

# VICTIMS AND PRISONERS BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Victims and Prisoners Bill as brought from the House of Lords on 24 May 2024. (Bill 230)
- 2 These Explanatory Notes have been prepared by the Ministry of Justice assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 31 the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1-32, 33-41, 44, 47-53, 55-97, 100-143 were tabled in the name of the Minister.
- 6 Lords Amendment 32 was tabled by Baroness Thornton, and was opposed by the Government.
- 7 Lords Amendment 33 was tabled by Lord Russell, and was opposed by the Government.
- 8 Lords Amendments 41, 42, 43, 45 and 125 were tabled by Baroness Bertin and were accepted by the Government.
- 9 Lords Amendment 47 was tabled by Baroness Meacher and was opposed by the Government.
- 10 Lords Amendment 54 was tabled by Lord Ponsonby and was opposed by the Government.
- 11 Lords Amendments 98 and 99 were tabled by Baroness Royall and were opposed by the Government.
- 12 In the following Commentary, an asterisk (\*) appears in the heading of any paragraph that deals with a non-Government amendment.

# Commentary on Lords amendments

## Lords Amendments to Part 1: Victims of Criminal Conduct

### Lords Amendments 1-15, 40, 48, 49 and 50 : Victims Code

- 13 Lords amendment 1 clarifies that the Victims' Code is only directed at persons exercising functions of a public nature.
- 14 Lords amendments 2-6 amend the language in Clause 2 of the Bill relating to the principles for victims of criminal conduct for services provided under the Victims' Code so that they set out what victims 'require' rather than what they 'should' receive.
- 15 Lords amendment 7 is a minor and technical amendment to update drafting restated from the Domestic Violence, Crime and Victims Act 2004 to reflect current drafting practice.
- 16 Lords amendment 8, specifies that particular regard must be paid to the needs of victims under the age of 18 and those with protected characteristics when considering whether to make different provision for victims of different descriptions;
- 17 Lords Amendment 9 is a consequential amendment.
- 18 Lords Amendments 10 and 11 require the Secretary of State to consult with the Victims' Commissioner and Welsh Ministers when issuing or making any changes to the Victims' Code, including minor revisions.
- 19 Lords Amendment 12 provides that when the Victims' Code makes provision for a person to provide a service, that person ("the service provider") is required to provide that service in accordance with the Code, unless the service provider has good reasons not to do so. Lords amendment 49 and 50 are consequential on this new duty.
- 20 It also requires all service providers who are legal persons (rather than individuals) to have procedures in place for persons to complain about an alleged failure to comply with the service provider's duty to provide services in accordance with the Code.
- 21 Lords Amendment 13 adjusts the duty for criminal justice bodies to keep under review whether and how services are provided in accordance with the Victims' Code so that it instead requires them to keep under review whether and how services are provided in accordance with the new duty inserted by Lords Amendments 16, 18 and 20 makes similar changes in relation to the duties placed on PCCs, the Chief Constable of the British Transport Police and the Chief Constable of the Ministry of Defence Police.
- 22 Lords Amendments 14, 17, 19 and 21 require the Secretary of State to consult the Victims' Commissioner before making the Code Compliance regulations

provided for in Clauses 6, 7, 8 and 9.

- 23 Lords Amendment 15 gives the Secretary of State (in practice the Secretary of State for Justice and the Home Secretary) and the Attorney General a joint power to direct relevant criminal justice bodies (the police, the Crown Prosecution Service and youth offending teams) to provide specified information to a third party for the purposes of enabling or assisting the third party to collect victim feedback, if a third party was commissioned to do so.
- 24 Lords amendments 22-29 establish some new components of the framework for oversight of Code compliance and adapt others.
- 25 In particular, Lords Amendment 22 requires the Secretary of State (in practice the Home Secretary and the Secretary of State for Justice) and the Attorney General to (a) keep Code compliance under review; and (b) issue, publish and lay before Parliament annual reports on Code compliance, having consulted the Victims' Commissioner. Where Ministers agree that an agency's Code compliance is unsatisfactory (and having consulted the Victims' Commissioner) the amendment provides for them to issue a notice to the relevant agency and, if such a notice is issued, the amendment requires Ministers to publish the notice in such form and manner as they consider appropriate. Lords Amendment 27 provides further detail regarding the requirements for the annual reports on Code compliance.
- 26 Lords Amendments 23 to 26 are consequential on these changes.
- 27 Lords Amendment 30 amends the requirement for the Code compliance and Code awareness guidance to include provision about the way in which information is collected to replace the reference to "children" with a reference to "individuals who are under the age of 18" to provide clarity.
- 28 Lords Amendment 31 requires the Secretary of State to consult the Victims' Commissioner before issuing the Code compliance and Code awareness guidance.
- 29 Lords amendment 40 alters the Victims' Commissioner's current statutory function under the Domestic Violence, Crime and Victims Act 2004 to keep the operation of the Victims' Code under review to include the extent to which agencies have complied with their new duty to provide services in accordance with the Victims' Code (see Lords Amendment 12). Lords amendments 48 and 49 are consequential on this amendment.

#### **\*Lords amendment 32: Duty to co-operate with the Commissioner for Victims and Witnesses**

- 30 Lords amendment 32 provides that the Victims' Commissioner may request that a specified public authority co-operates with them in any way that the Commissioner considers necessary for the purposes of monitoring compliance with the Victims' Code. It also requires that the specified public authority

complies with the request so far as reasonably practicable. For these purposes "specified public authority" means (a) a criminal justice; (b) the Parole Board; (c) a PCC; (d) BTP; and (e) MDP. The amendment also contains a power to add or remove a public authority from the list of specified public authorities for the purposes of this section, or to vary any description of a public authority within that definition.

