

VICTIMS AND PRISONERS BILL
DELEGATED POWERS MEMORANDUM

Introduction

1. This memorandum has been prepared by the Ministry of Justice for the Delegated Powers and Regulatory Reform Committee, to assist with its scrutiny of the Victims and Prisoners Bill ('the Bill'). The memorandum identifies the provisions of the Bill which confer new powers to make delegated legislation. It explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

Background and purpose of the Bill

2. Part 1 of the Bill (Victims of Criminal Conduct) aims to improve victims' experiences so that victims are better supported across the criminal justice process. Together the measures will send a clear signal about what victims can and should expect from the criminal justice system, strengthen transparency and oversight of criminal justice agencies, and improve how victim support services deliver for victims. These measures:

- (a) Set out the key principles that must be reflected in the services in the Victims' Code; and provide a power to make further provision about the Victims' Code in secondary legislation;
- (b) Place a duty on specified criminal justice bodies, the British Transport Police ("BTP") and the Ministry of Defence Police ("MDP") to take reasonable steps to promote awareness of the Victims' Code;
- (c) Provide for improved review and oversight of compliance with the Victims' Code by (i) placing a duty on specified criminal justice bodies within a police area (the police, the Crown Prosecution Service ("CPS"), His Majesty's Courts and Tribunals Service ("HMCTS"), His Majesty's Prison and Probation Service ("HMPPS") and Youth Offending Teams ("YOTs")) and on non-territorial police forces (BTP and MDP) to keep under review their own compliance with the Code, including by collecting and sharing information about their compliance; (ii) enhancing mechanisms for overseeing compliance with the Code by requiring elected local policing bodies (Police and Crime Commissioners ("PCCs")), the British Transport Police Authority ("BTPA") and the Secretary of State to keep under review how criminal justice bodies, the BTP and the MDP are complying with the Victims' Code; and (ii) providing for Code compliance information to be published;

- (d) Introduce a duty for PCCs, local authorities and Integrated Care Boards in England to collaborate locally when commissioning victim support services for victims of domestic abuse, criminal conduct of a sexual nature and serious violence, to facilitate more holistic and better coordinated victim support services;
 - (e) Create a duty for the Secretary of State to issue guidance in relation to the role and functions of Independent Sexual Violence Advisors (“ISVAs”) and Independent Domestic Violence Advisors (“IDVAs”) and a duty for those advisors, and others who have functions relating to victims or any other aspect of the criminal justice system (with the exception of the judiciary), to have regard to that guidance;
 - (f) Provide for the Victims’ Commissioner to lay their annual report in Parliament to raise the profile of their reports and of victims’ issues; provide for relevant agencies to respond to recommendations in all Victims’ Commissioner reports within 56 days, explaining how they will act upon the recommendation, or how they will do so in future, or provide reasons for why they will not act on the recommendation;
 - (g) Provide for joint thematic criminal justice inspections on victims’ experiences to ensure a clearer focus on the quality of service provided to victims, and place a new duty on inspectorates to consult the Victims’ Commissioner, alongside pre-existing consultees, when preparing their individual and joint inspection programmes; and
 - (h) Provide for a simplified complaint escalation process for victims by removing the need to raise a complaint via an MP before it can be escalated to the Parliamentary and Health Services Ombudsman (“PHSO”), where the complaint relates to the complainant’s experiences as a victim of crime.
3. Part 2 of the Bill (Victims of Major Incidents) permits the Secretary of State to appoint one or more individuals to act as an independent public advocate (“advocate”) to assist victims of a major incident that occurs in England or Wales. These measures:
- (a) Provide the Secretary of State with a discretion to appoint an advocate (or multiple advocates) when a major incident has directly caused the death of, or serious harm to a significant number of individuals. Advocates will be appointed based on their academic, professional, or other qualifications, experience or skills, or their relationship with the geographical area or community that is affected by the incident;

- (b) Provide for the advocate to be appointed on terms agreed between the Secretary of State and the advocate ('terms of appointment') which will provide for appropriate remuneration and payment of reasonable costs incurred by the advocate in connection with the exercise of their functions. The Secretary of State and the advocate will both have the ability to terminate the appointment and the terms of appointment may also make provision for how an appointment may be terminated.
 - (c) Provide that where more than one advocate is appointed in relation to the same major incident, one of the advocates can be appointed as the lead advocate;
 - (d) Set out that the functions of the advocate are to provide appropriate support, in accordance with their terms of appointment, to the injured and bereaved families following a major incident in relation to the aftermath, an investigation into the incident, an inquest under the Coroners and Justice Act 2009, a non-statutory inquiry and an inquiry into the incident under the Inquiries Act 2005;
 - (e) Create a duty for advocates to report to the Secretary of State at the conclusion of an investigation, inquest or inquiry if requested by a notice sent under this section to do so, and for the Secretary of State to publish a copy of their report in a way that the Secretary of State thinks fit;
 - (f) Enable advocates to share information received in the exercise of their functions with any other advocate appointed in respect of the same incident, the Secretary of State, another public authority and the injured and bereaved families in respect of the incident, though this is subject to the injured and bereaved families providing their consent in respect of the sharing of personal data; and
 - (g) Provide a power for the Secretary of State to issue guidance about the matters to which an advocate must have regard when exercising their functions.
4. Part 3 of the Bill (Prisoners) provides for reforms to the parole process by making changes to the system by which prisoners serving custodial sentences are released on licence by the Parole Board ("the Board") to continue serving their sentence in the community. It also provides for a prohibition on whole life order prisoners forming a marriage or civil partnership, subject to an exemption in exceptional circumstances. These measures:
- (a) Clarify the meaning and application of the statutory test that determines release;

- (b) Provide for new powers for the Secretary of State to refuse release following a Board direction, in cases of prisoners serving sentences for ‘top-tier’ offences (murder, rape, causing death of child, serious terrorism), with a route of appeal to the Upper Tribunal (“the Tribunal”);
 - (c) Change of function of the Board Chair (“the Chair”) and introduction of a power of dismissal by the Secretary of State;
 - (d) Make changes to the composition of membership of the Board to include persons with law enforcement experience;
 - (e) Make interpretive provision in relation to the Human Rights Act 1998 (“the HRA”) and the European Convention on Human Rights (“the Convention”) in the context of release, licence, supervision and recall of offenders; and
 - (f) Provide for a prohibition on whole life order prisoners marrying or forming a civil partnership, unless the Secretary of State considers there are exceptional circumstances which justify permission being granted.
5. Part 4 of the Bill (General) makes the necessary legal provision for regulations under the Bill as well the short title of the Bill, commencement, extent and transitional provisions.

Summary of delegated powers in the Bill

6. The Bill contains a range of delegated powers including:
- powers to make regulations;
 - a duty to issue a Code of Practice;
 - provision for the issuance of guidance including requirements to issue guidance;
 - powers to issue directions; and
 - an amendment to an existing power to make rules by negative resolution.
7. In addition, the Bill includes standard regulation-making powers to make transitional or saving provision and relating to commencement. These powers are explained in more detail below.
8. The Bill contains two Henry VIII powers subject to the affirmative resolution procedure, and two amendments to existing Henry VIII powers, subject to the affirmative resolution procedure. Otherwise, the rest of the regulation-making powers are subject to the negative resolution procedure.

9. There are 24 delegated powers in this Bill.

Analysis of delegated powers by clause

Part 1 (Victims of Criminal Conduct)

Clause 2(1): A requirement for the Secretary of State to issue a code of practice (“the Victims’ Code”) as to the services to be provided to victims by persons appearing to the Secretary of State to have functions relating to victims, or any aspect of the criminal justice system

Power conferred on: Secretary of State

Power exercisable by: Statutory Code of Practice

Parliamentary procedure: None – but the draft Code will be laid before Parliament (clause 3(6)) and brought into operation on such day as the Secretary of State appoints by regulations (clause 3(7)).

Context and purpose

10. The Bill repeals the provisions in Part 3, Chapter 1, of The Domestic Violence, Crime and Victims Act 2004 (“the 2004 Act”) which relate to the issuing of a Code of Practice as to the services to be provided to a victim of criminal conduct. It restates and builds on these provisions by setting out key principles that the Code must reflect when making provision for those services, subject to the permissible restrictions currently set out in section 32 of the 2004 Act (and substantively restated as clause 2(6) of the Bill). The Code may include provision requiring or permitting services to be provided to persons instead of, or as well as, the victim (clause 2(7)) and may make different provision for different purposes, including in relation to different descriptions of victim (clause 2(8)). It may not require anything to be done by a person acting in a judicial capacity or a person discharging a function which involves prosecutorial discretion (clause 2(9)).

11. Clauses 3 and 4 of the Bill set out the procedures which must be followed when making and revising the Code. In the main, these re-state section 33 of the 2004 Act, except that subsections (3) – (5) of clause 4 of the Bill contains a new simplified procedure for minor amendments to the Code.

12. The new Victims’ Code will be laid in Parliament after the consultation process in clause 3 of the draft Bill has been followed. The Code will reflect the key principles set out in the Bill and accord with any regulations issued under the power in clause 2(4), which allows the Secretary of State to make further provision about Code via

regulations (see below). Any future revisions to the Code will always need to reflect the key principles set out in the Bill and accord with the regulations under clause 2(4) in force at the relevant time.

