# VICTIMS AND PRISONERS BILL

# EXPLANATORY NOTES

## What these notes do

These Explanatory Notes relate to the Victims and Prisoners Bill as reintroduced in the House of Commons on 8 November 2023 (Bill 2). The Bill completed Committee Stage in the House of Commons on 11 July 2023. The Bill has been carried over from the 2022-2023 Parliamentary session.

These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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# Overview of the Bill

1 The Victims and Prisoners Bill contains measures in relation to:

- Victims of criminal conduct
- Victims of major incidents
- Reforms to the parole system
- Restrictions on marriage for prisoners who are imprisoned under whole life orders.

2 Part 1 of the Bill brings forward measures to improve the end-to-end support for victims of crime so that they get the support needed to cope and build resilience to move forward with daily life and feel able to engage and remain engaged in the criminal justice system. 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.

3 Part 2 of the Bill also establishes an Independent Public Advocate to support victims and the bereaved when a major incident occurs to provide them with support and guidance following a significant major incident where large scale loss of life or harm has occurred.

4 Part 3 of the Bill implements the reforms set out in the Government's Root and Branch Review of the Parole System to strengthen the parole system by creating a top-tier cohort of offenders with a Ministerial oversight function to be able to refuse the release of the most dangerous offenders where this is required for public protection. The Bill also makes changes to the function of the Parole Board, setting out clearly the functions and responsibilities of the Chair of the Board and creates a power for the Secretary of State to remove the Chair if they believe this is necessary for the maintenance of public confidence in the Board.

5 Part 3 of the Bill prohibits prisoners who are imprisoned under whole life orders from being able to marry or forming a civil partnership whilst in prison.

6 This Bill was originally introduced in the House of Commons in 2022-2023 session on 29 March 2023. Second Reading took place on 15 May 2023 and Commons Committee Stage concluded on 11 July 2023. A carryover motion was agreed by the House of Commons on 15 May 2023. The Bill was carried over to the next Parliamentary session and reintroduced on 8 November 2023.

# Policy background

## Victims of criminal conduct measures

7 In 2019/20, it was estimated that 6.6% of 10-15-year olds and around one in five adults (19.3%) in England and Wales were victims of crime.[1] In December 2021, the Government launched a public consultation "Delivering justice for victims: A consultation on improving victims' experiences of

[1] For the April 2019 to March 2020 period. Crime in England and Wales: Appendix tables, summary table 2 and table A11 – Office for National Statistics, https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesappendixtables

the justice system"[2] to inform development of this law. The Government consulted broadly on how to improve what victims can expect from the criminal justice system and how to improve aspects of victim support services. Its aim was to better understand the experiences of victims and harness expertise from frontline practitioners and experts, to ensure that the Bill and accompanying measures improve support for victims throughout the criminal justice system. The consultation ran for eight weeks and received over 600 responses.

8 The Government's response to the consultation set out the legislative and non-legislative measures planned to improve victims' experiences of the justice system. The Bill will facilitate a more consolidated framework to better support victims through the following legislative measures:

- placing the overarching principles of the Victims' Code in primary legislation
- placing a duty on relevant bodies to promote awareness of the Victims' Code
- enhancing oversight of delivery of the Victims' Code through better data collection and an enhanced role of Police and Crime Commissioners at the local level
- introducing a duty on Police and Crime Commissioners, local authorities and Integrated Care Boards in England to collaborate locally, to facilitate more holistic and better coordinated victim support services
- improving consistency of support provided by Independent Sexual Violence Advisors and Independent Domestic Violence Advisors by requiring the Secretary of State to issue statutory guidance about these roles, and placing a requirement on those advisors as well as other persons who work with victims, or any aspect of the criminal justice system - with the exception of the Judiciary - to have regard to that guidance.
- updating the role of the Victims' Commissioner, including a requirement for departments and agencies with a responsibility to meet the requirements under the Victims' Code to, if named, respond to recommendations made by the Victims' Commissioner in their published reports.
- bolstering national oversight through a power to direct joint thematic inspections on victims' experiences and a requirement for the criminal justice inspectorates to consult the Victims' Commissioner.
- removing the need to raise a complaint via an MP before it can be escalated to the Parliamentary and Health Service Ombudsman, where the complaint relates to the complainant's experiences as a victim of crime.
- Creates provisions to ensure that the police and other specified law enforcement organisations request information from third parties in respect of victims of criminal conduct only when it is necessary and proportionate and in pursuit of a reasonable line of inquiry.

7 The draft Victims Bill was published for pre-legislative scrutiny on 25 May 2022. The Government

[2] Delivering justice for victims - consultation response (publishing.service.gov.uk)

is grateful for the Justice Select Committee's consideration of the Bill[3] and has responded separately to the recommendations within their report[4].

## The Victims' Code

8 Under section 32 of the Domestic Violence, Crime and Victims Act 2004 (the 2004 Act), the Secretary of State must issue a Code of Practice for services to be provided to victims of criminal conduct by those persons working in the criminal justice system or having some function related to it. The first Code of Practice for Victims of Crime (Victims' Code) came into effect in 2006. It has since been updated several times. The latest Victims' Code, which was laid before Parliament in November 2020 and came into force on 1 April 2021, sets out 12 overarching services which eligible victims are entitled to receive, and these are referred to as 'rights' in the Code.

9 The Government consulted on proposals to place the key principles of the Code in primary legislation and the detail of the Code in regulations and guidance, with the intent of raising the profile of the Victims' Code.

10 Respondents to the consultation were in favour of these proposals. This Bill will repeal the Code provisions of the 2004 Act, restate them with amendments and set out in primary legislation the key principles that must be reflected in the services provided for by the Victims' Code.

11 The Bill will also create a power for the Secretary of State to make regulations which make further provision about the Victims' Code, including about matters that the Code must include. The intention is that the regulations will set out a framework for the new Code by reference to the twelve key entitlements from the 2020 Code, to ensure victims continue to receive this level of service from criminal justice agencies, and to enhance Parliamentary oversight of the Code. This approach retains flexibility to review and amend the framework of the Code, to ensure that it stays relevant for victims. It also provides flexibility for further matters to be provided for in the regulations, if and when the Secretary of State deems it necessary.

12 The new Victims' Code issued under the Bill will be a statutory code which will set out in detail the services that should be provided to victims of crime. The Code will need to reflect the key principles as set out in the Bill and accord with any provision set out in the regulations. The Code will explain who is entitled to access services and provide information about how they will be delivered. The current legislation requires a public consultation before any changes can be made to the Victims' Code and the Bill will retain this requirement as well as allowing for amendments that the Secretary of State deems to be minor changes, such as clarifications or corrections, to be made to the new Victims' Code without consultation.

## Code awareness and compliance: specified bodies

13 The Bill will place a duty on specified bodies to promote awareness of the Victims' Code, and to jointly keep their compliance with the Victims' Code under review.

14 These duties will apply to the following bodies, because they are the most likely to be in contact with the victim throughout their journey and are required to deliver specific Code entitlements:

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[3] Pre-legislative scrutiny of the draft Victims Bill (parliament.uk)

[4] Pre-legislative scrutiny of the draft Victims Bill: Government Response to the Committee's Second Report (parliament.uk)

"The criminal justice bodies:"

a. The Chief Officer of police for the police area in question

b. The Crown Prosecution Service

c. His Majesty's Courts and Tribunals Service

d. His Majesty's Prison and Probation Service and its executive agencies (His Majesty's Prison Service, the Probation Service and the Youth Custody Service);

e. Youth Offending Teams; and

15 These duties will also apply to the following non-territorial police forces:

- The Chief Constable of the British Transport Police and
- The Chief Constable of the Ministry of Defence Police)

## Raising awareness of the Victims' Code

16 The specified bodies already have processes in place to inform victims about the Victims' Code. However, during the pre-legislative scrutiny process, stakeholders highlighted that more should be done to make victims aware of the Victims' Code.

17 The Bill will therefore place a duty on the specified bodies as outlined above, to take reasonable steps to promote awareness of the Victims' Code among users of the services that they provide and amongst other members of the public.

18 Supporting guidance will underpin the duty and will provide recommendations on how bodies may fulfil this duty. This allows for flexibility for the bodies to choose how they meet this duty, recognising the expertise that these bodies will have in determining the most appropriate method and timing of bringing the Code to the attention of victims and other service users.

19 The effectiveness and implementation of the duty to promote awareness of the Code amongst service users will be overseen by the Code compliance monitoring framework. This will enable appropriate data collection, and local and national governance of compliance with the duty.

## Monitoring compliance with the Victims' Code

20 The Bill places an overarching duty on the specified bodies to jointly keep their compliance with the Victims' Code under review. It also places a duty on Police and Crime Commissioners (PCCs) to keep under review how the criminal justice bodies are complying with the Victims' Code in their local police area. This duty will help ensure there is effective and consistent oversight, providing a clear picture of compliance with the Code for criminal justice bodies to drive up standards of the service for victims.

21 As part of this overarching duty, this Bill places a duty on each of the criminal justice bodies to collect prescribed information relating to how they exercise their functions in the police area in accordance with the Victims' Code.

22 The Bill also places a duty on the specified bodies to share information with one another and with Police and Crime Commissioners, in order to support them in their duties to jointly keep compliance with the Victims' Code under review. It also requires the criminal justice bodies and PCCs to jointly review the information that has been shared.

23 Police and Crime Commissioners will also be required to share specified information collected pertaining to Code compliance with the Ministry of Justice, together with reports on specified matters in connection with the review of the information, so that the department can build a coherent picture of how the criminal justice system is delivering for victims and witnesses.

24 The non-territorial police forces do not operate by police area and therefore do not fit within the same governance structure as local police forces. The Bill therefore provides a separate process for oversight of compliance with the Victims' Code for the Ministry of Defence Police and the British Transport Police. As with the duty on territorial forces, the Chief Constable of the Ministry of Defence Police and the Chief Constable of the British Transport Police are required to keep under review their compliance with the Code and to collect and share prescribed information relating to their compliance with the Code and will be required to review this information.

25 The mechanism for them to share and review the information differs from territorial forces by involving a separate body in the absence of a PCC (but under the same requirements), namely, the Secretary of State for the Ministry of Defence Police (which in practice will be the Secretary of State for Defence) and the British Transport Police Authority for British Transport Police. The British Transport Police Authority are required to jointly review the information shared with them by The Chief Constable of the British Transport Police and to share information, together with reports in connection with the review of the information, with the Ministry of Justice. The Chief Constable of the Ministry of Defence Police is required to review and share information with the Secretary of State who is required to prepare reports on matters in connection with the review of information. A memorandum of understanding will be used to set out arrangements relating to the sharing of information, where it is anticipated that The Chief Constable of the Ministry of Defence Police will review and share the information with the Secretary of State for Defence who will then share information and reports with the Secretary of State for Justice.

26 This will ensure that all police forces (those that operate at a local and national level) have parity of expectations in the service delivered to victims.

27 The Bill contains powers for the Secretary of State to make regulations in respect of the duties placed on the specified bodies, which may in particular prescribe the different information to be collected or shared by them (and the form in which it should be collected and shared or require it to be provided in a form specified in a notice), for the overall purposes of keeping Code compliance under review. It is intended that the information to be collected and shared will include: (i) compliance data relating to the delivery of the different services under the Victims' Code; and (ii) data relating to the experiences of users of those services, particularly victims' feedback regarding services received.

28 To ensure transparency at every level, the Secretary of State will be required to publish information which enables the public to assess the compliance with the Victims' Code. PCCs will be required to take reasonable steps to make members of the public in their area aware of how to access this information.

29 The Bill also contains a requirement for the Secretary of State to issue guidance in respect of the discharge of the above duties and any person subject to the duties must have regard to the guidance.

## Victim support services

30 Victims are likely to experience a range of impacts following a crime and may require advice, recovery and support services, which could be medical, therapeutic, practical and/or emotional. The current Victims' Code sets out the entitlement for victims to be referred to support services and the intention is that this will be reflected in the new Victims' Code.

31 The Government consulted on whether more formalised collaboration structures could help to improve service provision for victims of certain crimes (domestic abuse, criminal conduct of a sexual nature and serious violence), because currently there is no framework or structure that brings together the range of public sector bodies who provide support services to these victims outside of safe accommodation.

32 In response to the consultation feedback, this Bill will place a new duty on local authorities, Police and Crime Commissioners and Integrated Care Boards to collaborate when commissioning support services for victims of domestic abuse, criminal conduct of a sexual nature, and serious violence (excluding services for victims living in safe accommodation, which are covered by a separate legislative framework in Part 4 of the Domestic Abuse Act 2021), to facilitate more holistic and coordinated support services.

33 It will require them to jointly prepare, publish and implement a joint local strategy to set out the aims and approach for commissioning relevant services from each commissioning body, and an explanation of how the duty requirements have been met. When preparing the strategy, they will be required to have regard to particular issues and consult certain groups, set out in more detail below. This is to ensure that strategies are informed by relevant needs assessments including the needs of victims who may experience barriers to using generic support services (such as child victims), existing local and national provision, and victims' voices and sector expertise. The relevant bodies will also be required to review and revise this strategy from time to time.

34 This duty will be underpinned by guidance. This will address the practicalities of carrying out this duty, such as setting out what local collaboration structures may be used, and information to support strategy development – such as when the strategy should be published or revised, how best to take account of local need, or how best to reflect victims' voices and sector expertise. The guidance will also set out non-legislative oversight structures, which will enable consideration of local strategies and of any challenges arising out of this duty.

## Independent Advisors

35 Depending on their varying needs and experiences, victims of domestic and sexual abuse may require a range of support which, if appropriate, can be provided by Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs). These advisors provide emotional and practical support to help victims make informed choices, navigate support services, and engage with the criminal justice system (if they choose to do so). The type and level of support provided by these advisors varies from case to case depending on the needs of the individual.

36 In "Delivering justice for victims: A consultation on improving victims' experiences of the justice system", the Government consulted on how to strengthen victim advocate roles, with a focus on ISVAs and IDVAs. The Government subsequently looked into how we can promote better join-up across agencies, reviewing the standards they operate under, alongside guidance and frameworks.

37 The Bill contains provisions to raise the profile of the roles of ISVAs and IDVAs. The Bill will define an Independent Domestic Violence Advisor and an Independent Sexual Violence Advisor for the purpose of requiring statutory guidance to be published setting out more information about their roles. It is anticipated that the definitions and guidance will increase awareness of these roles among victims and agencies who work with ISVAs and IDVAs. The definitions are purposefully broad to reflect the wide scope of work carried out by these roles. They do not prescribe who can access support from ISVAs and IDVAs – but do reflect the fact that their core purpose is to support victims of criminal conduct of a sexual nature and domestic abuse. It is recognised that in practice the advisors may provide support beyond what is described in the definitions.

38 The Bill will create a duty for the Secretary of State to issue guidance about ISVAs and IDVAs. This guidance will improve clarity and awareness of the functions of these roles and encourage greater consistency across the sector. The guidance will include content on the core functions of the ISVA and IDVA role, their training, how they can support victims with specific needs (such as victims with particular protected characteristics), and how other individuals and relevant agencies can best work with ISVAs and IDVAs to holistically support victims. The guidance will reflect the

broad nature of the roles and the need to consider support on an individual basis, including how ISVAs and IDVAs can best support children and other persons, including where appropriate the family and friends of the primary client. The Bill places duties to have regard to this guidance on ISVAs, and IDVAs. It also places duties to have regard to the guidance on those that have a function relating to victims of crime, 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 so as to preserve judicial independence). This aims to foster greater collaboration and effective working across agencies in order to support victims' needs. Engagement will take place with the Judiciary outside of this guidance to explore ways to overcome challenges ISVAs and IDVAs may face in the courtroom while supporting their clients.

## The role of the Victims' Commissioner

39 The Secretary of State is required to appoint a Commissioner for Victims and Witnesses, as set out in section 48 of the 2004 Act. The Commissioner's functions are set out in section 49 of that Act.

40 The Bill will amend the 2004 Act to ensure the Victims' Commissioner is able to undertake these functions as effectively as possible and promote the interests of victims and witnesses across England and Wales. To ensure the ongoing visibility of the Victims' Commissioner and increase parliamentary and public focus on victims' experiences, the Bill will create a requirement for the Victims' Commissioner's annual report to be laid before Parliament.