#### \*Lords amendment 33: Training: Support for victims

Lords amendment 33 places a duty on the Secretary of State to publish and implement, in consultation with the Victims' Commissioner, a strategy for providing mandatory training on the contents and application of the Victims' Code for relevant staff of specified organisations. The specified organisations are listed in the amendment and are the police, the Crown Prosecution Service, probation services, the Foreign, Commonwealth and Development Office, health and social services, victim support services, maintained and independent schools and colleges or further education, and such other bodies as the Secretary of State deems appropriate.

The amendment requires the strategy to be reviewed and updated every three years.

#### Lords amendment 34: duty to collaborate

31 Lords amendment 34 amends the requirement for relevant authorities to have particular regard to the needs of children and those with protected characteristics when developing their strategy for collaboration in the exercise of victim support functions. It does this by replacing the reference to "children" with a reference to "individuals who are under the age of 18" to provide clarity.

#### Lords amendment 35: Guidance about specified victim support roles

32 Lords Amendment 35 substitutes Clause 15 with a new clause. The effect of this change is described below.

33 Subsection (1) creates a duty on the Secretary of State to issue guidance about specified victim support roles.

34 Subsection (2) explains that the Secretary of State has the power to specify these victim support roles in regulations. For the purpose of this clause, "victim support role" is defined as a role performed by individuals which provides support to victims of criminal conduct (where the support relates to that conduct).

35 Subsection (3) sets out how victim support roles could be described in regulations. The victim support roles named in regulations may be specified by reference to (amongst other matters) -

- a. the circumstances in which the role is performed. For example, a victim support role which provides specialist support for victims of a specific crime

type or provides a specific type of support;

- b. the type of support provided in connection with the role. For example, a victim support role which provides advocacy support to victims to engage with the criminal justice system;
  - c. the type of criminal conduct in relation to which such support is provided. For example, domestic abuse.
- 36 Subsection (4) sets out that this guidance must cover the key functions of the role alongside recommended minimum expectations and best practice, including training and qualifications. It must also set out best practice for collaboration between the role 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.
- 37 Subsection (5) specifies that, where relevant, the guidance must include provision about victims who are under the age of 18 and those with protected characteristics.
- 38 Subsection (6) creates a duty on any person who has a function of a public nature which is related to victims or any aspect of the criminal justice system to have regard to the guidance. This duty will have effect where such a function is being exercised, and the guidance is relevant to the exercise of that function.
- 39 Subsection (7) specifies that the duty to have regard to the guidance - outlined in subsection (6) - does not apply to those acting in a judicial capacity, or on the instructions of or on behalf such a person. This is designed to protect judicial independence.
- 40 Subsection (8) specifies that the Secretary of State must consult the Welsh Ministers before issuing guidance under this clause, so far as the guidance relates to devolved matters, meaning a matter provision about which would be within the legislative competence of Senedd Cymru were it contained in an Act of the Senedd.

### Lords amendments 36 and 125: Disclosures by victims that cannot be precluded by agreement

- 41 Lords Amendment 36 inserts a new clause in relation to disclosures by victims that cannot be precluded by agreement. The effect of the new clause is described below.
- 42 Subsection (1) voids the portion of confidentiality clauses that purport to preclude victims from making a disclosure falling under subsection (2). This means a confidentiality clause could not be legally enforced against a victim for making a permitted disclosure under subsection (2) in the context of a claim against a victim for breach of contract by the other party to the agreement.
- 43 Subsection (2) specifies the permitted disclosures that a victim, or a person who reasonably believes they are a victim, can make:

- a. to any person who has law enforcement functions, for the purpose of those functions being exercised in relation to relevant conduct;
  - b. to a qualified lawyer, for the purpose of seeking legal advice about relevant conduct;
  - c. to any individual who is entitled to practise a regulated profession, for the purpose of obtaining professional support in relation to relevant conduct;
  - d. to any individual who provides a service to support victims, for the purpose of obtaining support from that service in relation to relevant conduct;
  - e. to a regulator of a regulated profession for the purpose of co-operating with the regulator in relation to relevant conduct;
  - f. (to a person who is authorised to receive information on behalf of a person mentioned in paragraph (a), (b), (c), (d) or (e) for the purpose mentioned in that paragraph;
  - g. to a child, parent or partner of the person making the disclosure, for the purpose of obtaining support in relation to relevant conduct.
- 44 Subsection (3) provides that a confidentiality clause would not be void under these provisions if the victim makes a disclosure to anyone listed under subsection (2) for the primary purpose of releasing the information into the public domain. This aims to protect the legitimate uses of non-disclosure agreements. This provision does not conflict with whistleblowing legislation under the Employment Rights Act 1996. The Act allows workers to make a protected disclosure, which can involve the release of information into the public domain, if the relevant criteria in that legislation is met. In those cases, confidentiality clauses would be voided by virtue of the Employment Rights Act provision instead.
- 45 Subsections (4) and (5) provide that the Secretary of State may by regulations subject to the affirmative resolution procedure amend the list of permitted disclosures under subsection (2) and extend the application of subsection (1) to specific obligations or liabilities in non-disclosure agreements so that they cannot be legally enforced in relation to the permitted disclosures.
- 46 Subsection (6) defines “law enforcement functions” as functions for the purposes of the investigation or prosecution of criminal offences or the execution of criminal penalties and sets out that “qualified lawyer” means a person who is an authorised person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007. Subsection (6) also defines “entitled to practise” in relation to a regulated profession as to be read in accordance with section 19(2) of the Professional Qualifications Act 2022 and provides that “regulated profession” and “regulator” have the same meanings as in the Professional Qualifications Act 2022. Subsection (6) specifies that a person is a “partner” of another person if they are married to each other, in a civil partnership with each other, or in an intimate personal relationship with each other which is of

significant duration. “Relevant conduct” is also defined as conduct by virtue of which the person making the permitted disclosure is or reasonably believes they are a victim.

