remote observation and recording of court and tribunal proceedings

- 217 Lords Amendments 123 to 135 would amend Clause 167 which makes provision for the remote observation of court and tribunal proceedings using audio and/or audio-visual live links. These measures (together with Clause 168) replace the temporary and more limited modifications made by Schedule 25 to the Coronavirus Act 2020.
- 218 Lords Amendment 125 would expand new section 85A of the Courts Act 2003 so as to cover all "courts" within the meaning of the Contempt of Court Act 1981 (which include tribunals and other judicial bodies), so that regulations under new section 85A may be made in relation to proceedings in that wider range of courts and tribunals.
- 219 Lords Amendments 123 and 124 are consequential on Amendment 125.
- 220 Lords Amendment 127 would (responding to the inclusion of tribunals within new section 85A of the Courts Act 2003) provide for the Senior President of Tribunals to consent to regulations under that section in appropriate cases.

221 Lords Amendment 128 would provide that the Supreme Court and courts or tribunals within devolved competence do not fall within the expanded scope of new section 85A of the Courts Act 2003.

222 Lords Amendments 129 to 135 and 145 are consequential on Amendments 125 and 128.

Lords Amendments 136 to 139: Offence of recording or transmission in relation to remote proceedings

223 Lords Amendments 136 to 139 would amend Clause 168 which makes provision, corresponding broadly to the prohibitions in section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981, prohibiting unauthorised recording or transmission of a transmission of proceedings made pursuant to a direction under the measures introduced by Clause 167 .

224 Lords Amendment 136 would follow through Lords Amendment 128, providing that the Supreme Court and courts or tribunals within devolved competence do not fall within the expanded scope of new section 85B of the Courts Act 2003 (as they do not fall within the scope of new section 85A).

225 Lords Amendment 137 would follow through Lords Amendment 125, expanding new section 85B of the Courts Act 2003 so as to cover, as new section 85A would do as amended by Lords Amendment 125, all “courts” within the meaning of the Contempt of Court Act 1981 (which include tribunals and other judicial bodies).

Lords Amendments 140, 144, 149, 156 and 157: Expedited procedure for initial regulations about remote observation of proceedings

226 Lords Amendment 140 would insert new clause "Expedited procedure for initial regulations about remote observation of proceedings" which would make provision to enable the first set of regulations made under the power conferred by subsection (8) of the new section 85A of the Courts Act inserted by Clause 167 (which, in particular, will specify types of court or tribunal proceedings in which remote observation directions will be available) to be made subject to the 'made affirmative' procedure rather than the draft affirmative procedure.

227 Lords Amendments 144, 149, 156 and 157 are consequential on Amendment 140.

*Lords Amendments 141 and 142: Offence of requiring or accepting sexual relations as a condition of accommodation

228 Lords Amendments 141* and 142* would create two new offences: one of requiring or accepting sexual relations as a condition of accommodation, which is commonly known as “sex for rent”, and another of arranging or facilitating the same. The first offence – requiring or accepting sexual relations in return for accommodation – would be punishable on indictment with a maximum sentence of seven years’ imprisonment. The second offence of arranging or facilitating “sex for rent”, including through publishing or advertising the arrangements, would be punishable with a fine of up to £50,000.

*Lords Amendment 143: Fast-track Public Space Protection Orders

229 Lords Amendment 143* would amend the Anti-social Behaviour, Crime and Policing Act 2014 to introduce a process by which a Public Space Protection Order (PSPO) can be made without consulting in advance, where the PSPO is expedited for the purposes of:

- prohibiting behaviour outside schools which is likely to have a detrimental effect on the quality of life of the pupils and staff.

- prohibiting behaviour outside a premise providing NHS vaccination services which is impeding members of the public from receiving a vaccine or harassing or intimidating members of the public or staff and volunteers.

230 Local Authorities would be able to immediately implement such a PSPO for a period of six months with the consent of the school's leadership/NHS body, chief of police and leader of the local authority.

Lords Amendments to Part 13: Final provisions

Lords Amendments 158 to 161: Minor amendments in relation to the sentencing consolidation

231 Schedule 20 to the Bill makes a number of minor and technical amendments to the Sentencing Act 2020, the Criminal Justice Act 2003 and the Counter-Terrorism and Sentencing Act 2021, subsequent to the consolidation of sentencing procedural law into the Sentencing Code by the 2020 Act.

232 Lords Amendments 158 to 161 would make further such amendments.

Financial Effects of Lords Amendments

233 Lords Amendments 59 and 60 (Code of practice relating to non-criminal hate incidents) are estimated to have an average annual cost of between £0.0 million to £0.7 million.

234 Lords Amendments 61 to 69 (Offences relating to hares etc) are estimated to have an average annual cost of between £0.2 million to £0.4 million.

235 Lords Amendment 72* (Offences motivated by hostility towards the sex or gender of the victim) is expected to have financial implications in terms of additional prison places; these have not been quantified.

236 Lords Amendment 88 (Wilful obstruction of highway) is estimated to have an average annual cost of £0.4 million.

237 Lords Amendment 104 (Assaults on those providing a public service etc) is estimated to have an average annual cost of between £0.2 million to £5.5 million.

238 Lords Amendments 118 to 120 (Football Banning Orders) are estimated to have an average annual cost of between £0.0 million to £0.2 million.

239 Lords Amendments 121 and 122 (Pardons and disregards for historical convictions for consensual gay sex) are estimated to have an average annual cost of between £0.0 million to £0.1 million.

Police, Crime, Sentencing and Courts Bill

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Police, Crime, Sentencing and Courts Bill as brought from the House of Lords on 26 January 2022.

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