41 The Bill will also place a duty on specified relevant criminal justice agencies and Government departments to respond to any recommendations made to them within the Victims' Commissioner's reports within 56 days of the report being published. The response will have to set out the actions taken or proposed actions in response to the recommendation, or set out why the agency has not taken, or does not propose to take, action in response to the recommendation. These responses must be published, and a copy sent to the Victims' Commissioner and the Secretary of State.

42 Additionally, although Police and Crime Commissioners will have oversight of the operation of the Victims' Code at a local level, the Victims' Commissioner will retain the existing responsibility to keep under review the overall operation of the Code. It is intended that the Code compliance oversight guidance will contain information regarding mechanisms that will be available to the Victims' Commissioner, should they choose to utilise them in order to work with Police and Crime Commissioners in their new role.

## Joint thematic inspections of victims' issues

43 The criminal justice inspectorates all have a responsibility for assessing the efficiency and effectiveness of the criminal justice agencies they oversee. Each inspectorate currently has its high-level functions set out in differing pieces of legislation. This legislation includes provision on how the inspectorates act jointly. This broadly sets out that the inspectors shall act together to prepare a joint inspection programme, setting out what inspections they propose to carry out to effectively discharge their functions. It also states that the Secretary of State (which in practice will usually be the Home Secretary and the Justice Secretary), Lord Chancellor and the Attorney General may jointly direct when a joint inspection programme is prepared and what form it should take. It is envisaged that the inspectorates will continue to agree and set out their proposed joint inspection programme in a Joint Business Plan, which typically covers a period of two years.

44 The inspectorates do already work together effectively to undertake joint thematic inspections. However, to ensure that their programme of work regularly includes a focus on victims' issues, the Bill will introduce the ability for relevant Ministers to direct joint thematic inspections by criminal justice inspectorates to assess the experiences and treatment of victims throughout the

entire criminal justice process. The policy intention behind requiring these joint thematic inspections is to make inspectorates more effective at: identifying key issues in relation to victims across the whole system; understanding the cause of these issues and the best ways to address them; and making recommendations that will ensure improvements in the service provided to victims.

45 This requirement will apply to the following inspectorates:

- HMI Constabulary and Fire and Rescue Services (HMICFRS) (who hold responsibility for assessing the effectiveness of police forces and fire and rescue services), but only to their functions relating to police forces
- HM Crown Prosecution Service Inspectorate (HMCPSI) who hold responsibility for assessing the effectiveness of the CPS and the Serious Fraud Office
- HMI Probation (HMIP) who inspect probation and youth offending services
- HMI Prisons (HMIP) who inspect prisons and young offender institutions.

46 The Bill will create a new power for the Secretary of State (which in practice will usually be the Home Secretary and the Justice Secretary), Lord Chancellor and the Attorney General acting jointly, to require any of the above inspectorates to carry out a joint inspection assessing victims' experiences and treatment and to specify when this should be carried out. The intention is to use the power for the purpose of specifying in which given joint inspection business plan cycle an inspection is to take place.

47 There is no dedicated inspectorate for His Majesty's Courts and Tribunals Service (HMCTS). The Public Bodies (Abolition of HM Inspectorate of Courts Administration and the Public Guardian Board) Order of 2012 abolished HM Inspectorate of Court Administration (HMICA) and set out that any of the four remaining criminal justice inspectorates may inspect any aspect of the Crown Court or Magistrates' Courts in relation to their criminal jurisdiction, which could have been inspected by HMICA. HMCTS have been assessed since then as part of joint thematic inspections.

## Duty on criminal justice inspectorates to consult the Victims' Commissioner

48 While some inspectorates already routinely consult the Victims' Commissioner, during the pre-legislative scrutiny process, stakeholders drew attention to the lack of a formal consultative role. It is important that the needs of victims are robustly considered within criminal justice inspections. The Bill therefore places a duty on criminal justice inspectorates to consult the Victims' Commissioner when developing their work programmes and frameworks.

**49** Existing legislation requires inspectorates to consult a variety of stakeholders on inspection frameworks and programmes – such as the other criminal justice inspectorates, the Commission for Healthcare Audit and Inspection and the Auditor General for Wales**.** The Bill will amend this legislation to include the Victims' Commissioner alongside the existing mandatory consultees.

## Removal of MP filter in relation to victims' complaints referred to the Parliamentary Commissioner for Administration

50 The Parliamentary and Health Service Ombudsman (PHSO) combines the two statutory roles of Parliamentary Commissioner for Administration (PC) and the Health Service Commissioner for England. The PC can investigate, and make final decisions on, all complaints made against a specified set of Government organisations and UK public organisations.

51 Currently, a complaint falling within the Parliamentary Commissioner's jurisdiction must be referred to a member of the House of Commons before the Parliamentary Commissioner can investigate the complaint. This can cause delays in the process. The policy aim is to make the complaints process more streamlined for victims who may not want to share their traumatic experiences at multiple stages, and to achieve faster outcomes from the process.

52 The Bill will remove the need to refer a complaint via a person's MP and replace it with a dual access system. Under this process, a complaint relating to the complainant's experiences as a victim can be made directly to the Parliamentary Commissioner by:

- The person affected,
- A person authorised by them (including an MP), or
- Where they are deceased or otherwise unable to make the complaint or authorise another person to do so, their personal representative or another person (e.g., a family member) the Parliamentary Commissioner assesses as suitable to represent them (section 6(2), Parliamentary Commissioner Act 1967).

53 These measures will continue to allow for the affected person's MP to be kept informed of the results of an investigation or a statement of the Parliamentary Commissioner's reasons for not conducting an investigation, even if the complaint was not made by the MP on their behalf, but only if the affected person has consented to the report or statement being sent to an MP. Where the Parliamentary Commissioner makes a finding that there has been maladministration or a failure to perform a relevant duty, the Parliamentary Commissioner may lay a special report before Parliament. This is consistent with the Parliamentary Commissioner's function, which is to assist Parliament in its scrutiny role.

54 Removal of the 'MP filter' will only apply to persons whose complaints relate to their experiences as victims of crime, for whom approaching an MP to share a potentially traumatic experience is more likely to be a barrier to making a complaint. This does not constitute an indication that the Government intends to remove the MP filter more widely.

## Victim information requests for purposes of a criminal investigation etc.

55 When investigating a crime, the police and other law enforcement authorities can request information about a victim from a third party to support a reasonable line of enquiry. This information is commonly referred to as 'third party material' or 'TPM' and may include, but is not limited to, any relevant medical, education or social service records.

56 The Government's End to End Rape Review found that requests for third party material are sometimes unnecessary and disproportionate, and focused on victim credibility. Responses to the 'Police Requests for Third Party Material Consultation' (June to August 2022 ) further corroborated these findings and demonstrated support for legislative clarification. Subsequently, the Government committed to legislate to ensure that any third party material requested by an authorised person is necessary and proportionate to the investigation and to create a code of practice to ensure consistency across requests.

57 These new measures define certain conditions authorised persons, including the police, British Transport Police, National Crime Agency and service police, must meet before making the victim information request.

58 Under these measures an authorised person will have a duty to only request information on victims of criminal conduct where it is necessary and proportionate in pursuit of a reasonable line

of enquiry. Authorised persons must also notify the victim about whom the information is being requested or other relevant person for example in the case of children, missing or vulnerable persons. This includes a written notice detailing what information is being sought, why, and how it will be used. Authorised persons will also have a duty to provide clear and detailed information to accompany victim information requests to third parties, unless it would be inappropriate to do so. This must include clear details about the information being sought, the reason why and how the material will be used. Finally these measures impose a duty to have regard to the accompanying code of practice to ensure that police requests for victim information are necessary and proportionate.

## Victims of Major Incidents (Appointment of Independent Public Advocates)

59 The Independent Public Advocate arises from the lessons learned from the 1989 Hillsborough Disaster. The investigation and inquests that followed that tragedy were heavily criticised and the families had to fight for many years to get to the truth of what happened on that fateful day.

60 Although important reforms have been made in recent years to support and empower victims of major incidents, the aftermath of a major incident can involve multiple rules and procedures that are unfamiliar to most people. This can be daunting, confusing, and overwhelming.

61 Introducing The Independent Public Advocate has been a long-standing Government commitment which was set out in the 2017 Queen's Speech. The IPA will provide advice and support to the bereaved and the injured following a major incident and through any investigation, inquest and inquiry that follows.

62 The Ministry of Justice consulted on the proposal to establish an IPA in 2018. A high-level response to this consultation was published alongside a statement from the Government in March 2023 announcing the creation of an Independent Public Advocate and setting out the intention to place it on a statutory footing. The measures in this Bill do this.

## The Parole Board and prisoner release

63 The Parole Board was established in 1968 under the Criminal Justice Act 1967. It became an independent executive non-departmental public body (NDPB) on 1 July 1996 under the Criminal Justice and Public Order Act 1994. It works to protect the public by risk assessing parole-eligible prisoners to decide whether they can be safely released on licence into the community and to confirm the continued detention of the prisoner where they cannot.

64 Whilst elements such as general risk of re-offending and good behaviour in prison are taken into account by the Board, it is important to stress that the offender's potential risk of causing serious further harm to the public is the deciding factor in parole decisions. If the Board determines that an offender's risk cannot be safely managed in the community through licence conditions and supervision by the Probation Service, then they will not be released and will remain in prison pending a further review, which occurs every 12 to 24 months.

65 Each year the Parole Board reviews around 26,000 cases. In 2020/21, the Parole Board conducted 23,453 paper considerations and 9,202 oral hearings. Of the total cases concluded in any given year, fewer than one in four prisoners reviewed are judged to meet the statutory test for release. Less than 0.5% of prisoners released by the Parole Board are convicted of a serious further offence within three years of the release decision having been made.

66 The Parole Board's procedures are governed by the Parole Board Rules, which are made by the

Secretary of State for Justice through secondary legislation under the Criminal Justice Act 2003 ("the 2003 Act") and subject to the negative procedure.

67 There are several different sentence types that may bring an offender into contact with the Parole Board, making them "parole-eligible" sentences. These sentences are Extended Determinate Sentences, Sentences for Offenders of Particular Concern, Life Sentences and Sentences of Imprisonment for Public Protection (IPP). Additionally, all standard determinate sentenced terrorist offenders will go before the Parole Board under section 247A of the 2003 Act, as will standard determinate sentenced offenders who are deemed to be dangerous and are referred to the Board instead of being released automatically under section 244ZB of the 2003 Act.

68 Extended determinate sentences are available for offenders convicted of certain specified violent, sexual or terrorism offences whom the court determines to be "dangerous", and Sentences for Offenders of Particular Concern are available for offenders convicted of certain terrorism offences and the two most serious sexual offences against children. Under these sentences, an offender is considered for release by the Parole Board between the two-thirds and end point of the custodial term. If not released earlier, they are automatically released at the end of their custodial term and serve an extended period (Extended Determinate Sentenced prisoners) or an additional 12-month period (Sentences for Offenders of Particular Concern prisoners) on licence.

69 Life sentences in almost all cases spend a minimum period in custody (a 'tariff', set by the court) before consideration for release by the Parole Board. Many offenders remain in prison beyond their tariff, and some may never be released. If an offender is released, they will remain on licence for the rest of their life and will be subject to recall to prison at any time. There are currently three types of life sentence available to the court: mandatory life sentences must be imposed on anyone convicted of murder; discretionary life sentences apply to a range of offences that carry a maximum penalty of life imprisonment (e.g., manslaughter, rape, and robbery); life sentence for a specified second offence is available for adult offenders who have been convicted of a second specified violent, sexual or terrorism offence.

70 Imprisonment for Public Protection (IPP) sentences were introduced in 2005 as an indeterminate sentence targeted at serious offenders who did not merit a life sentence. Under the sentence, offenders were given a minimum term that had to be served in full in custody. At the end of the term, they can be released only if the Parole Board is satisfied that they are safe to be released on licence. IPP sentences were abolished in 2012, although not retrospectively, so there are still IPP offenders in custody who are subject to Parole Board release (including both those who are awaiting first release and those who have been recalled).

71 In 2019, the Conservative Party's Manifesto committed to conducting a Root and Branch review of the Parole system to improve accountability and public safety.

72 In March 2022, the Ministry of Justice published the Root and Branch Review of the Parole System. The review set out a range of reforms to the parole system to increase transparency, improve victims' experience and improve public safety. The review also proposed several changes that require primary legislation, including refining the statutory release test to make it more prescriptive and introducing a power for the Secretary of State to review and, if necessary, refuse release decisions for the most serious offenders. These changes are the subject of this section of the Bill, along with changes to the appointment of Parole Board members and the role of the Chair.

## The Statutory Release Test

73 The Statutory Release Test is used by the Parole Board when assessing whether it is safe for a prisoner to be released into the community. This test was set out in the Criminal Justice Act 1991 for the release of those persons serving discretionary life sentences and was extended to all parole-eligible prisoners via the 2003 Act. It states:

"The Parole Board must not give a direction [for release]… unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined"

74 The Root and Branch Review set out the Government's intention to amend this statutory release test to ensure that the focus is on the potential risk posed by an offender when the Board is considering them for release. The review explained that the Government believes it is properly the prerogative and responsibility of Parliament to set out the conditions that help define the level of risk which a prisoner must present in order to keep the public safe, and the Government's responsibility to ensure that the conditions are met. The Bill achieves this by clarifying that the purpose of the release test, which has been subject to varied interpretations in the past (see Legal Background), is to minimise any risk, as far as is reasonably possible, to the safety of the public. To achieve this, the Bill introduces a clear list of criteria the Board must take into account when applying the test in order to remove ambiguity.

## Top-tier Cohort

75 The Root and Branch review set out the need for a more precautionary approach to releasing offenders, in particular, those who have committed the most serious offences and who may go on to commit another offence that causes serious harm if released. The review identified a need for greater safeguards whenever the Parole Board determines that any of these prisoners is suitable for release. The Review, therefore, proposed the creation of a "top-tier" cohort of prisoners who have committed murder, rape, certain terrorist offences or who have caused or allowed the death of a child. The Review concluded that any decision to release an offender in the top tier should be subject to greater scrutiny by enabling the Secretary of State to call in the Parole Board's decision, review it and, if necessary, refuse the prisoner's release

76 The Bill creates and defines the "top-tier" cohort whose release decisions will be subject to greater scrutiny. The cohort will also include all transferred offenders, service offenders and repatriated offenders who have committed top tier offences and whose release is subject to the parole system of England and Wales. Inchoate offences (preparatory or anticipatory versions of the top-tier offences) are not included in the top tier list.

## Secretary of State's powers

77 As proposed in the Root and Branch Review, the Bill creates powers to enable the Secretary of State, if they so decide, to review any case in which the Parole Board has decided to release a top tier prisoner.

78 If the Parole Board determines that a top tier prisoner presents no more than a minimal risk of committing a serious offence on release and is, therefore, eligible for release, it must notify the Secretary of State of its decision. There are two existing mechanisms for the Secretary of State to require the Parole Board to review a decision to release a prisoner. If, the Secretary of State considers that the decision is procedurally unfair, irrational or there has been an error of law, they can apply for the Parole Board to reconsider its decision through the existing reconsideration mechanism. If the Secretary of State considers the Parole Board made an error of law or fact in their decision, or that there is new information or a change of circumstances coming to light since the decision which, had the Board known the information, would mean that the Parole Board would not have made the release decision, the Secretary of State can apply to the Parole Board to have the decision set aside if it is in the interests of justice to do so.

79 The new measures will provide that, following a referral from the Parole Board, if the Secretary of State considers that the release test may not have been met, he may direct the Board to refer the case to him so that he (or another Minister or a senior official) can retake the decision. The Secretary of State may direct such a referral without first asking the Board to reconsider, or set aside, its decision.

80 The Board may also refer a case to the Secretary of State to take the decision where it considers it appropriate to do so, including when it is unable to adequately assess the prisoner's risk to the public.