- 47 Lords Amendment 125 provides that regulations under this new Clause must be made via the draft affirmative procedure.

### Lords Amendments 37 and 38: restricting parental responsibility where one parent kills the other

- 48 Lords amendments 37 clarifies the extent of the restrictions placed on an offender with respect to a child by a prohibited steps order made under new section 10A of the Children Act 1989.
- 49 Lords amendment 38 means that the Crown Court must not make a prohibited steps order under new section 10A of the Children Act 1989 with respect to a child who is the subject of a placement order under section 21 of the Adoption and Children Act 2002.

### Lords amendment 39: Victim representations to mental health tribunals

- 50 Lords amendment 39 amends the Domestic Violence, Crime and Victims Act 2004 (“the DVCVA”) to introduce entitlements for victims of offenders subject to hospital orders with restriction orders to: (a) make a victim impact statement to the Mental Health Tribunal (“MHT”) or the Mental Health Review Tribunal for Wales (“MHRTW”); and, (b) be able to apply to attend a tribunal hearing that is due to take place to read their statement, an application which must be granted by the tribunal unless there are good reasons not to do so. The MHT operates in England and is part of the First-tier Tribunal. The MHRTW is the equivalent tribunal in Wales.
- 51 These entitlements are made effective by way of a new section inserted into Chapter 2 of the DVCVA, which at present contains entitlements for victims of certain offenders to make representations about certain matters and receive information in specified circumstances. Section 36 sets out entitlements for victims of offenders who are subject to hospitals orders (pursuant to s.37 of the Mental Health Act 1983, “the MHA”) with or without restriction orders (which, if imposed, are done so pursuant to s.41 of the MHA). Section 37 contains further provision around the procedure for handling victim representations in cases where a restriction order is made. In this context, offenders are referred to as ‘patients’.
- 52 The entitlements contained in section 37ZA will apply to victims where:
- 53 The relevant patient is charged with a sexual, violent or terrorism offence and one of the following categories applies:
- a. the patient is convicted of the offence;
  - b. a verdict is returned that the patient is not guilty of the offence by reason of insanity;

- c. a finding is made— (i) under section 4 of the Criminal Procedure (Insanity) Act 1964 (c. 84) that the patient is under a disability, and (ii) under section 4A of that Act that he did the act or made the omission charged against him as the offence; (s.36(2)) and,
  - d. A hospital order with a restriction order is made in respect of the relevant patient. (s.37(1)).
  - e. An application referenced in section 37(5) (so under ss. 69, 70, 71 of 75 of the MHA) is made to the First-tier Tribunal (MHT) or the MHRTW.
- 54 In a case where the conditions above apply, the relevant probation body (as defined in s.37ZA(5)) must take all reasonable steps to ascertain whether the victim of the offence, or someone acting for them, wishes to make a victim impact statement (subsection (2)(a)). ‘Victim impact statement’ has the meaning given to it by subsection (5) and is a statement about the way in which, and degree to which, the offence has affected and/or continues to affect the victim or any other person. Where the victim or the person acting for them makes such a statement, the relevant probation body must forward it to the Tribunal (subsection (2)(b)).
- 55 Subsection (3) then creates an entitlement for the person who made a statement in the circumstances outlined above to ask permission to attend a relevant hearing to read the statement (subsection (3)(a)), and to have this permission granted by the tribunal unless they consider there are good reasons not to (subsection (3)(b)). ‘Requesting permission’ is intended as a reference to the relevant tribunal’s process for non-parties to apply to attend a hearing – for example, in the MHT, this is done pursuant to Rule 36(2) of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. ‘Relevant hearing’ is defined pursuant to subsection (5) and is intended to mean that this entitlement will only apply where a tribunal hearing is already due to take place, meaning one will not have to be convened especially for the victim to read their statement.
- 56 Subsection (4) sets out how the statement should be used by the Tribunal. They may have regard to it when determining a matter specified in section 36(5)(a) or (b) – i.e. where they are deciding whether to impose discharge conditions on a patient and, if so, what conditions. However, they must not have regard to it for any other purpose, including in relation to the discharge decision itself (to which only the factors in section 73 of the MHA should be relevant).

#### Lords Amendments 41, 42, 43 44: Counselling notes

- 57 Lords Amendment 41 provides that when considering a request for victims’ counselling records (a specific type of TPM of particular sensitivity), an authorised person will only be able to make such a request where the records sought are likely to have substantial probative value to a reasonable line of enquiry being pursued or to be pursued.
- 58 Lords Amendment 42 provides for regulations defining the counselling services.



It is consequential to Amendment 41 to be subject to the negative resolution procedure.

- 59 Lords Amendment 43 provides that, the measures require the code (i) to include a rebuttable presumption that requests for counselling records are not necessary and proportionate for a law enforcement purpose and (ii) to prescribe the steps that must be taken in reaching any decision to rebut that presumption.
- 60 Lords Amendment 44 inserts a new clause which requires the Secretary of State to prepare a report about the operation, in the review period (being 3 years after the provisions are commenced), of the provisions of new Chapter 3A of the Police, Crime, Sentencing and Courts Act 2022 (i.e. new sections 44A to 44F relating to victim third party material requests), in relation to requests for counselling information (“counselling information requests”). The Secretary of State may arrange for another person to prepare the report. The report must be published and laid before parliament as soon as is reasonably practicable after the end of the review period (i.e. 3 years after the provisions are commenced) (per clause 32(3)). This will enable the effectiveness of the additional safeguards applicable to requests for counselling information to be reviewed.