Justification for taking the power

13. The current code of practice as to the services to be provided to victims of criminal conduct, issued under section 32 of the 2004 Act, is an established and recognised document. It is a victims-facing document and, in addition to setting out the services and minimum standards that victims can expect to receive, it also contains explanations about the wider criminal justice system and information about accessing services which the Code itself does not provide for. Examples of this are: information about where to access support for families bereaved by murder or manslaughter abroad and information about coroners' courts, which are civil courts. Given the level and nature of detail necessary to make this document meaningful for victims, it would not be suitable to transpose the Code in its entirety into primary or secondary legislation. However, the Code will now be underpinned by the principles set out on the face of the Bill (with a statutory requirement that the services provided for in the Code must reflect those principles) and by regulations making further provision about the Code, giving greater certainty on the content of the Code and improving parliamentary oversight.

Justification for the procedure

14. Given the likely content and nature of the Victims' Code, the Government does not consider it is necessary for the Victims' Code to be subject to parliamentary procedure. This approach is consistent with that taken for other Codes of Practice, such as the Codes provided for in section 51 of the Domestic Abuse Act 2021 (in relation to data from electronic monitoring) and section 103 of the Digital Economy Act 2017 (for providers of online social media platforms).

15. Parliamentary oversight is provided by the requirement in clause 3(6) for the draft Code to be laid in Parliament. This is a continuation of the procedure set out in section 33 of the 2004 Act, which is re-stated here, with the addition of a less onerous procedure (clause 4(3) – (5)) for making minor revisions. These changes will only be corrections, clarifications or consequential on other changes in law, practice or procedure so it is felt that a less strenuous procedure is justified. The revised Code will still be laid before Parliament, even if the changes are minor (clause 4(5)(b)). An additional safeguard is provided by clause 4(2), which provides that the Secretary of State may only revise the Code if they are satisfied that the proposed revisions will not result in a significant reduction in the quality or extent of services provided under the Code or a significant restriction in the descriptions of person who will be provided with services under the Code.

16. A draft of the Victims' Code will be published to inform parliamentary passage of the Bill and formal consultation on the draft Victims' Code will occur after Royal Assent, as required by clause 3.

Clause 2(4): A power for the Secretary of State to make further provision about the Victims' Code, including about matters that the Code must include

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution

Context and purpose

17. The Bill sets out the key principles that must be reflected in the Victims' Code and creates a power for the Secretary of State to make further provision about the Victims' Code by way of regulations, including about matters that the Code must include. The current Code, which came into force on 1 April 2021, is structured around 12 overarching entitlements for victims, referred to as 'rights' in the Code itself. It is intended that regulations made under clause 2(4) will set out a framework for the new Code linked to those entitlements. The Code itself will set out the extent and application of the entitlements. In this way, the regulations and the key principles set out in the Bill will provide a legislative framework to underpin the Code.

Justification for taking the power

18. To supplement the key principles and to provide further parliamentary oversight of the content of the Code, a power is being taken to make further provision about the Code in regulations. In the future, this could be used to add to the key principles at a secondary legislation level, if appropriate, and the power may also be used to specify further detail of how the key principles must be given effect.

19. The intention is to use this power to provide a framework for the new Code in line with the entitlements that are included in the current Code. This will also ensure greater parliamentary scrutiny of the content of the Code, given that the negative parliamentary procedure will apply to these regulations.

20. Unlike the key principles, which will be set out in primary legislation, the regulations are more likely to need to be amended to reflect future development of the provision of victim services. Together with the primary provisions, the power to make further provision about the Victims' Code is designed to improve the overall parliamentary accountability of the Victims' Code, consistent with enhancing its status.

Justification for the procedure

21. The regulations will be subject to the negative resolution procedure. The Government considers this to be an appropriate level of scrutiny as the regulations cannot amend or depart from the key principles which will be set out in primary legislation. The use of the regulation-making power is limited by the restriction in clause 2(5) of the Bill which provides that the Secretary of State can only make regulations under that clause if they are satisfied that provision made in the Code in compliance with the regulations would not result in a reduction in the quality or extent of the services provided under the Code. In addition, once the Code is re-issued, the statutory requirements in relation to the Code itself are such that the Secretary of State cannot make changes to the Code itself which would lead to a reduction of this kind (clause 4(2)). The regulations operate to add yet a further level of scrutiny, at the parliamentary level, thus enhancing overall accountability. In light of this, it is considered that the negative resolution procedure is the appropriate level.
22. A draft of the regulations will be prepared and published during parliamentary passage of the Bill.

Clause 3(7): A power for the Secretary of State to bring the Victims' Code into operation on such day as the Secretary of State may appoint, once the draft Code has been laid in Parliament

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

Context and purpose

23. Before making regulations to bring the Victims' Code into operation, the Secretary of State must prepare a draft of the Code in consultation with the Attorney General (clause 3(2) and (3)), carry out a public consultation (clause 3(4)), consider the consultation responses with the Attorney General and make any appropriate changes to the draft (clause 3(5)) and lay the draft Code in Parliament (clause 3(6)). The same procedure applies to any future revisions of the Code, with a slightly simplified version of the procedure for minor revisions (clause 4)). All revised versions, including those where the changes made are only minor, will be laid in Parliament and brought into operation by regulations subject to the negative resolution procedure (clause 4(5)). The purpose of this process is to ensure that sufficient consultation and parliamentary oversight is achieved for the new Code and for any future revisions.

Justification for the power

24. The power relates to choosing the date that the Code or any revised version will come into operation. The use of regulations will afford the necessary flexibility to bring the new Code into operation at the appropriate time, having regard to the need for service providers under the Code to familiarise themselves with the new version, undertake appropriate training and put any additional systems or procedures in place.

Justification for the procedure

25. The regulations will be subject to the negative resolution procedure. This follows the approach taken in relation to the power in section 33(7) of the 2004 Act, which is being re-stated here. This is considered to be an appropriate level of scrutiny, given that this power is procedural and relates solely to the appointment of a date for the new Code or a revised Code to be brought into operation.

Clause 6(2): Power for the Secretary of State to prescribe in regulations information that the criminal justice bodies must collect and share regarding their provision of services in accordance with the Victims' Code, as well as to prescribe the manner in which the information must be collected, shared and reviewed.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Context and purpose

26. The Bill establishes a duty on specified criminal justice bodies (the police, the CPS, HMCTS, HMPPS and Youth Offending Teams) to keep under review how they provide services in accordance with the Victims' Code. As part of that duty, it also places a specific requirement on these bodies to collect and share information about their compliance with one another and with PCCs. Underpinning that duty is a power for the Secretary of State to make regulations setting out what information should be collected and shared, and prescribing the manner in which information must be collected, shared and reviewed.

27. Clause 6(4) provides that regulations may in particular (a) prescribe different information to be collected or shared by different bodies; (b) prescribe different information in relation to different services; (c) prescribe information relating to the characteristics or experiences of service users; (d) prescribe the times at which, or periods within which, information must be collected, shared or reviewed; and (e) prescribe the form in which information must be collected or shared, or require

information to be collected or shared in such form as may be specified in a notice issued from time to time by the Secretary of State. The purpose of this is to ensure that information is collected and shared in a uniform way in order to ensure consistency and allow for comparisons to be made.

Justification for taking the power

28. The policy intention is to use the regulations to require that two main types of information are collected (i) statistical data designed to analyse to what extent the bodies are complying with the Victims' Code; and (ii) feedback from persons who access services provided by these bodies under the Code. Regulations can prescribe that any part of the information collected, in addition to any other information specified in regulations, be shared with PCCs. The exact information to be collected and shared under these categories will vary across the different bodies, depending on the services that they provide under the Code. The regulations are also intended to be used to establish the frequency with which the activities must be carried out and the form in which information should be collected and shared (which may be by reference to a notice issued by the Secretary of State). Given that the bodies will be under a statutory duty to collect and share information, it is necessary for the details regarding what information should be collected and shared and the manner in which these activities must be carried out to be set out in legislation, so that the bodies are able to understand and comply with those duties.
29. The Government considers that secondary legislation is most appropriate for this purpose because the information to be collected and shared will largely consist of a dataset of lengthy and detailed metrics which are not suitable for primary legislation. The metrics are likely to need to be amended from time to time to reflect changes to the Victims' Code, as well as the operational procedures of the bodies themselves. In order to strike the right balance between clarity for the bodies and flexibility to amend, it is considered that secondary legislation is the most appropriate vehicle for these requirements.

Justification for the procedure

30. The regulations will be subject to the negative resolution procedure. The overall policy intent is set out on the face of the Bill and the regulations will provide the technical detail behind the duty to collect and share. The main content of the regulations is intended to be detailed metrics reflecting the services included in the Victims' Code and a list of information to be gathered from users accessing services under the Victims' Code. The exact information to be collected and shared will vary between different criminal justice bodies, depending on the services that they provide under the Code. The Secretary of State is required to consult such persons as they think appropriate before making the regulations (clause 6(5)) and it is intended that this will include the criminal justice bodies themselves. The duties will be set out in primary legislation and the regulations will simply provide the

operational and technical details. Therefore, the negative resolution procedure is considered to provide an appropriate level of parliamentary scrutiny.

31. Further details about what will be contained in the regulations will be published during the passage of the Bill to enable Parliamentary consideration.

Clause 7(2): Power for the Secretary of State to prescribe in regulations (a) information that PCCs must provide to the Secretary of State, (b) matters to be included in reports provided in connection with the joint review, and (c) the manner in which the information must be shared, reviewed or reported on.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Context and purpose

32. The Bill places a duty on PCCs to keep under review how criminal justice bodies which provide services in their police area provide those services in accordance with the Victims' Code. As part of that duty, PCCs must jointly review the information provided to them by criminal justice bodies with the relevant bodies, and then provide the Secretary of State with the information (or such of that information as is prescribed in regulations) and provide the Secretary of State with reports on matters in connection with the joint review of that information with criminal justice bodies. Underpinning that duty is a power for the Secretary of State to make regulations setting out a subset of the information received from criminal justice bodies which must be shared with the Secretary of State and to prescribe which matters in connection with the review should be reported on, as well as to prescribe the manner in which the information should be shared, reviewed or reported on.