81 On referral at the Secretary of State's request, the Board's decision to release the prisoner is quashed while the Secretary of State considers the case. In effect, the Bill requires the Secretary of State to apply the same release test as the Parole Board and to make a judgement as to level of risk the prisoner may pose to public safety if released. In reaching a decision, the Secretary of State may make such findings of fact as they consider appropriate on the evidence before them. The Secretary of State must not release the prisoner unless satisfied that their imprisonment is no longer necessary for public protection: i.e., that the prisoner presents no more than minimal risk of committing an offence that would cause serious harm if released on licence.

## Appeal to the Upper Tribunal

82 Where the Secretary of State decides not to release a prisoner, the Bill enables the prisoner to make an appeal against the decision to the Upper Tribunal. The grounds for such an appeal are that the Secretary of State's decision is flawed, for example, because it is irrational, or that the prisoner does not pose more than a minimal risk to the public. If the Upper Tribunal finds the Secretary of State's decision is flawed, it must remit the decision to the Secretary of State to retake, otherwise it must confirm the decision. When assessing an appeal on the ground of whether or not the release test has been met, the Upper Tribunal must consider the same public protection test that has been applied at first instance by the Parole Board, and subsequently the Secretary of State when reviewing the case. The Upper Tribunal must either confirm the Secretary of State's decision, or otherwise direct the prisoner's release, if it is satisfied that there is no more than a minimal risk of the prisoner committing a further offence that will amount to serious harm if they are released.

## Interpretive provision relating to the release legislation

83 The Bill also contains two measures which bring forward reforms contained in the Bill of Rights Bill (introduced to Parliament in June 2022) which will guide interpretation of the new parole clauses, as well as Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 Act ("the 1997 Act"), Chapter 6 of Part 12 of the 2003 Act, section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"), and all secondary legislation made under these provisions ('the release legislation'). These provisions span the full legislative framework in England and Wales relating to release, licences, supervision, and recall of indeterminate and determinate sentenced offenders.

84 The measures disapply section 3 of the Human Rights Act 1998 ("the HRA") so that if incompatibilities do arise with the new parole measures, or any of the other release measures, courts (and others) will not be under the obligation to interpret the provisions compatibility "so far as it is possible to do so". The purpose of this is to avoid courts adopting a strained section 3 interpretation, which ultimately disregards the policy intentions of the release regime. The measures also provide that, where a court is considering a challenge relating to a relevant Convention right, in relation to application of any of the release legislation, the court must give the greatest possible weight to the importance of reducing the risk to the public from the offender.

## The Parole Board

### Membership

85 The Parole Board is an independent statutory body that exercises its role by convening panels of Parole Board members to make a detailed assessment of a parole-eligible prisoner's risk to the public and their suitability for release. Parole Board members are public appointees, appointed by the Secretary of State. These members are either judicial (serving or retired judges), specialist

(with psychologist or psychiatric qualifications), or independent (with significant experience of the criminal justice system).

86 The Root and Branch Review of the Parole System set out the Government's intention to increase the number of independent Parole Board members with law enforcement experience, such as former police officers and for these members to sit on panels for 'top-tier' offenders. This is intended to bring a different perspective on offending and offenders from those with first-hand experience of assessing risk to the public, adding to the collective knowledge and experience of the Board. The Board already has a small number of independent members with law enforcement experience and the Ministry of Justice has recently launched a campaign to recruit more such members.

87 To ensure that law enforcement experience is embedded within the Parole Board, the Bill requires the Board to include among its members those with law enforcement experience: those with experience in the prevention, detection, and investigation of offences.

88 The Bill also gives the Secretary of State the power, through the Parole Board Rules, to prescribe that particular classes of cases be dealt with by members of a particular description. This power will be used, in the first instance, to require any panel considering a top tier case to include at least one member with law enforcement experience. Knowing that those parole decisions are being made by those with different insight into offenders' behaviour will help to strengthen public confidence in the Parole Board. The power will enable future changes to be made to configuration of panel expertise, to maximise members' particular skill sets.

## The Chair of the Parole Board

89 The Chair of the Parole Board, as with Parole Board members, is a public appointment and appointments are made by the Secretary of State for Justice under paragraph 2(1) of Schedule 19 of the 2003 Act. Currently, the exact terms of this appointment are not set out in legislation. The Bill will provide that the Secretary of State appoints the Chair for a five-year tenure, which may be renewed for a further five years. The role will remain a public appointment.

90 There is no detailed statutory provision made for the grounds or process for removal of the Chair or the remainder of the Parole Board membership. In 2018, the Secretary of State agreed a termination protocol with the Board.

91 The agreed Protocol sets out grounds and process for removal of the Chair and other Parole Board members by a panel which includes a representative of the Secretary of State, a representative of the Parole Board and an independent member. For the Chair, the grounds are if they have been absent, without reasonable excuse, from their office and not fulfilled its functions for a continuous period of at least three months; have been convicted of an offence; are an undischarged bankrupt or; become, for any reason, incapable of carrying out their duties and the panel concludes that the Chair is therefore unfit or unsuitable to continue as Chair of the Parole Board and recommends the Secretary of State remove the Chair on this basis. These grounds for removal are similar to those for other Non-Departmental Public Body Chairs.

92 The Parole Board's key function is to protect the public through robust determinations on release informed by the making of risk assessments. It is important that the public have confidence that it is performing this role. The decision-making process can be unclear and, on occasion, gives rise to public concern. Given the organisation is subject to such attention, it is vital that it commands the confidence of the public at all times. To ensure that the Parole Board Chair is properly accountable to the Secretary of State for such matters, the Government has decided it necessary to legislate to enable the Secretary of State to remove the Chair if that is necessary to maintain public confidence in the organisation.

93 As the Parole Board plays a crucial role in protecting the public, it is not unreasonable for the

public to expect ministers to provide robust oversight of the Board and the decisions it takes. The provisions in this Bill for the Secretary of State to review top tier cases and veto release decisions demonstrates that the Government takes its responsibilities seriously. By setting out in statute the functions the Chair of the Parole Board is expected to fulfil and enabling the Secretary of State to remove the Chair from post in certain circumstances, oversight of the parole process will be additionally strengthened. To ensure continuity of tenure and independence of the Board, the length of the Chair's appointment will be extended, and set out expressly (alongside that of the Vice-Chair) in the Bill.

94 The new power of dismissal, if necessary to do so to maintain public confidence in the Parole Board, enables unilateral action by the Secretary of State in relation to one of the Department's arms-length judicial bodies. The Bill will therefore create a ring-fence to prevent the Chair's involvement in its judicial functions. The provisions clarify that, although the Parole Board performs judicial functions in its decision-making in individual cases, the Chair has a non-judicial role, responsible for leading the organisation, ensuring a strategic direction is set and reviewed, and promoting awareness of the Board and the role it plays in public protection. To achieve this, the Bill sets out the Chair's new functions, as well as the activities that the Chair must not participate in, so that postholder remains completely separate from the Board's assessment of individual parole cases.

95 The measures relating to the role of the Chair of the Parole Board will not apply to the incumbent Chair on introduction of the Bill, but will apply to any future post-holders once the provisions are commenced.

## Restriction on marriage for whole life order prisoners

96 Currently, prisoners have a legal right to enter into marriage in the place of their detention, according to the Marriage Act 1983. The Civil Partnership Act 2004 provided for same sex couples to enter into a civil partnership, followed by the Marriage (Same Sex Couples) Act 2013. In December 2019, civil partnerships were extended to opposite sex couples, as Civil Partnership (Opposite-sex Couples) Regulations 2019 amended the 2004 Act.

97 Marriage and civil partnerships in prison are relatively infrequent. In 2022, around 60 prisoners applied to marry in prison, out of a total prison population of approximately 80,000.

98 Under current operational policy, as set out in PSI 14/2016 (Marriage of Prisoners and Civil Partnership Registration), where a prisoner wants to marry or enter into a civil partnership in a prison, he or she is required to obtain a statement of authority from the prison governor which states that there is no objection to the prison being named as the place at which the marriage or civil partnership will take place. The statement by the responsible authority is not required if the prisoner is getting married or entering a civil partnership outside the prison.

99 The measures in the Bill would prohibit prisoners who are serving a whole life order from marrying or forming a civil partnership. For prisoners who have been sentenced to a whole life order, it is considered that it would undermine confidence in the Criminal Justice System for them to be allowed to marry. This sentence is the single most severe punishment in UK criminal law and means that the offender must spend the rest of their life in prison. Whole life orders are reserved for those who have committed the most serious crimes, for example serial or child murders that involved a substantial degree of premeditation or sexual or sadistic conduct.

100 The Bill would provide that the Secretary of State may grant permission for a prisoner serving a whole life order to marry only where they consider such permission is justified on compassionate grounds in exceptional circumstances.

# Legal background

*The Victims' Code*

101 The duty to issue a Code of Practice (the Victims' Code) and the procedure for doing so are already set out in primary legislation. The current provisions are sections 32 to 34 of the Domestic Violence, Crime and Victims Act 2004. This Bill repeals and restates these provisions in the 2004 Act with amendments, in addition to setting out the key principles that must be reflected in the services provided for in the Victims' Code and giving the Secretary of State a power to make regulations setting out further matters which the Victims' Code must reflect. It also includes a new procedure for making minor amendments to the Victims' Code.

*The Commissioner for Victims and Witnesses*

102 The provisions in relation to the Commissioner for Victims and Witnesses are set out in primary legislation. The current provisions are sections 48 to 54 of the Domestic Violence, Crime and Victims Act 2004. This Act will continue to be the main Act dealing with the Victims' Commissioner, and this Bill inserts new provisions (see clause 17) into the 2004 Act.

*Inspectorates*

*103* The relevant provisions relating to joint inspections in respect of the following inspectorates are set out in primary legislation as follows:

a. The Police Act 1996 sections 54-56 and Schedule 4A

b. The Crown Prosecution Service Inspectorate Act 2000 sections 1 and 2 and the Schedule

c. The Criminal Justice and Court Services Act 2000 sections 6 and 7 and Schedule 1A

d. The Prison Act 1952 section 5A and Schedule A1.

104 These Acts will continue to be the main Acts dealing with inspectorate powers, and this Bill inserts new provisions (see clauses 18 – 21) into the schedules of the above Acts.

*The Parliamentary Commissioner*

105 The provisions in relation to the Parliamentary Commissioner are set out in primary legislation. The relevant provisions for the purposes of this Bill are sections 5, 6 and 10 of the Parliamentary Commissioner Act 1967. This Act will continue to be the main Act dealing with complaints referred to the Parliamentary Commissioner in relation to Government departments, and this Bill inserts new provisions (see clause 22) into the 1967 Act.

*Victim information requests for the purpose of criminal investigations (etc.)*

106 The provisions in relation to victim information requests (third party material requests) for the purposes of criminal investigations insert new sections 44A-44E (Chapter 3A) into Part 2 of the Police, Crime, Sentencing and Courts Act 2022. The provisions introduce a new statutory duty on policing when making such requests.

107 The processing of the victim's personal information by policing pursuant to such requests will be regulated by the Data Protection 2018, the UK GDPR and the Human Rights Act 1998.

*The Independent Public Advocate*

108 The provisions that create the independent public advocate (IPA) are new. Clause 28 amends section 47 of the Coroners and Justice Act 2009 so that an IPA appointed to assist victims of a major incident will be an interested party to an inquest arising out of that major incident.

*Parole eligibility*

109 Sentences of imprisonment are generally served part in prison and part in the community. Some types of sentence (for offenders who are more serious or dangerous) will be subject to discretionary release by the Parole Board ('parole eligible sentences'). Apart from standard determinate sentenced offenders who have not committed a terrorism offence (who are entitled to automatic release by the Secretary of State), all other types of sentence are parole-eligible at prescribed points. Determinate sentenced parole-eligible prisoners in England and Wales must be referred to the Parole Board, and subsequently released in accordance with the provisions contained in Chapter 6 of Part 12 of the 2003 Act which includes the legacy release provisions of the Criminal Justice Act 1991 which are restated in Schedule 20B of the 2003 Act. All indeterminate sentences are parole-eligible, and indeterminate sentenced prisoners who have reached the end of their minimum term are dealt with in accordance with Part 2 of the 1997 Act.

110 All offenders recalled to prison following an increase in their risk to public safety will go before the Parole Board for a decision on re-release or, where not released, confirming continued detention. Determinate sentence prisoners can also be executively re-released by the Secretary of State. Recalled determinate prisoners are dealt with via sections 254 to 256AZB of the 2003 Act; recalled indeterminate prisoners are dealt with under section 32 of the 1997 Act.

*Public protection test*

111 Where the Parole Board has the function to determine release, it does so by applying the release test, also known as the public protection test, determining whether it is no longer necessary for the protection of the public that the offender remain confined, in order to decide if the offender should be released on licence. The release test has been subject to significant judicial commentary. In *R v Parole Board, ex p. Bradley* [1991] 1 WLR 134, the High Court held that the release test for indeterminate offenders whose minimum term had ended was a balancing exercise between the legitimate, but conflicting interests of both the prisoner and the public, and that the threshold to be met involved the risk posed being not merely perceptible or minimal. This concept of a balancing exercise was referred to again by the Court of Appeal in *R (Brooke) v Parole Board* [2008] 1 WLR 1950, where the Court was considering both determinate and indeterminate parole-eligible offenders.

112 A different position was established in the case of *R (King) v Parole Board* [2016] EWCA Civ 51, where the Court of Appeal made it clear there was no balancing test involved in the release test, and the threshold was simply if there is a more than minimal risk of harm if the prisoner was to be released, confinement of the prisoner will be required to avoid that risk. The changes to the public protection test in the Bill will codify the principles set out in *King* within the release test to create consistency in application and put beyond doubt the threshold the Board must apply.

113 Part of the clarification of the public protection test is to codify some of the key matters which the Board must consider when taking their decision. The Board is already required to take all relevant matters into account when taking their decisions (and the drafting makes it clear that the list does not fetter the matters the Board can take into account when making the decision); however, taking the approach of listing the significant considerations will put beyond doubt those matters upon which the public protection test focuses. This approach is based on the approach taken in Ireland via section 27(2) of the Parole Act 2019 (IE) and section 1 of the Criminal Justice (Temporary Release of Prisoners) Act 2003 (IE).

*Ministerial power to refuse release and appeal*

114 In the past, a similar mechanism to the veto power provisions in the Bill existed under section 35(2) of the Criminal Justice Act 1991. Long term and life prisoners could be made subject to release on licence if the Board recommended release, subject to the Secretary of State agreeing that

release following consultation with the Lord Chief Justice and trial judge. This mechanism was amended following several cases, including that of *Stafford v United Kingdom* (46295/99), where the European Court of Human Rights held that ongoing post-minimum term detention requires determination of lawfulness by a court, in accordance with Article 5(4).

115 The new measures in the Bill restore involvement of the Secretary of State in the release of the most serious and dangerous offenders (the top tier), where they will review the release decision and take it afresh. The case law on findings of fact has recently developed to the position that the Secretary of State is unable to depart from a finding of fact or credibility made by the Board unless he or she has good reason to do so (see, e.g., *R (Hindawi) v Secretary of State for Justice* [2011] EWHC 830 (QB)). When taking the release decision, the Bill expressly provides Secretary of State is not bound by the findings of the Parole Board but can make their own findings of fact.

116 Currently, a prisoner dissatisfied with a Parole Board decision not to release them may seek a judicial review of that decision. Under the new measures, where the Board judges that a top tier offender is eligible for release (or it is not able to reach a decision) and the case is referred to the Secretary of State, who subsequently decides the public protection test has not been met, the prisoner may appeal to the Upper Tribunal on the grounds that either the Secretary of State's decision is flawed, or the prisoner poses no more than minimal risk of committing an offence that would cause serious harm. The ability of a Tribunal to oversee the release decision (known as "full-merits review") generates the appropriate standard of review set out in *Stafford.*

117 The new grounds of review also contain judicial review grounds, whereby a prisoner can challenge a decision of the Secretary of State if their decision was flawed from a public law perspective. The irrationality head of appeal, which has developed via the Courts to permit a more intense review in cases where an individual's rights are being interfered with (see *R v Ministry of Defence, ex parte Smith* [1996] 1 All E.R. 257 and *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26 at [28]). The irrationality head has been drafted narrowly, to exclude any more expanded intensity of review than that set out in *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223 ('Wednesbury'). This is to ensure the Tribunal does not undertake a proportionality analysis or balancing exercise when determining whether or not the Secretary of State erred in their decision-making, but analyses the decision strictly, in line with the precautionary principles which put public protection at the forefront of parole decision-making.