#### Lords Amendment 45: Right to erasure of personal data

- 61 Lords Amendment 45 inserts a new clause which amends Article 17 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 which provides data subjects with the right to request that data controllers erase their personal data. Article 17(1) specifies grounds under which data subjects can request erasure, and where the data controller is obliged to accept this request. Article 17(3) sets out circumstances when this right does not apply, and a data controller can refuse a request for erasure.
- 62 Subsection (2) of the amendment inserts an additional ground under Article 17(1) which victims of harassment and stalking can use to request the erasure of personal data from a data controller. This new ground applies if the personal data held was a result of an allegation that was made by a malicious person in relation to the victim, and the data controller has investigated the allegation and has decided that no further action is needed. The exemption detailed in Article 17(3) will apply to this new ground.
- 63 Subsection (3) of the amendment defines the term ‘malicious person’ as an individual who has either been convicted of a relevant offence in relation to the data subject or who is subject to a stalking protection order made to protect the victim. Subsection (3) also lists the relevant offences in an accompanying table and these offences cover stalking and harassment.
- 64 Subsection (4) of the amendment amends the Data Protection Act 2018 to add in a new power for the Secretary of State to make regulations to amend the list of relevant offences set out in subsection (3). This regulation making power is

subject to the affirmative resolution procedure.

#### Lords Amendment 46: Child victims of domestic abuse

- 65 Lords Amendment 46 is to establish that arrangements are in place in all police forces to ensure that all schools and other educational establishments a child might attend are notified where there are reasonable grounds to believe that the child may be a victim of domestic abuse, in order to provide appropriate support. The Domestic Abuse Act 2021 legally recognises children as victims of domestic abuse in their own right for the first time.
- 66 The Operation Encompass notification scheme is already in operation within all 43 police forces across England and Wales on a voluntary basis. Operational practice varies widely across forces and between schools and local authorities, which can cause inconsistencies in whether children are identified and in turn receive the necessary support. A duty on chief officers to ensure that arrangements are in place to make notifications is intended to motivate change as they can be held to account against them (via potential judicial review); to improve existing frontline practices, which would contribute to improving child safeguarding, and to enable early intervention and prevention of further domestic abuse. The amendment also provides a power to make regulations in the future to extend the organisations to which notifications can be made to include childcare providers.
- 67 This will ensure there is an obligation on chief officers of police to make sure that all forces are making notifications as soon as reasonably practicable, except in exceptional circumstances that will be set out in regulations subject to the negative procedure.
- 68 The decision to make a notification will require an assessment of whether the police member's suspicions are reasonable and if an exceptional circumstance applies. The amendment will be inserted into the Domestic Abuse Act 2021, ensuring that the definition of 'domestic abuse' and the obligations relating to guidance in the Domestic Abuse Act 2021 will apply. In due course (following the making of regulations subject to the affirmative procedure) childcare providers may also receive notifications from the police in either England and Wales or in both jurisdictions, meaning that children of below school age would also be covered by the scheme.

#### Lords Amendment 47: Data sharing for immigration purposes

- 69 Lords Amendment 47 would insert a new clause creating a firewall to ensure that victims of particular offences receiving support and assistance related to the offence cannot have their information passed on to Immigration Enforcement without their consent. The clause also seeks to create a firewall to ensure that witnesses of particular offences, who are giving information or evidence to assist with the investigation or prosecution of a crime, cannot have their information passed to Immigration Enforcement without their consent.
- 70 The clause further requires that the Secretary of State issue guidance on the

firewall following consultation with the Domestic Abuse Commissioner, Victims' Commissioner, the Independent Anti-Slavery Commissioner, and such other persons as the Secretary of State considers appropriate and to publish any guidance or revisions to guidance within 6 months.

- 71 This would place a duty on the Secretary of State to make arrangements to ensure that the personal data of victims of certain offences that is processed for the purposes of requesting or receiving support or assistance related to the offence is not used for the maintenance of immigration control without their consent. The amendment contains a similar provision for witnesses to these offences where the data is processed for the purposes of giving information or evidence to assist the investigation or prosecution of the offence.
- 72 The relevant offences are those listed in subsection (3). Pursuant to subsection (3)(e), this includes a power for the Secretary of State to add further offences by way of regulations.

## **Lords Amendments to Part 2: Victims of major incidents**

### **Lords Amendments 51 and 52: Consultation with Welsh Ministers**

- 73 Lords Amendment 50 would require the SoS to consult with Welsh Ministers before declaring an incident that occurs in Wales to be a major incident.
- 74 Lords Amendment 51 would require the SoS to consult with Welsh Ministers before appointing an advocate in respect of a major incident that occurs in Wales.

### **Lord Amendment 53: Omission of material**

- 75 Lords Amendment 53 would allow the Secretary of State to omit material from a report to be published following a major incident where the Secretary of State considers that publication of that material would prejudice certain investigations, inquiries or inquests.

### **Lords Amendment 54: Duty of Candour**

- 76 Lords Amendment 54 would require public authorities, public servants and officials to act in the public interest and with transparency, candour and frankness when carrying out their duties in relation to major incidents. This duty will apply when the Secretary of State has declared a major incident in writing. A major incident is defined in Clause 28 of the Bill as an event which occurs in England and Wales, and causes the death of, or serious harm to, a significant number of individuals, and is declared in writing by the Secretary of State.
- 77 This duty would include specific requirements as they relate to court proceedings, official inquiries and investigations which result from a major incident.
- 78 To enforce the duty, a relevant court or inquiry will have at its disposal existing remedies within its respective current powers to apply in respect of a breach.