33. The purpose of placing this duty on PCCs is to allow the Ministry of Justice to utilise the compliance information and any useful insights from the joint review to build a clear picture of whether criminal justice bodies are meeting their obligations under the Victims' Code and providing victims with a proper service. The Ministry of Justice will then publish such of this information as is considered necessary in order to enable members of the public to assess the code compliance of each criminal justice body which provides services in a police area, in accordance with the duty under clause 10(1)(a) of the Bill and PCCs will be required to take reasonable steps to make members of the public aware of how to access that information (clause 10(5)).

34. Clause 7(4) provides that regulations may in particular (a) prescribe the times at which, or periods within which, information or a report must be provided; and (b) prescribe the form in which information or a report must be provided, or require information or a report to be provided in such form as may be specified in a notice issued from time to time by the Secretary of State. The purpose of this is to provide uniformity in the information collected which is important in order to enable comparison across each police area, which will allow for performance management.

Justification for taking the power

35. The Bill provides for regulations to be used to prescribe what information PCCs should share with the Secretary of State, when the Secretary of State does not require all of the information collected and shared by the criminal justice bodies. Although the full dataset will be useful for local discussions, it may not all be required at a national level. Allowing for the prescribing of the subset of information that should be shared with the Secretary of State will ensure that there is no unnecessary burden placed on criminal justice bodies to share information that is not required. As the exact information to be collected and shared by different criminal justice bodies will be set out in secondary legislation (using the regulation-making power in clause 6(2)), it follows that the subset of information that needs to be shared with the Secretary of State cannot be referred to on the face of the Bill. It is also considered that the detailed technical nature of the information means that it is better suited for secondary legislation.

36. The Bill provides for regulations to prescribe which matters, in connection with the joint review of how criminal justice bodies provide services in accordance with the Victims' Code, should be reported on to the Secretary of State. It is expected that this will relate to the outcome of the review and be linked to specific metrics, as provided for in the regulations referred to above – therefore it is not possible to set out the matters for report on the face of the Bill. This will also allow the content to be updated if different information is required in the future.

Justification for the procedure

37. The regulations will be subject to the negative resolution procedure. The regulations are intended to set out a subset of the overall information collected by criminal justice bodies which needs to be shared with the Secretary of State and to set out which matters in connection with the compliance review should be reported on to the Secretary of State. As with the regulations setting out the information that should be collected and shared, the information that should be shared with the Secretary of State will vary from between different criminal justice bodies. The Secretary of State is required to consult such persons as they think appropriate before making the regulations (clause 7(5)) and it is intended that this

will include PCCs themselves. Therefore, the negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

38. Further details about what will be contained in the regulations will be published during passage of the Bill to enable Parliamentary consideration.

Clause 8(4): Power for the Secretary of State to prescribe in regulations information that the British Transport Police (BTP) must collect and share regarding their provision of services in accordance with the Victims' Code, as well as to prescribe the manner in which the information must be collected, shared and reviewed.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Context and purpose

39. The Bill establishes a duty for BTP to keep under review how they provide services in England and Wales in accordance with the Victims' Code. As part of that duty, it also places a specific requirement on BTP to collect and share information about their compliance with the British Transport Police Authority (the BTPA). This duty is an equivalent of (and serves the same purpose as) the duty for criminal justice bodies (including police forces) under clauses 6(1)(b) and 6(2) but specifically tailored for BTP. Underpinning this duty is a power for the Secretary of State to make regulations setting out what information should be collected and shared, as well as the manner in which information must be collected, shared and reviewed.

40. As a result of clause 8(7) regulations under this clause may in particular (a) prescribe different information in relation to different services; (b) prescribe information relating to the characteristics or experiences of service users; (c) prescribe the times at which or periods within which information must be collected, shared or reviewed; and (d) prescribe the form in which information must be collected or shared or require those things to be done in such form as may be specified in a notice issued from time to time by the Secretary of State.

Justification for taking the power

41. The policy intention is to use the regulations to require that two main types of information are collected (i) statistical data designed to analyse to what extent BTP is complying with the Victims' Code; and (ii) feedback from persons who access services that BTP provide under the Code. Regulations can prescribe that any part

of the information collected, in addition to any other information specified in regulations, be shared with the BTPA. The regulations are also intended to be used to establish the frequency with which the activities must be carried out and the form in which information should be collected and shared (which may be by reference to a notice issued by the Secretary of State). Given that BTP will be under a statutory duty to collect and share this information, it is necessary for the details regarding what information should be collected and shared and the manner in which those activities must be carried out to be set out in legislation, so that they are able to understand and comply with their duty.

42. The Government considers that that secondary legislation is most appropriate for this purpose because information to be collected and shared will largely consist of a dataset of lengthy and detailed metrics which are not suitable for primary legislation. The metrics are likely to need to be amended from time to time to reflect changes to the Victims' Code, as well as to the operational procedures of BTP. In order to strike the right balance between clarity for BTP and flexibility to amend, it is considered that secondary legislation is the most appropriate vehicle for these requirements.
43. Regulations made under clause 8(4) may prescribe the form in which information must be collected or shared, or they may require information to be provided in a form specified in a notice issued from time to time by the Secretary of State (clause 8(7)(d)). The purpose of this is to provide uniformity which is important in order to enable comparison across each police force, which will allow for performance management. The information from BTP can then be compared with that of local police forces and with that of MDP.

Justification for the procedure

44. The regulations will be subject to the negative resolution procedure. The overall policy intent is set out on the face of the Bill and the regulations will provide the technical detail behind the duty to collect and share. The main content of the regulations is intended to be detailed metrics reflecting the services included in the Victims' Code and a list of information to be gathered from users accessing services under the Victims' Code. The Secretary of State is required to consult such persons as they think appropriate before making the regulations (clause 8(8)) and it is intended that this will include BTP. The duties themselves will be set out in primary legislation and the regulations will simply provide the operational and technical details. Therefore, the negative resolution procedure is considered to provide an appropriate level of parliamentary scrutiny.
45. Further details about what will be contained in the regulations will be published during the passage of the Bill to enable Parliamentary consideration.

Clause 8(5): Power for the Secretary of State to prescribe in regulations (a) information that the British Transport Police Authority (the BTPA) must provide to the Secretary of State, and (b) matters to be included in reports provided in connection with the joint review and (c) the manner in which the information must be shared, reviewed or reported on.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Context and purpose

46. The Bill places a duty on the BTPA to keep under review how the Chief Constable of BTP provides services in England and Wales in accordance with the Victims' Code. This duty is an equivalent of the duty for PCCs under clause 7(1) and serves the same purpose.
47. As part of this duty, BTPA must provide the Secretary of State with the information shared with them by BTP (or such of that information as is prescribed in regulations) and provide the Secretary of State with reports on matters in connection with the review of that information with BTP. Underpinning that duty is a power for the Secretary of State to make regulations setting out a subset of the information received from BTP which must be shared with the Secretary of State and to prescribe which matters in connection with the review should be reported on.
48. The purpose of placing this duty on BTPA is to allow the Ministry of Justice to utilise the compliance information and any useful insights from the joint review to build a clear picture of whether non-territorial police forces are meeting their obligations under the Victims' Code and providing victims with a proper service. The Ministry of Justice will then publish such of this information as is considered necessary in order to enable members of the public to assess the Code compliance of BTP, in accordance with the duty under clause 10(1) of the Bill.
49. As a result of clause 8(7) regulations under this clause may in particular (a) prescribe different information in relation to different services; (b) prescribe information relating to the characteristics or experiences of service users; and (c) prescribe the times at or periods within which information must be shared or reviewed or information or a report must be provided to the Secretary of State; and (d) prescribe the form in which information must be shared or a report must be provided to the Secretary of State or require those things to be done in such form as may be specified in a notice issued from time to time by the Secretary of State.

Justification for taking the power

50. The Bill provides for regulations to be used to prescribe what information BTPA should share with the Secretary of State, when the Secretary of State does not require all of the information collected by BTPA. Although the full dataset will be useful for the purposes of the review to be carried out by BTP and BTPA, it may not all be required at a national level. Prescribing the subset of information that should be shared with the Secretary of State will ensure that there is no unnecessary burden placed on BTPA to share information that is not required. As the exact information to be collected by BTP will be set out in secondary legislation (using the regulation-making power in clause 8(4)), it follows that the subset of information that needs to be shared with the Secretary of State cannot be referred to on the face of the Bill.
51. The Bill also provides for regulations to prescribe which matters, in connection with the joint review of how the BTP provides services in accordance with the Victims' Code, should be reported on to the Secretary of State. It is expected that this will relate to the outcome of the review and be linked to specific metrics, as provided for in the regulations referred to above – therefore it is not possible to set out the matters for report on the face of the Bill. This will also allow the content to be updated if different information is required in the future.
52. Regulations made under clause 8(5) may prescribe the form in which information must be collected or shared, or they may require information or a report to be provided in a form specified in a notice issued from time to time by the Secretary of State (clause 8(7)(d)). The purpose of this is to provide uniformity which is important in order to enable comparison across each police force, which will allow for performance management. The information from BTP can then be compared with that of local police forces and with that of MDP.