*Interpretive provision relating to Convention rights and the release legislation*

118 The Bill contains interpretive provision bringing forward Bill of Rights changes in relation to judicial reviews of, and other legal challenges to, the release legislation, and decisions made under the release legislation.

*Prohibiting whole life order prisoners from marrying in prison*

119 Whole Life Orders are provided for by section 321 of the Sentencing Act 2020. This section provides that when a court passes a life sentence, it must make a minimum term order unless it is required to make a Whole Life Order. Subsection 3 sets out when a court is required to do so. Subsection 5 sets out that a Whole Life Order is an order that the early release provisions are not to apply to the offender. Therefore, such prisoners will serve the entirety of their life sentence in prison, with no possibility of release, except in exceptional circumstances on compassionate grounds.

120 Schedule 22 of the Criminal Justice Act 2003 sets out the transitional provisions applicable to prisoners given life sentences before the 2003 Act reformed the sentence and introduced the Whole Life Order. Such prisoners can apply to the High Court to have their sentences converted into ones under the 2003 Act framework, and the High Court cannot impose a sentence longer than the Secretary of State had previously notified them that they should serve. Therefore, the

High Court can only impose a Whole Life Order on such prisoners if the Secretary of State had informed the prisoner that they did not intend that the prisoner should ever be released on licence.

121 The Marriage Act 1949 gives adults in England and Wales the right to marry. Restrictions on who can get married are set out on the face of the 1949 Act. There is an exhaustive list of marriages which are to be treated as void given in the Act. The fact that one prospective spouse is a prisoner is not currently an exception to the right to marry.

122 The 1949 Act was amended by the Marriage Act 1983 to enable marriage in prison following the decision of the European Commission on Human Rights in the case of Hamer v UK [1979] 12 WLUK 129. The 1983 Act enables marriages of house-bound and detained people to be solemnized at the place where they reside. Amongst other things the 1983 Act also inserted section 27A (on solemnising marriages at a person's residence, including a prison) into the 1949 Act.

123 Where a "detained person" is seeking to get married, section 27A(3) of the 1949 Act requires that the marriage notice issued by the superintendent registrar is accompanied by a statement from the "responsible authority", which is a Governor in the case of a Prison. The statement given under section 27A must identify the establishment where the person is detained and state that the responsible authority has no objection to that establishment being specified in the notice of marriage as the place where that marriage is to be solemnized.

124 The extent of the power of a superintendent registrar or a prison governor to object to a prisoner's wedding under section 27A of the 1949 Act was considered in the Court of Appeal judgment in J v B [2002] EWCA Civ 1661. The Court found that neither the registrar general nor a prison governor had powers to prevent the marriage. In respect of the governor, public policy considerations did not entitle them to adopt an interventionalist role in proceedings because section 27A(3) of the 1949 Act only allowed objections to prison marriages on practical and logistical grounds.

125 7 Where a detained person proposes to enter a civil partnership, section 19(4) of the Civil Partnership Act 2004 (the "2004 Act") provides for an equivalent statement to be given by the responsible authority as is required by section 27A(3) of the 1949 Act.

# Territorial extent and application

126 The Bill extends and applies to England and Wales only, with the following exceptions:

a. Clauses 12 – 14 (duty to collaborate in the exercise of victim support functions) extend to England and Wales but apply to England only;

b. Clause 21 (the Parliamentary Commissioner for Administration) and the consequential amendment in clause 23(3) extend and apply to England and Wales, Scotland, and Northern Ireland (and for these purposes the definition of "victim" in clause 1 applies to England and Wales, Scotland, and Northern Ireland);

c. Clause 51 which contains a power to make consequential amendments by regulations, in relation to clauses 49 or 50 (whole life prisoners prohibited from forming a marriage or civil partnership) extends and applies to England and Wales, Scotland, and Northern Ireland; and

d. Part 4 (General) extends and applies to England and Wales, Scotland, and Northern Ireland.

127 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. It is the view of the UK Government that aspects of Parts 1 and 2 of the Bill fall within the legislative competence of Senedd Cymru. Conversations are ongoing with the Welsh Government over securing Legislative Consent Motion support for these clauses.

128 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

# Commentary on provisions of Bill

# Part 1: Victims of Criminal Conduct

## Meaning of "victim"

### Clause 1: "Meaning of Victim"

129 Clause 1 defines a "victim" for the purpose of this Part of the Bill.

130 Subsection (1) describes a victim as somebody who has been harmed by a crime **and** is the person against whom the crime is committed *or* somebody who fits into one or more of the categories in subsection (2).

131 Subsection (2) captures other individuals who can be a victim for the purposes of this Part of the Bill, if they have suffered harm, in addition to the person against whom the crime is committed. It includes:

a. Those harmed as a result of witnessing criminal conduct, meaning those who see, hear, or directly experience the crime in live time.

b. Individuals born as a result of rape or any sexual offence that can directly result in a pregnancy.

c. Close family members of individuals killed by criminal conduct. This reflects the current Victims' Code which specifies that bereaved families are victims for the purposes of the Code.

d. A child under 18 years of age who sees, hears, or experiences the effects of domestic abuse which constitutes criminal conduct between adults (aged 16 and older). This is to be read in accordance with the definition of a victim of domestic abuse in Part 1 section 3 of the Domestic Abuse Act 2021.

132 Subsection (4) defines:

a. "Harm" as including physical, mental or emotional harm (which captures both diagnosed and undiagnosed psychological condition or impacts on the person) and economic loss. This does not require the "harm" caused to the individual to be verified by another party, professional or otherwise; and,

b. "Criminal conduct" which means conduct which constitutes an offence in England and Wales, except for in relation to Clause 21, where it covers conduct which constitutes an offence in the UK, because the Parliamentary Health Services Ombudsman is a UK-wide body.

133 Subsection (4)(b) clarifies that a person can be a victim of criminal conduct for the purposes of this clause, irrespective of whether or not an offender is charged or convicted, including where the crime has not been reported. This ensures that the provisions of the Code issued under Clause 2 can require the provision of services to victims at all stages of the criminal justice process and to victims of offences in respect of which no criminal proceedings are eventually brought or where criminal proceedings result in a not-guilty verdict.

## Victims' Code

### Clause 2: The Victims' Code

134 Clause 2 restates, with amendments, the provisions of section 32 of the Domestic Violence, Crime

and Victims Act 2004 (the 2004 Act) that relate to the requirement to issue a Code of Practice (subsection (1)) in respect of the services to be provided to victims by persons who have functions relating to victims or the criminal justice system as a whole.

135 Subsection (3) inserts a new subsection into the re-stated provisions of the 2004 Act stating the key principles that must be reflected in the services provided under the Victims' Code.

136 These principles are that victims of criminal conduct:

- should be provided with information to help them understand the criminal justice process;
- should be able to access services which support them (including, where appropriate, specialist services);
- should have the opportunity to make their views heard in the criminal justice process; and
- should be able to challenge decisions which have a direct impact on them.

137 Subsection (4) give the Secretary of State a power to make regulations making further provision about the Victims' Code, including matters that the Code must include, subject to the restriction in subsection (5).

138 Subsections (6)-(8), as substantively restated from the 2004 Act allow the Code, amongst other things to:

- differentiate between different types of victims, for example so that particularly vulnerable victims might receive a faster service, or a service tailored to their needs;
- benefit persons other than the victim, such as those who might represent the victim like parents of victims who are children; and
- allow for regional variations in the way that services are provided to victims so that the Code can reflect local practices.

139 Subsection (9) provides that the Code may not require anything to be done by a person acting in a judicial capacity (or someone acting on their behalf in that capacity) or by a person acting in the discharge of a prosecutorial function if that function involves exercising a discretion.

140 Subsection (11) is a transitional provision designed to ensure the continuity of the Victims' Code.

## Clause 3: Preparing and issuing the Victims' Code

141 Clause 3 restates the procedure for issuing and amending the Code as set out under section 33 of the Domestic Violence, Crime and Victims Act 2004. However, historic references to the Secretary of State for Justice and the Secretary of State for the Home Department have been amended to refer instead to "the Secretary of State", which is defined in the Interpretation Act 1978 and means one of His Majesty's Principal Secretary of State. In practice this power is expected to be exercised by the Secretary of State for Justice acting in consultation with the Secretary of State for the Home Department. Subsections (6)-(8) set out the procedure for the new Code to be laid in Parliament and provide for it to be brought into operation.

## Clause 4: Revising the Victims' Code

142 Clause 4 confirms that the procedure set out in clause 3 must be followed when revising the Victims' Code once it has been brought into operation. These provisions are restated from section 33(8) and (9) of the Domestic Violence, Crime and Victims Act 2004.

143 It also creates a new secondary procedure for making amendments to the Victims' Code, which

can be used where the Secretary of State considers the revisions to be minor. Such amendments can be made without a public consultation and include corrections, clarifications and revisions which reflect changes to the law or practice or procedure of the criminal justice system. Subsection (5) states that, under this procedure, the Secretary of State must consult the Attorney General; lay a new Code before Parliament and stipulate via regulations when the new Victims' Code will come into force.

## Clause 5: Effect of non-compliance

144 Clause 5 restates section 34 of the Domestic Violence, Crime and Victims Act 2004 and provides that a failure to comply with the Code does not, in itself, give rise to any liability to criminal or civil proceedings.

## Clause 6: Code awareness and reviewing compliance: criminal justice bodies

145 Clauses 6 and 7 use the definition "elected local policing body", which has the meaning given by section 101 of the Police Act 1996, namely; (a) a police and crime commissioner, and (b) the Mayor's Office for Policing and Crime. This is in contrast to the Clause 12 duty which applies to "local policing bodies"; the difference being that "elected local policing bodies" does not include the Common Council for the city of London Police area. This is because the guidance will set out that Clause 6 and 7 duties may be discharged within police and crime commissioner-chaired Local Criminal Justice Boards (LCJBs). The City of London police area does not have its own LCJB but is instead included within the London Criminal Justice Board. In addition, when criminal justice bodies break their data down to force area, London includes both City of London and the metropolitan police area. This approach has been confirmed as appropriate by the Association of Police and Crime Commissioners. For the purposes of these provisions, elected local policing bodies are referred to hereafter as PCCs.

146 Clause 6 places a duty on specified criminal justice bodies to take reasonable steps to promote awareness of the Victims' Code and to review their compliance with the Victims' Code.

147 Subsection (1)(a) specifies that the bodies must take reasonable steps to promote awareness of the victims' code among users of those services and other members of the public. Together this will ensure that those who are engaged with the criminal justice system, as well as those who do not report a crime, will be captured. The inclusion of 'reasonable' gives bodies the flexibility to tailor their approach in different circumstances. This allows for those working in the system to use their expertise to determine the most appropriate moment and method of sharing the Code.

148 Subsection (1)(b) specifies that the bodies must keep under review how their services are provided in accordance with the Victims' Code

149 Subsections (2)(a) – (c) place specific duties on criminal justice bodies in each police area to collect information and to share information about their compliance with the Victims' Code with each other and with the relevant PCC, and to jointly review the information shared with other criminal justice bodies and with the relevant PCC for that police area. Subsections (2) and (3) contain powers for the Secretary of State to prescribe in regulations the descriptions of information that should be collected and/or shared for the overall purpose of keeping under review compliance with the Code, as well as to prescribe the manner in which information must be collected, shared, and reviewed. The intention is that the information to be collected and shared will include; data on criminal justice bodies' compliance with the delivery of responsible services under the Victims' Code and information relating to the experiences of service users. Subsections (4)(a) – (e) set out a non-exhaustive list of matters that the regulations may prescribe. This includes different information to be collected or shared by the different bodies and in relation to different services provided under the Code, information relating to the characteristics or experiences of users of those services that should be collected and shared by criminal justice bodies, the times at which or

periods within which information must be collected, shared or reviewed, and the form that it should be collected and shared including as may be specified in a notice issued from time to time by the Secretary of State.

150 Subsection (5) places a duty on the Secretary of State to consult such persons as the Secretary of State considers appropriate before making regulations. This enables discretion for targeted consultation with those affected and with a specific interest, which it is anticipated may include, for example, criminal justice bodies subject to the duty.

151 Subsection (6) lists the bodies who are subject to both the duty to take reasonable steps to promote awareness of the Victims' Code and to review their compliance with the Victims' Code. In practice the specified criminal justice bodies will be the police, the Crown Prosecution Service, His Majesty's Court and Tribunal Service, His Majesty's Prison and Probation Service and its executive agencies (His Majesty's Prison Service, the Probation Service and the Youth Custody Service), and Youth Offending Teams.

152 Subsection (7) defines the term "prison" for the purposes of subsection (6)(d).

## Clause 7: Reviewing code compliance: elected local policing bodies

153 Subsection (1) places a duty on PCCs in each police area to keep under review how the criminal justice bodies in their area are complying with the Victims' Code.

154 Subsection (2)(a)-(c) places specific duties on PCCs to participate in the joint review of information provided to them by criminal justice bodies under clause 6(2)(b)(ii) and to provide the Secretary of State with such of that information as may be prescribed by the Secretary of State. Subsection (2)(c) sets out that PCCs must provide the Secretary of State with reports on matters in connection with the joint review, and the intention is to use the regulations to prescribe a list of set matters that the reports should include, such as key insights generated from the joint review and the sharing of best practices. Subsections (2) and (3) create powers for the Secretary of State to make regulations prescribing the information and reports to be shared with the Secretary of State. Subsection (4)(a) and (b) sets out a non-exhaustive list of matters that the regulations may include. This includes the times at which or periods within which information must be collected, shared, or reviewed and the form in which information or reports are to be provided by PCCs to the Secretary of State including as may be specified in a notice issued from time to time by the Secretary of State.

155 Subsection (5) places a duty on the Secretary of State to consult such persons as the Secretary of State considers appropriate before making regulations. This enables discretion for targeted consultation with those affected and with a specific interest, which it is anticipated may include, for example, PCCs subject to the duty.

## Clause 8: Reviewing compliance: British Transport Police

156 Subsection (2) places a duty on the Chief Constable of the British Transport Police Force (BTP) to take reasonable steps to promote awareness of the Victims' Code among users of relevant services and other members of the public. The inclusion of 'reasonable' gives bodies the flexibility to tailor their approach in different circumstances. This allows those working in the system to use their expertise to determine the most appropriate moment and method of sharing the Code.

157 Subsection (3) places a duty on the BTP and the British Transport Police Authority (BTPA) to keep under review BTP's compliance with the Victims' Code. As the BTP is a national force, it does not fall within PCC areas. The BTPA is therefore the appropriate alternative to the PCC for overseeing compliance with the Victims' Code.

158 Subsections (4)(a)-(c) place specific duties on the BTP to collect information about its compliance with the Victims' Code and to share information about its compliance with the Victims' Code with

the BTPA. The BTP is also required to jointly review the information shared with the BTPA. Regulations will be used to prescribe the information to be collected and/or shared and the intention is that it will include; data relating to BTP's compliance with the delivery of responsible services under the Victims' Code and information relating to the experiences of service users.

159 Subsection (5)(a)-(c) specify that BTPA must participate in the review of the information shared by BTP and provide the Secretary of State with such of that information as may be prescribed in regulations together with reports on matters in connection with any reviews as may be prescribed in regulations.

160 Subsection (7)(a)-(d) sets out a non-exhaustive list of the matters that regulations made under this clause may include. This includes prescribing the information to be collected or shared including different information in relation to different services, how information may be collected from victims with protected characteristics and different experiences, the times at which or periods within which information must be collected, shared or reviewed or that a report must be provided by the BTPA to the Secretary of State, and the form that information should be collected and shared in and the form in which information or a report must be provided by the BTPA to the Secretary of State including as may be specified in a notice issued from time to time by the Secretary of State.

161 Subsection (8) places a duty on the Secretary of State to consult such persons as the Secretary of State considers appropriate before making regulations. This enables discretion for targeted consultation with those affected and with a specific interest, which it is anticipated may include, for example, BTP and BTPA.

## Clause 9: Code awareness and reviewing compliance: Ministry of Defence Police

162 Subsection (2) places a duty on the Chief Constable of the Ministry of Defence Police (MDP) to take reasonable steps to promote awareness of the victims' code among users of relevant services and other members of the public. The inclusion of 'reasonable' gives bodies the flexibility to tailor their approach in different circumstances. This allows for those working in the system to use their expertise to determine the most appropriate moment and method of sharing the Code.

163 Subsection (3) places a duty on the MDP and the Secretary of State (in practice, this would be the Secretary of State for Defence) to keep under review MDP's compliance with the Victims' Code. As the MDP is a national force, it does not fall within PCC areas. The Secretary of State for Defence is therefore the appropriate alternative to the PCC for overseeing compliance with the Victims' Code

164 Subsections (4) (a)-(c) specify that the Chief Constable of the MDP must collect information about their compliance with the Victims' Code and share information about their compliance with the Victims' Code with the Secretary of State (in practice, this would be the Secretary of State for Defence). The MDP is also required to jointly review the information shared with the Secretary of State. Regulations will be used to prescribe the information to be collected and/or shared. We intend that this will include; data relating to MDP's compliance with the delivery of responsible services under the Victims' Code and information relating to the experiences of service users.

165 Subsection (5)(a)-(b) require the Secretary of State (in practice, this would be the Secretary of State for Defence) to participate in a review of the information shared by MDP with them, and to prepare reports on matters in connection with any review as may be prescribed in regulations. Regulations issued by the Secretary of State will prescribe the information to be collected and/or shared and what reports in connection with the joint review of information should be prepared, including the matters upon which reports they should be prepared. It is intended that the information to be collected and shared will include; data on their compliance with the delivery of responsible services under the Victims' Code and information relating to the experiences of

service users.

166 A memorandum of understanding will be used to set out arrangements relating to the sharing of information, where it is anticipated that the MDP will review and share information with the Secretary of State for Defence who will then share information and reports with the Secretary of State for Justice.

167 Subsection (7)(a)-(d) sets out a non-exhaustive list of the matters that regulations made under this clause may include. This includes prescribing the information to be collected or shared including different information in relation to different services, how information may be collected from victims with protected characteristics and different experiences, the times at which or periods within which information must be collected, shared, or reviewed, and the form that it should be collected and shared in. It also includes the times at which or periods within which information must be collected, shared, or reviewed and the form in which information or a report is to be provided by the MDP to the Secretary of State including as may be specified in a notice issued from time to time by the Secretary of State.

168 Subsection (8) places a duty on the Secretary of State (in practice, this would be the Secretary of State for Justice) to consult such persons as the Secretary of State considers appropriate before making regulations. This enables discretion for targeted consultation with those affected and with a specific interest, which it is anticipated may include, for example the MDP.

## Clause 10: Publication of code compliance information

169 Subsection (1) requires the Secretary of State to publish such compliance information as the Secretary of State considers will enable members of the public to assess the code compliance of the specified criminal justice bodies which provides services in a police area, the BTP and the MDP. Subsection (2)(a) specifies that "compliance information" refers to the information provided to the Secretary of State by PCCs, the BTPA and the MDP under clauses 7(2)(a), 8(5)(a) and 9(4)(b). Subsection (2)(b) defines the term "code compliance".

170 Subsection (3) defines "relevant area" as that which relates to a police force area for criminal justice bodies, or England and Wales for the British Transport Police and the Ministry of Defence Police.

171 Subsection (4)(a) and (b) sets out the frequency at which compliance information must be published and states that the form and manner of such publication is a matter for the Secretary of State as they consider appropriate.

172 Subsection (5) provides that PCCs must take reasonable steps to make the public in their local police area aware of the information published by the Secretary of State under subsection (1)(a) where that information relates to their own police force area. A similar duty is not required for the Secretary of State for Defence or BTPA as the data published by the Secretary of State for Justice will already present a national picture, ensuring parity between the non-territorial forces (with national jurisdiction) and territorial forces (whose data would be publicised by their PCC

## Clause 11: Guidance on code awareness and reviewing compliance

173 Subsection (1) requires the Secretary of State to issue guidance about how the criminal justice bodies, PCCs, the Chief Constable of the BTP the BTPA and the Chief Constable of the MDP are to discharge their duties under Clauses 6-10. Those bodies must have regard to the guidance.

174 Subsections (2) sets out a non-exhaustive list of matters for which the guidance may make provision to support the relevant bodies in discharging their functions under Clauses 6-10. The purpose of this guidance is to advise on issues such as: appropriate circumstances and methods for promoting awareness of the Victims' Code among service users and members of the public; advice on obtaining feedback from children and those with protected characteristics; likely processes for joint review of criminal justice body information, which is expected to take place within PCC-chaired Local

Criminal Justice Boards, alongside parallel processes for the MDP and the BTP. It will also detail matters PCCs should consider when exercising their functions, referring to the interaction between their role and that of the Victims' Commissioner who has a general duty to keep under review the operation of the Code.

175 Subsection (3) requires that, before issuing any guidance, the Secretary of State must consult persons they consider appropriate. This enables discretion for targeted consultation with those affected and with a specific interest, which it is anticipated may include, for example relevant bodies who are subject to the duties under Clauses 6-10.

## Collaboration in exercise of victim support functions

### Clause 12: Duty to collaborate in exercise of victim support functions

176 Subsection (1) places a duty on a number of authorities (as defined in subsections (2) and (3)) working in a police area in England (the area for which a Police and Crime Commissioner is responsible as listed in schedule 1 to the Police Act 1996, as well as the metropolitan police district and the City of London police area) to collaborate when exercising their existing victim support functions.

177 Subsections (2) and (3) explain that the relevant authorities are:

- local policing bodies (which are defined within Schedule 1 to the Interpretation Act 1978 by reference to section 101 of the Police Act 1996 as meaning Police and Crime Commissioners, 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 in accordance with Chapter A3 of Part 2 of the National Health Service Act 2006); and
- tier one local authorities (as defined in the Domestic Abuse Act 2021 and meaning the county council or the district council where there is no county council, and the Greater London Authority rather than individual London boroughs, and the Council of the Isles of Scilly).

178 "Relevant victim support services" are defined in subsections (4), (5), (6) and (7) and are intended to describe some of the existing functions undertaken by the relevant authorities in relation to the commissioning and provision of victim support services. This duty will not include new requirements to commission services. Subsection (4) explains that relevant victim support services as services that are provided to support victims of domestic abuse, criminal conduct of a sexual nature or serious violence. Victim support services can include advice, recovery and support services, which could be medical, therapeutic, practical and/or emotional. This duty is intended to require the relevant authorities to target this collaborative effort towards victims of these categories of crime, which are particularly traumatic offences with a high number of victims each year.

179 Criminal conduct of a sexual nature refers to conduct that amounts to a criminal offence, and where a person has suffered harm as a result of this conduct, as set out in clause 1.

180 Subsection (5) defines domestic abuse and accommodation-based support for these purposes as having the same meaning as in sections 1 and 57 of the Domestic Abuse Act 2021 respectively.

181 Subsections (6) and (7) clarify the meaning of violence and serious violence. Violence for these purposes includes violence against property and threats of violence; and the decision as to whether violence is serious should take into account the maximum penalty for the offence and victim impact. The decision as to whether criminal conduct constitutes serious violence should

be made by the relevant authorities. Terrorism within the meaning of the Terrorism Act 2000 is not included, because victims of terrorism are supported by the Home Office CONTEST strategy and funding commitments.

182 Subsection (8) is intended to ensure that the relevant authorities consider whether sharing or processing information may assist them in the effective discharge of functions under this section. As clause 22 makes clear, this does not require information to be disclosed if the disclosure would contravene the data protection legislation, but it clarifies the lawful basis for disclosure under that legislation.

183 Subsection (9) clarifies that the victim support functions referenced in this clause includes the commissioning of services provided by another person.

184 The exercise of the duty will be organised by reference to police area because it is expected that as part of their role in commissioning wider victims' services, PCCs may convene the collaborative activity in local areas and bring local partners together. The relevant authorities are those responsible for functions falling all or part within a police area. The relevant police area in each instance will be that attaching to the local policing body as defined in section 101(1) of the Police Act 1996, namely that listed in schedule 1 of the Police Act 1996), the Metropolitan Police district and the City of London police area. For integrated care boards and local authorities, these could fall fully or partly within the police area meaning at the local level that the same commissioning team may be required to liaise with one or more PCC as appropriate in relation to the effective discharge of this duty

## Clause 13: Strategy for collaboration in exercise of victim support functions

185 Subsection (1) provides that the duty in clause 12 includes a requirement that the relevant authorities in a police area in England work together to prepare and implement a joint local strategy to set out the aims and approach for commissioning relevant services, as well as setting out how local areas are meeting the duty requirements.

186 Subsection (2) requires the relevant authorities to seek the views of those appearing to them to represent the interests of victims; those providing victim support services; and others as they consider appropriate (for example, the educational authority for the area).

187 Subsection (3) requires the relevant authorities to consider any assessments they have carried out of the needs of victims in order to inform development of the strategy. This will include any relevant assessments of victims' needs (which may have been carried out as part of existing commissioning processes), including any assessments indicating the needs of children and those with protected characteristics, as these persons may experience barriers to using generic support services (such as, lesbian, gay, bisexual and transgender (LGBT) victims, ethnic minority victims, deaf or disabled victims, and victims with specific needs due to their sex). The authorities must also have regard to existing local and national provision (in order to be aware of what is already available to victims in their local area and avoid duplication).

188 Subsection (4) puts a requirement on the relevant authorities to publish the strategy, keep the strategy under review and revise it from time to time.

189 Subsection (5) ensures that subsections (1) to (4) also apply to the preparation of a revised strategy.

## Clause 14: Guidance on collaboration in exercise of victim support functions

190 Clause 14 places the Secretary of State under a duty to issue guidance to the relevant authorities on how to carry out their obligations under clauses 12 and 13 and places the relevant authorities under a duty to have regard to that guidance. The purpose of this guidance is to support the relevant authorities in discharging their functions under these clauses and it will advise on issues

such as local partnership structures that may work for collaboration and how joint activity may be convened in practice (such as through a convening role by PCCs), alongside information to support strategy production. Subsection (2) sets out that before issuing any guidance, the Secretary of State must consult persons they consider appropriate, which is expected to include interested stakeholders and practitioners to accurately reflect what further explanation and practical guidance may be beneficial.

## Independent domestic violence and sexual violence advisors

### Clause 15: Guidance about independent domestic violence and sexual violence advisors

191 Subsection (1) creates a duty on the Secretary of State to issue guidance about Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs). As set out in subsection (4), this guidance will cover the key functions of these roles alongside recommended minimum expectations and best practice, including training and qualifications for advisors. Guidance will also detail how these roles support victims with specific needs, including a focus on supporting those with protected characteristics. It will also set out best practice for collaboration between ISVAs and IDVAs and those who have functions relating to victims, or any other aspect of the criminal justice system in order to effectively work together to meet the needs of victims.

192 Subsection (2) defines "IDVA" and "ISVA" for the purposes of this clause. "Independent Domestic Violence Advisor" is defined as a person who provides a relevant service to individuals who are victims by virtue of criminal conduct which constitutes domestic abuse. "Independent Sexual Violence Advisor" is defined as a person who provides a relevant service to individuals who are victims of criminal conduct which constitutes conduct of a sexual nature. These definitions are deliberately broad in view of the wide range of support provided by these advisors. The definitions describe (but do not limit) the scope of services which might be provided, but do not prescribe eligibility for advisor services.

193 Subsection (5) provides that IDVAs and ISVAs must have regard to the guidance when exercising their functions.

194 Subsection (6) creates a duty on any other person who has a function which is related to victims or any aspect of the criminal justice system to have regard to the guidance unless they are acting in a judicial capacity. This duty will have effect where such a function is being exercised, and the guidance is relevant to the exercise of that function.

## Victims' Commissioner

### Clause 16: Commissioner for Victims and Witnesses

195 Clause 16 makes the following amendments to the Domestic Violence, Crime and Victims Act 2004 (the 2004 Act).

196 Subsection (2)(a) amends section 49(2)(c) of the 2004 Act to provide that the Victims' Commissioner can make recommendations at any point in time and is not limited to just making recommendations in the annual report. Subsection (2)(b) inserts a provision which specifies that the Victims' Commissioner can include within their reports recommendations to any authority within the Victims' Commissioner's remit and subsection (2)(c) inserts a requirement for the Victims' Commissioner to lay their annual report before Parliament.

197 Subsection (3) inserts a requirement for criminal justice agencies or Government departments who are named directly in the Victim's Commissioner's reports to respond to any recommendations made to them. The relevant person(s) must prepare comments on any recommendations made in

the report, with an explanation of:

a. the action that has been, or is proposed to be taken in response to the recommendation, or;

b. why action has not been, or is not proposed to be, taken in response to the recommendations.

198 The inserted wording provides that the relevant person(s) is the authority the recommendations are made about, or in the event the authority is a Government department with a responsible Minister, that Minister. It also specifies that the response must be published in a manner considered appropriate by the relevant person(s), within 56 days of the Victim's Commissioner's report being published and that anything published must be sent to the Victim's Commissioner and, where the authority is not a Government department in the charge of a Minister, the Secretary of State.

199 Subsection (4) ensures that Schedule 9 to the 2004 Act includes the authorities that may be responsible for responding as per subsection (3) above.

## Inspections by criminal justice inspectorates

### Clause 17: His Majesty's Chief Inspector of Prisons

200 Subsection (1) amends the Prisons Act 1952 with subsection (2) providing for the Commissioner for Victims and Witnesses to be added to the mandatory list of consultees on the inspectorates' work programmes and frameworks.

201 Subsection (3) adds provisions to the Prison Act 1952 (which includes provision for His Majesty's Chief Inspector of Prisons) to provide for the Secretary of State, Lord Chancellor, and the Attorney General to jointly require that the criminal justice inspectorates' joint inspection programme includes provision for inspections, at specified times, of specified matters relating to the experiences and treatment of victims. It also sets out that "specified" means specified in the joint direction, and "victim" has the meaning given in clause 1 of the Bill.

### Clause 18: His Majesty's Chief Inspector of Constabulary

202 Subsection (1) amends the Police Act 1996 (further provision about inspectors of constabulary) with subsection (2) providing for the Commissioner for Victims and Witnesses to be added to the mandatory list of consultees on the inspectorates' work programmes and frameworks.

203 Subsection (3) adds provisions to the Police Act 1996 (which includes provision for His Majesty's Chief Inspector of Prisons) to provide for the Secretary of State, Lord Chancellor, and the Attorney General to jointly require that the criminal justice inspectorates' joint inspection programme includes provision for inspections, at specified times, of specified matters relating to the experiences and treatment of victims. It also sets out that "specified" means specified in the joint direction, and "victim" has the meaning given in clause 1 of the Bill.

### Clause 19: His Majesty's Chief Inspector of the Crown Prosecution Service

204 Subsection (1) amends the Crown Prosecution Service Inspectorate Act 2000 (further provision about Chief Inspector) with subsection (2) providing for the Commissioner for Victims and Witnesses to be added to the mandatory list of consultees on the inspectorates' work programmes and frameworks.

205 Subsection (3) adds provisions to the Crown Prosecution Service Inspectorate Act 2000 (which includes provision for His Majesty's Chief Inspector of Prisons) to provide for the Secretary of State, Lord Chancellor, and the Attorney General to jointly require that the criminal justice inspectorates' joint inspection programme includes provision for inspections, at specified times, of

specified matters relating to the experiences and treatment of victims. It also sets out that "specified" means specified in the joint direction, and "victim" has the meaning given in clause 1 of the Bill.

### Clause 20: His Majesty's Chief Inspector of Probation for England and Wales

206 Subsection (1) amends the Criminal Justice and Court Services Act 2000 (further provision about the inspectorate) with subsection (2) providing for the Commissioner for Victims and Witnesses to be added to the mandatory list of consultees on the inspectorates' work programmes and frameworks.