This may include order making powers. Where there is no such existing court or inquiry, such as where there is a relevant investigation, a judicial review may be sought. In seeking such remedies, persons may apply to the court or inquiry, or the court or inquiry may act of its own motion. There do not seem to be sanctions attached beyond the existing remedies already available to the relevant court or inquiry.

#### Lords amendment 55: Review of Part 2

- 79 Lords amendment 55 would require the Secretary of State to review the operation of Part 2 in the period of 18 months following the first time an advocate is appointed under Clause 30.

## Lords Amendments to Part 3: Infected Blood Compensation Body

#### Lords Amendment 56: Infected Blood Compensation Authority

- 80 This clause establishes a new arm's length body called the Infected Blood Compensation Authority (IBCA); for which further provisions as to the body's constitution and powers are set out in Schedule 1.

#### Lord Amendment 57: Infected blood compensation scheme

- 81 Subsection (1) imposes a duty on the Secretary of State or the Minister for Cabinet Office to establish, by regulations made within three months of Royal Assent, an 'infected blood compensation scheme' to deliver payments to eligible claimants.
- 82 Subsection (2) provides for the regulations to determine who is eligible for compensation, within the categories of persons laid out in subsection (3).
- 83 Subsection (3) establishes a framework within which eligibility is to be set, identifying three distinct categories, being (a) those who have been directly infected as a result of being treated with contaminated blood/products, (b) those who were secondarily infected as a result of someone being treated with contaminated blood/products (such as via sexual transmission or child in utero) and (c) those who have been affected by another person being directly or secondarily infected.
- 84 Subsection (4) sets out a non-exhaustive list of potential factors which the regulations may refer to in determining eligibility, including the type of infection, when it occurred and who gave the treatment. For secondarily infected claimants, it may include consideration of how the person was infected and their connection with the person who was treated, as per subsection (4)(f). For affected claimants, it may include consideration of how the person has been affected and their connection with the person who has been infected, as per subsection (4)(g).
- 85 Subsection (5) requires that the regulations provide that the payments owing under the scheme are to be administered by the IBCA.

### Lords Amendment 58: Payments

- 86 Subsection (1) provides that the amount of compensation to be delivered by the IBCA will be determined via the compensation scheme regulations. This includes the ability to make payments of either a specified amount, within a range or to a set maximum award, per subsection (2).
- 87 Subsection (3) allows the regulations to determine how payments are delivered to eligible persons, whether as a lump sum or periodically, made on trust for others, for interest to be payable or uplifts to be made (for instance linked to inflation).
- 88 Subsections (4) to (6) include powers to apply conditions to compensation payments and to arrange for the repayment of sums to the IBCA in circumstances to be set in future regulations (e.g. overpayment due to fraud).

### Lords Amendment 59: Applications and procedures

- 89 Lords amendment 59 provides that regulations (secondary legislation) concerning the new compensation scheme may make provisions about the procedure to be adopted by the ICBA for the making and handling of claims. This can include time limits and evidential requirements.

### Lords Amendment 60: Reviews and appeals

- 90 Lords amendment 60 provides that the regulations may make provisions setting out the compensation scheme reviews and appeals procedure, including an ability for the IBCA to review decisions taken under the scheme. It is a requirement that the scheme must include a right for applicants to appeal scheme decisions to the First-tier tribunal (FTT), but if the regulations allow the IBCA to review decisions, they may also make provision that the right to appeal to the FTT cannot be exercisable unless the IBCA have first reviewed the decision (for instance by way of an internal appeals process to be exhausted before the right to appeal arises).

### Lords Amendment 61: Information: infected blood compensation scheme

- 91 Lords amendment 61 provides a power for the IBCA to disclose information, including personal data, to any third parties and for third parties to disclose information to the IBCA, as needed to support the administration of the scheme. Any such sharing authorised under this clause is required to comply with all data protection legislation to safeguard applicants' personal data.
- 92 Should it need to, and after having unsuccessfully issued a written notice requiring the same, the IBCA may obtain a court order to compel information or the production of documentation from any person, subject to this being required in relation to the administration of the scheme.

### Lords Amendment 62: Duty to co-operate with the IBCA

- 93 Lords amendment 62 sets out a requirement for the bodies listed in subclause (2) to co-operate with the IBCA as required for the purpose of delivering the compensation payments. The relevant bodies include the Secretary of State and

Minister for the Cabinet Office; the Welsh and Scottish Ministers and Department of Health in Northern Ireland; and NHS Act Special Health Authorities and their devolved counterparts. The latter captures the administrators of the IBSS who have specialist knowledge of providing support to victims of infected blood and hold data on the scheme beneficiaries. The clause includes a provision that the Secretary of State or Minister for the Cabinet Office may make regulations to add any other persons to this list should cooperation of further third parties be required, but shall require the consent of the Welsh and Scottish Ministers and Department of Health in Northern Ireland should Welsh, Scottish or Northern Ireland bodies be sought to be added.

#### Lords Amendment 63: Provision of support and assistance

- 94 Lords amendment 63 provides that the Secretary of State or Minister for the Cabinet Office may make arrangements to provide support and assistance to either scheme applicants, or potential applicants to the scheme, whether by the IBCA or a third party

#### Lords Amendment 64: Payments to personal representatives of qualifying infected persons

- 95 The Secretary of State or Minister for the Cabinet Office is required to arrange for a payment of £100,000 to be paid to the personal representatives of deceased persons who were registered with a relevant support scheme, as defined, and who had not previously received a payment under the Infected Blood Interim Compensation Payment Scheme.
- 96 A power is also provided for the Secretary of State or Minister for the Cabinet Office to make regulations to amend or repeal this clause as needed.