Justification for the procedure

53. The regulations will be subject to the negative resolution procedure. The regulations are intended to set out the subset of the overall information collected by BTP which needs to be shared with the Secretary of State and to set out which matters in connection with the compliance review should be reported on to the Secretary of State. The Secretary of State is required to consult such persons as they think appropriate before making the regulations (clause 8(8)) and it is intended that this will include BTPA. Therefore, the negative procedure is considered to provide an appropriate level of parliamentary scrutiny.
54. Further details about what will be contained in the regulations will be published during the passage of the Bill to enable Parliamentary consideration.

Clause 9(4)): Power for the Secretary of State to prescribe in regulations information that Ministry of Defence Police must collect and share regarding their provision of services in accordance with the Victims' Code, as well as the manner in which information must be collected, shared and reviewed

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Context and purpose

55. The Bill establishes a duty for MDP to keep under review how they provide services in England and Wales in accordance with the Victims' Code. As part of that duty, it also places a specific requirement on MDP to collect and share information about their compliance with the Secretary of State. This duty is an equivalent of (and serves the same purpose as) the duty placed on criminal justice bodies (including police forces) under clause 6(2)(b) but specifically tailored for MDP. The arrangements for MDP are broadly similar to those for BTP under clause 8, but with slight differences to reflect MDP's governance arrangements. Underpinning this duty is a power for the Secretary of State to make regulations setting out what information should be collected and shared, as well as prescribing the manner in which information must be collected, shared and reviewed.

56. The Bill places a duty on the Secretary of State to keep under review how MDP provides services in England and Wales in accordance with the Victims' Code. This duty is an equivalent of the duty placed on PCCs in relation to criminal justice bodies (clause 7(1)) and on the BTPA in relation to BTP (clause 8(3)). There is also a duty on the Secretary of State to review the information with the MDP (clause (9)(5)(a)), replicating the duty on PCCs and the BTPA to do the same (clauses 7(2)(b) and 8(5)(b)) and to prepare reports on such matters in connection with the review as may be prescribed in regulations (clause 9(5)(b)). The policy intent is for these duties to be carried out by the Secretary of State for Defence. A Memorandum of Understanding will be used to replicate the arrangements in place for PCCs and the BTPA in relation to sharing information with the Secretary of State for Justice. This will include setting out arrangements for the Secretary of State for Defence to share the information collected under clause 9(4)(b), together with any reports on matters in connection with the review (clause 9(5)(b)) with the Secretary of State for Justice, effectively replicating the arrangements for PCCs and the BTPA in clauses 7(2) and 8(5) respectively.

57. The purpose of these arrangements is to allow the Ministry of Justice to utilise the compliance information and any useful insights from the joint review to build a clear picture of whether non-territorial police forces are meeting their obligations under

the Victims' Code and providing victims with a proper service. The Secretary of State is required to publish such of this information as is considered necessary in order to enable members of the public to assess the Code compliance of MDP, in accordance with the duty under clause 10(1) of the Bill. In practice, the Secretary of State for Justice will publish the information, and the Memorandum of Understanding will be used to set out the arrangements for the Secretary of State for Defence to share information with the Secretary of State for Justice to allow publication.

58. Clause 9(7) provides that regulations under this clause may in particular (a) prescribe different information in relation to different services; (b) prescribe information relating to the characteristics or experiences of service users; and (c) prescribe the times at which, or periods within which, information must be collected, shared or reviewed; and (d) prescribe the form in which information must be collected or shared, or require information to be collected or shared in such form as may be specified in a notice issued from time to time by the Secretary of State.

Justification for taking the power

59. The policy intention is to use regulations made under clause 9(4) to require that two main types of information are collected (i) statistical data designed to analyse to what extent MDP is complying with the Victims' Code; and (ii) feedback from persons who access services that MDP provide under the Code. Regulations can prescribe that any part of the information collected, in addition to any other information specified in regulations, be shared with the Secretary of State. The regulations are also intended to be used to establish the frequency with which the activities must be carried out and the form in which information should be collected and shared (which may be by reference to a notice issued by the Secretary of State). Given that MDP will be under a statutory duty to collect and share information, it is necessary for the details regarding what information should be collected and shared and the manner in which these activities must be carried out to be set out in legislation, so that they are able to understand and comply with their duty.
60. The Government considers that secondary legislation is most appropriate for this purpose because the information to be collected and shared will largely consist of a dataset of lengthy and detailed metrics which are not suitable for primary legislation. The metrics are likely to need to be amended from time to time to reflect changes to the Victims' Code, as well as to the operational procedures of MDP. In order to strike the right balance between clarity for MDP and flexibility to amend, the Government considers that secondary legislation is the most appropriate vehicle for these requirements.

61. Regulations made under clause 9(4) may require information to be provided in a form specified in a notice issued from time to time by the Secretary of State (clause 9(7)(d)). The purpose of this is to provide uniformity which is important in order to enable comparison across each police force, which will allow for performance management. The information from MDP can then be compared with that of local police forces and with that of BTP.

Justification for the procedure

62. The regulations will be subject to the negative resolution procedure. The overall policy intent is set out on the face of the Bill and the regulations will provide the technical detail behind the duty to collect and share. The content of the regulations is intended to be detailed metrics reflecting the services included in the Victims' Code, and a list of information to be gathered from users accessing services under the Victims' Code. The Secretary of State is required to consult such persons as they think appropriate before making the regulations (clause 9(8)) and it is intended that this will include MDP. The duties themselves will be set out in primary legislation and the regulations will simply provide the operational and technical details. Therefore, the negative resolution procedure is considered to provide an appropriate level of parliamentary scrutiny.

63. Further details about what will be contained in the regulations will be published during the passage of the Bill to enable Parliamentary consideration.

Clause 11(1): Duty on the Secretary of State to issue guidance about the discharge of duties under clauses 6-10

Power conferred on: Secretary of State

Power exercisable by: Guidance

Parliamentary procedure: None

Context and purpose

64. Clause 11(1) creates a duty on the Secretary of State to issue guidance to assist the bodies referred to in clauses 6-11 in discharging their duties under those clauses, which relate to keeping under review compliance with the Victims' Code.

65. The purpose of the guidance in relation to the Code awareness duties (clauses 6(1)(a), 8(2) and 9(2)) is to recommend how the bodies may promote awareness of the Victims' Code amongst users of the service and members of the public. It is anticipated that this guidance will include appropriate circumstances and methods for notifying service users about the Code.

66. The purpose of the guidance in relation to the remainder of clauses 7-9 is to recommend how the bodies might meet their overarching duties to keep under review compliance with the Victims' Code. In particular, it will include guidance in respect of how the criminal justice bodies, BTP and MDP may identify and take into account the information they are under a duty to collect and share, and the ways in which all of the bodies, could review the information. For example, in relation to PCCs it will recommend that meetings take place through which PCCs can review the information with the criminal justice bodies and that these are attended by all bodies and chaired by PCCs.
67. The purpose of the guidance in relation to clause 10 is to provide information to PCCs about what steps they might take in order to discharge their duty to make members of the public in the area aware of how to access the information published by the Secretary of State (clause 10(5)).
68. The Secretary of State is under a duty to issue guidance to the relevant bodies, who in turn are placed under a duty to have regard to that guidance.

Justification for taking the power

69. The guidance issued under clause 11(1) is intended to support the relevant bodies in discharging their functions under Clauses 6-10 -. It will not make provision for what information should be collected or shared, as those duties are underpinned by regulations which will make provision specifically for those duties, but it will include information on how information could be identified and considered.
70. It is expected that the guidance will be an important tool in guiding the bodies on how to monitor compliance with the Code, which will allow for them to tailor arrangements to best meet their particular arrangements. Guidance is required for this purpose, where the necessary level of detail and flexibility could not be provided in legislation. For example, the guidance will advise the criminal justice bodies, the BTP and the MDP on how they might collect information relating to the experiences of persons accessing services under the Victims' Code, as well as other matters such as how they might attend meetings to discuss and scrutinise the information (as part of their duty to review the information collected).
71. It is important that guidance can be updated quickly to keep pace with changes to the collection of compliance information, future revisions of the Victims' Code, and the changing nature of these crime types and nuances in local areas. This will help provide consistency across England and Wales, building a national picture of delivery of the Victims' Code across the criminal justice system, whilst allowing for local variations on what may work best to meet the legislative requirements.

72. Relevant bodies will be required to have due regard to this guidance. However, the guidance itself will contain recommendations and best practice on how the bodies should discharge their functions under clauses 6-10. It is advisory in nature and therefore does not create any additional obligations or duties.

73. In respect of this duty, and in keeping with public law principles and good administration, it is expected that the bodies should follow the recommendations made in the guidance and only depart from it where they have justification for doing so. This will ensure proper understanding and consistent delivery of the requirements of the duties to keep under review Code compliance but will also allow for flexibility given that the guidance will cover a range of different bodies who operate nationally and by local police area. This will also ensure that the guidance is given appropriate weight when the body is carrying out its functions and ensure that those who interact with bodies who are subject to the duty are aware of the guidance and its status.

Justification for the procedure

74. The guidance will provide practical direction on the discharge of the relevant bodies' functions and duties set out in primary legislation. The guidance will not conflict with, or alter the scope of, the duties set out in the Bill. Whilst the bodies who are subject to the duties will be required to have regard to the guidance, the guidance will not be binding.

75. The Government's view is that statutory guidance containing technical, practical, and operational details does not require parliamentary oversight. Clause 11(3) places a duty on the Secretary of State to consult such persons as the Secretary of State considers appropriate before issuing guidance. This will provide an appropriate level of scrutiny where any guidance issued under clause 11(1) will be drafted in consultation with relevant stakeholders and practitioners to provide scrutiny and challenge. This approach is consistent with other recent statutory guidance, for example, that provided for in section 50 of the Domestic Abuse Act 2021.