207 Subsection (3) adds provisions to the Criminal Justice and Court Services Act 2000 (which includes provision for His Majesty's Chief Inspector of Prisons) to provide for the Secretary of State, Lord Chancellor, and the Attorney General to jointly require that the criminal justice inspectorates' joint inspection programme includes provision for inspections, at specified times, of specified matters relating to the experiences and treatment of victims. It also sets out that "specified" means specified in the joint direction, and "victim" has the meaning given in clause 1 of the Bill.

## Parliamentary Commissioner for Administration

### Clause 21: Parliamentary Commissioner for Administration

208 Subsections (2) to (5) amend section 5 of the Parliamentary Commissioner for Administration Act 1967 through the following actions.

209 Subsection (3) provides for complainants who claim to have sustained injustice due to the maladministration of a Government department or other authority to which the Act applies, to go directly to the Commissioner, rather than going through a member of the House of Commons, where the complaint relates to their experience as a victim. Subsection (3) also provides for all other complaints to be referred to a member of the House of Commons in the usual way.

210 Subsection (4) provides for complainants who claim that a duty under the Victims' Code has been breached or a person has failed to comply with a duty to victims under sections 35-44 of the Domestic Violence, Crime and Victims Act 2004, to go directly to the Commissioner, rather than going through a member of the House of Commons, where the complaint relates to their experience as a victim. Again, subsection (4) also provides for all other complaints to be referred to a member of the House of Commons in the usual way.

211 Subsection (5) provides for "victim" in the amended provisions to have the meaning given by clause 1 of this Bill.

212 Subsection (6) to (10) amends section 6 of the Parliamentary Commissioner for Administration Act 1967 through the following actions.

213 Subsection (7) inserts a new subsection which provides that a complaint may be made directly by a person authorised to act on behalf of the aggrieved person, regardless of whether it is made via a member of the House of Commons or directly by the complainant themselves.

214 Subsection (8) provides for complaints to be made by a personal representative or a member of the complainant's family or another individual suitable to represent them, where a person is unable to authorise another person to act on their behalf. Subsection (9) adds a new subsection that provides that these are the only circumstances in which a complaint can be entertained when not made by the person aggrieved.

215 Subsection (10) removes another reference to a complaint being made via a member of the House of Commons. The existing requirement that a complaint must be made within 12 months from the

first notice of the matters alleged in the complaint remains, except that now the complaint can be made directly to the Commissioner in some circumstances.

216 Subsections (11) to (14) amends section 10 of the Parliamentary Commissioner for Administration Act 1967 through the following actions.

217 Subsection (12) and (13) adjust where the report or statement on the complaint should be sent. This is to the person who made the complaint, but the amended provision also allows for the report or statement to also be sent to a member of the House of Commons with the consent of the person who makes the complaint.

218 Lastly, subsection (14) adjusts the existing provision which states that a report or statement by the Commissioner shall be absolutely privileged, to reflect the changes made in subsections (12) and (13).

## Information relating to victims

### Clause 22: Information relating to victims

219 Clause 22 amends the Police, Crime, Sentencing and Courts Act 2022 ("the 2022 Act"), to insert new sections 44A to 44E into that Act, relating to victim third party material requests.

220 New section 44A provides that a "victim information request" (a request for third party material relating to a victim, or person who is at risk of being a victim) may only be made when it is necessary and proportionate to the prevention, detection, investigation, or prosecution of a crime, and in pursuit of a reasonable line of enquiry. Additionally, the authorised persons must have a reason to believe that the information being requested is held by the third party. In making or deciding whether to make such a request the authorised person must have regard to the Code of Practice issued by the Secretary of State. It applies to specified law enforcement bodies who undertake and support investigations and protect vulnerable victims.

221 New section 44B requires the authorised person to provide the victims with a written notice that details what information is being sought, why it is being sought, and how the information will be dealt with once obtained when appropriate. The notice must be given on or before the date the request is made or, if that is not reasonably practicable, as soon as practicable after that date. Where the victim is a child or an adult without capacity, the notice must be given to their parent or guardian, or person representing the authority or organisation whose care they are in. If no such person is available, notice is to be given to any adult the authorised person considers appropriate.

222 New section 44C requires that the request to the third party to be made in writing, and specify what information is being sought, why it is being sought, and how the information will be dealt with once it has been obtained. The authorised person is not required to give full information about the crime, as this is often highly sensitive, but instead must provide a more general overview to the third party they are requesting material from.

223 New section 44D requires the Secretary of State to prepare a Code of Practice which sets out the duties and best practice for authorised persons when making a victim information request. Prior to issuing the Code, the Secretary of State must consult relevant bodies such as the Information Commissioner, the Commissioner for Victims and Witnesses and the Domestic Abuse Commissioner.

224 New section 44E defines "authorised person" and includes the police, British Transport Police, National Crime Agency and service police. The Secretary of State may amend the list of authorised persons, by adding or removing persons or modifying the references to the persons (for example if their name changes), by regulations.

## Data Protection

### Clause 23: Data protection

225 Clause 23 makes it clear that nothing in this Part of the Bill requires or authorises the processing of information if that processing would contravene the data protection legislation (where "data protection legislation" has the same meaning as in the Data Protection Act 2018).

## Consequential provision for Part 1

### Clause 24: Consequential provision

226 This clause repeals Chapter 1 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 and makes various consequential amendments.

# Part 2: Victims of Major Incidents

## Appointment of independent public advocates

### Clause 25: Appointment of independent public advocates

227 Clause 25 allows the Secretary of State to appoint an individual to act as an independent public advocate ("IPA" or "advocate").

228 Subsection (1) gives the Secretary of State the power to appoint any individual to act as an advocate for victims of a major incident.

229 Subsection (2) defines a "major incident" as:

a. One that occurs in England and Wales; and

b. In the opinion of the Secretary of State, appears to have caused the death of, or serious harm to a significant number of individuals.

230 In practical terms, it is envisioned that incidents which fall within this definition will be those that are on a similar scale or magnitude to the Grenfell Tower Fire; the Manchester Arena bombing; and the Hillsborough disaster.

231 Subsection (3) defines "harm" as including the physical, mental and emotional harm caused as a result of being physically present at the major incident. There will be no test for harm.

232 Subjection (4) gives the Secretary of State the power to appoint any individual as an advocate that they consider is qualified to act and appropriate in respect of the major incident in question.

233 Subsection (5) and subsection (6) give details of the sorts of things the Secretary of State may have regard to when considering an appointment of an advocate and how appropriate they would be for a particular major incident. This is a non-exhaustive list, and the Secretary of State has discretion to consider any matter they consider relevant in making an appointment.

234 Subsection (7) defines "victims" in this part of the Bill and in relation to a "major incident" which is defined in Subsection (2). "Victims" are:

a. Individuals who have been directly harmed by the incident (whether or not that harm is serious harm), and

b. Close family members or close friends of individuals who have died or been caused serious harm by the incident.

235 In practice, subsection (7)(a) means individuals who are harmed or injured (physically, mentally

and emotionally), as a result of being present at the major incident. Subsection (7)(b) treats a close family member of those who have lost their lives as a result of being present at the major incident, or a close friend if there is no suitable family member, as being a victim for the purposes of receiving support and assistance from the advocate. The default position will be that the advocate will first try to identify a close family member before considering a friend to be supported.

### Clause 26: Terms of appointment

236 Clause 26 governs the terms of appointment for the advocates.

237 Subsection (1) states that the advocate will be appointed on terms agreed between the advocate and the Secretary of State and agreement will be reached prior to them being considered for appointment as an advocate. These terms may be varied from time to time by the Secretary of State seeking agreement of those who have expressed an interest in being appointed in the event of a major incident occurring.

238 Subsection (2), in addition to explaining that the terms of appointment will contain provision for terminating the appointment, specifies that an advocate's appointment may be terminated by the Secretary of State or by the advocate themselves.

239 Subsection (3) allows the Secretary of State to pay the advocates for their work at rates the Secretary of State considers appropriate. It also allows the Secretary of State to reimburse an advocate's reasonable costs incurred while acting as an advocate and to indemnify an advocate in respect of reasonable costs that may be incurred in legal proceedings in respect of the advocate exercising their function. Subsection (3)(c) covers allowances and (exceptionally) gratuities if the Secretary of State considers appropriate.

240 Subsection (4) gives the Secretary of State the discretion to provide secretarial support to the advocates in the exercise of their function. This will be done by making the IPA secretariat within the Ministry of Justice available to support the advocates when they are appointed.

241 Subsection (5) clarifies that advocates appointed by the Secretary of State in respect of a major incident are not to be considered as servants or agents of the Crown and clarifies that they are not entitled to any status, immunity, or privilege of the Crown.

### Clause 27: Appointment of multiple independent public advocates

242 Clause 27 (1) deals with the appointment of more than one advocate for the same major incident. This is likely to be necessary for larger scale events with high numbers of victims that require support. In this instance the advocates will form a panel.

243 Subsection (2) allows the Secretary of State to appoint one of the advocates as the lead advocate in situations where more than one advocate is appointed for the same major incident.

244 Subsection (3) is a delegated power to the lead advocate, which enables them to give directions to other advocates who must have regard to these directions when exercising their functions in respect of the incident.

245 In practice, this means the lead advocate will be able to coordinate the other advocates to prevent duplication of activity, particularly in the immediate aftermath of a major incident, as this can be a pressured environment.

246 Subsection (4) makes clear that references to "an advocate" or "the advocate" in this part of the Victims and Prisoners Bill is the same as a reference to multiple, should more than one be appointed for a major incident.

## Functions and powers of independent public advocates

## Clause 28: Functions of an independent advocate

247 Clause 28 governs the functions of an independent public advocate.

248 Subsection (1) provides that the support which advocates can give to victims following a major incident will be set out on the terms of their appointment. This is in relation to: the aftermath of the incident; investigations by public authorities into the incident; an inquest into deaths caused by the incident; and an inquiry into the incident. Non-statutory inquiries are covered by (1)(b).

249 Subsection (2) is an illustrative but non-exhaustive list of actions that the advocates may decide to undertake in supporting victims of a major incident. The advocates will help victims navigate a complex, sometimes bureaucratic landscape and signpost to appropriate services. Those activities in 2(a)-(d) are not mandatory for the advocates to perform and may not be appropriate for all victims for all types of major incidents.

250 Subsection (3) allows an advocate to support victims via a representative of a victim, even if the representative is not themselves a victim under the definition at Clause 24 (7). In practice, this will allow for situations where a number of victims are content to have their interests represented by another, who may be a community leader, either officially or unofficially. Whilst it will be possible for the Secretary of State to appoint such a person as an advocate, there may be instances where for whatever reason such a person does not wish to accept the appointment and this provision caters for that eventuality. It is expected that this will occur rarely. This clause does not permit lawyers to represent victims seeking support from the advocates, which is made clear by subsection (5) below.

251 Subsection (4) refers to situations where a victim is under the age of 18 and it allows the advocate to support a representative of the victim under the age of 18. This is likely to be their legal guardian as a default.

252 Subsection (5) clarifies that such a representative must be at least 18 years old and that a representative cannot be a lawyer.

253 Subsection (6) governs activities that the advocates are not permitted to exercise whilst supporting victims of a major incident. These include:

a. Carrying on a legal activity – this includes the provision of legal advice and representation;

b. Providing financial support and;

c. Providing health care;

254 Subsection (7) makes it clear that nothing in this part of the Bill automatically grants an individual the right to support from an advocate or support of a particular type.

255 Subsection (8) defines "health care", "inquiry panel", "legal activities" and "public authority".

a. "Health care" includes all forms for an individual, both physical and mental. The advocates are not to provide counselling.

b. "Inquiry panel" has the same meaning given by section 3 of the Inquiries Act 2005

c. "Legal activities" has the same meaning given by section 12(3) of the Legal Services Act 2007. This includes giving legal advice, assistance or representing someone in legal proceedings.

d. "Public authority" includes examples in relation to advocates includes courts, tribunals, coroners and an inquiry panel. However, it is also any other person whose functions are functions of a public nature.

## Clause 29: Role of advocates under Part 1 of the Coroners and Justice Act 2009

256 Clause 29 amends the Coroners and Justice Act 2009 to include an advocate as an interested person in relation to investigations or inquests into a person's death. This provision will enable advocates to exercise their role in supporting victims or their representatives throughout an inquest.

## Clause 30: Reports to the Secretary of State

257 Clause30(1) places a duty on the advocate to report to the Secretary of State when the Secretary of State sends them a notice to provide a report on their opinions as to the treatment of victims during the investigation, inquest and inquiry process and on any other matter relating to the exercise of their function that the Secretary of State may specify.

258 Subsection (2) states that a notice in writing from the Secretary of State will require the advocate to provide a report and the matters the Secretary of State would like the advocates to address in their report.

259 Subsection (3) specifies that any notice from the Secretary of State in subsection (2) may require an advocate to produce a report within a reasonable timeframe specified by the Secretary of State or an agreed timeframe between the advocates and the Secretary of State.

260 Subsection (4) clarifies that an advocate may include in their report any matters that they consider to be relevant to the incident they are reporting on, even if they have not been specified by the Secretary of State in the notice requesting for report. This allows the advocates to exercise their independence where they feel it is relevant and appropriate to include specific matters that have not been stated expressly by the Secretary of State.

261 Subsection (5) states that the Secretary of State must publish a copy of a report made under 29(1) in a manner they see fit.

262 Subsection (6) gives the Secretary of State the power to omit material from a report produced under subsection (1) if publication of that material would be contrary to the public interest or if it contravenes data protection legislation within the meaning given by section 3 of the Data Protection Act 2018.

263 Subsection (7) states that if more than one advocate has been appointed for the same major incident, the lead advocate may report on behalf of other appointed advocates.

## Clause 31: Information sharing and data protection

264 Clause 31 creates an express information sharing gateway which governs the way in which the advocate may share information relating to their function.

265 Clause 31(1) allows an advocate to share information received in the exercise of their function with any other advocate appointed for the same major incident; the Secretary of State; another public authority and victims of the incident. This also allows the advocate to share such information as appropriate with their secretariat.

266 Subsection (2) allows the Secretary of State to share such information as they consider appropriate with an advocate for the purpose of exercising their function as an advocate for a specified major incident.

267 Subsection (3) allows advocates to use information referred to in 30 (1) and (2) only in exercising their functions.

268 Subsection (4) clarifies that the information referred to in Clause 30 may include personal data.

269 Subsection (5) confirms that personal data received by an advocate may not be shared where the data subject to which the data relates has not consented to an advocate sharing their data.

270 Subsection (6) confirms that existing data protection legislation applies, and when considering this legislation, the powers conferred in this Part are to be taken into account.

271 Subsection (7) defines "data subject", "personal data", "processing" and "the data protection legislation" as the same meaning given in section 3 of the Data Protection Act 2018. It also refers to clause 27 for the definition of "public authority".

272 "data subject" means the identifies or identifiable living individual to whom personal data relates.

273 "personal data" means any information relating to an identified or identifiable living individual".

## Independent public advocates: guidance

### Clause 32: Guidance for independent public advocates

274 Clause 32 provides a power for the Secretary of State to issue guidance.

275 Clause 32(1) provides for the Secretary of State to issue guidance as to matters which an advocate must have regard to whilst exercising their functions.

276 Subsection (2) states that guidance issues by the Secretary of State under 32(1) must not be directed at any specific advocate or relate to a specific major incident and that such guidance may be withdrawn or revised at any time.

277 Subsection (3) places a duty on an advocate to have regard to the guidance issued by the Secretary of State under 32(1) in so far as it is relevant to the terms of their appointment and the incident to which they have been appointed.

# Part 3: Prisoners

## Public protection decisions

### Clause 33: Public protection decisions: life prisoners

278 Clause 33 amends Chapter 2 of Part 2 of the 1997 Act to clarify the meaning and application of the existing statutory release test in the case of a life sentenced prisoner.

279 Subsection (1) of section 28ZA states that this new section applies when a decision-maker (defined in subsection (11) as the Board or the Secretary of State) making a public protection decision about a life prisoner. Subsection (10) sets out that the test should be applied:

a. when the Parole Board is considering a life sentence offender for first release;

b. when the Parole Board is considering re-releasing a life sentence after they have been recalled on licence; and

c. where the Secretary of State has been referred a case by the Parole Board and is exercising the new power to refuse release.

280 Subsection (2) of new section 28ZA sets out that a public protection decision is a decision as to whether it is no longer necessary for the protection of the public that a prisoner remains confined. This is the current wording of the public protection test for all life-sentenced offenders releases, no matter if first-instance or on a recall.

281 Subsection (3) sets out the new, more specific release test - that, when making a public protection decision, the decision maker must be satisfied that there would be no more than a minimal risk that the prisoner would commit a further offence that would cause serious harm if they were to be released, in order to release the offender.

282 Subsection (4) relates to the offences that are presumed to cause serious harm. Schedule 18B, which is inserted into the 2003 Act by subsection (9) of clause 33, provides for offences which are considered under the criminal justice regime to be serious in nature, for which offenders must or may currently receive serious or restrictive sentencing and release measures. This list turns a decision-maker's mind to the types of offences which may be sufficient to meet the threshold of serious harm in the release test, should the decision-maker consider that the offender poses a risk of committing that offence. This deeming provision allows the decision-maker to take the circumstance of the case into account when deciding if commission of the offence would truly cause serious harm. It also does not preclude the decision-maker from considering other offences which may cause serious harm, which are not contained in the list, when determining if the offender should be released or not. New section 237A(13), and clause 33(8), enables this list to be amended by affirmative order.

283 Subsection (5) sets out specific criteria that must be taken into account by the decision-maker when assessing the prisoner for release. These provisions do not change in practice how the Board takes public protection decisions, or the Board's discretion as to weight to give to each consideration. The list set out express considerations to underpin the question of whether the prisoner meets the threshold in subsection (3), for clarity. Subsection (6) ensures that the decision-maker must in particular have regard for the protection of any victim of the prisoner (restricted to the victim or victims of the offence to which the relevant sentence relates). Subsection (9) enables the decision-maker to take account of matters in addition to those covered in section 28ZA.

284 Subsection (12) is a minor technical provision that glosses new section 28ZA(1) for the release test for recalled life offenders. The test has the same meaning but is cast slightly differently. A 'gloss' is a non-textual modification that changes the effect of a provision, without changing the main text.

285 Clause 33(3) and (4) ensures that the new meaning and application applying to public protection decisions is referenced and applies in sections 28A and 28B of the 1997 Act, which govern the release of offenders who have committed murder, manslaughter or indecent image offences and have not provided information about their victims.

286 Clause 33(5)(a) inserts the new public protection threshold into section 31A of the 1997 Act, which governs the Board's decision whether to terminate the licence of prisoners serving indeterminate sentences for public protection ('IPP's).

287 Clause 33(5)(b) provides a gloss on new section 31A(4ZA) for IPP sentenced offenders who have been released on licence and are back in custody on other matters or recalled at the point their licence termination falls to be considered, so the effect of the termination of the licence only has effect on the next re-release.

## Clause 34: Public protection decisions: fixed-term prisoners

288 Clause 34 provides for the same changes as Clause 33 for fixed term (determinate) sentenced offenders released pursuant to Chapter 6 of Part 12 of the 2003 Act by inserting new sections 237A and 237B into the 2003 Act and making consequential changes. The operation of this clause is the same as clause 32, adjusted to the different provisions.

289 New section 237A will apply to all, either in whole or in part, to all public protection decisions taken under the 2003 Act (with the exception of the test as to whether or not a prisoner is suitable for automatic release, under section 255A(4)), as set out in subsection (10) and new section 237B:

i. 244ZC(4) - where the Secretary of State has referred a standard determinate sentenced offender determined to be dangerous to the Parole Board;

ii. 244ZC(5)(b) - 244ZC offenders, subject to subsequent parole reviews;

iii. 244A(4)(b) - in relation to offenders serving Sentences for Offenders of Particular Concern;

iv. 246A(6)(b) - in relation to offenders serving Extended Determinate Sentences;

v. 247A(5)(b) - in relation to terrorist prisoners serving determinate sentences;

vi. 255B(4A) - For Parole Board decisions on re-release of offenders who have been recalled to prison following release on licence:

vii. 255C(4A) - for Parole Board decisions on re-release of offenders who have been recalled to prison and are unsuitable for automatic release;

viii. 256A(4) - further annual reviews of offenders who are refused re-release after recall;

ix. 256AZBC(2) - Secretary of State 'refusal of release' decision for determinate offenders directed release by the Board;

x. Para 6(2) of Schedule 20B – discretionary conditional release prisoners sentenced under the Criminal Justice Act 1991;

xi. Para 15(4) of Schedule 20B – old extended sentences imposed under section 226 or 227;

xii. Para 25(3) of Schedule 20B – prisoners serving sentences imposed under the Criminal Justice Act 1967;

xiii. Para 28(3) of Schedule 20B - prisoners with an extended sentence certificate serving a sentence imposed under the Criminal Justice Act 1967.

290 Subsection (12) adds a gloss to subsection (2) so that the new public protection test applies to Parole Board decisions in sections 255B(4A), 255C(4A) or 256A(4) of the 2003 Act, which govern the re-release of recalled fixed-term offenders and subsequent annual reviews.

291 Clause 34(3) and (4) ensures that the new meaning and application applying to public protection decisions is referenced and applies in sections 246B and 246C of the 2003 Act, which govern the release of extended determinate sentenced offenders who have committed manslaughter or indecent image offences and have not provided information about their victims.

292 Clauses 34(5) and (6) apply the new public protection threshold in cases where the Secretary of State is deciding whether or not to discretionarily release different categories of recalled determinate offenders (known as executive re-release). The new public protection test applies, but not the list of mandatory considerations, as these are specific executive decisions where different considerations may apply.

293 Clause 34(7) amends section 256AZB, which is the power to change the test for re-release following recall by secondary legislation. It makes provision to clarify that the existing consequential power can be used to amend and modify the application of the release test in the Secretary of State power of refusal, and Upper Tribunal appeal from the power of refusal, where the primary power has been used to change any re-release following recall test.

294 Clause 34(10) to (12) provide for the new public protection application and meaning to apply to the transitional cases where prisoners have committed manslaughter or indecent image offences,

but have not provided information about their victims, in Schedule 20B of the 2003 Act.

### Clause 35: Amendment of power to change test for release on licence of certain prisoners

295 Clause 35 amends section 128 of LASPO which allows for all parole release test provisions in Chapter 6 of Part 12 of the 2003 Act to be altered by secondary legislation. Clause 35(2) adds the new statutory release test provisions into section 128(3) so they may be amended by affirmative order. Clause 35(3) makes provision to clarify that the existing consequential power in section 128 can be used to amend and modify the application of the release test in the Secretary of State power of refusal, and Upper Tribunal appeal from the power of refusal, where the primary power has been used to change an initial release test.

## Referral of release decisions to Secretary of State

### Clause 36: Referral of release decisions: life prisoners

296 Clause 36 amends the 1997 Act to create a 'top-tier' cohort of life-sentenced offenders, which the Parole Board can refer to the Secretary of State to determine release. The provision also contains the power for the Secretary of State to direct the Board to refer cases to them to retake the decision, where the Board has determined the prisoner is safe to be released.

297 Clause 36 inserts new sections 32ZAA, 32ZAB and 32ZAC into Part 2 of the 1997 Act.

298 New section 32ZAA applies where a life sentenced prisoner is having a parole review under section 28 or 32 of the 1997 Act, relating to the sentence imposed for a 'top tier' offence defined in new section 32ZAB. These offences are murder, rape, serious terrorism or terrorism connected offences, and causing or allowing the death of a child. They include the Northern Irish and Scottish equivalents of the offences, to capture offenders who are convicted in the devolved administrations but transferred to England and Wales to serve their sentence. Equivalent service offences are also included. Some of the 'top tier' offences do not carry a maximum penalty of life; however, owing to the historic availability of the IPP sentence for all these offences, they are included so as to ensure IPPs who have committed these offences who are being considered for release are treated consistently with those serving life sentences.

299 Subsections (2) and (3) of the new section 32ZAA provide that the Board may refer the prisoner's case to the Secretary of State instead of taking the release decision itself, for any reason it considers appropriate, including if the Board is unable to make an adequate assessment of a prisoner's risk to the public (a 'discretionary referral').

300 Subsections (4) and (5) provide that where the Parole Board decides to direct the release of a prisoner in the top tier cohort, the Secretary of State may then direct the Parole Board to refer the prisoner's case to them for review (a 'directed referral'). Under a directed referral, subsection (6) provides that the decision of the Parole Board is quashed.

301 Subsection (7) clarifies that this section applies to all relevant prisoners, including those currently serving sentences.

302 Subsection (8) confirms that this section does not apply to those who have already had a release decision from the Board.

303 New section 32ZAC provides for decisions for directed and discretionary referrals of release to be made by the Secretary of State. If the Secretary of State is satisfied that the public protection test is met (using the same criteria as the Parole Board has used under new section 28ZA), they must release the prisoner on licence (subsections 32ZAC(1)(a) and (2), read with new section 28ZA(10)(c) above). If they are not so satisfied, they must decide the prisoner will remain confined

under 32ZAC(1)(b).

304 Subsection (3) means that the date of a direction by the Secretary of State for the prisoner to remain confined is to be treated as the date on which the Board disposed of the case, which has relevance for when the Board must next consider the prisoner for parole. The prisoner must be informed of the reasons for the refusal of their release and their right of appeal under subsection (4).

### Clause 37: Referral of release decisions: fixed-term prisoners

305 Clause 37 provides for the same changes as Clause 36, for fixed term (determinate) sentenced offenders released pursuant to Chapter 6 of Part 12 of the 2003 Act by inserting new sections 256AZBA, 256AZBB and 256AZBC into Chapter 6 of Part 12 of the 2003 Act, and making consequential changes. The operation of this clause is the same as clause 36, adjusted to the different provisions.

306 New section 256AZBB, which sets out the top tier offences, does not include murder. This is because murder carries mandatory life sentence, so offenders sentenced for this offence will never be due for release under the 2003 Act. All other aspects of section 256AZBB correspond with provision in new section 32ZAB for life sentenced offenders. New section 256AZBC corresponds with new section 32ZAC for the purposes of the Secretary of State's decision.

307 Subsection (5) of section 256AZBC glosses the public protection test set out in section 256AZBC(3) for recalled fixed-term offenders who make representations on their recall and are subsequently referred to the Board by the Secretary of State under section 255B(4A) of the 2003 Act.

### Clause 38: Procedure on referral of release decisions

308 Clause 38 inserts new section 239A into the 2003 Act, setting out what the Secretary of State must consider as part of their decision-making on referral of a case by the Parole Board under either 256AZBA of the 2003 Act or 32ZAA of the 1997 Act. The Secretary of State is a public authority and is required to take decisions in line with public law decision-making principles; section 239A sets this out in the same manner as existing section 239 sets out the requirements for the Board to consider a prisoner's case.

309 When taking the release decision, subsection (4) expressly provides Secretary of State is not bound by the findings of the Parole Board but can make their own findings of fact under subsection (4).

310 Subsection (5) provides for the Secretary of State to make rules around the procedure to be followed when making decisions for discretionary of directed referral cases, including requiring cases to be dealt with at prescribed times.

## Appeal to Upper Tribunal of decisions on referral

### Clause 39: Appeal to Upper Tribunal of decisions on referral: life prisoners

311 A prisoner whose release is refused by the Secretary of State under the new provisions can appeal that decision to the Upper Tribunal. New section 32ZAD sets out the appeal mechanism for life prisoners.

312 Subsection (3) of new section 32ZAD sets out that the limited grounds for making an appeal, which are that either:

a. the Secretary of State's decision was flawed because it was illegal, irrational (read strictly, to mean no reasonable Secretary of State could have ever made the decision, in line with new subsection (4)) or because he did not follow proper procedure or made a fundamental error of

fact; or

b. there is no more than minimal risk they will commit an offence that would cause serious harm if released on licence. This is the same release test as that set out in new section 28ZA(3) for the Board and the Secretary of State, and application is the same, via subsection 32ZAD(7).

313 Subsection (4) of new subsection 32ZAD prevents the Upper Tribunal from taking an 'anxious', 'super-Wednesbury' or 'proportionality' approach to the ground of irrationality, by prescribing irrationality is confined to the test set out in *Wednesbury* (see Legal Background).

314 Certain applications to the Upper Tribunal require the Tribunal's permission in order to proceed (so that applications with no merit are prevented from being submitted to the Tribunal). Subsection (5) confirms that the permission of the Upper Tribunal is required for an appeal on the ground that the Secretary of State's decision was flawed. This will enable the Tribunal to make an initial judgement as to whether the challenge should proceed. No permission is required for the ground of whether or not the release test is satisfied, to enable unfettered access to full merits review of the Secretary of State's decision.

315 Under subsection (6), if the appeal is in relation to a flawed decision and is made out, the Upper Tribunal must remit the case back to the Secretary of State to re-take. Under subsection (8), if the appeal ground is in relation to the application of the release test, and the Tribunal is satisfied the test has been met, then it must direct the release of the prisoner. The new release test criteria apply to the Tribunal's release decision under subsection (7).

316 Subsection (9) ensures that release by the Secretary of State must occur as soon as reasonably practicable after a release direction, taking into account the need to make release arrangements such as ensuring accommodation can be provided.

### Clause 40: Appeal to Upper Tribunal of decisions on referral: fixed-term prisoners

317 New section 256AZBD provides for the same appeal mechanism and functionality for determinate sentenced prisoners under the 2003 Act.

## Licence conditions on release following referral

### Clause 41: Licence conditions of life prisoners released following referral

318 Clause 41 allows the Secretary of State to set and subsequently vary licence conditions following release by the Secretary of State under a decision made on a discretionary or directed referral. Where release is directed after an appeal to the Upper Tribunal, new section 31(3A) of the 1997 Act requires the Secretary of State to include the licence conditions directed by the Upper Tribunal on first release, and enables them to subsequently vary and cancel those conditions as part of the normally process of managing an offender's licence as their circumstances change.

### Clause 42: Licence conditions of fixed-term prisoners released following referral

319 Clause 42 amends section 250 of the 2003 Act, which prescribes responsibility for setting and varying licence conditions for fixed-term prisoners, on initial release from prison and subsequently in the community. The changes ensure that, on first release following a direction to release by the Upper Tribunal, the Secretary of State must include only those bespoke conditions directed by the Upper Tribunal in the offender's licence, consistently with the provisions on Board release.

## Application of Convention rights

### Clause 43: Section 3 of the Human Rights Act 1998: life prisoners

### Clause 44: Section 3 of the Human Rights Act 1998: fixed term prisoners

### Clause 45: Section 3 of the Human Rights Act 1998: powers to change release test

320 Clauses 43, 44 and 45 disapply section 3 of the Human Rights Act 1998 (HRA) in relation to Chapter 2 of Part 2 of the 1997 Act, Chapter 6 of Part 12 of the 2003 Act, section 128 of LASPO, and all secondary legislation made under these provisions ('the release legislation'). These provisions span the legislative framework in England and Wales relating to release, licences, supervision, and recall of indeterminate and determinate sentenced offenders.

321 Section 3 of the HRA requires primary and secondary legislation to be read and given effect to in a way that is compatible with the Convention rights, "so far as it is possible to do so".

322 When operated by the courts, section 3 requires them to go further than they usually would when interpreting legislation. This has required, at times, the courts to depart from the unambiguous meaning of the legislation. It has also required the courts to adopt interpretations of legislation which depart from the intention of Parliament when that legislation was passed – see, eg, *Ghaidan v Godin-Mendoza* [2004] UKHL 30, para 31).

323 Further, the requirement in section 3 is not merely for courts. Anyone, including public authorities, applying legislation has a duty under section 3 to interpret it in a compatible way.

324 By removing this duty in respect of the release legislation, it ensures that, should the courts – or others – find these provisions incompatible, they will apply the section as it is intended to be applied, and not use section 3 to alter the interpretation. In such cases, declarations of incompatibility under section 4 HRA will be available.

### Clause 46: Application of certain convention rights in prisoner release cases

325 Clause 46 sets out the approach courts should take when considering a decision that has been made concerning the release of a prisoner and where that decision has been challenged on human rights grounds.

326 When considering such a challenge, which could arise via a judicial review, a habeas corpus application, a private law damages claim or any other legal challenge where a Court is required to consider the Convention rights of a person in relation to a release decision, the court must give the greatest possible weight to the importance of reducing the risk to the public from those persons who have been convicted of a criminal offence. Requiring the courts to give the greatest possible weight to this factor reinforces the precautionary approach and means that public protection will be given appropriate consideration in any balancing exercise.

## The Parole Board

### Clause 47: Parole Board rules

327 Clause 47(2) amends the power in section 239 of the 2003 Act to make procedural Rules about how the Board conducts proceedings (the Parole Board Rules) to add the power to prescribe via the Rules that parole cases to be dealt with by Parole Board members with particular skills or experience. Subsection (3) amends section 239(5A) of the 2003 Act to provide that the Rules may make provision about the steps that must be taken by the Parole Board before a discretionary referral to the Secretary of State can be made by the Board.

### Clause 48: Parole Board membership

328 Clause 48(1) through (4) amend paragraph 2 of Schedule 19 of the 2003 Act which deals with membership of the Parole Board. It amends the membership to provide for the position of Vice Chair and a member with law enforcement experience (defined as the "prevention, detection or investigation of offences"). Clause 47(5) sets out new terms of appointment for the chair and vice-chair of the Parole Board to be inserted into paragraph 2. The Chair and Vice Chair must be appointed for an initial term of five years and may be re-appointed for one further five-year term.

Either postholder may resign from their role by providing notice in writing to the Secretary of State. New subparagraphs (2D) and (2E) prevent both the Chair and Vice chair from re-appointment to that same role, other than if the Secretary of State decides to re-appoint them following their first term in office.

329 New subparagraph (2C) enables the Secretary of State to remove the chairman from their role, if necessary to do so, in order to maintain public confidence in the Parole Board.

330 New paragraph 2A(1) sets out the new functions of the Chair, which are focused on general leadership, ensuring a strategy is in place, public awareness, administrative efficiency and effectiveness.

331 Paragraph 2A(3) and (5) prohibits the Chair from any involvement in individual parole cases or functions of the Board relating to those cases, by providing the Chair must not play any part in dealing with individual parole cases, including attending or playing any part in proceedings of the Board in relation to those cases, or otherwise seek to influence recommendations of Board members in those cases. This would include all any matters which interfere with the judicial decision-making of individual members, including determining which Board members participate in those proceedings. The preclusion of the new role of the Chair from involvement in any functions which could be perceived to relate to the discharge of judicial functions by the Parole Board is necessary to permit the power of dismissal to operate compatibly with Article 5(4) of the Convention.

332 Paragraph 2A(4) enables the Board to delegate any of the chairman's functions to another member or an employee of the Board.

333 Clause 47(8) consequentially amends paragraph 4 of Schedule 19 to provide that arrangements relating to meetings of the Board are now subject to the restrictions in new paragraph 2A.

334 Clause 47(10) provides that the new measures in clause 47 will not apply to the post-holder of the role of Chair on introduction of the Bill.

## Whole life prisoners prohibited from forming a marriage or civil partnership

### Clause 49: Whole life prisoners prohibited from forming a marriage

335 Clause 49(1) amends the Marriage Act 1949 by inserting a new section to prohibit whole life prisoners from marrying unless they have permission from the Secretary of State.

336 New section 2A(1) sets out which prisoners may not marry, with more detail as to the meaning and interpretation of specific terms provided in paragraph 2A (5) and (6). To be in scope an individual must fulfil two criteria.

337 Firstly, they must be serving a life sentence in a prison or other place of detention (such as a Young Offender Institution or secure hospital). This would exclude prisoners released on licence on compassionate grounds under section 30(1) of the Crime (Sentences) Act 1997.

338 Secondly, they must be subject to either:

a. A court order that they should not be eligible for release by the Parole Board under the usual release arrangements for life sentence prisoners; or

b. A mandatory life sentence received before December 2003, having been notified in writing before that date that the Secretary of State did not intend that they should ever be released on licence; and the High Court must have not since ordered that the early release provisions should instead apply.

339 New subsections 2A(2) and (3) set out a process for exemptions to be granted by written permission from the Secretary of State. The Secretary of State may only give permission for a whole life prisoner to marry if satisfied that this is justified by exceptional circumstances

340 New subsection 2A(4) establishes that if a whole life prisoner does manage to marry without written permission from the Secretary of State, their marriage will not be legally valid.

### Clause 50: Whole life prisoners prohibited from a forming a civil partnership

341 This clause amends the Civil Partnership Act 2004 to prohibit whole life prisoners from forming civil partnerships unless they have permission from the Secretary of State.

342 Subsection (2) adds whole life prisoners to the list of people not eligible to register as civil partners.

343 The other provisions of this clause replicate provisions set out in clause 48 as to the exemptions process and prisoners in scope.

### Clause 51: Power to make a consequential provision

344 This creates a power for the Secretary of State to make any consequential amendments that may be required to existing law to ensure consistency in the statute book and operability of these provisions contained in clauses 48 and 49 of this Bill.

## Part 4: General

### Clause 52: Financial provision

345 This clause creates a financial provision to allow any expenditure incurred or attributable once the measures in this Bill become an Act is to be paid out of money provided by Parliament.

### Clause 53: Regulations

346 Clause 53 sets out that regulations made under the powers in the Bill will be made by statutory instrument and may make different provision for different purposes. This may include provisions that are supplementary, incidental, saving or transitional.

347 Clause 53(1)(a) provides that regulations under the Act may make different provision for different purposes.

348 Subsection (3) provides for the affirmative parliamentary procedure to apply to regulations made under clause 50, if those regulations amend, repeal, or revoke primary legislation.

349 Subsections (4) and (5) provide for the negative parliamentary procedure to apply to any other regulations made under powers in the Bill, excluding regulations provided for in clause 54 regarding commencement and transitional provisions for the Bill, which are not subject to parliamentary procedure.

350 This clause does not apply to commencement regulations but clause 54(4) makes equivalent provision for commencement regulations under that clause.

### Clause 54: Extent

351 Clause 54 sets out that the measures in the Bill extend to England and Wales, expect for the following clauses which extend to England and Wales, Scotland, and Northern Ireland:

a. Clauses 21 and 23(3) – which amend the Parliamentary Commissioner Act 1967 and have the same extent as that Act;

b. Clause 51 – which includes a power to amend a Measure or Act of Senedd Cymru, an Act of the Scottish Parliament or Northern Ireland legislation; and

c. Part 4, which makes general provision in relation to the Bill.

## Clause 55: Commencement

352 Clause 55(1) and (2) provide that all of the provisions in the Bill will come into force on such day as the Secretary of State appoints via regulations, apart from Part 4 of the Bill which will come into force on the day on which the Bill becomes an Act of Parliament.

353 Subsection (3) provides for the Secretary of State to make transitional or saving provision by way of regulations. Regulations for this purpose may make different provision for different purposes and will be made by statutory instrument.

## Clause 56: Short title

354 This clause provides that the short title of the Bill will be the Victims and Prisoners Act 2023, once the Bill becomes an Act.

# Commencement

356 The provisions in this Bill will come into force by regulations made on a day appointed by the Secretary of State, apart from Part 4 of the Bill which will come into force on the day on which the Act is passed.

# Financial implications of the Bill

357 Impact Assessments have been prepared for each part of the Bill and covers the implications on bodies and organisations which derive from this Bill. The main public sector financial implications fall to:

358 Police and Crime Commissioners – with the cost to monitor compliance with the Victims' Code and give regard to feedback estimated to be between £0 and £3.5m per year, and the cost to collaborate when commissioning support services for victims estimated to be £0.17m to £0.18m per year, with a best estimate of £0.17m.

359 Criminal justice inspectorates – with the cost of a joint thematic inspection estimated as £1m, currently assumed that these inspections will take place around every 3 years.

360 Local authorities - with the cost to collaborate when commissioning support services for victims estimated to be £0.29m to £0.34m per year, with a best estimate of £0.31m.

361 Integrated Care Boards – with the cost to collaborate when commissioning support services for victims estimated to be £0.0m to £0.19m per year, with a best estimate of £0.09m.

362 The other options in part 1 of this Bill (placing the Victims' Code into legislation, amending the role of the Victims' Commissioner, removing the 'MP filter', and requiring guidance to be issued about ISVAs and IDVAs) are currently estimated to be of no cost.

363 Part 2 of the Bill establishes an Independent Public Advocate. This includes a secretariat to support the advocate. £2.5m has been allocated to the Ministry of Justice for the first three years of its operation.to cover the cost of the secretariat, recruitment of the advocates, training for the advocates and the secretariat, IT equipment, any guidance that needs to be produced in respect to the work of the Independent Public Advocate and any communication campaigns that are required to inform the public and public authorities about the establishment of the Independent Public Advocate and the support it will provide. If a major incident. If a major incident were to occur, as defined in Part 2 of the Victims and Prisoner Bill 2023 there will be increased expenditure to pay for the work of any advocates that are appointed, this is difficult to estimate as this expenditure will be dependent on the nature of the incident.

364 All of these figures are estimated based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the Impact Assessment published alongside the Bill.

365 A money resolution is required for this Bill. A money resolution is required where a Bill authorises new charges on the public revenue (broadly speaking, new public expenditure). For part 1 of this Bill the potential increases in public expenditure is mainly attributable to new or expanded functions conferred on public authorities. This includes expenditure on Police and Crime Commissioners, local authorities, and Integrated Care Boards under Clauses 13-15 in relation to the requirement to collaborate when commissioning support services for victims. Further expenditure may be required for Police and Crime Commissioners under Clause 8 and their need to monitor Victims' Code compliance and give regard to victim feedback. Clauses 18-21, requiring joint thematic inspections on victims' issues give rise for potential increases in the sums provided to the criminal justice inspectorates. Clauses 26 and 32 will lead to expenditure to

cover resources for the Independent Public Advocate, to support the appointment of advocates and any guidance that needs to be produced in respect to the work of the Independent Public Advocate. Expenditure is also likely needed for communication to inform the public and public authorities about the establishment of the Independent Public Advocate. If a major incident were to occur, as defined in Part 2 of the Victims and Prisoner Bill 2023, Clauses 26, 28, 29, 30 and 31 will lead to increased expenditure to pay for the work of any advocates that are appointed. Expenditure is estimated to vary dependent on the nature of the incident.

# Parliamentary approval for financial costs or for charges imposed

366 A money resolution is required for the Bill. A money resolution is required where a bill authorises new charges on the public revenue - broadly speaking, new public expenditure. This resolution was agreed to on 15 May 2023 alongside the carryover motion for the Bill.

367 Costs incurred by certain public bodies in complying with duties under Part 1 of the Bill are likely to require increased central Government support for those bodies under existing legislation. The Secretary of State may also incur costs directly in issuing and maintaining a code of practice under clause 2 of the Bill.

368 The Secretary of State will incur expenditure in connection with the appointment of independent public advocates under Part 2 of the Bill, including making payments to advocates, providing administrative support to advocates and preparing guidance.

369 The reforms to the parole system in Part 3 of the Bill are expected to result in some prisoners spending longer in prison and less time under licence supervision in the community. Public expenditure will therefore be incurred in providing the necessary prison capacity. The Secretary of State will incur costs in administering prisoner release decisions referred from the Parole Board.

370 A ways and means resolution is not required for the Bill. A ways and means resolution is required where a bill authorises new charges on the people - broadly speaking, new taxation or other similar charges. Nothing in the Bill authorises such charges.

# Compatibility with the European Convention on Human Rights

371 The Government does not consider that the Bill raises any significant issues in relation to the European Convention on Human Rights (ECHR) and the Lord Chancellor and Secretary of State for Justice, the Rt. Hon. Secretary Alex Chalk MP, has made a statement under section 19(1)(a) of the Human Rights Act 1998 that the Bill is compatible with the ECHR.

## Duty under Section 20 of the Environment 2021

372 The Government's view is that the Bill does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

# Related documents

# Annex A - Territorial extent and application in the United Kingdom

| Provision | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Extends and applies to Scotland? | Extends and applies to Northern Ireland? | Legislative Consent Motion process engaged? |
|---|---|---|---|---|---|
| **Part 1** | | | | | |
| Clause 1 | Yes | Yes | No | No | No |
| Clause 2 | Yes | Yes | No | No | No |
| Clause 3 | Yes | Yes | No | No | No |
| Clause 4 | Yes | Yes | No | No | No |
| Clause 5 | Yes | Yes | No | No | No |
| Clause 6 | Yes | Yes | No | No | No |
| Clause 7 | Yes | Yes | No | No | No |
| Clause 8 | Yes | Yes | No | No | No |
| Clause 9 | Yes | Yes | No | No | No |
| Clause 10 | Yes | Yes | No | No | No |
| Clause 11 | Yes | Yes | No | No | No |
| Clause 12 | Yes | No | No | No | No |
| Clause 13 | Yes | No | No | No | No |
| Clause 14 | Yes | No | No | No | No |
| Clause 15 | Yes | Yes | No | No | Yes |
| Clause 16 | Yes | Yes | No | No | No |
| Clause 17 | Yes | Yes | No | No | No |
| Clause 18 | Yes | Yes | No | No | No |
| Clause 19 | Yes | Yes | No | No | No |
| Clause 20 | Yes | Yes | No | No | No |
| Clause 21 | Yes | Yes | Yes | Yes | No |
| Clause 22 | Yes | Yes | No | No | No |
| Clause 23 | Yes | Yes | No | No | No |
| **Part 2** | | | | | |
| Clause 24 | Yes | Yes | In part | In part | No |
| Clause 25 | Yes | Yes | No | No | Yes |
| Clause 26 | Yes | Yes | No | No | Yes |
| Clause 27 | Yes | Yes | No | No | Yes |
| Clause 28 | Yes | Yes | No | No | Yes |
| Clause 29 | Yes | Yes | No | No | Yes |
| Clause 30 | Yes | Yes | No | No | Yes |

| Provision | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Extends and applies to Scotland? | Extends and applies to Northern Ireland? | Legislative Consent Motion process engaged? |
|---|---|---|---|---|---|
| Clause 31 | Yes | Yes | No | No | Yes |
| Clause 32 | Yes | Yes | No | No | Yes |
| **Part 3** | | | | | |
| Clause 33 | Yes | Yes | No | No | No |
| Clause 34 | Yes | Yes | No | No | No |
| Clause 35 | Yes | Yes | No | No | No |
| Clause 36 | Yes | Yes | No | No | No |
| Clause 37 | Yes | Yes | No | No | No |
| Clause 38 | Yes | Yes | No | No | No |
| Clause 39 | Yes | Yes | No | No | No |
| Clause 40 | Yes | Yes | No | No | No |
| Clause 41 | Yes | Yes | No | No | No |
| Clause 42 | Yes | Yes | No | No | No |
| Clause 43 | Yes | Yes | No | No | No |
| Clause 44 | Yes | Yes | No | No | No |
| Clause 45 | Yes | Yes | No | No | No |
| Clause 46 | Yes | Yes | No | No | No |
| Clause 47 | Yes | Yes | No | No | No |
| Clause 48 | Yes | Yes | No | No | No |
| Clause 49 | Yes | Yes | No | No | No |
| Clause 50 | Yes | Yes | No | No | No |
| Clause 51 | Yes | Yes | Yes | Yes | No |
| **Part 4** | | | | | |
| Clause 52 | Yes | Yes | Yes | Yes | No |
| Clause 53 | Yes | Yes | Yes | Yes | No |
| Clause 54 | Yes | Yes | Yes | Yes | No |
| Clause 55 | Yes | Yes | Yes | Yes | No |

# VICTIMS AND PRISONERS BILL

# EXPLANATORY NOTES

These Explanatory Notes relate to the Victims and Prisoners Bill as introduced in the House of Commons on 8 November 2023 (Bill 2).

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