#### Lords Amendment 65: Information: payments to personal representatives

- 97 On the basis that the payments to personal representatives, will be made ahead of the establishment of the IBCS, by the Secretary of State, Minister for the Cabinet Office, or someone on their behalf, Lords amendment 65 enables third parties to provide information to the Secretary of State, Minister for the Cabinet Office or such administering party, for the purpose of delivering the payments. Any such sharing authorised under this clause is required to comply with all data protection legislation to safeguard applicants' personal data.

#### Lords Amendments 116-119: Whole life prisoners prohibited from forming a marriage or a civil partnership

- 98 Lords Amendments make minor revisions to the drafting of clauses 55 and 56. They ensure that registrars have all the information they need at the point they consider an application to marry or to enter into a civil partnership. The information needed is whether an applicant or their intended spouse or civil partner is a whole life prisoner and, if so, whether they have been granted an exemption from the Secretary of State. They also make some minor changes to clarify the procedure and to update related legislation in line with the reforms.

## Lords Amendments to Part 4: Prisoners

### Lords Amendments 66, 68-72, 74-79, 81-84, 86-92, and 94 to 97 : court of referral

- 99 Lords Amendments 66, 68-72, 74-79, 81-84, 86-92, and 94 to 97 change the referral venue from the Upper Tribunal to the High Court in all cases. This means that the High Court will hear and determine referrals of top-tier cases.

### Lords Amendments 73, 80, 85 and 93: express power to detain prisoner whilst determining whether to refer

- 100 Lords Amendments 73, 80, 85 and 93 provide that the Secretary of State's duty to release a prisoner caught by the new second check process is suspended for the time reasonably required to decide whether to refer the case to the High Court.

### Lords Amendments 98 and 99: Multi-Agency Public Protection Arrangements (MAPPA)

- 101 Lords Amendment 98 amends section 325 of the Criminal Justice Act 2003 to include "relevant domestic abuse or stalking perpetrator" within the specified offenders who must be managed under Multi-Agency Public Protection Arrangements ("MAPPA"). Amendment 98 also amends section 327 of the Criminal Justice Act 2003 to include a definition of this term requiring that the offender be convicted of either a "specified domestic abuse offence" (one where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning of the Domestic Abuse Act 2021), a "specified stalking offence" (under the Protection from Harassment Act 1997) or a "associate offence" (undefined). The offender must either be a "relevant serial offender" or be assessed as high or very high risk of harm. A relevant serial offender is defined as someone who commits the same specified offence more than once, or commits more than one specified offence. Amendment 98 also provides for a review of the operation of the section within 12 months of the passing of the Bill.
- 102 Lords Amendment 99 amends section 80 of the Sexual Offence Act 2003 to include relevant domestic abuse and stalking offenders as persons who are subject to notification requirements within specified timescales under that section. A "relevant domestic abuse or stalking perpetrator" is defined under Amendment 99(4).

### Lords Amendments 100 - 107: Imprisonment for Public Protection (IPP)

- 103 Lords Amendment 100 clarifies that the amendments made by Clause 48 all relate to Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (life sentences).
- 104 Lords Amendment 101 gives the Secretary of State the power to insert licence conditions on a prisoner where the Secretary of State makes a release decision under new section 32ZZA (Amendment 106).
- 105 Lords Amendment 102 changes the qualifying period for an offender who has

been released on licence to have their licence considered for termination by the Parole Board from ten years after first release to three years for those serving an IPP sentence. The qualifying period for those convicted when under the age of 18 is changed to two years. The qualifying period counts from the first release from prison and does not reset if an offender is recalled to prison. Lords Amendment 104 is consequential on 102, and provides for a shorter qualifying period for those only serving preventive sentences imposed in respect of offences for which they were convicted when aged under 18.

- 106 Lords Amendment 103 tidies up the definition of “preventive sentence” to mean a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006), or a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one passed as a result of section 221 of the Armed Forces Act 2006);”
- 107 Amendment 104 amends the power to alter the qualifying period by regulations so that both the 3 year qualifying period for IPP’s and the two years for DPP’s can be amended.
- 108 Lords Amendment 105 enables the Secretary of State, when the Parole Board directs the re-release of a preventive sentence prisoner who is recalled to prison, to disregard the revocation of the prisoner’s licence for the purposes of automatic licence termination under amendments made by Clause 48(2).
- 109 Lords Amendment 106 introduce a power for the Secretary of State to release a recalled IPP or DPP offender following Risk Assessed Recall Review. The Secretary of State can only release a recalled IPP or DPP Offender where satisfied that it is no longer necessary for the protection of the public that they should remain in prison, which is the same test applied by the Parole Board. Re-release from recall by the Secretary of State under this power, or by the Parole Board will reset the automatic period. These amendments also introduce a power for the Secretary of State to disregard the recall of a IPP or DPP offender for the purpose of the automatic period, so as to not disrupt the two year automatic period. Lords Amendment 100 is a consequential amendment relating to re-release.
- 110 Lords Amendment 67 applies the new public protection test to the new executive re-release power introduced by Lords Amendment 106 for Imprisonment for Public Protection sentences.
- 111 Lords Amendment 107 requires the Secretary of State to prepare and publish a report about the steps taken in the reporting period to support the rehabilitation of IPP prisoners and their progress towards release from prison or licence termination. Subsection (1)(b) requires this report to be laid before Parliament.
- 112 Subsection (2)(a) defines ‘release from prison’ and subsection (2)(b) defines



‘licence termination’.