76. During passage of the Bill, further details regarding the guidance are intended to be published to enable Parliamentary consideration. Consultation will take place on the draft guidance after Royal Assent.

Clause 14(1): Duty on the Secretary of State to issue guidance to relevant authorities about the discharge of the duties imposed on them under clause 12 and 13.

Power conferred on: Secretary of State

Power exercisable by: *Guidance*

Parliamentary procedure: *None*

Context and purpose

77. As set out above, clauses 12 and 13 of the Bill confer a duty on relevant authorities in England to collaborate when commissioning support services for victims of domestic abuse, criminal conduct of a sexual nature and serious violence, and to prepare, publish and implement a joint local strategy to set out the aims and approach for commissioning relevant services from each agency. The relevant authorities are: local policing bodies (meaning PCCs, the Mayor’s Office for Policing and Crime in relation to the Metropolitan police district and the Common Council in relation to the City of London Police area); Integrated Care Boards (established under Chapter A3 of Part 2 of the National Health Service Act 2006); and local authorities (as defined in clause 12(3) of the Bill and meaning the county council or the district council where there is no county council, the Council of the Isles of Scilly and the Greater London Authority rather than individual London boroughs). The clause also requires these bodies to explain how the general collaboration duty, as well as the particular requirements imposed in relation to preparation of the strategy (on consultation and key matters to which they should have regard) have been met.

78. The new duty is intended to ensure collaboration in the exercise of existing commissioning functions to facilitate more holistic and better coordinated local area services; to increase the voice of victims within the commissioning process so that their needs are better reflected; and to improve accessibility and tailoring of services to particular needs, such as the needs of victims with protected characteristics. There is no intention to create a new duty to arrange or provide services. It is recognised that the authorities subject to the duty may benefit from support through guidance on how best to meet the duty requirements, and that there is a balance to strike between providing relevant authorities with flexibility to undertake activity in a way that works locally and seeking a consistent approach across England.

79. Clause 14(1) therefore makes provision for the Secretary of State to issue guidance to relevant authorities. These bodies must have regard to the guidance when discharging the duties imposed under clauses 12 and 13. Clause 14(2) includes a requirement for the Secretary of State to consult such persons as they consider appropriate before issuing guidance.

Justification for the power

80. The purpose of any guidance under clause 14(1) is to support the relevant authorities in discharging their functions under clauses 12 and 13. The legal framework contained within the Bill sets out the key features of the collaboration duty, and guidance will supplement this with practical advice and best practice examples so that areas may draw on them. For example, it will include explanatory material in relation to how local partnership structures may work for collaboration and how joint activity may be convened, alongside information to support strategy production, such as relevant needs assessments, consultation methods with victims and providers, and on data sharing mechanisms such as memoranda of understanding. The aim of the guidance is therefore to provide a framework for consistent approaches to delivering the duty while allowing for local discretion to tailor their approach as appropriate. The guidance will expand on how areas can carry out the compulsory elements of the duty, as well as setting out additional best practice. It will not set out any new mandatory requirements that are not included in the legislation.
81. The duty on the relevant authorities to have regard to the guidance will ensure: (i) that the guidance is appropriately taken into account when the authorities are carrying out their functions; and (ii) that those who interact with the authorities are aware of the expectations set out in guidance to which the authorities should have regard .
82. There is a range of guidance issued in relation to local commissioning of services, and it is important that guidance can be updated quickly to keep pace with good practice and the changing nature of crime and relevant support.

Justification for the procedure

83. Before issuing any guidance under clause 14(1), the Secretary of State must consult such persons as the Secretary of State considers appropriate. The Government considers that this is the appropriate level of scrutiny given that it will require consultation with relevant stakeholders, noting that the guidance will provide practical advice in relation to compliance with duties under clauses 12 and 13 and will not conflict with, or alter the scope of, the duties set out in the legislation.
84. Moreover, whilst the specified authorities will be required to have regard to the guidance when discharging their duties under clauses 12 and 13, the guidance will not be binding. This approach is consistent with other recent statutory guidance, for example, that provided for in section 50 of the Domestic Abuse Act 2021.
85. During passage of the Bill, further details regarding the guidance are intended to be published to enable Parliamentary consideration. Consultation will take place on the full draft of the guidance after Royal Assent.

Clause 15(1): Duty on the Secretary of State to issue guidance about independent domestic violence advisors (IDVAs) and independent sexual violence advisors (ISVAs)

Power conferred on: Secretary of State

Power exercisable by: Guidance

Parliamentary procedure: None

Context and purpose

86. Clause 15(1) makes provision for the Secretary of State to issue guidance about IDVAs and ISVAs. ISVAs and IDVAs and those who have functions relating to victims of criminal conduct, or any aspect of the criminal justice system, where they are exercising such a function and the guidance is relevant to the exercise of that function (with the exception of the judiciary), is required to have regard to the guidance.

87. The matters which the guidance must include provision about are set out in clause 15(4). The guidance is required to cover (a) the role of ISVAs and IDVAs, (b) the services they provide to victims and others; (c) how advisors should work with other relevant bodies, and vice versa; and (d) appropriate training and qualifications for advisors.

88. Guidance will highlight and promote best practice amongst these roles, encouraging consistency and better collaboration across agencies, while allowing flexibility and innovation. The policy intention is that there will be separate guidance for IDVAs and ISVAs respectively.

Justification for taking the power

89. It is considered that guidance issued by reference to a statutory duty will have greater weight than other forms of guidance, and the additional duty to have regard to that guidance will ensure greater consistency and awareness thus improving the support provided to victims. However, it will remain advisory in nature rather than stipulating specific requirements, which could have adverse consequences and potentially destabilise the professions that the Government is aiming to support and strengthen.

Justification for the procedure

90. The guidance will not prescribe eligibility for or create new legal responsibilities for ISVAs and IDVAs or for others working with them. It will recommend and share best practice and expectations for these groups. The Government therefore does not consider it is necessary for the guidance to be subject to parliamentary procedure or a statutory requirement to consult. However, the intention is that relevant stakeholders and practitioners will be consulted before the guidance is issued under clause 15(1), in order to provide scrutiny and challenge.

91. During passage of the Bill, updates on the details of guidance and/or a draft of this guidance are intended to be published to enable Parliamentary consideration.

Clauses 17-20: Powers for the Secretary of State, the Lord Chancellor and the Attorney General by joint direction to require a joint inspection programme to include provision for the inspection, at specified times, of specified matters relating to the experiences and treatment of victims

Power conferred on: Secretary of State, acting jointly with the Lord Chancellor and Attorney General

Power exercisable by: Direction

Parliamentary procedure: None

Context and purpose

92. Clauses 17-20 amend each of the existing inspection regimes in relation to their powers to act jointly with other inspectorates when discharging their functions. The inspectorates are dealt with as follows:

- (a) Clause 17: HM Inspectorate of Prisons;
- (b) Clause 18: HM Inspectorate of Constabulary (now HMICFRS, however, the Bill only deals with police);
- (c) Clause 19: HM Inspectorate of the CPS;
- (d) Clause 20: HM Inspectorate of Probation.

93. The existing legislative powers in respect of inspectorates include powers that provide for the SoS, the Lord Chancellor and the Attorney General (acting jointly) to direct when a joint inspection programme is prepared and what form it should take. Clauses 17-20 add further powers relating to each inspectorate to enable the Secretary of State (which in practice will usually be the Home Secretary and the Justice Secretary), the Lord Chancellor and the Attorney General by a joint direction to require a joint inspection to take place at specified times in relation to specified matters relating to the experiences and treatment of victims. The intention is that directions given on the timing of a joint victims' inspection will be in respect

of when that inspection takes place within a given joint inspection business plan cycle. As joint victims' inspections are to be carried out under the existing inspection regimes, they will benefit from any supplementary provisions attached to each regime e.g. powers to obtain information and access premises under s.54 and Schedule 4A to the Police Act 1996.

94. The purpose behind this is to ensure that the criminal justice inspectorates regularly focus on the entire experience of victims throughout the criminal justice process, in order to identify issues and provide recommendations as to how to address them, therefore improving the quality of service provided to victims.

Justification for taking the power

95. These powers will ensure that the inspectorates conduct joint thematic inspections on the treatment of victims. This power will enable the Secretary of State, the Lord Chancellor and the Attorney General to specify when a joint victims' inspection should take place and what that inspection must consider in relation to the experiences and treatment of victims. A power to direct joint inspections of this nature is required to ensure inspections on victims' experiences of the criminal justice system are carried out when it is deemed necessary, in order to better understand the quality of service provided to victims or specifically delve into a victims' issue that has arisen to understand why it is happening and how to address it.

Justification for the procedure

96. These directions require no parliamentary procedure. This is consistent with the existing powers of direction in the legislation in respect of joint inspections.

Part 2 (Victims of major incidents)

Clause 27(3): Power for the lead advocate to give directions to other advocates about how they are to exercise their functions in respect of the incident.

Power conferred on: *Lead advocate*

Power exercisable by: *Direction*

Parliamentary procedure: *None*

Context and purpose

97. Clause 27(1) enables the Secretary of State to appoint more than one advocate in respect of the same major incident. This could be necessary if, for example, the

incident raised a number of different and complex issues, if the incident affected a particularly large number of individuals such that more than one advocate may be necessary to provide assistance, or if it was deemed helpful to appoint an advocate with links to the community in addition to an advocate with more general experience. Where more than one advocate is appointed, clause 26(2) provides that the Secretary of State may appoint one of the advocates as the lead advocate. If this happens, clause 26(3) provides a power for the lead advocate to give directions to other advocates about how they are to exercise their functions in respect of the incident. The purpose of this power is to ensure consistency in the exercise of functions in respect of a particular incident while avoiding unnecessary duplication.

Justification for the power

98. The power is necessary to ensure the most effective provision of support where there are multiple advocates in respect of the same major incident. The nature of the support to be provided and the split of responsibilities between individual advocates will inevitably be highly fact specific and it is not possible to provide for such detail in advance whether in primary or secondary legislation or in guidance. The Government considers that the use of directions is therefore appropriate in these circumstances.

Justification for the procedure

99. The directions given by the lead advocate relate to the exercise of functions by the advocates as provided for by the Bill with regard being given to any guidance issued by the Secretary of State under clause 32. The directions will therefore have clear parameters and the Government considers that it is appropriate that no parliamentary procedure is necessary in respect of them.

Clause 31(1): Allows the Secretary of State to issue guidance about the matters to which an independent public advocate must have regard to in exercising their functions

Power conferred on: Secretary of State

Power exercisable by: Guidance

Parliamentary procedure: None

Context and purpose

100. Clause 31 provides that the Secretary of State may issue guidance as to the matters which an advocate must have regard to in exercising their functions. An advocate may provide such support to victims of a major incident (as defined in clause 24(7)) in accordance with their terms of appointment as the advocate

considers appropriate. For example, this may include helping victims to understand the actions of public authorities in relation to the incident and assisting victims to access documents or other information in relation to an investigation and an inquest or inquiry. Clause 31(3) provides that an advocate must have regard to the matters stated in guidance under this section, to the extent that it is relevant to the exercise of their functions and to the incident in respect of which they have been appointed. The purpose of the guidance will be to provide more detail to explain how the advocate may decide to carry out their role, including guidance on how a 'close family member' and 'close friend' is to be understood for the purposes of the advocate determining who is an appropriate representative from or for a bereaved family, how the advocate may go about publicising their role and making themselves known to victims of the incident and the methods by which the advocate will provide support. The guidance is not mandatory, but will assist in setting out best practice, taking into account learnings from previous incidents.

Justification for the power

101. The purpose of the guidance is to support the advocate in discharging their functions. The guidance is expected to contain examples of best practice and a level of detail that could not be provided in primary or secondary legislation. It is also important that the guidance can be updated quickly to take into account learnings from previous incidents. The aim would be to help provide consistency in advocates carrying out their functions while allowing flexibility to meet the particular circumstances of each incident. Although the guidance is not mandatory, advocates will be required to have regard to it. This will help ensure proper understanding and consistent delivery of the functions of the advocate and ensure awareness of the functions among those who interact with the advocate.

Justification for the procedure

102. The guidance will provide practical direction on the discharge of the advocate's functions as set out in primary legislation. The guidance will not conflict with, or alter the scope of, the functions set out in the Bill. Whilst the advocate will be required to have regard to the guidance when exercising those functions, the guidance will not be binding. The Government's view is that statutory guidance containing technical, practical, and operational details does not require parliamentary oversight. During passage of the Bill, a policy statement will be published outlining the policy intentions for the guidance.

Part 3 (Prisoners)

Clauses 34(2), new section 237A(13): Power to amend the list of offences deemed to cause serious harm when considering release

Power conferred on: Secretary of State

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary Procedure: *Affirmative resolution*

Context and purpose

103. The current discretionary release test for all determinate and indeterminate prisoners on initial release from any sentence, or re-release on recall, is that the decision maker is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined. The test is mainly applied by the Board in operating its functions, but also by the Secretary of State in re-releasing recalled offenders. Clause 32 inserts a new section 28ZA into the Crime (Sentences) 1997 Act (“the 1997 Act”), for indeterminate prisoners, and clause 33 inserts a new section 237A into the Criminal Justice Act 2003 (“the 2003 Act”), for determinate prisoners, clarifying the meaning and application of the current statutory release test. Under subsection (3) of both of those sections, when applying the public protection test, the decision maker must direct release only where there is no more than a minimal risk that the prisoner would commit an offence which would cause ‘serious harm’.

104. Subsection (4) of each of the new provisions provides for consideration of the risk of the prisoner committing an offence specified in new Schedule 18B, which contains prescribed serious offences, when considering the release test. This list does not preclude the Board, or another decision-maker, from concluding an offence not set out in Schedule 18B could be committed, or cause serious harm. The offences have been chosen from relevant Schedules relating to sentencing and release of dangerous and serious offenders. This provision demonstrates Parliament’s direction as to which offences should be the most serious should they be committed, and assists with turning the decision-maker’s mind to the seriousness of the harm which the offender may be at risk of posing.

105. The deeming provision also applies in relation to consideration of termination of a licence of prisoners sentenced to indeterminate sentences for public protection (clause 32(5)(a), inserting new section 31A(4ZA) of the 1997 Act), and for re-release of recalled offenders by the Secretary of State (clause 33(5) and (6), inserting new sections 255B(3A) and 255C(3A) into the 2003 Act), and for the determination of an appeal against a Secretary of State decision by the Tribunal (clause 38, inserting new section 32ZAD(7) of the 1997 Act and clause 39, inserting new section 256AZBD(7) of the 2003 Act). It is also used for the new Secretary of State powers, set out in new sections 32ZAC of the 1997 Act and section 256AZBC of the 2003 Act.

106. Clause 33(2) (see new section 237A(13) of the 2003 Act) provides a power to amend the list of offences deemed to cause serious harm (for both determinate

and indeterminate offenders) by adding or excluding an offence. This will be by affirmative instrument, as set out in clause 34(10), which amends section 330(5)(a) the 2003 Act.

Justification for taking the Power

107. The power has been taken so the list of offences can be updated with new offences if required, and to remove any existing offences if no longer thought suitable. The release or continued confinement of a prisoner based on a risk of commission of further specified offences may be subject to change over time, for example where new offences are added to the statute book or repealed; or perceptions change as to seriousness of certain types of offences, which may be triggered by prevalence or changes in society. It will be important for the Department to ensure that the reference list of offences in applying the test provides the most effective method of public protection, while allowing offenders to demonstrate that they can be safely managed in the community.

108. The power to add or remove offences in this manner is consistent with other powers to add serious offences to existing lists, such as in section 35(3)(b)(ii) of the Criminal Justice Act 1988.

Justification for the procedure

109. As the power enables the amendment of primary legislation, it is appropriate that the power to add to the list of offences deemed to cause serious harm should be subject to the affirmative Parliamentary process.

Clause 33(7): Express provision relating to an existing power to amend the statutory re-release test

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative resolution

Context and purpose

110. Section 255A(4) of the 2003 Act sets out the test the Secretary of State is to apply when determining whether a recalled offender serving a determinate sentence should be subject to automatic release after 28 days (or in some cases 14 days), or whether re-release by the Secretary of State or the Parole Board should follow an assessment of risk. Sections 255B(2) and 255C(2) also set out the tests the Secretary of State is to apply to 'executively' release a recalled determinate prisoner at any time. Under the existing provisions of sections 255B, 255C and 256A of the 2003 Act, the Board may direct the release of a recalled prisoner, using the existing test applied in practice by the Board for initial releases.

111. Section 256AZB of the 2003 Act contains a power to alter the test for automatic release after recall, or Parole Board release after recall, for determinate sentenced offenders. Section 330 of the 2003 Act sets out the procedure for such an order (affirmative resolution) and also provides for such supplementary, incidental or consequential provision which the Minister considers necessary or expedient. Clause 33(7) creates a new section 256AZB(3), which makes express provision in respect of the consequential power in section 330 of the 2003 Act to ensure that it permits changes to be made to amend the referral and appeal release tests, in consequence of a change made to a recall release test under section 256AZB.

Justification for expressly setting out the power

112. Having a power to amend these re-release tests is important to enable the Department to be responsive in relation to different categories of sentence and offender. As with the power under section 128 of LASPO (set out below), section 256AZB enables the Department to act quickly to address any need for the re-release test to be revised, for example, so that different conditions must be satisfied. In contrast with the changes made to section 128 of LASPO for initial release tests, no amendment is required to section 256AZB to enable the new release test provisions under section 237A to be able to be amended, as the power under section 256AZB already allows for the test for release, and the Chapter, to be amended.

113. The Government considers that the consequential power in section 330(4)(b) provides the vires for subsequent changes to the veto and the appeal release tests which are truly consequential on changes made to the re-release test or the underlying interpretive provision. However, to put the matter beyond doubt, in particular because the appeal release test is cast directly in line with section 237A(3) rather than being integrated into the main underlying interpretive provision and cross referenced, the effect of the consequential power in the case of the referral and appeal has been expressly set out. This power is necessary for congruence - for example, if the Government decided it needed to change the re-release test for those convicted of manslaughter, to make it stricter, using the power in section 256AZB – it would be necessary to amend the related referral re-release test and appeal re-release test to mirror the initial re-release test.

114. Changing the re-release test will not change the parameters of the sentence set by the Court. Nor will it change the eligibility points for release. In enacting section 256AZB of the 2003 Act, Parliament has already found that secondary legislation is suitable for this purpose.

Justification for the procedure

115. No changes are being made to the procedure by way of this provision - section 256AZB is currently subject to the affirmative procedure, and this was considered suitable when enacted in 2022 based on the procedure for section 128 of the 2012 Act. The procedure will therefore remain affirmative and the Government remains of the view that this is the appropriate level of Parliamentary scrutiny for this provision.

Clause 34: Adding to an existing power to amend the statutory release test

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative resolution

Context and purpose

116. Section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“2012 Act”) provides a power for the Secretary of State to change the release test applied by the Parole Board for the initial release of a prisoner serving (as set out in section 128(3)):

- an indeterminate sentence for public protection (IPP) under section 225 of the 2003 Act (release for which is governed by section 28 of the 1997 Act)
- a determinate extended sentence under sections 254, 266 and 279 of the Sentencing Act 2020 (“the Code”) (release for which is under section 246A of the 2003 Act);
- a sentence for offenders of particular concern under section 265 or 278 of the Code (release for which is under section 244A of the 2003 Act);
- Terrorist offenders referred to the Parole Board under section 247A of the 2003 Act;
- High-risk offenders referred to the Parole Board under section 244ZB of the 2003 Act;
- and some transitional determinate sentenced prisoners (release for which is under paragraph 6, 15, 25 or 28 of Schedule 20B to the 2003 Act).

117. It does not apply to mandatory or discretionary life sentences, or to recalled offenders.

118. As set out above in relation to the power to deem offences causing serious harm, clause 32 inserts a new section 28ZA into the 1997 Act, for indeterminate prisoners, and clause 33 inserts a new section 237A into the 2003 Act, for determinate prisoners, clarifying the meaning and application of the current

statutory release test. These provisions will directly affect the interpretation of the release tests listed in the provisions set out above which are listed in section 128(3). Clause 34(2) adds these two provisions to the list, so that the release test, as it applies to the first release of an offender, can be amended by order.

119. Clause 35 inserts new section 32ZAC into the 1997 Act and clause 36 inserts new section 256AZBC into the 2003 Act. These clauses operate, as explained above, to allow for discretionary and directed referrals to the Secretary of State from the Board, in top-tier cohort cases.

120. Clause 35 inserts new section 32ZAD into the 1997 Act, and clause 36 inserts new section 256AZBD into the 2003 Act. These provisions provide for an appeal from a decision of the Secretary of State to the Tribunal. The Tribunal can then consider the appeal on several grounds, including whether or not the release test has been satisfied (again, using the same release test as the Secretary of State and Board).

121. Section 128(3)(f) contains a power to make consequential amendment in relation to changes made by order under the provision. Clause 34(3) makes provision to clarify that this consequential power can be used to amend and modify the application of the release test in the referral and appeal decisions where the primary power has been used to change an initial release test.

Justification for taking the Power

122. Having a power to amend these release tests via section 128 of the 2012 Act is important for the Department to be responsive in relation to different categories of sentence and offender. The existing power allows the Department to respond quickly if evidence arose that indicated the release test needed to be amended. For example, if it was found that the current release test was not suitable for assessing the level of risk posed by a particular cohort of prisoners, e.g. those who have committed terrorism or terrorism-related offences, then it would be important to be able to alter the legislation to impose a more appropriate test without having recourse to primary legislation and waiting for the availability of a suitable Bill. If the new release test definitions in clause 32 and 33 are not added to section 128(3), the power in section 128 would be rendered inoperable, as the primary measures could be changed, but not the underlying interpretive provision. The Department expects the new test will ensure effective public protection while allowing offenders to demonstrate that they can be safely managed in the community. However, if the Department finds that, once the new test is implemented, the balance between those two objectives needs to be amended - or there are any unintended consequences - then a swift response may be required. The delegated power therefore enables the Department to act quickly to address any need for the release test to be revised, for example, so that different conditions must be satisfied.

123. Although it is considered that the consequential power in section 128(3)(f) provides the vires for subsequent changes to the referral and the appeal release tests which are truly consequential on changes made to the Board release test or the underlying interpretive provision, to put it beyond doubt, in particular because the appeal release test is cast directly in line with section 28ZA(3) rather than being integrated into the main underlying interpretive provision and cross referenced, the effect of the consequential power in the case of the referral and appeal has been expressly set out. This power is necessary for congruence - for example, if the Government decided it needed to change the release test for those convicted of manslaughter, to make it stricter, using the power in section 128 – it would be necessary to amend the related referral release test and appeal release test to mirror the Board’s test.

124. Changing the release test will not change the parameters of the sentence set by the Court. Nor will it change the eligibility points for release. In enacting section 128 of the 2012 Act, Parliament has already found that secondary legislation is suitable for this purpose.

Justification for the procedure

125. Section 128 is currently subject to the affirmative procedure, and this was considered suitable when enacted in 2012 and also when further amended to add new release provisions in the Criminal Justice and Courts Act 2015, the Terrorist Offenders (Restriction of Early Release) Act 2020 and the Police, Crime, Sentencing and Courts Act 2022. The procedure will therefore remain affirmative, as whilst the changes are suitable for secondary legislation in line with the existing power, Parliament would have an interest in scrutinising and debating measures which directly affect public protection.

Clause 38 – new section 239A(5) of the 2003 Act: Adding a new power to make procedural rules for referrals to the Secretary of State

Power conferred on: Secretary of State

Power exercisable by: Rules made by statutory instrument

Parliamentary Procedure: Negative resolution

Context and purpose

126. Following a referral from the Board to the Secretary of State under the new referral process, the Secretary of State will consider the case and must either release the prisoner, or decide that the prisoner should remain confined. Clause 37 inserts new section 239A into the 2003 Act, which provides for the process by which the Secretary of State must deal with cases referred to them by the Board

under new sections 28ZAA of the 1997 Act or new 256AZBA of the 2003 Act. The Secretary of State is a public authority and is required to take decisions in line with public law decision-making principles; new 239A sets this out in the same manner as existing section 239 sets out the high-level requirements for the Board to consider all relevant matters in relation to a prisoner's case.

127. Release decisions are complex decisions relating to a person's liberty, requiring consideration of a large dossier of evidence, the hearing of witnesses and legal representation. New section 239A(5) provides for a power for the Secretary of State to make procedural rules in relation to dealing with referrals made to them. This will enable procedural matters such as non-disclosure applications, timings and legal representation to be set out in secondary legislation, ensuring the procedure for these decisions is governed by law rather than policy. This new power mirrors that under section 239(5) of the 2003 Act, which provides for a power for the Secretary of State to make procedural rules in relation to proceedings of the Board.

Justification for taking the Power

128. The ability for the Secretary of State to consider and take release decisions in top tier cohort cases is a new substantive power and one that needs to be provided for in primary legislation. However, the Government considers it is justified to take a power to make rules in respect of the process by which the Secretary of State may exercise their power to take these decisions. This approach is consistent with the existing legislative framework for the Board: its powers and functions to make decisions on release, and the test that it is to apply in respect of such decisions, are set out in primary legislation; whereas, the detailed procedure that the Board and the parties to its decision-making are to follow are set out in rules made under section 239(5). The Government considers it appropriate and justified to adopt a similar framework in this instance and preserve all referral process and procedure in a single set of rules. Procedural rules of this nature contain a level technical detail which the Government considers is more appropriately set out in secondary legislation. This also simplifies the ability to make changes to the process where it is considered necessary or beneficial for operational decision-making. The Parole Board Rules are frequently updated (annually at least) and it is expected the new Secretary of State Rules will need to be trialled and likely to need to be adjusted as frequently.

129. The mechanism is procedural and takes no substantive power away from any decision-maker. It is in line with the power to make procedural rules also provided for in the Tribunals system found in section 22 of the Tribunals, Courts and Enforcement Act 2007.

Justification for the procedure

130. The Parole Board Rules, made under section 239(5), are currently made using the negative procedure as set out in section 330(6) of the 2003 Act - consistently, the new procedural rules under section 239A will also attract the negative procedure. The Government considers that this level of Parliamentary scrutiny is appropriate given the nature of the procedural matters set out therein.

Clause 45(4): Public protection – definition of custodial sentence

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Context and purpose

131. This clause requires courts to give the greatest possible weight to the importance of reducing the risk to the public from persons who have committed offences in respect of which custodial sentences have been imposed when considering an alleged breach of a relevant Convention right of a person in the context of any of the release legislation (Chapter 2 Part 2 of the 1997 Act, and Chapter 6 Part 12 of the 2003 Act, and subordinate legislation made under either Chapter).

Justification for taking the Power

132. The definition of “custodial sentence” is not specified on the face of the Bill and will be specified in regulations.

133. The purpose of this power is to ensure that “custodial sentence” can be defined in sufficient detail to reflect the fact that while this is a term with a generally recognised meaning, the technical meaning differs between sentencing regimes and may change over time. By enacting clause 45, Parliament will be agreeing to the principle of the public protection clause under primary legislation, and it is an appropriate use of a power to provide such a definition.

Justification for the procedure

134. Exercise of the power is subject to the negative resolution procedure via clause 52(3). This is appropriate as the regulations made under the power will set out technical detail and the substance of the Bill provision will have been subject to full scrutiny during the passage of the Bill.

Clause 46(2): Adding to an existing power to make procedural rules in section 239(5) of the 2003 Act to provide that the Secretary of State may make rules

prescribing members with particular expertise deal with particular classes of case

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Rules made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>Negative resolution</i>

Context and purpose

135. Clause 47(3) inserts a new requirement for Board membership to include members with law enforcement experience. As part of the Root and Branch Review, the Government determined it would be useful to increase the number of members with that sort of professional background and expertise within the Board, because of their particular first-hand experience of assessing the risk to the public. This is intended to help strengthen the diverse range of skills and experience among the Board's membership.

136. Section 239(5) of the 2003 Act provides for a power for the Secretary of State to make procedural rules in relation to proceedings of the Board, including rules requiring cases to be dealt with by a prescribed number of members, or at prescribed times. This will be extended by clause 45 to provide that the Secretary of State may make rules prescribing members with particular expertise deal with particular classes of case. This power will allow, amongst other types of cases, for prescription whereby members with law enforcement experience are included on panels dealing with the top-tier cohort of offenders, as set out in the Government's Root and Branch Review.

Justification for taking the Power

137. The Department considers the best way to achieve this reform will be through a combination of primary and secondary legislation. The primary legislation will expressly provide for the broad policy: that procedural rules may be made requiring specific types of cases to be dealt with by Parole Board members with specific professional experience. This ensures the Secretary of State retains the flexibility and agility to change the composition of panels in the future, by further rule changes where he considers it necessary and appropriate.

138. In the first instance, the Department intends to use the rules to specify that 'top tier' cases must be dealt with by a panel that consists of at least one member with law enforcement experience. That secondary legislation will be prepared to ensure the policy can be implemented after Royal Assent.

139. Making provision for the broad policy in primary legislation and the specific policy in secondary legislation also manages the operational issue of recruitment

of these specialist members - if insufficient members with law enforcement experience are in place at time of commencement to be able to consider all top-tier cases (for instance, if insufficient numbers have applied for the role), prescription in the primary legislation would prevent top-tier cases continuing to be heard. If the specific policy were set out in the primary legislation and commenced with no flexibility, top tier cases would be delayed pending a law enforcement member becoming available. By including the specific policy in secondary legislation, issues of delay can be avoided.

140. This approach also broadly aligns with the approach in the unified tribunal system, where the primary legislation provides the general policy that the Lord Chancellor may issue directions regarding the composition of Tribunal panels (paragraph 15(1) of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007); the directions themselves contain the specific policy regarding tribunal panel composition.

Justification for the procedure

141. The Rules are currently negative procedure as set out in section 330 of the 2003 Act. This is considered appropriate for the procedural matters set out therein, and the existing Rules are frequently updated. The addition of a power to prescribe particular cases be dealt with particular types of members is procedural and does not require additional scrutiny not already provided for by the existing negative procedure, and is most closely aligned with that considered appropriate under the 2007 Act power.

Clause 46(3): Adding to an existing power to make procedural rules in section 239(5) of the 2003 Act to make provision for when or in what circumstances cases can be discretionarily referred to the Secretary of State from the Board

Power conferred on: Secretary of State

Power exercisable by: Rules made by Statutory Instrument

Parliamentary Procedure: Negative resolution

Context and purpose

142. Clause 36 inserts new section 32ZAC into the 1997 Act and clause 37 inserts new section 256AZBC into the 2003 Act. These clauses operate where the Board has made a release decision in relation to an offender convicted of one of the most serious offences (murder, rape, causing or allowing the death of a child and terrorist/terrorist-connected offences - known as the 'top-tier cohort') or has determined, instead of making the decision, to refer the matter to the Secretary of State. In these cases, the Secretary of State will take ('a directed referral'), or re-take ('a discretionary referral'), the release decision, using the same release test

as that set out in the Board's provisions. The Secretary of State's release test also uses the new clarified release test interpretation provisions, set out above.

143. Clause 45(3) inserts a further clarification to subsection (5A) of section 239, which is the procedural rule-making power for governing Board proceedings, discussed above. Section 239(5A) is designed to put beyond doubt that the rule-making power in section 239(5) allows for rules which make provision about provisional decisions and reconsideration of decisions. New section 239(5A)(ba) makes clear that rules under 239(5) can make provision about the circumstances in which the Board may refer a prisoner's case under section 256AZBA of the 2003 Act, or section 32ZAA of the 1997 Act, for a directed or discretionary referral decision.

Justification for taking the Power

144. The Board has a broad discretionary referral power under new sections 256AZBA(2) and (3) of the 2003 Act and 32ZAA(2) and (3) of the 1997 Act to refer in any case it thinks appropriate. This is broad enough to permit referral without any consideration of the case. The Board has been consulted on this new power of referral and they consider at present it would be extremely rarely used. However, it is also considered that in rare cases (such as in specialist terrorism matters with multiple agency involvement), the Board may consider referring the matter without considering the case. The Board's role and expertise are viewed as essential in the public protection process. The proviso is designed for cases where the Board consider they have been unable to the requisite degree of certainty to determine whether or not the prisoner ought to be released, as part of the precautionary approach set out in the Root and Branch Review.

145. The discretionary referral is a new power and how it will operate in practice remains to be seen once the new process takes effect. Therefore, the Department considers it is important to take a power to control at which stage in the process the Board may refer. Perhaps it may become necessary, for example, to prescribe that the Board must have taken all evidence they would deem necessary to make a decision before reaching the conclusion that they want to refer the case. While it is considered that the conferring of a function and power to refer decisions to the Secretary of State is a matter for primary legislation, it the same is not considered to be true for the processes and practice by which those powers are to be exercised. This power is in line with the existing rule-making powers under section 239(5) which allow the Secretary of State to prescribe other similar procedural matters such as timings of cases. The power will support the precautionary principle by ensuring the Parole Board consider cases to the extent necessary to ensure the most robust levels of public protection, ensuring the Secretary of State has the widest range of relevant evidence available to him at the point of making a first instance decision, and to safeguard against the risk that large numbers of

cases are referred to the Secretary of State where the expectation is that the Board will be the first instance decision-maker in the overwhelming majority of cases.

Justification for the procedure

146. The Rules are currently negative procedure as set out in section 330 of the 2003 Act. This is considered appropriate for the procedural matters set out therein, and the existing Rules are frequently updated. The addition of a clarification as to when the Board can refer the Secretary of State cases is procedural and does not require additional scrutiny not already provided for by the existing negative procedure.

Clause 50: Power to make consequential provision in relation to clauses 49 or 50

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution (if it does not amend primary legislation), otherwise affirmative resolution

Context and Purpose

147. This clause enables the Secretary of State by regulations to amend, repeal or revoke primary legislation, secondary legislation or the legislation of the Devolved Administrations, which has passed into force prior to the Bill receiving Royal Assent, in consequence of clause 48 or 49.

Justification for taking the Power

148. Whilst extensive efforts to identify primary legislative provision that requires minor and consequential amendment as a result of these provisions have been made, the Government considers that a delegated power to amend primary legislation for this purpose remains necessary due to the complexities of marriage law and potential historic references to marriage requirements in the primary legislative statute book, which may only become apparent at a future time.

149. The Government has considered the Committee's guidance and reports on delegated powers to amend primary legislation. Whilst these clauses have a relatively narrow focus prohibiting Whole Life Order prisoners from marrying other than in exceptional circumstances, they may have (minor and consequential) ramifications for a relatively complex and historic range of the statute book. Whilst the Government acknowledges that precedents cannot be

relied upon for justification, it notes that similar power is found, for example, in the Divorce Dissolution and Separation Act 2020 and the Marriage and Civil Partnership (Minimum Age) Act 2022. The Government considers it necessary to include this power so that full effect can be given to these clauses. Use of this power will be limited to that which is necessary to implement these clauses. Where it is used to amend primary legislation, such powers, although seemingly wide, are limited by virtue of such amendments being necessarily consequential on these clauses. The power does not extend to amending provisions of this Bill, or future legislation.

Justification for the procedure

150. Whilst the Government considers that a delegated power to make consequential amendments to primary legislation is necessary for the reasons set out above, it considers that it would be appropriate that such amendments be subject to the affirmative resolution procedure so that Parliament may give them due scrutiny. Where only secondary legislation is being amended, the negative resolution procedure will apply.

Part 4 (General)

Clause 52: Regulations

147. Clause 52 does not confer a power to make regulations, but it does make general provision in respect of the regulations that will be made under powers in the Bill. It provides for regulations under the Bill to be made by the negative resolution procedure and allows regulations to make different provision for different purposes (clause 52(1)(a)) and to include supplementary, incidental, saving or transitional provisions (clause 52(1)(b)). There are numerous precedents for provision of this type, such as section 77(2) of the Product Security and Telecommunications Infrastructure Act 2022.

Clause 54(2): Commencement powers

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: None

Context and purpose

148. Clause 54(3) contains a standard power for the Secretary of State to bring the provisions of the Bill into force by commencement regulations, apart from Part 4 of the Bill, which will come into force on the day that the Act is passed.

Justification for the power

149. Leaving provisions in the Bill to be brought into force by regulations will afford the necessary operational flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be.

Justification for the procedure

150. As is usual with commencement powers, regulations made under clause 53(2) are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

Clause 54(3): Power to make transitional or saving provisions on commencement

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: None

Context and purpose

151. Clause 54(3) confers on the Secretary of State the power to make such transitional or saving provisions as they consider appropriate in connection with the coming into force of the provisions in the Bill.

Justification for the power

152. This standard power ensures that the Secretary of State can provide a smooth commencement of new legislation and transition between existing legislation without creating any undue difficulty or unfairness in making these changes. There are numerous precedents for such a power, for example, section 183(9) of the Policing and Crime Act 2017. The Government has kept this power as narrow as possible and there is no general power for consequential amendments.

Justification for the procedure

153. As indicated above, this power is only intended to ensure a smooth transition between existing law and the coming into force of the provisions of the Bill. Such powers are often included as part of the power to make commencement regulations and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them. Although drafted as a free-standing power on this occasion, the same principle applies and accordingly the power is not subject to any parliamentary procedure.

Ministry of Justice

29 March 2023