- 113 Subsection (3) requires that the report must specifically address the steps taking in relation to IPP and DPP offenders who are female (subsection (3)(a)) and DPP offenders (subsection (3)(b)).
- 114 Subsection (4) requires that the Secretary of State sets out who has been consulted in the reporting period in relation to the steps taken on the rehabilitation and progress of preventive sentence prisoners.
- 115 Subsection (5) defines the terms in the clause, including life sentence, preventive sentence, preventive sentence prisoner and reporting period.

#### Lords Amendments 108 - 112: Parole Board rules and membership

- 116 Lords Amendments 108 and 109 allow for Parole board rules to provide for functions of the board to be exercised by employees of the Board, subject to exceptions. The Parole Board Rules can be amended by secondary legislation (subject to negative resolution) to enable delegation of certain of the Board’s judicial functions to staff. This is likely to include functions such as revoking and varying substantive directions, changing deadlines, and adjourning or deferring a hearing. However the amendment does not permit the release decision, the decision to terminate an IPP licence, or decisions on reconsideration or set aside to be made by Board staff. These functions are specifically excluded, and will continue to be carried out by Board members.
- 117 Lords Amendments 110 to 112 leaves out provisions relating to the appointment, resignation, dismissal and functions of the chair and vice-chair of the Parole Board. The processes governing appointment and dismissal of the chair and vice chair of the Board will continue to operate as they do currently. The chair could continue to take an active role in individual cases if they chose, and the Secretary of State would not have the power to remove the chair in the interests of public confidence. Therefore the chair could only be removed if they were considered unfit or unsuitable to continue as chair for the reasons set out in the agreed Protocol.

## Lords Amendments to Part 5: General

### Lords Amendments to Clause 58: Regulations

- 118 Lords Amendment 121 provides a power to make consequential amendments via regulations for Part 3, conferred on the Secretary of State and his counterparts for each of the devolved administrations, to the extent it is within their respective legislative competence. Lords Amendment 123 is consequential on this.
- 119 Lords Amendment 122 enables legislation passed or made after the current session of Parliament to be consequentially amended by regulations under Clause 58. Lords Amendment 124 is consequential on this.
- 120 Lords Amendment 126 allows for the first regulations made under the Section (Infected Blood Compensation Scheme) to be subject to the made affirmative procedure.
- 121 Lords Amendments 128, 129, 130, 131 and 132 state the procedures for the regulations in relation to the Infected Blood Compensation Scheme.

### Lords Amendments to the extent, commencement and title

- 122 Lords Amendment 133 provides that Part 3 extends to England and Wales, Scotland and Northern Ireland.
- 123 Lords Amendment 134 provides that His Majesty may by an Order in Council extend any of s the provisions of Part 3, with or without modifications to:
- a. Any of the Channel Islands;
  - b. The Isle of Man
  - c. Gibraltar
  - d. The Falkland Islands
- 124 Lords Amendments 135, 136, 137, 138, 139 and 140 amend the Bill to permit all of Part 3 and Sections 53 (1) and (2) of Part 4 to come into force on Royal Assent.
- 125 Lords Amendment 141 allows the Secretary of State or the Minister for the Cabinet Office make transitional or saving provisions in connection with the coming into force of any provision of Part 3 by way of regulations.

## Lords Amendment 142 - New Schedule - Infected Blood Compensation Authority

- 126 Lords Amendment 142 creates a new schedule - Infected Blood Compensation Authority.

### Part 1 - Constitution

- 127 Part 1 of the Schedule provides for the Infected Blood Compensation

Authority's (IBCA) governance arrangements. It includes details of the membership of the ICBA and the process for appointments, including the appointment of the Chair, and sets out the IBCA's financial and reporting obligations.

#### Membership

128 The IBCA is to consist of between three and six executive members including a Chief Executive, and between four and seven non-executive members including the Chair, who will together form the IBCA Board. Therefore the minimum number on the IBCA board will be 7, with a maximum of 13. The IBCA must seek to ensure they have more non-executive than executive members, as far as this is practicable.

#### Appointment of non-executive members

129 The Chair will be appointed by the Secretary of State or the Minister for the Cabinet Office, as will the following three appointments of non-executives, with any subsequent appointments made by the Chair. It is a requirement that staff of the IBCA may not hold a non-executive post.

#### Appointment of executive members

130 The executive members are to be appointed by the Chair, except for the interim Chief Executive as set out below. The executive members will be members of the IBCA's staff.

#### Appointment of members: eligibility

131 The Secretary of State or Minister for the Cabinet Office, through secondary legislation, can set criterion which subsequent members of the IBCA would have to meet before being appointed. These regulations can provide that someone must cease to be a member of the IBCA if they no longer meet this criteria.

#### Terms of membership

132 This clause provides that the terms of employment for IBCA members will be in accordance with the terms of their appointment, i.e. as per any contractual agreement, however such terms must be read subject to the provisions of the Schedule.

133 Further provisions are set out relating to members vacating office, including resignation and becoming a member of the IBCA's staff. An IBCA member may be removed from office by the Chair, and the Chair may be removed by the Secretary of State or Minister for the Cabinet Office.

#### Non-executive members: payments

134 The IBCA is required to arrange for the payment of any non-executive member appointed by the Chair, to include remuneration, pensions, allowances or gratuities, as determined by the Chair. Where the non-executive member was

appointed by the Secretary of State or Minister for the Cabinet Office, the IBCA must arrange for their payment as determined by the Secretary of State or the Minister for the Cabinet Office.

#### Staffing

135 The IBCA is required to employ staff on such pay, terms and conditions as it may determine, subject to the approval of the Secretary of State or Minister for the Cabinet Office as to the policy on remuneration and ancillary payment provisions.

#### Interim chief executive

136 An initial interim chief executive may be appointed by the Secretary of State or the Minister for the Cabinet Office, until the substantive chief executive is appointed by the Chair. The interim chief executive is able to incur expenditure and has the authority to take action in the name of, and on behalf of, the IBCA.

#### Committees and sub-committees

137 The IBCA can appoint committees and sub-committees as it considers necessary. Such committees may consist of either IBCA staff or otherwise. Where a member of a committee is not an existing IBCA staff member, the IBCA can elect to pay them remuneration or any other allowances, as appropriate.

#### Procedure

138 The IBCA is able to determine its own procedures and the procedures of any committee or sub-committee. The validity of any proceedings of the IBCA or its committees will not be affected by any membership vacancies.

#### Exercise of functions

139 The IBCA must exercise the functions conferred on it effectively, efficiently and economically, placing the IBCA under the same duty of economy and efficiency as other public bodies in the health service. The IBCA can delegate authority to carry out its functions to any of its members, any of its committees or any authorised member of its staff.

#### Funding

140 The Secretary of State or the Minister for the Cabinet Office must fund the IBCA as is needed to compensate the beneficiaries of the compensation scheme. They must also pay any other sums as reasonably required for the IBCA to operate effectively, which may be made subject to conditions.

141 The Secretary of State or the Minister for the Cabinet Office may also make regulations imposing conditions on the IBCA's use of any repayments it receives under section 50(5) claw back provisions.

#### Annual report

142 The IBCA must publish an annual report on how it has exercised its functions,

to be sent to the Secretary of State or the Minister for the Cabinet Office, who must in turn lay the same before Parliament.

#### Accounts and audit

- 143 The IBCA is required to keep proper accounts and prepare a statement of accounts in each financial year. It is required to prepare these accounts in the form, with the content, and using methods and principles, determined by the Secretary of State or the Minister for the Cabinet Office. The IBCA must send its annual accounts to the Secretary of State or the Minister for the Cabinet Office and the Comptroller and Auditor General as soon as is practicable at the end of the relevant year. The Comptroller and Auditor General is responsible for examining, certifying and reporting on the accounts and for laying copies of the audited accounts (and his report on them) to the Secretary of State to be laid before Parliament.

#### Provision of information

- 144 The Secretary of State or the Minister for the Cabinet Office may require the IBCA to furnish information concerning its functions, and the IBCA is required to provide the same, on request.

#### Status

- 145 The IBCA and its members and employees are not to be regarded as servants or agents of the Crown, nor civil servants, and will not enjoy any status, immunity or privilege of the Crown. The IBCA's property will not be regarded as property of, or property held on behalf of, the Crown.

#### Seal and evidence

- 146 The IBCA's seal must be countersigned by any member of the IBCA or any other person authorised for that purpose for it to be authenticated. Any documents which appear to have been correctly executed on behalf of the IBCA will be considered as executed by the IBCA, unless proven otherwise.
- 147 These terms will not apply to any documents which require specific execution as per the law of Scotland, which will not be deemed as executed by virtue of compliance with this provision.

#### Supplementary powers

- 148 The IBCA is conferred with ancillary powers to take any actions it considers necessary, subject to such action being in connection with its functions.

#### Part 2 - Transfer schemes

##### Power to make transfer schemes

- 149 The Secretary of State may make one or more transfer schemes in connection with the transfer of property, rights and liabilities of a relevant person or body so as to allow the ICBA to carry out its functions, as the Secretary of State or the Minister for the Cabinet Office consider appropriate. Further limitations are

included as to who constitutes a “relevant person”, what may be transferred and what the transfer scheme may provide for are included within these provisions.

#### Tax treatment of transfer schemes

150 The Treasury are given a power to make regulations to vary the tax position for the transfer schemes, including providing that tax may not apply, or the standard tax position may be modified.

#### Part 3 - Amendments

151 This Part provides for consequential amendments to other legislation required as a result of the Infected Blood provisions of the Bill, meaning these various enactments to apply in relation to the IBCA.

152 Schedule 1 to the Public Records Act 1958: This will place obligations on the IBCA to properly protect and preserve records;

153 Schedule to the Public Bodies (Admission to Meetings) Act 1960: This adds the IBCA to the list of public bodies whose meetings must be open to the public, subject to the terms and exceptions of the Act;

154 Schedule 2 to the Parliamentary Commissioner Act 1967: This brings the IBCA under the remit of the Commissioner and allows for complaints to be made and investigated, adding a further layer of accountability;

155 Schedule 1 of the House of Commons Disqualification Act 1975: This prohibits any sitting MPs from membership to the IBCA board, or disqualifies members of the board from being a sitting MP;

156 Schedule 1 of the Northern Ireland Assembly Disqualification Act 1975: This similarly disqualifies any sitting members of the IBCA board from membership of the Northern Ireland Assembly;

157 Schedule 1 of the Freedom of Information Act 2000: This puts the IBCA in scope of freedom of information requests and oversight by the Information Commissioner; and

158 Schedule 19 to the Equality Act 2010: The public sector equality duty in section 149 will apply to the IBCA. This duty applies to public bodies listed in Schedule 19 of the Act, under which the heading “Health, Social care and social security” is amended to include the IBCA.

#### Title

159 Lords Amendment 143 amends the title to include "for an infected blood compensation scheme" to be included in the long title.

# VICTIMS AND PRISONERS BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Victims and Prisoners Bill as brought from the House of Lords on 24 May 2024 (Bill 230)

---

Ordered by the House of Commons to be printed, 24 May 2024

---

© Parliamentary copyright 2024

This publication may be reproduced under the terms of the Open Parliament Licence which is published at [www.parliament.uk/site-information/copyright](http://www.parliament.uk/site-information/copyright)

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS