CRIME AND POLICING BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Crime and Policing Bill as introduced in the House of Commons on 25 February 2025 (Bill 187).

- These Explanatory Notes have been drafted by the Home Office, Ministry of Justice, Ministry of Defence and Department for Environment, Food and Rural Affairs 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 Crime and Policing Bill supports the delivery of the Government's Safer Streets Mission to halve knife crime and violence against women and girls ("VAWG") in a decade and increase public confidence in policing and the wider criminal justice system. It aims to support neighbourhood policing and give the police the powers they need to tackle anti-social behaviour, crime and terrorism, whilst introducing reforms to ensure that law enforcement agencies perform to the highest standards expected by the public and focus on front-line policing. The Bill gives effect to or supports the implementation of the following specific commitments in the Labour Party's 2024 manifesto to:

- "[introduce] new Respect Orders";
- "scrap the effective immunity for some shoplifting ……. and create a new specific offence for assaults on shopworkers that will protect them from threats and violence";
- "introduce a new offence of criminal exploitation of children, to go after the gangs who are luring young people into violence and crime";

- “strengthen the use of Stalking Protection Orders and give women the right to know the identity of online stalkers”; and
- “introduce a new criminal offence for spiking to help police better respond to this crime”.

2. The Bill is in 15 parts.
3. Chapter 1 of Part 1 (Clauses 1 and 2 and Schedule 1) make provision for Respect Orders to tackle persistent anti-social behaviour and make amendments to Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014, which makes provision for anti-social behaviour injunctions, consequential on the introduction of Respect Orders.
4. Chapter 2 of Part 1 (Clauses 3 to 9 and Schedules 2 and 3) amends the powers of the police, local authorities and other agencies to tackle anti-social behaviour. Clause 3 extends the duration of dispersal directions and closure notices. Clause 4 increases the sum payable under Fixed Penalty Notices (“FPNs”) issued for certain breaches of Public Spaces Protection Orders (“PSPOs”), expedited PSPOs and Community Protection Notices and enables persons accredited under the community safety accreditation scheme to issue FPNs. Clause 5 and Schedule 2 enables registered housing providers to issue closure

notices. Clause 6 and Schedule 3 strengthen the role of local policing bodies in Anti-Social Behaviour case reviews. Clause 7 enables the Secretary of State, by regulations, to require relevant authorities to provide information about anti-social behaviour incidents and their response. Clause 8 removes the requirement for the police to issue a warning before seizing a vehicle (such as off-road bikes, motorbikes and e-scooters) being driven anti-socially. Clause 9 confers power on the Secretary of State to issue guidance to local authorities in England about their enforcement powers in respect of fly-tipping.

5. Part 2 (Clauses 10 to 13) makes provision about offensive weapons. Clause 10 introduces a new offence relating to the possession of a bladed article or offensive weapon with intent to use it to cause unlawful violence (or a person to apprehend such unlawful violence) or serious damage to property; or to enable another person to cause such violence or damage. Clause 11 increases the maximum penalty for offences relating to the sale etc. of offensive weapons (under sections 141 and 141A of the Criminal Justice Act 1988, and section 1 of the Restriction of Offensive Weapons Act 1959). Clause 12 provides police with a new power to seize bladed articles where they are lawfully on

private premises and have reasonable grounds to suspect the article will be used in connection with unlawful violence, and Clause 13 extends this provision to the service police of the armed forces.

6. Part 3 (Clauses 14 to 16) makes provision about retail crime. Clause 14 creates a new offence of assaulting a retail worker. This includes those doing both paid and unpaid work, as well as the owner or occupier of a retail premises. Clause 15 requires a court to impose a Criminal Behaviour Order on those convicted the offence of assaulting a retail worker. Clause 16 repeals section 22A of the Magistrates' Courts Act 1980 (as inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014) which provides that that low-value shop theft is a summary offence unless the defendant elects a jury trial.

7. Part 4 (Clauses 17 to 35 and Schedules 4 and 5) makes provision in respect of the criminal exploitation of children and vulnerable adult. Clause 17 provides for an offence of child criminal exploitation ("CCE") and Clauses 18 to 31 and Schedule 4 make provision for CCE prevention orders. Clauses 32 to 34 and Schedule 5 criminalise the practice of 'cuckooing', whereby criminals take over the home of another person without their consent

to perpetrate illegal activity. Clause 35 makes consequential provision relating to the CCE and cuckooing offence and CCE prevention orders.

8. Chapter 1 of Part 5 (Clauses 36 to 44 and Schedule 6) creates new or amends existing sexual offences in relation to children as well as expanding the powers of border staff in relation to child sexual abuse material. Clause 36 creates a new offence which criminalises the making, possession, adaptation or supply of digital files or models designed to create child sexual abuse material. Clause 37 extends the so-called “paedophile manuals” offence to cover AI generated images. Clauses 38 and Schedule 6 provide for an offence of administering or moderating of electronic services who facilitate the production or distribution of child sexual abuse material and Clauses 39 to 41 make ancillary provision in respect of the offence. Clause 42 amends the criminal law to capture a broader range of culpable behaviour where a person engages in sexual activity in the presence of a child or person with a mental disorder. Clause 43 creates a new statutory aggravating factor for grooming behaviour where the court is considering the seriousness of a child sex offence, including, where perpetrated by grooming gangs. Clause 44 extends the power

of Border Force officers to compel individuals at the border to unlock their electronic devices for search on suspicion of possession of digital child sexual abuse material.

9. Chapter 2 of Part 5 (Clauses 45 to 54 and Schedule 7) place a duty on persons undertaking regulated activity (such as teachers and health care professionals) to report child sexual abuse, subject to specified exceptions. Clauses 45 and 46 sets out the duty and associated definitions and Clause 47 sets out the reasons to suspect a child sex offence may have been committed. Clauses 48 to 51 set out exceptions to the duty. Clause 52 creates an offence of preventing a person subject to the duty from complying with it. Clause 53 modifies the duty in relation to constables. Clause 54 confers upon the Secretary of State a power to amend Chapter 2 of Part 5 by regulations and makes consequential provision.

10. Chapter 3 of Part 5 (Clauses 55 to 58 and Schedule 8) makes other provision about sexual offences. Clause 55 confers a power on to the Secretary of State to issue guidance to the police on the disclosure of information for the purpose of preventing child and other sex offences. Clause 56 and Schedule 8 introduce new offences to criminalise taking or recording

an intimate photograph or film without consent, and installing equipment with intent to enable the taking or recording of intimate photographs or films without consent. Clause 57 amends the offence of “exposure” in section 66 of the Sexual Offences Act 2003. Clause 58 creates a broader offence of ‘sexual activity with a corpse’, replacing the existing offence of necrophilia at section 70 of the Sexual Offences Act 2003, to encompasses penetration of a corpse with a maximum penalty of seven years’ imprisonment and creates a new offence of non-penetrative sexual activity with a corpse.

11. Chapter 4 of Part 5 (Clauses 59 to 68 and Schedule 9) make further provision about the management of registered sex offenders (“RSOs”). Clause 59 requires RSOs to notify any new name to the police seven days before using it. Clause 60 requires RSOs to notify the police if they intend to be absent from their home address for five days or more. Clause 61requires certain RSOs to notify the police before entering certain premises at which children are present. Clause 62 amends the procedure, in Scotland and Northern Ireland, for specifying the police stations at which a person, who is subject to notification requirements under the Sexual Offences Act 2003, may attend to give notification. Clause

63 empowers the police to authorise RSOs to give certain notifications virtually rather than in person at a police station. Clauses 64 and 65 enable the police to review whether a RSO who is subject to the notification requirements indefinitely should be discharged from the requirements, without an application. Clause 66 empowers the police to prohibit a RSO from changing their name on identity documents without authorisation from the police. Clauses 67 reduces the rank of police officer who may authorise an application for a warrant to search a RSO's home address. Clause 68 and Schedule 9 make consequential and minor amendments to Part 2 of the Sexual Offences Act 2003.

12. Part 6 (Clauses 69 to 72) makes provision about stalking. Clauses 69 and 70 enable a court to make a stalking protection order on the conviction or acquittal of a defendant at a criminal trial. Clause 71 confers a power for the Secretary of State to issue guidance to relevant public authorities about stalking. Clause 72 confers a power for the Secretary of State to issue guidance to the police about the disclosure of information about the identity of online stalkers or alleged stalkers.

13. Part 7 (Clauses 73 to 77) amends the criminal law and makes other provision about offences

against the person. Clause 73 repeals sections 22, 23 and 25 of the Offences Against the Person Act 1861 and replaces section 24 with a new offence of administering a harmful substance (including by spiking). Clauses 74 and 75 introduce a new broader offence of encouraging or assisting serious self-harm, replacing the communications offence in the Online Safety Act 2023 to cover all means of encouraging or assisting serious self-harm. Clause 76 amends section 1 of the Child Abduction Act 1984 to make it an offence for a person connected with a child to detain a child outside the UK without the appropriate consent. Clause 77 enables employers to access enhanced criminal records checks, which include a check of the children's barred list, for those working with children in a supervised capacity.

14. Part 8 (Clauses 78 to 85 and Schedule 10) provides for new offences to prevent vehicle theft and fraud. Clauses 78 and 79 provide for new offences to criminalise the possession, importation, manufacture, adaptation, supply or offering to supply of electronic devices for use in vehicle theft. Clauses 80 to 82 and Schedule 10 introduce new offences relating to the possession or supply of a "SIM farm" with associated powers of entry and search for evidence of those offences. Clauses 83 to 85

create offences relating to the possession or supply of other electronic communications technologies that can be used to facilitate fraud via electronic communications network and services (with such technologies specified in regulations made by the Secretary of State).

15. Part 9 (Clauses 86 to 91 and Schedule 11) provide for new offences related to public order. Clauses 86 to 88 create a new offence of wearing or otherwise using a face covering in a designated locality. A police designation can only be made where a protest is likely to involve or has involved the commission of offences. Clause 89 prohibits the possession of pyrotechnics at protests. Clause 90 creates an offence of climbing on a war memorial specified in Schedule 11. Clause 91 contains interpretive provision in relation to this Part.

16. Part 10 (Clauses 92 to 101 and Schedules 12 and 13) confers new or modified powers on the police and other law enforcement agencies. Clause 92 and Schedule 12 provides investigative agencies with a power to apply to the court for an order that a third-party entity involved in the provision of internet protocol ("IP") addresses and internet domain names should prevent access to an IP address or domain name. Clause 93 provides police with a new power to enter and search premises

(private or public) without a warrant where stolen goods have been electronically tracked to those premises and they have reasonable grounds to believe the goods are on those premises and it is not reasonably practicable to obtain a warrant, and Clause 94 confers these powers on the service police. Clause 95 enables the Secretary of State to make regulations about access to driver licence records by the police and other law enforcement agencies. Clauses 96 to 100 expand police powers to test persons in police detention on arrest or after charge (for persons aged 14 and over) for specified Class A drugs, to also permit drug testing for specified Class B and Class C drugs and to take an additional sample, where relevant. Clause 101 expands the cohort of foreign national offenders who can be given a conditional caution requiring them to leave the country to those who have limited leave to remain in the United Kingdom ("UK").

17. Part 11 (Clauses 102 and 103 and Schedules 14 and 15) reforms the confiscation regime in England and Wales and Northern Ireland in Parts 2 and 4 of the Proceeds of Crime Act 2002 respectively. This Part also introduces costs protections for law enforcement agencies in civil recovery proceedings in the High Court under Part 5 of the Proceeds of Crime Act

2002.

18. Part 12 (Clauses 104 and 105) makes further provision for the management of offenders. Clause 104 extends the criteria for polygraph testing to people released on licence, under probation supervision, who have been convicted of murder and are assessed as posing a risk of sexual offending; to the whole envelope of the sentence for those who are sentenced concurrently for a sexual and non-sexual offence; and to offenders sentenced for offending which is considered to be linked to terrorism before the Counter Terrorism Act 2008 ("CTA 2008") was commenced, or following commences of the CTA 2008 but before the Counter-Terrorism and Sentencing Act 2023 was commenced for offences outside the specified list contained in Schedule 2 to the CTA 2008. Clause 105 requires offenders serving community and suspended sentences to notify their probation officer or Youth Offending Team of changes to their names or personal contact information.

19. Part 13 (Clauses 106 to 109) makes provision about the police. Clauses 106 to 108 reform the arrangements for the handling of complaints against the police and the investigation of conduct matters. Clause 109 provides a power for the Secretary of State to

make certain provision by secondary legislation about appeals by chief officers of police, local policing bodies and the Independent Office for Police Conduct to the Police Appeals Tribunal.

20. Part 14 (Clauses 110 to 126 and Schedules 16 and 17) introduces new powers and modifies existing powers to counter terrorism and hostile state threats. Clauses 110 to 121 make provision for youth diversion orders to disrupt young people involved in terrorism-related offending and divert them from the criminal justice system. Clause 122 amends the Terrorism Prevention and Investigation Measures and State Threats Prevention and Investigation Measures regimes to better manage the risk from those involved in terrorism- or hostile state-related activity by limiting their access to bladed articles and other articles capable of being used as a weapon. Clause 123 amends section 13 of the Terrorism Act 2000 to apply the offences relating to the wearing of uniform or the publication of images relating to a proscribed organisation to conduct in prisons and other places of detention or relevant premises. This clause also amends section 13 of the Terrorism Act 2000 to enable the police to seize any article displayed in a public place if it arouses reasonable suspicion that an individual is a supporter or member of a

proscribed group, without the need for the article to be used in criminal proceedings. Clause 124 and Schedule 16 extends notification requirements, and other specified counter-terrorism risk management tools, for those convicted of offences deemed to be connected to terrorism. Clause 125 and Schedule 17 add an additional offence (breaching a foreign travel restriction order) to be captured by the terrorist offenders sentencing, restricted release, and management on licence regimes. Clause 126 ensures that terrorism sentences with a fixed licence period available for terrorist offenders in Northern Ireland are handed down consistently with the equivalent sentence in England and Wales.

21. Part 15 (Clauses 127 to 137) contains miscellaneous and general provisions. Clauses 127 to 129 enable the UK and devolved governments to make regulations giving effect to international law enforcement information-sharing agreements. Clause 130 provides for a corporate body or partnership to be held criminally liable where a senior manager commits any offence while acting within the actual or apparent authority granted by the organisation, replacing provisions in the Economic Crime and Corporate Transparency Act 2023 which were confined to specified

economic crimes. Clauses 131 to 137 make general provision, including in respect of the Bill's territorial extent and commencement.

Policy background

Anti-social behaviour powers

22. Anti-social behaviour can be defined as 'behaviour which causes, or is likely to cause, harassment, alarm or distress'. There are three main types of anti-social behaviour:

- Personal anti-social behaviour which is when a person targets a specific individual or group.
- Nuisance anti-social behaviour which is when a person causes trouble, annoyance or suffering to a community.
- Environmental anti-social behaviour which is when a person's actions affect the wider environment, such as public spaces or buildings.

23. The Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") provides the police, local authorities and other local agencies with a range of tools and powers that they can use to respond to anti-social behaviour:

- **Civil Injunctions** are issued by the courts upon application from specific organisations such as the police and local

authorities. Civil Injunctions are intended to target behaviour such as public drunkenness, bullying, being an abusive neighbour and vandalism. An injunction will include relevant prohibitions to get individuals to stop behaving anti-socially. It can also include positive requirements to get the individual to deal with the underlying cause of their behaviour (for example, attending alcohol awareness classes). Though they are a civil rather than a criminal order (in that they are not linked to a criminal offence), breaching an injunction is treated as a contempt of court (punishable with a prison sentence of up to two years, a fine, or both) and the court can include a power of arrest for such breaches.

- **Criminal Behaviour Orders** ("CBO") are issued after an individual has been convicted for any criminal offence. An order will include prohibitions to stop the anti-social behaviour but can also include positive requirements to get the offender to address the underlying causes of their behaviour. Breach of a CBO is a criminal offence, subject to a maximum penalty of five years' imprisonment, a fine, or both.
- **Dispersal powers** can be used upon

authorisation by a police officer of the rank of inspector or above to require individuals to disperse from a location. These powers can only be authorised when members of the public in the location are being harassed, alarmed or distressed, or when there is localised crime and disorder. An authorisation lasts for 48 hours. Failure to comply with a dispersal direction is criminal offence, subject to a maximum penalty of three months' imprisonment (for persons over 18 years), a level 4 fine, or both.

- **Community Protection Notices** ("CPN") are intended to stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils a community's quality of life. They can deal with a range of behaviours; for instance, it can deal with noise nuisance and litter on private land. A CPN can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again. CPNs can be issued by local authority officers, the police or social landlords. Breach of a notice is a criminal offence, punishable by a level 4 fine in the case of an individual or an unlimited fine in the case of a business. As an alternative to

a prosecution, breach may be dealt with by means of a £100 fixed penalty notice. A court can also then impose a remedial order to require an individual to carry out work specified in the order.

- **Public Spaces Protection Orders** (“PSPO”) are orders which bans taking part in certain acts in designated areas that would not otherwise be a criminal offence, for example, the consumption of alcohol. They are imposed by a local authority. Breach of a PSPO is a criminal offence, punishable by a level 3 fine (£1,000). As an alternative to a prosecution, breach may be dealt with by means of a £100 fixed penalty notice.
- **Closure Notices and Orders** allow the police or a local authority to close premises quickly which are being used, or likely to be used, to commit nuisance or disorder. A closure notice can be issued by a police officer or a local authority and can bar any person who is not a resident accessing the premises for a maximum of 48 hours. A court issued closure order can close premises for up to six months and can restrict all access. Breach of a closure notice or closure order is a criminal offence, punishable by a maximum penalty

of three months’ imprisonment or six months’ imprisonment respectively, a fine, or both.

24. The Labour Party’s 2024 general election manifesto argued that powers to tackle anti-social behaviour had been weakened (for example, breaches of a civil injunction do not attract an automatic power of arrest and are punishable as a contempt of court rather than as a criminal offence) and committed to introduce new “Respect Orders”, a new preventative civil order to address persistent and/or highly disruptive anti-social behaviour which can be used to prohibit a wide variety of anti-social behaviours. Chapter 1 of Part 1 provides for Respect Orders.

25. Separately, the then Government launched a consultation in March 2023 on proposals to amend a number of these existing powers to tackle anti-social behaviour (the consultation closed on 22 May 2023).[1] Amongst other things, the consultation sought views on the following proposals:

- Increasing the length of dispersal orders to

[1] Community Safety Partnerships Review and Anti-Social Behaviour Powers: Consultation, Home Office, 27 March 2023

72 hours.

- Increasing the upper limit of fixed penalty notices for breaches of CPNs and PSPOs to £500.
- Extending Community Safety Accreditation Scheme (a scheme by which employees of local partners such as local authorities are accredited to use certain powers that are usually only available to the police) powers to include relevant anti-social behaviour powers.

26. The then Government's response to the consultation was published on 14 November 2023.[2]

27. Clauses 3 and 4 give effect to the above proposals.

28. Anti-social behaviour involving vehicles, such as off-road bikes, is a concern which communities frequently raise with MPs (see, for example, Westminster Hall debate sponsored by Grahame Morris MP on 26 May 2022) and Police and Crime Commissioners. During the 2024 General Election campaign,

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[2] Community Safety Partnerships Review and Anti-Social Behaviour Powers: Government Response, 14 November 2023

the now Home Secretary, the Rt Hon Yvette Cooper MP, made a commitment to take action to prevent re-offending and improve police enforcement against this type of anti-social behaviour (Daily Mail, 9 June 2024). Clause 8 gives effect to this commitment by amending existing police powers to seize motor vehicles being used in an anti-social manner (contained in section 59 of the Police Reform Act 2002 (”the 2002 Act”)), by removing the requirement to first issue a warning to a person prior to seizing a vehicle which has been used in an anti-social manner.

Fly-tipping

29. Local authorities in England reported over a million fly-tipping incidents to the Department for the Environment, Food and Rural Affairs in 2022/23[3]. According to research by Eunomia, the estimated cost of fly-tipping to England's economy was £392 million in 2018/19[4]. A research report by Research Futures[5] on effective enforcement suggests that 49% of the public think that fly-tipping is a problem in their area.

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[3] Fly-tipping statistics for England, 2022 to 2023

[4] Counting the cost of UK waste crime: Report 2021, Environmental Services Association

[5] Effective enforcement of litter, fly-tipping and do fouling, Defra, August 2023

30. Local authorities have enforcement powers to help them tackle fly-tipping. They carried out 532,000 enforcement actions in 2022/23 which included issuing 69,000 Fixed Penalty Notices and 1,681 prosecutions[6].

31. The use of enforcement powers varies among local authorities. To support local authorities to consistently and appropriately exercise their existing fly-tipping enforcement powers, Clause 9 confers a power on the Secretary of State to issue statutory guidance on fly-tipping enforcement; local authorities will be required to have regard to the guidance.

Knife crime

32. Offences involving knives or sharp instruments recorded by the police rose by 4% (50,973 offences) in year ending June 2024, compared with the previous year (48,409 offences)[7]. The police recorded 562 homicide offences in the year ending June 2024, of which 44 % were committed using a knife or other sharp

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[6] Fly-tipping statistics for England, 2022 to 2023

[7] The nature of violent crime in England and Wales - Office for National Statistics (ons.gov.uk)

instrument. This was a slight increase compared with 42% in the previous year. The latest provisional admissions data for NHS hospitals in England and Wales showed no change in the number of admissions for assault by a sharp object in the year ending June 2024. This was similar to the year ending June 2023 and 20% below the pre-pandemic years ending March 2020. In its 2024 general election manifesto, the Labour Party committed to halving knife crime in a decade as part of its Safer Streets Mission.

33. In April 2023, the Home Office ran a public consultation to expand and improve the tools available to the police and wider criminal justice system to limit the availability of knives that may be used in violent offences and disrupt knife possession.[8] These tools aim to help tackle wider knife crime, in particular the use of machetes and large knives. This was in response to significant public and parliamentary concern about increases in knife crime.

34. The consultation sought views to the following

[8] Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime, Home Office, 18 April 2023

proposals requiring primary legislation:

(a) Whether additional powers should be given to the police to seize, retain and destroy lawfully held bladed articles if these are found by the police when in private property lawfully and they have reasonable grounds to suspect that the article(s) are likely to be used in connection with unlawful violence.

(b) Whether there is a need to increase the maximum penalty for the offence of importation, manufacture, sale , general supply and possession of prohibited offensive weapons (as provided for in section 141 of the Criminal Justice Act 1988 ("the 1988 Act") and section 1 of the Restriction of Offensive Weapons Act 1959) and the offence of selling bladed articles to persons under 18 (as provided for in section 141A of the 1988 Act) from six months' imprisonment to two years' imprisonment, to reflect the severity of these offences.

(c) Whether there is a need for a separate possession offence of bladed articles and weapons with the intention to injure or cause fear of violence with a maximum penalty of four years' imprisonment, bridging the gap between possession in

public and on school or further education premises and threatening. This new offence is in addition to the offences of carrying a bladed article with the exception of a folding pocketknife with a blade of less than three inches, in a public place or a bladed article or offensive weapon on school or further education premises (as provided for in section 139 and 139A of the 1988 Act); the offence to threaten somebody with an offensive weapon (provided for in section 1A of the Prevention of Crime Act 1953), or with a bladed article in public or a bladed article or offensive weapon on school or further education premises (provided in section 139AA of the 1988 Act); and to threaten somebody in private with a bladed article or offensive weapon (as provided in section 52 of the Offensive Weapons Act 2019).

35. Following the closure of the consultation in June 2023, the then Government published its response in August 2023.[9] Clauses 10 to 13

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[9] Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articled in crime – Government response to consultation and summary of public responses, Home Office, [30 August 2023]

give effect to these measures which were announced by the Home Secretary on 19 February 2025.

Retail Crime

36. Shop theft offences have been increasing, with the latest police recorded crime data showing 492,914 offences in the year to September 2024, an increase of 23%[10] compared to the previous year. Shop theft is a common offence in sentencing occasions for prolific offenders.[11]

37. Section 39 of the Criminal Justice Act 1998 provides for the offence of common assault and battery, but assaults against retail workers are not separately recorded. The British Retail Consortium Crime Report 2025[12] showed there were around 737,000 incidents of violence and abuse in 2023-24, or just over 2,000 incidents a day, up from 475,000, in the previous survey year. Figures published by Usdaw in March 2024[13] show that over seven out of 10 workers said they had been verbally abused in the 12 months to December 2023. 46% received

[10] Crime in England and Wales - Office for National Statistics

[11] Characteristics of Prolific Offenders, 2000-2021 - GOV.UK (www.gov.uk)

[12] crime-survey_2025_final.pdf

[13] USDAW - Violence against shopworkers doubles in the retail crime epidemic – an Usdaw survey finds

threats of violence and 18% were physically assaulted during the year.

38. Shop theft is not a specific offence but constitutes theft under section 1 of the Theft Act 1968. As such it is triable either way, that is in either a magistrates' court or the Crown Court. Section 22A of the Magistrates' Courts Act 1980 (as inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014) provides that low-value shop theft (that is, where the value of the goods stolen is £200 or less) is a summary only offence. Under section 22A of the Magistrates' Courts Act 1980, shoplifters who steal goods equal to or below £200 are tried summarily in the magistrates' court unless they elect trial in the Crown Court. There is a perception in the retail industry that the practical effect of the change made by section 176 of the 2014 Act was to down grade the police response to low-value shop theft.

39. Part 3 delivers on commitments made in the Labour Party's 2024 general election manifesto to "create a new specific offence for assaults on shopworkers that will protect them from threats and violence" and to "scrap the effective immunity for some shoplifting introduced by the [previous administration]".

40. The manifesto commitments build on the

National Police Chiefs' Council's Retail Crime Action Plan[14], published in October 2023, which committed police forces across England and Wales to prioritise police attendance at the scene where violence has been used towards shop staff, where an offender has been detained by store security, and where evidence needs to be secured and can only be done by police personnel. Additionally, where CCTV or other digital images are secured, police will run this through the Police National Database to further aid efforts to identify prolific offenders or potentially dangerous individuals.

Child criminal exploitation

41. CCE is a form of child abuse where a child is exploited into taking part in criminal activity, often by gangs and organised criminal networks. CCE is typified by an imbalance of power that is unduly exercised by an adult who uses a child to commit crime for their or another adult's benefit. A child victim cannot consent to their own abuse and exploitation, which they often do not recognise themselves.

[14] National Police Chiefs' Council Retail Crime Action Plan (www.nbcc.police.uk)

42. CCE occurs across a variety of crime types. For example, children being exploited to work in cannabis factories, move drugs or money across the country, commit financial fraud, shoplift or pickpocket. Child criminal exploitation through county lines remains a significant risk to children, with 2,888 children recorded as having county lines involvement in 2023/24.[15]

43. Although the Government estimates suggest there are approximately 14,500 children identified by social services in England as being exploited or at risk of CCE,[16] Criminal Justice System data show that only around 120 individuals are charged per year under existing offences, including under the Modern Slavery Act 2015 and inchoate offences under sections 44 to 46 of the Serious Crime Act 2007, and only around 60 are sentenced.[17] This suggests a potential enforcement gap between the scale of offending and cases enforced under existing legislation. In addition,

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[15] https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/publications-log/national-crime-coordination-committee/2024/county-lines-strategic-threat-risk-assessment.pdf

[16] Statistics: children in need and child protection - GOV.UK (www.gov.uk)

[17] Criminal Justice System statistics quarterly: June 2024 - GOV.UK (www.gov.uk)

the Government is of the view that existing offences do not properly encapsulate the specific physical, psychological and emotional harm done to the child through criminal exploitation.

44. The Government was elected with a manifesto commitment to "introduce a new offence of criminal exploitation of children, to go after the gangs who are luring young people into violence and crime". The new offence was announced by the Home Secretary on 22 February 2025. Clause 17 provides for a standalone CCE offence which will target the adult as the primary offender in causing harm to the child by exploiting them to commit criminal activity, whether or not the child goes on to commit criminality. The Government intends that this will provide a strong deterrent to gangs from enlisting children by charging them as child exploiters and create greater awareness of CCE to improve identification of victims. In addition, Clauses 18 to 31 and Schedule 4 provide for new civil preventative orders, the purpose of which are to prevent CCE conduct before it occurs or to prevent it from reoccurring.

Cuckooing (controlling another's home for criminal purposes)

45. Cuckooing (controlling another’s home for criminal purposes) is a highly exploitative practice whereby criminals target and take over the homes of vulnerable people for the purpose of illegal activity. It is often associated with anti-social behaviour and the exploitation of children used by criminal gangs inside properties.

46. Currently a range of offences can be used to prosecute criminal activity commonly associated with cuckooing. For example, the inchoate offences under sections 44 to 46 of the Serious Crime Act 2007 may apply where cuckooing amounts to an act of encouraging or assisting the commission of an offence. Any criminal activity carried out from the cuckooed property would also already be an offence, for example, where a cuckooed property is used to supply illegal drugs, offences under the Misuse of Drugs Act 1971 may apply. It is the Government’s view, however, that the existing legal framework does not reflect the harm caused to victims when their home, a place where they should feel safe, is taken over by criminals.

47. As such, Chapter 2 of Part 4 provides for a new bespoke criminal offence of cuckooing, which aims to strengthen the legal framework

to tackle this form of offending. Engagement by the Home Office with a variety of stakeholders on the merits and scope of a new offence has helped inform the development of these provisions, which will criminalise the control, however obtained, over another person's dwelling without their consent for the purposes of enabling it to be used in connection with specified criminal activity. The specified criminal activity includes the types of criminal activity that cuckooing is typically used to facilitate, for example, drugs offences, sexual offences and offensive weapons offences, among others. The new offence was announced by the Home Secretary on 22 February 2025.

Child sexual abuse material: offences

48. The creation, possession and distribution of child sexual abuse material ("CSAM") is already unlawful. The relevant criminal law includes:

- Section 1 of the Protection of Children Act 1978 which makes it an offence to take, or permit to be taken, or to make, distribute or show an indecent photo or pseudo-photograph (this covers photo-realistic generated images) of a child.

- Section 62 of the Coroners and Justice Act 2009 which makes it an offence to be in possession of a prohibited image of a child, which is an image that is pornographic, ‘grossly offensive, disgusting or otherwise of an obscene character’, focus on the child’s genitals or portray sexual acts. This offence is targeted at non-photographic images, such a computer-generated images, cartoons and drawings.

- Section 160 of the Criminal Justice Act 1988 which makes it an offence for a person to have in their possession any indecent photograph or pseudo-photograph of a child.

- Section 69 of the Serious Crime Act 2015 which provides for an offence of being “in possession of any item that contains advice or guidance about abusing children sexually” which targets so-called “paedophile manuals”.

- Sections 44 and 45 of the Serious Crime Act 2007 which provide for the inchoate offences of intentionally encouraging or assisting the commission of an offence, or encouraging or assisting the commission of an offence believing it will be committed. These offences can be prosecuted in connection

with making or producing an indecent photograph or pseudo-photograph of a child.

49. In October 2023 the Internet Watch Foundation published a report which identified a significant and growing threat where artificial intelligence ("AI") technology is being exploited to produce CSAM. The report revealed the presence of over 20,000 AI-generated images on a dark web forum in one month where more than 3,000 depicted criminal child sexual abuse activities. Since then, the issue has escalated and continues to evolve. An updated report published in July 2024[18] showed that over 3,500 new AI-generated criminal child sexual abuse images have been uploaded on the same dark web forum as previously analysed in October 2023.

50. AI generative technology is easy to use to produce a high volume of images in a short period of time. The most convincing AI generated images are visually indistinguishable from real images. AI generated imagery is produced by machine

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[18] How AI is being abused to create child sexual abuse material (CSAM) online (iwf.org.uk)

learning models that have been trained on huge datasets of existing imagery. There is significant evidence that offenders are taking mainstream AI models, and further adapting these to create bespoke models optimised to create CSAM. While the use of AI to create CSAM would be an offence under section 1 of the Protection of Children Act 1978 and a person giving information to another individual about how they could use an AI model to create the indecent imagery can be prosecuted under sections 44 or 45 of the Serious Crime Act 2007, the existing criminal law does not cover the production, possession, distribution or advertisement of digital models or files designed to be used to create CSAM. Clause 36 addresses this gap in the criminal law.

51. Section 69 of the Serious Crime Act 2015 makes it an offence to be in possession of any item that contains advice or guidance about abusing children sexually, including to take, distribute or possess an indecent photograph of a child (so called “paedophile manuals”). This offence excludes pseudo-photographs and, as such, there is a gap in current legislation which allows individuals to possess detailed guidance on how to create AI-generated child sexual abuse material. Clause 37 addresses this gap by providing for a new

offence that will criminalise the possession of guidance for on how to use AI to abuse children sexually, by amending the offence to include advice or guidance on making pseudo-photographs or prohibited images.

52. The Independent Inquiry into Child Sexual Abuse found that the growing scale of child sexual abuse, including access to the most horrific and depraved indecent images, is facilitated by the internet[19]. The scale of the child sexual abuse threat is vast. The Office of National Statistics estimate that 7.5% of adults experienced child sexual abuse before they were 16. This is equivalent to 3.1 million people. The National Crime Agency's National Strategic Assessment 2024[20] notes that the CSA threat has increased in complexity, severity, and scale over the past 12 months. The volume of indecent images of children ("IIOC") identified online remains high and is increasing. The Internet Watch Foundation reported that 275,293 web pages were confirmed to contain IIOC in 2023.

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[19] The Independent Inquiry into Child Sexual Abuse, "The Internet" , Investigation Report, March 2020

[20] NSA_2024_Website_-_PDF_Version_1.pdf

53. The great majority of online CSA offending is underpinned by networking between offenders, whether through active engagement in forums and chat, or via passive use of shared spaces and resources.

54. For such online networks and forums to operate and continue to be usable by offenders it is necessary for a person to provide and maintain the service, including by hosting the website, server creation, writing code, site maintenance and debugging. In addition to the provision of such technical support, a person may act as a moderator of website, forum or messaging group, for example controlling access and setting conditions for membership. Offenders who set up, maintain or moderate CSA sites or groups can be charged with offences relating to possession and distribution of indecent images of children where appropriate. These offences do not reflect the serious, sustained, and organised offending undertaken by individuals who choose to assume leadership positions in online groups created to share or discuss child sexual abuse, consequently Clauses 38 to 41 provide for a new offence which criminalise the provision of a service on the internet which

facilitates child sexual abuse and make ancillary provision.

55. The Home Secretary announced these measures on 2 February 2025.

Sexual activity in the presence of a child

56. The Sexual Offences Act 2003 ("the 2003 Act") contains a range of offences to target those situations where a person (A) intentionally engages in sexual activity in the presence of either a child or a person with a mental disorder (B), or in a place from which A can be observed by B. At present the offences require the prosecution to prove that A knows or believes that B is aware of the activity, or A intends that B be aware of the activity.

57. The police and the Crown Prosecution Service ("CPS") have expressed concerns about the difficulties in prosecuting a number of cases involving this harmful type of sexually motivated behaviour where there was insufficient evidence that the perpetrator knew, believed, or intended that the child or mentally disordered person was aware of the sexual activity.

58. To address such concerns, Clause 42 amends the relevant 2003 Act offences to remove this requirement and ensure that intentional sexual activity in the presence of a child or person

with a mental disorder is an offence where A acts for the purpose of obtaining sexual gratification from the mere presence of B regardless of whether A knows or believes that B is aware of the sexual activity, or intends that B be aware of the sexual activity.

Grooming aggravating factor

59. In recent years, there have been a number of high-profile cases involving 'grooming gangs' (groups of offenders involved in child sexual exploitation) including in Rotherham, Telford, Newcastle, Rochdale, Oxford and Oldham. In its Child Sexual Exploitation by Organised Networks Investigation Report published in February 2022[21], the Independent Inquiry into Child Sexual Abuse recommended "the strengthening of the response of the criminal justice system by the government amending the Sentencing Act 2020 to provide a mandatory aggravating factor in sentencing those convicted of offences relating to the sexual exploitation of children". In her oral statement on child sexual exploitation and abuse on 6 January 2025 (official Report, columns 631 to 633), the Home Secretary, the

[21] child-sexual-abuse-organised-networks-investigation-report-february-2022.pdf

Rt Hon Yvette Cooper MP, committed to "legislate to make grooming an aggravating factor in the sentencing of child sexual offences, because the punishment must fit the terrible crime". The statutory aggravating factor will target grooming behaviour and will include (but is not limited to) individuals involved in grooming gangs.

60. Clause 43 creates a statutory aggravating factor that will require sentencing courts to treat grooming behaviour as an aggravating factor when considering the seriousness of specified child sex offences. It will capture offenders whose offending is facilitated by, or involves, the grooming of a person under 18. The grooming itself need not be sexual and may be undertaken by the offender or a third party and committed against the victim of the underlying offence or a third-party. An aggravating factor makes an offence more serious and is taken into account by the Court when deciding the length of a sentence. It will remain open to the court to consider grooming an aggravating factor in other contexts where the court considers it to be relevant to its assessment of the seriousness of the offending.

Child sexual abuse material: detection of CSAM at the UK Border

61. The NCA’s National Strategic Assessment[22] indicates the presence of between 710-000 and 840,000 individuals in the UK who represent a sexual risk to children. The vast majority of these are not identified. Intelligence indicates that many of these individuals travel overseas from the UK to engage in sexual contact with minors, with 23 locations featuring as particularly high risk for British national offenders.

62. Many of those who pose a direct risk to children travel frequently across the UK border to commit child sexual abuse offences abroad. The border represents a unique chokepoint through which individuals leaving or entering the UK must pass, at which point they can be questioned, and their baggage searched for ‘prohibited goods’ as defined by the Customs and Excise Management Act 1979 (“CEMA”). The importation of obscene or indecent articles is prohibited by section 42 of the Customs Consolidation Act 1876. Similarly, the export of child sexual abuse material is also illegal because mere possession of the material is

[22] NSA 2024 - Child Sexual Abuse - National Crime Agency

illegal, and there is no right to export an item the possession of which is itself unlawful. Consequently, such articles or material may be seized by Border Force officers exercising powers under CEMA.

63. Before the development of digital media devices, CSAM would typically present in the form of printed photographs, video cassettes or DVDs. As such, it would be detected routinely via a baggage search under CEMA. However, CSAM is now usually held digitally and within the memory of digital devices such as phones, tablets and laptops – all of which are protected by passcodes or biometrics. Whilst, acting under CEMA, a Border Force officer is able to compel an individual to present digital devices, the Act does not enable the officer to require that the digital device is unlocked in furtherance of a search to detect CSAM. Effectively, this prevents Border Force from detecting digital CSAM in the manner previously possible.

64. In recent years, the Home Office has developed the Child Abuse Image Database ("CAID") – a repository of all known CSAM detected during UK Police investigations. The CAID now holds millions of unique files. In parallel to the CAID, the capability now exists

to undertake a rapid scan of a digital device to determine whether known material is held within its memory. Accordingly, it is possible to scan a digital device (such as a phone) for CAID material. As a scan is not a download, it will take approximately 15 seconds to identify whether CAID material is or is not present. This capability has now been operationalised at the UK Border, with trials generating significant intelligence around individuals representing a sexual risk to children – leading to investigation and arrests. This has included merchant sailors coming into the UK for shore leave as well as prolific travellers to high-risk countries. As a device is required to be unlocked for a scan to go ahead and there is no legal power that Border Force can use to require a person to unlock their device, all scans to date have been possible only where the individual has consented. Inevitably, large numbers of individuals whom Border Force suspects may represent a sexual risk to children do not consent. Follow-up with UK police highlights some have committed offences subsequently which would have been prevented had CSAM been detected in their possession at the border.

65. Clause 44 addresses this gap in the powers of Border Force officers by enabling them to

require an individual entering or leaving the UK to unlock or unblock their digital devices for examination, where that officer reasonably suspects that the device may contain evidence of child sexual abuse material.

66. The reasonable grounds threshold may be met as a result of identifying paraphernalia associated with the commission of sexual offences against children during baggage inspection (for example, lubricants, condoms, children's toys and underwear) of an individual travelling to or returning from a known high-risk location. If the individual refuses, then the existing offence of 'obstruction of an officer of Revenue and Customs' under section 31 of the Commissioners for Revenue and Customs Act 2005 would be triggered – which would enable the arrest of the individual and seizure of the device, thereby creating a double-lock.

Duty to report child sex offences

67. In its final report to the Government (October 2022), the Independent Inquiry into Child Sexual Abuse recommended the introduction of a 'mandatory reporting' regime for child

sexual abuse in England[23]. Work which had been undertaken to implement this recommendation fell in May 2024 upon dissolution of Parliament ahead of a General Election. On 6 January 2025, the Home Secretary announced that the Government would introduce mandatory reporting of child sexual abuse in England through the Crime and Policing Bill.

68. Chapter 2 of Part 5 gives effect to the mandatory reporting duty. It places a requirement on adults engaged in certain roles in England to report promptly to the police or local authority when they are made aware of child sexual abuse; either by being told about it by a child or perpetrator or witnessing the abuse themselves. If they fail to do so, they may be referred to their professional regulator (where applicable) or the Disclosure and Barring Service, who will consider their suitability to continue working in regulated activity with children. Clause 52 also creates a new criminal offence of preventing or deterring a person from complying with their reporting

[23] The Report of the Independent Inquiry into Child Sexual Abuse, IICSA, 20 October 2022

duty.

Disclosure of information held by the police for the purpose of preventing sex offending

69. The Child Sex Offender Disclosure Scheme is often known as “Sarah’s Law” after Sarah Payne, the victim of a high-profile murder in 2000. The principal aim of the scheme is to provide parents, guardians and carers with information that will enable them to better safeguard their children’s safety and welfare. It introduced the principle of a two-way disclosure by enabling the public to ask about the history of a person who has access to their child. The scheme was rolled out nationally in 2011 to enable limited public access to information about registered sex offenders. The Home Office published updated guidance to police forces on the operation of the scheme in April 2023.[24]

70. Clause 55 puts the guidance underpinning the scheme on a statutory footing by conferring a power on the Secretary of State to issue statutory guidance to the police regarding their disclosure of information to prevent sexual

[24] Child sex offender disclosure scheme guidance, Home Office, 3 April 2023

offending.

Offences relating to intimate photographs or films and voyeurism

71. Intimate image abuse is the non-consensual taking or sharing of photographs or film that show or appear to show the victim in an 'intimate state' as defined in section 66D(5) Sexual Offences Act 2003 (that is, with their breasts, genitals or buttocks (partially) exposed, engaged in sexual behaviour or toileting). It is a gross violation of the victim's bodily and sexual autonomy and can be highly intrusive, humiliating and distressing. The Government therefore considers it important that the legal framework deals effectively with this behaviour so that victims have the protection they deserve.

72. Some of the behaviour of taking an intimate image without consent may in certain circumstances already be caught by existing offences, for example by the voyeurism offence at section 67(3) of the Sexual Offences Act 2003, but there are several limitations with the application of these offences. The Law Commission, in their July 2022 report,

"Intimate Image Abuse"[25], recommended a package of offences to update the laws relating to taking and sharing intimate images without consent. Sharing offences were previously introduced via the Online Safety Act 2023.

73. The new offences provided for in Schedule 8 to the Bill strengthen the law in relation to the taking of intimate images without consent and the installation of equipment with the intention of enabling either oneself or another to do so.

74. Where applicable, victims will be able to qualify for anonymity and special measures. Those convicted of offending for the purpose of sexual gratification may be subject to the sex offender notification requirements and courts will be able to make a deprivation order under section 153 of the Sentencing Act 2020 to confiscate images resulting from the commission of one of these offences. The measures were announced by Alex Davies-Jones, Parliamentary Under-Secretary of State for Justice, in a written ministerial statement on 7 January 2025 (HCWM354).

[25] Intimate Image Abuse Report - Law Commission

Exposure

75. The offence of exposure in section 66 of the Sexual Offences Act 2003, requires that the perpetrator intends that someone will see the exposed genitals and that they will be caused alarm or distress.

76. Evidence submitted to the Law Commission, (Modernising Communications Offences: A final report, July 2021) suggested that the intention to cause alarm or distress was too narrow a fault element. They highlighted that sexual gratification or a desire to humiliate the victim were both key drivers of exposure behaviour.

77. Currently, where a person exposes their genitals to another with the intent to humiliate, or for the purpose of obtaining sexual gratification, and does not also have an intent to cause alarm or distress, the behaviour would not be captured by the existing exposure offence at section 66 of the 2003 Act.

78. Acting only with the intent of obtaining sexual gratification is insufficient to commit the section 66 offence and this is reflected in the CPS guidance which states: “If the purpose in exposing their genitals is to obtain sexual gratification this is not sufficient, and an offence of outraging public decency should be

considered.”

79. The Government, therefore, considers that it is necessary to amend the specific intent elements of the section 66 offence so that they capture circumstances where the purpose in exposing their genitals is to humiliate or to obtain sexual gratification. This also means that the offence is consistent with the analogous offence at section 66A of the 2003 Act. Clause 57 makes the necessary amendment to section 66.

Sexual activity with a corpse

80. Following an internal review of section 70 of the 2003 Act, the then Government concluded that the maximum penalty should be raised for the offence of sexual penetration of a corpse and that non-penetrative sexual activity with a corpse should also be captured by the criminal law. Clause 58 replaces the existing offence at section 70 of the 2003 Act with a broader offence of ‘sexual activity with a corpse’ with a maximum penalty of seven years’ imprisonment where the offence involved penetration and five years’ imprisonment for non-penetrative sexual touching.

Management of sex offenders

81. Under Part 2 of the 2003 Act, offenders who receive a conviction, caution, or finding for specified sexual offences are automatically

required to provide the police with a record of (amongst other things) their: name, address, date of birth, national insurance number, any foreign travel, residence in a household with a child under the age of 18, their bank account and credit card details, and information about their passports or other identity documents. This must be done annually and whenever their notified details change.

82. Registered sex offenders ("RSOs") are subject to Part 2 of the 2003 Act and are eligible for management under the multi-agency public protection arrangements ("MAPPA"). On 31 March 2024, there were 70,052 qualifying sex offenders in the community under MAPPA management. MAPPA is a statutory arrangement established by section 325 of the Criminal Justice Act 2003 ("the CJA 2003"). That provision requires local criminal justice areas in the 42 criminal justice areas in England and Wales to work together to manage the risk posed by sexual, violent and other high-risk offenders.

83. The Home Office commissioned an independent report into the police's management of sex offenders in the community in 2022, which retired Chief Constable Mick Creedon undertook in 2022. The Home Office published his report

'Independent review of police-led sex offender management' in April 2023. Chief Constable Creedon made 38 recommendations to improve the consistency, efficiency and effectiveness of the police's management of sex offenders. Responsibility for taking forward these recommendations lies with the Government, Police and Crime Commissioners, police forces, the National Police Chiefs' Council ("NPCC"), HM Inspectorate of Constabulary and Fire & Rescue Services, the College of Policing and HM Courts and Tribunals Service.

84. Chief Constable Creedon made several recommendations to the Home Office regarding the notification requirements for registered sex offenders. These recommendations included:

- that the Home Office review the details that RSOs are currently required to notify, and if necessary to improve the police's risk management of RSOs, incorporate additional details such as email addresses and phone numbers;
- that the application of certain notification requirements be made dependent on the police's risk assessment of an RSO;
- that the police be able to receive online or remote notification where appropriate; and

- that the police be given a power to review and if suitable remove indefinite notification requirements.

85. Chapter 4 of Part 5 of the Bill include reforms informed by consultation with the police that act on the recommendations above to strengthen the efficiency and effectiveness of notification regime by:

- Requiring RSOs to give advance notification where they will be absent from their home address (while remaining in the UK) for five or more days and of their travel and accommodation arrangements in that time, including the date that the RSO will leave their home address and their date of return to that address.
- Requiring certain RSOs to notify the police before entering specified premises where children are present. This will automatically apply to RSOs with convictions for sexual offences against children. The police will also be able to apply the requirement to notify entry into a specified premises where children are present to offenders without such convictions but who pose a risk of sexual harm to children generally or particular children.
- Give the police a power to authorise RSOs

to give notification virtually in specified circumstances. Virtual notification must be via a means of communication that enables the offender and officer to see and hear each other in real time. This will address the challenge Chief Constable Creedon identified in that RSOs in particular localities have difficulty reaching a police station within the statutory three-day time limit to notify changes to their details, resulting in unintentional but unavoidable breaches of the notification requirements.

- Give the police a power, without an application for review having been made, to proactively consider and if suitable discharge an RSO's indefinite notification requirements after the minimum duration has elapsed. The minimum durations for indefinite notification are 15 years for adult offenders and eight years for juveniles. This will address the issue identified by Chief Constable Creedon whereby offenders subject to indefinite notification requirements do not expeditiously apply for their removal when appropriate, resulting in many offenders remaining subject to the notification requirements where their risk level does not require it.

- Reducing from superintendence to inspector the rank of a police officer able to authorise warrant applications for the police to enter and RSO's home to assess their risk of sexual harm.

86. The Government is also imposing a new restriction on RSOs, which will in certain circumstances prohibit them from applying for identity documents in a new name. This is in response to public and parliamentary concern over several high-profile cases in which a change of name preceded sexual reoffending.

87. The changes contained within this Bill will:

    - Require RSOs to notify the police of an intended change of name at least seven days in advance of using it, or if that is not reasonably practicable, as far in advance of their using it as it reasonably practicable;
    - Where the police consider it necessary to protect the public or children or vulnerable adults from sexual harm, enable them to serve a notice on offenders requiring them to seek the police's authorisation before applying to change their name on a specified identity document (namely, a UK passport, driving licence or immigration document).

88. The police will be able to exercise the power in the second measure – the “police authorisation” measure – when satisfied that it is necessary to protect the public, or any particular members of the public, or protect children or vulnerable adults generally or any particular children or vulnerable adults overseas, from sexual harm. Where a name change has been approved by the police, an RSO will be able to apply for an identity document in a new name without committing a criminal offence.

89. RSOs that have received a notice must seek the police’s authorisation to change a name on an identity document on the basis that they meet certain conditions set out in the Bill or specified by the Secretary of State in secondary legislation. The conditions will be to enable a change of name to be authorised where it is a consequence of marriage, a religious conversion in accordance with legitimate practice, a change of gender or where the police consider that there are exceptional circumstances not covered by one of the specified conditions above.

90. The police will retain a discretion to reject applications that meet the criteria where they consider the imperative to protect the public from sexual harm requires it.

Stalking

91. Stalking is a prevalent form of VAWG with 3.1% of persons over 16 (1.5 million) experiencing it in the year ending June 2024 according to the Crime Survey for England and Wales[26]. The police in England and Wales and the CPS define stalking as "a pattern of unwanted, fixated and obsessive behaviour which is intrusive. It can include harassment that amounts to stalking or stalking that causes fear of violence or serious alarm or distress in the victim"[27]. In November 2022, the Suzy Lamplugh Trust, on behalf of the National Stalking Consortium, submitted a super-complaint on the police response to stalking[28]. This set out several concerns which outlined systemic issues with the police response in England and Wales, which have since been investigated by the College of Policing, His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, and the Independent Office for Police Conduct. A report of their findings was published in September 2024 titled, "The police response to stalking: Report

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[26] Crime in England and Wales - Office for National Statistics

[27] Stalking Protection Orders | The Crown Prosecution Service

[28] Download.ashx (suzylamplugh.org)

on the super-complaint made by the Suzy Lamplugh Trust on behalf of National Stalking Consortium"[29]. This report highlighted police misunderstanding and misidentification of stalking, resulting in failings to provide adequate safeguarding advice to victims of stalking. In its 2024 general election manifesto, the Government committed to "strengthen the use of Stalking Protection Orders and give women the right to know the identity of online stalkers". In line with these manifesto commitments and as part of the Government's response to the super-complaint, the Minister for Safeguarding and Violence Against Women and Girls, Jess Phillips MP, announced in an oral statement on 3 December 2024 (Official Report columns 182 to 184) that the Government would legislate to:

- "introduce a power to issue multi-agency statutory guidance on stalking, which will set out for the first time a robust framework for how frontline professionals should define stalking and better work together";

[29] The police response to stalking: Report on the super-complaint made by the Suzy Lamplugh Trust on behalf of National Stalking Consortium

- “introduce statutory “right to know” guidance that will set out the process by which the police should release identifying information about anonymous stalking perpetrators to victims”; and
- “enable the courts to impose stalking protection orders, of their own volition, which can impose restrictions and positive requirements on those who pose a risk, on conviction and on acquittal”.

92. Part 6 of the Bill gives effect to these measures. The Government responded to the supper-complaint in a letter to the investigating bodies on 21 November 2024[30].

Administering etc harmful substances (including by spiking)

93. The Government recognises the growing concern amongst the public and law enforcement about the practice commonly called “spiking”. Spiking generally means the administration of a substance without consent, and usually with an intent to incapacitate or cause another person harm. It can occur through a variety of mechanisms, such as

[30] Super-complaint Government Response Letter

adding a substance to food, drink, cigarette or vape, or administering the substance via injection. In a debate pack published by the House of Commons Library on 13 December 2023,[14] reference was made to the receipt of 6,732 reports of spiking to the police, which included 957 needle spiking reports during the period May 2022 to April 2023. Additionally, according to the NPCC[15] on average, the police receive 561 reports of spiking a month.

94. Spiking is already illegal and can be prosecuted under a range of criminal offences depending on the circumstances of the case. The administration of a harmful substance, for example by injection, can amount to an assault. The administration of a harmful substance can also be a specific offence depending on the harm caused or the intention behind the administration. The offences that relate directly to spiking include: section 61 of the Sexual Offences Act 2003 (administering a substance with an intent to engage in sexual activity), and sections 23 (maliciously administering poison etc so as to endanger life or inflict grievous bodily harm) and 24 (maliciously administering poison etc with intent to injure, aggrieve or annoy any other person) of the Offences Against the Person Act 1861 (“OAPA 1861”). Sections 23 and 24 of the OAPA 1861, also criminalises non-

spiking behaviour, for example, spraying someone with pepper spray or throwing faeces or urine in the face of a prison officer.

95. Clause 73 gives effect to the Government's manifesto commitment to "introduce a new criminal offence for spiking to help police better respond to this crime". It does so by repealing sections 22, 23 and 25 of the OAPA 1861 and replacing section 24 with a new single administering a harmful substance (including by spiking) offence.

Encouraging or assisting serious self-harm

96. The Government acknowledges that encouragement of suicide or self-harm falling short of suicide is a matter of concern. It is already an offence, under the Suicide Act 1961 (and the Criminal Justice Act (Northern Ireland) 1966), to do an act capable of encouraging or assisting another person to take, or attempt to take, their own life. In their Modernising Communications Offences report[31], published in July 2021, the Law Commission considered how the criminal law might best tackle encouragement of self-harm.

[31] Modernising Communications Offences: Final Report, Law Commission July 2021

Recognising that any criminal law solution in this complex area must be properly constrained to avoid criminalising vulnerable people who share their experiences of self-harm or those offering them support, the Commission recommended a narrow offence, modelled on the Suicide Act offence, that targets the deliberate encouragement or assistance of serious self-harm in order to avoid criminalising vulnerable individuals.

97. The Online Safety Act 2023 gave partial effect to the Law Commission's recommendation by introducing a new offence of encouraging or assisting serious self-harm by means of verbal or electronic communications, publications or correspondence ("the communications offence"). To give full effect to the recommendation, Clauses 74 and 75 repeal the communications offence insofar as it applies to England and Wales, and Northern Ireland, and replaces it with a broader offence that covers encouraging or assisting serious self-harm both by means of communication, and in any other way. For example, direct assistance, such as providing a bladed article with which to self-harm, will be captured by this offence. The broader offence will be, in this regard, consistent with the Suicide Act and Criminal Justice Act (Northern Ireland) offences which are not limited to encouraging

or assisting suicide by means of communication.

Child abduction

98. Section 1 of the Child Abduction Act 1984 Act ("the 1984 Act") makes it an offence for a parent, or person with similar responsibility, to take or send a child out of the UK without the consent of the other persons with responsibility for the child, or of the court. Section 2 of the 1984 Act generally makes it an offence for a person other than a parent to take or detain a child out of the control of its parents, whether or not the child is taken out of the UK.

99. The case of *R (on the application of Nicolaou) v Redbridge Magistrates' Court*[32] considered that the offence under section 1 of the 1984 Act could only be committed by 'taking or sending' the child out of the UK, and therefore confirmed that it is not a criminal offence under section 1 for a parent who has lawfully removed a child from the UK, to detain that child outside the UK for longer than the permitted period.

[32] [2012] EWHC 1647 (Admin), [2012] 2 Cr App R 23

100. In their November 2014 report “Simplification of the Criminal Law: Kidnapping and Related Offences”[33], the Law Commission examined the case of *Nicolaou* and concluded that the section 1 offence should be amended to include the case where the connected person having taken or sent the child out of the UK with the appropriate consent, keeps or detains that child outside the UK without the appropriate consent. They considered this would provide a statutory solution to the *Nicolaou* problem. Clause 76 gives effect to the Law Commission’s recommendation.

Safeguarding vulnerable groups: regulated activity

101. The Disclosure and Barring Service (“DBS”) issues criminal record checks in England and Wales to support employers and others to make decisions about the suitability of individuals for particular roles. There are four levels of criminal record certificate issued by DBS: basic, standard, enhanced and enhanced with barred list(s) check, with increasing levels of relevant information disclosed on each proportionate to the role

[33] Simplification of the Criminal Law: Kidnapping and Related Offences - Law Commission

being applied for. Legislation (principally the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”)) prescribes which level of check can be undertaken for which role.

102. The DBS maintains two lists of individuals whom it has barred from working in regulated activity. These are known as the Adults’ and Children’s Barred Lists. Anyone working, or applying to work, in regulated activity is eligible for an enhanced criminal record certificate with a check of the relevant barred list(s) issued by the DBS. In addition to criminal record information, this will show whether an individual is on one or both of the lists. It is an offence for someone to work in regulated activity from which they have been barred and an offence for an employer to employ someone in regulated activity from which they are barred.

103. Regulated activity is defined in Schedule 4 to the 2006 Act. In broad terms it covers sensitive roles working closely with children and vulnerable adults, for example, teaching and supervising children. However, Schedule 4 provides an exemption for “any such work which is, on a regular basis, subject to the day-to-day supervision of another person who is engaging in regulated activity relating to

children". This supervision exemption, introduced through the Protection of Freedoms Act 2012, means that supervised volunteers in specified settings such as schools, and supervised roles (paid and unpaid) in other settings involving work with children are not in regulated activity.

104. Not being in regulated activity has the following effects:

i) whilst these roles remain eligible for an enhanced check, it does not include a check of the Children's barred list;
ii) a person who is on the children's barred list is not committing an offence if they work in these supervised roles;
iii) an employer who engages a barred person in a supervised role is not committing an offence;
iv) should an employer dismiss a person in a supervised role for causing harm, or posing a risk of harm to a child, they do not have to refer that person to DBS so that they can be considered for barring, a duty which applies to regulated activity providers, and;
v) supervised volunteers in schools are not

subject to the requirement (laid out in Keeping Children Safe in Education[34]) for an enhanced with children's barred list check which applies to those in regulated activity.

105. In its final report to the Government (October 2022), the Independent Inquiry into Child Sexual Abuse recommended that "the UK government enables any person engaging an individual to work or volunteer with children on a frequent basis to check whether or not they have been barred by the Disclosure and Barring Service from working with children. These arrangements should also apply where the role is undertaken on a supervised basis" (recommendation 9).

106. Clause 77 gives effect to this recommendation. As a result, these roles will be defined as regulated activity, regardless of whether they are supervised or not. This will enable employers/organisations to access enhanced DBS checks which include a check of the children's barred list and reduce the risk of a

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[34] Keeping children safe in education - GOV.UK

barred person working with children in a supervised capacity.

Electronic devices used in vehicle theft

107. Vehicle theft offences continue to be high. The Crime Survey for England and Wales ("CSEW") showed there were 732,000 vehicle-related thefts, year ending September 2024[35]. The Office for National Statistics ("ONS") publish the number of police recorded crime offences; from September 2023 to September 2024, there was a total of 375,048 vehicle related thefts. 188,517 of these offences were theft from a vehicle and 132,412 were theft of a motor vehicle.[36]

108. Vehicles are predominantly stolen using electronic devices to gain entry and start the vehicle without a key, and this crime is predominantly committed by organised crime groups. Stolen vehicles are often shipped abroad through organised crime networks. Profit from the theft of vehicles is used to fund other serious and organised crime. The Metropolitan Police Service estimates that in

[35] Crime in England and Wales - Office for National Statistics

[36] Police recorded crime and outcomes open data tables - GOV.UK (www.gov.uk)

London, these devices are used in approximately 60% of vehicle theft. ONS data indicated that from April 2019 to March 2020, offender manipulated signal from remote locking device was 36% of vehicle thefts[37]. Though predominantly committed by organised crime groups, there are also opportunistic criminals who are looking for something to sell on the stolen market including the vehicle itself.

109. These devices include signal jammers, signal amplifiers, devices used to access a vehicle's 'CAN bus' (wiring system[38]), and a device which when touched against the door handle of the vehicle can process the signal from the vehicle and calculate an unlock code.

110. Clauses 78 and 79 make it illegal to import, make, supply, offer to supply and possess electronic devices used to steal vehicles, placing the burden on the defendant to prove they were not intending to steal a vehicle, or

[37] Nature of crime: vehicle-related theft - Office for National Statistics (ons.gov.uk)

[38] The CAN bus is the vehicle's wiring system that allows interconnection between the vehicle's systems. When the device is attached to the wiring of the CAN bus system the electronic functions of the vehicle can be accessed and manipulated, for example the vehicle can be unlocked, and the ignition started.

suspect the device would be used to steal a vehicle.

SIM farms

111. SIM (subscriber identity module) farms are electronic devices that are capable of using five or more SIM cards simultaneously or interchangeably and which allow the user to send Short Messaging Service (“SMS”) texts or phone calls in large numbers over the telecommunications network.

112. Whilst there is a limited set of legitimate uses for SIM farms, they are frequently used by criminals engaged in fraud to send fraudulent messages to a large number of recipients at once. These messages frequently impersonate family members or trusted institutions such as banks in order to persuade the recipient to reveal personal information such as bank details or passwords or to transfer funds to a criminal. They can also send out malicious links that, once clicked on by the recipient, download malware onto the recipient’s device. SIM cards in SIM farms can also be used by criminals to receive a one-time passcode to set up online accounts that require such a passcode for verification purposes. This allows criminals to avoid having to provide their own mobile phone’s SIM details when setting up the online account. In this use case, SIM farms

are used only to receive these verification messages rather than *send* texts or place calls. SIM farms are available on online marketplaces, at low prices, with limited or no requirement to verify the buyer's identity. This makes them an easy access, low-cost option for criminals looking to extract personal data fraudulently.

113. In 2023, the then Government consulted on proposals to ban (through the introduction of a new criminal offence) the possession and supply of SIM farms in the UK.[39]. The consultation invited views on the proposed definition of SIM farms to ensure it accurately captures the devices currently in use, and views on the proposal to apply the measure only to devices with more than four SIM slots. In addition, the consultation sought views on whether other technologies used almost exclusively to commit fraud should be included within the ban. To ensure that the Government of the day can respond to new threats identified in the future, the consultation also sought views on whether the Government should be able to update the list to ban other

[39] Preventing the use of SIM farms for fraud: consultation, Home Office, 3 May 2023

technologies and articles through secondary legislation.

114. Responses to the consultation found that SIM farms are used to attempt fraud on a large scale via texts, robocalling campaigns and live calls.[40] Following the consultation, the Government intends to give effect to a ban on SIM farms. The Government also intends to provide for the extension of the ban on possessing and supplying other articles used to perpetrate electronic communications fraud that are specified in regulations. Clauses 80 to 85 give effect to these proposals.

Public order

115. The regular protests following the events in Israel and Gaza on 7 October 2023 highlighted gaps in public order legislation, principally the Public Order Acts 1986 and 2023. In response to the policing challenges arising from such protests, on 8 February 2024, the then Home Secretary announced a package of new measures to give the police the tools they need to maintain public order and safety. These measures included the following:

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[40] Preventing the use of SIM farms for fraud: government response, [November 2023]

- A new criminal offence of climbing on war memorials. Under section 1 of the Criminal Damage Act 1971 anyone who, without lawful excuse, destroys or damages any property belonging to another, intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged, commits an offence. Whilst this may capture instances where damage is caused to a war memorial, a person who climbs a war memorial but does not damage it would not be guilty of an offence. This new offence will ensure the police have the powers they need to tackle this form of disorderly behaviour and help them maintain public order. The offence will apply to those war memorials designated as Historic England National Heritage Category I sites which are publicly accessible. This includes key memorials such as the Cenotaph.
- A new criminal offence of possession of a pyrotechnic article at a protest. Some existing offences restrict or prohibit pyrotechnic use in specific circumstances. For example, section 54 of the Metropolitan Police Act 1839 prohibits throwing or setting fire to fireworks in throughfares or public places within the

limits of the Metropolitan Police District and under section 80 of the Explosives Act 1875 it is an offence to throw, cast or fire a firework in a street or public place. However, possession of a pyrotechnic at a protest is not, of itself, an offence. This new offence will enable the police to take preventative action against the misuse of pyrotechnics during protests. The new offence will only apply to those taking part in protest events, so that those taking part in public events where the use of pyrotechnics is a traditional or cultural activity will not be criminalised.

- A new criminal offence of wearing or otherwise using an item that conceals identity (such as a face covering) in an area designated by police. Under section 60AA of the Criminal Justice and Public Order Act 1994 the police may issue an authorisation in relation to particular areas when they reasonably believe that activities may take place in that area that are likely to involve the commission of offences. Section 60AA then provides that where an authorisation is in force under that section (or, separately, where an authorisation is in place under section 60 of the 1994 Act), any constable in uniform can require a person to remove any item

which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity, and can seize any item which the constable reasonably believes any person intends to wear wholly or mainly for that purpose. It is an offence to fail to remove such an item when required to do so. The police have expressed concern that the current provisions are not sufficient to prevent people wearing face coverings at protests for the purpose of concealing their identity, with the intention of avoiding detection or conviction for criminal behaviour. In their experience, individuals may follow the initial direction of an officer to remove their face covering, but they can then move to a new area of the crowd and redeploy the face covering shortly afterwards. Once this has happened, police officers cannot always tell which individuals have already been directed to remove a face covering (and who are therefore committing an offence by wearing it again). This prevents police officers from being able to arrest protestors wearing face coverings in most circumstances. The powers are therefore not a significant deterrent to protestors seeking to wear face coverings to conceal their identities and avoid conviction for

criminal offences. This new power will make it a criminal offence to wear or otherwise use an item which conceals identity when in a public place within a designated locality. It will enable officers to arrest protestors who are using face coverings and other items to hide their identity, or the identity of another, within the designated locality.

116. Part 9 of the Bill gives effect to these proposals.

Suspension of internet protocol addresses and internet domain names

117. A domain name is another term for a website address (for example, www.gov.uk) that is easy to remember and, when typed into the search bar of a browser, directs the user to a website. It is different to a URL (Uniform Resource Locator), which is a unique identifier for the location of a webpage on the internet.

118. Every website on the internet will have a domain name. This is so they can be identified by users who may not know the exact URL, which is often longer, more complicated and must be exactly typed in to get the right webpage. Domain names are created and leased by authorised registrars, and issued by registries. These organisations keep a database of all domain names and manage

their allocation and administration to avoid issues such as duplication.

119. An IP (Internet Protocol) address is a unique numerical address given to every device connected to any network on the internet, and can be used to identify devices, send and receive information, and to see when content has been accessed on the internet. IP addresses can be given to users of the internet in multiple ways. Most people using the internet at home will have their IP address assigned to the device they are using by their internet provider. It can be the case that organisations knowingly or unknowingly assign an IP address, or a range of IP addresses, to facilitate criminal activity.

120. Currently, law enforcement and other agencies tackle the issue of criminals using domain names and IP addresses through voluntary partnerships with the organisations responsible for assigning IP addresses or domain names. These organisations will often include in their terms of service that the IP address or a domain name should not be used for criminal purposes, including fraud. Therefore, when approached by a law enforcement agency who suspects an IP or domain is being used to facilitate crime, these organisations will often agree to suspend the IP address or domain

name as their terms of service have been breached. Domestically, these voluntary arrangements work well and the majority of organisations will agree to suspend domain names and IP addresses.

121. These voluntary domestic arrangements are dependent on cooperation and limited to the small portion of the internet that is located in the UK. The overwhelming majority of entities that allocate IP addresses and domain names are situated in foreign jurisdictions. In these cases, overseas providers do not always recognise informal requests from investigative agencies and it is not practical to have voluntary relationships with international providers in the same way that cooperative arrangements work domestically. Many relevant overseas organisations require court orders before they will suspend IP addresses or domain names.

122. In February 2023, the then Government launched a consultation on how to strengthen law enforcement's ability to take down IP addresses and domain names used for criminal purposes. The consultation sought views on proposals to create a new power to mandate that organisations responsible for the registering of domain names or the assigning of IP addresses remove access if there is

suspicion it is being used for serious criminal activity such as fraud.

123. The Government received 43 responses, with the majority supporting proposals to introduce a new power to suspend domain names and IP addresses used for criminal purposes in the small number of domestic cases when voluntary arrangements have not been successful and to formally request action by organisations outside the UK. The then Government's response to the consultation was published on 14 November 2023.[41] Clause 92 and Schedule 12 give effect to these proposals.

Powers of entry and seizure to recover electronically tracked stolen goods

124. Advances in technology have made it easier to track stolen items. Electronic devices such as phones often have Global Positioning System ("GPS") tracking or other location finding applications such as Bluetooth, WiFi access points or cellular mobile network technology, and GPS trackers can now be fitted to high value items such as vehicles or placed in

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[41] Review of the Computer Misuse Act 1990 – Analysis of responses, Home Office, 14 November 2023

handbags. This means victims of theft can inform the police of where their stolen item last was before tracking facilities were disabled. However, the longer the time that elapsed since the theft, the more likely the tracking facility is to have been disabled and the item moved. This reduces the chance of successfully retrieving the item as evidence to support a charge and potential prosecution.

125. Once goods are moved on to other locations, they can be sold or used to commit other crimes. These powers are intended to allow swift seizure of stolen property and better gathering of evidence to support investigation and arrest. Acting quickly will also help to prevent stolen goods being moved out of the country or used to facilitate other crime, particularly in the case of vehicles and machinery.

126. The police have the power to enter private premises without the owner or occupier’s permission only in a limited range of circumstances, including:

(a) to arrest someone for a specific offence, or for breach of bail, if they have reasonable grounds to believe the person is on the premises;

(b) to enforce an arrest warrant;

(c) if pursuing someone ‘unlawfully at large’;

(d) to prevent serious damage to property;

(e) to save life or limb or to prevent a breach of the peace;

(f) following arrest for indictable offences, where they have reasonable grounds to suspect that evidence relating to the arrest offence, or a related or similar indictable offence, is on premises occupied or controlled by the suspect; or

(g) if the police have obtained a search warrant from a court.

127. There are many powers enabling the police to obtain a search warrant from a court in order to enter premises. The most relevant are section 8 of the Police and Criminal Evidence Act 1984 (“PACE”), which permits police to obtain a search warrant from a magistrate in order to enter premises to search for evidence of an indictable offence, and section 26 of the Theft Act 1968, which permits the police to obtain a warrant to enter premises in order to search for and seize stolen goods. These powers are subject to certain conditions.

128. A warrant can only be granted under section 8 of PACE if police can satisfy the court that there are reasonable grounds for believing that:

- an indictable offence has been committed;
- relevant material is on the premises;
- the material is likely to be of substantial value to the investigation, whether on its own or together with other evidence;
- the material is likely to be relevant in the sense of it being admissible as evidence to a court;
- the material is neither excluded, nor subject to special procedure or subject to legal privilege; and
- it is not practicable to seek permission from anyone entitled to grant entry to the premises, or that entry will not be granted without a warrant.

129. A warrant can only be granted under section 26 of the Theft Act 1968 if the court is satisfied that there is reasonable cause to believe that a person has on their premises (or otherwise in their possession or control) any stolen goods.

130. In light of advances in tracking technology within consumer goods, Clauses 93 and 94 confer on the police a new power which enables them to enter and search a property (private or public) for specific item/s, following senior officer authorisation, where any of the stolen items have been linked to the premises by electronic tracking data and subject to

reasonable belief that those items are on the premises and are stolen and not reasonably practicable to obtain a warrant. Police officers on premises following authorisation can seize, in addition to the specific item/s and where necessary, any other items on the same premises which are reasonably believed to be stolen, and theft offence evidence.

Expanding the lawful purposes for which the police can access DVLA driver licensing records

131. Section 71 of the Criminal Justice and Court Services Act 2000 ("the 2000 Act") gives police officers and certain other law enforcement officers in the UK access to driver licensing records held by the Driver and Vehicle Licensing Agency ("DVLA"). Access is defined as being to "constables" and to National Crime Agency ("NCA") officers with constables being further defined to include civilian staff of the Metropolitan Police, police forces in England and Wales outside of London, police staff in Scotland and Northern Ireland and police staff of the British Transport Police.

132. The definition of "constables" does not include civilian staff working for other UK police forces such as the Ministry of Defence Police and the Civil Nuclear Constabulary. Furthermore, the 2000 Act does not provide clarity on whether

the term applies to individuals known as constables in Crown Dependency police forces; for example the Crown Dependencies of Jersey and Guernsey have parish constables that are responsible for local civil administration.

133. For data provided through the Police National Computer ("PNC") or Law Enforcement Data Service this access is restricted by Regulation 2 of the Motor Vehicles (Access to Driver Licensing Records) Regulations 2001 (SI 2001/3343), as amended, primarily to purposes related to the enforcement of road traffic offences under the Road Traffic Act 1988, for example if a person has been stopped on suspicion of careless driving or for having an unroadworthy vehicle.

134. The police can request personal information from the DVLA for general policing purposes, that is other than those pertaining to the Road Traffic Act 1998. However, this must be done on a case-by-case basis and is not automated. As a result, this takes additional time and in certain circumstances, the police consider that it is not appropriate to disclose the sensitive operational information needed to satisfy the DVLA of the law enforcement need to obtain the driver information. Until recently all organisations accessing driving licence data

have done so through their connection to the PNC. Access to the PNC was previously controlled by the Police Information Technology Organisation (now abolished) and then by the National Policing Improvement Agency ("NPIA") (now closed). The NPIA had broad powers to provide assistance to a range of organisations including police forces in Jersey, Guernsey and the Isle of Man.

135. Clause 95 clarifies the authorised persons who can access DVLA driver licensing information. This will ensure that the Secretary of State has an explicit power to provide access to all police officers and law enforcement individuals who need access to this data. The clause specifies that data will only be accessed for policing and law enforcement purposes. The clause also allows regulations to be made setting out further provision, such as the circumstances in which a person may be authorised to receive information. This clause, together with a code of practice and regulations made under the new powers, will strengthen the governance over how DVLA data is used by police and law enforcement agencies.

Drug Testing on Arrest

136. Drug testing in police detention, known as Drug Testing on Arrest, was introduced as a police power in the Criminal Justice and Court

Services Act 2000 ("the 2000 Act"), which inserted sections 63B and 63C into PACE. This legislation provided the police with the power to drug test those arrested, if aged 18 and over, or charged, if aged 14 and over, for the presence of specified Class A drugs if arrested for or charged with either a trigger offence, or where a police officer of at least the rank of inspector has reasonable grounds to suspect that specified Class A drug use has caused or contributed to the offence and authorises the test. Trigger offences are listed in Schedule 6 to the 2000 Act and include theft, handling stolen goods, going equipped for stealing, and possession of a controlled drug if committed in respect of a specified Class A drug.

137. A "controlled drug" means any substance or product for the time being specified in Part 1, 2 or 3 of Schedule 2 to the Misuse of Drugs Act 1971 ("the 1971 Act"); or in a temporary class drug order as a drug subject to temporary control (section 2(1) of the 1971 Act). A "Class A drug" means any of the substances and products for the time being specified in Part 1 of Schedule 2 to the 1971 Act, such as heroin or cocaine. The 1971 Act also controls Class B and Class C drugs (as listed in Parts 2 and 3 of Schedule 2 to the 1971 Act respectively). The definition of "specified Class A drugs" for

the purposes of drug testing in police detention, along with other drug testing powers, is set out in the Criminal Justice (Specified Class A Drugs) Order 2023 (SI 2023/784). This Order provides that for the purposes of drug testing in police detention (along with other drug testing powers), "specified Class A drugs" means the substances and products specified in paragraphs 1 to 5 of Part 1 of Schedule 2 to the 1971 Act.

138. Under the Drugs Act 2005, if an individual tests positive for a specified Class A drug they may be required to attend an initial assessment, and, where relevant, a follow-up assessment, with a suitably qualified person (i.e. a drug support worker). The purpose of this assessment is to assess a person's drug use and refer them to subsequent drug treatment and support services where appropriate. Failure to give a sample without good cause, and failure to attend or stay for the duration of an initial assessment (and follow up assessment where relevant) are criminal offences, each subject to a maximum penalty of three months' imprisonment, a level 4 fine (£2,500), or both. A positive test result may be disclosed to the court in respect of the initial offence for which the individual was arrested or charged for, for the consideration of bail and

for sentencing, as may information relating to an initial assessment for the purpose of enabling a court considering an application for bail.

139. Clauses 96 to 100 extends drug testing on arrest to specified Class B and C drugs and make associated provision. This will allow the police to test for specified controlled drugs in those classes as well as specified Class A drugs to reduce drug related offending and ensure a wider range of people may access treatment and support services. Clause 98 further provides the police with the power to take up to a maximum of two samples for the purposes of drug testing on arrest, where the first is either unsuitable or insufficient. This is to allow for circumstances where a further sample is required to test for different drugs, whether traditional or synthetic, including on a separate machine/testing kit. Provision is also made to move the list of trigger offences and power to amend the list of trigger offences into the Police and Evidence Act 1984. Schedule 13 now lists trigger offences for the purposes of drug testing on arrest.

Extension of foreign national conditional cautions to those with limited leave to remain

140. A conditional caution is a form of out of court disposal which requires an offender to comply

with certain conditions, as an alternative to prosecution. Section 22 of the CJA 2003 provides for a conditional caution to be given to a foreign national offender without leave to remain to secure their departure from the UK. Section 103 of the Police, Crime, Sentencing and Courts Act 2022 ("the 2022 Act") provides for a diversionary caution to be given to a foreign national offender on the same basis as a conditional caution under the CJA 2003.

141. The criteria for issuing a foreign national conditional caution are set out in the Ministry of Justice's Code of Practice for Adult Conditional Cautions[42] and in Director of Public Prosecutions guidance[43]. Under the criteria, a foreign national conditional caution may be issued where all of the following conditions are met:

- there is sufficient evidence to charge the foreign national and there is a realistic prospect of conviction;
- the foreign national accepts the caution and agrees to comply with deportation;

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[42] Code of practice for adult conditional cautions: Part 3 of the Criminal Justice Act 2003, Ministry of Justice, 9 January 2013

[43] Conditional Cautioning: Adults – DPP Guidance, The Crown Prosecution Service, 3 October 2022

- the foreign national makes a clear admission of guilt;
- the foreign national has no leave to remain in the UK and is liable to administrative removal or deportation;
- there are no barriers to deportation, such as an outstanding asylum or human rights claim and the person is not a victim of trafficking;
- the sentence likely to be imposed by the court for the offence concerned would be less than two years' imprisonment;
- the decision to issue a caution for any 'Indictable Only' offence should be taken only in exceptional circumstances and must be taken by the CPS.

142. To ensure that more foreign national offenders are removed from the country, Clause 101 extends foreign national conditional cautions to cover those with limited leave in the UK.

Confiscation of the proceeds of crime

143. Part 2 of the Proceeds of Crime Act 2002 ("POCA") sets out the legislative framework for the post-conviction confiscation regime in England and Wales for the recovery of assets gained through criminal means (Parts 3 and 4 of POCA contain analogous provisions in respect of Scotland and Northern Ireland

respectively). Confiscation orders are intended to deprive criminals of their benefit from crime and are made personally against a defendant; requiring them to pay a sum of money equivalent to their benefit from crime. For example, if someone has gained £100,000 from a fraud scheme, a confiscation order may be imposed so that individual has to pay the £100,000 back. The subject of a confiscation order will have a set amount of time to pay the monies back, after which the original sum ordered by the court will start to accrue interest.

144. In 2018, the Home Office commissioned the Law Commission of England and Wales to review the entirety of the confiscation regime contained in Part 2 of POCA, with the aim of making recommendations for wholesale reform of the regime.

145. As part of the review, the Law Commission undertook a consultation from September to December 2020.[44] The Law Commission received over 100 responses to its consultation which informed its final report published in

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[44] Confiscation Consultation paper, Law Commission, 17 September 2020

November 2022.[45]

146. The report contained 119 recommendations for reform of the confiscation regime to: improve the process by which confiscation orders are made; ensure orders made are realistic and proportionate; and improve the enforceability of orders.

147. In October 2023, the then Government published its response to the Law Commission report.[46] Amongst other things, the Government response agreed to give effect to the Law Commission's recommendations to:

- Introduce a statutory objective for the confiscation regime: "to deprive a defendant of his or her benefit from crime".
- Prioritise victims' interests, including multiple recommendations which are intended to better prioritise compensation for victims and legitimate third-party interests.
- Early resolution of confiscation: to create a procedure after the sentencing but prior to the making of a confiscation order to

[45] Confiscation of the Proceeds of Crime after Conviction: Final Report, Law Commission, 9 November 2022

[46] Government response to the Law Commission's review of confiscation, Home Office, 25 October 2023

narrow the issues in dispute and fast-track agreed orders.

- Make it easier to restrain assets and preserve their value during an investigation by clarifying the requirements for making a restraint order.
- Improve enforcement by extending the enforcement powers of magistrates' courts to the Crown Court. This will address the drift that frequently occurs in payment of orders and will streamline the enforcement process.
- Introduce confiscation assistance orders to enable orders to be enforced promptly, and standardise the practice of appointing an appropriately qualified person to assist a defendant with satisfying their confiscation order.
- Provisional discharge of confiscation orders: to allow outstanding confiscation orders to be placed in abeyance where there is no realistic prospect of recovery in the immediate term, and all enforcement steps have been exhausted. This would not bluntly write off the debt. The discharge would be provisional so that money could still be recovered in time if the provisional discharge of an order was revoked.

- Place the concept of hidden assets on a statutory footing: to clarify the approach the court should take when a defendant hides their assets from law enforcement agencies and to ensure the value of those assets is re-paid.

148. Clause 102 and Schedule 14 give effect to these reforms in England and Wales. Schedule 15 gives effect to the reforms in Northern Ireland.

Civil recovery of proceeds of crime: costs protections

149. Part 5 of POCA provides for a broad set out powers available to law enforcement agencies in the UK to take ownership of assets which a civil court is satisfied (on the balance of probabilities) derive from criminal conduct or are intended for use in criminal conduct. These powers include civil recovery in the High Court or Court of Session (Chapter 2 of Part 5 of POCA) and summary forfeiture in a magistrates' court or sheriff's court (Chapters 3 to 3F of Part 5 of POCA).

150. The Civil Procedure Rules apply to civil recovery proceedings before the High Court in England and Wales. They set out the principle often referred to as "loser pays" or "costs follow the event". This is the principle that the

"losing party" of a case will be ordered by the court to pay the legal costs of the winning party. A different costs regime applies in magistrates' court in England and Wales as provided for in section 64 of the Magistrates' Court 1980 and the case of *Perinpanathan*: [2010] EWCA Civ 4. That case found that, "in a case where regulatory or disciplinary bodies, or the police, carrying out regulatory functions, have acted reasonably in opposing the grant of relief, or in pursuing a claim, it seems appropriate that there should not be a presumption that they should pay the other party's costs".

151. Pressure from Parliamentarians led to the enactment of section 215 of the Economic Crime and Corporate Transparency Act 2023 ("the 2023 Act") which placed a duty on the Secretary of State (in practice, the Home Secretary) to "assess whether it would be appropriate to restrict the court's power to order that the costs of proceedings under Chapter 2 of Part 5 of POCA are payable by an enforcement authority and, if so, how". The Secretary of State was further required to publish and lay before Parliament a report on the outcome of the assessment. To inform the report, the Home Office ran an engagement exercise between 12 January 2024 and 8

March 2024 asking whether it would be appropriate to restrict the court's power to order legal and court fees payable by an enforcement authority in civil recovery cases in the High Court. The engagement exercise also asked for views on the appropriate mechanism for implementing such changes.

152. There was a strong consensus amongst consultees that a form of costs protection for enforcement authorities in the High Court would be appropriate. Enforcement authorities noted that the risk of adverse costs affects their decision to pursue cases particularly those involving kleptocrats and other wealthy individuals with costly legal representation. This is due to the high risk of litigation, which exposes enforcement authorities to significant strain on their budgets.

153. The Government published the report under section 215 of the 2023 Act on 18 December 2025. The report concluded that a form of costs protection for enforcement authorities in the High Court would be appropriate to encourage the greater use of the civil recovery powers under Chapter 2 of Part 5 of POCA. The report further concluded that primary legislation broadly mirroring the provisions for costs protections under the unexplained wealth

order regime in Part 8 of POCA would be most appropriate. Clause 103 provides for such costs protections.

Extension of polygraph condition to certain offenders

154. Section 28 of the Offender Management Act 2007 ("the 2007 Act") enables the Secretary of State to impose a polygraph testing licence condition on an offender released on licence in England and Wales. The use of polygraph testing was introduced in 2014, following a pilot, so that probation officers could strengthen their risk management of high-risk sex offenders following a trial of its effectiveness with that cohort of offenders. In 2021, the imposition of the polygraph condition was extended to two further cohorts of offenders: the Counter-Terrorism and Sentencing Act 2021 ("CTSA 2021") extended the condition to specified terrorist offenders, and the Domestic Abuse Act 2021 enabled a three-year pilot of polygraph testing of high-risk domestic abuse perpetrators in certain specified police areas.

155. There is currently no provision to add a polygraph condition to the licence of an offender convicted of murder. If an offender rapes a victim, then a polygraph condition can be included as a condition of their licence, as it

is a relevant sexual offence under the 2007 Act. But if they rape and murder a victim, then a polygraph condition is unlikely to be able to be included. This is because the offence of murder carries a mandatory life sentence, which means that even if the offender were also convicted of rape, it is unlikely that their rape sentence would still be active at the point they become eligible for release on licence.

156. There is also currently no provision to add a polygraph condition to the licence of an offender who is sentenced concurrently for a relevant sexual offence and a non-sexual offence, where the sentence for the sexual offence expires before they are released on licence or expires while they are still on licence for their non-sexual offence.

157. The Government considers that the Secretary of State's ability to include a polygraph testing condition should be extended to those convicted of murder who pose a risk of committing a relevant sexual offence, and to those who have been sentenced concurrently for a sexual and non-sexual offence, where the sexual offence expires before release or before the end of their non-sexual offence sentence. Clause 104 makes provision for the polygraph testing of this cohort of offenders.

158. The CTA 2008 introduced a 'terrorism

connection' 'label' which courts could apply as a statutory sentencing aggravating factor to offenders who committed a specified non-terrorist offence. Specified non-terrorist offences were those listed in Schedule 2 to the CTA 2008, that the judge considered had or may have had a terrorist connection, and which were committed on or after its date of commencement of 18 June 2009.

159. Following the attacks at Fishmongers' Hall and Streatham in November 2019 and February 2020 respectively, the then Government introduced the CTSA 2021 to increase the offender management provisions (including polygraph testing) available for terrorist and terrorist connected offenders on licence in the community. That Act extended the 'terrorism connection' 'label' so that it could be applied to any non-terrorism offence punishable on indictment with more than two years' imprisonment. That extension has not yet been commenced in relation to service offenders.

160. There is currently no provision to add a polygraph condition to the licence of an offender who committed a non-terrorism offence that was connected to terrorism before the commencement of the CTA 2008 on 18 June 2009 or who committed a terrorism-linked offence between 2009 and 2021 which fell

outside the specified list in Schedule 2 to the CTA 2008, that is where the terrorism connection aggravating factor was not available to the court to apply. Clause 104 also makes provision for the polygraph testing of this cohort of 'historic terrorism-connected' offenders.

Management of offenders serving community or suspended sentences

161. In August 2022, the then Government made the Criminal Justice (Sentencing) (Licence Conditions) (Amendment) (No.2) Order 2022 (SI 2022/703) which required determinate sentence offenders on licence to inform their probation officer of any change of name or use of different names or pseudonyms (for example, online aliases) , and to inform their probation officer of any change of, or new, contact details, including any phone number or email. This Order recognised the importance of ensuring the public is protected and offenders managed in the community are able to be properly monitored by probation services with the ability for services to take robust enforcement action where necessary.

162. Such requirements do not currently apply to offenders serving a community or suspended sentence. Clause 105 therefore extends the requirement to notify changes of name or

contact details to those serving such sentences, thereby ensuring consistency across the sentencing framework. For offenders serving community orders, youth rehabilitation orders and referral orders, the requirement will last for the whole duration of the supervision period while the offender is supervised by probation or a Youth Offending Team ("YOT") until it reaches the end date set by the court or is otherwise terminated. For suspended sentence orders, this requirement will last for the period when the offender must keep in touch with their probation team or YOT. Once the offender is no longer required to keep in touch with their probation team or YOT, this requirement will also end.

Police accountability

163. On 5 September 2022, Chris Kaba was shot and killed by an armed police officer (then referred to as officer NX121) during the course of an operation in Streatham, South London, to stop a vehicle he was driving. In accordance with their statutory remit, the Independent Office for Police Conduct ("IOPC") conducted an investigation into the fatal shooting. The IOPC investigation concluded in March 2023 when they referred a file of evidence to the CPS to determine whether officer NX121 should be charged. On 20 September 2023 the

CPS authorised the murder charge. An anonymity order was made by the court but on 8 March 2024, this was partially lifted by the court and the officer could be identified as Sergeant Martyn Blake.

164. Following the decision to charge Sergeant Blake, on 24 September 2023 the then Home Office launched a review of investigatory arrangements which follow police use of force and police driving related incidents. The terms of reference were published on 24 October 2023[47]. This followed concerns from policing that the accountability system had lost the confidence of officers, deterring some from carrying arms or taking other actions necessary to protect the public. On 21 March 2024, the then Home Secretary issued a written ministerial statement (HCWS369[48]) updating Parliament on progress with the review and setting out interim findings. A key finding of this work to date was that investigations take too long, causing distress to those involved and undermining public

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[47] Review of investigations after police use of force: terms of reference, Home Office, 24 October 2023

[48] Police Misconduct and Investigations – Witten Ministerial Statement, Rt Hon James Cleverly MP, HCWS369, 21 March 2024

confidence. Based on the findings to date, the then Home Secretary announced three immediate changes to the current accountability arrangements, as follows:

a. raise the threshold for referrals to the CPS from investigations of officers carried out under Schedule 3 to the 2002 Act, from an ‘indication of criminality’ to a ‘reasonable prospect of conviction’ - aligning with the test the CPS uses for subsequent charging decisions;

b. amend current restrictions which prevent criminal proceedings from being brought pending conclusion of an investigation under Schedule 3 to the 2002 Act, which will enable early referrals to the CPS (for example, by the IOPC) provided the threshold for referrals to the CPS is met; and,

c. place IOPC’s Victims Right to Review policy on a statutory footing.

165. Clauses 106 to 108 give effect to these proposals. They were originally tabled by the previous government as amendments to the Criminal Justice Bill at Commons Report stage (see new clauses 74 to 76). The Bill subsequently fell when the 2024 election was called.

166. The review was continued post the 2024 election by the new Home Secretary, the Rt Hon Yvette Cooper MP. Following the acquittal of Sergeant Blake on 22 October 2024, the Home Secretary made an oral statement to the House of Commons on 24 October 2024 (Official Report, columns 299 to 314) announcing that the Government would take forward the three measures (set out in paragraph 164 above) announced by the previous government. In addition to this, the Home Secretary also announced that the Government would introduce a presumption of anonymity for firearms officers who are charged with offences relating to, and committed during, their duties, up to the point of conviction. The rationale for introducing this presumption for firearms officers is that firearms officers and their families are likely to be at increased risk if their identity is revealed following an armed incident, due to their exposure to dangerous individuals and organised crime groups. There will continue to be judicial discretion to depart from the presumption of anonymity, based on the facts of each case. The Government intends to bring forward such a presumption of anonymity by an amendment to the Bill in the House of Commons.

Police misconduct and dismissals

167. In December 2014, Major-General Chip Chapman published his review into the police disciplinary system, having been tasked by the then Home Secretary, Rt Hon Theresa May MP, to identify proposals for a reformed disciplinary system which was "clear, public-focussed, transparent and more independent".[49]

168. What ultimately followed was several years of legislative reform to strengthen the complaints and discipline systems, which included public misconduct hearings in 2015 and the introduction of the police barred list in in 2017. In 2016, Legally Qualified Chairs replaced senior officers as the chair of misconduct hearings, through the Police (Conduct) (Amendment) Regulations 2015 (SI 2015/626). However, the Police (Conduct) (Amendment) Regulations 2024 (SI 2024/521) have effectively reversed that position, giving greater responsibility over misconduct proceedings to chief officers or their delegate.

169. The Policing and Crime Act 2017 brought further substantial changes to the complaints

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[49] An Independent Review of Police Disciplinary System in England and Wales, Maj. Gen. Chip Chapman CB, [11 December 2014]

and discipline systems, including reform of the then Independent Police Complaints Commission to what is now the IOPC which is the independent body charged with overseeing the police complaints process and is responsible for investigating the most serious and sensitive matters; the introduction of the police Barred and Advisory Lists to prevent those dismissed from re-joining policing; and provisions to allow former officers to face misconduct proceedings, despite their retirement or resignation from their force.

170. More recently, the then Government introduced a series of secondary legislation in February 2020. These measures gave additional powers to the IOPC, provided Legally Qualified Chairs with a greater role to case manage hearings, implemented measures to improve timeliness, redefined the threshold for misconduct and brought into effect the Reflective Practice Review Process – a process to move away from a blanket approach for all breaches of the Standards of Professional Behaviour, no matter how low-level they are, to one which focusses on a culture of learning and reflection for minor breaches and disciplinary action for serious breaches.

171. There are two forms of behaviour which can

currently result in an officer being dismissed from the police – gross misconduct, which is handled under the Police (Conduct) Regulations 2020 and unsatisfactory performance/gross incompetence which is handled under the Police (Performance) Regulations 2020. There is a separate process to discharge under-performing probationary constables.

172. Officers with a case to answer for gross misconduct can be referred to a misconduct hearing which, for cases referred on or after 7 May 2024, will be heard by a panel chaired by a senior officer, former senior officer or police staff equivalent (or, where the officer concerned is a senior officer, a panel composed in accordance with regulation 28 of the Police (Conduct) Regulations 2020, as amended). A senior officer is defined as an officer above the rank of Chief Superintendent. However, where there is sufficient evidence (on the balance of probabilities) of gross misconduct and it is in the public interest for the individual to cease to be an officer without delay, officers are instead referred to an accelerated hearing. This is a fast-track process which, for cases referred on or after 7 May 2024, will be chaired by a senior officer, former senior officer, or police staff equivalent (or, where the officer concerned is a senior

officer, by a panel composed in accordance with regulation 55 of the Police (Conduct) Regulations 2020, as amended).

173. As police officers are office holders, rather than employees, they do not, in most circumstances, have the ability to pursue unfair dismissal claims at the Employment Tribunal. Instead, police offices have a statutory right of appeal under the Police Act 1996 to the Police Appeals Tribunal ("PAT").

174. Following misconduct proceedings, a non-senior officer (of Chief Superintendent rank or below), against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing, may appeal to PAT on the following grounds:

- that the finding or decision to impose disciplinary action was unreasonable; or
- that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action; or
- that there was a breach of the procedures set out in the Conduct Regulations, the Complaints and Misconduct Regulations or Part 2 of the 2002 Act or unfairness which could have materially affected the finding

or decision on disciplinary action.

175. Non-senior officers can also appeal under similar circumstances relating to the outcome or finding at a performance meeting, held under the Police (Performance) Regulations 2020.

176. Separately, a senior officer against whom a finding of misconduct or gross misconduct has been made at either a misconduct hearing or misconduct meeting has a right of appeal to the PAT under the same circumstances above.

177. Chief officers have no statutory right to appeal decisions by misconduct panels concerning their force's officers. Their only recourse to challenge the outcome of a misconduct hearing is by way of a judicial review.

178. In a written ministerial statement on 18 October 2022, the then Minister of State for Crime, Policing and Fire, Rt Hon Jeremy Quin MP, announced a review into the process of police officer dismissals[50], following concerns with the system, a series of high-profile cases and the publication of Baroness Casey's interim findings on misconduct in the

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[50] Casey Review: Police Dismissals – written ministerial statement, Home Office, HCWS327, 18 October 2022

Metropolitan Police Service.[51]

179. The review was launched by the Home Office on 18 January 2023. The review's terms of reference took in the dismissal process as a whole and included reviewing the available appeal mechanisms for both officers and chief officers where they wish to challenge disciplinary outcomes or sanctions concerning officers (or former officers) serving in the force they lead.

180. The review's methodology gathered evidence from several sources including engagement with stakeholders, existing research and literature and data sets held by police forces in England and Wales.

181. The findings of the review were published on 18 September 2023. The review made 18 recommendations covering the processes relating to misconduct, performance and vetting, including: a presumption for dismissal in cases of proven gross misconduct, certain offences conviction of which automatically amount to gross misconduct, a streamlining of the performance system, a clarified route of

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[51] Baroness Casey Review: An Independent Review into the Standard of Behaviour and Internal Culture of the Metropolitan Police Service, Baroness Casey of Blackstock DBE CB, [7 March 2023]

dismissal for those who fail vetting and a statutory route of appeal for chief officers. The majority of the recommendations will be implemented via secondary legislation (including the Police (Conduct) (Amendment) Regulations 2024 (SI 2024/521) which, amongst other things, provides for chief officers or their delegate to chair misconduct hearings). One recommendation (that relating to appeals by chief officers against the findings of misconduct hearings) requires primary legislation. Clause 109 gives effect to this change.

182. Local policing bodies have responsibility for the appointment of chief officers, but also matters relating to their performance, conduct and suspension. Local policing bodies are the "appropriate authority" in respect of complaints, conduct matters or recordable conduct matter relating to a chief officer (or acting chief officer) and, under Schedule 8 to the Police Reform and Social Responsibility Act 2011, have powers to require a chief officer to resign or retire. Clause 109 enables a right of appeal for local policing bodies in relation to the chief officer of their force.

183. The IOPC may, instead of the appropriate authority, present a misconduct hearing or accelerated misconduct hearing in specific

circumstances set out at regulation 24 of the Police (Conduct) Regulations 2020. Clause 109 further enables a right of appeal for the IOPC in circumstances where it has presented in accordance with those regulations.

Counter-terrorism and national security powers

184. The Terrorism Acts (principally the Terrorism Act 2000 ("TACT 2000") and the Terrorism Act 2006 ("TACT 2006") provide for a range of powers to protect the public from the threat of terrorism. These powers include criminal offences, civil protection orders and police powers. Section 36 of TACT 2006 provides for the appointment, by the Home Secretary, of a person to review the operation of TACT 2000 and Part 1 (offences) of TACT 2006. This person is known as the Independent Reviewer of Terrorism Legislation ("IRTL"). The IRTL is also responsible for reviewing the operation of the Anti-terrorism, Crime and Security Act 2001 (Part 1, and Part 2 in so far as it relates to counter-terrorism), Terrorist Asset-Freezing etc. Act 2010 (Part 1), Terrorism Prevention and Investigation Measures ("TPIM") Act 2011 and Part 1 of the Counter-Terrorism and Security Act 2015. Since May 2019, Jonathan Hall KC has held the post of Independent Reviewer. Part 14 of the Bill gives effect to various recommendations made in his annual

or other bespoke reports or as recommended by operational partners:

- The TPIM Act 2011 provides for civil preventative measures intended to protect the public from the risk posed by persons believed to be involved in terrorism who can be neither prosecuted nor, in the case of foreign nationals, deported, by imposing restrictions intended to prevent or disrupt their engagement in terrorism-related activity. Amongst the measures that may be imposed on a person subject to a TPIM is a weapons and explosives measure: essentially a prohibition on owning guns, offensive weapons or explosives. The provisions of the TPIM Act 2011 are broadly replicated in Part 2 of the National Security Act 2023 which makes provision for State Treats Prevention and Investigation Measures ("STPIMs"). In his annual report of the Terrorism Acts in 2022, the IRTL recommended that "the TPIM Act 2011 is amended to enable the Home Secretary to prohibit the possession of unapproved knives or bladed articles.". The Government accepted the recommendation in its response to the IRTL's report, published November 2024.

- Young people comprise an increasing proportion of counter-terrorism investigations. This is of significant concern to operational partners (Counter-Terrorism Policing and the Security Service), for example, in Great Britain, in the year ending September 2024, 32 people aged 17 and under were arrested for terrorist-related activity (Operation of police powers under TACT 2000, to September 2024). Though these figures likely underestimate the scale of problematic activity that falls below the prosecution threshold. In his annual report of the Terrorism Acts in 2021, the IRTL identified a gap in the current tools available to intervene early to prevent young people engaging in terrorism and divert them from the criminal justice system and the stigma of a terrorism conviction. He recommended that "A new child violence diversion order should be considered in cases of children arrested on suspicion of committing terrorist offences". The Home Secretary announced the Government's intention to introduce youth diversion orders in a Written Ministerial Statement on 17 December 2024 (HCWS327).

- Section 13(1) of TACT 2000 makes it an offence to carry out certain actions in a public place, such as wearing a uniform or displaying

a banner, if doing so would arouse reasonable suspicion that the person is a member or a supporter of a proscribed organisation. Section 13(4) confers a power on the police to seize items in connection with the offence. In his annual report of the Terrorism Acts in 2022, the IRTL identified a gap in the seizure powers under section 13, arguing that the police lack adequate powers to seize articles (such as flags or banners) that are associated with proscribed organisations if they are displayed in a public place but not associated with any person (for example, a flag left hanging from a lamppost). He recommended "that section 13 is amended to allow the seizure of any article if the constable reasonably suspects that it has been displayed in such a way or in such circumstances as to arouse reasonable suspicion that a person is a member or supporter of a proscribed organisation". The Home Secretary accepted the recommendation in the Government response to the IRTL's report, published November 2024.

- The offence under section 13(1) of TACT of wearing a uniform etc of a proscribed organisation only applies to conduct in a public place. In his April 2022 report "Terrorism in

Prisons", Jonathan Hall recommended "The government should consider whether or not to amend the Terrorism Acts so that conduct falling within section 13 of the Terrorism Act 2000 ….. is capable of amounting to an offence even if committed within a prison cell and even if, in the case of encouragement of terrorism, it only involves two prisoners".

- Part 4 of the CTA 2008 introduced a requirement for a court sentencing an offender for a specified non-terrorism offence, to consider whether the offence was committed with a terrorist connection (i.e. was committed for the purposes of terrorism etc.). If the court determines this was the case, then it must aggravate the sentence and state in open court that the offence has been aggravated for that reason. Following the attacks at Fishmongers' Hall and Streatham in November 2019 and February 2020 respectively, the CTSA 2021 expanded this requirement so that a court must consider whether there was a terrorist connection for all offences with a maximum penalty of more than two years' imprisonment. A terrorist connection results in sentence aggravation and the application of various risk management powers provided by other legislation including: notification requirements (provided for in section 42 of the CTA 2008);

and powers of urgent arrest and personal search (provided for in sections 43B and 43C of TACT 2000). The notification requirements and the powers of arrest and personal search do not apply to an offender who committed a terrorism connected offence before the commencement of the CTA 2008 on 18 June 2009 or who committed a terrorism connected offence between 2009 and 2021 which fell outside the specified list in Schedule 2 to the CTA 2008.

International law enforcement information sharing agreements

185. New law enforcement information sharing agreements with international partners will provide law enforcement officers with access to new intelligence to fight crime. Clauses 127 to 129 enable the swift implementation of these new agreements, thereby providing UK law enforcement agencies with additional capabilities at the earliest point possible to help keep the public safe from the threat posed by international criminality, cross-border crime and help protect vulnerable people.

186. These new agreements will set the parameters for the sharing of law enforcement data between the UK and a third country, including

the technical specifications relating to how data will be shared.

187. One example envisaged in relation to new international law enforcement information sharing agreements, is an agreement enabling the reciprocal exchange of law enforcement alerts. Such alerts would contain information about a particular person or object that are of interest or under investigation by law enforcement authorities. The agreement would enable a data sharing process where international partners' relevant authorities can search against a UK 'alert store' containing such data. UK law enforcement agencies would have a similar ability to search the platforms of international partners and access relevant data.

Identification doctrine

188. The Economic Crime and Corporate Transparency Act 2023 (ECCT 2023) places the Identification Doctrine, which is the legal test for deciding whether the actions and mind of a body corporate can be regarded as those of a natural person, on a statutory footing. Before the 2023 Act, common law required that an offence had to be committed by the 'directing mind and will' of a body corporate to trigger attribution to the body corporate itself. If

the person(s) identified as the 'directing mind and will' of the body corporate commits an offence in that capacity, that offence, including the guilty mind to commit the offence, is considered that of the body corporate.

189. This 'directing mind and will' test was established in 1971 in Tesco Supermarkets Ltd*. v* Nattrass. Since then, companies have grown in size and complexity. As a result, corporate governance has also become complex. This has made it more difficult to determine who is a 'directing mind and will' within complicated corporate governance structures. This can mean that employees of large corporates with significant control over business areas are not considered controlling enough under this legal test, even if they have the authority in the corporate to commit large-scale harms. This makes it harder to hold these organisations accountable.

190. ECCT 2023 provision provides for corporate liability where a senior manager commits an offence while acting in the scope of their actual or apparent authority, in relation to economic crime offences only.

191. The then Government committed to extending this identification doctrine to all criminal offences in England and Wales. Clauses 130 gives effect to that commitment. It also repeals

the provisions introduced in ECCT 2023. This legislation does not replace or amend the common law identification doctrine, but provides a new statutory route to corporate liability.

192. The test in Clause 130 replicates the definition of a “senior manager” in the Corporate Manslaughter and Corporate Homicide Act 2007. This model takes into account what a senior manager’s roles and responsibilities are within the organization rather than their formal job title. It includes instances where the senior manager is a person who plays a significant role in the making of decisions about the whole or a substantial part of the body corporate or partnership.

193. The provisions apply, for example, where the Chief Executive Officer of a corporate commits a financial crime in their capacity as such, if they are considered to be acting in the scope of their actual or apparent authority then the corporate they belong to has also committed an offence.

Legal background

194. The Bill amends or repeals the following legislation:

- Sections 23 to 25 of the Offences Against the Person Act 1861 in relation to the administration of harmful substances.
- Section 1 of the Restriction of Offensive Weapons Act 1959 which, amongst other things, makes it an offence to manufacture, sell etc. flick knives and gravity knives.
- Section 50 of the Criminal Appeal Act 1968, which defines “sentence” for the purposes of that Act.
- The Theft Act 1968, which, amongst other things, confers a power to a magistrates’ court to grant a warrant for police to search for and seize stolen goods.
- Section 22A of the Magistrates’ Courts Act 1980, which provides that low-value shop theft is a summary offence.
- Sections 37, 38 63B and 63C of the Police and Criminal Evidence Act 1984, which make provision for the duties of custody officers before charge and drug testing of persons in police detention.
- Section 4A of the Ministry of Defence Police Act 1987, which makes provision in respect of appeals by Ministry of Defence Police officers against dismissal.
- Sections 141 and 141A of the Criminal Justice Act 1988 which, amongst other things, provide

for offences relating to the manufacturer, sale etc. of specified offensive weapons and the sale of knives and bladed articles to persons under 18 respectively.

- Schedule 1A of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which lists offences (in Scotland) carrying restricted eligibility of terrorist prisoners for release on licence.
- Schedule 5ZB to the Criminal Procedure (Scotland) Act 1995, which lists terrorism offences in respect of which the court must impose a sentence with fixed licence period.
- Section 85 of and Schedule 6 to the Police Act 1996, which make provision in respect of appeals by police officers against dismissal.
- Section 70 of and Schedule 6 to the Criminal Justice and Court Services Act 2000, which defines a trigger offence for the purposes of the police powers to drug test persons on arrest.
- Section 71 of the Criminal Justice and Court Services Act 2000, which makes provision for the police and others to access driver licensing records.
- Section 13(1) of TACT 2000 makes it an offence to wear the uniform of a proscribed organisation, or to display items or articles that

are associated with a proscribed organisation, such as the organisation's flag. This offence may be committed only in a public place. Section 13(4) to (6) confer powers on a constable to seize articles, including items of clothing, that are reasonably suspected to be evidence that the section 13(1) offence has been committed (if necessary to prevent the item being concealed or destroyed etc).

- Schedule 1 to the Criminal Justice and Police Act 2001, which specifies the seizure powers to which certain provisions of that Act, enabling removal of items from premises for the purposes of ascertaining or separating out items subject to a seizure entitlement, apply.
- Section 59 of the Police Reform Act 2002, which confers powers on the police to seize and remove vehicles being used in a manner that causes alarm, distress or annoyance.
- Schedule 3 to the Police Reform Act 2002, which makes provision for the handling of complaints and conduct matters in respect of police officers in England and Wales.
- Schedule 5 to the Police Reform Act 2002, which specified the powers that may be exercised by accredited persons under a community safety accreditation scheme.

- Parts 2, 4 and 5 of the Proceeds of Crime Act 2002 make provision for confiscation orders in England and Wales and Northern Ireland and for the civil recovery of the proceeds of crime throughout the UK.
- Section 22 of the Criminal Justice Act 2003, which provides for conditional cautions.
- Schedule 19ZA to the Criminal Justice Act 2003, which lists offences (in England and Wales) carrying restricted eligibility of terrorist prisoners for release on licence.
- Chapter 6 of Part 12 of the Criminal Justice Act 2003, which relates to release of offenders.
- Parts 1 and 2 of the Sexual Offences Act 2003, which make provision for sexual offences (including in relation to taking or recording intimate photographs of films, exposure, sexual activity in the presence of a child or person with mental disorder and sexual activity with a corpse) and notification requirements on registered sex offenders.
- Part 3 of the Drugs Act 2005 which confers powers to require certain persons to attend an assessment and follow-up assessment in respect of their misuse of drugs.
- Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, which defines regulated

activity for employment or volunteering vetting purposes.

- Paragraph 11(6) of Schedule 7B to the Government of Wales Act 2006, which makes provision that an Act of the Senedd may, without consent, remove or modify any function of a Minister of the Crown, that is exercisable concurrently where that function is conferred by, or by regulations made under, specified legislation.
- Part 3 of the Armed Forces Act 2006, which makes provision in relation to powers of arrest, search and entry conferred on service police and others in specified circumstances where service law applies.
- Section 28 of the Offender Management Act 2007, which relates to offender management and the use of polygraph as a licence condition.
- Article 7 of the Criminal Justice (Northern Ireland) Order 2008 (NI), which governs length of custodial sentences in Northern Ireland.
- Schedule 2A of the Criminal Justice (Northern Ireland) Order 2008, which lists offences (in Northern Ireland) specified for various purposes relating to terrorism including

carrying restricted eligibility of terrorist prisoners for release on licence.

- Schedule 1A to the Counter-Terrorism Act 2008, which lists offences where the sentencing court is not required to consider whether there is a terrorist connection.
- Schedule 1 to the TPIM Act 2010 sets out the prevention and investigation measures that can be imposed on a TPIM subject. Schedule 7 to the National Security Act 20023 similarly sets out the prevention and investigation measures that can be imposed on a person subject to a STPIM.
- Parts 1, 3 and 4 of the Anti-social Behaviour, Crime and Policing Act 2014, which provide for anti-social behaviour injunctions, dispersal powers, community protection notices, public spaces protection orders and closure powers; and Schedule 4 to that Act which makes further provision in respect of anti-social behaviour case reviews.
- Section 176 of the Anti-social Behaviour, Crime and Policing Act 2014, which inserted section 22A into the Magistrates' Courts Act 1980 that provided that low value shop theft was a summary offence.

- The Stalking Protection Act 2019, which makes provision for stalking protection orders.

- Sections 83, 193, 215 and 301 of the Sentencing Act 2020, which require offenders subject to a referral order, youth rehabilitation order, community order or suspended sentence order respectively to attend meetings of a youth offender panel as established by a YOT or to keep in touch with the responsible officer as the case may be.
- Schedule A1 and Part 1 of Schedule 13 to the Sentencing Act 2020, which respectively list offences where the sentencing court is not required to consider whether there is a terrorist connection and offences involving or connected with terrorism where the sentencing court is required to impose a special sentence for offenders of particular concern.
- Section 103 of the Police, Crime, Sentencing and Courts Act 2022, which provides for foreign offenders' conditions to be attached to a diversionary cautio (section 103 is not yet in force).
- Sections 196 to 198 of and Schedule 12 to the Economic Crime and Corporate Transparency Act 2023 makes provision for a corporate body or partnership to be held criminally liable where a senior manager commits a specified economic crime-related offence while acting within the actual or apparent authority granted by the organisation. The Bill repeals and

replaces these provisions with analogous provisions which are not limited specified economic crime-related offences.

- Section 184 of the Online Safety Act 2023, which makes provision for an offence of encouraging or assisting serious self-harm.

Territorial extent and application

195. Clause 134 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.

196. Subject to the exceptions described in the paragraphs below, the provisions in the Bill extend and apply to England and Wales only.

197. Clause 9 (guidance on fly-tipping enforcement) and Chapter 2 of Part 5 (duty to report child sex offences) apply to England only.

198. The following substantive provisions also extend and apply to Scotland and Northern Ireland: Clause 11(1) (maximum penalty for offences relating to offensive weapons); Clause 13 (power to seize bladed articles etc: armed forces); Chapter 2 of Part 4 (cuckooing); Clauses 38 to 41 (online facilitation of child sexual exploitation and

abuse); Clause 44 (power to scan for child sexual abuse images at the border); Clause 55 (guidance about disclosure of information by police for purpose of preventing sex offending); Clauses 59, 61, 63, 66(1) and 68 (management of sex offenders); Clauses 78 and 79 (electronic devices for use in vehicle offence); Clauses 80 to 85 and Schedule 10 (possession or supply of a SIM farm and possession or supply of other articles used to facilitate fraud by electronic communications); Clause 92 and Schedule 12 (suspension of IP addresses and internet domain names); Clause 94 (electronically tracked stolen goods: search without warrant (armed forces)); Clause 95 (access to driver licencing records); Clause 103 (proceedings for civil recovery: costs and expenses); Clauses 110 to 125 and Schedule 16 (terrorism and national security); Clauses 127 to 129 (international law enforcement information-sharing agreements); and Clause 130 (criminal liability of bodies corporate and partnerships where senior manager commits offence). See also paragraph 205 below.

199. Clause 62 (police stations at which notification may be given) extends and applies to Scotland and Northern Ireland only.

200. Clause 11(3) (maximum penalty for offences relating to offensive weapons: Restriction of

Offensive Weapons Act 1959), Clause 60(1) (notification of absence from sole or main residence) and Clause 66(2) (restriction on granting replacement driving licences in new name) also extends and applies to Scotland.

201. Clause 35(4)(b) (lifestyle offences); Clause 67(2) (power of entry and search); and paragraphs 1 and 2 of Schedule 17 (sentences for offence of breaching foreign travel restriction order) extend and apply to Scotland only.

202. The following substantive provisions also extend and apply to Northern Ireland: Clause 37 (possession of advice and guidance about creating CSA images); Clause 67(3) (power of entry and search); Clause 73 (administering etc harmful substances (including by spiking)) and Clauses 74 and 75 (offence of encouraging or assisting serious self-harm).

203. Clause 35(2) and (3) (protection for witnesses); Clauses 35(4)(c) (lifestyle offences); Clause 60(2) (notification requirements: absence from notified residence); Clause 65 (review of indefinite notification requirements); Clause 102(2) and Schedule 15 (confiscation)); Clause 126 (length of terrorism sentence with fixed licence period: Northern Ireland); and paragraph 5 of Schedule 17 (sentences for offence of

breaching foreign travel restriction order) extend and apply to Northern Ireland only.

204. Any amendment made by Schedule 9 (sex offenders notification requirements: minor and consequential amendments) has the same extent as the provision being amended.

205. Where provisions of this Bill amend the Armed Forces Act 2006 ("AFA 2006"), or where provisions of this Bill are applied by or under the AFA 2006 ("the armed forces provisions"), their extent is the same as that of the AFA 2006. This means that the armed forces provisions extend to the whole of the UK. They also extend directly to the Isle of Man and the British overseas territories (excluding Gibraltar), but an Order in Council may be made to modify the armed forces provisions in their application to any of those territories. The armed forces provisions may also be extended to the Channel Islands by Order in Council, with such modifications as may be specified in the order. Regardless of their extent, the armed forces provisions apply to members of the armed forces wherever they are in the world.

206. There is a convention ("the Sewel 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. (In relation to Scotland and Wales, this convention is enshrined in law: see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006.)

207. The provisions in Clause 32 to 34 and 35(4)(b) and Part 2 of Schedule 5 (cuckooing), Clause 55 (guidance about disclosure of information by police for the purpose of preventing sex offending), Clauses 59, 60(1), 61, 62, 63, 66(1), 67(2), 68 and Schedule 9 (management of sex offenders), Clauses 78 and 79 (electronic devices for use in vehicle theft), Clause 95 (access to driver licence information), Clause 103 (proceedings for civil recovery: costs and expenses), Clauses 127 to 129 (implementation of law enforcement information-sharing agreements) and Clause 130 (criminal liability of bodies corporate and partnerships), relate, wholly or partly, to matters within the legislative competence of the Scottish Parliament. The Cabinet Secretary for Justice has been asked to agree to seek approval from the Scottish Parliament for a legislative consent motion in relation to these provisions.

208. The provisions in Clause 14 (assault on retail

workers), Clauses 74 and 75 (encouraging or assisting serious self-harm) and Clauses 127 to 129 (implementation of law enforcement information-sharing agreements) relate, wholly or partly, to matters within the legislative competence of Senedd Cymru. In addition, the provisions in Clause 1 (respect orders), Clause 5 and Schedule 2 (closure of premises by registered social housing provider) and Clause 7 (provision of information relating to ASB to Secretary of State) confer new reserved functions on devolved Welsh authorities. The Cabinet Secretary for Social Justice has been asked to agree to seek approval from the Senedd for a legislative consent motion in relation to these provisions.

209. The provisions in Clause 32 to 34 and 35(2), (3) and (4)(c) and Part 3 of Schedule 5 (cuckooing), Clause 37 (possession of advice and guidance about creating CSA images), Clauses 59, 60(2), 61, 62, 63, 65, 66(1), 67(3), 68 and Schedule 9 (management of sex offenders), Clause 73 (administering etc harmful substances (including by spiking)), Clauses 74 and 75 (encouraging or assisting serious self-harm), Clauses 78 and 79 (electronic devices for use in vehicle theft), Clause 95 (access to driver licence information), Clause 102(2) and Schedule 15 (confiscation), Clause 103 (proceedings for

civil recovery: costs and expenses), Clauses 127 to 129 (implementation of law enforcement information-sharing agreements) and Clause 130 (criminal liability of bodies corporate and partnerships), deal with, wholly or partly, to matters within the legislative competence of the Northern Ireland Assembly. The Minister for Justice has been asked to seek approval from the Northern Ireland Assembly for a legislative consent motion in relation to these provisions.

210. If, following introduction of the Bill, there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

211. See the table in Annex B for a summary of the position regarding territorial extent and application in the UK.

Commentary on provisions of Bill

Part 1: Anti-social behaviour

Chapter 1: Respect orders, youth injunctions and housing injunctions

Clause 1: Respect orders

212. This clause inserts new Part A1 into the 2014 Act – comprising new sections A1 to N1 – which makes provision for respect orders, which will provide the police, local authorities and other relevant agencies with a new power to tackle anti-social behaviour.

213. New section A1 confers a power for a county court or High Court to make a respect order, on application from a relevant authority, in respect of individuals who have engaged in anti-social behaviour ("ASB"). Relevant authorities (defined in new section B1) include the police, local authorities and registered housing providers, among others. The respect order partially replaces the civil injunction (provided for in section 1 of the 2014 Act) for persons aged 18 or over. It will enable courts to prohibit adult offenders from engaging in activities relating to their ASB, as specified in the order. It can be used to tackle a wide range of ASB, where the behaviour is causing, or is likely to cause, harassment, alarm or distress. For example, it can be issued to an individual who is persistently drunk and aggressive in a public park, causing harassment and distress to the public by shouting at passersby or threatening them with their dog. A relevant authority could apply to a court for a respect

order, seeking to ban the individual from attending the public park and also requiring the individual to attend an alcohol awareness class, to prevent future ASB. Breach of a respect order will be a criminal offence, allowing the police to enforce suspected breaches via arrest.

214. New section A1(1) provides that for a court to make a respect order two tests must be satisfied. First, the court must be satisfied, on the balance of probabilities (the civil standard of proof), that the respondent has engaged in, or threatens to engage in, ASB; and second that it is just and convenient to grant the respect order. New section A1(9) defines ASB as conduct that has caused, or is likely to cause, harassment alarm or distress. The legal test and definition for non-housing related ASB is the same as it is for civil injunctions made under Part 1 of the 2014 Act.

215. The respect order can include prohibitions and requirements (new section A1(2)). Such prohibitions may include, for example, not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. Requirements would be designed to deal with the underlying causes of an individual's anti-

social behaviour and could include, for example, attendance at an alcohol or drugs misuse course or dog training in the case of irresponsible dog owners.

216. Both prohibitions and positive requirements must avoid, so far as practicable, interference with work or education and must not conflict with requirements in any other court order or injunction that the respondent may be subject to (new section A1(3)). For example, where a respect order sets out a requirement to attend a drugs misuse course, it cannot prevent the respondent from also attending their place of work if the course is held during their normal hours of work. If the respondent's normal hours of work are Monday to Friday, 9am to 5pm, the course will instead have to be completed either in the evenings or at weekends.

217. A respect order must specify the period it has effect (new section A1(4)). Like the civil injunction, there is no minimum or maximum period a respect order must apply for. For example, the relevant court can decide that a respect order ceases to have affect after two years or alternatively can issue a respect order for an indefinite period.

218. New section A1(8) read with new section 1A(9) of the 2014 Act (as inserted by paragraph 3 of Schedule 1) provide that an application for a respect order may be treated as an application for a housing injunction and vice versa, so as to give effect so that a court dealing with an application for one should be able to grant the other if more appropriate. This would be, for example, where an application for a respect order has been made but the court believes that the legal test has been met for a housing injunction (housing-related nuisance or annoyance) rather than for a respect order (harassment, alarm or distress) and so the court can grant a housing injunction instead. This could also apply where a housing injunction has been applied for however the court deems a respect order more appropriate owing to it meeting the threshold for harassment, alarm or distress and therefore grant a respect order.

219. New section B1 lists the relevant authorities that can apply for a respect order; the list is the same as that for the civil injunction. The list covers: a local authority; a housing provider; a chief officer of police (including of the British Transport Police); Transport for London; the Environment Agency; the National Resources Body for Wales; and NHS Counter Fraud

Authority in England and the relevant body in Wales exercising corresponding functions or other body in Wales exercising any such functions on the direction of the Secretary of State or Welsh Ministers.

220. A housing provider can apply for a respect order only where the ASB concerns, either directly or indirectly, its housing management functions (subsection (4)). It does not allow housing providers to apply for a respect order against a tenant causing ASB in a public place such as a town centre, which has no connection with the housing provider's management functions.

221. New section B1(7) enables the Secretary of State to amend by regulations (subject to the draft affirmative resolution procedure) section B1 so as to add to, remove or vary the list of relevant authorities.

222. New section C1 provides that in granting a respect order to a housing provider, local authority or the police, the court may attach a power to exclude the respondent from their home. This can only be done if the court considers the respondent has been violent or threatened violence to other persons, or if there is a significant risk of harm from the

respondent to other persons. In the case of a housing provider, exclusion can only relate to the property owned or managed by them. There is no such limitation in the case of the police or local authority and exclusion would be tenure neutral.

223. New section D1 requires a respect order to specify an individual or organisation who will be responsible for supervising compliance with any requirements that are set in the order. Such individuals or organisations could include the local authority, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners.

224. The supervisor must make any necessary arrangements in connection with the requirement and promote the respondent's compliance with the requirement. The supervisor must inform the person who applied for the order and the appropriate chief officer of the police of the respondent's compliance with the requirement. If the supervisor considers the respondent has failed to comply with the requirement, they must inform the person who applied for the order and the chief officer of police, unless the respondent has a reasonable excuse or section H1 applies. The respondent must keep in touch with the

supervisor about the requirement and notify the supervisor of any changes of address.

225. Where a court requires an individual to participate in a particular activity (for example, attending alcohol awareness classes), the court must declare that it is requiring the individual to participate in an "activity requirement". This is because warning letters, as set out in new section H1, are to be issued where the respondent has failed to comply with an activity requirement, as opposed to a prohibitive requirement. If the court considers that a requirement qualifies as an activity requirement then the court must declare it as such, and the order must specify that it has done so. An activity requirement could be, for example, a requirement to attend a drugs misuse or alcohol awareness class.

226. Applications for a respect order would normally be made following the giving of notice to the respondent. However, new section E1 allows an application for a respect order to be made without notice. Without notice applications would, in practice, only be made in exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice hearing was necessary. The court has three options when

an application is made without notice, that is to adjourn the proceedings and make an interim order, adjourn the proceedings without making an interim order or dismiss the application. Rules of Court may provide for the applicant to appeal the court's decision, without notice given to the respondent.

227. New section F1 enables an interim respect order can be made where the court adjourns the hearing for a respect order, whether it is made with notice or not. The court will have the same powers as it does for a respect order made at a final hearing, however if the respondent was not given notice, the interim order may only contain prohibitions and cannot contain requirements for the respondent to participate in a particular activity. For example, even where it has been identified that alcohol misuse is an underlying cause for an individual's behaviour, the interim respect order cannot require the individual to attend an alcohol awareness class but can prohibit them from drinking alcohol in a public place.

228. An interim order could be made, for example, where a relevant authority has identified an individual who is causing significant harm to the public by repeatedly shouting at passersby, playing loud music, being drunk and

irresponsibly allowing their dog to jump at people. Whilst this behaviour does not meet the criminal threshold, it is causing immediate harassment and distress to the public and despite attempts from the relevant authority to stop the behaviour, it is deemed that a respect order is required immediately to prevent a reoccurrence of the behaviour. Normally notice would be given to the individual however due to the significant harm being caused to the public, the relevant authority makes an application to court without notice for an interim respect order so that the behaviour stops immediately.

229. New section G1 confers power on the court which made a respect order to vary or discharge the order on application by the original applicant or the respondent. A variation may take a number of forms including the addition of a new prohibition or requirement or the removal of an existing one, or the extension or reduction of the duration of an existing prohibition or requirement. Where an application is dismissed, no further application can be made by the same party, unless with the permission of the court or the other party.

230. New section H1 places a duty on the

supervisor responsible for an activity requirement to give a written warning, either by hand or by sending it by first class post addressed to the respondent at the respondent's last known address, where the supervisor believes they have failed to carry out, without reasonable excuse, a requirement as set out in their respect order. For example, where a respondent has been given a respect order that includes a requirement to attend alcohol awareness classes, and the respondent fails to attend and does not provide a reasonable excuse, the supervisor must give a written warning which states that further non-attendance within a period of twelve months will be considered a breach of the respect order. The warning must be given in writing and recorded by the supervisor as soon as practicable to do so. Only one warning may be given in a twelve-month period.

231. New section I1 provides that breach of a respect order, without reasonable excuse, is a criminal offence. Such a breach may arise where the respondent does something that the respect order prohibits them to do or fails to comply with something that the respect order requires them to do. A respect order is breached in respect of a failure to comply with a requirement only after the respondent has

been given a written warning as set out in new section H1.

232. Breaches will initially be heard in a magistrates' court with the most serious breaches being transferred to the Crown Court. The maximum penalty on conviction on indictment is two years' imprisonment, a fine, or both. A copy of the original respect order is admissible as evidence in the same way that oral evidence is admissible.

233. New section J1 requires a relevant authority, prior to submitting an application to the court for a respect order, to carry out a risk assessment. The risk assessment must consider risks associated to the victim, vulnerabilities of the respondent, alternative interventions and any such matters the person thinks relevant. This is to ensure that wider contextual factors are considered so that use of the respect order is proportionate and effective. For example, if an offender is causing problems in a public space, for example by repeatedly urinating in public, shouting and threatening passers-by, an effective risk assessment would consider whether the respondent is homeless and / or suffering from mental illness, and known to relevant services, in conjunction with

proceeding with the respect order application. It would balance this assessment of offender vulnerabilities with risk to the public and potential victims when considering whether to make the order, and what prohibitions or requirements to include. When carrying out a risk assessment, a person must have regard to guidance issued by the Secretary of State under new section M1.

234. New section K1 requires a relevant authority to inform anyone it considers appropriate when applying for a respect order with notice, or when applying for a variation or discharge of the order. For example, this could include a social landlord (when an application is made by another body against one of their tenants) or mental health team where the respondents mental health is a relevant factor for their behaviour.

235. Where a without notice application is adjourned, the relevant authority is required to inform anyone considered appropriate prior to the first on-notice hearing.

236. New section L1 provides that the special measures for vulnerable and intimidated witnesses as set out in Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act

1999 apply to respect order proceedings. Such measures may include giving evidence behind a screen or by video link or in private.

237. New section M1 confers a power on the Secretary of State to issue and revise guidance to relevant authorities about the exercise of their functions in relation to respect orders. Such guidance must be published, and relevant authorities are required to have regard to the guidance when exercising such functions.

238. New section N1 defines terms used in new Part A1 of the 2014 Act.

Clause 2 and Schedule 1: Youth injunctions and housing injunctions

239. Clause 2 introduces Schedule 1 which makes consequential amendments to Part 1 of the 2014 Act to provide for youth injunctions and housing injunctions which will continue to operate in the same way as the existing injunctions under Part 1 of the 2014 Act.

240. Relevant authorities will be able to apply for a youth injunction for ASB perpetrators aged 10 to 17 in the same way that the civil injunctions currently operate. For example, it can be used where a 16-year-old has been committing

harassment and alarm to the public in their local park by persistently and openly taking illegal drugs, playing loud music and threatening passersby. A relevant authority is able to apply to a youth court for a youth injunction to prohibit such behaviour and also attend a drugs misuse course. If, despite this being granted, the respondent continues their behaviour, proceedings are then heard in the youth court where civil penalties are available (a supervision order or a civil detention order of up to three months for 14- to 17-year-olds).

241. Relevant authorities will be able to apply for a housing injunction for ASB perpetrators aged 18 or over committing housing related anti-social behaviour that is causing nuisance or annoyance in the same way as with previous civil injunctions (see new section 1A of the 2014 inserted by paragraph 3 of Schedule 1). For example, a housing provider can apply to the County Court or the High Court for a housing injunction where one of its tenants is causing annoyance by repeatedly playing loud music. The relevant court can then issue a housing injunction to prohibit the playing of loud music. Breach of such an order would be heard in the relevant court where the available penalties are an unlimited fine or up to two years' imprisonment for contempt of court.

242. Paragraph 15 of Schedule 1 inserts new section 13A into the 2014 Act. This makes similar provision to new section J1 in that it requires a person applying for an injunction under Part 1 of the 2014 Act to first undertake a risk assessment and, in doing so, have regard to guidance issued by the Secretary of State under section 19 of the 2014 Act.

243. Subsection (2) makes transitional provision. It provides that for civil injunctions granted pre-commencement, or where applications are made pre-commencement and injunctions are granted on such applications, these will continue to be dealt with as a civil injunction. For example, if a relevant agency applies for a civil injunction, and during the proceedings, the respect order, housing injunction and youth injunction are commenced under the Crime and Policing Act, then the proceedings will be dealt with as a civil injunction and will not automatically become respect order, housing injunction or youth injunction proceedings.

Chapter 2: Other provisions about anti-social behaviour

Clause 3: Maximum period in certain directions, notices and orders

244. This clause expands the timeframe that a

dispersal direction can be in place from 48 hours to 72 hours and extends the maximum duration of a closure notice from 48 hours to 72 hours.

245. Subsection (2) amends section 35 of the 2014 Act, which limits the time a dispersal direction can be in place. A dispersal direction can be issued by police officers in uniform to require a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours. For a dispersal direction to be issued, the behaviour must be contributing or likely to contribute to members of the public in the locality being harassed, alarmed or distressed (or the occurrence of crime and disorder) and a direction is necessary to remove or reduce the likelihood of the anti-social behaviour, crime or disorder. Subsection (2) amends section 35 of the 2014 Act to increase the maximum duration of a dispersal direction to 72 hours. New section 35(7A) of the 2014 Act (as inserted by subsection (2)(b)) requires a police officer of at least the rank of inspector to review any dispersal direction set to last more than 48 hours as soon as reasonably practicable after 48 hours has elapsed.

246. A closure notice and closure order can be issued by local authorities and the police. It is

designed to allow them to close premises which are being used, or likely to be used, to commit nuisance or disorder. The 2014 Act provides that following a closure notice being issued, the closure order can be applied for no longer than 48 hours after service through the courts.

247. A closure notice issued under section 76 of the 2014 Act by a police officer of at least the rank of inspector or a local authority may last for up to 24 hours (section 77(1)). A closure notice can be issued for, or extended up to, a maximum of 48 hours if agreed by a police officer of at least the rank of superintendent or someone designated by the chief executive officer of a local authority (section 77(2)). Subsection (3) extends these timeframes for which a closure notice may apply to 48 hours, in the case of a notice issued by a police officer of at least the rank of inspector or a local authority, and to 72 hours in the case of a closure notice issued or extended by a police officer of at least the rank of superintendent or the chief executive of a local authority.

248. Where an application has been made to a court for a closure order, but the court determines not to make an order, it can nonetheless extend the operation of a closure notice for up to a further 48 hours (section

81(2) of the 2014 Act). Subsection (4) amends sections 81(2) of the 2014 Act to enable a court to extend the duration of a closure notice for a maximum period of the 72 hours.

Clause 4: Fixed penalty notices

249. This clause increases the upper limit for Fixed Penalty Notices (“FPN”) for breaches of PSPOs and CPNs from £100 to £500 and extends the categories of person who may issue an FPN.

250. Subsection (1) amends Schedule 5 to the 2002 Act, which gave the chief officer (in most police forces the chief constable, or in the Metropolitan Police Force the Commissioner) the power to grant accreditation to the employee of certain organisations. These accredited employees can then exercise powers outlined in Schedule 5 to the 2002 Act such as requesting an offender’s name and address, issuing a FPN and confiscating items such as tobacco and alcohol. This subsection allows these accredited employees, known as Community Safety Accreditation Scheme officers, to issue FPNs for breaches of PSPOs and CPNs.

251. Section 52 of the 2014 Act enables an authorised person to issue a FPN to anyone who that person has reason to believe has breached a CPN as an alternative to

prosecution. The maximum level of the FPN is £100 (section 52(7) of the 2014 Act). Subsection (3) amends this to £500.

252. Section 68 of the 2014 Act enables a constable or an authorised person to issue a FPN to anyone who that person has reason to believe has breached a PSPO as an alternative to prosecution. The maximum level of the FPN is £100 (section 68(6) of the 2014 Act). Subsection (4) amends this to £500.

Clause 5 and Schedule 2: Closure of premises by registers social housing provider

253. This clause introduces Schedule 2 which enables registered social housing providers to issue a closure notice and apply for a closure order in respect of premises which are being used, or likely to be used, to commit nuisance or disorder.

254. Chapter 3 of Part 4 of the 2014 Act enables a police officer of at least the rank of inspector or a local authority to issue a closure notice in respect of premises where they reasonably believe that there is, or is likely soon to be, a public nuisance or there is, or is likely soon to be, disorder in the vicinity of, and related to the premises and the notice is necessary for preventing the continuation, occurrence or reoccurrence of that nuisance or disorder (section 76(1) of the 2014 Act). For example,

closing a nightclub where police have intelligence to suggest that disorder is likely in the immediate vicinity on a specific night or over a specific period. A notice is issued out of court, can be issued for a maximum of 48 hours, and cannot prohibit access by the owner of the premises or people who habitually live on the premises. The notice can be designed to prohibit access by particular people at particular times. For example, where a property is closed in anticipation of a party publicised through social media, the family who lived there would not be prohibited from entering, and additional people could also be exempted (such as other family members) where appropriate. A notice can last for up to 24 hours, extendable to a maximum of 48 hours if agreed by a police officer of at least the rank of superintendent or someone designated by the chief executive officer of a local authority. When a closure notice is issued, the police or local authority must apply to a magistrates' court for a closure order. The court can make a closure order for a maximum period of three months if it is satisfied that: a person has engaged in disorder, anti-social or criminal behaviour on the premises (or that such behaviour is likely if the order is not made) or the use of the premises is associated with the occurrence of disorder or serious

nuisance to members of the public (or that such disorder or serious nuisance is likely if the order is not made); and that the order is necessary to prevent the continuation or occurrence or reoccurrence of such disorder or behaviour. Unlike the closure notice, a closure order can prohibit access to anyone, including the landlord, owner or habitual residents.

255. Paragraph 2 of Schedule 2 amends section 76 of the 2014 to enable a registered social housing provider to issue a closure notice. The test for issuing a notice remains unchanged.

256. Paragraphs 3 to 15 of Schedule 2 make other amendments to Chapter 3 of Part 4 of the 2014 Act consequential on the amendment to section 76 enabling a registered social housing provider to issue a closure notice. In each case, the substantive effect of the provisions is unchanged, but the provisions are modified so that the powers vested in a senior police officer or local authority, for example to cancel or vary a closure notice, are similarly vested in a registered social housing provider.

Clause 6 and Schedule 3: Reviews of responses to complaints about anti-social behaviour

257. Clause 6 and Schedule 3 create a duty for local policing bodies – PCCs, the Mayor's Office for Policing and Crime, and the Common Council of the City of London – to

promote awareness of anti-social behaviour ("ASB") case reviews in their police area and provide a route for victims to query decisions.

258. The 2014 Act provides for ASB case reviews, a mechanism for victims of persistent ASB to request that relevant bodies undertake a case review. Relevant bodies are set out in section 105 of the 2014 Act, namely local authorities, the police, health providers and providers of social housing. Any individual, community or business can make an application for a case review, and the relevant bodies must carry out a case review if the threshold is met. The threshold is set by the relevant bodies but must be no more than three complaints of ASB in the previous six-month period. The case review is a backstop for victims of ASB who consider that there has not been an appropriate response to their complaints about such behaviour. Schedule 4 to the 2014 Act makes additional provisions for ASB case reviews. The review procedures must include what happens when the applicant is dissatisfied with the way their application was dealt with or the review carried out (paragraph 3 of Schedule 4 to the 2014 Act) and an assessment of the effectiveness of the procedures and revising them (paragraph 4 of Schedule 4 to the 2014 Act).

259. The role of local policing bodies is limited to being consulted in the making and revising of the review procedures (paragraph 1 of Schedule 4).

260. Subsection (3) inserts new section 104A into the 2014 Act which places a requirement on the relevant local policing body ("LPB") to carry out a review of the response to anti-social behaviour (an "LPB case review").

261. New subsection 104A(1) sets out that an LPB case review can be conducted whether a relevant body has already carried out an ASB case review or where someone has applied for an ASB case review but the relevant body has deemed the threshold was not met.

262. New subsection 104A(2) requires a LPB to conduct an LPB case review if the person in relation to the case review – or someone acting on their behalf with their consent – applies for one and if the LPB considers the threshold for carrying out an ASB case review was met.

263. The LPB may also conduct a review on their own initiative where a further review has not been requested if the body considers that it is appropriate to do so and the threshold for carrying out an ASB case review was met (new section 104A(3)).

264. The LPB must make arrangements about the carrying out of LPB case reviews by that body ("LPB review procedures"), and ensure that the current LPB review procedures are published (new section 104A(4)). The LPB review procedures must include provision about the making of applications for LPB case reviews and, in particular, must specify the point of contact for making applications (new section 104A(5)).

265. New section 104A(6) provides that a LPB who carries out an LPB case review may make recommendations to a person who exercises public functions, such as a local authority or the police, in respect of any matters arising from the review; and the person must have regard to the recommendations in exercising public functions.

266. Where an LPB case review follows an ASB case review into the same behaviour, a person exercising public functions does not have to have regard to the recommendations made in the ASB case review. The exception to this is where the LPB case review confirms the recommendation made in the ASB case review (new section 104A(7) read with new section 104(7A) inserted by subsection (2) of this clause).

267. A LPB is required to inform the relevant

applicant (as defined in new section 104A(9)) of the LPB case review or of the original ASB case review of the outcome of the LPB case review and any recommendations that have been made (new section 104A(8)).

268. New section 104A(10) sets out the information relating to LPB case reviews that the LPB must publish as soon as is practical after the end of a reporting period.

269. New section 104A(11) gives effect to new Schedule 4A to the 2014 Act (as set out in Schedule 11 to this Bill).

270. Subsections (4) to (6) makes consequential amendments to section 105 of and Schedule 4 to the 2014 Act. Subsection (5)(d) inserts new paragraphs 10 and 11 into Schedule 4. New paragraph 10 obliges local policing bodies to promote awareness of opportunities to make applications for ASB case reviews and ASB review procedures for such reviews. New paragraph 11 provides that relevant bodies must have regard to guidance issued by the Secretary of State in exercising functions under section 104 of and Schedule 4 to the 2014 Act.

271. New Schedule 4A to the 2014 Act makes further provision about LPB case reviews, including requiring LPBs to consult relevant bodies and housing providers on LPB review

procedures (paragraphs 1 and 2), making provisions about what is to happen where an applicant is dissatisfied (paragraph 3), making provisions for the assessment and review of those procedures (paragraph 4), requiring LPBs to consult appropriate local social housing providers and for local social housing providers to cooperate with LPBs on LPB case reviews (paragraph 5) and making provisions for the requesting and disclosure of information (paragraph 6).

272. Paragraph 7 of new Schedule 4A deals with the effect of joint review procedures where a local government area falls within two or more police areas. If two or more local policing bodies jointly carry out an LPB case review, references in section 104A and Schedule 4 are to be read accordingly.

273. Paragraph 8 of new Schedule 4A provides that LPB review procedures may make different provision in relation to different parts of a police area. Paragraph 9 obliges local policing bodies to promote awareness of opportunities to make applications for LPB case reviews and LPB review procedures for such reviews. Paragraph 10 provides that an LPB must have regard to guidance issued by the Secretary of State in exercising functions under section 104A, Schedule 4 (ASB case reviews) or

Schedule 4A (LPB case reviews).

Clause 7: Provision of information relating to anti-social behaviour to Secretary of State

274. This clause inserts new section 105A into the 2014 Act which confers power on the Secretary of State, by regulations (subject to the negative resolution procedure), to require relevant authorities to report information relating to ASB to the Secretary of State. Relevant authorities for these purposes are those agencies (such as the police, local authorities and social housing providers) eligible to apply for an injunction under Part 1 of the 2014 Act (other than the Secretary of State) together with integrated care Boards in England and Local Health Boards in Wales.

275. New section 105A(2) to (5) provide detail on what information the relevant authorities may be required to report on and how they may be required to do so. The Secretary of State will be able to make regulations to further specify the exact requirements for each body, and the regularity and form of submission. This may include, reporting information on volume and type of ASB incidents; use of ASB powers and interventions and what for; and number of ASB case reviews and outcomes. Different bodies may be required to report different information,

for example the regulations could request certain information from local authorities, but different information from social housing providers. Subsection (7) makes further provision for the Secretary of State, before making regulations, to consult with such persons as the Secretary of State considers appropriate. This may include such persons likely to be affected by new requirements.

Clause 8: Seizure of motor vehicles used in manner causing alarm, distress or annoyance

276. This clause modifies the police powers to deal with the anti-social use of motor vehicles on public roads or off-road. Section 59 of the 2002 Act provides the police with the power to remove vehicles that are being driven carelessly or inconsiderately on road or without authorisation off-road and in a manner causing, or likely to cause, alarm, distress or annoyance. Section 59(4) of the 2002 Act currently requires an officer to warn the person before seizing the vehicle, to enable its anti-social use to be stopped. By virtue of section 59(5) of the 2002 Act, the requirement to give prior warning does not apply where it is impracticable to do so or where a warning has previously been given. The Police (Retention and Disposal of Motor Vehicles) Regulations

2002 (SI 2002/3049), as amended, make provision for the removal, retention, release and disposal by the police or persons authorised by them, of vehicles seized under section 59.

277. Subsection (1) repeals section 59(4) and (5) of the 2002 Act to remove the requirement to give a warning in all cases thereby enabling the police to remove motor vehicles being used in an anti-social manner more quickly and efficiently. The repeal does not have retrospective application (subsection (2)).

Clause 9: Guidance on fly-tipping enforcement in England

278. This clause inserts new section 34CZA into the Environmental Protection Act 1990. This new section contains a power for Secretary of State to issue statutory guidance to English waste collection authorities on the exercise of their enforcement functions, and those of their authorised officers, against (a) fly-tipping and (b) breaches of the household waste duty of care (for example, where a householder gives their waste to a fly-tipper). Such enforcement activity includes the power to search and seize vehicles linked to fly-tipping offences, the power to issue fixed penalty notices for fly-tipping and breaches of the household waste

duty of care, and associated powers of investigation and prosecution.

279. New section 34CZA(2) requires waste collection authorities to have regard to such guidance when taking such enforcement activity. A “waste collection authority” is typically a district council or London borough council and includes unitary authorities exercising the powers of district councils. New section 34CZA(3) allows the Secretary of State to revise such guidance. New section 34CZA(4) requires the Secretary of State to consult such persons as they consider appropriate before issuing or revising such guidance. This will include waste collection authorities. New sections 34CZA(5) require such guidance, and any revised guidance, to be laid before Parliament and published.

Part 2: Offensive weapons

Clause 10: Possession of a weapon with intent to use unlawful violence etc

280. This clause introduces a new offence of possessing an article with a blade or point or offensive weapon with the intent to use unlawful violence, cause a person to believe unlawful violence will be used or cause serious unlawful damage.

281. At present, it is an offence to carry an article with a blade or point , with the exception of a folding pocketknife with a blade of less than three inches, in a public place under section 139 of the 1988 Act, or a bladed article or offensive weapon on school or further education premises under section 139A of the 1988 Act. It is also an offence to threaten somebody with an offensive weapon under section 1A of the Prevention of Crime Act 1953, or with an article with a blade or point in public or a bladed article or offensive weapon on school or further education premises under section 139AA of the 1988 Act. It is an offence to threaten another person with a bladed article or an offensive weapon in a private place under section 52 of the Offensive Weapons Act 2019. It is also an offence to carry in public any article that is intended to be used as an offensive weapon (under section 1 of the Prevention of Crime Act 1953). The introduction of this new offence bridges the gap between being in possession of a bladed article or offensive weapon and threatening somebody with a bladed article or offensive weapon.

282. Subsection (1) inserts new section 139AB into the 1988 Act.

283. New section 139AB(1) of the 1988 Act makes

it an offence, in England and Wales, for a person to have in their possession a relevant weapon with the intention to use unlawful violence against another person; to cause another person to believe that unlawful violence will be used against them or someone else; to cause unlawful serious damage to property or; for someone to enable another person to do any of the previously mentioned actions.

284. New section 139AB(2) defines a relevant weapon for the purposes of the new offence, that is an article to which section 139 of the 1988 Act applies (namely any article which has a blade or is sharply pointed except a folding pocket knife if the cutting edge of its blade does not exceed three inches) or an offensive weapon to which section 1 of the Prevention of Crime Act 1953 applies (namely, any article made or adapted for use for causing injury to the person, or intended by the person having it with them for such use by them or by some other person).

285. New section 139AB(3) details the maximum penalty for this offence. The maximum penalty, upon summary conviction, is six months' imprisonment (the current general limit in a magistrates' court as provided for in section 224 of the Sentencing Act 2020), a fine, or

both, or on conviction on indictment four years' imprisonment, a fine, or both.

286. Subsection (2) amends section 315 of the Sentencing Code which provides for minimum sentences for repeat offences involving weapons or bladed articles. The effect of the amendments is to provide that the courts must in sentencing a person following a second or subsequent conviction for a relevant offence involving an offensive weapon (including the new section 139AB offence) impose a minimum sentence of at least six months' imprisonment in the case of an adult or a four-month detention and training order in the case of a 16- or 17-year-old. The minimum sentence must be imposed unless the court is of the opinion that there are exceptional circumstances which relate to the offence or to the offender and justify not doing so.

Clause 11: Maximum penalty for offences relating to offensive weapons

287. This clause increases the maximum penalty, from six months' imprisonment to two years' imprisonment, for the offences of importation, manufacture, sale and supply, and possession of an offensive weapon, flick knife or gravity knife. This change reflects the severity of the offences and, by making these offences triable either way, it provides the police with more

time to investigate the alleged offence and to do so when sufficient evidence has been gathered, without the pressure of the current time limit of six months for the prosecution of a summary only offence.

288. Subsection (1) amends section 141(1) and (1A) of the 1988 Act. Section 141(1) of that Act makes it an offence for a person to manufacture, sell, hire, offer for sale or hire, have in their possession for the purpose of sale or hire, lend or give to any other person, an offensive weapon to which section 141 applies. Section 141(1A) of the 1988 Act makes it an offence for a person to possess a weapon to which section 141 applies in private. That section applies to an offensive weapon of a kind specified in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (SI 1988/2019), as amended. Amongst the kinds of weapons specified in that order are: knuckledusters, swordsticks, stealth knives and items known as “push daggers”, “zombie knives” and “cyclone knives”. Under the law of England and Wales, the section 141(1) and (1A) offences are a summary-only offences, that is they may only be tried in a magistrates’ court, and carry a maximum penalty of six months’ imprisonment, a fine, or both. Section 141(1) and (1A), as amended, instead provides that, in England and Wales,

the section 141(1) and (1A) offences are henceforth to be either way offences, that is they may be tried as a summary offence in a magistrates' court or as an indictable offence in the Crown Court. The maximum penalty on summary conviction is, as now, six months' imprisonment (the current general limit in a magistrates' court as provided for in section 224 of the Sentencing Act 2020), a fine, or both. The maximum penalty on conviction on indictment is two years' imprisonment, a fine, or both. Section 141 of the 1988 Act applies to England and Wales, Scotland and Northern Ireland. New section 141(1ZA) preserves the existing maximum penalties for the offence in Scotland (six months' imprisonment, a level 5 fine (£5,000), or both) and Northern Ireland (four years' imprisonment, a fine, or both).

289. Subsection (2) amends section 141A of the 1988 Act which makes it an offence to sell to a person under the age of 18 years an article to which section 141A applies. Subject to certain exceptions, section 141A applies to any knife, knife blade or razor blade, any axe and any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to a person. Under the law of England and Wales, the section 141A offence is a summary-only offence and carries a maximum penalty of six months'

imprisonment, a fine, or both. Subsection (2) amends section 141A(1) of the 1988 Act to provide that, in England and Wales, the section 141A offence is henceforth to be an either way offence carrying a maximum penalty on summary conviction of six months' imprisonment (the current general limit in a magistrates' court as provided for in section 224 of the Sentencing Act 2020), a fine, or both and on conviction on indictment of two years' imprisonment, a fine, or both.

290. Subsection (3) amends section 1 of the Restriction of Offensive Weapons Act 1959 ("the 1959 Act") which makes it an offence for a person to possess, manufacture, sell, hire, offer for sale or hire, have in their possession for the purpose of sale or hire, lend or give to any other person, a flick knife or gravity knife. Under the law of England and Wales, the offences in section 1 of the 1959 Act are summary-only offence and carry a maximum penalty of six months' imprisonment, a fine, or both. Subsection (3) insert a new subsection (1ZA) into section 1 of the 1959 Act and amends subsection (1B) of that section which together provide that, in England and Wales, the section 1 offences are henceforth to be an either way offences carrying a maximum penalty on summary conviction of six months' imprisonment (the current general limit in a

magistrates’ court as provided for in section 224 of the Sentencing Act 2020), a fine, or both, or on conviction on indictment a maximum penalty of two years’ imprisonment, a fine, or both. Section 1 of the 1959 Act applies to England and Wales, and Scotland. New section 1(1ZA) of the 1959 Act preserves the existing maximum penalties for the offence in Scotland (six months’ imprisonment, a level 5 fine (£5,000)), or both.

291. Subsection (4) provides that the increases in maximum penalties do not have retrospective effect.

Clause 12: Power to seize bladed articles etc

292. This clause creates a new police power to seize, retain and destroy legally held bladed articles from private property when a constable is lawfully on the private premises and they have reasonable grounds to suspect the bladed article will likely be used in connection with unlawful violence. The power can be exercised by any police officer, regardless of rank, acting in the course of their duty. The owner of a seized article may seek to recover it through an application to a magistrates’ court.

293. An example of when this power could be used would be where the police come across legal knives, for example machetes, while investigating another offence, such as a drugs

offence. Unless the machetes can be used as evidence in the investigation, the police are not currently permitted to seize them. This power therefore allows the police to seize, retain and destroy the machetes if the constable had reasonable grounds to suspect that they would likely be used in connection with unlawful violence.

294. Subsection (1) confers a new power on a constable who is lawfully on any premises (including, for example, someone's home) where they find an article that has a blade or is sharply pointed (such as a knife or machete) on that premises and they have reasonable grounds to suspect that the article is likely to be used in connection with unlawful violence if the article were to not be seized. If the above conditions are met, the constable will be able to seize the article. A constable, acting in the course of their duty, may lawfully be on any premises under PACE powers or common law powers, or by invitation of an occupier. If, for example, they have been invited in by the occupier of those premises and see such item in plain sight or they are executing a search warrant and encounter a bladed article the constable may seize the item.

295. The term "unlawful violence" is defined in subsection (9) as including unlawful damage to

property and the threat of unlawful violence, including unlawful damage to property.

296. Subsections (2) to (8) make provision for the recording, retention or disposal, and recovery of a relevant article that has been seized by a constable under the power conferred by subsection (1).

297. Subsection (3) requires a constable to make a record of seizure (containing the information, such as a description of the seized article, as specified in subsection (4)) and to give such a record to a person who is on the premises or otherwise leave it on the premises if they are unoccupied.

298. Subsection (5) sets out that the constable who has seized the article can retain it, destroy or otherwise dispose of it after a period of six months. This is subject to the provisions in subsections (6) to (8) which enable a person claiming to be the owner of the article to apply to a magistrates' court to recover the article. A magistrates' court may make an order for the return of the article if they are satisfied that the claimant is the owner of the article and it would be just to make such an order. In determining whether it was just to make an order, a magistrate would, amongst other things, be expected to consider whether the test for the seizure of the article has been made out,

namely that there were reasonable grounds for suspecting that the relevant article would be likely to be used in connection with unlawful violence. Subsection (8) provides that a relevant article cannot be disposed of within six months of its seizure and then only on the conclusion of any proceedings in respect of the recovery of the article.

Clause 13: Power to seize bladed articles etc: armed forces

299. Clause 13 gives the service police powers, equivalent to those granted to the civilian police by Clause 12, to seize, retain and destroy legally held bladed articles from premises when a member of the service police is lawfully on the premises and they have reasonable grounds to suspect the bladed article will likely be used in connection with unlawful violence. The service police have jurisdiction over service personnel and civilians subject to service discipline. This new power may only be used where service police are lawfully on premises under existing powers.

300. The clause inserts a new section 93ZD into Part 3 of the Armed Forces Act 2006. The Armed Forces Act 2006 governs the discipline of the armed forces, and Part 3 sets out powers of arrest, search and entry for commanding officers and the service police.

Part 3: Retail crime

Clause 14: Assault of retail worker

301. This clause introduces a new offence for assaulting a retail worker at work. This offence applies to England and Wales.

302. Subsection (2) defines a retail worker as someone working in or about retail premises, for or on behalf of the owner/occupier of the retail premises. They may also be the owner or occupier of the premises.

303. Subsection (3) defines retail premises for the purpose of this clause. These are premises mainly or wholly used for the sale of anything by retail; and premises which are mainly used for wholesale purposes, but also are used for the sale of anything by retail.

304. ‘Premises’ will include a stall, or a vehicle, for example an outdoor market or food truck. ‘Working’ will include unpaid work, for example those working voluntarily in a charity shop or working in a family business without pay.

305. Subsection (4) provides that this is a summary only offence, and that the maximum penalty will be six months’ imprisonment, an unlimited fine, or both.

306. Subsection (5) provides that when section 281(5) of the CJA 2003 comes into force, the maximum penalty will increase to 51 weeks,

along with other for summary offences committed after that date.

307. Subsection (6) inserts the offence of assault retail worker into section 40 of the Criminal Justice Act 1988 which permits for the offence to be included in an indictment if the charge (a) is founded on the same facts or evidence as a count charging an indictable offence; or (b) is part of a series of offences of the same or similar character as an indictable offence which is also charged.

308. This clause is not intended to limit the existing offences of common assault and battery.

Clause 15: Assault of retail worker: duty to make criminal behaviour order

309. This clause inserts new section 331A into the Sentencing Code which places a duty on the court to impose a criminal behaviour order where someone has been convicted of the offence of assaulting a retail worker (Clause 14).

310. New section 331A(1) specifies the conditions that must be met for the duty to apply namely that the offender has been convicted of the offence of assaulting a retail worker, is aged 18 or over, the prosecution has made an application to the court for an order to be made and the court does not impose a

custodial sentence, a youth rehabilitation order, a community order or a suspended sentence order.

311. New section 331A(2) modifies the application of section 331 of the Sentencing Code (power to make CBO). The effect of section 331 as modified is that the court is under a duty to make a CBO (rather than has a power to make such an order), unless the court decides there are exceptional circumstances that relate to the offence or the offender, or that justify not making a CBO or if the courts make an order for absolute discharge (under section 79 of the Sentencing Code in respect of the offence).

312. New section 331A(3) modifies the application of section 332 of the Sentencing Code (proceedings on an application for an order). The effect of section 332 as modified is that in deciding whether there are exceptional circumstances to disapply the duty to make an order, the court must hear representations from the prosecution and the offender.

Clause 16: Theft from shop triable either way irrespective of value of goods

313. Subsection (1) repeals section 22A of the Magistrates' Courts Act 1980 (inserted by section 176 of the 2014 Act), which provides, subject to one exception, that low-value shop theft (that is, where the value of the goods is

£200 or less) is a summary offence. The one exception is where an adult defendant is to be given the opportunity to elect Crown Court trial, and if the defendant so elects, the offence is no longer summary and will be sent to the Crown Court (section 22A(2)). Otherwise, the effect of section 22A is that offences of low-value shop theft cannot be sent to the Crown Court for trial or committed there for sentence; they attract a maximum penalty of six months' imprisonment; and are within the procedure in section 12 of the Magistrates' Courts Act 1980 that enables defendants in summary cases to be given the opportunity to plead guilty by post. The effect of the repeal of section 22A is that low-value shop theft offences will be tried as 'general theft' (an either way offence with a maximum custodial sentence of seven years' imprisonment), instead of summarily in the magistrates' court.

314. Subsection (2) makes consequential amendments and repeals (including of section 176 of the 2014 Act) as a result of the repeal of section 22A of the Magistrates' Courts Act 1980.

315. Subsection (3) provides that the repeal of section 22A does not have retrospective effect.

Part 4: Criminal exploitation of children and others

Chapter 1: Child criminal exploitation

Clause 17: Child criminal exploitation

316. This clause creates a new offence of child criminal exploitation.

317. Subsection (1) makes it a criminal offence for an adult (A) aged 18 or over to do anything to a child (B) or in respect of B, intending to cause B to engage in any criminal activity, where either B is under the age of 13 or A does not reasonably believe that B is aged 18 or over.

318. The offence is aimed at adults who exploit children by intentionally using them to commit criminal activity. This could be, but is not limited to, where A recruits B into a criminal gang, or where A directs or controls B's offending. It could also cover the situation where A arranges or facilitates B's criminal behaviour, including where A instructs another person (C) to use B to commit criminal activity. It also covers precursory acts, such as grooming, where there is the requisite intent. A will commit the offence regardless of any apparent consent given by B to the conduct done to or in respect of them, or to engage in the criminal activity. The offence is also made

out regardless of whether B commits or intends to commit the criminal activity intended by A, or whether the child is prosecuted or found guilty of the criminal activity.

319. Subsection (1)(b) provides that where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. However, where B is under 13, A will commit the offence regardless of any reasonable belief he may have about B’s age.

320. Subsection (2) clarifies that, for the purposes of this offence, a child is a person under the age of 18. It also sets out a definition of “criminal conduct”, the effect of which is that the offence is made out where the activity that A intends to cause B to engage in constitutes an offence in England and Wales or would constitute a criminal offence if it occurred in England and Wales and/or were committed by a person over the age of criminal responsibility in England and Wales. It is therefore irrelevant for the offence whether B is under 10, or the conduct intended is to occur outside of England and Wales.

321. Subsection (3) provides that this is a triable-either-way offence with a maximum penalty of imprisonment for a term not exceeding the

general limit in a magistrates' court (currently, six months' imprisonment for a single offence) or an unlimited fine, or both, in the case of a summary conviction and of ten years' imprisonment, a fine, or both for conviction on indictment.

322. This clause is not intended to limit the potential scope and/or application of any existing offences (such as the inchoate offences) or override the age of criminal responsibility. It does not extend or transfer liability to the adult for the offence committed by the child but is a separate offence to reflect the harm done against the child by the adult by exploiting them and drawing them into a world of criminality.

Clause 18: Power to make CCE prevention order

323. Subsections (1) and (2) set out the power for a court to make a CCE prevention order ("CCEPO") in respect of a person over 18 ("the defendant"). A CCEPO is a new civil order, which enables prohibitions or requirements to be imposed by courts on individuals involved in CCE in order to protected children from harm from criminal exploitation by preventing future offending.

324. Subsection (2) sets out the circumstances in which a court can make a CCEPO. They may

be obtained through a variety of routes. An order may be made by a magistrates' court following an application by a chief officer of the police (including the British Transport Police and the Ministry of Defence Police) or Director General of the NCA (subsection (2)(a) and see Clause 20). An order may also be made by a court (for example, a magistrates' court, the Crown Court or in limited cases the Court of Appeal) on its own volition at the end of criminal proceedings, in situations where the defendant has been acquitted of the offence or the court has made a finding that the defendant is not guilty by reason of insanity, or is under a disability (such that they are unfit to be tried) but has done the act charged (subsection (2)(b) and (d)). Additionally, the Crown Court may make an order where it allows a defendant to appeal against their conviction (subsection (2)(c)).

325. Subsections (3) to (5) set out the three conditions that must be satisfied for a court to make a CCEPO. The first is that the court must be satisfied, on the balance of probabilities (that is, the civil standard of proof), that the defendant has engaged in conduct associated with causing children to engage in criminal behaviour (subsection (3)(a)*)*. In cases where the court is imposing an order at the end of

criminal proceedings after a finding that the defendant is not guilty by reason of insanity or is not fit for trial but has done the acts charged, the first condition will also be met (automatically) if the offence the finding relates to is an offence of child criminal exploitation (subsection (3)(b)). The second condition is that the court considers that there is a risk that the defendant will seek to cause children generally, or particular children, to engage in criminal conduct (subsection (4)), and the third condition is that the court considers the order necessary to protect children (generally or specific children) from being caused to engage in criminal behaviour (subsection (5)).

326. Subsection (6) makes clear that grooming children, or encouraging others to groom children, with the intention that they will engage in criminal conduct in the future, is included in conduct that could satisfy the first test.

327. Subsection (7) provides that a CCEPO may be made in relation to conduct, or a finding in relation to an offence, that occurred before this section comes into force.

Clause 19: CCE prevention orders

328. This clause describes a CCEPO. CCEPOs are orders containing prohibitions or requirements on the subject of the order (subsection (1)). The court can only include in the order prohibitions or requirements which it is satisfied are necessary to protect children from being caused to engage in criminal conduct (subsections (1) and (2)). The nature of any condition is a matter for the court to determine. These conditions could include limiting their ability to work with children, contact specific people online or in person, or go to a certain area, or requiring them to attend a drug awareness class. In particular, they can require the subject of the order to comply with the notification condition (set out in Clause 24).

329. These conditions must, so far as practicable, avoid conflict with the defendant's religious beliefs, interference with their work or education and must not conflict with requirements in any other court order or injunction that the respondent may be subject to (subsection (3)). A CCEPO therefore should not, for example, impose requirements to attend a drugs awareness class during the individual's hours of work which prevent them from attending their work.

330. Subsections (4) to (7) provide for the extent and duration of a CCEPO and the prohibitions and requirements in it. Prohibitions and requirements contained within the order will apply throughout the UK unless otherwise stated (subsection (4)).

331. A CCEPO must either specify the duration of the order (which must be for at least two years) or provide that it remains in force until further order (subsection (5)). Different prohibitions or requirements may last for different lengths of time (subsection (6)). Where a person is made subject to a new CCEPO any existing CCEPO will cease to apply (subsection (7).

Clause 20: Applications for CCE prevention orders

332. This clause covers the steps to be taken by the police, or NCA, to apply for a CCEPO to a magistrates' court. Subsections (1) and (2) enable the following persons to apply for a CCEPO: a relevant chief officer of police (being the chief officer police for the police area where the defendant lives or for a police area where they believe the defendant is in or about to enter), the Chief Constable of the British Transport Police Force, the Chief Constable of the Ministry of Defence Police and the Director General of the NCA. Police areas take the meaning in section 1 (and Schedule 1) of the Police Act 1996.

333. If the British Transport Police, Ministry of Defence Police, or NCA make an application for a CCEPO, they must notify the chief officer of police where the defendant lives or where they believe they defendant is or is intending to come to, that they have made an application as soon as practicable (subsection (3)). This ensures local police forces are kept fully informed of risks relating to child criminal exploitation in their areas.

Clause 21: Applications without notice

334. Applications for a CCEPO will normally be made following the giving of notice to the defendant, however this clause allows the applicant to make an application for a CCEPO without giving notice to the defendant (subsection (1)). This will allow for an order to be imposed, where appropriate, in exceptional or urgent situations such as where an immediate risk to specific or general children is present and where serving notice would cause unacceptable delay or risk the defendant absconding or causing imminent harm to potential victims or witnesses. The applicant will need to produce evidence to the court as to why a without notice hearing is necessary.

335. The court has three options when an application is made without notice; to adjourn

the proceedings and make an interim order, adjourn the proceedings without making an interim order or dismiss the application (subsection (2)). Clause 22 deals with interim orders.

Clause 22: Interim CCE prevention orders

336. This clause deals with the court's powers to grant an interim CCEPO where it is considering an application for a CCEPO but adjourns the hearing. An interim order may be made following an application made either with or without notice to the defendant. An adjournment may be necessary to enable further information to be gathered ahead of a full hearing, or to enable a defendant to attend a full hearing.

337. The court can only grant an interim CCEPO where it considers it necessary to do so (subsection (2)). Interim orders can only last for a fixed period or until the full order is either granted or dismissed (subsection (2)).

338. Subsection (3) provides that while an interim CCEPOs may contain prohibitions, the only requirement they may contain is the notification condition (see Clause 24). Therefore, other positive requirements, such as attending a drug awareness class, cannot be part of an interim CCEPO.

339. If an interim CCEPO is made at a hearing without notice, it only takes effect upon being served on the defendant (subsection (5)). Subsection (6) makes clear that an interim CCEPO may be varied (or discharged) under Clause 25 (in the same way as a full CCEPO may).

Clause 23: Procedural powers where no application made

340. This clause sets out additional procedural powers of the court where a CCEPO is being considered at the end of criminal proceedings, in circumstances other than on conviction. This is where the defendant has been acquitted, allowed to appeal their conviction, found guilty by reason of insanity, or found to be under a disability but to have done the act charged.

341. Subsections (2) and (3) make clear that the court may consider, for the purpose of deciding whether to make a CCEPO, evidence by the prosecution and defendant, and this can be evidence that would not have been admissible in the preceding criminal trial. Subsections (4) to (7) set out the court's powers to adjourn proceedings and the powers of to the court where a defendant fails to appear for any adjourned proceedings (including a power to

issue a warrant for the defendant's arrest or hear the proceedings without the defendant being present). None of these limits any other

Clause 24: Notification requirements

342. This clause sets out that a CCEPO may include a requirement for the defendant to notify the police of their name(s), including any aliases, and home address, although this is not a mandatory requirement. It sets out where and how that notification is to occur and the requirement for the police to acknowledge it.

343. If this requirement is included in the order, the defendant must notify their local police of their name (s) and home address within three days (subsection (2)). Changes of name or home address must also be notified within three days of the change (subsections (3) and (4)). Such information will assist the police in monitoring compliance with the CCEPO and in managing the risk posed by the defendant.

344. The defendant's "home address" for these purposes is defined in subsection (7), as meaning either the person's sole or main residence in England and Wales or, where they have no such residence, the address or location in England and Wales they can regularly be found. If a person can regularly be found at two or more locations (for example, at

a family home at the weekend and at a flat near their work during the week) they would need to select one of these places and provide details of its address. Equally, if a person is homeless, they would need to provide details of one location where they can regularly be found.

345. The three day period within which notification must be given does not take into account time when the defendant is in custody (prison or service detention), detained in a hospital, or outside the UK (subsection (8)). Notification must be given orally to the police, and the police must acknowledge the notification in writing. (subsection (6).

Clause 25: Variation and discharge of CCE prevention orders

346. This clause sets out how a CCEPO may be varied or discharge, who may apply for such variation or discharge, and to which court an application should be made. A variation could include simply extending the duration of an order which has been made for a specified period.

347. A court may vary or discharge a CCEPO on an application by the original applicant, the defendant, or the chief officer of police for the

area the defendant lives or is in, or is intending to come to (subsections (1) and (2)). This ensures that the order can be modified to reflect the changing circumstances, both to ensure that it remains effective to manage the risk posed by activities related to CCE and that the order remains necessary for that purpose.

348. The court must hear from the defendant and, where relevant, the original applicant for the order and/or relevant chief officer of police (if they wish to be heard) before making a decision to vary or discharge an order (subsection (3)).

349. The court, in determining an application under this section, may make such order as it considers appropriate (subject to subsection (7) (subsection 3)). In particular, a variation may include the addition of a new prohibition or requirement or the removal of an existing one, or the extension or reduction of the duration of an existing prohibition or requirement (subsection (4)). The variations must be necessary to protect children from engaging in criminal behaviour (subsection (5). Subsection (6) makes clear that any additional prohibitions or requirements must, so far as practicable, avoid conflict with any religious beliefs of the defendant, interference with their

work or education, or conflict with any other court order or injunction; that such additional prohibitions or requirements apply throughout the UK (unless specified otherwise); and different lengths of time may be specified for different prohibitions or requirements (section 19(3), (4) and (6) apply).

350. A CCEPO must not be discharged within two years of it being made without the consent of the defendant and the relevant chief officer of police (subsection (7)).

351. Where an application to vary or discharge an order is made by the British Transport Police, Ministry of Defence Police or NCA, they must notify the chief officer of police for the area the defendant lives or is in, or is believed to be coming to (subsection (8)).

352. Subsection (9) sets out which court the variation or discharge application is to be made to. Where the Crown Court or Court of Appeal made the order, an application is to be made to the Crown Court. In any other case, an application is to be made to a magistrates' court.

Clause 26: Appeals

353. This clause sets out the circumstances in which an affected person may appeal against

a decision of a court in respect of a CCEPO.

354. A relevant person (as defined in subsection (2)) may appeal against decisions made on an application to make a CCEPO or interim CCEPO or an application to vary or discharge a CCEPO. This permits appeal against a court's decision to make, or to decline to make, an order (or interim order), and such appeal can be brought by the defendant, the applicant for the order or a relevant chief officer of police (i.e. for the area in which the defendant lives or is in, or is intending to come).

355. Appeal is to the Crown Court (where a magistrates' court decision is appealed) or Court of Appeal (where a Crown Court decision is appealed) (subsection (2)). Subsection (3) sets out the powers of the court when determining an appeal. The court may make such orders as it considers necessary to give effect to the determination of the appeal and such incidental and consequential orders as it considers appropriate. For example, it will be open to the court to revoke the order or to amend its provision (either the duration or the prohibitions or requirements contained in it).

356. Where an order was made at the end of criminal proceedings, it can be appealed by

the defendant as if it was a sentence (subsection (4)).

357. The effect of subsection (5) is that where an appellate court makes a CCEPO on appeal, subsequent proceedings in relation to further variation or discharge of the order should be issued in the lower court. For example, an order by the Crown Court on an appeal from a decision of a magistrates' court is treated as if it was an order of the magistrates' court for the purposes of a subsequent application to vary or discharge that order.

358. Subsection (6) provides that rules of court may make provision for appeals of a court decision following a without notice application may be made without notice being given to the defendant. In practice, such "without notice" appeals will occur only in exceptional or urgent cases (as outlined above).

Clause 27: Offence of breaching CCE prevention order

359. Subsection (1) makes it an offence to breach (that is, to do anything which is prohibited by or fail to do anything which is required by) a CCEPO (including an interim CCEPO), without reasonable excuse. The court must be satisfied beyond reasonable doubt the

individual has, without reasonable excuse, breached the order. It will be for the court to decide what constitutes a reasonable excuse in a particular case.

360. This is an either way offence, meaning that it can be heard in either a magistrates' court or Crown Court depending on the seriousness of the offence. The maximum penalty for the offence is imprisonment for the general limit in the magistrates' court (currently six months for a single offence) or a fine, or both, on summary conviction, or five years' imprisonment, a fine, or both on conviction on indictment (subsection (2)). The court cannot give an order for conditional discharge for a conviction for a breach of a CCEPO (subsection (3)).

361. Subsection (4) ensures that, in proceedings for an offence of breaching a CCEPO, a certified copy of the original CCEPO, is admissible as evidence of it having been made and its contents (avoiding the need for oral evidence on those matters).

Clause 28: Offence of providing false information

362. This clause provides that, where a CCEPO includes a notification requirement (in line with Clause 24), it is an offence to knowingly provide the police with false information to

satisfy this requirement (subsection (1)).

363. This is an either way offence, meaning that it can be heard in either a magistrates' court or Crown Court depending on the seriousness of the offence. The maximum penalty for the offence on summary conviction is imprisonment for the general limit in the magistrates' court (currently six months for a single offence) or a fine, or both, and on conviction on indictment is five years' imprisonment, a fine, or both (subsection (2).

Clause 29: Interpretation and supplementary provision

364. Subsection (1) defines terms for the purposes of the CCEPO provisions in Chapter 1 of Part 4. In particular, it defines "CCE prevention order", "child", "criminal conduct" and "defendant".

365. This clause also makes supplementary provision in relation to court procedure. Subsection (2) provides that applications (for the making, variation or discharge of CCEPOs) are to be made by complaint to the magistrate's court or in accordance with rules of court in any other case. Subsection (3) disapplies the six-month time limit for making an application made by complaint to a

magistrates' courts, enabling the police or NCA to apply for a CCEPO (or its variation or discharge) more than six months after the conduct giving rise to the application occurred.

366. Subsection (4) disapplies magistrates' courts powers, on the hearing of an application for the making, variation or discharge of a CCEPO, to summons a witness or issue a warrant for their arrest (under section 97 of the Magistrates' Courts Act 1980) in relation to any person for whose protection the order is sought (that is, children at risk of being criminally exploited), except where the person has already given oral or written evidence at the hearing.

Clause 30 and Schedule 4: Orders made on conviction

367. This clause introduces Schedule 4 which inserts new Chapter 2A into Part 11 of the Sentencing Code, to introduce CCEPOs (new civil orders) on conviction. It makes broadly equivalent provision for CCEPO to that in Clauses 18 to 29 in relation to orders made on application or on acquittal etc. New Chapter 2A does not make provision for interim CCEPOs.

368. New section 358A 11 of the Sentencing Code provides the power to make a CCEPO where it

is dealing with an offender for the offence that may result in a CCEPO made. New section 358A(1) provides that CCEPOs can be made by a court dealing with a person aged 18 or over and convicted of an offence. New section 358A(2) to (5) set out the three conditions that must be satisfied for a court to make a CCEPO. The first is that either (a) the court must be satisfied, on the balance of probabilities (that is, the civil standard of proof), that the defendant has engaged in conduct associated with causing children to engage in criminal behaviour, or (b) the offender is convicted of a CCE offence. The second condition is that the court considers that there is a risk that the defendant will seek to cause children generally, or particular children, to engage in criminal conduct, and the third condition is that the court considers the order necessary to protect children (generally or specific children) from being caused to engage in criminal behaviour. New section 358A(7) provides that a CCEPO may be made in relation to conduct, or an offence, that occurred before this section comes into force.

369. New section 358B provides for the requirements and prohibitions imposed by a CCEPO. New section 358B(1) and (2) define a

CCEPO as an order made in respect of an offender which imposes such prohibitions or requirements on the offender as the court considers necessary for the purpose of protecting children, or any particular children, from being caused to engage in criminal activity. These conditions must, so far as practicable, avoid conflict with the defendant's religious beliefs, interference with their work or education and must not conflict with requirements in any other court order or injunction the defendant is subject to (new section 358B(3)). New section 358B(5) to (7) provides for the duration and extent of a CCEPO: prohibitions and requirements will apply throughout the UK, unless stated otherwise and a CCEPO must either specify the duration of the order or provide that it remains in force until further order. Different prohibitions or requirements may have different durations, and any existing CCEPO will cease to apply if the person is made subject to a new CCEPO.

370. New section 358C makes provision for notification requirements, which a court may decide (in its discretion) to impose as a condition of the order (it is not a mandatory condition of all CCEPOs). If a Court does impose such notification condition, new section

358C(2) sets out the information that the offender must provide to the police within three days of the order being served. The information is the name, or names, of the offender and their home address. New section 358C(3) provides that the offender must notify the police if they change their name or home address, within three days of such change. Home address is defined in new section 358C(7), and means the address of the offender's sole or main residence and, if they have no such residence (for example, because they live between two addresses or are homeless), the address or a location of a place in England and Wales where they can be regularly found. The three day period within which notification must be given does not include time when the defendant is in custody (prison or service detention), detained in a hospital or outside the United Kingdom (new section 358C(8)). Notification is to be given orally to the police, at a police station in the offender's local area or the area in which the court which made the order is located, and the police must acknowledge the notification in writing (new section 358C(5) and (6)).

371. New section 358D sets out additional procedural powers from the criminal court considering imposing a CCEPO. New section

358D(1) and (2) make clear that the court may consider, for the purpose of deciding whether to make a CCEPO, evidence led by the prosecution and defendant and this can be evidence that would not have been admissible in the preceding criminal trial. New section 358D(3) to (6) sets out the court's powers to adjourn proceedings and the powers of to the court where a defendant fails to appear for any adjourned proceedings (including a power to issue a warrant for the defendant's arrest or hear the proceedings without the defendant being present). None of these limits any other powers of the criminal court (new section 358D(7)).

372. New section 358E sets out how a CCEPO may be varied or discharged, who may apply for such variation or discharge and to which court an application should be made. New section 358E(1) and (2) provide that a court may vary or discharge a CCEPO on an application by the original applicant, the defendant, or the chief officer of police for the area the defendant lives or is in, or is intending to come to. The application is to be made to the Crown Court (where the Crown Court or Court of Appeal made the order) or magistrates' court (in any other case) (new section 358E(8). The court must hear from the defendant and, where

relevant, the original applicant for the order and/or relevant chief officer of police (if they wish to be heard) before making a decision to vary or discharge an order (new section 358E(3)). In determining the application, the court may make such order as it considers appropriate, which may include the addition of new prohibitions or requirements or the removal or the extension of the duration of any existing ones (new section 358E(4)). As with the making of any order, the variations must be necessary to protect children from engaging in criminal behaviour (new section 358E(5), and the same safeguards and provisions as to extent and duration apply as for imposition when making an order (new section 358E(6)). A CCEPO must not be discharged within five years of it being made without the consent of the defendant and the relevant chief officer of police (new section 358(7)).

373. New section 358F sets out the circumstances in which an affected person may appeal against a decision of a court in respect of a CCEPO. Existing appeal routes exist for an offender to appeal against the making of an order imposed on conviction by way of appeal against sentence (under section 50(1) of the Criminal Appeal Act 1968 or section 108(3) of the Magistrates' Courts Act 1980). A relevant

person (as defined in new section 358F(2), being the applicant, offender, or relevant chief officer of police) may appeal against a decision made on an application to vary or discharge a CCEPO). Such appeal is to be made to the Crown Court or, where the variation or discharge application was made to the Crown Court, to the Court of Appeal. On such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal and such incidental and consequential orders as appear appropriate.

374. New section 358G makes it an offence to breach (that is, to do anything which is prohibited by or fail to do anything which is required by) a CCEPO (including an interim CCEPO), without reasonable excuse. It will be for the court to decide what constitutes a reasonable excuse in a particular case. This is an either way offence with a maximum penalty on summary conviction of imprisonment for the general limit in a magistrates' court (currently six months for a single offence) or a fine, or both, and on conviction on indictment to five years' imprisonment, a fine, or both (new section 358G(2)). The court is precluded from giving an order for conditional discharge for a conviction under this section (new section

358G(3)).

375. New section 358H makes it an offence, where a CCEPO includes a notification requirement, for a person to knowingly provide the police with false information to satisfy this requirement (new section 358H(1) and (2)). This is an either way offence with a maximum penalty on summary conviction of imprisonment for the general limit in a magistrates' court (currently six months for a single offence) or a fine, or both, and on conviction on indictment to five years' imprisonment, a fine, or both (new section 358H(3)).

376. New section 358I defines terms for the purposes of the CCEPO provisions in Chapter 2A of the Sentencing Code. In particular, it defines "CCE prevention order", "child", "criminal conduct" and "defendant". It also makes supplementary provision in relation to court procedure: it provides that applications under this Chapter are to be made by complaint to the magistrates court, or in accordance with rules of court, in any other case; disapplies the six-month time limit (from the date of the relevant conduct) for making an application by complaint to a magistrates' court; and precludes a magistrates' court from

issuing a witness summon, or warrant for an individual's arrest, for the purpose of compelling a witness to give evidence in relation to an application where that witness is a person for whose protection the order s sought (except where the person has already given evidence at the hearing) (new section 358I(2) to (4)).

Clause 31: Guidance

377. This clause confers a power on the Secretary of State to issue statutory guidance to relevant officers (defined in subsection (6)), including chief officers of police, about the exercise of their functions in relation to the new offence of child criminal exploitation and new child criminal exploitation prevention orders. Subsection (2) provides a power to revise any guidance.

378. Subsection (3) requires the Secretary of State to consult persons they consider appropriate before issuing or revising any guidance. This does not apply if the revision of the guidance is considered insubstantial by the Secretary of State.

379. Subsection (4) requires that the guidance be published.

380. Subsection (5) requires relevant officers to

have regard to any guidance issued under this clause when exercising functions in relation to the new offence of child criminal exploitation and new child criminal exploitation orders. This means that they must take the statutory guidance into account when exercising relevant functions, for example, investigating child criminal exploitation offences or applying for child criminal exploitation prevention orders. A relevant officer for these purposes is defined in subsection (6) and includes the chief officers of the 43 territorial police forces in England and Wales, the British Transport Police, the Ministry of Defence Police and the NCA.

Chapter 2: Cuckooing

Clause 32 and Schedule 5: Controlling another's home for criminal purposes

381. Clause 32, together with interpretation clause 33 and Schedule 5, creates an offence of cuckooing.

382. Subsection (1) sets out that a person (A) commits an offence if they: exercise control over the dwelling of another person (B); and do so for the purpose of enabling that dwelling to be used in connection with the commission (by any person) of one or more of the offences

listed in Schedule 5 and B does not consent to A exercising control for that purpose. All three elements (control for criminal purposes without consent) must be met for the offence to have been committed. The effect of subsection (1)(a) is to criminalise the control however it is exercised. Subsection (1)(b) requires only that control is exercised for the purpose of enabling the dwelling to be used in connection with the commission of a relevant offence. It does not require the specified underlying offence to necessarily have been committed and includes offences committed or intended to be committed by other persons. Subsection (1)(c) specifies that control of another person's dwelling for criminal purposes is an offence if that person does not consent to that control for that criminal purpose. Therefore, in cases where the control is exercised in connection with more than one criminal offence and person B consents to control of their dwelling in relation some of these offences but not others, a cuckooing offence will only have been committed in relation to the criminal offences that B did not consent to.

383. The cuckooing offence extends to England and Wales, Scotland and Northern Ireland therefore subsection (2) explains that 'relevant offence' refers to the offences for each

jurisdiction listed in Parts 1, 2 and 3 of Schedule 5.

384. Subsection (3) signposts to the interpretation provisions for the offence contained in interpretation Clause 33.

385. Subsection (4) sets out the maximum penalties for this offence. Subsection (4)(a) sets out that the maximum penalty on summary conviction in England and Wales is imprisonment for the general limit in the magistrates' court (currently six months), or a fine, or both. Subsection (4)(b) sets out that the maximum penalty on summary conviction in Scotland is imprisonment for 12 months, or a fine not exceeding the statutory maximum (currently £5,000), or both. Subsection (4)(c) sets out that the maximum penalty on summary conviction in Northern Ireland is six months, or a fine not exceeding the statutory maximum (currently £5,000), or both.

386. The maximum penalty on conviction on indictment is five years' imprisonment, or a fine, or both (subsection (4)(d)).

Clause 33: Section 32: Interpretation

387. Subsection (1) specifies that the interpretive provisions in Clause 33 apply to the cuckooing offence contained in Clause 32.

388. Subsections (2) and (3) define the meaning of ‘dwelling of a person’ as any structure or part of a structure occupied by the person as their home or other living accommodation (whether occupied alone or shared with others), together with any yard, garden, grounds, garage or outhouse belonging to or used with it. For example, this includes a house or a room in shared accommodation, provided it is occupied as their home or other living accommodation, or part of a property such as a shed connected to the home. Structure includes a tent, caravan, vehicle, vessel or other temporary or moveable structure.

389. Subsection (4) sets out circumstances in which a person may be deemed to ‘exercise control’ over a dwelling of another person. It is a non-exhaustive list and includes where the person exercises control over who is able to enter, leave, occupy or use the dwelling or part of the dwelling, the delivery of things to, or the collection of things from, the dwelling, the way the dwelling is used and/or the ability of the occupier to use the dwelling. The control may be temporary or permanent.

390. Subsection (5) provides clarification as to when consent will be validly given by the occupier (person B) to person A to exercise control over the property. For consent to be

given for the purposes of Clause 32(1)(c) the occupier (person B) must:

- be an adult (aged 18 or over). This means that a child cannot consent to the cuckooing of their dwelling;
- have capacity to give consent to the exercise of control for the specified criminal purpose. This may include people who are unable to make an informed decision about the control of their dwelling for the criminal purpose due to disability, illness and/or the effects of substance misuse.. This applies to both permanent and short-term lack of capacity. For example, consent given while a person is temporarily incapacitated due to the effect of alcohol or drugs would not have capacity to give consent;
- have sufficient information to enable them to make an informed decision about whether to consent. For example, a person will not have made an informed decision about whether to consent where they were not given sufficient information or were given misleading or false information about the exercise of control for the criminal purpose;
- have given consent freely. This means a person will not have given consent "freely"

where, for example, the consent was obtained by coercion, or other forms of abusive behaviour; and

- not have withdrawn their consent at any point. This means that consent must be ongoing for the whole period of control. If it is withdrawn (whether by, e.g., words or actions) at any stage the offence will be made out.

Clause 34: Power to amend definition of “relevant offence”

391. Subsection (1) confers power on the Secretary of State to amend, by regulations, the list of relevant offences in Schedule 5, with the exception of offences that relate to a devolved or transferred matter which can only be amended by the relevant devolved administration.

392. Subsections (2) and (3) confer power on the Scottish Ministers and the Northern Ireland Department of Justice to amend relevant offences in Parts 2 and 3 of Schedule 5 respectively which are within the legislative competence of the relevant devolved administration. These provisions ensure that the legislation can be adapted to reflect any future changes to the types of criminality associated with cuckooing.

Chapter 3: Consequential provision

Clause 35: Protections for witnesses, and lifestyle offences

393. Subsection (1) amends the Youth Justice and Criminal Evidence Act 1999 (which applies to England & Wales) to provide for the child criminal exploitation and cuckooing offences to be added to the list of offences which provide for victims and witnesses of the listed offences to be automatically eligible for "special measures" when giving evidence to court. It also adds child criminal exploitation and cuckooing as relevant offences in section 33(6) of the 1999 Act to which a presumption as to the witness's age applies, where the age of the witness is uncertain and there are reasons to believe the witness is under 18, and as an offence to which section 35 of the 1999 Act applies which prohibits defendants from cross examining protected witnesses in criminal proceedings. Subsections (2) and (3) amend and the Criminal Evidence (Northern Ireland) Order 1999 to provide for the cuckooing offence to be added to the list of offences which provide for victims and witnesses of the listed offences to be automatically eligible for special measures when giving evidence to court. Special measures may include, for example, screening of the witness from the

accused or giving evidence by live link or in private.

394. Subsection (4) provides for the child criminal exploitation and cuckooing offences to be included in the list of ‘lifestyle offences’ in Part 2 of POCA (which applies to England & Wales) and for the cuckooing offence to be added to the list of lifestyle offences in Parts 3 and 4 of POCA (which apply to Scotland and Northern Ireland respectively). The practical effect of this is that a person found guilty of the offences of child criminal exploitation in England and Wales, and cuckooing in England and Wales, Scotland and/or Northern Ireland will automatically be considered to have a criminal lifestyle. It will be for the courts to then decide if the person has benefited from their general criminal conduct, and make a confiscation order accordingly under POCA. Ultimately this may result in a higher amount of assets potentially subject to confiscation, which reflects the serious nature of this type of offending.

Part 5: Sexual offences and offenders

Chapter 1: Child sexual abuse

Clause 36: Child sexual abuse image-generators

395. Subsection (1) inserts new sections 46A and 46B into the 2003 Act. New section 46A makes it an offence to make, adapt, possess, supply or offer to supply a CSA image generator. The term ‘CSA image generator’ is defined in new section 46A(6) as anything which is made or adapted for use for creating, or facilitating the creation of, CSA material. This definition captures AI models that have been optimised to create child sexual abuse material (“CSAM”) (for example, models that have been trained on existing child sexual abuse content) as well as wider technologies that can be used to create this content, such as CGI programmes.

396. New section 46A(2) and (3) provide for several defences. They are that the person had not asked for the item - it having been sent without request - and that he or she had not kept it for an unreasonable period of time; this will cover those who are sent unsolicited material and who act quickly to delete it or otherwise get rid of it; and that the person did not know or had cause to suspect that the item was a CSA image-generator.

397. New section 46A(5) provides for the maximum penalty for the offence namely, on conviction on indictment, five years’ imprisonment, or a fine, or both.

398. New section 46A(6) defines terms used in new section 46A.

399. New section 46A(7) sets out that where a CSA image generator is a service, possession would include possessing the ability to access the image generator, and that supplying or offering to supply the image generator would include providing access or offering to provide access to the service.

400. New section 46B(1) provides additional defences. New section 46B(1)(a) sets out a defence for a person who can prove that any offence in section 46A was committed for the purposes of preventing, detecting or investigating crime, or to assist criminal proceedings in any part of the world. New section 46B(1)(b) and (c) set out defences for the intelligence agencies (the Security Service, the Secret Intelligence Service and GCHQ) and Ofcom employees who commit offences under new section 46A in the course of their online safety functions.

401. Subsection (2) adds the CSA image-generator offence to Schedule 2 to the 2003Act, the effect of which is to make it an offence in England and Wales for a British citizen or UK

resident (subject to section 72(2)) to commit child sexual abuse or exploitation offences or offences related to indecent photographs or pseudo-photographs overseas.

402. Subsection (3) adds the CSA image-generators offence to Schedule 3 to the 2003 Act, the effect of which is that a person convicted of the offence and sentenced to a term of imprisonment for at least 12 months will be subject to the notification requirements in Part 2 of that Act.

403. Subsections (4) to (7) confer a power on a Secretary of State, by regulations (subject to the negative procedure) to make provision authorising either the Secretary of State or a person specified in the regulations to carry out testing of CSA image generators. Such regulations may impose conditions related to the parameters of any such testing and may provide a defence to the commission of an offence set out under section 2 of the Obscene Publications Act 1959 (publication of obscene material), section 1(1)(a) of the Protection of Children Act 1978 (taking, distributing, possessing or publishing indecent images of children), section 127(1) of the Communications Act 2003 (sending of

obscene messages etc) or an offence under new section 46A.

Clause 37: Possession of advice or guidance about creating CSA images

404. This clause amends section 69 into the Serious Crime Act 2015 to make it an offence to be in possession of any item that contains advice or guidance about creating CSA images. This augments the so-called ‘paedophile manual’ offence contained in that section, which criminalises possession of any item that possesses advice or guidance about abusing children sexually. This offence excludes pseudo-photographs and thereby excludes guidance on producing AI generated CSAM. It also excludes prohibited images (for example manga or anime stylised images depicting child sexual abuse).

405. The definition of a CSA image (new section 69(2A)) covers an indecent pseudo-photograph of a child (as per Protection of Children Act 1978) or a prohibited image (as per section 62 of the Coroners and Justice Act 2009). AI generated CSAM could fall into either of these categories depending on the realism of the image.

406. The existing defences in section 69 of the Serious Crime Act 2015 apply. They are:

- that the person had a legitimate reason for being in possession of the item; this would be a question of fact for the jury to decide on the individual circumstances of a case. It could cover, for example, those who are investigating whether an offence has been committed so need to examine the item;
- that the person had not seen (or listened to) the item in his or her possession and therefore neither knew, nor had cause to suspect, that it contained advice or guidance about abusing children sexually; and
- that the person had not asked for the item - it having been sent without request - and that he or she had not kept it for an unreasonable period of time; this will cover those who are sent unsolicited material and who act quickly to delete it or otherwise get rid of it.

407. These defences place a reverse legal burden on the defendant, that is the legal burden of proof is on the defendant (not the prosecution) to prove, on the balance of probabilities, that they had a legitimate reason for being in possession of the item, that they had not seen the item or that they had not asked for the item, as the case may be.

408. As with the existing section 69 offence, the maximum penalty for the expanded offence is, on conviction on indictment, three years'

imprisonment, or a fine, or both.

409. As now, proceedings for the expanded offence must be instituted by or with the consent of the Director of Public Prosecutions.

Clause 38 and Schedule 6: Online facilitation of child sexual exploitation and abuse

410. Subsection (1) provides for a new offence of carrying out relevant activity with the intention of facilitation child sexual exploitation and abuse. This is designed to cover individuals who are colloquially known as 'moderators' or 'administrators' of websites containing CSAM. The term 'child sexual exploitation and abuse' is defined in subsection (4) and covers conduct in the UK that would constitute one of the offences listed in Schedule 6 to the Bill or conduct outside the UK which, had it been undertaken in the UK, would have constituted such an offence.

411. Subsection (2) defines 'relevant internet activity'. Subsection (2)(a) refers to 'providing an internet service', which is defined in accordance with section 226 of the Online Safety Act 2023 (as per subsection (3)). Subsections (2)(b), (c) and (d) provides further conduct that would constitute 'relevant internet activity', including providing or maintaining an internet service or administration, moderating

or otherwise controlling access to content on an internet service as well as facilitating the sharing of content on an internet service.

412. Subsection (5) provides for the maximum penalty for the offence. The maximum penalty on conviction on indictment is 10 years' imprisonment, a fine, or both.

Clause 39: Offence under section 38 outside the United Kingdom

413. This clause provides for the offence in Clause 38 to have extra-territorial application in certain circumstances. In doing so, it makes analogous provision to section 72 of the 2003 Act which provides for the extra-territorial application of the offences in Schedule 2 to that Act.

414. Subsections (2) and (3) make it an offence in England and Wales, Scotland and Northern Ireland for a British citizen, UK body or UK resident to undertake conduct overseas which if committed in the UK would constitute an offence under Clause 38. In the case of a UK resident, the conduct must also constitute an offence in the country where it took place. Subsections (4) and (5) extends the extra-territorial application of the offence to non-UK citizens, bodies and residents in cases where

they have become a UK citizen, body or resident at the time proceedings are brought in the UK.

Clause 40: Liability for offence under section 38 committed by a body

415. This clause sets out the circumstances in which an offence under Clause 38 is committed by a body corporate, partnership or unincorporated association. Subsection (2) provides that if an offence is committed under Clause 38 with the consent or connivance of a person in relation to the body or a person purporting to act as a relevant person in relation to the body, both the person as well as the body would have committed the offence and would be liable to be proceeded against.

416. Subsection (3) defines a 'relevant person' in relation to a body depending on whether it is a body corporate, limited liability partnership or other body corporate whose affairs are managed by its members, a limited partnership, any other partnership or any other kind of body.

Clause 41: Notification requirements for offences under section 38

417. This clause inserts the new Clause 38 offence into the lists of offences in Schedule 3 to the 2003 Act which apply to England and Wales,

Scotland and Northern Ireland respectively. The effect of these amendments is that a person convicted of the offence and sentenced to imprisonment for a term of at least 12 months will be subject to the notification requirements in Part 2 of that Act.

Clause 42: Sexual activity in the presence of child etc

418. This clause amends the 2003 Act to modify the scope of the various offences therein relating to sexual activity in the presence of a child or a person with a mental disorder. At present, the offence is only committed where the person knows or believes that the child or person with a mental disorder is aware of the activity, or the person intends that the child or person with a mental disorder be aware of the activity. The provisions will amend the mental elements of these offences by removing this requirement in order to capture situations where for the purpose of sexual gratification, a person intentionally engages in sexual activity in the presence of a child or person with a mental disorder, even if they do not necessarily intend the child or the person with mental disorder to be aware of the activity or do not know or believe that the child/person with a mental disorder is aware.

419. Subsection (2) amends section 11(1) of the

2003 Act which provides for an offence of engaging in sexual activity in the presence of a child. The effect of the amendment is that it is an offence for a person aged 18 or over (A) to intentionally engage in sexual activity (as defined in section 78 of the 2003 Act) for the purposes of obtaining sexual gratification, they do so when another person (B) is present or is in a place from which A can be observed and B is under 13, or B is under 16 and A does not reasonably believe that B is 16 or over. The offence will now be committed whether or not A knows or believes that B is aware of the activity, or intends that B be aware of the activity. This offence would cover, for example, where A was masturbating in the presence of a sleeping child for the purpose of obtaining sexual gratification from the child's presence.

420. Subsection (3) amends section 18(1) of the 2003 Act such that it is an offence for a person aged 18 or over (A) to intentionally engage in sexual activity where for the purpose of obtaining sexual gratification, they do so when another person (B) is present or is in a place from which A can be observed, A is in a position of trust in relation to B (as defined by sections 21 to 22A of the 2003 Act), and B is under 13, or B is under 18 and A does not reasonably believe that B is 18 or over. The offence will now be committed whether or not

A knows or believes that B is aware of the activity, or intends that B be aware of the activity.

421. Subsection (4) amends section 32(1) of the 2003 Act such that it is an offence for a person (A) to intentionally engage in sexual activity where for the purpose of obtaining sexual gratification, they do so when another person (B), is present or is in a place from which A can be observed, B is unable to refuse because of or for a reason related to a mental disorder, and A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse. The offence will now be committed whether or not A knows or believes that B is aware of the activity, or intends that B be aware of the activity.

422. Subsection (5) amends section 36(1) of the 2003 Act such that it is an offence for a person (A) to intentionally engage in sexual activity where for the purpose of obtaining sexual gratification, they do so when another person (B) is present or is in a place from which A can be observed, because of A's inducement, threat or deception, B has a mental disorder and A knows or could reasonably be expected to know this. The offence will now be committed whether or not A knows or believes

that B is aware of the activity, or intends that B be aware of the activity.

423. Subsection (6) amends section 40(1) of the 2003 Act such that it is an offence for a person (A) to intentionally engage in sexual activity where for the purpose of obtaining sexual gratification, they do so when another person (B), who has a mental disorder, is present or is in a place from which A can be observed, B has a mental disorder, A knows or could reasonably be expected to know this, and A is involved in B's care in a way that falls within section 42 of the 2003 Act. The offence will now be committed whether or not A knows or believes that B is aware of the activity, or intends that B be aware of the activity.

Clause 43: Child sex offences: grooming aggravating factor

424. Subsection (1) inserts new section 70A in Part 4 of the Sentencing Act 2020 (exercise of court's discretion). It introduces a new aggravating factor to be applied when the court is considering the seriousness of a specified child sex offence and where the offence being considered was facilitated by, or involved, the grooming of a person under 18. The grooming itself need not be sexual and may be undertaken by the offender or a third party and committed against the victim of the underlying

offence or a third-party.

425. New section 70A(1) sets out that section 70A applies where the court is considering the seriousness of a specified child sex offence which is aggravated by grooming, and where the offender was 18 or over when the offence was committed.

426. New section 70A(2) provides that the court must treat the fact that the offence is aggravated by grooming as an aggravating factor and must state this in open court.

427. New section 70A(3) provides that the offence is considered to be aggravated by grooming if the offence was facilitated by, or involved, the offender grooming a person aged under 18 or the offence was facilitated by, or involved, a person other than the offender grooming a person aged under 18 and the offender knew, or could reasonably be expected to have known, about the grooming when the offence took place. This ensures that an offence will be aggravated where grooming behaviour by any person helped the offence to take place provided that the offender knew, or could be expected to have known about the grooming when the offence took place. An offence will not be so aggravated where grooming by a third party led to the offence and the offender could not be reasonably expected to know

about the grooming behaviour.

428. The person groomed need not be a victim of the offence. This is to allow for instances where, for example, child A is groomed and pressurised into recruiting child B against whom an offence is committed.

429. New section 70A(4) provides that a ‘specified child sex offence’ is an offence listed in subsections (5) to (7), or an inchoate offence for one of those offences. An inchoate offence is an offence relating to actions or agreements undertaken in preparation for a substantive offence which has not, or not yet, been committed (see section 398 of the Sentencing Act 2020).

430. New section 70A(5) lists the child sex offences within subsection (1) and to which section 70A applies.

431. New section 70A(6) lists the offences within the 2003 Act that are within new subsection (1) if the victim, or intended victim, was aged under 18.

432. New section 70A(7) sets out that the offence of sexual activity in a public lavatory is “specified child sex offence”, if a person involved in the activity in question is under the age of 18.

433. New section 70A(8) sets out that nothing prevents the court from treating the fact that an

offence involved, or was facilitated by, grooming of a person as an aggravating factor in relation to an offence not within new subsection (1). This means that a court can still treat grooming behaviour as an aggravating factor in circumstances that are not covered by new section 70A.

434. New section 70A(9) provides that new section 70A applies where a person is convicted of an offence after the coming into force of the clause.

435. Subsection (2) inserts in section 238 of the Armed Forces Act 2006 (deciding the seriousness of an offence) the same provision so that the statutory aggravating factor applies in the service justice system when sentencing service offences which correspond to the child sex offences specified in new section 70A(5) to (7) of the Sentencing Code.

Clause 44: Power of scan for child sexual abuse images at the border

436. This clause establishes a power for Border Force to compel individuals reasonably suspected of posing a sexual risk to children to unlock their digital devices (such as a mobile phone or laptop) in furtherance of a search against the Child Abuse Image Database ("CAID") to identify known CSAM.

437. The clause inserts new section 164B into the Customs and Excise Management Act 1979 ("the 1979 Act"). New section164B provides that the power to scan an electronic device for CSAM applies where a Border Force officer has reasonable grounds to suspect that 'a person to whom section 164 applies' is carrying a device storing CSAM. Section 164 of the 1979 Act applies to 'any person who is entering or about to leave the United Kingdom' (as well as other specified categories of person). This is the context in which the new power is most likely to be used.

438. The 'reasonable grounds to suspect' test may be satisfied, for example, where the person is the subject of an Interpol Notice for potential CSA offenders uploaded to the UK Border Watch List, UK Registered Sex Offenders, intelligence provided by the NCA, UK police force or received from international partners, possession of child abuse paraphernalia in luggage, or travel history/profile corresponding with frequent visits to destinations on the list of countries in which the Secretary of State considered children to be at high risk of sexual abuse or sexual exploitation by UK nationals or residents (see section 172 of the Police, Crime, Sentencing and Courts Act 2022). Should an individual fail to comply with a

request by Border Force officers to unlock their digital devices for search, they may be arrested for the offence of wilful obstruction.

Chapter 2: Duty to report child sexual abuse

Clause 45 and Schedule 7: Duty to report child sex offences

439. This clause places a duty on persons aged 18 or over engaged in "relevant activity" in England to notify suspected child sex offences (as listed in Part 1 of Schedule 7) to the police or local authority. The duty to report is subject to certain exceptions, as set out in or under Clauses 47 to 51. A failure to report child sex offences will not of itself be an offence, instead failing to comply with the duty imposed by Clause 45 will be treated as conduct potentially giving rise to a person being subject to disciplinary action by their professional regulator (where applicable) and/or being included on the children's barred list maintained by the Disclosure and Barring Service.

440. Subsection (1) provides for the duty to report. The duty applies to adults engaged in relevant activity (as defined in subsection (12)) in England and is triggered when they have reason to suspect that a child sex offence (as listed in Part 1 of Schedule 7) may have been committed (see Clause 47 for the meaning of

reason to suspect). The duty only applies while a person is acting in their professional or voluntary capacity, that is engaging in relevant activity, and not where a person acquires information which gives rise to a reason to suspect the commission of a child sex offence outside of working hours. The duty applies irrespective of how long ago the suspected offence occurred.

441. Subsection (2) sets out the requirements of a notification made under subsection (1). These are: that the notification is made to a relevant police force or local authority (terms defined in subsection (11)), or both; that the notification sets out each person who the person making the notification believes is involved in the suspected offence (where known) and explains why the notification has been made; that it be made as soon as is practicable (subject to subsections (5) and (6)); and that a notification can either be done orally or in writing.

442. Subsection (3) sets out that that if the person making the notification believes that none of the children included in the report live in England and Wales, then subsection (2)(a) applies to the police force only. For example, if the only child included in the notification lives in Scotland, then the notification would only be given to the relevant police force which the

person making the notification considers appropriate.

443. Subsection (4) confers a power on the Secretary of State to make regulations specifying the way in which notifications are to be made, whether orally or in writing.

444. Subsections (5) and (6) set out temporary qualifications to the requirement to make a notification ‘as soon as is practicable’. Subsection (5) provides that in situations where an individual subject to the duty reasonably believes that the act of making a notification could present a risk to the life or safety of a child, the notification may be delayed for a period of up to seven days in order to manage that risk. For example, where the person reasonably believes that the child, at the particular time, may self-harm if a notification is made. Subsection (6) provides that a notification need not be made by an individual if they have reason to believe another person will make a notification on their behalf within seven days of the ‘reason to suspect’ arising. (When a notification is made on their behalf within this seven-day period, subsection (7) is engaged and a further notification in connection with the same incident will not be required). For example, this will accommodate situations where a teacher,

who has a reason to suspect a child sex offence may have been committed, passes this information to their school's designated safeguarding lead reasonably believing that the safeguarding lead will make a notification on their behalf.

445. Subsection (7) provides for circumstances in which the duty is disapplied. The duty is disapplied if the person who is subject to the duty has received confirmation from another that a notification has been made in connection with the same suspected child sex offence. For example, where a teacher has reason to believe a child sex offence may have been committed, they can pass this information to a school's designated safeguarding lead expecting for the safeguarding lead to make a notification on their behalf. The teacher's duty to make a notification will be satisfied when the safeguarding lead provides confirmation to the teacher that a notification has been made on their behalf to the police and/or local authority.

446. Subsection (8) clarifies that reports made by another person under subsections (6) and (7) can be treated as being made on behalf of the person who is under the duty to report. This means the former individual does not have to personally satisfy the requirements of

subsection (1) to make a notification under this section.

447. Subsection (9) signposts further exceptions to the duty as set out in Clauses 47 to 51.

448. Subsection (10) sets out that a notification made under this duty does not breach any previous obligation of confidence or restriction on the disclosure of information. For example, a notification made on the basis of a disclosure received in a healthcare setting involving patient confidentiality.

449. Subsection (11) defines the seven-day period referred to in subsections (5) and (6) and clarifies that suspected offences requiring notification under the duty include offences involving indecent images of children. It also signposts to the definition of “relevant local authority” and “local police force” given in Clause 46.

450. Subsection (12) defines “child” as a person under 18; and “relevant activity” as covering a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (this includes, for example, healthcare professionals or teachers), or (b) an activity specified in Part 2 of Schedule 7. This includes certain positions of trust not captured in that Act, and police officers. This subsection also

defines the meaning of "child sex offence" as those offences set out in Part 1 of Schedule 7.

451. Subsection (13) sets out that the duty applies to individuals undertaking relevant activity in Crown employment (within the meaning of the Employment Rights Act 1996) in the same way that it applies to other persons.

Clause 46: Section 45: meaning of "relevant local authority" and "relevant police force"

452. This clause defines "relevant local authority" and "relevant police force" in relation to the areas in which a child involved is believed to reside, or in cases where the person making a notification does not have sufficient information, the local authority or police force they consider most appropriate. Subsection (4) also defines "local authority" within the meaning provided by section 65 of the Children Act 2004.

Clause 47: Section 45: reasons to suspect child sex offence may have been committed

453. This clause sets out the circumstances which oblige an individual who is subject to the duty to make a notification under Clause 45.

454. A reporter is considered to have been given reason to suspect that an offence has been committed when they witness abuse themselves (including through videos or audio

recordings); or when they are told something by either a child or a perpetrator, that could reasonably lead them to suspect an offence had been committed. The duty to notify does not arise in any other circumstances.

Clause 48: Exception for certain consensual sexual activities between children

455. This clause disapplies the duty to report where certain conditions are met relating to consensual sexual activity among children aged 13 or over. Four conditions must be met for this exception to apply.

456. Subsection (2) sets out the first condition, that the child sex offence that is suspected of being committed is an offence under either:

- Section 13 of the 2003 Act, which makes it an offence for a person under the age of 18 to do something that would constitute an offence under sections 9 to 12 of that Act (sexual activity with a child, causing or inciting a child to engage in sexual activity, engaging in sexual activity in the presence of a child and causing a child to watch a sexual act).
- Section 1(1)(a) to (c) of the Protection of Children Act 1978, which makes it an offence to take, permit to take, distribute, show or possess indecent images of

children.

- Section 160 of Criminal Justice Act 1988, which makes it an offence for someone to possess an indecent photograph of a child.

457. Subsection (3) sets out the second condition, that all of the children involved in the suspected offence are reasonably believed by the reporter to be aged 13 or over. Where the offence relates to an indecent photograph of a child, the person must also believe that the child in the photograph is aged 13 or older.

458. Subsection (4) sets out the third condition, that the reporter is satisfied that the children involved in the offence (except for the suspected offender) consented to the activity. Subsection (6) specifies that 'consent' means agreeing by choice, and having the freedom and capacity to make that choice.

459. Subsection (5) sets out the fourth condition, that the reporter is satisfied that making a report to the local authority or police would not be appropriate; taking into account the circumstances and risk of harm to those involved. This condition is included to ensure that, in cases where the reporter has concerns that the relationship between the children, for example, is abusive or includes an element of coercion, they should make a notification.

Clause 49: Exception relating to commission of offence under section 14 of the Sexual Offences Act 2003 by a child in certain circumstances

460. This clause provides an exception to the duty set out in Clause 45 in respect of instances where children aged 13 or over arrange or facilitate child sex offences in certain circumstances. For example, this exception might cover a situation where a teacher becomes aware that a young person is arranging to meet a boyfriend or girlfriend to engage in sexual activity. Four conditions must be met for this exception to apply.

461. Subsection (2) sets out the first condition, that the child sex offence that is suspected of being committed is an offence under section 14 of the 2003 Act – which makes it an offence for a person under the age of 18 to do something that would constitute an offence under section 13 of that Act (arranging or facilitating child sex offences).

462. Subsection (3) sets out the second condition, that the children involved in the suspected offence (or those intended or believed by the suspected offender to be involved) are believed by the reporter to be aged 13 or over.

463. Subsection (4) sets out the third condition, that the reporter is satisfied that those involved in the offence (except for the suspected offender)

consented to the activity Subsection (6) specifies that 'consent' means agreeing by choice, and having the freedom and capacity to make that choice.

464. Subsection (5) sets out the fourth condition, that the reporter is satisfied that making a report to the local authority or police would not be appropriate; taking into account the circumstances and risk of harm to those involved.

Clause 50: Exception in respect of certain disclosures by children

465. Subsection (1) provides for an exception to the duty in respect of certain disclosures by children relating to their own behaviour. Where a young person discloses the commission of a potential sex offence and others involved in the offence are aged 13 and over, the duty under Clause 45 does not apply. The purpose of this exception is to ensure that children are not deterred from seeking support in relation to their own harmful sexual behaviour.

Clause 51: Exception for persons providing specified services

466. This clause confers a power on the Secretary of State to make regulations specifying that the duty does not apply to a person providing particular services. This may be engaged on

an exceptional basis where confidentiality is deemed operationally necessary for services which relate to the safety and wellbeing of children.

Clause 52: Preventing or deterring a person from complying with duty to report suspected child sex offence

467. Subsection (1) provides for an offence of preventing or deterring a person from complying with the duty imposed by Clause 45. The maximum penalty for the offence is seven years' imprisonment, a fine, or both (subsection (4)). A failure to report will not of itself be a criminal offence but will instead be dealt with, as appropriate, though professional misconduct proceedings and/or by the person being added to the children's barred list maintained by the Disclosure and Barring Service.

468. Subsection (2) provides for a defence where the conduct in question is limited to making representations to a prospective reporter about the timing of a notification under Clause 45 in the light of the best of a child involved in the suspected offence (other than the suspected offender).

Clause 53: Modification of Chapter for constables

469. This clause makes specific provision to explain

what a police officer needs to do in order to discharge their duty to notify suspected offences to their own force. A police officer is to be treated as having complied with the duty to report where they have recorded the matter in accordance with their police force's policy and procedure on recording criminal offences. A police officer may also discharge their duty by making a notification to the relevant local authority.

Clause 54: Power to amend this Chapter, and consequential amendment

470. This clause confers a power on the Secretary of State to make regulations (subject to the draft affirmative resolution procedure) to make certain amendments to the Crime and Policing Act in relation to the duty imposed by Clause 45. In particular, such regulations may amend:

- Clause 45 so as to change the person or persons to whom a notification under that clause is to be made;
- the Crime and Policing Act so as to add or change an exception to the duty under Clause 45 (such exceptions are provided for in clauses 45(5) and (6) and 48 to 51); and
- Schedule 7 so as to: (i) add an offence to, change, or remove an offence from Part 1 of that Schedule; (ii) add an activity to, change, or remove an activity from Part 2 of that

Schedule.

471. Subsection (2) amends Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (barred lists) to specify that failing to comply with the duty to report is a behaviour that should be considered relevant for considering inclusion on the children's barred list maintained by the Disclosure and Barring Service.

Chapter 3: Other provision about sexual offences

Clause 55: Guidance about the disclosure of information by police for the purpose of preventing sex offending

472. This clause confers a power on the Secretary of State to issue statutory guidance to chief officers of police about the disclosure of police information by police forces for the purposes of preventing relevant sexual offences. Such guidance is presently issued on a non-statutory basis with the Child Sex Offender Disclosure Scheme being the only guidance of this type currently. The term 'relevant sexual offence' is defined in subsection (6) as covering offences listed in Schedule 3 to the 2003 Act. Subsection (7) provides that the list of sexual offences in Schedule 3 to the 2003 Act is to apply notwithstanding any thresholds

or age restrictions specified in that Schedule (for example, paragraph 25 of Schedule 3 to the 2003 Act refers to offences relating to the abuse of positions of trust where the offender has been sentenced to a specified minimum sentence). By disapplying any such thresholds or age restrictions the guidance could support the disclosure of police information as it pertains to any offence listed in Schedule 3 to the 2003 Act without being limited by these restrictions provided that the disclosure is compliant with Human Rights Act 1998, Data Protection Act 2018 and the UK General Data Protection Regulation.

473. Subsection (2) requires chief officers of police to have regard to any guidance issued under this clause. This means that the police must take this statutory guidance into account when exercising relevant functions, for example, under the Child Sex Offender Disclosure Scheme if that Scheme were re-issued as statutory guidance, and that, if they decide to depart from the statutory guidance, they must have good reasons for doing so. A chief officer of police for these purposes is defined in subsection (6) and covers the chief officers of the British Transport Police and the 43 territorial police forces in England and Wales.

474. Subsection (3) requires the Secretary of State

to consult the NPCC and other persons they consider appropriate before issuing or revising guidance under this clause. Subsection (4) sets out that this does not apply if the revision of the guidance is considered insubstantial by the Secretary of State. Subsection (5) requires that the guidance and any subsequent revisions to be published.

Clause 56 and Schedule 8: Offences relating to intimate photographs or films and voyeurism

475. Clause 56 introduces Schedule 8 to the Bill, which sets out the substantive amendments. Paragraph 2 of Schedule 8 insert new sections 66AA, 66AB and 66AC into the 2003 Act which create three new offences of taking or recording an intimate photograph or film without consent, and two new offences of installing etc equipment to enable the taking or recording of an intimate photograph or film without consent, by means of inserting three new sections into the 2003 Act.

New section 66AA: Taking or recording an intimate photograph or film

476. Subsection (1) provides that it is an offence if a person (A) intentionally takes a photograph or records a film which shows another person (B) in an intimate state, without B's consent, or a reasonable belief in B's consent. There is no requirement to prove the taking or recording

was done for a particular reason. Section 66D(5), as inserted by the Online Safety Act 2023, which sets out when a photograph or film shows another person in an intimate state, will apply to this offence (and the other intimate image offences created by this Bill).

477. Subsection (2) provides that it is an offence if a person (A) intentionally takes a photograph or records a film which shows another person (B) in an intimate state, without B's consent, and with the intent to cause alarm, distress or humiliation to B.

478. Subsection (3) provides that it is an offence if a person (A) intentionally takes a photograph or records a film which shows another person (B) in an intimate state, without the consent or a reasonable belief in B's consent, for the purpose of obtaining sexual gratification (whether for the person taking or recording the image, or another person).

479. Subsection (4) provides for the offences in subsections (1) to (3) to be subject to section 66AB, which sets out a number of exemptions (not all of which would be applicable to all the offences).

480. Subsection (5) provides a defence to the offence in subsection (1) where the person charged had a reasonable excuse for taking or recording the photograph or film without

consent or a reasonable belief in consent. Examples of a reasonable excuse might include where it was necessary for a police officer to take an intimate photo for the purpose of investigating a crime.

481. Subsection (6) provides that the presumptions relating to consent at sections 75 and 76 of the 2003 Act apply to all the "taking and recording" offences in section 66AA. Section 75 outlines specific circumstances under which a complainant is presumed not to have consented to a relevant sexual act, and the defendant is presumed not to have reasonably believed in the complainant's consent. These circumstances include the use of violence against the complainant, causing the complainant to fear violence against themselves or another person, and the complainant being unlawfully detained, unconscious, or asleep, having a physical disability that impeded their ability to communicate consent, or being drugged with a substance that stupefies or overpowers them. In these situations, the complainant is presumed not to have consented unless sufficient evidence is presented to raise an issue regarding consent. Section 76 provides that it is conclusively presumed that the complainant did not consent to the relevant act if the defendant intentionally deceived the

complainant about the nature or purpose of the act, or induced the complainant's consent by impersonating someone personally known to the complainant.

482. Subsection (7) provides that the offence in subsection (1) is triable only summarily. The maximum penalty on conviction is imprisonment for a term not exceeding the maximum term for summary offences (currently six months), an unlimited fine, or both.

483. Subsection (8) provides for the offences under subsections (2) and (3) to be triable either way (that is, either in a magistrates' court or on indictment by the Crown Court). If convicted in a magistrates' court the maximum penalty on conviction is imprisonment for a term not exceeding the general limit in a magistrates' court. On conviction on indictment the maximum penalty would be imprisonment for a term no more than two years.

484. Subsection (9) confers a power on a magistrates' court or jury to find a person guilty of the offence in subsection (1) where they have been found not guilty of the more serious offence under subsections (2) or (3), for example because it has not been proven that the person took or recorded the photograph or film for the purpose of obtaining sexual

gratification.

485. Subsection (10) provides that where this occurs in the Crown Court, the Court would have the same powers and duties when convicting a person of a subsection (1) offence by virtue of subsection (9) as a magistrates' court would have had (for example, the maximum penalty will align with that set out in subsection (9)).

New section 66AB: Taking or recording an intimate photograph or film: exemptions

486. Subsection (1) provides for exceptions to the offences under section 66AA(1), (2) and (3), namely where the photograph or film that was taken or recorded is taken or recorded in a place to which the public, or a section of the public, have or are permitted to have access, or where A reasonably believes that this was the case; where B is voluntarily in the intimate state (or the defendant reasonably believes they are); and where B does not have a reasonable expectation of privacy from the photograph or film being taken or recorded.

487. Subsection (2) provides that whether or not B has a reasonable expectation of privacy from a photograph or film being taken or recorded in public is judged by the circumstances that the person (A) taking or recording the photograph or film reasonably believes to have existed at

the time it is taken or recorded. All of these limbs have to be made out in order for the exemption to apply. If the exemption is found to apply to the case, the defendant will not be guilty of the offence.

488. Subsection (3) provides for a further exception to the offence under section 66AA(1), namely where a person takes or records an intimate photograph or film of a child under 16 who lacks capacity to consent to the taking or recording (or the person taking or recording reasonably believes they lack capacity to consent), and it is taken or recorded by a healthcare professional acting in that capacity, or otherwise in connection with the child's care or treatment by a healthcare professional.

489. Subsection (4) provides for another exception to the offence under section 66AA(1), that is where a person (A) takes or records an intimate photograph or film which shows a child, A does not commit this offence if A is a member of the child's family or is a friend of the child, and the photograph or film of the child is of a kind which is normally taken or recorded by a family member or friend. This could include, for example, a family member taking a photograph of a group of toddlers in a paddling pool at a family barbeque.

New section 66AC: Installing etc. equipment to

enable taking or recording of intimate photograph or film

490. New section 66AC provides that it is an offence for a person (A) to install, adapt, prepare or maintain equipment with the intention of enabling either A or another person to commit one of the three “taking” offences in section 66AA(1), (2) or (3).

491. The two offences in subsections (1) and (2) complement the existing offence at section 67(4) of the 2003 Act of installing equipment, or constructing or adapting a structure or part of a structure, with the intent of enabling either the defendant or another person to commit an offence under section 67(1) of the 2003 Act (observing another person doing a private act, without consent and for the purpose of obtaining sexual gratification).

492. Subsection (1) provides that a person (A) commits an offence if they install, adapt, prepare or maintain equipment with the intention of enabling themselves or another person (B) to commit an offence under section 66AA(1): taking an intimate photograph or film where B does not consent and A does not reasonably believe that B consents.

493. Subsection (2) provides that a person (A) commits an offence if they install, adapt, prepare or maintain equipment with the

intention of enabling themselves or another person (B) to commit one of the other two “taking offences”: an offence of taking an intimate photograph or film with the intention of causing B alarm, humiliation or distress (as set out in 66AA(2)), or taking an intimate image for the purpose of sexual gratification and B does not consent and A does not reasonably believe that B consents (as set out in 66AA(3)).

494. Subsections (3) and (4) set out the maximum penalties for committing the offences at subsection (1) and (2). These penalties mirror the penalties of the “taking offence” to which they relate. An offence committed under subsection (1) is triable only summarily and a person will be liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences (currently six months’ imprisonment), or a fine, or both. An offence committed under subsection (2), is triable either way, and a person is liable: on summary conviction, to a conviction to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both; on conviction on indictment, to imprisonment for a term not exceeding two years.

495. Subsection (5) provides that if a defendant is found not guilty of an offence under subsection

(2) (installing, adapting, preparing or maintaining equipment with the intention of enabling themselves or another person to commit an offence under section 66AA(2) or (3)), they may be found guilty of the lesser offence under subsection (1) instead (installing, adapting, preparing or maintaining equipment with the intention of enabling themselves or another person to commit an offence under section 66AA(1): taking an intimate photograph or film where B does not consent and A does not reasonably believe that B consents).

496. Subsection (6) provides that if a person is convicted of an offence under subsection (1) by virtue of the provision in subsection (5), then the Crown Court has the same powers and duties in relation to the defendant as a magistrates' court would have on convicting the person of that offence. For example, a person convicted by the Crown Court in this way will be liable on conviction to imprisonment for a term not exceeding the maximum term for summary offences, or a fine, or both.

Paragraph 3: amendments to section 66B of the Sexual Offences Act 2003

497. Sub-paragraph (1) makes amendments to the provisions at section 66B of the 2003 Act (as

inserted by the Online Safety Act 2023). Sub-paragraph (2) provides that the presumption relating to consent at section 76 of the 2003 Act apply to the "sharing" offences in section 66B(1), (2) and (3). Section 76 provides that it is conclusively presumed that the complainant did not consent to the relevant act if the defendant intentionally deceived the complainant about the nature or purpose of the act, or induced the complainant's consent by impersonating someone personally known to the complainant.

498. Sub-paragraph (3) repeals subsection (6) of section 66B which relates to "general and specific" consent as it applies solely to the "sharing" offence, as this is replaced by the new provision at section 66D(10) as inserted by this Bill, which applies to both the "sharing" and "taking" offences (see paragraph 5(4) of Schedule 8).

499. This sub paragraph also repeals the definition of "maximum term for summary offences" from section 66D(11). Paragraph 10 inserts the same definition into section 79 of the 2003 Act.

Paragraph 4: amendments to section 66C of the Sexual Offences Act 2003

500. Paragraph 4 amends the exemption in section 66C(1) to capture circumstances where a person shares a photograph or film that they

reasonably believed was taken in a place to which the public, or a section of the public, had or were permitted to have access. Section 66C(2) is also amended to make it clear that the recording of a film is also covered by this exemption.

Paragraph 5: amendments to section 66D of the Sexual Offences Act 2003

501. This paragraph amends section 66D to ensure that the definitions it contains also apply to new sections 66AA to 66AC.

502. Sub-paragraph (3) removes the previous cross-reference in section 66D(4) to the definition of “photograph” and “film” in section 66A of the 2003 Act, and instead incorporates that definition into section 66D itself. The amendment makes clear (in new section 66D(4B)) that the expanded meaning of “photograph” and “film” (by including images which have been altered by computer graphics or any other way which appears to be a photograph or film, copies of an image altered in this way or data stored by any means which is capable of being converted into an altered image) only apply to sections 66B and 66C (and do not apply to sections 66AA to sections 66AC).

503. Sub-paragraph (4) amends section 66D of the 2003 Act to insert a new subsection (10) which

provides that “consent” to the taking, recording or sharing of a photograph or film includes general consent covering the particular act of taking, recording or sharing in question, as well as specific consent to that act. For example, B could give general consent to A to take “photos of me whenever I get changed” or specific consent to take the photograph at a specific time. As noted above, paragraph 3(3) omits subsection (6) from section 66B, which made similar provision for the sharing offences in section 66B.

504. Paragraph 5(4) also amends section 66D by inserting a new subsection (10) which provides that when determining whether or not a person’s belief in B’s consent was reasonable, regard must be had to all of the circumstances, including any steps that the person has taken to ascertain whether B consents.

Paragraph 6: repeal of the offence at section 67(3) of the Sexual Offences Act 2003

505. This paragraph repeals the offence of “recording another person doing a private act” in section 67(3) as this is replaced by the new “taking or recording” offences inserted by section 66AA.

Paragraph 7: repeal of the offence at section 67A(2) of the Sexual Offences Act 2003

506. This paragraph repeals the offence of “recording an image beneath the clothing of another person” in section 67A(2) (commonly known as the “upskirting” offence) as it is replaced by the new “taking or recording” offences inserted at section 66AA.

507. Paragraph 7(b) also provides that the presumption relating to consent at section 76 of the 2003 Act applies to the offence at section 67A(2B), to ensure consistency with the other intimate image abuse offences. Section 76 provides that it is conclusively presumed that the complainant did not consent to the relevant act if the defendant intentionally deceived the complainant about the nature or purpose of the act, or induced the complainant's consent by impersonating someone personally known to the complainant.

Paragraph 8: amendments to section 77 of the Sexual Offences Act 2003 – relevant acts

508. This paragraph makes several amendments to section 77 to set out the “relevant acts” relating to the intimate image offences, at the time of which the circumstances set out in the presumptions in sections 75 and 76 are to be considered.

Paragraph 9: definition of “sexual”

509. This paragraph provides that the definition of

"sexual" in section 78 of the 2003 Act does not apply to the new offences of taking or recording an intimate photograph or film because a separate definition applies to those offences.

Paragraph 10: maximum term for summary offences

510. This paragraph inserts a definition relating to the maximum penalty on summary conviction into section 79 of the 2003 Act.

Paragraph 11: closure orders

511. This paragraph adds a reference to certain of the new offences of taking or recording an intimate photograph or film, and installing etc. equipment, into section 136A(3A) of the 2003 Act (offences specified as child sex offences for the purposes of Part 2A of that Act when committed against a person under 18).

Paragraph 12: extraterritorial jurisdiction

512. This paragraph amends Schedule 2 to the 2003 Act to ensure that the offences under new section 66AA(2) and (3) and section 66AC(2) (as inserted by paragraph 2) and section 66B(2), (3) and (4) will have extraterritorial application and ensure that in some circumstances a UK national or UK resident can be prosecuted for these offences in England and Wales even when committed

abroad.

Paragraph 13: notification requirements

513. This paragraph amends Schedule 3 to the 2003 Act to ensure that where certain criteria are met, notification requirements can be applied to those convicted of the new offence of taking or recording an intimate photograph or film for the purpose of obtaining sexual gratification (section 66AA(3) or the new offence of installing etc. equipment with the intent to enable the commission of the section 66AA(3) offence (new section 66AC(3)).

Part 2: consequential amendments

514. Part 2 of Schedule 8 makes amendments to several Acts consequential upon the provisions in Part 1.

515. Paragraph 14 inserts a reference to the new offences of taking or recording an intimate photograph or film in section 66AA and the new installing offences in section 66AC into Schedule 1 to the Children and Young Persons Act 1933 (offences to which certain provisions of that Act apply).

516. Paragraph 15 inserts a reference to the new offences of taking or recording an intimate photograph or film in section 66AA(2) and (3) as well as the installing etc offence in section 66AC(2) into section 65A(2) of PACE, which

sets out all “qualifying offences” for the purposes of Part 5 of that Act.

517. Paragraph 16 inserts a reference to the new offences of taking or recording an intimate photograph or film in section 66AA(2) and (3) as well as the installing etc. offence in section 66AC(2) into Part 2 of Schedule 15 to the CJA 2003 (specified sexual offences for the purposes of section 325 of that Act).

518. This paragraph also inserts a reference to the new offences of taking or recording an intimate photograph or film in section 66AA(2) and (3) as well as the installing etc. offence in section 66AC(2) into paragraph 10 of Schedule 34A to the CJA 2003 (child sex offences for the purposes of section 327A of that Act).

519. Paragraph 17 inserts a new section 177DA into the Armed Forces Act 2006 which provides that, for the purposes of the power to make a deprivation order under section 177C(3) of that Act, where a person commits an offence under section 42 of that Act as respects which the corresponding offence under the law of England and Wales is an offence under section 66AA(1), (2) or (3), the photograph or film to which the offence relates is to be considered as property which has been used for the commission of an offence for the purposes of section 177C(3), including

where it is committed by aiding, abetting, counselling or procuring.

520. Paragraph 18 inserts a reference to certain of the new offences of taking or recording an intimate photograph or film in section 66AA(2) and (3) and the installing etc. offence in section 66AC(2) into section 116(8)(c) of the Anti-social Behaviour, Crime and Policing Act 2014 (conduct amounting to "child sexual exploitation at hotels" when committed against a person under 18 for the purposes of that section).

521. Paragraph 19 inserts a reference to certain of the new offences of taking or recording an intimate photograph or film in section 66AA(2) and (3) and the installing etc. offence in section 66AC(2) into paragraph 33 of Schedule 4 to the Modern Slavery Act 2015 (offences to which the defence in section 45 does not apply).

522. Paragraph 20 inserts a new section 154ZA into the Sentencing Code which provides that, for the purposes of the power to make a deprivation order under section 153 of that Act, the photograph or film to which an offence under section 66AA(1), (2) or (3) relates is to be considered as property which has been used for the commission of an offence for the purposes of section 153, including where it is

committed by aiding, abetting, counselling or procuring.

523. Paragraph 20 also inserts new sub-paragraphs into paragraph 38, after sub-paragraph (axa) (inserted by paragraph 20 of Schedule 14 to the Online Safety Act 2023), of Part 2 of Schedule 18 to the Sentencing Code to refer to certain of the new offences of taking or recording an intimate photograph or film in section 66AA(2) and (3) and the installing etc. offence in section 66AC(2) (specified sexual offences for the purposes of section 306).

Clause 57: Exposure

524. This clause substitutes subsection (1) and inserts new subsection (1A) into section 66 of the 2003 Act. New subsection (1) amends the specific intent element of the offence of exposure in section 66. As currently drafted, the offence only captures those who intentionally expose their genitals to cause those who may see them alarm or distress (new subsection (1)(a)). As amended, the offence would also capture those who expose their genitals with the intent to cause humiliation to those who may see them, or those who do so for the purposes of obtaining sexual gratification while being reckless as to whether someone who sees them will be

caused alarm, distress or humiliation (new subsection (1)(b)).

525. New section 66(1A) of the 2003 Act excludes certain cases from the scope of the ‘sexual gratification’ limb at new subsection (1)(b). It ensures that where a person exposes their genitals to a particular person or persons for the purpose of obtaining sexual gratification, they do not commit the offence unless they are reckless as to whether that particular person or one of those particular persons is caused alarm, distress or humiliation. For example, where the exposure is carried out between a consenting couple in a secluded area, but another individual accidentally witnesses the behaviour, this would be excluded from the offence.

Clause 58: Sexual activity with a corpse

526. Subsection (1) replaces the existing offence of sexual penetration of a corpse at section 70 of the 2003 Act with new section 70.

527. New section 70(1) of the 2003 Act sets out the elements of the offence of sexual activity with a corpse.

528. For the offence to be made out, a person must intentionally touch a part of the body of a dead person (section 70(1)(a) and (b)), knowing that what they touch is a part of the body of a dead

person, or being reckless as to that fact (section 70(1)(c)). The touching must be sexual (section 70(1)(d)).

529. Touching is already defined in section 79(8) of the 2003 Act to include touching with any part of the body, with anything else, through anything, and in particular includes touching which amounts to penetration. ‘Sexual’ is defined in section 78 of the 2003 Act.

530. New section 70(2) of the 2003 Act provides that the offence is triable either way and provides the maximum penalty for the offence. The maximum penalty that may be imposed on summary conviction is a sentence of imprisonment not exceeding the general limit in the magistrates’ court (currently six months), a fine, or both. On conviction on indictment, the maximum penalty that may be imposed depends on whether the offence involved penetration. Where the offence involved penetration, the maximum penalty is one of seven years’ imprisonment; where the offence did not involve penetration, the maximum penalty is five years’ imprisonment.

531. Subsection (2) make consequential amendments to other enactments which reference the section 70 offence.

Chapter 4: Management of sex offenders

Clause 59: Notification of name change

532. Currently, relevant offenders must, under section 84(1)(a) of the 2003 Act, notify the police of their use of a new name within three days of their using the name. This clause inserts new section 83A into the 2003 Act, which will replace the existing requirement with a requirement to notify the police of a new name no less than seven days before using it. Where it is not reasonably practicable to do so, new section 83A(1)(b) and 83A(2) require the offender to notify that name to the police as far in advance of their using it as is reasonably practicable and no more than three days after its use.

533. New section 83A(4) and (5) require an offender to renotify the name change where they begin using it more than two days before the date specified during the initial notification; this renotification must be within three days of the name's use. New section 83A(6) and (7) require an offender to renotify that a previously notified new name has not been used if they have not started using it more than three days after the date specified in the earlier notification. The second notification must be within six days of the date specified during the first notification.

534. To illustrate the effect of subsections (1) to (7)

of new section 83A, a relevant offender who expects to use a new name from 8 April would be required to notify the police of the new name on or before 1 April. In the notification, the relevant offender specifies 8 April as the date they expect to start using the new name. If it was not reasonably practical to make an advance notification, the notification must be made by 11 April. In the event, the relevant offender starts using the new name on 4 April and, as a result, must notify the police of that fact by 7 April. Alternatively, in the event, the relevant offender has not used the new name by 11 April in which case that must notify the police of that fact by 14 April.

535. New section 83A(8) applies section 83(6) of the 2003 Act to the determination of the periods of three days in subsections (2) and (5) and the period of six days in subsection (7), so that periods of time during which an offender is remanded in custody, serving a sentence of imprisonment or service detention, detained in a hospital or is outside of the UK will be disregarded for the calculation of those durations.

536. New section 83A(9) requires a relevant offender to renotify the information given in an initial notification under section 83(5) of the 2003 Act when making a notification under

section 83A(1), (2) or (5). Section 83(5) lists the information that an offender must notify upon initial notification.

Clause 60: Notification of absence from sole or main residence

537. Currently, section 85(5)(a) and (b) of the 2003 Act and regulation 9 of the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 (SI 2012/1876) require a relevant offender to notify every seven days where they have no sole or main residence. This requirement will remain unchanged.

538. Section 83(5)(d), (f) and (g) of the 2003 Act require respectively a relevant offender to notify on their initial notification their home address on the relevant date, their home address on the date of their initial notification and the addresses of any other premises in the UK at which they regularly reside or stay on the date of initial notification. Section 84(1)(c) requires a relevant offender to notify any period of residence or stay for a qualifying period at any premises in the UK not previously notified to the police. Section 84(6)(a) and (b) define the qualifying period as a period of seven consecutive days or two or more periods that taken together amount to seven days over a 12-month period.

539. This clause inserts new section 85ZA into the 2003 Act. New section 85ZA requires relevant offenders whose sole or main residence is in England and Wales or Scotland to notify periods of absence that exceed ‘the relevant period’ from that home address no less than 12 hours before leaving it. New section 85ZA(2) defines the relevant period as five days, but new section 85ZA(8) gives a power to the Secretary of State (in relation to England and Wales) and the Scottish Minister (in relation to Scotland) to increase that period by regulations (subject to the negative procedure).

540. New section 85ZA(3) and (4) specify the information a relevant offender must notify to the police, which includes the date on which the relevant offender will leave that home address, details of the relevant offender’s travel arrangements during the relevant period (that is, the means of transport used and dates of travel), accommodation arrangements during that period (that is, the address of any accommodation for overnight stays and the nature of that accommodation) and the date of return to that home address.

541. New section 85ZA(5) requires a relevant offender to give a further notification if at any time not less than 12 hours before they leave

their home address any previously notified information becomes inaccurate. New section85ZA(6) requires a relevant offender to notify the date on which they return to their sole or main residence within three days of returning if they return on a date that is different to the date notified in advance of leaving their sole or main residence.

542. To illustrate these requirements – a relevant offender intends to reside at a friend's house for a period of one week, leaving their home address at 08:00 on 1 April. The relevant offender must notify the police of that fact no later than 20:00 on 31 March. In compliance with new section 85ZA(3), the notification states that the relevant offender will leave their home address on 1 April and travel by car on that date to their friend's house at 16 Acacia Avenue, Anytown, AT6 2BS, returning on 8 April. On 30 March, the relevant offender's car fails to start and they take it to a garage for repair and instead travel on 1 April by foot, bus and train to their friend's house having notified the police of the change to the mode of travel at least 12 hours before their departure. The relevant offender decides to stay an extra day at their friend's house, to 9 April, and is therefore required to notify the police of their actual return date by no later than the 12 April.

543. New section 85ZA(7) specifies that the requirements in new section 85ZA do not affect a relevant offender's requirement to notify information prescribed by regulations under section 86 of the 2003 Act, which deals with a relevant offender's travel outside the UK.

Clause 61: Child sex offenders: requirement to notify if entering premises where children present

544. For the purposes of section 83(5)(h) of the 2003 Act, Regulation 10 of the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 ("the 2012 Regulations") requires relevant offenders to notify stays of 12 hours or more in a household where children are present. They must notify the address, the date on which that stay or residence began and the period or periods for which they intend to reside or stay at that household. They must notify within three days of that 12-hour period elapsing.

545. Regulation 2 of the 2012 Regulations defines a relevant household or other place where a child resides or stays and to which the public do not have access (whether for payment or not).

546. This clause inserts new sections 86A to 86D into the 2003 Act. New section 86A outlines the criteria that make a relevant offender

subject to the requirements described in new section 86B (a “section 86B relevant offender”). Those criteria are: (a) that the offender is a child sex offender (as defined in new section 86A(4) to (7)); and (b) that the offender has been served with a notice (“a section 86A notice”) by a chief officer of police to the effect that the offender is subject to the requirements in new section 86B, and the notice has not been cancelled.

547. New section 84A(2) prescribes the test for a chief officer issuing of a section 86A notice, namely that the chief officer is satisfied that it is necessary to issue a notice for the purpose of protecting children generally, or particular children, from sexual harm from the offender.

548. New section 86A(3) requires a section 86A notice to indicate a relevant offender’s rights of appeal under new section 86D.

549. New section 86B(1) requires a section 86B relevant offender to notify the police the date on which they enter a qualifying premises at least 12 hours before entering it. New section 86B(2) sets out the required information that must accompany a notification under subsection (1). A notification under subsection (1) must include the date on which the offender is to enter the premises, the address of the premises and such other information as the

appropriate authority (as defined in new section 86B(8)) specifies in regulations (subject to the negative resolution procedure).

550. New section 86B(3) confers on the appropriate authority a power, by regulations (subject to the draft affirmative procedure), to define the qualifying premises in respect of which a relevant offender must notify.

551. New section 86B(4) confers a power on the appropriate authority (as defined in new section 86A(6)) a power, by regulations (subject to the draft affirmative procedure), to provide for circumstances in which a relevant offender is not required to give repeated notifications in relation to the same children or premises, because, for example, they enter that premises where that child is present regularly at the same time and stay for the same duration.

552. New sections 86B(5) and (6) require relevant offenders to renotify if they have not entered that premises on the date specified during the first notification within six days of that date.

553. New section 86B(7) applies section 83(6) of the 2003 Act to the determination of the periods of three days mentioned in subsection (2) and six days mentioned in subsection (7)(b), so that periods of time during which an offender is remanded in custody, serving a

sentence of imprisonment or service detention, detained in a hospital, or outside the UK will be disregarded for the calculation of those durations

554. New section 86C requires the police to review annually the necessity of a section 86A notice given to a section 86B relevant offender, where that section 86A notice has not been cancelled. New section 86C(3) provides for a section 86B relevant offender to make representations within one month of that notice's annual review to the chief officer of police for their local area about the notice. New section 86C(4) requires the chief officer to notify the section 86B relevant offender of their right to make representations before the start of that one-month period before an annual review.

555. New section 86C(5) and (6) require the chief officer to consider those representations, decide whether to cancel the notice and give a decision notice to the offender as soon as reasonably practicable after the review date. The chief officer may decide to cancel the notice if satisfied the offender no longer presents a risk of sexual harm to children, as set out in new section 86A(4).

556. New section 86C(7) requires the chief officer to provide a statement of reasons for a

decision not to cancel a notice following an annual review and indicate that an appeal may be made against the decision under section 86D.

557. New section 86D(1)(a) and (b) respectively provide for a section 86B relevant offender to appeal against the chief officer's decision to give a section 86A notice and their decision not to cancel the notice. New section 86D(2) requires an appeal to be made to the appropriate court (as defined in new section 86D(5)) within 21 days of the day on which the section 86A notice is given to the offender or the day on which notice of the decision not to cancel a section 86A notice is given to the offender.

558. New section 86D(3) empowers a court to confirm or cancel a notice where an appeal is made against the decision to give the Section 86B notice. New section 86D(4)(a) empowers a court to confirm a chief officer's decision not to cancel a notice or, , new section 86D(4)(b) empowers the court to remit the decision to the appropriate chief officer for reconsideration with such directions (if any) as the court sees fit.

Clause 62: Police stations at which notifications may be given (Scotland and Northern Ireland)

559. Registered sex offenders must notify certain

personal details to the police, including their name and home address, and notify the police of any changes to those details. Section 87 of the 2003 Act provides a power for the Scottish Ministers and the Department of Justice in Northern Ireland to make regulations specifying the police stations in Scotland and Northern Ireland respectively at which an offender may notify the chief officer of police of the relevant information. This clause amends section 87 to remove the requirement for the Scottish Ministers and the Department of Justice in Northern Ireland to prescribe a list of police stations for this purpose and makes this the responsibility of the chief constable of Police Scotland and the Police Service of Northern Ireland respectively. A similar change was made in relation to England and Wales by section 168 of the 2022 Act.

Clause 63: Alternative method of notification

560. Section 87 of the 2003 Act requires a relevant offender to notify in person at a police station in their local police area specified in a document published by the chief officer of police for that local area under section 87(2A). Section 87(4) enables the police to require a relevant offender giving notification to allow the officer to take their fingerprints and/or photograph any part of him to verify the identity of the relevant offender.

561. This clause inserts new sections 87A and 87B into the 2003 Act enabling a relevant offender to notify virtually if the three conditions set out in the section are met, plus any further conditions specified by the appropriate authority (that is, the Secretary of State, Scottish Ministers or the Department of Justice in Northern Ireland) in regulations made under new section 87A(1)(b).

562. New section 87A(2) provides for the first condition: that a police officer of at least the rank of inspector in the relevant offender's local area, who is authorised to give section 87A notices, has given the relevant offender a notice authorising virtual notification and that notice has not been cancelled. Initial notification under section 83 must always be in person regardless of whether a relevant offender has a section 87A authorising notice.

563. The test that must be met for a senior police officer (as defined in new section 87A(5)) to give a notice is set out in new section 87A(3), namely that the senior officer is satisfied it is not necessary for the purposes of protecting the public, or any particular members of the public, from sexual harm to require the relevant offender to notify in person. A senior police officer may also cancel this section 87A notice by giving further notice, if they consider

in-person notification is required to protect the public, or any particular members of the public, from sexual harm (new section 87A(4)).

564. Condition two (new section 87A(6)) requires the notification does not relate to a matter specified by the appropriate authority in regulations (subject to the negative procedure).

565. Condition three (new section 87A(7)) is that the relevant offender gives notification to a person authorised to receive virtual notification by the local chief officer of police. Virtual notification, as defined in new section 87A(8), is by a means that enables the relevant offender and the person receiving the notification to see and hear each other without being together in the same place, for example by video conferencing software.

566. New section 87A(9) enables the relevant authority to make regulations imposing further conditions about the means of giving virtual notification. New section 87A(10) requires that any virtual notification given in line with this section must be acknowledged in writing, in such form as the relevant authority may direct. New section 87B requires the relevant offender notifying to attend a local police station to have their fingerprints and/or photograph taken if asked to do so by the person receiving the

virtual notification.

Clause 64: Review of indefinite notification requirements (England and Wales)

567. Relevant offenders sentenced to a term of imprisonment of 30 months or more are subject to the notification requirements indefinitely. They must comply with the notification requirements for a minimum period of 15 years (or eight years for juveniles) before they may apply to the police to review their notification requirements. The police – in conjunction with other MAPPA agencies where appropriate – review their notification requirements and decide whether to discharge those requirements where they are no longer required to protect the public from sexual harm.

568. Sections 91A to 91F of the 2003 Act provides for relevant offenders to apply to the police for a review of their indefinite notification requirements once the 15-year minimum duration (or eight-year duration for juveniles) has elapsed.

569. Subsection (2) inserts new subsection (1A) into section 91A of the 2003 Act to enable the relevant chief officer of police to consider whether a relevant offender should remain subject to indefinite notification requirements without an application from the relevant

offender (an “own motion review”).

570. Subsection (3) inserts new sections 91EA to 91ED into the 2003 Act. New section 91EA(1) and (2) enables the chief officer to begin an own motion review after the qualifying date. The qualifying date is defined in section 91B as: (a) the end of the 15-year period beginning with a relevant offender’s first notification where they were 18 or over on the relevant date (i.e., date of conviction, caution or finding); or (b) the end of the 8-year period beginning with a relevant offender’s first notification where they were under 18 on the relevant date.

571. New sections 91EA(3) to (5) require the chief officer to inform the offender that they are conducting an own motion review and confer a right on the relevant offender to make representations. These representations must be made to the relevant chief officer of police within 35 days following receipt of a notification from the police under new section 91EA(4) that they are beginning an own motion review.

572. New section 91EA(6) provides for the police to notify a responsible body (as defined in new section 91B(11), namely the local probation board (or relevant provider of probation services), the Minister of the Crown exercising prison functions and the bodies mentioned in

section 325(6) of the CJA 2003) within seven days of beginning an own motion review and new section 91EA(7) requires the responsible body to give any relevant information it holds within 28 days of receipt of that notification.

573. New section 91EB(1) and (2) requires the relevant chief officer of police to give a notice of an own motion review's determination within six weeks of the latest date on which the relevant offender may make representations under new section 91EA(5). The six week period may be amended by regulations (subject to the negative procedure) (new section 91EB(6)).

574. New section 91EB(3) provides that the chief officer may determine that the relevant offender should not remain subject to notification requirements indefinitely only if satisfied that it is not necessary for the purpose of protecting the public, or any particular members of the public from sexual harm. Under new section 91EB(4), where the chief officer determines the relevant offender should not remain subject to notification requirements, they will cease on the date the offender receives the notice of determination. Where a chief officer of police decides that a relevant offender should remain subject to the indefinite notification requirements, new

section 91EB(5) requires the chief officer to provide a statement of their reasons and inform the relevant offender of their appeal rights under new section 91ED.

575. New section 91EC sets out the factors to which the chief officer must have regard when determining an own motion review.

576. New section 91ED sets out a relevant offender's right of appeal. A relevant offender may, under new section 91ED(1), appeal against a chief officer's determination that the offender must remain subject to the notification requirements. New section 91ED(2) and (3) provides the relevant offender with a right of appeal to a magistrates' court within 21 days of them receiving the determination notice. An appeal may be made to any magistrates' court in a local justice area that includes any part of the chief officer's local area. New section 91ED(4) provides that, if the court makes an order that the relevant offender should not remain subject to the indefinite notification requirements, the relevant offender ceases to be subject to the indefinite notification requirements on the date of the order.

577. Subsection (4) inserts new section 91G into the 2003 Act, which provides for a relevant offender to be discharged from indefinite notification requirements in England and

Wales when their notification requirements are discharged in Scotland or Northern Ireland.

Clause 65: Review of indefinite notification requirements (Northern Ireland)

578. This clause inserts new paragraphs 6A to 6D into Schedule 3A to the 2003 Act which makes similar provision for own motion reviews in Northern Ireland to that provided for in new sections 91EA to 91ED in relation to England and Wales.

Clause 66: Restriction on applying for replacement identity documents in new name

579. Currently, relevant offenders must notify information regarding their names and changes of name as outlined in paragraph 532 above. The Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 also require relevant offenders to notify information about any passports they hold or any passports they obtain or cease to hold; in the absence of a passport, they are required to notify information about another identity document, such as a driving licence.

580. This clause inserts new sections 93A to 93H into the 2003 Act; these provisions apply UK-wide. New section 93A provides for a relevant offender's local chief officer of police to issue a

notice (a “section 93A notice”) that makes the relevant offender subject to the restriction in new section 93B (such an offender is styled a “section 93B relevant offender”). The chief officer may issue a notice where it is necessary to protect the public, or any particular members of the public, in the UK or children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm (or, in Northern Ireland, serious sexual harm) outside the UK (new section 93A(2)).

581. New section 93A(4) sets out that the offender may appeal against a section 93A notice as provided for in new section 93F.

582. New section 93B(1) and (2) prevent a section 93B relevant offender from applying for an identity document listed in new section (6) (namely, an immigration document, UK passport or a driving licence issued under Part 3 of the Road Traffic act 1988) in a new name unless authorised to do so by a chief officer under new section 93C. A person who fails without reasonable excuse to comply with subsection (1) commits a criminal offence. The maximum penalty for the offence on conviction on indictment is five years’ imprisonment, a fine, or both (new section 93B(4)).

583. New section 93B(6)(d) confers a power on the

appropriate authority (as defined in new section 93A(5)) to add to the list of identity documents in section 93B(6)(a) to (c) by regulations (subject to the affirmative procedure).

584. New section 93C outlines the process by which a relevant offender may obtain authorisation to apply for a new name on a replacement identity document. New section 93C(2) requires the application to be in writing, specify the type of identity document and name sought and include such other information as the Secretary of State may specify in regulations (subject to the negative procedure). New section 93C(3) and (8) require respectively the chief officer of police to determine the application within four weeks of receiving it and give a decision notice, which must, if the application is unsuccessful, contain a statement of reasons for the decision and indicate a right of appeal against the decision under new section 93G. If an application is unsuccessful, a further application may not be made for one year in respect of the same document (new section 93C(8)(b)).

585. New section 93C(5) set outs that a chief officer may grant authorisation only if the conditions in new section 93C(6) and (7) are met. The first condition is that the chief officer is satisfied

that the offender is using the new name following their marriage or entering into a civil partnership, or as a result of the offender's religion or belief. A chief officer may also authorise a name change where they are satisfied that the application meets any other conditions specified in regulations made by the appropriate authority, or there are exceptional circumstances that justify granting authorisation. The second condition is that the chief officer does not consider it necessary to refuse the application in order to protect the public in the UK or children or vulnerable adults outside the UK from sexual harm. Whilst making this determination, the chief officer must have regard to any guidance issued by the Secretary of State or the Department of Justice in Northern Ireland under new section 93H.

586. Under new section 93D(1) an authorisation under new section 93C(5) lapses one year after it has been given or if the chief officer cancels the authorisation.

587. New section 93D(2) and (3) provides the chief officer with a power to cancel an authorisation if no longer satisfied that the conditions in new section 93C(6) and (7) are met.

588. New section 93E allows the chief officer of police to give a section 93A notice to a

relevant offender’s parent if they are under 18 and for the parent to make a section 93C application to change the name of the offender on identity documents on that offender’s behalf. This “parental notice” expires when the offender reaches 18.

589. New section 93F(1) requires the chief officer to conduct an annual review of the necessity of a section 93A notice as soon as reasonably practicable after the review date. New section 93F(2) defines the review date as (a) the end of the 12-month period beginning with the notice’s issue and (b) each successive 12-month period.

590. New section 93F(3) requires the chief officer when making their decision to consider any representations made by the relevant offender. New section 93F(4) requires the chief officer to notify the relevant offender before the start of the consultation period of their right to make representations during that period.

591. New section 93F(5) defines the ‘consultation period’ as the period of one month ending with the review date. In other words, it occurs in the month before the end of the 12-month period following a notice’s issue or successive 12-month periods.

592. New section 93F(6) requires a chief officer following an annual review to decide whether

to cancel the section 93A notice, and if they so decide to give notice of the decision.

593. New section 93F(7) stipulates that the chief officer may only cancel a notice if no longer satisfied that the notice is necessary either to protect the public within the UK or protect children and vulnerable adults outside of the UK from sexual harm.

594. Should the chief officer decide to keep the section 93A notice in place following an annual review, the decision notice must contain the reasons for this decision and outline the offender's right of appeal (new section 93F(8)). Those rights of appeal are set out in new section 93G.

595. New section 93G(1) outlines a section 93B relevant offender's rights of appeal against: (a) a decision to give a notice; (b) a decision to refuse authorisation to apply for a change of name; (c) a decision to cancel authorisation; (d) a decision to give a parental notice under new section 93D; and (e) a decision that a section 93A notice should not be cancelled following an annual review.

596. New section 93H places a duty on the Secretary of State and the Department of Justice in Northern Ireland to issue guidance to chief officers of police in England and Wales and to the chief constable of the Police Service

of Northern Ireland respectively in relation to the determination by them of applications under new section 93C. The Secretary of State and the Department of Justice in Northern Ireland may, from time to time, revise the guidance issued and must arrange for any guidance issued under this section to be published in such manner as they think appropriate.

597. Subsection (2) inserts new section 93I into the 2003 Act which confers a power on the Secretary of State to make regulations (subject to the draft affirmative procedure) that prevent a person from being granted a replacement driving licence if the following three conditions are met: (a) the person already holds or has held a driving licence; (b) that the name specified on the replacement licence is different to the name on the licence they most recently held, and (c) information given by the appropriate chief officer indicates that the person is required under new section 93B to obtain authorisation for a change of name on a driving licence but has not obtained that authorisation before applying. The effect would be to prevent the person from obtaining a driving licence in a new name where they hold or have held a licence.

598. New section 93I(2) and (3) allows regulations

made under this section to include provision for requiring the appropriate chief officer to provide specified information to the Secretary of State and vice versa. The regulations may also make provision for how this information is used.

599. New section 93I(5) prevents regulations authorising any disclosure or processing of information that would contravene data protection legislation.

Clause 67: Power of entry and search

600. Section 96B of the 2003 Act enables an officer of the rank of at least superintendent to make an application to a court in person for a warrant to enter and search a relevant offender's home for the purpose of assessing their risk.

601. The police obtain and execute section 96B warrants when an offender denies entry to their home, preventing the police from conducting a risk assessment.

602. This clause amends section 96B by replacing the requirement in subsection (1) for a warrant application to be made by a senior officer with a requirement for it to be approved by an appropriate officer, which is defined in amended subsection (10) as a constable authorised to make the application by a constable of at least the rank of inspector.

Clause 68 and Schedule 9: Minor and consequential amendments

603. Clause 68 introduces Schedule 9 which makes minor and consequential amendments to the 2003 Act as a result of the changes made by Chapter 4 of Part 5.

Part 6: Stalking

Clause 69: Stalking protection orders on acquittal etc

604. This clause amends the Stalking Protection Act 2019 ("the SPA 2019") so as to extend to the courts in England and Wales the power to impose a stalking protection order ("SPO") on acquittal. The defendant can be acquitted of any offence for an SPO to be considered as long as the circumstances in subsections (2) or (3) in new section 2A of the 2019 Act are met. It does not therefore have to be in relation to a specific stalking offence.

605. Subsection (2) inserts new section A1 into the SPA 2019 which defines the term "stalking protection order" for the purposes of that Act. An SPO is an order made under the SPA 2019 made for the purpose of preventing a person from carrying out acts associated with stalking, and which contains measures which prohibit the respondent from doing anything described in the order and/or requires the respondent to

do anything described in the order. New section A1(2) signposts readers to section 2A of the Protection from Harassment Act 1997 for examples of acts associated with stalking. The 1997 Act does not define stalking but provides a (non-exhaustive) list of examples of "acts or omissions associated with stalking" which include following a person, contacting a person, monitoring the use by a person of the internet or email, and watching or spying on a person.

606. Currently the SPA 2019 provides only for the making of an SPO by a magistrates' courts on application by a chief officer of police. As a result of the provisions in Clauses 69 and 70, there will be two new routes for obtaining an SPO, namely by a magistrates' court or the Crown Court following the acquittal of a person in a criminal trial (see new section 2A of the SPA 2019) and again by a magistrates' court or the Crown Court following the conviction of a person in a criminal trial (see new Chapter 3A of Part 11 of the Sentencing Code).

607. Subsections (3) and (4) make amendments to sections 1 and 2 of the SPA 2019 consequential on the insertion of new section A1.

608. Subsection (5) inserts a new section 2A into the SPA 2019. New section 2A(1) sets out that a court may make an SPO in respect of the defendant if any of circumstances in new section 2A(1) or the conditions in the current section 2(1) are met. In new section 2A(1) the circumstances in which the court may make an SPO on acquittal are: (a) the defendant is acquitted of any offence, by or before the court; (b) the court allows the defendant’s appeal against a conviction for any offence; or (c) the defendant is found not guilty of any offence by reason of insanity or the court makes a finding that the defendant is under a disability and has done the act charged against them in respect of any offence. New section 2A(2) sets that the court must be satisfied that the conditions in section 2(1) of the SPA 2019 must be met before a SPO may be made. These are that: (a) the defendant has carried out acts associated with stalking; (b) the defendant poses a risk associated with stalking to another person); and (c) the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in paragraph (a)).

609. New section 2A(3) applies section 1(4) for the purposes of new section 2A which provides

that a risk associated with stalking may be in respect of physical or psychological harm to the other person; or may arise from acts which the defendant knows or ought to know are unwelcome to the other person even if, in other circumstances, the acts would appear harmless in themselves.

610. New section 2A(4) applies the provisions in section 2(2) to (7) of the SPA 2019 to an order made on acquittal etc. Those provisions are: that prohibitions or requirements included by the court in the SPO must only be included if necessary to protect a person mentioned in section 2(1)(b) from a risk associated with stalking; that prohibitions or requirements must, as far as practicable, avoid (a) conflict with the defendant's religious beliefs, and (b) interference with any times the defendant normally works or attends an educational establishment; that a prohibition or requirement applied in all parts of the UK unless it is limited to a particular locality; and that where the defendant is already subject to a SPO, the new order must not include a prohibition or requirement that is incompatible with a prohibition or requirement in the earlier SPO.

611. Subsection (6) amends section 4 of the SPA 2019 which makes provision for the variation, renewal and discharge of SPOs. In the same way as an SPO made on application, an SPO made on acquittal etc may be varied, renewed or discharged on application to the appropriate courts (namely a magistrates' court or youth court (as specified in new section 4(5)) by either the person who is subject to the order, or a relevant chief officer of police.

612. Subsection (7) amends section 7 of the SPA 2019 which provides for appeals against the making, variation, renewal or discharge of an SPO. Where the SPO was made on acquittal in a magistrates' court, the appeal is to be made to the Crown Court. Where the SPO was made on acquittal in the Crown Court, the avenue of appeal is to the Court of Appeal. New section 7(5) provides that where an SPO has been confirmed, varied or renewed on appeal it remains an order of the lower court, accordingly further applications for variation, renewal or discharge are to be made to the lower court.

613. Subsections (8) and (10) make other consequential amendments to the SPA 2019.

614. Subsection (9) inserts new subsection (3) into

section 14 of the SPA 2019 which provides for an application to the Crown Court under any provision in the SPA 2019 is to be made in line with the rules of court.

Clause 70: Stalking protection orders on conviction

615. Subsection (1) inserts new Chapter 3A into Part 11 of the Sentencing Code (behaviour orders), comprising new sections 364A to 364H. New Chapter 3A makes similar provision in respect of SPOs on conviction to that contained in the SOA 2019. The defendant can be convicted of any offence for an SPO to be considered as long as the circumstances in new section 364B(2) or (3) are met. It does not therefore have to be in relation to a specific stalking offence.

616. New section 364A(1) provides that a SPO is an order made with the purpose of preventing someone from carrying out acts associated with stalking and may contain prohibitions that stop the person from doing something or requirements that require the person to do something in the order.

617. New section 364A(2) signposts section 2A of the Protection from Harassment Act 1997, which contains examples of acts associated with stalking of relevance for SPOs. New section 364A(3) explains that an SPO can

have effect for either a fixed period or until another order is made. New section 364A(4) stipulates that when an SPO does have a fixed duration, this must be for a minimum of two years. New section 364A(5) provides that an SPO may also specify a set period that prohibitions or requirements within the order will have effect.

618. New section 364B confers the power on a court to make an SPO on conviction for an offence. New section 364B(2) sets out the test for making an SPO, namely that the court is be satisfied that the defendant has (a) carried out acts associated with stalking, that they pose a risk of stalking to any person (whether or not that person was the victim of the acts mentioned in paragraph (a)) and that the order is necessary to protect that person from such a risk. The individual to be protected by the order does not have to have been the victim of the acts associated with stalking which provide the grounds for the making of an order. This scenario could arise if a perpetrator is stalking other people connected to that individual (such as family members, friends, or co-workers), knowing that this behaviour will impact on the individual who is the principal subject of the stalking acts.

619. New section 364B(3) provides that a court has to be satisfied that a condition (requirement or prohibition) included in an SPO is necessary to safeguard the victim against a risk associated with stalking.

620. New section364B(4) provides that the stalking behaviour that may be considered by the court when determining whether to make an order can have taken place in any part of the United Kingdom, or abroad. This can also include behaviour that took place prior to new section 364B coming into force.

621. New section 364B(5) is related to risks associated with stalking. It states that a risk associated with stalking may (a) be in relation to physical or psychological harm or (b) arise from behaviour that the perpetrator should or ought to know are unwelcome.

622. New section 364C makes further provision in relation about the prohibitions (restrictions) or requirements that can be included in a SPO and the circumstances in which they can be applied.

623. New section 364D makes provision for the variation, renewal or discharge of an SPO made on conviction. New section 364D(1)

provides that the offender or a relevant chief officer of police may apply to an appropriate court (as defined in new section 364D(5)) for an order to vary, discharge or renew an SPO. New section 364D(2) requires that before making a decision on an application that is seeking to vary, discharge or renew an SPO, the court must hear from (a) the offender and (b) any relevant chief officer of police.

624. New section 364E sets out the information that must be specified in a SPO.

625. New section 364F provides for appeals. An offender may appeal against the making of an SPO in the same manner as an appeal against sentence for an offence (new section 364F(1)). New 364F(2) enables the offender and the relevant chief officer of police to appeal against the variation, renewal or discharge of an order or the refusal of a court to vary, renew or discharge an order.

626. New section 364G provides that it is an offence to breach the terms of a SPO without reasonable excuse. It will be for a court to decide what constitutes a reasonable excuse in a particular case. The maximum penalty on summary conviction is six months' imprisonment, a fine, or both. The maximum

penalty on conviction on indictment is five years' imprisonment, a fine, or both. New section 364G(3) provides that conditional discharge is not available to the courts on conviction for breach of a SPO. A conditional discharge is where the court decides not to impose a punishment on the offender unless they go on to commit another crime, at which point they can be sentenced for both the earlier offence and the new one.

627. New section 364H signposts the provisions in sections 9, 10 and 11 of the SPA 2019 which provide for persons subject to a SPO to comply with certain requirements to notify the police of their name (including any aliases) and address and to keep such information up to date.

628. Subsections (2) and (3) make consequential amendments to the Sentencing Code and SPA 2019 respectively.

Clause 71: Guidance about stalking

629. This clause inserts new section 7A into the Protection from Harassment act 1997 and relates to guidance about stalking. New section 7A(1) enables the Secretary of State to issue guidance to public authorities in England and Wales about (a) the stalking offences in

sections 2A, 2B, 4A, 4B and 7 of the Protection from Harassment Act 1997; (b) the effect of any aspect of the SPA 2019; (c) the effect of new Chapter 3A of Part 11 of the Sentencing Code (which provides for SPOs made on conviction); or (d) any other matters relating to stalking. New section 7A(2) enables the Secretary of State to revise any guidance that is issued under new section 7A.

630. New section 7A(3) requires the Secretary of State, before issuing or revising any guidance, to consult any person whom the Secretary of State considers appropriate. The duty to consult is disapplied where any revisions to the guidance make insubstantial changes. The Secretary of State is required to publish any guidance or revised guidance (new section 7A(4)). New section 7A(5) requires any public authority defined in the guidance under this section to have regard to it when exercising its public functions. New section 7A(6) excludes courts and tribunals from the ambit of any guidance.

Clause 72: Guidance about the disclosure of information by police forces

631. This clause inserts new section 12A into the SPA 2019. New section 12A(1) confers on the Secretary of state a power to issue guidance to

chief officers of police about the disclosure of police information for the purpose of protecting persons from risks associated with stalking. Such disclosures would be made under the police's existing common law powers. Amongst other things, the guidance may deal with the disclosure to victims of stalking the identify of online stalkers. New section 12A(2) enables the Secretary of State to revise any guidance that is issued under new section 12A.

632. New section 12A(3) requires the Secretary of State, before issuing or revising any guidance, to consult the NPCC and any other person whom the Secretary of State considers appropriate. The duty to consult is disapplied where any revisions to the guidance make insubstantial changes. The Secretary of State is required to publish any guidance or revised guidance (new section 12A(4)). New section 12A(5) requires chief officers of police to have regard to the guidance.

Part 7: Other provision for the protection of persons

Clause 73: Administering etc harmful substances (including by spiking)

633. This clause repeals sections 22, 23 and 25 of OAPA 1861 and replaces section 24 with a

single, new administering a harmful substance (including by spiking) offence. The intention is for the new offence to continue to criminalise broadly the same spiking and non-spiking behaviour that is currently criminalised under sections 23 and 24 of the OAPA 1861.

634. Paragraph (a) repeals section 22 (using chloroform etc to commit any indictable offence) and section 23 (maliciously administering poison etc; so as to endanger life or inflict grievous bodily harm) of the OAPA 1861.

635. Paragraph (b) replaces section 24 of the OAPA 1861 (maliciously administering poison with intent to injure, aggrieve or annoy another person) with a new section 24 offence of administering harmful substances (including by spiking). The aim of specifically referring to spiking in the heading is to increase public awareness that spiking behaviour is illegal.

636. New section 24(1) makes it an offence if unlawfully, a person administers a harmful substance to, or causes a harmful substance to be administered to or be taken by another person and the person does so with intent to injure, aggrieve or annoy the other person.

637. New section 24(1)(a) makes clear that the harmful substance can either be directly or indirectly administered to the other person. It

also refers to a person “unlawfully” administering or causing a harmful substance to be administered. Simply referring to “unlawfully” as opposed to the previous “unlawfully or maliciously” is not intended to change the way in which the offence works, or the circumstances in which the behaviour is criminal. The intent is that the offence will not be committed if the person has a lawful purpose for administering the substance or if the other person consents to the administration.

638. New section 24(1)(b) maintains the specific intent requirement in the existing section 24 offence. The person must have intent to “injure, aggrieve or annoy” the other person.

639. New section 24(2) states that a harmful substance is any poison or other destructive or noxious thing. The intention is that, by incorporating the previous language of the section 23 and 24 OAPA 1861 offences, the new offence will retain the current wide coverage of the sort of substances which fall within the scope of those offences, as established by case law.

640. New section 24(3) makes the offence triable ‘either way’, meaning it can be tried in a magistrates’ court or the Crown Court. The previous section 23 and 24 offences were

‘indictable only’ offences meaning they could only be tried in the Crown Court.

641. New section 24(3)(a) sets out that for cases dealt with on summary conviction in England and Wales, the maximum penalty that can be imposed is a term of imprisonment not exceeding the general limit of the magistrates’ court, or a fine, or both.

642. New section 24(3)(b) sets out the maximum penalty on summary conviction in Northern Ireland is a term of imprisonment not exceeding six months, or a fine not exceeding the statutory maximum (or both).

643. New section 24(3)(c) provides that the maximum penalty on conviction on indictment is 10 years’ imprisonment or a fine or both. The maximum penalty on indictment for the new section 24 offence has increased from five years to ten years.

644. Paragraph (c) repeals section 25 of the OAPA 1861 as the alternative verdict provision is no longer required given that section 23 of the OAPA 1861 is being repealed.

Clause 74: Encouraging or assisting serious self-harm

645. This clause creates an offence of intentionally doing an act capable of encouraging or assisting the serious self-harm of another

person by any means, including through direct assistance, such as giving a person a blade with which to self-harm. Unlike the offence in section 184 of the Online Safety Act 2023, which it replaces in so far as that offence extends to England and Wales and Northern Ireland, it is not limited to encouraging or assisting serious self-harm by means of verbal or electronic communications, publications or correspondence.

646. Subsection (1) provides that a person commits an offence if they do an act capable of encouraging or assisting the serious self-harm of another person; and their act was intended to encourage or assist the serious self-harm of another person.

647. Subsection (2) provides that the person committing the offence does not need to know, or be able to identify, the person or persons who may be encouraged by their act to cause themselves serious self-harm. So, for example, a person who sends a message intending that a recipient or recipients of the message will seriously self-harm is guilty of an offence, even though they may never know the identity of those who read the message.

648. Subsection (3) provides that an offence is committed regardless of whether serious self-harm of a person occurs.

649. Subsection (4) provides that:

- "act" includes any conduct except conduct consisting only of one or more omissions (and a reference to the doing of an act is to be read accordingly). The definition of "act" is intended to cover a series of acts, as well as a combination of acts and omissions, but not only an omission or series of omissions on the part of the defendant.
- "encouraging" the serious self-harm of a person includes doing so by putting pressure on a person to self-harm (whether by threatening them or otherwise).
- "serious self-harm" of a person occurs where their conduct results in self-harm to them that is grievous bodily harm (within the meaning of the Offences Against the Person Act 1861). A person's conduct may be a single act, a series of acts, ongoing omissions, or a combination of acts and omissions. For example, a person may cause themselves serious self-harm by alternately purging and starving themselves of food during a period of time.

650. Subsection (5) provides that a person who commits the offence is liable: on summary conviction in England and Wales, to a

custodial term not exceeding the general limit in a magistrates' court or a fine (or both); on summary conviction in Northern Ireland, to a custodial term not exceeding six months' or a fine not exceeding the statutory maximum (or both); and on conviction on indictment in England and Wales and Northern Ireland to a custodial term not exceeding five years or a fine (or both).

Clause 75: Encouraging or assisting serious self-harm: supplementary

651. This clause makes provision supplementary to Clause 74. Subsection (1) provides that a person who arranges for someone else to do an act capable of encouraging or assisting the serious self-harm of another person will also be committing an offence if the other person does that act.

652. Subsection (2) has the effect that an act can be capable of encouraging or assisting serious self-harm – and therefore an offence may be committed - even if the circumstances are such that it was impossible for the act to be carried out. An act is therefore treated as capable of encouraging or assisting serious self-harm if it would have been so capable had the facts been as the defendant believed them to be at the time of the act (for example, where a person gives harmless pills to another

person in the belief that they will assist the other person to seriously self-harm) or had subsequent events happened as the defendant believed they would (for example, if razor blades were sent to a person with the intention that the person would use them to seriously self-harm but the blades failed to reach them), or both.

653. Subsection (3) provides that an internet service provider does not commit the offence merely for providing a means through which others can send, transmit or publish content that is capable of encouraging or assisting the serious self-harm of a person.

654. Subsection (4) provides that the definitions at Clause 74(4) also apply to Clause 75.

655. Subsection (5) repeals section 184 of the Online Safety Act 2023, insofar as it extends to England and Wales and Northern Ireland, in consequence of the provisions made by Clauses 74 and 75.

Clause 76: Child abduction

656. This clause amends section 1 of the Child Abduction Act 1984 (the “1984 Act”) to make it an offence for a person connected with a child to detain a child outside the UK without the appropriate consent.

657. Subsection (2)(a) inserts a new child abduction

offence at new section 1(1A) of the 1984 Act. A person connected with a child under the age of sixteen commits an offence if the child is taken or sent out of the UK with the appropriate consent and, at any time after the child is taken or sent, the person detains the child outside the UK without the appropriate consent.

658. Subsection (2)(b) amends section 1(4) of the 1984 Act to include reference to “detaining a child outside the United Kingdom”. Similarly, sections 1(4)(a) and 1(4)(b) are amended to include specific reference to “detains the child outside the United Kingdom”. Therefore, a person does not commit the new section 1(1A) offence if: (a) they are a person named in a child arrangements order as a person with whom the child is to live and they detain the child outside of the UK for a period of less than one month; or (b) they are a special guardian of a child and they detain the child outside the UK for a period of less than three months.

659. Subsection (2)(c) amends section 1(4A) of the 1984 Act to make reference to “detaining the child outside the United Kingdom”. Section 1(4) of the 1984 Act therefore does not apply if the person detaining the child outside the UK does so in breach of an order under Part II of the Children Act 1989.

660. Subsection (2)(d) amends section 1(5A)(b) of the 1984 Act to make reference to "detaining the child outside the United Kingdom". Therefore section 1(5)(c) of the 1984 Act does not apply if the person detaining the child outside the UK is acting in breach of an order made by a court in the UK.

661. Subsection (3) amends section 11(3) of the 1984 Act to replace the reference to "section 1 above", with "section 1(1) above". The existing offence at section 1(1) is carved out from having extraterritorial jurisdiction in certain circumstances and the intention is for the new offence at section 1(1A) to not be subject to this carve out. The new section 1(1A) offence by its very nature takes place outside of the UK.

662. Subsection (4) makes amendments to the Schedule to the 1984 Act to ensure that the modifications of section 1 for children in certain cases apply to the new section 1(1A) offence in the same way as the existing section 1(1) offence.

663. Subsection (5) provides that the amendments made by this clause apply only to cases where the taking or sending of a child outside the UK takes place on or after the date on which this clause comes into force.

Clause 77: Safeguarding vulnerable groups: regulated activity

664. This clause removes the provisions within Schedule 4 to the 2006 Act which take supervised roles out of regulated activity in the child workforce. This means that those who work closely and frequently with children will be in regulated activity, whether they are supervised or not. Being in regulated activity means that these roles can be subject to, and eligible for, the highest-level DBS check (enhanced with check of the children's barred list) in line with the high level of risk to children involved in the role, and subject to the requirements attendant to individuals and employers in regulated activity.

Part 8: Prevention of theft and fraud

Clause 78: Electronic devices for use in vehicle theft

665. This clause introduces new offences to criminalise the possession, importation, manufacture, adaptation, supply or offer to supply and possession of electronic devices, such as signal jammers, signal amplifiers and devices used to access a vehicle's wiring system, to commit a relevant offence such as stealing a vehicle, stealing anything in a vehicle or taking a vehicle without authority.

666. Subsections (1) and (2) make it an offence to possess or import, make, adapt, supply or offer to supply an electronic device such as a signal jammer or a signal amplifier in circumstances which give rise to a reasonable suspicion that the device will be used in connection with a relevant offence (as defined in subsection (5)) such as stealing the vehicle. The term 'electronic device' is intended to capture any electronic device which may be used to steal a vehicle.

667. Subsection (3) provides a defence for a person charged with an offence under this clause to prove that the person did not intend or suspect that the device would be used in connection with a relevant offence.

668. Subsection (4) provides that if it is proved the electronic device was on premises at the same time as the accused, or on premises occupied or habitually used by the accused, the court may assume the accused possessed the electronic device unless they show they did not know of its presence or had no control over it.

669. Subsection (5) sets out the relevant offences. For England and Wales these are section 1 of the Theft Act 1968 - theft of a conveyance (as defined in section 12 of the Theft Act 1968) or anything in a conveyance (for example theft of a car or anything in a car) – and taking a

vehicle or other conveyance without authority as defined in section 12 of the Theft Act 1968. For Scotland, the relevant offences are the theft of a vehicle, vessel (such as a boat), or aircraft or of anything in that vehicle, and taking a motor vehicle without authority (section 178 of the Road Traffic Act 1988). For Northern Ireland, the relevant offences are an offence under the section 1 of the Theft Act (Northern Ireland) 1969, which makes it an offence to steal a conveyance (such as a car) or anything from within that conveyance, or an offence under section 12 of the above Act (taking a vehicle or other conveyance without authority).

670. Subsection (6) sets out the maximum penalties in relation to these offences in England and Wales, Scotland and Northern Ireland, respectively. The maximum penalty on summary conviction in England and Wales is imprisonment for the general limit in a magistrates' court (currently six months), a fine, or both. The maximum penalty on summary conviction in Scotland is 12 months' imprisonment, a fine not exceeding the statutory maximum, or both. The maximum penalty on summary conviction in Northern Ireland is imprisonment for a term not exceeding six months, a fine limited to level 5 on the standard scale (currently £5,000), or

both. In England and Wales, Scotland, and Northern Ireland the maximum penalty for conviction on indictment is five years' imprisonment, a fine, or both.

Clause 79: Section 78: evidential burdens and lifestyle offences

671. This clause explains that for the purposes of Clause 78 the burden of proof that a person will need to discharge to be regarded as having shown that they did not intend nor suspect an article would be used for vehicle theft, or that they did not know of its presence or have control over it.

672. This is a reverse evidential burden of proof, which means that the defence need only bring forward sufficient evidence to raise an issue for the court to consider, to then return the burden of proving the contrary beyond reasonable doubt to the prosecution. This differs from a reverse legal burden of proof, which would require the defence to prove evidence to the civil standard, which is the balance of probabilities.

673. Subsection (3) provides for the electronic devices for use in vehicle theft offence to be included in the list of 'lifestyle offences' in Parts 2, 3 and 4 of POCA (which apply to England & Wales, Scotland and Northern Ireland respectively). The practical effect of this is that

a person found guilty of the offence will automatically be considered to have a criminal lifestyle. It will be for the courts to then decide if the person has benefited from their general criminal conduct, and make a confiscation order accordingly under POCA. Ultimately this may result in a higher amount of assets potentially subject to confiscation, which reflects the serious nature of this type of offending.

Clause 80: Possession of a SIM farm

674. This clause bans the possession of a SIM farm unless possession is for a good reason or has lawful authority. SIM farms are electronic devices which can hold sometimes hundreds of SIM cards that can then be used to send out thousands of scam texts and calls in seconds. They are currently easy and legal to buy online, making it easy to commit telecoms-enabled fraud on a large scale.

675. Subsection (1) creates a summary-only offence of possession of a SIM farm (a term defined in Clause 82).

676. Subsection (2) and (3) sets out the defences a person may use if they are charged with the subsection (1) offence. Subsection (2) provides the defence that someone may possess a SIM farm if they have a good reason or lawful authority to do so. It will be for

a defendant to raise the defence and prove it on balance of probability (that is, it is more likely than not).

677. Subsection (3) provides the following non-exhaustive list of examples of what may be a good reason for the purposes of subsection (2) above: that a person may be possessing a SIM farm to provide broadcast services; operate or maintain a public transport service; track freight or monitor it in any other way; operate or maintain an electronic communications network.

678. Subsection (4) sets out that possessing a SIM farm to supply to another is a good reason for possessing it only if any supply would be in accordance with Clause 80(2)(a) to (c).

679. Subsection (5) sets out the maximum penalty for the offence, namely an unlimited fine in England and Wales, or a level 5 fine (currently £5,000) in Northern Ireland and Scotland.

Clause 81: Supply of a SIM farm

680. This clause bans the supply of a SIM farm to another person.

681. Subsection (1) creates a summary-only offence of supplying a SIM farm to another person.

682. Subsection (2) sets out the defences that are applicable if a person is charged with the

offence set out in subsection (1). It will be for a defendant to raise the defence and prove it on balance of probability (that is, it is more likely than not).

683. The defences provided under subsection (2) is that either the supply was made in the course of business carried on by the supplier or that the supplier had good reason or lawful authority to possess the SIM farm before the supply was made, and both that the supplier took reasonable steps to satisfy themselves that the person they were supplying the SIM farm to would have a good reason or lawful authority to possess it, and that the supplier recorded the information specified in subsection (4). This a three-limb test and the defence is only made out if it meets each of the criteria contained in subsection (2)(a) to (c).

684. Subsection (3) sets out that possessing a SIM farm simply to supply it to another is not a good reason for the purposes of subsection (2)(a)(ii).

685. Subsection (4) states the information that must be recorded for the purposes of the third limb of the defence as set out in subsection (2)(c).

686. Subsection (5) sets out the maximum penalty for the offence, namely an unlimited fine in England and Wales or a level 5 fine (currently

£5,000) in Northern Ireland and Scotland.

Clause 82: Sections 80 and 81: meaning of “SIM farm” etc

687. Clause 82 defines a “SIM farm” for the purposes of the offences in Clauses 80 and 81. The definition covers a device which can hold five or more removable physical SIM cards and is used to make calls to persons at telephone numbers allocated in accordance with national or international number plans or to send or receive text messages to or from such telephone numbers.

688. Subsection (2) defines a SIM card as a removable physical card (subscriber identity module).

689. Subsection (3) specifies that the card is “used” if it enables a user to access the service by which the call is made or the message is sent.

690. Subsection (4) confer a power on the Secretary of State to amend this clause by regulations (subject to the draft affirmative procedure), with the exception of this subsection.

691. Subsection (5) introduces Schedule 10, which confers powers of entry and search in relation to the offences set out in Clauses 80 and 81.

Schedule 10: Possession or supply of SIM farms: powers of entry etc

692. Paragraph 1 defines terms used in Schedule 10.

693. Paragraph 2 provides that the powers of entry and search conferred by Schedule 10 are without prejudice to the continued operation of any other powers conferred by or under any enactment or under common law.

694. Paragraph 3 confers powers to stop and search vehicles on a constable (who could be a police officer or other person designated with the powers of a constable, such as certain NCA officers). The power is engaged where the constable has reasonable grounds to suspect that the vehicle contains evidence of an offence under Clause 80 or 81 or any associated offences such as attempts. The power does not apply where the vehicle is a dwelling (paragraph 3(1)(b)); in such circumstances the provisions of paragraph 5 would apply. A dwelling is not defined but is intended to be given its natural meaning; the exclusion would, for example, apply to a residential caravan. The power applies to vehicles whether or not a driver or other person is in attendance of the vehicle. Where it is impractical for a stopped vehicle to be searched in the place it has been stopped, the constable may require the vehicle to be moved to another place before conducting the search

(paragraph 3(3)). This provision would apply, for example, where the vehicle has been stopped on a busy road and it would be safer to conduct the search in another location.

695. These stop and search powers are exercisable in any place to which the constable has lawful access. This would enable a vehicle parked in a garage on premises that are the subject of a search warrant under paragraph 4 to be searched (paragraph 3(5)).

696. The power of a constable in England and Wales to stop and search a vehicle under paragraph 3 engages certain safeguards under Part 1 of PACE or, in Northern Ireland, Part II of PACE NI:

- The constable need not search a detained vehicle if it subsequently appears to him or her: (i) that no search is required; or (ii) that a search is impracticable (section 2(1) of PACE and Article 4(1) of PACE NI).
- Where the constable contemplates a search of an attended vehicle, he or she is under a duty to take reasonable steps before he or she commences the search to bring to the attention of the detained person (section 2(2) and (3) of PACE and Article 4(2) and (3) of PACE NI) —
  - If the officer is not in uniform, documentary

evidence that he or she is a constable; and whether he or she is in uniform or not, the matters specified below:

    - the constable's name and the name of the police station to which he or she is attached;
    - the object of the proposed search;
    - the constable's grounds for proposing to make it; and
    - the right of the owner or person in charge of the vehicle to receive a record of any search conducted (section 3(8) of PACE and Article 5(8) of PACE NI)

- A constable not in uniform has no power to stop a vehicle (section 2(9)(b) of PACE and Article 3(10)(b) of PACE NI).
- A constable must make a record of the search in writing unless it is not practicable to do so. Where it is not practical to make a record at the time, the constable must do so as soon as practicable after the completion of the search (section 3(1) and (2) of PACE and Article 5(1) and (2) of PACE NI).
- The provisions of the Code of Practice made under section 66 of PACE or Article 66 of PACE NI.

697. Paragraph 4 contains powers to board and

search vessels or aircraft analogous to those in paragraph 3 in respect of entry and search of vehicles. A vessel is defined in paragraph 1(1) and includes any ship, boat or hovercraft. The powers do not apply where the vessel or aircraft is used as a dwelling, for example, a houseboat. Again, the provisions of sections 2 and 3 of PACE apply where the powers are exercised by a constable in England and Wales (subsection (10) of sections 2 and 3 of PACE apply the provisions of those sections to vessels, aircraft and hovercrafts as they apply to vehicles).

698. Paragraph 5 provides for prior judicial authorisation of powers to search premises for evidence of an offence under Clause 80 or 81 or associated offences ("premises" is defined in paragraph 1(1) and includes both residential and commercial premises and vehicles or vessels). Applications for a search warrant must be made, in England and Wales and Northern Ireland, by a constable, or, in Scotland, by a constable or the procurator fiscal. Paragraph 5(1) enables a justice (as defined in paragraph 1(1)) to issue a search warrant to a constable that authorises that officer to enter premises specified in the warrant and search them for such evidence. There is a two-stage test for the grant of a search warrant (paragraph 5(3)). The first

element of the test is that the justice must be satisfied that there are reasonable grounds to suspect that the evidence is to be found on premises covered by the warrant. In determining whether the "reasonable grounds to suspect" test has been satisfied, the justice will apply the civil standard of proof, namely the balance of probabilities. The second element of the test is that any of the conditions in paragraph 5(3) are met. The nature of those conditions are such that a constable should, where possible, secure entry into premises or access to items on the premises with the co-operation of the owner or occupier and only seek a warrant where such co-operation is unlikely to be forthcoming or where the purpose of the search would be frustrated or seriously prejudiced if immediate entry to the premises could not be secured using the authority of a warrant.

699. As with the provisions for search warrants in section 15 of PACE, a warrant issued under this paragraph may be in relation to a single set of premises (a "specific-premises warrant") or, in England and Wales and Northern Ireland only, an "all-premises warrant" where it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practical to specify all the premises at the time of applying for the warrant (see

paragraph 5(2)). An all-premises warrant will allow access to all premises occupied or controlled by that person, both those that are specified on the application, and those that are not; this allows for follow-up searches where evidence at one premises controlled by the named person identifies a second associated with that person.

700. Paragraph 6(2) allows persons applying for search warrants to do so without informing those persons who might be affected by it (for example, the owner or occupier of the premises or the owner of the substances in question) to avoid forewarning such a person of the impending search thereby affording an opportunity to remove or otherwise hide the evidence. In coming to a judgment as to whether the test for the grant of a warrant is made out (see paragraph 5(3)), a justice would weigh up the information supplied in the application (paragraph 6(3)) or in oral evidence (paragraph 6(4)).

701. Paragraph 7(1) enables a search warrant to be executed by any constable and not just the constable who applied for the warrant. If the search warrant so provides, paragraph 7(2) enables authorised persons to accompany a constable when executing a warrant. Such a person, for example, a Police Community

Support Officer, has the same powers as those conferred on the constable (paragraph 7(3)).

702. Paragraph 8 enables a constable, when searching a vehicle or vessel (with or without a warrant) or any premises (under a warrant), to examine anything in the vehicle or vessel or on the premises. Paragraph 8(4) places a duty on any person in or on the premises to facilitate or assist the exercise of a constable's powers of search under Schedule 10 or the powers conferred by paragraph 8, for example, to open any locked container. If there is no such person on the premises to assist in such manner or that person refuses to do so, paragraph 8(3) confers a power on a constable to use force to break open a container or other locked thing (for example, a locked storeroom).

703. Paragraph 9 enables a constable, when searching a vehicle or vessel (with or without a warrant) or any premises (under a warrant), to require any person in the vehicle or vessel or on the premises to produce any document or record that is in the person's possession or control. The power extends to requiring a person to produce information held in electronic form, for example on a computer, so that it can be read. Such an examination may assist in providing additional evidence of criminal conduct, for example spreadsheets

detailing various trades and supplies of SIM farms.

704. Paragraph 10 enables a constable (or a person authorised to accompany them when executing a search warrant) to use reasonable force, if necessary, when exercising powers under Schedule 10, for example, to search a person or to enter premises to execute a search warrant (this mirrors section 117 of PACE).

705. Paragraph 11(1) makes it an offence for a person, without reasonable excuse, intentionally to obstruct a constable in the exercise of his or her powers under Schedule 10.

706. Paragraph 11(2) makes it an offence for a person, without reasonable excuse, to fail to comply with a reasonable requirement made or direction reasonably given by a constable under Schedule 10. It is also an offence to prevent another person from complying with such a requirement or direction. Such a requirement or direction may be, for example, to open a locked door of a room within premises subject to a search warrant or to open a locked cabinet.

707. These offences extend to the obstruction of, or failure to comply with a requirement or direction given by, a person authorised to

accompany a constable (such as a police community support officer) to affect a search of premises (paragraph 11(3)).

708. Paragraph 11(4) provides for the maximum penalties for both offences, which are the same as those under Clauses 80 and 81, namely an unlimited fine in England and Wales or a level 5 fine (currently £5,000) in Northern Ireland and Scotland.

709. Paragraphs 12 to 16 (Part 3 of Schedule 10) contain further provisions about applications in England and Wales or Northern Ireland for search warrants under paragraph 5. Paragraph 13 provides that a constable applying for a search warrant should state that the application is for a warrant under paragraph 5; the grounds for suspecting that relevant evidence is in the premises; identify the offence to which the relevant evidence relates; and provide information about the premises being searched as specified in paragraph 13(2) and (3).

710. Paragraph 14 states that a search warrant authorises entry on one occasion only, unless it specifies that it authorises multiple entries. Paragraph 15 sets out the information that must be specified in the warrant. Paragraph 16 specifies the number of copies of the search warrant that must be made when entering one

set of premises (paragraph 16(1)) or multiple entries (paragraph 16(2)).

711. Paragraphs 17 to 25 (Part 4 of Schedule 10) contain further provision about the execution in England and Wales or Northern Ireland of search warrants under paragraph 5. Paragraph 18 states that the warrant must be executed within a month of issue.

712. Paragraph 19 states that all premises warrants may be executed only if a senior officer has authorised them. Paragraph 19(3) states that for the purposes of paragraph 19, senior officer means (a) a constable of at least the rank of inspector, or (b) an NCA officer who is designated under section 10 of the Crime and Courts Act 2013 and is grade 3 or above. Paragraph 20 sets out that searching premises more than once under a search warrant authorising multiple entries must be authorised by a senior officer.

713. Paragraph 21 states that entry and search must be at a reasonable hour unless it appears to the constable that this would frustrate the search. Paragraph 22 sets out the information that must be provided as evidence of authority when executing a search warrant, where the occupier of the premises to be entered and searched is present (paragraph 22(1)) and where the occupier is not present (paragraph

22(2)).

714. Paragraph 23 sets out that the search must not be more extensive than required by the purpose behind the warrant and paragraph 24 states that reasonable steps must be taken to secure the premises after entry.

715. Paragraph 25 states that the search warrant must be returned to the appropriate person (as specified in sub-paragraph (2)) when the warrant has been executed or no later than a month from the date of issue if the warrant is a specific-premises warrant that has not been executed, an all-premises warrant, or a warrant authorising multiple entries.

Clause 83: Possession of specified article

716. This clause, together with Clauses 84 and 85, broadly mirror the offences of possession and supply of a SIM farm as provided for in Clauses 80 and 81, but apply them to "specified articles", that is articles specified in regulations made under Clause 85.

717. Subsection (1) makes it an offence to possess a specified article.

718. Subsection (2) sets out the defences a person may use if they are charged with the subsection (1) offence. Subsection (2) provides the defence that someone may possess a specified article if they have a good

reason or lawful authority to do so. It will be for a defendant to raise the defence and prove it on balance of probability (that is, it is more likely than not).

719. Subsection (3) sets out that possessing a specified article to supply to another is a good reason for possessing it only if any supply would be in accordance with Clause 84(2)(a) to (c).

720. Subsection (4) specifies the maximum penalty for any offence created by regulations made under subsection (1), namely an unlimited fine in England and Wales or a level 5 fine (£5,000) in Scotland and Northern Ireland.

Clause 84: Supply of specified article

721. Subsection (1) provides for an offence of supplying a specified article.

722. Subsection (2) sets out the defences that are applicable if a person is charged with the offence set out in subsection (1). It will be for a defendant to raise the defence and prove it on balance of probability (that is, it is more likely than not).

723. The defences provided under subsection (2) are that either the supply was made in the course of business carried on by the supplier or that the supplier had good reason or lawful authority to possess the specified article before

the supply was made, and both that the supplier took reasonable steps to satisfy themselves that the person they were supplying the specified article to would have a good reason or lawful authority to possess it, and that the supplier recorded the information specified in subsection (4). This a three-limb test and the defence is only made out if it meets each of the criteria contained in subsection (2)(a) to (c).

724. Subsection (3) sets out that possessing a specified article simply to supply it to another is not a sufficient reason for the purposes of subsection (2)(a)(ii).

725. Subsection (4) states the information that must be recorded for the purposes of the third limb of the defence as set out in subsection (2)(c).

726. Subsection (5) sets out the maximum penalty for the offence, namely an unlimited fine in England and Wales or a level 5 fine (currently £5,000) in Northern Ireland and Scotland.

Clause 85: Sections 83 and 84: specified articles and supplementary provision

727. Subsection (1) provides that the Secretary of State may by regulations specify articles for the purposes of the offences in Clauses 83 and 84.

728. Subsection (2) provides that an article may be

specified only if the Secretary of State deems there is significant risk the article being used in connection with fraud over an electronic communications network or service.

729. Subsection (3) requires the Secretary of State, before making regulations under this clause, to consult persons likely to be affected by the regulations as the Secretary of State considers appropriate. This may, for example, cover industry bodies or particular manufacturers of the article concerned.

730. Subsection (4) specifies that Schedule 10, which confers powers of entry and search, also applies to the offences set out in Clauses 83 and 84.

731. Subsection (5) defines terms used in this clause.

Part 9: Public order

Clause 86: Offence of concealing identity at protests

732. Subsection (1) introduces a new criminal offence of wearing, or otherwise using, an item that conceals identity in a public place (as defined in Clause 91)) within an area designated under Clause 87. The reference to "otherwise using an item" is to ensure that the offence applies not only to coverings worn on a person's face, but also other items, such as

placards or masks held close to the face, which are used for the purpose of concealing identity.

733. Subsection (2) provides for a defence if the person is wearing or otherwise using the item for a purpose relating to the health of the person or others, religious observance, or the person’s work. The defence places a reverse legal burden on the defendant, that is the legal burden of proof is on the defendant (not the prosecution) to prove, on the balance of probabilities, that they wore or otherwise used an item for a purpose relating to their health or that of others, religious observance, or their work.

734. Subsection (3) provides that the offence in subsection (1) is only committed within the specified 24-hour period of a designation under Clause 87(1) if all reasonable steps were taken by the police to notify the public of a designation. It will be for the prosecution to prove beyond reasonable doubt that such reasonable steps were taken.

735. Subsection (4) provides that the offence in subsection (1) is only committed within a 24-hour extension period of a designation under Clause 87(3) if all reasonable steps were taken by the police to notify the public of the extended designation. It will be for the

prosecution to prove beyond reasonable doubt that such reasonable steps were taken.

736. Subsection (5) provides that the offence carries a maximum penalty of one month's imprisonment, a level 3 fine (currently £1,000), or both.

Clause 87: Concealing identity at protests: designating localities and giving notice

737. Subsection (1) provides that a police officer of or above the rank of inspector may designate a locality in their police area for a specified period not exceeding 24 hours. The officer must reasonably believe that a protest (that is, a public assembly or public procession, as defined in Clause 88, that constitutes a protest) may take place or is currently taking place in the locality, offences are likely to be or have been committed at the protest and it is expedient to designate a locality in order to prevent or limit the commission of offences.

738. Subsection (2) provides that a police officer who designates a locality must ensure that all reasonable steps are taken (by the officer or another person) to notify the public of the fact that the designation has been made, details of the offence created by Clause 86, the area the designation covers and the time period (up to 24 hours) the designation is in force.

739. Subsection (3) provides that a police officer of or above the rank of superintendent can extend the operation of the designation for a further 24 hours. This is on the condition that it is expedient to do so due to offences which have been or are reasonably suspected to have been committed in connection with the protest in the designated locality.

740. Subsection (4) provides that the police officer who extends a designation must ensure that all reasonable steps are taken (by the officer or another person) to notify the public of the fact the designation will continue to be in force, details of the offence, the area the designation covers and the time period the extended designation is in force.

741. Subsection (5) makes provision for the British Transport Police and the Ministry of Defence Police to designate areas within their respective jurisdictions.

742. Subsection (6) provides that this clause does not limit any other power of a police officer and it does not affect authorisations under section 60AA of the Criminal Justice and Public Order Act 1994 (powers to require removal of disguises).

Clause 88: Concealing identity at protests: procedure for designations etc

743. Subsection (1) provides that an inspector who designates a locality under Clause 87 must inform an officer of or above the rank of superintendent of the designation as soon as is reasonably practicable.

744. Subsections (2) and (3) provide that a designation made under Clause 87 must either be in writing and signed by the officer who made it or be made orally where it is not reasonably practicable for a designation to be made in writing. In both cases, the designation must specify the reason it is being made, the locality to which it applies and the period which it will be in force. If the designation is made orally, subsection 3(b) requires that it is recorded in writing as soon as reasonably practicable.

745. Subsection (4) provides that an officer who extends a designation for a further 24 hours (under Clause 87(3)) must give the direction in writing or, where it is not reasonably practicable, record the direction in writing as soon as it is possible to do so.

Clause 89: Possession of pyrotechnic articles at protests

746. Subsection (1) provides for an offence of possessing a pyrotechnic article at any time while taking part in a public procession that constitutes a protest, a public assembly which

constitutes a protest or a one-person protest. A "pyrotechnic article" for these purposes is defined in subsection (7). The definition covers, for example, flares and fireworks, but excludes matches or other articles, or description of articles, specified in regulations made by the Secretary of State (subject to the negative procedure).

747. Subsection (2) excludes from the ambit of the offence the possession of a pyrotechnic article at a cultural or religious event of a kind at which pyrotechnic articles are customarily used. This would cover, for example, events celebrating Chinese New Year or Diwali.

748. Subsections (3) and (4) provide that it is a defence for a person charged with this offence to show that they had a reasonable excuse for possessing a pyrotechnic article at the time. In particular, if they are in possession of the item in connection with their work. This defence imposes a reverse evidential burden on a defendant, namely that the offence is made out unless they adduce sufficient evidence to establish that they had a reasonable excuse to possess a pyrotechnic article at a protest. Having brought forward sufficient evidence, then it falls to the prosecution to satisfy the jury or justices, beyond a reasonable doubt, that the evidence put forward does not establish

the defence.

749. Subsection (6) provides for the maximum penalty for the offence of a level 3 fine (currently £1,000).

Clause 90 and Schedule 11: War memorials

750. Subsection (1) makes it an offence to climb on a specified war memorial.

751. Subsection (2) provides for three defences, namely where the person charged with the offence had good reason to climb on the specified war memorial, were the owner or occupier of the war memorial, or where they have the consent of the owner or occupier or other lawful authority. Such defences would cover, for example, a contractor appointed by the owner of a war memorial to clean or repair the memorial. The defences place a reverse legal burden on the defendant, that is the legal burden of proof is on the defendant (not the prosecution) to prove, on the balance of probabilities, that they had good reason to climb on the war memorial.

752. Subsection (3) defines the term "specified war memorial" as the war memorials or parts of war memorials specified in Schedule 11. The list of war memorials contained in Schedule 11 are those designated as Historic England National Heritage Category I sites which are accessible by the public.

753. Subsection (4) confers a power on the Secretary of State to amend the list of specified war memorials in Schedule 11 by regulations (subject to the affirmative procedure).

754. Subsection (5) provides for the maximum penalty for the offence of three months' imprisonment, a level 3 fine (currently £1,000), or both.

Clause 91: Interpretation of Part

755. This clause defines terms used in Part 9 of the Bill. "Public procession" has the same meaning as in the Public Order Act 1986 (Section 16) and "Public Assembly" also has the same meaning as in Section 16 of that Act except that it also includes an assembly of two or more persons in a public place within the geographical jurisdiction of the British Transport Police; this includes covered railways stations which are not currently covered by the section 16 definition of a public assembly which is confined to assemblies taking place wholly or partly in the open air.

Part 10: Powers of police etc

Clause 92 and Schedule 12: Suspension of internet protocol addresses and internet domain names

756. Clause 92 introduces Schedule 12 to the Bill

which provides for two new orders, one to suspend (Internet Protocol) ("IP") addresses and one to suspend domain names. An IP address is a unique address given to every network on the internet which identifies it, is used to send information, and can be used to see when content has been accessed on the internet. Every device that uses the internet has to have an IP address in order to access it. A domain name is another term for a website address (for example, www.gov.uk) that is easy to remember and, when typed into the search bare of a browser, directs the device to a website. It is different to a URL ("Uniform Resource Locator"), which is a unique identifier for the location of a webpage on the internet.

757. Paragraph 1 of Schedule 12 makes provision for applications for IP address suspension orders, which would result in preventing access to an IP address so that it no longer connects to other devices.

758. Paragraph 1(1) sets out that an 'appropriate officer' may make an application for an IP address suspension order. An appropriate office is defined in paragraph 14. In England, Wales and Northern Ireland the definition covers police officers, NCA officers, HM Revenue and Customs officers, and members of staff of the Financial Conduct Authority. In

England and Wales, it also includes enforcement officers in the Gambling Commission and in Scotland it means a procurator fiscal.

759. Paragraph 1(2) to (4) defines an IP address suspension order as an order that requires the provider of the IP address to which the order relates to prevent access to the IP address specified in the order for a period of time no longer than 12 months. IP address providers can be a range of organisations, including but not limited to Regional Internet Registries, Local Internet Registries, or Internet Service Providers, which will all have the technical capability to ensure an IP address is rendered inaccessible.

760. Paragraph 2 sets out the conditions for making an IP address suspension order.

761. Paragraph 2(1) provides that a judge may grant an IP address suspension order if they are satisfied that the four conditions set out in sub-paragraphs 2(2) to (5) have been met.

762. Condition 1 is that the IP address is being used for the purposes of serious crime as defined by paragraph 19.

763. Condition 2 requires a relationship between the IP address and the UK. It provides that one of the following must apply: a UK Person – as

defined in paragraph 20 – is using the IP address for the purposes of serious crime; a UK Person is a victim of serious crime for which the IP address has been used; that the IP address is being used for the purposes of serious crime connected with unlicenced gambling or that the IP address is allocated to a device located in the UK.

764. Condition 3 requires it to be necessary and proportionate to suspend the IP address in order to prevent it being used for the purposes of serious crime.

765. Condition 4 is that either without a suspension order access to the IP address won't be prevented or that trying to prevent access to the IP address through other means – such as a voluntary arrangement with the IP address provider - will seriously prejudice the prevention, restriction or disruption of serious crime for which the IP address is being used. This condition ensures that appropriate officers must consider other methods of achieving the suspension, in particular through engagement with the provider, so that an order is only applied for if it is absolutely necessary.

766. Paragraphs 3 and 4 make like provision for the making of applications for and the grant of domain name suspension orders as paragraphs 1 and 2 do for IP address

suspension orders. A domain name suspension order requires a specified internet domain registry or a specified registrar for an internet domain registry (as defined in paragraph 17) to prevent access to an internet domain name as specified in the order. The domain name conditions also cover instances in which domain names could be used for criminality in the future. This is due to the criminal use of domain generation algorithms ("DGA") to aid their operations. Once the relevant law enforcement agencies understand the DGA, they can identify domains which could be associated with criminal activity in the future and suspend them before they can be used.

767. Paragraph 5 provides for a non-disclosure duty to apply when notice of an application for a suspension order is served on the person against whom the order is sought (namely the specified IP address provider or the domain name registry or registrar). This means that the person must not disclose the making of the suspension order application or its contents without the permission of a judge or an appropriate officer. This ensures, for example, that the person who is involved in the criminal activity is not alerted to disruptive actions being taken.

768. Paragraph 5(3) provides that the non-disclosure duty ceases to apply if an application for a suspension order is dismissed, withdrawn or abandoned. Paragraph 5(4) and (5) provide that a judge may order the that the non-disclosure duty continues to apply if an application for a suspension order has been dismissed, on application from an appropriate officer, and the order must specify when the non-disclosure requirement ceases to apply. Paragraph 5(6) provides that when a judge grants a suspension order, the non-disclosure duty ceases to apply either when the suspension order doesn't include a non-disclosure requirement (under paragraph 6) or when the non-disclosure requirement in a suspension order expires.

769. Paragraph 6 provides for a non-disclosure requirement to be attached to a suspension order should it be required, so that the individual that the order is served on (namely the specified IP provider, or specified internet domain registry or registrar) is unable to inform other persons. This again ensures, for example, that the person who is involved in the criminal activity is not alerted to disruptive actions being taken. If a non-disclosure requirement is included, disclosure can only be authorised by the judge or the appropriate

officer. The order must specify when the non-disclosure requirement is to expire.

770. Paragraph 7 allows an appropriate officer, or anyone affected by the order, to apply for variation or discharge of the order. A person affected by a suspension order could include the IP address provider or internet domain registry; or a user of the IP address or domain name. In the former case, the IP address provider or internet domain registry may raise unidentified consequences arising from complying with the order. In those instances, the entity could apply to the court to suggest amendments to the order to further mitigate those consequences, or even discharge it entirely if it is not considered necessary and proportionate.

771. Paragraph 8 allows an appropriate officer to make an application to extend the duration of the suspension order. Paragraph 8(4) sets out that this can only be ordered when it is necessary and proportionate to continue to do so. Any extension can only be for a further period of a maximum of 12 months (paragraph 8(5)), although there can be multiple extensions (paragraph 8(7)).

772. Paragraph 9 sets out that a judge may discharge or vary a non-disclosure order following an application by either an

appropriate officer or the person subject to the order (namely, the IP address provider or domain name registry or registrar).

773. Paragraph 10(1) provides that an application for a suspension order can be made without notice to the intended subject of the order; this is so that a person involved in criminal activity cannot take evasive action ahead of an order being made. Paragraph 10(2) provides that, in England and Wales and Northern Ireland, an application for a suspension order must be made or authorised by an officer of the required minimum seniority (as set out in paragraph 14(2)).

774. Paragraph 11 provides for the service of notice of applications and orders on the IP address provider or domain name registry or registrar, including service on a person outside the UK.

775. Paragraph 12 enables criminal procedure rules of court to be made governing the practice and procedure relating to suspension orders.

776. Paragraph 13 indicates that an order made by a judge has effect as if it were an order of the court, in England and Wales and Northern Ireland.

777. Paragraphs 14 to 21 define terms used in Schedule 12.

Clause 93: Electronically tracked stolen goods: search without warrant

778. This clause inserts new section 26A into the Theft Act 1968 which confers power on a police officer to enter and search any premises for stolen goods without a warrant in situations where the stolen goods can be electronically tracked to the premises. The Theft Act 1968 revised the law of England and Wales pertaining to theft, creating and codifying a number of offences against property.

779. New section 26A(1) provides that a police officer of at least the rank of inspector (the "senior officer") may authorise a constable to enter specified premises and search those premises for specified items.

780. New section 26A(2) sets out the conditions that must be fulfilled for the officer to authorise the entry and search of a specified property. They must be satisfied there are reasonable grounds to believe that the specified items are stolen and on the specified premises, and that it would not be reasonably practicable to obtain a warrant without frustrating or seriously prejudicing the purpose of the entry and search for the specified items. And additionally, that there is electronic tracking data indicating that any of the specified items are on the specified premises, or have been on

the premises at some time since they are believed to have been stolen. All of these conditions must be satisfied. For instance, a senior officer may be satisfied there is evidence that a stolen phone has been tracked to the premises via a 'Find My' application. In order for authorisation to be granted, they would also have to believe, on a reasonable basis, that the stolen phone is on the premises. The basis for this belief may be the electronic tracking data, on its own or in combination with other evidence, or may be some other evidence.

781. New section 26A(3) sets out that authorisation can be given either orally or in writing. This reflects the need for the power to be used swiftly.

782. New section 26A(4) sets out that the authorising officer must record in writing the authorisation, if given orally, and whether it was given orally or in writing, their reasons for being satisfied that the conditions in new section 26A(2) are met. This must be done as soon as reasonably practicable after authorisation. New section 26A(5) provides certain safeguards for police exercise of the power, namely that it must be exercised only (a) by a constable in uniform; (b) within 24 hours of the authorisation being given; and (c)

at a reasonable hour unless it appears to the constable that this would frustrate or seriously prejudice the purpose for the search, for example they anticipate that the specified stolen items will be removed from the premises overnight if they do not enter and search before this happens.

783. New section 26A(6) sets out that these powers only allow constables to search the specified premises to a reasonable extent and until they find the specific items they are seeking. They may not continue the search once the specific items have been found. For example, if a constable enters a premises in search of a phone, they must cease the search once the phone has been located and seized and cannot search in places on the premises not reasonably required to locate it.

784. New section 26A(7) requires the constable to identify themselves to an occupier present at the time the constable seeks to enter and search the specified premises, and state the purpose of the entry and search.

785. New section 26A(8) provides a definition of electronic tracking data, namely that it is information as to the location of an item which is determined by electronic means. This is a wide definition reflecting the dynamic technology market and is intended to capture

future technological advances after the Bill’s passage.

786. New section 26B(1) sets out that when the new entry and search power is being used, the requirements of new section 26B, relating to powers of seizure, must be used instead of the general power of seizure set out at section 19 of PACE. This is to reflect the narrow scope of this power, being a tool to facilitate the swift retrieval of stolen goods electronically tracked to premises, and seizure of evidence of related offending, rather than a general power of seizure.

787. New section 26B(2) enables a police officer exercising the search power to seize any item on the premises – whether it is an item for which entry and search was authorised, or not - which they have reasonable grounds to believe is stolen, and that seizure is necessary to prevent it being concealed, lost, damaged, altered or destroyed. For example, if police enter a property to search for one particular stolen phone, but find during their search several other phones they reasonably believe to be stolen and that if not seized, they will be moved off the premises and lost, those phones can also be seized.

788. New section 26B(3) enables the police officer to seize additional items on the premises if

they have reasonable grounds to believe they constitute evidence relating to a theft offence, and it is necessary to seize this evidence in order to prevent it being concealed, lost, damaged, altered or destroyed. This is to support officers to identify theft offences and facilitate the charging of suspects.

789. New section 26B(4) sets out that as soon as soon as reasonably practicable after items are seized in exercise of the power, the police officer must make a written record of the grounds under which this power of seizure was exercised and the items which were seized during the search.

790. New section 26C(1) disapplies the powers of search and seizure in relation to items that are subject to legal privilege, excluded materials or materials subject to special procedure. That is, the police cannot use the powers to search for or seize such items.

791. New section 26C(2) allows for a constable to use reasonable force, if necessary, in order to exercise the powers of entry, search or seizure.

792. New section 26C(3) defines ‘specified’ in new sections 26A and 26B to refer to specification in an authorisation by an officer of the rank of at least inspector as set out in 26A(1).

793. New section 26C(4) applies the definition of stolen goods in section 24 of the Theft Act 1968. This includes that under section 24(2) of the Theft Act, the proceeds of stolen goods (including part proceeds) which have been realised by the thief or handler and have been in their possession or under their control, are themselves stolen goods. So, where, for example, a mobile phone is stolen and disposed of to a handler, the money received by the thief will be stolen goods. The phone itself will remain stolen goods and if the handler then sells it to an innocent purchaser, the money obtained by the handler will also be stolen goods. But if the innocent purchaser sells the phone on, the money received by them will not be stolen goods because it has never represented the proceeds of stolen goods in the hands of either the thief or the handler. Under section 24(4) of the Theft Act 1968, goods obtained by fraud (as defined in the Fraud Act 2006) or blackmail are included within the definition.

794. New section 26C(5) sets out that for the purpose of this power the following definitions set out in PACE apply: “items subject to legal privilege” (section 10), “excluded material” (section 11), “special procedure material” (section 14) and “premises” (section 23). “Items subject to legal privilege” include

communications between a person and their lawyer concerning legal advice or legal proceedings, and certain communications between a lawyer and a third party. “Excluded material” and “special procedure material” include but are not limited to, personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence, human tissue or tissue fluids taken for the purposes of diagnosis or medical treatment and held in confidence, and journalistic material. “Premises” refers to any place, including both private dwellings and commercial properties in addition to any vehicle, vessel, aircraft or hovercraft; any offshore installation; any renewable energy installation; or any tent or movable structure.

795. Subsection (3) of the clause amends Schedule 1 to the Criminal Justice and Police Act 2001, extending police’s existing seize and sift powers (under the Criminal Justice and Police Act 2001) in the operational exercise of the new seizure power in section 26B of the Theft Act to ensure they do not examine any material to which the power does not extend.

Clause 94: Electronically tracked stolen goods: search without warrant (armed forces)

796. Clause 94 gives the service police powers, equivalent to those granted to the civilian police by Clause 93, to enter premises without a warrant and search for stolen goods. The service police have jurisdiction over service personnel and civilians subject to service discipline. Service police may only exercise the power conferred by Clause 94 in relation to relevant residential premises, as defined by section 84(3) of the Armed Forces Act 2006.

797. The clause inserts new sections 93ZA to 93ZC into Part 3 of the Armed Forces Act 2006. The Armed Forces Act 2006 governs the discipline of the armed forces, and Part 3 sets out powers of arrest, search and entry for commanding officers and the service police.

Clause 95: Access to driver licencing information

798. This clause replaces existing section 71 of the 2000 Act with a new section 71 and inserts new sections 71A to 71C into that Act. It provides for the police and other law enforcement persons to have access to driver licensing data held by the Driver and Vehicle Licensing Agency ("DVLA") and provides powers for the Secretary of State to make regulations setting out any conditions which need to be met by any person accessing the data. It regularises access to driving licence data by the police and other law enforcement

persons and expands the purposes for which automatically provided data may be used to all policing or law enforcement purposes.

799. New section 71(1) of the 2000 Act provides the Secretary of State with the power to make available, to any authorised person, driver licensing information held by him or her. Driver licensing information is defined in new section 71(7) as information held by the Secretary of State for the purposes laid out in Part 3 of the Road Traffic Act 1988. Such information includes, in relation to each driver, their name and address, date and country of birth, photograph, signature, entitlement (namely the type of vehicle they are eligible to drive), endorsements, convictions and any relevant medical information that may affect their ability to drive. The Motor Vehicles (Access to Driver Licensing Records) Regulations 2001 (SI 2001/3343) made under the existing section 71 only enables driver licensing information automatically made available to the police and other law enforcement agencies to be used for the purposes of the prevention, investigation or prosecution of road traffic offences or to ascertain whether a person has an order made against them under specified legislation disqualifying them from driving.

800. New section 71(2) to (4) requires driver

information regulations to set out the circumstances in which driver licensing information may be made available and sets out a non-exhaustive list of the type of provision which may be made, which includes provision in relation to further disclosure by an authorised person, specifying conditions which must be met by an authorised person before the data is made available and specifying information that may not be made available to authorised persons.

801. New section 71(5) requires the Secretary of State to consult specified persons before making driver information regulations.

802. New section 71(6) provides a statutory override making it clear that the new provisions are subject to data protection legislation.

803. New section 71(7) defines the terms used in the new section 71, including the term "authorised person".

804. New section 71A defines "authorised person". The term is defined by references to categories of person and by the authorising officer for each category of person. The following persons are authorised:

- A constable
- A member of civilian police staff

- A police volunteer designated under section 38 of the Police Reform Act
- An NCA officer
- A member, or member of staff of the Independent Office for Police Conduct
- A member of staff of the Police Investigations and Review Commissioner
- A member of staff of the Police Ombudsman for Northern Ireland
- A member of a service police force or person under the direction and control of a Provost Marshal
- A person appointed as an investigating officer by, or a member of staff of the Service Police Complaints Commissioner
- A member of an Island police force
- Other law enforcement officials in the Crown Dependencies
- A member of the Royal Gibraltar Police
- A member of the Gibraltar Defence Police.

This is a broader list of persons than provided for in the existing section 71 which is limited to constables (defined as including civilian staff employed by the territorial forces in the UK (other than the City of London Police) and the British Transport Police) and NCA officers.

805. A constable for these purposes includes constables appointed or employed by a UK territorial force or a UK specialist police force

(British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary); a UK Ports Police officer (sworn under section 79 of the Harbours, Docks and Piers Clauses Act 1847, section 154 of the Port of London Act 1968 (for the Port of Tilbury Police) or section 103 of the Tees and Hartlepools (sic) Port Authority Act 1966 (for the Teesport and Hartlepool Harbour Police)); constables attested under section 105(2) of the County of Merseyside Act 1980; and special constables.

806. A member of civilian police staff includes police staff employed by any of the police forces listed in the preceding paragraph, together with police volunteers.

807. New section 71B enables the Secretary of State to issues a code of practice in relation to the receipt and use of information provided under new section 71. The purpose of the code of practice is to ensure there is a mechanism to provide effective governance of the use by police and other law enforcement agencies of the data accessed.

808. New section 71B(3) lists the organisations which must be consulted by the Secretary of State prior to issuing a code of practice.

809. New section 71B(4) allows the code to be revised. New section 71B(5) provides that the

code is to be laid in Parliament and published. New section 71B(6) provides that any person to whom information is made available must have regard to any code of practice issued under the section.

810. New section 71C sets out the requirement for the Secretary of State to publish an annual report about the use of information made available under section 71.

Clause 96 and Schedule 13: Testing of persons in police detention for presence of controlled drugs

811. This clause, together with Clause 97, expands the existing police power to drug test in police detention for the presence of any specified Class A drugs to include any 'specified controlled drugs'.

812. Subsections (2) and (3) amend sections 63B and 63C of PACE. Sections 63B and 63C of PACE give the police the power to take a sample of urine or a non-intimate sample from a person in police detention (on arrest, if aged 18 and over; or on charge, if aged 14 and over) to test for the presence of specified Class A drugs where the conditions in section 63B(1)(a) to (c) are met. These conditions include that a person has been arrested (or charged) for a trigger offence, or another offence where a police officer of at least the rank of inspector has reasonable grounds to

suspect that the misuse of a specified Class A drug has caused or contributed to the offence, and has authorised the test. The age condition must be met (the person must be aged 18 and over for testing on arrest, or aged 14 and over for testing on charge) and the request condition must be met, that is an officer must request the person concerned to give the sample. Before requesting a sample, an officer must warn the person concerned that failure to provide a sample may result in prosecution and inform them of the authorisation for the test (including the grounds in question) before requesting a sample.

813. The amendments made by subsection (2) to section 63B of PACE expand the police's power to drug test in police detention for the presence of any specified controlled drug rather than specified Class A drugs only.

814. Subsection (3) amends the existing definitions of certain terms in section 63C(6) of PACE. Subsection (3)(b) substitutes subsection (6) of section 63C for new subsections (6) to (11). Replacement section 63C(6) dispenses with the definition of a "Class A drug" (as the power is now to test for specified controlled drugs) and provides for new definitions of a "specified controlled drug" and "trigger offences", so that the terms no longer take their meaning from

Part 3 of the 2000 Act and instead mean a controlled drug (within the meaning of the Misuse of Drugs Act 1971) specified in regulations made by the Secretary of State (subject to the negative resolution procedure) and an offence specified in new Schedule 2B to PACE, respectively. New section 63C(8) confers a power on the Secretary of State to amend new Schedule 2B to PACE by regulations (subject to the draft affirmative resolution procedure). New section 63C(9) provides that regulations may make different provision for different purposes or different areas, and may make transitional, transitory or saving provision. New sections 63C(10) and (11) clarify that where any statutory instrument contains regulations to amend new Schedule 2B to PACE (alone or with other provision, for example to specify controlled drugs), it must be subject to the draft affirmative resolution procedure; where any statutory instrument contains any other regulations under this section, it is subject to the negative resolution procedure.

815. Subsection (4) inserts new Schedule 2B into PACE. The list of trigger offences in new Schedule 2B retains many of the list currently contained in Schedule 6 to the 2000 Act, including theft offences and drugs offences (expanded to include any specified controlled

drug), but removes fraud offences (including attempt of fraud) and vagrancy offences. The current list is augmented by the common law offences of common assault and battery, and specified offences under the Offences against the Person Act 1861, Children and Young Persons Act 1933, Prevention of Crime Act 1953, Restriction of Offensive Weapons Act 1959, Criminal Damage Act 1971, Public Order Act 1986, Criminal Justice Act 1988, Road Traffic Act 1988, Football (Offences) Act 1991, Protection from Harassment Act 1997, Crime and Disorder Act 1998, Criminal Justice and Police Act 2001, Sexual Offences Act 2003 and Serious Crime Act 2015.

816. Subsection (5) amends paragraph 6B of Part 1 of Schedule 1 to the Bail Act 1976 by substituting “Class A” for “controlled” drugs to reflect the amendment to the heading of section 63B of PACE.

817. Subsection (6) makes consequential repeals and amendments to the 2000 Act to reflect the amendments made by subsection (3). This subsection repeals the definition of a “trigger offence” in the 2000 Act, Schedule 6 to the 2000 Act (which lists the trigger offences), and the power to amend Schedule 6. As outlined above, new Schedule 2B of PACE will now define a trigger offence for the purposes of

section 63B of PACE. As a result, the reference to trigger offences in the 2000 Act (and the related power to amend trigger offences) is now redundant as there are no remaining drug testing or assessment provisions in the 2000 Act which rely on the current definition of trigger offences.

Clause 97: Assessment of misuse of controlled drugs

818. Subsections (2) and (3) amend sections 9 and 10 of the Drugs Act 2005 ("the 2005 Act"), which outline the framework for initial and follow-up assessments following a positive drug test in police detention, to reflect the expanded testing for 'specified controlled drugs'.

819. Subsection (4) makes a consequential amendment to section 16 of the 2005 Act, which sets out the processes for samples submitted for further analysis following a drug test in police detention, so that where a further analysis is taken and that analysis does not reveal any specified controlled drug was present, any requirements imposed under sections 9(2) and 10(2) of the 2005 Act cease to have effect, to reflect the expanded testing for 'specified controlled drugs'.

820. Subsection (5) amends section 17 of the 2005 Act. The effect is that if someone is required,

as a condition of bail under the Bail Act 1976, to attend a required assessment in respect of their Class A drug use, and they have not yet fully complied with the requirement under section 9(3)(a) or 10(4) to attend any assessment under the 2005 Act in respect of their Class A drug use, whether following a drug test in or outside of custody, their requirement to do so in respect of their Class A drug use falls away. However, their requirement to attend any assessment under the 2005 Act will continue in respect of their Class B or C drug use. Subsection (6) makes a consequential amendment to section 19 of the 2005 Act, which defines terms used in Part 3 of that Act, to add a definition of “specified controlled drug”.

Clause 98: Power to take additional sample

821. This clause amends section 63B of PACE which enables the police to take a sample from a person in police detention for the purpose of testing for specified Class A drugs. Following the expansion in the police’s power to drug test for specified Class B and C drugs (in addition to specified Class A drugs) made by Clauses 96 and 97, this clause provides the police with the power to take an additional sample. This is to allow for circumstances where a further sample is required to test for different drugs, whether traditional or synthetic, including on a

separate machine/testing kit.

822. Subsection (2) amends section 63B(1) of PACE to provide the police with the power to take an additional sample, where the additional sample condition is met. Subsection (4) inserts new section 63B(4C) which outlines the additional sample condition, namely that one sample (only) has been taken from the person under section 63B during the period of the person's detention, but it was not suitable for the same means of analysis, or it proved insufficient.

823. Subsection (3) makes a consequential amendment to section 63B(1A)(b) and 63B(2)(b), so that the inspector's authorisation for the taking of samples in accordance with this section may be given once, whether one sample or an additional sample is taken.

824. Subsection (5) amends section 63B(5) so that before requesting the person concerned to give a sample, an officer must if no sample has been taken from the person under this section during the period of the person's detention, warn them that if, when so requested, they fail without good cause to give any sample which may be taken under this section they may be liable to prosecution.

825. Subsection (6) amends section 63B(5B) to clarify that if a sample is taken under section

63B from a person in respect of whom the arrest condition is met, if the charge condition is also met in respect of them at any time during the same continuous period of detention, the sample must be treated as a sample taken by virtue of the fact that the charge condition is met and it must be so recorded in the person's custody record.

Clause 99: Removal of power to continue detention

826. Subsection (2) repeals subsections (8A) and (8B) of section 37 of PACE which enable the police to continue to detain an individual before charge for the purposes of taking a sample under section 63B of PACE. Subsection (3) amends section 38 of PACE to remove the police's power to continue to detain an individual after charge for the purposes of taking a sample under section 63B of PACE. This is because this power is no longer necessary due to changes in operational procedures.

Clause 100: Removal of notification conditions

827. This clause removes the notification conditions in section 63B of PACE and the 2005 Act that the relevant chief officer must have been notified by the Secretary of State that appropriate arrangements have been made before conducting drug testing or initial and

follow-up drug assessments.

828. Home Office guidance issued in 2011 advised forces that they did not need to seek additional, individual authorisation from the Home Office to conduct drug testing in police detention. These amendments reflect that guidance by removing the notification condition from both PACE and the 2005 Act.

Clause 101: Cautions given to persons having limited leave to enter or remain in UK

829. Subsection (1) amends section 22 of the CJA 2003, which provides for a conditional caution to be given to a foreign national offender without leave to remain to secure their departure from the UK. The subsection inserts new paragraph (za) into section 22(3G) of the CJA 2003, which expands the cohort of those offenders who can be given a foreign national conditional caution to those with limited leave to remain in the UK.

830. Subsection (2) amends section 103 of the 2022 Act to achieve the same effect in relation to that legislation. It inserts new paragraph (za) into section 103(4) of the 2022 Act, which expands the cohort of those offenders who can be given a diversionary caution to foreign nationals with limited leave to remain in the UK. Part 6 of the 2022 Act creates two tiers of cautions, prospectively replacing the existing

six disposals, including the conditional caution. There will be a lower-tier disposal (community caution) and an upper-tier disposal (diversionary caution).

Part 11 – Proceeds of crime and other property connected with criminal behaviour

Clause 102 and Schedules 14 and 15: Confiscation

831. Clause 102(1) introduces Schedule 14 to the Bill which reforms the confiscation regime in respect of proceeds of crime in England and Wales, principally by amending Part 2 of POCA.

832. Paragraph 1 of Schedule 14 inserts new section 5A into POCA, which defines the principal objective for which confiscation powers under Part 2 must be exercised. Part 2 of POCA does not contain an overarching objective to which the courts should have regard. The objectives of the regime are principally derived from two sources: (i) the "legislative steer" in section 69 of POCA (which makes provision about how the Crown Court and receivers appointed under the Act are to exercise their powers); and (ii) case law. It is important to specify the principal objective of the criminal confiscation regime, not least because proportionality can only be assessed

with respect to the aim of the regime.

833. The principal objective (as specified in new section 5A(2)) is to deprive the defendant of their benefit from crime, so far as within the defendant’s means (that is to say, the powers must be exercised proportionately with respect to the specified objective). Powers under the criminal confiscation regime must be exercised in a way that is best calculated to further the principal objective (new section 5A(4)). New section 5A(5) provides that the overarching objective in new section 5A(2) takes precedence over the objective in section 2A(1) of POCA (which requires a relevant authority – the NCA, prosecutors and others – to exercise its functions under the Act in the way which it considers is best calculated to contribute to the reduction of crime) in respect of those powers to which new section 5A relates and to the extent that the two objectives are in conflict.

834. Paragraph 2 provides that the court must only decide whether the defendant had a criminal lifestyle (for the purposes of section 6(4) of POCA) if asked to do so by the prosecutor. The criminal lifestyle provisions apply a series of assumptions regarding the calculation of benefit such that all property obtained or expended by the defendant since that date is assumed to constitute benefit from crime

unless the defendant can show otherwise. If the criminal lifestyles provisions are not applied in a given case, the court will calculate benefit by reference to particular (rather than general) criminal conduct. This prosecutorial discretion imports flexibility into the application of the criminal lifestyle provisions, allowing efficient allocation of investigative and prosecutorial resources.

835. Paragraph 3 amends section 10 of POCA by clarifying the scope of the “serious risk of injustice” test. The current confiscation regime provides that the court should not apply the assumptions if there would be a “serious risk of injustice” in their application (section 10(6)(b) of POCA). This provision has been narrowly construed in case law, such that it is ordinarily applied only to prevent double counting, rather than more generally in the interests of justice. Paragraph 3 inserts new subsection (6A) into section 10, requiring the court to consider all the circumstances of the case when determining whether there would be a serious risk of injustice if the criminal lifestyle assumptions were made.

836. Paragraph 4 changes the test for when an offence constitutes conduct forming part of a course of criminal activity in criminal lifestyle cases by reducing the number of offences of

which the defendant must be convicted from three offences to two. The test will also be satisfied if the defendant benefitted, or intended to benefit, from the conduct which constitutes the offence.

837. Paragraph 5 inserts three further offences into Schedule 2 to POCA. Schedule 2 contains a list of substantive criminal offences to which the criminal lifestyle provisions will automatically apply (defined in section 75 of POCA, which determines whether the defendant is subject to the confiscation of benefit from their particular criminal conduct or their general criminal conduct). The new offences are two environmental offences – depositing certain waste otherwise than in accordance with an environmental permit (section 33(1)(a) of the Environmental Protection Act 1990), and operating a regulated facility, or causing or knowingly permitting a water discharge activity or groundwater activity, otherwise than in accordance with an environmental permit (regulation 38(1)(a) of the Environmental Permitting (England and Wales) Regulations 2016).

838. Paragraph 6 concerns the "recoverable amount" (defined in section 7 of POCA, which specifies how the amount recoverable under a

confiscation order is to be calculated) and amends section 7 of POCA. It provides that further categories of property must be ignored when calculating the total value of the defendant's benefit from crime. Section 7(4) of POCA currently provides that certain property should be ignored when calculating the defendant's benefit from criminal conduct. However, the property that should be ignored is limited to property that has been forfeited or forfeitable under specific powers, or is subject to a recovery order. This does not extend to other forms of property of which the defendant may legitimately have divested themselves or, because the property has been seized, which the defendant is unable to realise and apply towards payment of the order.

839. Section 7(4) is amended to include new and further categories of property to be ignored when calculating the defendant's benefit. This is to ensure that the benefit figure realistically reflects the defendant's benefit from crime and, in accordance with the overarching object, ensures that what has already been given up to the State or to victims should not be paid twice. Specifically, it provides that, when calculating the defendant's benefit, the court should also ignore property seized under any rule of law, property restored to the victim of the criminal conduct, property handed over to

an appropriate officer (as defined in 41A(3) and 47A(1) of POCA), and money paid by way of compensation to a victim of the criminal conduct in respect of loss, injury or damage sustained by that victim.

840. Paragraph 6 also amends section 7(2) of POCA to put on a statutory footing the burden of proof as understood in case law. As currently drafted the burden is on a defendant to “show” that the amount available for confiscation is less than the benefit and to “show” the extent of the available amount. Section 7(2), as amended, requires a defendant instead to prove such matters or to otherwise satisfy the court.

841. Paragraph 7 makes statutory provision for the hidden property determinations made in confiscation proceedings by inserting new section 9A into POCA. Currently, a “hidden assets” determination means this: where the value of the defendant’s available amount appears to be lower than the value of their benefit, the court may treat the difference between the values as assets which have been hidden by or on behalf of the defendant, and which are available to satisfy the confiscation order. Such determinations therefore describe any unexplained difference between a person’s benefit from crime and the

value of their known assets. New section 9A makes provision for such determinations (at subsections (1) and (2)), though also requires the court to consider whether there are other circumstances that may account for the difference (at subsection (3)).

842. Paragraph 8 amends section 77 of POCA to ensure that the definition of “tainted gift” captures individuals who transfer criminal property to others on the day of their offending. This aligns with Parliament’s original intention for the tainted gift regime.

843. Paragraph 9 amends sections 76 and 84 of POCA. These provisions concern the calculation of a person’s benefit from crime. The calculation of benefit has a real significance throughout the confiscation process. Section 76 of POCA provides that a person benefits from criminal conduct if the person obtains property in connection with or as a result of criminal conduct. Section 84 of POCA defines “property” in wide terms and outlines the rules that apply in relation to property.

844. This paragraph amends section 84 such that a person will be treated as “obtaining” property if, as a result of or in connection with conduct, a person keeps property that the person already has (where the court believes it is just to do

so).

845. Paragraph also inserts new subsection (8) into section 76. That subsection affords the court discretion to amend the benefit figure where it would be unjust to regard obtained property as amounting to criminal benefit because the person: (i) intended to have only a limited power to control or dispose of all or part of the property, (ii) obtained the property temporarily, or (iii) is treated as having “obtained” property as a result of the new provisions inserted by this paragraph in section 84(3). The paradigmatic example of property that should not form part of the benefit calculation is money that was held temporarily by a person (for example, a person coaxed into allowing their bank account to be used by a criminal gang such that they took temporary possession of funds). The effect of new section 76(8) would be that not all funds passing through the hands of a defendant would necessarily be treated as his or her benefit from crime.

846. Paragraph 10 makes provision in relation to the value of the property obtained from conduct, codifying two principles from case law. Firstly, the paragraph amends section 80 of POCA to ensure that, where the purchase of property was only part-funded by the proceeds

of criminal conduct, only that proportion funded by criminal proceeds may be regarded as benefit.

847. Secondly, the paragraph inserts new section 80A. This provides – and thus qualifies the new provisions in section 80 – that property obtained with a loan secured by a mortgage will count towards benefit only by the amount of any increase in value as is attributable to the mortgage. The paragraph provides a formula for calculating this. The greater the percentage of the property that was attributable to the mortgage (that is, the greater the loan-to-value ratio), the greater the percentage of the increase in value will be attributable to the mortgage. If the property was purchased with a loan-to-value ratio of 75%, and the property increased in value by £100,000, then the increase that is attributable to the mortgage is £75,000. Separate provision needs to be made for mortgages because, unlike normal loans, a person never "obtains" the mortgage advance (that is, the money), so you cannot treat the mortgage advance as benefit. The mortgage advance remains in the beneficial ownership of the lender until completion, when it passes direct to the vendor. At no stage does the person receive the mortgage advance or have any direct power over it. The person only has a chose in action against the bank to pay money

to the vendor and that right has no market value.

848. Paragraph 11 makes further provision in relation to the calculation of benefit. The paragraph inserts new subsections (3A) to (3C) into section 80 (value of property obtained from conduct). New subsection (3A) provides that, where property was obtained from conduct and subsequently sold, the value of the property is taken to be the higher of the proceeds of sale or the value immediately before the sale. New subsection (3B) provides that, where the property obtained was cryptoassets and has been destroyed by virtue of a court order, the value is the market value at the time as set out by the order. New subsection (3C) provides that, if the proceeds of sale are in a currency other than sterling, the rate of exchange to be applied when calculating the equivalent sterling value will be whatever the rate of exchange was at the end of the day on which the property was sold. These provisions as to the value of property sold or destroyed reflect the provision in paragraph 16 (new section 21A). That provision allows for downwards variation of the benefit figure where property that was taken into account when calculating the benefit figure is subsequently sold or destroyed, and at a value less than had been ascribed to it at the

point the benefit figure was calculated.

849. Paragraph 12 makes provision in relation to priority orders. “Priority orders” are defined in section 13(3A) of POCA. They include compensation orders, surcharge orders, unlawful profit orders, and slavery and trafficking reparation orders. At present, the court may direct that the proceeds of a confiscation order be applied towards payment of a compensation order, but only where the defendant does not have the means to pay both orders. Paragraph 12 provides that the court must direct that sums recovered under the confiscation order be applied to priority orders (so not just compensation orders, and whether or not the defendant lacks the means to satisfy both orders). This prioritises the application of funds to victims of victims’ funds. This provision allows for the court to order that confiscation sums as calculated after reconsideration to be paid towards priority orders (where those orders were made as part of the same overall confiscation proceedings).

850. Paragraph 13 refers to applications made under section 22 of POCA 2002. Section 22 applies where the court has made a confiscation order in an amount lower than the defendant’s assessed benefit because there was insufficient realisable property to satisfy

an order in the full amount. At a section 22 application, if the court considers that the defendant's available amount has increased, it may vary the amount payable under the confiscation order but may not increase it beyond the defendant's assessed benefit. This measure intends to introduce a new provision for the court to redirect any increased sums owed by the defendant, by way of a compensation direction, to the defendant's victim(s) in certain circumstances.

851. Paragraph 13(2) inserts a new section 22A into POCA which provides the court with the discretion to make a compensation direction when considering a section 22 application. If the court decides that the available amount has increased and varies the amount repayable under the confiscation order, the court has the discretion to consider whether some or all of the sums owed by the defendant are redirected to the defendant's victim(s) to compensate for their loss (new section 22A(3).

852. By way of example, a defendant may commit a fraud offence against an individual (the victim) who has suffered a loss of £50,000 from the offence. At the confiscation hearing, the defendant's benefit is calculated at £50,000, however their available amount (or means) is

calculated at £10,000. Therefore, a compensation order of £10,000 is made in favour of the victim and a nominal confiscation order is made (£0). It is later discovered that the defendant has a further £30,000 of assets. At a section 22 application, the court varies the original confiscation order to include the new £30,000 of assets and makes a compensation direction to redirect the £30,000 to the victim who was not compensated fully for their loss at the original confiscation hearing, therefore the total amount of compensation awarded to the victim since the confiscation proceedings is £40,000. The remaining amount to be paid towards the confiscation order remains nominal (£0).

853. This measure further applies where at the time of the section 22 application, an existing compensation order is part-fulfilled (for example if the defendant is paying this in instalments) if the victim's total loss was not compensated fully at the time of the confiscation order.

854. As determined in new section 22A(2), this order only applies where at a confiscation hearing, a compensation order has been made against the defendant, the court has assessed the victim's loss and that loss is greater than

the amount required to be paid under the compensation order, except where new section 22A(6) applies. The aim of this provision is to compensate the victim, so far as possible, for their total original loss not covered by a compensation order in the original confiscation proceedings.

855. New sections 22A(4) and (5) provides that a victim(s) can receive a compensation direction up to the total value of their assessed loss. Referring to the example at paragraph 820, the victim could only receive a compensation order up to the value of £50,000 irrespective of how much the defendant's available amount may increase under a section 22 application (or multiple section 22 applications).

856. New section 22A(6) provides that a victim(s) can receive a compensation direction if their loss was recognised and assessed in the original confiscation proceedings against the defendant, however a compensation order was not made. This may occur where the court at the confiscation hearing did not make a compensation order because they determined that the defendant had inadequate means to fulfil a compensation order. Further, the court may decide to a make a compensation direction if at a section 22 application a victim's

loss was included in the calculation to the defendant’s benefit at the confiscation hearing, however they could not be fully identified at the time of the proceedings and therefore were not awarded a compensation order at that time.

857. New sections 22A(8) and (9) limits the amount that can be included in a compensation direction to ensure that any redirection of sums at a section 22 application are limited to the victim’s loss, as calculated, at the time of the original confiscation proceedings.

858. Paragraph 13(3) insets new subsection (5B) into section 55 of POCA. This clarifies the position of compensation directions in relation to other types of priority orders under section 55 of POCA.

859. Paragraph 14 makes provision for the timing of confiscation proceedings and effect on sentencing. It replaces sections 14 and 15 of POCA – which provide for the ‘postponement’ of proceedings for up to two years – with new section 15A. That section primarily changes the current law in two ways. Firstly, it requires the court to draw up a timetable for confiscation proceedings before the end of the hearing at which it sentences the defendant for the offence (subsection (3)).

860. Secondly, new section 15A(7) provides that the court may vary the sentence imposed on the defendant in certain ways (per section 14A(6)) within a period of 56 days from the point at which a confiscation order was made (or from the point at which the court decided not to make a confiscation order). Under the current law, if the court sentences prior to making a confiscation order and refrains from imposing any financial, forfeiture or deprivation order pursuant to section 15(2) of POCA, the court may amend the sentence within 28 days of the end of the period of postponement to impose such an order. The current limit of 28 days to correct such an error has proved to be a trap for the unwary, because a period of 56 days is permitted to vary a substantive sentence under what is referred to as the "slip rule" (section 385 of the Sentencing Act 2020). This provision therefore makes POCA consistent with the general slip rule in sentencing.

861. Paragraph 15 formalises the existing practice of agreeing confiscation orders prior to the confiscation hearing by providing for a process called the Early Resolution of Confiscation ("EROC") process. The purpose of this process is to fast-track agreed orders and narrow the issues in dispute, to save court time and to avoid protracted enforcement

proceedings. New section 15B makes provision for the EROC process. This is a two-stage process, in which there will be a meeting between the defence and prosecution, followed, if necessary, by an EROC hearing in court. The court can direct that an EROC meeting will take place, either of its own motion, or on application by the prosecutor. As per new section 15B(3), the first stage, the EROC meeting, is a meeting held with a view to the defendant and prosecution either agreeing the terms of the confiscation order, or, where agreement is not reached, identifying the issues for confiscation proceedings. Paragraph 15(2) then provides, where agreement is reached at the EROC meeting, that the Court may make determinations about the defendant’s criminal lifestyle under section 6(4) and recoverable amount under section 6(5) in accordance with the terms of the agreement reached by the prosecutor and defendant at the EROC meeting. The second stage, the early resolution hearing, is required if no agreement was reached or where the prosecutor and defendant did reach agreement, but the court decided not to make a confiscation order under section 6 requiring the defendant to pay the amount agreed. The purpose of the hearing is for the court to consider the next steps in confiscation

proceedings as part of active case management.

862. Paragraph 16 inserts new section 21A into POCA providing for downwards reconsideration of the defendant's benefit where criminally obtained property is sold or, in the case of cryptoassets, destroyed under court order, and the value ascribed to it following its sale or destruction is lower than the value at which it was previously taken into account (section 21A(3)). If it appears that the value of the benefit following sale or court-ordered destruction is lower than the value as previously calculated, then the court must make a new calculation of the benefit figure by deducting from the benefit figure (adjusted for inflation) the reduction in value of the sold or destroyed property (section 21A(4)). If the effect of the reduction in the benefit figure is such that the new benefit figure is lower than the amount required to be paid, the amount required to be paid will be reduced in line with the newly calculated benefit figure (section 21A(6)). The new provision will only apply if the applicant believes that a new calculation of the defendant's overall benefit would not exceed the amount found pursuant to new section 21A(4) of POCA.

863. Sub-paragraphs 16(3) and (4) clarify that the

time for payment in section 11 of POCA is to be read according to when the new calculation is made, rather than when the original order is made. This accounts for instances where an enforcement authority may grant more or less time to pay an order where an order has been varied upward. New subsection (11B) of section 21 of POCA clarifies how section 12 of POCA (interest on unpaid sums) works in a case where the order is varied under section 21 (reconsideration of benefit) and the court allows time for payment. New subsection (7B) clarifies how section 12 works in a case where the order is varied under section 22 of POCA (reconsideration of available amount) and the court allows time for payment.

864. Paragraph 17 inserts new sections 24A, 24B and 24C into POCA, which make provision for the provisional discharge of confiscation orders. Provisional discharge enables a confiscation order to be placed temporarily in abeyance when there is no realistic prospect of recovery in the immediate term, despite the reasonable efforts of enforcement authorities. The discharge would be provisional so that money could still be recovered in time if an order were revoked. Unlimited enforcement is not viable because it comes at a cost that is ultimately borne by the taxpayer. This principle is already recognised by sections 24 and 25 of

POCA, which provide for confiscation orders to be written off in certain circumstances.

865. Paragraph 17 clarifies the effect of the revocation of the provisional discharge of a confiscation order, in particular that, from the time of the revocation, the order is no longer treated as satisfied, and proceedings are treated as not having been concluded. Where the provisional discharge is revoked, the time to pay period in section 11 and section 12 are to be read according to the day on which the provisional discharge is revoked. Whilst a confiscation order has been provisionally discharged, no interest can accrue on the order but any interest that was payable for the order before the provisional discharge becomes payable upon revocation of the discharge.

866. New section 24A allows for the provisional discharge of confiscation orders where it is in the interest of justice so to do. In determining whether it is in the interests of justice to discharge the order on a provisional basis, the court must have regard to the factors in new section 24A(4), which include the amount already paid, the extent to which the amount outstanding represents interest on the original order, and what enforcement steps may reasonably be taken.

867. New section 24B provides that, where the order is provisionally discharged, the order is deemed to be satisfied unless an application for variation is made (in which case the court may revoke the provisional discharge) or where the court finds, on application the prosecutor or receiver, that it would be in the interests of justice to revoke the order. The interests of justice will be determined by reference to the same factors as for new section 24A(4).

868. New section 24C allows the court to make an order requiring the defendant to provide information about their assets and other financial circumstances, and documentary or other evidence in support of that information as the court may require in connection with the exercise of its functions under section 24A or 24B. Failure for the defendant to comply with the order, or providing false information, is considered contempt of court and perjury.

869. Paragraph 18 relates to the proactive enforcement of confiscation orders. It inserts new sections 13ZA and 13ZB into POCA, and provides that, during the initial confiscation hearing, when a court makes a confiscation order under section 6, it must also prepare an enforcement plan if there are reasonable grounds to believe that the defendant might

default on the confiscation order or the court otherwise believes it is appropriate to do so for the purpose of ensuring that the confiscation order is effective. This is to ensure that enforcement is addressed by the parties at the earliest opportunity, so to make the process of enforcement (should it have to arise) more efficient and timely. New section 13ZA(4) provides that an enforcement plan is a document setting out drafts of one or more orders that the court considers the enforcing court could make in the event that the defendant defaults on the confiscation order. New section 13ZB provides that the court must, as part of the plan, set the date for an enforcement hearing to take place in the event that the defendant defaults on the confiscation order, and that date must be the first date then available to the enforcing court after the expiry of the time to pay period. (See also paragraph 19, introducing new section 35F, which requires the enforcing court to make the orders in accordance with the enforcement plan, subject to conditions.)

870. Paragraph 19 replaces section 35 of POCA (enforcement as fines) with new sections 35A to 35R. The purpose of these new provisions is to allow the Crown Court to enforce confiscation orders where appropriate. (Under the current law, enforcement of confiscation

orders is dealt with by a magistrates' court.)

871. New section 35B specifies the formula by which the default term should be reduced where there has been part payment of the confiscation order. The amount of the part payment is compared to the amount required to be paid when the default term was fixed (per section 35A(2)) – accrued interest is thus not relevant for these purposes.

872. New section 35C provides that a warrant of commitment ceases to have effect if the defendant pays the amount in respect of which the default term was fixed.

873. New section 35D defines which court is to be the enforcing court. When making the confiscation order, the Crown Court must determine which court (the Crown Court or a magistrates' court) is to be the enforcing court. If the Crown Court is the enforcing court, it may order that a magistrates' court is to be the enforcing court. If a magistrates' court is the enforcing court, it may only order that the Crown Court is to be the enforcing court if the time to pay period has not expired.

874. New section 35E provides that a subsequent enforcing court has the power to vary or revoke orders made by the prior court in relation to enforcement.

875. New section 35F requires the enforcing court, at the initial enforcement hearing, to make the orders that were prepared as part of the enforcement plan (the initial enforcement orders). However, this is subject to the condition in subsection (4) that those orders would not result in the realisation of property where the proceeds of that realisation would be greater than the amount then remaining to be paid under the confiscation order, and that the interests of justice do not require that an initial enforcement order not be made. If that condition is not met, then the court must consider what other steps to take for the purpose of enforcing the confiscation order (new section 35F(3)).

876. New section 35G gives the enforcing court the power to compel a defendant to attend court at any stage of confiscation enforcement proceedings. It provides that the enforcing court may, for any purpose in connection with the enforcement of the order, issue a summons requiring the defendant to appear before the court at the time and place appointed in the summons, or issue a warrant to arrest the defendant and bring them before the court.

877. New section 35H makes provision for financial status orders. It provides that the enforcing

court may make an order requiring the defendant to give the court any information about the defendant’s assets and other financial circumstances, and documentary or other evidence in support of that information that the court may require in connection with the enforcement of the confiscation order. Failure by the defendant to comply with the order, or providing false information, can constitute contempt of court or perjury.

878. New section 35I gives the enforcing court the power to appoint a confiscation assistance adviser to assist a defendant in satisfying their confiscation orders. It may appoint (with that person’s consent) any person the court thinks appropriate. It is expected that this will be the Asset Confiscation Enforcement (“ACE”) teams. This reflects trials that have already taken place under Project Mariner. Project Mariner was established in 2021 with funding from the Asset Recovery Incentivisation Scheme Top-Slice and has been led by the NPCC. Appropriately qualified members of the police are appointed to work alongside prison staff to assist serving defendants with their confiscation orders. Following the success of these trials, and the related Law Commission recommendation, this process is being put on a statutory basis.

879. New section 35J makes provision for the enforcement of confiscation orders where a magistrates' court is the enforcing court. The amount required to be paid under the confiscation order is to be treated as if it were a fine imposed by the magistrates' court on conviction. This means that the confiscation sum can be enforced in the same way as fines imposed upon conviction (albeit with some amendments to take account of the fact that there are differences in substance and procedure between confiscation orders and fines).

880. New sections 35K to 35R grant to the Crown Court (where it is the enforcing court) the enforcement powers corresponding to those of a magistrates' courts.

881. Paragraph 20 extends to the Crown Court powers – currently only available to magistrates' courts – in relation to money, cryptoassets and personal property that are found in sections 67, 67ZA, 67A, 67AA, 67B, 67D, and 69 of POCA 2002.

882. Paragraph 21 extends to the Crown Court the powers under Schedule 5 to the Courts Act 20023 the powers to make attachment of earnings orders and applications for benefit deductions. These powers are available to the magistrates' courts, so this paragraph ensures

that the powers are available to the Crown Court when it is the enforcing court.

883. Paragraph 22 applies the Attachment of Earnings Act 1971 to attachment of earnings orders made by the Crown Court when enforcing confiscation orders.

884. Paragraph 23 clarifies the basis upon which collection orders can be made under Schedule 5 to the Courts Act 2003 in the context of confiscation.

885. Paragraph 24 amends Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) to make provision for the fact that the Crown Court may be the enforcing court.

886. Paragraph 25 relates to the conditions for making of a restraint order under section 40 of POCA. Restraint orders provide the preservation of assets which may later be used to satisfy a confiscation order. Paragraph 25 codifies the "risk of dissipation" test that is currently applied by courts when determining restraint applications, but is not explicitly mentioned in Part 2 of POCA. The paragraph imposes a further condition that must be satisfied before an order is made under section 41 (restraint orders), such that there must be a real risk that property held by any person will be dissipated unless the Crown Court makes a

restraint order in relation to that property. New section 40(1B) provides that the court, when determining the risk of dissipation, must have regard to various factors.

887. Paragraph 26 amends section 41 of POCA to allow for an exception to a restraint order to be made for legal expenses in respect of the offence with which confiscation proceedings are concerned. This will be subject to the provisions in new section 41ZA (as inserted by paragraph 26(3)). New section 41ZA further provides that the exception may be made subject to conditions as specified in regulations made by the Lord Chancellor.

888. Paragraph 27 inserts new subsection (3A) into section 41 of POCA 2002 (restraint orders) to make provision for exceptions for reasonable living expenses. Exception can already be made for reasonable living expenses (section 41(3)(a)); new section 41(3A) provides that, in making an exception to a restraint order that makes provision for reasonable living expenses the court must have regard to particular factors such as the person's applicable standard of living and the extent to which expenditure by the specified person is necessary or desirable for the purpose of improving or maintaining the value of relevant realisable property held by them. Paragraph 27

also inserts new subsection (11), which defines “applicable standard of living”.

889. Paragraph 28 clarifies the basis upon which restraint orders can be discharged where proceedings have not begun within a reasonable time by inserting new subsection (7CA) in section 41 and new subsection (7A) in section 42.

890. Paragraph 29 inserts new section 42A into POCA and provides for a list of factors to which the court must have regard where is makes or varies a restraint order after the defendant’s conviction for the offence. New section 42A(3) also requires the court to review the appropriateness of an exception granted in respect of legal or reasonable living expenses.

891. Paragraph 30 concerns the appointment of a management receiver (as defined in section 48 of POCA; that is, persons appointed to manage a defendant’s property pending their conviction (and sometimes afterwards), but prior to the making of a confiscation order). Under the current law, the Crown Court first has to make a restraint order prior to appointing a management receiver. Paragraph 30 inserts sub-paragraph (1A) into section 48 of POCA, further allowing the Crown Court to appoint a management receiver where a

magistrates' court has made an order for the further detention of seized property (defined in section 47M of POCA). In order to preserve the value of seized assets, it may be necessary to sell them. Assets may be sold where there is a management receivership order. This provision extends the ability of the police to apply to the Crown Court for a management receivership order.

892. Paragraph 31 concerns appeals in connection with proceedings under Part 2 of POCA. The purpose of this section is to codify and clarify existing appeal rights. This paragraph does not introduce any new rights of appeal.

893. Paragraphs 32 to 51 make further amendments to POCA and other enactments consequential upon the proceeding provisions in Schedule 14.

894. Clause 102(2) introduces Schedule 15 to the Bill, which reforms the confiscation regime in respect of proceeds of crime in Northern Ireland, principally by amending Part 4 of POCA. The provisions are of equivalent effect to the England and Wales provisions in Schedule 14 to the Bill, save that the provisions relating to the enforcing court (that is, which court is responsible for enforcement), and the resultant extension of enforcement powers to the Crown Court, will not apply to

Northern Ireland. In Northern Ireland, the Crown Court is responsible for enforcing confiscation orders, and the Bill does not alter this position.

Clause 103: Proceedings for civil recovery: costs and expenses

895. Subsection (1) inserts new section 288A in Part 5 of POCA. It introduces a provision to protect enforcement authorities from paying costs (or, in Scotland, expenses) during High Court (or, in Scotland, Court of Session) civil recovery proceedings, preventing the court from ordering costs (or expenses) against them unless the authority acted unreasonably, dishonestly or improperly as outlined in new section 288A(1)(a) and (1)(b).

896. New section 288A(1)(c) provides the court with the discretion to exercise a balance of judgement to deal with unexpected circumstances where it would be ‘just and reasonable’ for an enforcement authority to pay costs. This is in recognition that civil recovery orders engage the right to peaceful enjoyment of possessions by permanently depriving a person of their property, ensuring compliance with the right of access to a court under Article 6 of the European Convention of Human Rights.

897. Subsection (2) provides that new section 288A does not have retrospective effect.

Part 12: Management of offenders

Clause 104: Extension of polygraph condition to certain offenders

898. This clause amends section 28 of the Offender Management Act 2007 (“the 2007 Act”) which provides for specified offenders to have a condition included in their licence requiring them to undergo polygraph testing. Currently the section is limited to sex offenders, specified terrorist offenders, and certain domestic abusers (under a three-year pilot commenced in 2021), and associated service offenders, aged 18 or over and where the custodial sentence is 12 months or over. Most offenders released from custody in England and Wales serve a licence period in the community. Licences contain conditions to manage risk and help re-integrate the offender.

899. Subsection (3) inserts new subsections (2A) and (2B) into section 28 of the 2007 Act. New section 28(2A) allows polygraph testing to be imposed on an offender convicted of murder, whom the Secretary of State considers pose a risk of committing a relevant sexual offence (as defined in section 28(4)) on release on licence. New section 28(2B) allows polygraph testing to

be imposed on an offender serving a relevant custodial sentence in respect of an offence who, at any earlier time during that sentence, was also serving a relevant custodial sentence for a relevant sexual offence. The new subsections apply to offenders who are aged 18 or over on the day that they are released.

900. Subsections (4) to (8) extend the polygraph provisions to cases where the Secretary of State is satisfied the offending was or took place in the course of an act of terrorism, or was committed for the purposes of terrorism.

901. As there are different cohorts of these offenders owing to changes in the terrorism connection sentencing framework (see policy background), the identification of these offenders is set out in three separate subsections. New subsection (4BA) applies to those who committed non-terrorist offences (including service offences) carrying a maximum penalty of over two years' imprisonment before 18 June 2009. New subsection (4BB) applies to those who committed non-terrorist offences carrying a maximum penalty of over two years' imprisonment between 19 June 2009 and 29 June 2021, who could not be given a terrorist connection aggravating factor by the Court.

902. At the time of drafting, section 1 of the CTSA

2021 has not yet been commenced for service offenders. New subsection (4BC) enables the polygraph provisions to apply to service offenders who commit the service equivalent of a non-terrorist offence carrying a maximum penalty of over two years' imprisonment between 19 June 2009 and the date of that commencement, who could not be given a terrorist aggravating factor by the court.

Clause 105: Duty of offender to notify details

903. This clause places a new duty on offenders serving a sentence in the community, requiring them to inform their responsible officer if they change their name, use a different name (for example, an alias), or change their contact information. This duty applies to both adults and children.

904. Subsection (2) amends the Sentencing Code by inserting new section 97A which relates to offenders under the age of 18.

905. New section 97A(1) provides that new section 97A applies to offenders that have been sentenced to a referral order that has not been revoked or discharged, and a youth offender contract between an offender and youth offender panel has taken effect.

906. New section 97A(2)(a) establishes a requirement for youth offenders sentenced to a referral order to notify the relevant member of

the youth offender panel ("the panel") if they begin using a name that is not specified in the referral order whilst the terms of the contract are active (this could be an alias, or a name used in online gaming). New section 97A(2)(b) requires offenders sentenced to a referral order to notify the relevant members of the panel of any telephone numbers or email addresses they have.

907. New section 97A(3) provides that the offender must notify the panel of the change of name and contact details as soon as reasonably practicable in the relevant circumstances.

908. New section 97A(4) provides that the obligation in subsection (2) to notify the relevant member of the panel is to be treated as a term of the youth offender contract. The youth offender contract is the agreement made between the child and the panel which contains the terms that the child must adhere to.

909. New section 97A(5) defines the "relevant member" as the member of the panel who, in accordance with the arrangements made by the panel, is responsible for receiving the notifications of a change of name or contact details.

910. New section 97A(6) states that a "relevant member" for the purposes of section 97A, must

be the person specified as the panel member appointed by the youth offending team from among its members in accordance with section 91(4)(a) of the Sentencing Code.

911. New section 97A(7) requires the panel to provide the offender with written notification and contact details of the relevant member they must notify if they change their name or contact details.

912. New section 97A(8) provides that the obligation in subsection (2) will apply to an order made at any time including before this section comes into force.

913. Subsection (3) amends section 193 of the Sentencing Code, which imposes a duty on offenders to keep in touch with their responsible officer. In subsection (2), paragraph (b) is substituted for new paragraph (b), and new subsections (2A) and (4) of section 193 make further provision about the obligation to keep in touch. These amendments place a duty on youth offenders sentenced to a youth rehabilitation order to notify their responsible officer if they change their name or contact details, and to notify the responsible officer of any telephone numbers or email addresses they have.

914. New section 193(2A) provides that offenders must comply with the obligation in subsection

(2)(b)(i) and (ii) as soon as reasonably practicable.

915. New section 193(4) provides that the obligation in section 193(2)(b)(i) and (ii) will apply to a youth rehabilitation order made at any time including before (as well as those made after) this section comes into force.

916. Subsection (3)(c) amends section 193(3) to provide for the court to deal with an offender who breaches the obligation in subsection (2) in the same way as someone who breaches a youth rehabilitation order. The powers of the court when a breach of a youth rehabilitation order is proven are set out in Schedule 7 of the Sentencing Code and include ordering the offender to pay a fine (not exceeding £2,500), amending the terms of the order to add or substitute any requirements that could be included in a youth rehabilitation order and re-sentencing the offender.

917. Subsections (4) and (5) makes like amendments to section 215 of the Sentencing Code, which applies to offenders sentenced to community orders, and to section 301 of the Sentencing Code, which applies to offenders sentenced to suspended sentences, as the amendments made by subsection (3) in respect of youth rehabilitation orders. Court powers on a breach of a community order are

set out in Schedule 10 to the Sentencing Code and include making the order more onerous, imposing a fine or resentencing the offender. Powers on a breach of a suspended sentence order are set out in Schedule 16 to the Sentencing Code. If a breach is proven there is a presumption that the court will activate the custodial sentence.

Part 13: The police

Clause 106: Accelerated investigation procedure in respect of criminal conduct

918. This clause amends the prohibition, imposed by paragraph 20 of Schedule 3 to the 2002 Act, preventing criminal proceedings from being brought before completion of the final report on an investigation under Schedule 3 (save in exceptional circumstances).

919. Subsection (1) inserts paragraph 20(1)(za) into Schedule 3 stating that criminal proceedings may be brought before completion of a final report on an investigation where a determination is made under new paragraph 20ZA.

920. Subsection (2) inserts new paragraph 20ZA in Schedule 3. This new paragraph allows the Director General of the IOPC or the appropriate authority (as the case may be) to make a determination for the purposes of new

paragraph 20(1)(za) (inserted by subsection (1)) enabling criminal proceedings to be brought before completion of a final report on the investigation. In order for a determination in new paragraph 20ZA to be made, the conditions in new paragraph 20ZA(3) to (6) must be met.

921. The conditions set out in new paragraph 20ZA(3) to (6) align with the conditions applicable under paragraphs 23 or 24 for the purposes of notifying the DPP on the investigation. Namely the Director General of the IOPC, or the appropriate authority (as the case may be), must consider:

- that the investigation at the time of the determination indicates that there is a realistic prospect of conviction of a criminal offence against the person to whom the investigation relates;
- it is appropriate for the matter under investigation to be considered by the DPP;
- considerations as to whether it is appropriate to refer a matter to the DPP include circumstances where it is not considered in the public interest to refer matters to the CPS; and
- in considering whether the conditions are met, the Director General or appropriate

authority must have regard to the Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985.

922. Subsection (3) substitutes the heading of paragraph 20 to Schedule 3 to the 2002 Act to reflect the above changes.

923. Subsection (4) states that the changes made by this clause will only apply to those matters in respect of which a complaint was made, or that have come to the attention of the IOPC on or after the day the clause comes into force.

Clause 107: Conditions for notification of Director of Public Prosecutions of investigation report

924. This clause amends Schedule 3 to the 2002 Act which sets out the framework for investigations into complaints against police officers, the conduct of police officers, and deaths and serious injuries caused by the police. This clause amends the conditions applicable to the Director General of the IOPC, and to the appropriate authority (the chief officer of police or the local policing body for the force concerned depending on the matter investigated) which must be met for matter subject of an investigation to be notified to the Director of Public Prosecutions ("DPP") and for the final report on the investigation to be transmitted to the DPP.

925. Subsection (1) amends paragraph 23 of Schedule 3 to the 2002 Act, which sets out the actions the Director General of the IOPC must take on receipt (or on completion as the case may be) of a report on an investigation under Schedule 3. Paragraph 23(2A) and (2B) sets out conditions for the Director General to consider. The condition in paragraph 23(2A) is that the report indicates that a criminal offence may have been committed. The condition in paragraph 23(2B) is that the Director General consider it appropriate to refer the matter to the DPP. If both conditions are met the Director General must notify the DPP on the investigation.

926. Subsection (1)(a) substitutes paragraph 23(2A). New paragraph 23(2A) sets out the amended first condition which the Director General must consider in respect of the report on the investigation for the purposes of deciding whether the DPP should be notified. The new condition is that the report indicates that there is a realistic prospect of conviction of a criminal offence against the person to whom the investigation relates.

927. Subsection (1)(b) inserts new paragraph 23(2C) and (2D) into Schedule 3. New paragraph 23(2C) clarifies that considerations under paragraph 23(2B) as to whether it is

appropriate for a matter to be referred to the DPP to include circumstances where it is not considered in the public interest to refer matters to the CPS.

928. New paragraph 23(2D) imposes a duty on the Director General to have regard to the Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985 when considering whether the conditions set out in paragraph 23(2A) and (2B) are met. This code sets out the general principles crown prosecutors should follow when deciding whether to prosecute a case.

929. Subsection (2) amends paragraph 24 of Schedule 3, which sets out the actions to be taken by the appropriate authority when a report on an investigation carried out by the appropriate authority on its own behalf or directed by the IOPC is considered the appropriate authority. Paragraph 24(2A) and (2B) sets out conditions for the appropriate authority to consider. The condition in paragraph 24(2A) is that the report indicates that a criminal offence may have been committed. The condition in paragraph 24(2B) is that the appropriate authority consider it appropriate to refer the matter to the DPP. If both conditions are met the appropriate authority must notify the DPP on the

investigation. These conditions are identical to those applicable to the Director General of the IOPC under paragraph 23. The amendments to paragraph 24 are identical to those made to paragraph 23.

930. Subsection (2)(a) substitutes paragraph 24(2A). New paragraph 23(2A) sets out the amended first condition which the appropriate authority must consider in respect of the report on the investigation for the purposes of deciding whether the DPP should be notified. The new condition is that the report indicates that there is a realistic prospect of conviction of a criminal offence against the person to whom the investigation relates.

931. Subsection (2)(b) inserts paragraphs 24(2C) and (2D). New paragraph 24(2C) clarifies that considerations under paragraph 24(2B) as to whether it is appropriate for a matter to be referred to the DPP to include circumstances where it is not considered in the public interest to refer matters to the CPS.

932. New paragraph 24(2D) imposes a duty on the appropriate authority to have regard to the Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985 when considering whether the conditions set out in paragraph 24(2A) and (2B) are met.

933. Subsection (3) amends paragraph 25 of

Schedule 3, which sets out the process of review of the outcome of an investigation into a complaint where certain conditions are met. In particular, the amendment concerns paragraph 25(4F) which sets out the conditions to be met for a decision to be made by the relevant review body (the Director General of the IOPC or a local policing body as the case may be) as to whether the person investigated should be referred to the DPP. Subsection (3) amends paragraph 25(4F) and inserts sub-paragraphs (4FA) and (4FB) to ensure the conditions applicable to a review under paragraph 25 are identical to the conditions relevant for decisions to refer a matter to the CPS under paragraphs 23 or 24.

934. Subsection (4) states that the changes made by this clause will only apply to those matters in respect of which a complaint was made, or that have come to the attention of the IOPC on or after the day the clause comes into force.

Clause 108: Duty of IOPC Director General to give victims right to request review

935. This clause inserts a new paragraph 23A in Schedule 3 to the 2002 Act, setting out in statute a right for victims to request a review of a proposed decision by the Director General of the IOPC not to refer to the DPP a person under criminal investigation by the Director

General, on the basis that the conditions in paragraph 23(2A) or (2B) are not met. This new right is intended to place on a statutory footing the existing IOPC scheme on victims right to review. The measure is also intended to balance the raising of the threshold in paragraph 23(2A) and (2B) of Schedule 3, providing victims with a right to request a review of decisions concerning that threshold.

936. New paragraph 23A(1) sets out the scope of the new right. The victims right to review will apply in respect of investigations where an officer whose conduct is investigated was informed that the investigation was been treated as concerning a conduct constituting or involving the commission of a criminal offence and where the Director General intends to make a determination that one of the conditions in paragraph 23(2A) or (2B) are not met.

937. New paragraph 23A(2) imposes a duty on the Director General to enable victims to request that the proposed determination is reviewed within a set timeframe.

938. New paragraph 23A(3) enables the Director General to determine persons or class of persons who should be considered victims for the purposes of this provision, and timeframes for the review to take place.

Clause 109: Appeals to police appeals tribunals

939. This clause creates a power for the Secretary of State to make rules enabling a statutory route of appeal to the police appeals tribunal for chief officers (in respect of police officers, or former police officers, in their force) and local policing bodies (in respect of chief officers, or former chief officers, in their force area). Reference to police officers is a reference to members of a police force and special constables.

940. Police officers (or former officers) who wish to appeal against the finding or outcome of their misconduct proceedings may do so by appealing to the police appeals tribunal established by section 85 of, and Schedule 6 to, the 1996 Act. Section 85(1) of the 1996 Act enables the Secretary of State to make rules specifying the circumstances in which a police officer (or former officer) may bring such an appeal (see the Police Appeals Tribunals Rules 2020 (SI 2020/1)). Currently, only the officer (or former officer) subject to misconduct proceedings may appeal the finding or outcome of their misconduct hearing. Chief officers may only challenge a decision by a misconduct panel by way of judicial review - a process which is considered to be more long-winded, limited in scope and expensive than appeals to the specialist police appeals

tribunal. This clause amends the 1996 Act to enable the Secretary of State to provide by rules that the force's chief officer, as the individual with overall responsibility for the professional standards of its workforce, can have a statutory route to appeal such decisions. Further parity and fairness are achieved by enabling the Secretary of State to provide local policing bodies (that is, PCCs or Mayors with PCC functions) with a mirroring right of appeal in cases where the hearing relates to the chief officer of police for whom it is the local policing body and the IOPC in any case in which it has presented.

941. Subsection (2) amends section 85 of the 1996 Act, which provide the Secretary of State with the power to make rules establishing cases in which an appeal may be brought to the police appeals tribunal.

942. Subsection (3) inserts new subsections (1A) to (1C) into section 85 of the 1996 Act, enabling the Secretary of State to make rules – in practice amendments to the existing Police Appeals Tribunals Rules 2020 - on the circumstances where a chief officer, local policing body or IOPC may appeal to the police appeals tribunal, in order to challenge the finding or outcome at a police misconduct hearing.

943. New section 85(1A) will allow a chief officer of police to appeal against a decision relating to a member or former member of the chief officer's force, or special constable or former special constable of their police area. New section 85(1B) will enable the Secretary of State to make rules permitting a local policing body to appeal to the police appeals tribunal when the decision relates to the chief officer, or former chief officer, of police for whom it is the local policing body. New section 85(1C) will enable the Secretary of State to make rules permitting the IOPC to appeal to the police appeals tribunal in circumstances in which the IOPC has presented the case at the relevant hearing.

944. Subsection (2) also makes a consequential amendment to section 85(2) of the 1996 Act, so that rather than referring to the "appellant", it refers to the "person to whom the appeal relates". This provision aims to make sure that the legislation works both for the current route of appeal (by officers themselves) and for the new routes of appeal (by chief officers or local policing bodies). This is necessary because in future cases, the chief officer may be the appellant and so it is important to distinguish that the appellant may be a different person than the person to whom the appeal relates.

945. Subsection (4) amends paragraph 1 of Schedule 6 to the 1996 Act, which sets out the composition of the panel which will hear an appeal by a senior officer (officer above the rank of Chief Superintendent), or former senior officer. In such cases, the panel comprises an independent legally qualified chair, HM Chief Inspector of Constabulary (or one of HM Inspectors of Constabulary) and the permanent secretary of the Home Office (or a Home Office Director). The subsection inserts new sub-paragraph (A1) which clarifies that the existing composition of appeal tribunals set out in sub-paragraph (1) is applicable not only in circumstances where the senior officer concerned appeals, but also where the chief officer makes an appeal in relation to a senior officer in their force or where the local policing body makes an appeal in relation to the relevant chief officer. The effect of this provision will be to ensure that the composition of the police appeals tribunals' panel applicable to senior officers is consistent in circumstances where the chief officer or local policing body are the appellant, and in circumstances where the officer concerned by the decision is the appellant.

946. Subsection (5) amends paragraph 2 of Schedule 6 to the 1996 Act, which sets out the composition of the panel which will hear an

appeal by a non-senior officer (officer of the rank of chief superintendent or below). In such cases, the panel comprises an independent legally qualified chair, a senior police officer and a lay person. This applies to serving and former officers and serving and former special constables. The subsection inserts new sub-paragraph (A1) which clarifies that the existing composition of appeal tribunals set out is applicable not only in circumstances where the officer concerned appeals, but also where their relevant chief officer makes an appeal. The effect of this provision will be to ensure that the composition of appeal tribunal panels applicable to non-senior officers is consistent in circumstances where the chief officer is the appellant, and in circumstances where the officer concerned by the decision is the appellant.

947. Subsection (6) amends paragraph 7 of Schedule 6 to the 1996 Act, which provides that, where the police appeals tribunal makes an order, replacing the original decision which is being appealed, the police appeals tribunal's order will be applicable retrospectively (for certain purposes) from the date the original decision appealed was made. Subsection (6)(c) introduces the new paragraph 7(1)(4), which sets out that where a police appeals tribunal makes a new decision to dismiss

(replacing the original decision not to dismiss), the tribunal's new decision takes effect from the date on which it is made. This ensures that an officer whose sanction is increased by the police appeals tribunal further to an appeal by their chief officer (or local policing body or the IOPC), resulting in the officer's dismissal, that officer is considered to be dismissed from the date of that decision by the police appeals tribunal, and not from the date of the original decision at a misconduct hearing. This avoids that an officer dismissed at a later date by the police appeals tribunal could be held liable for their pay between the original decision date and the subsequent dismissal decision by the tribunal. Subsection (6) also makes consequential amendments to sub-paragraph (2) and (3) of paragraph 7 of Schedule 6 to the 1996 Act so that rather than referring to the "appellant", it refers to the "person to whom the appeal relates" for the reasons set out above. This provision aims to make sure that the legislation works both for the current route of appeal (by officers themselves) and for the new routes of appeal (by chief officers or local policing bodies). This is necessary because in future cases, the chief officer may be the appellant and so it is important to distinguish that the appellant may be a different person than the person to whom the appeal relates.

948. Subsection (7) amends paragraph 9 of Schedule 6 to the 1996 Act, which provides that, in appeals by the officer concerned, the costs of the appeal will be met by the appellant, unless the police appeals tribunal directs that the whole, or part, of their costs should instead be met by the respondent. In such appeals, the respondent is responsible for its own costs. Subsection (7) also inserts new paragraphs 9 and 10, which covers the costs in appeals by the chief officer or local policing body. In such appeals, the appellant is responsible for its own costs. The respondent is also responsible for its own costs, unless the police appeals tribunal directs otherwise. Subsection (7) also inserts new paragraph 11, which covers the costs in appeals by the IOPC. In such appeals, the IOPC is responsible for its own costs, unless the police appeals tribunal directs otherwise, except in cases in which the IOPC and appropriate authority had agreed that the IOPC should present the case from which the appeal arose. In which case, the appropriate authority is responsible for the appellant's costs. The respondent is again responsible for its own costs, unless the police appeals tribunal directs otherwise.

949. Subsections (9) make equivalent provision to the changes being made to the power in

section 85 of the 1996 Act to section 4A of the Ministry of Defence Police Act 1987 (the "MDP Act"). The MDP Act provides the statutory basis for the Ministry of Defence Police powers and defines its jurisdiction.

950. Subsection (9)(a) extends the power in section 4A of the MDP Act to allow the Secretary of State to make regulations enabling the chief constable for the Ministry of Defence Police to appeal against a decision made in relation to a member or a former member (other than those who are senior officers (i.e. above the rank of chief superintendent) or were, immediately before ceasing to be a member of the Ministry of Defence Police, senior officers). It further provides that the regulations can allow the Secretary of State to appeal against a decision relating to the chief constable or a former chief constable of the Ministry of Defence Police, or a senior officer or former senior officer (who was a senior officer immediately before ceasing to be a member).

951. Subsection (9)(b) makes a minor consequential change for the same reason as the change being made by subsection (4).

952. Subsection (9)(c) provides that regulations made under section 4A of the MDP Act may provide that the Ministry of Defence Police Committee or any other person appointed in

accordance with the regulations may take decisions relating to appeals that would otherwise be taken by the Secretary of State or the chief constable for the Ministry of Defence Police.

953. Subsection (9)(d) applies the definition of "senior officer" contained in section 4 of the MDP Act, being a member of the Ministry of Defence Police holding a rank above that of chief superintendent, to section 4A of the MDP Act.

Part 14: Terrorism and national security

Chapter 1: Youth diversion orders

Clause 110: Power to make youth diversion orders

954. Chapter 1 of Part 14 introduces new Youth Diversion Orders ("YDOs") for terrorism-related cases. The YDO is a new counter-terrorism risk management tool available for individuals under the age of 21. The intention of the YDO is to divert a young person away from terrorist offending (and/or further terrorist offending) and enable the police to intervene at an earlier stage.

955. Clause 110 introduces a power for the police to make an application to the courts for a YDO.

956. Subsection (1) explains that a chief officer of police may apply to an appropriate court (as

defined in subsection (3)) for a YDO for an individual who is aged between 10 and 20 years old in England and Wales or Northern Ireland, or aged between 12 and 20 years old in Scotland. The increased age limit in Scotland recognises the higher age of criminal responsibility in that jurisdiction.

957. Subsection (2) sets out the conditions which must be met for the court to approve an application for a YDO. Subsection (2)(a) sets out the required conduct which the respondent must be involved in for the court to approve a YDO. On receiving an application from the police for a YDO, a court must be satisfied, on the balance of probabilities, that the respondent has committed a terrorism offence, an offence with a terrorism connection or has been engaged in conduct likely to facilitate the commission of a terrorism offence. Terrorism offences, for the purposes of the YDO, means an offence listed in section 41(1) of the Counter-Terrorism Act 2008 ("CTA 2008") or an ancillary offence (within the meaning of section 94 of the CTA 2008) in relation to a section 41(1) offence. An offence with a terrorism connection means an offence within section 42(1) of the CTA 2008.

958. Subsection (2)(b) sets out the second limb of the test for making a YDO, namely that the

court considers it necessary to make an order for the purposes of protecting the public from a risk of terrorism or other serious harm. Terrorism is defined with reference to section 1 of the Terrorism Act 2000. Clause 111 provides the definition of serious harm for the purposes of the YDO.

Clause 111: Meaning of "serious harm"

959. This clause provides for the definition of serious harm which the court will need to consider when making a decision on whether a YDO is necessary to protect the public from a risk of serious harm. For the purposes of the YDO, serious harm refers to harm from conduct that involves serious violence against a person, endangers the life of another person, or creates a serious risk to the health and safety of the public or a section of the public. Subsection (1)(b) provides that the risk of serious harm may also include harm from the threat of such conduct, for example the threat of serious violence. Subsections (2) and (3) provide that a reference to conduct or a person in this section may refer to conduct or a person in any part of the world. This recognises that a respondent may pose a risk of serious violence to a person based overseas.

Clause 112: Content of youth diversion orders

960. This clause makes provision relating to the

content of YDOs, such as the prohibitions or requirements (“measures”) which may be included in a YDO. Subsection (1) sets out that a YDO may prohibit the respondent from doing anything described in the order or require the respondent to do anything described in the order. Subsection (2) and (3) contain examples of the types of prohibitions or requirements that a YDO might include, but do not limit the flexibility of the court to impose such measures as it thinks are necessary for protecting the public from a risk of terrorism or other serious harm.

961. Subsection (4) provides that the court may only include a prohibition or requirement in a YDO if it considers it necessary for the purposes of protecting the public from a risk of terrorism or serious harm.

962. Subsection (5) sets out safeguards which limit the extent of measures that can be included in a YDO. Any measure must avoid, so far as practicable, conflict with the respondent’s religious beliefs, any interference with the times that the respondent normally attends educational establishments or works, and any conflict with the requirements of any other court order or injunction to which the respondent is subject. For example, if the

individual were already subject to a civil injunction, the court must consider whether similar measures imposed by a YDO are necessary and proportionate, and that they do not conflict with the requirements imposed by the civil injunction.

963. Subsection (6) provides that a YDO must specify the duration of the order (which must not exceed 12 months).

964. Subsection (7) provides that a YDO may specify different periods for which specific measures will be applied, for example some measures may be applied for a shorter amount of time in comparison to others which could last for the full duration of the YDO.

Clause 113: Duty to consult

965. This clause requires the police to consult certain authorities before applying for a YDO or applying for a variation or discharge of a YDO.

966. In England and Wales and Northern Ireland, the chief officer of police must consult the local youth offending team or the Youth Justice Agency, as the case may be, where the respondent is under the age of 18 at the time of the application.

967. In Scotland, the chief constable must consult the Lord Advocate in all cases. The chief

constable must also notify the Principal Reporter of the Scottish Children's Hearings Administration where the respondent is under the age of 18 at the time of the application.

Clause 114: Applications without notice

968. Applications for a YDO will normally be made following the giving of notice to the respondent, however this section allows the police to apply for a YDO without giving such notice (subsection (1)). Without notice applications should, in practice, only be made in exceptional or urgent circumstances and the police will need to produce evidence to the court as to why a without notice hearing is necessary.

969. Subsection (2) provides that, where the application is made without notice in England and Wales or Northern Ireland, the applicant is not required to comply with the consultation requirements set out in section 113(1) (duty to consult). However, the applicant must meet the section 113(1) consultation requirement before the first hearing, of which notice has been given (subsections (4) and (5)). Section 113(2) (duty to consult) continues to apply for applications without notice in Scotland.

970. Subsection (3) provides that, where a without

notice application is made, the court may adjourn the proceedings without granting an interim YDO, adjourn the proceedings and grant an interim YDO pending a full hearing following the giving of notice to the respondent, or dismiss the application.

Clause 115: Interim youth diversion orders

971. An interim YDO may be made by a court where it is considering an application for a YDO (whether made with notice or without). Subsection (2) provides that where the court considers it necessary to do so, an interim order can be made lasting until the determination of the application.

972. Subsection (3) provides that while an interim YDO may impose such prohibitions as may be imposed in a full YDO (and as the court thinks are required), the only requirement it may contain is a requirement to provide information, such as the respondent's name and address. Other positive requirements, such as attending appointments or participating in activities, cannot be part of an interim YDO.

973. If an interim YDO is made at a hearing without notice, it only takes effect upon being served on the respondent (subsection (5)).

Clause 116: Variation and discharge of youth diversion orders

974. Subsection (1) permits the chief officer of police who applied for the YDO or the respondent (referred to collectively as "a relevant person") to apply to the relevant court (as specified in subsection (2)) for the variation or discharge of a YDO.

975. Subsection (3) provides that, before the court makes any order to vary or discharge the YDO, the applicant and the other relevant person have a right to be heard.

976. Subsection (4) provides that a variation may include the addition of new measures, an extension of the duration of any measure, or an extension of the YDO. The YDO may only be extended up to six months on a maximum of two occasions. As a result, the maximum duration of a YDO is two years. Subsection (5) prevents the applicant, in the case of a dismissal, from reapplying to the court for a variation or discharge without prior consent of the court or agreement from the other party.

Clause 117: Appeals against youth diversion orders etc

977. This clause makes provision for the parties to appeal.

978. Subsection (1) provides that a relevant person (the applicant or the respondent) may appeal a decision made by the court following an application for a YDO, a decision made in relation to an interim youth diversion order, or a decision made on an application to vary or discharge a YDO.

979. Subsection (3) sets out that, on appeal under this clause, the relevant court may make such orders that the court considers necessary to deliver their verdict on the appeal. This means that the court may, for example, vary the duration of a YDO or the relevant measures.

Clause 118: Offence of breaching youth diversion order

980. Subsection (1) makes it a criminal offence to breach a YDO, without reasonable excuse.

981. Subsection (2) provides for the maximum penalty for the offence where the offender is under 18 years, namely six months' imprisonment, or an unlimited fine in England and Wales or a level 5 fine (currently £5,000) in Scotland or Northern Ireland.

982. Subsection (3) provides for the maximum penalty where the offender is 18 or over. On conviction on indictment the maximum penalty is two years' imprisonment, a fine, or both.

Clause 119: Guidance

983. Subsection (1) confers a power on the Secretary of State to issue and subsequently revise guidance to chief officers of police on the exercise of their functions in relation to YDOs. Chief officers of police are required to have regard to such guidance (subsection (2)).

984. Subsection (3) requires the Secretary of State to consult with specified persons before issuing or revising such guidance. The list of consultees covers prosecuting authorities, the NPCC and the chief constables of Police Scotland and the Police Service of Northern Ireland, the Independent Reviewer of Terrorism Legislation and such other persons as the Secretary of State considers appropriate.

985. Subsection (4) provides for such guidance to be subject to the negative resolution procedure.

986. Subsection (6) provides that the duty to consult and to lay any revisions before Parliament do not apply to insubstantial revisions of the guidance.

Clause 120: Rules of court about anonymity for respondents

987. This clause makes provisions for rules of court relating to YDO proceedings to make provision

for anonymity orders.

988. Subsection (2) provides for an anonymity order to include such prohibitions or restrictions as the court considers are appropriate relating to the disclosure of information, by such persons as the court specifies or by persons generally, regarding the identity of the respondent or any information that may identify the respondent.

Clause 121: Applications

989. This clause makes provision for YDO applications to be made by complaint to a youth court or other magistrates’ court and, in any other case, should be made in accordance with rules of court.

Chapter 2: Other provisions about terrorism and national security

Clause 122: Prevention of terrorism and state threats: weapons etc

990. Paragraph 6A of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 (“the TPIM Act”) allows the Home Secretary to impose a measure prohibiting anyone subject to a TPIM notice from possessing “offensive weapons”. Paragraph 7 of Schedule 7 to the National Security Act 2023 makes the same provision for individuals subject to a State Threat Prevention and Investigation Measures notice

("STPIM"). "Offensive weapons" are defined in both these provisions as "an article made or adapted for use for causing injury to the person, or intended by the person in possession of it for such use (by that person or another)".

991. Subsection (1) amends the definition of "offensive weapons" in the TPIM Act to refer to things which the Secretary of State reasonably considers could be used for causing injury to the person, and specifically to include within that definition corrosive substances (as defined by section 6 of the Offensive Weapons Act 2019) and motor vehicles. Subsection (2) makes analogous amendments to the National Security Act 2023. Subsection (3) provides that the amendments made by subsections (1) and (2) apply to TPIMs and STPIMs in force on the commencement date of this clause as well as to future orders.

Clause 123: Offence of wearing or displaying articles in support of proscribed organisation

992. This clause amends section 13 of TACT 2000. It is an offence under section 13(1) of TACT 2000 for a person in a public place to wear, carry or display articles in such a way or circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation. A

proscribed organisation is an organisation listed in Schedule 2 to TACT 2000 for being concerned in terrorism. On summary conviction for an offence under section 13, a person is liable to imprisonment for no more than six months, an unlimited fine, or both.

993. Under section 13(4) of TACT 2000 a constable may seize articles reasonably suspected of being evidence of the offence under section 13(1) where satisfied that it is necessary to do so to prevent the evidence being concealed, lost, altered or destroyed.

994. Subsection (2) inserts new section 13(1ZA) which provides for a new offence that replicates the offence under section 13(1) for conduct taking place in prisons and other relevant premises (as defined in new section 13(8)). For example, a person who displays a Hamas flag in a prison cell may commit the new offence. Hamas is an organisation proscribed in Schedule 2 to TACT 2000.

995. Subsection (3) expands the existing seizure power at section 13(4) to make it available to the police in cases where there is no person connected with the article. The effect of section 13(4) as amended is: i) to confer the power on a constable to seize an item of clothing (outer

garments only) or other article, such as a flag or banner, if they reasonably suspect that the item is evidence of an offence under new section 13(1ZA); and ii) to permit the police to seize an article in order to prevent its ongoing display in a public place. The intention of the amendment is to ensure that an article can also be seized by the police even without an investigation into a potential offence under section 13(1). In practice, this would, for example, enable the seizure of a flag or poster which arouses reasonable suspicion the individual who displayed it was a member or supporter of a proscribed organisation, but where there is no evidence to connect the display of the article with a specific individual (e.g. where it has been abandoned but is on display).

996. Subsection (4) also inserts new section 13(7) which is a power for the police to destroy articles they have seized under section 13(4). This destruction power would be used where the police do not need to retain the article as evidence in relation to an offence under subsection (1).

997. Subsection (5) inserts a new section 93ZD into the Armed Forces Act 2006. This enables Service Police to seize and destroy articles on

service custody premises which they reasonably suspect of being evidence of an offence under section 42 of the Armed Forces Act 2006. The offence under section 42 of the Armed Forces Act 2006 must be a corresponding offence under new section 13(1ZA) of the Terrorism Act 2000.

Clause 124 and Schedule 16: Management of terrorist offenders

998. Subsection (1) introduces Schedule 16 (notification orders) to the Bill.

999. Schedule 16 amends Part 4 of the CTA 2008 to allow the police or the Secretary of State to apply to the court for a notification order imposing the terrorist notification requirements on an offender who committed their offence, or was sentenced for it, prior to the commencement of the CTA 2008 on 18 June 2009 or between 2009 and 2021 (for an offence which fell outside the specified list in Schedule 2 to the CTA 2008).

1000. Paragraphs 2 to 7 of Schedule 16 make consequential amendments to the CTA 2008 to reflect the insertion of new Schedule 4A and Schedule 6A to that Act by paragraphs 8 and 9 respectively.

1001. Paragraph 8 of Schedule 16 introduces new Schedule 4A into the CTA 2008. The purpose of new Schedule 4A is to allow the police or the Secretary of State to apply to the court for a notification order for those offenders sentenced before the commencement of the CTA2008 on 18 June 2009 or for those sentenced for an offence that fell outside of the list specified in Schedule 2 to the CTA 2008 who were sentenced between 2009 and 2021 (since 2020 the provisions for England and Wales are found in the Sentencing Code).

1002. Paragraph 1 of new Schedule 4A defines the terms used throughout that Schedule.

1003. Paragraph 2(1) of new Schedule 4A allows an authorised person (as defined in paragraph 1) to apply to the appropriate court for a domestic offence notification order.

1004. Paragraph 2(2) of new Schedule 4A sets out that the court must make a domestic notification order if it is satisfied that the four conditions set out in paragraphs 2(3) to (8) are met. If they are not, the court must refuse the application.

1005. Paragraph 2(3) to (5) of new Schedule 4A sets out that the first condition is that the offender was convicted of the offence before 29 June 2021, that the penalty for that offence was for more than two years' imprisonment and that it is not an excluded offence. This is a three-limb test in which all limbs must be met.

1006. The definition of an excluded offence is detailed in paragraph 2(4). Paragraphs (a) to (c) are intended to excluded orders being made in relation to cases where it was open to a court to find a terrorism connection at the relevant time, but no such finding was made (either because the connection was not alleged by the prosecution, or the court determined that there was no connection). Paragraph (d) excludes certain offences that remain outside the scope of the terrorist connection provisions.

1007. Paragraph 2(5) makes a slight modification to the condition provided by paragraph 2(4)(a) to produce an equivalent effect for offences that were dealt with prior to the commencement of Part 4 of the CTA 2008.

1008. Paragraph 2(6) of new Schedule 4A sets out the second condition, which is a three-limb test: the person subject to the order must have

been sentenced to a term of imprisonment or detention of at least 12 months (or a sentence falling with section 45 of the CTA 2008) for the offence in question, must have been aged 16 years old or over at the time of their sentence, and at the time at which the domestic notification order is made, must be either imprisoned (including being absent without leave) or released on licence.

1009. Paragraph 2(7) of new Schedule 4A sets out that the third condition is that the relevant offence has a terrorist connection (as defined by section 93 of the CTA 2008). Under this section, an offence has a terrorist connection if the offence either is, or takes place in the course of, an act of terrorism, or is committed for the purposes of terrorism.

1010. Paragraph 2(8) of new Schedule 4A sets out that the fourth condition is that the notification requirement period (that is, the period for which the person will be subject to the notification requirements upon their release) has not expired before the application to the court. The notification requirement period can remain in place upon release on licence for a minimum of 10 years and for up to 30 years depending on the length of sentence imposed.

1011. Paragraph 3 of new Schedule 4A places restrictions on the police force that can make applications to the Court. The Chief Officer of police (for England and Wales), the Chief Constable of the Police Service of Scotland and the Chief Constable of the Police Service of Northern Ireland may only make an application if the individual resides in their respective area or if they believe that the person is in, or is intending to come to, that area.

1012. Paragraph 4 of new Schedule 4A provides that the effect of a domestic offence notification order is that the offender is then subject to the notification requirements in Part 4 of the CTA 2008. In summary, the notification regime requires notification of certain information about an individual, including their name and date of birth, addresses and foreign travel.

1013. Paragraph 5 of new Schedule 4A makes certain modifications of a consequential nature to Part 4 to ensure that the various notification requirements operate effectively in applying to individuals who are subject to domestic notification orders (who, in contrast to other individuals to whom the notification

requirements apply, become subject to the requirements after they have been sentenced for their offence).

1014. Paragraph 9 of Schedule 16 inserts new Schedule 6A ("Service Offence Notification Orders") into the CTA 2008, enabling a court to make service offence notification orders. These orders are the equivalent of domestic offence notification orders for service offences.

1015. Subsection (2) amends section 43B of Terrorism Act 2000, extending the powers of urgent arrest and personal search for those on licence (where it is suspected that they have breached a licence condition) to anyone who is subject to either the new domestic offence notification order or the service offence notification order. The power of urgent arrest gives a constable the power to arrest and detain a terrorist offender or a terrorist connected offender on suspicion of a breach of licence conditions, pending a decision on whether or not to recall the person to prison, if considered necessary to protect the public. The power of personal search gives a constable the power to stop and search a terrorist offender or terrorist connected offender who is released on licence. The power applies if it is a condition of the

offender’s licence that they submit to a search, and the constable considers that the search is necessary to protect the public.

Clause 125 and Schedule 17: Sentences for offence of breaching foreign travel restriction order

1016. This clause introduces Schedule 17 which makes amendments relating to sentences for an offence under paragraph 15 of Schedule 5 to the Counter-Terrorism Act 2008 (breach of a foreign travel restriction order), to ensure consistency with other terrorism offences carrying a maximum penalty of more than two years’ imprisonment.

1017. Paragraph 1 of Schedule 17 amends Schedule 1A to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (offences with restricted eligibility of terrorist prisoners for release on licence) to add the offence of breaching a foreign travel restriction order. This will ensure that the first eligible release point for an individual convicted for this offence will be the two-thirds point of their custodial sentence at the discretion of the Parole Board.

1018. Paragraph 2 of Schedule 17 amends the Criminal Procedure (Scotland) Act 1995. Sub-paragraphs 2(2) and 2(3) amend section 205ZC (terrorism sentence with fixed licence

period) of, and paragraph 4 of Schedule 5ZB (list of terrorism offences) to, the Criminal Procedure (Scotland) Act 1995 respectively to insert reference to the offence of breaching a foreign travel restriction order. These changes will mean that individuals convicted for this offence on or after the day on which paragraph 2 of Schedule 17 comes into force will be eligible to receive a terrorism sentence with fixed licence period. Offenders who receive this sentence will only be eligible for release at the two-thirds point of the custodial part of their sentence if the Parole Board decides that they do not pose a risk to the public. On release, offenders will be subject to a minimum one-year licence period, regardless of whether they are released early or serve their full custodial term.

1019. Paragraph 3 of Schedule 17 amends the CJA 2003. Sub-paragraph 3(2) amends section 247A (restricted eligibility for release on licence of terrorist prisoners) of the CJA Act 2003, to provide that this section will apply to relevant prisoners on the date on which paragraph 3 of Schedule 17 comes into force. Sub-paragraph 3(3) amends paragraph 8 of Schedule 19ZA to the 2003 Act (offences to which section 247A applies) to include the breach of a foreign travel restriction order

offence. This will ensure that the first eligible release point for an individual convicted for this offence will be the two-thirds point of their custodial sentence at the discretion of the Parole Board.

1020. Paragraph 4 of Schedule 17 amends Schedule 1A to the Counter-Terrorism Act 2008 (offences where terrorism connection not required to be considered) to include reference to the offence of breaching a foreign a travel restriction order and specify that this change will apply to a person convicted of this offence on or after the day on which paragraph 4 of Schedule 17 comes into force. This will mean that from this date a court in Northern Ireland or Scotland will no longer be required to consider at the point of sentencing whether this offence was committed with a terrorist connection.

1021. Paragraph 5 of Schedule 17 amends the Criminal Justice (Northern Ireland) Order 2008. Sub-paragraph 5(2) amends Article 15A of the 2008 Order (terrorism sentence with fixed licence period), by providing that this Article will apply to convictions on or after the day on which paragraph 5 of Schedule 17 comes into force. These changes, read with the change in sub-paragraph 5(4), will mean that from this

date individuals sentenced for the offence of breaching a foreign travel restriction order will be eligible to receive a terrorism sentence with fixed licence period. Sub-paragraph 5(3) of Schedule 17 amends Article 20A (restricted eligibility for release on licence of terrorist prisoners) of the 2008 Order to specify that it applies to relevant prisoners from the date on which paragraph 5 comes into force. From this date the first eligible release point for an individual convicted for this offence will be the two-thirds point of their custodial sentence at the discretion of the Parole Commissioners. Sub-paragraph 5(4) of Schedule 17 amends paragraph 32 of Schedule 2A to the 2008 Order (offences specified for various purposes of this Order relating to terrorism) to include the breach of foreign travel restriction order offence and give effect to the changes mentioned above.

1022. Paragraph 6 of Schedule 17 amends the Sentencing Code. Sub-paragraphs 6(2), 6(3) and 6(4) amend sections 252A, 265 and 278 (special sentence for offences of particular concern) of the Sentencing Code respectively, to specify that these sections apply in relation to relevant convictions on or after the day on which paragraph 6 of Schedule 17 comes into force. Sub-paragraph 6(5) amends paragraph

4 of Schedule A1 (terrorist connection aggravating factor – offences where terrorism connection not required to be considered) to the Sentencing Code by providing that it applies to someone who is convicted of the offence of breaching a foreign travel restriction order on or after the day on which paragraph 6 of Schedule 17 comes into force. Sub-paragraph 6(6) of Schedule 17 amends paragraph 4 of Schedule 13 (offences attracting special sentence for offenders of particular concern) to the Sentencing Code, to include the breach of a foreign travel restriction order offence. These changes will mean that in relation to someone convicted on or after the date paragraph 6 of Schedule 17 comes into force for breaching a foreign travel restriction order a court in England and Wales will no longer be required to consider at the point of sentencing whether this offence was committed with a terrorist connection, and the offender will no longer receive a standard determinate sentence. If they do not receive a life sentence or an extended sentence, they must receive a 'sentence for offenders of particular concern'.

Clause 126: Length of terrorism sentence with fixed licence period: Northern Ireland

1023. Clause 126 amends Article 7 of the Criminal Justice (Northern Ireland) Order 2008 (“the 2008 Order”) to ensure that judges may only pass a terrorism sentence with fixed licence period, under Article 15A of the 2008 Order, that is commensurate with the seriousness of the offence.

1024. Subsection (2) provides that the clause applies to those convicted on or after its commencement.

Part 15: Miscellaneous and general

Clause 127: Implementation of law enforcement information sharing agreements

1025. This clause provides the appropriate national authority (as defined in Clause 128) with the power to make regulations (subject to the negative procedure) to implement the technical and, where appropriate operational detail, of any new legally binding international law enforcement information-sharing agreements. Such new international law enforcement information-sharing agreements are subject to usual treaty ratification procedures, including the provision for parliamentary scrutiny as provided for in Part 2 of the Constitutional Reform and Governance Act 2010.

Clause 128: Meaning of “appropriate national authority”

1026. This clause defines the “appropriate national authority” by which regulations may be made under Clause 127 as the Secretary of State or, where a provision falls within devolved competence, Scottish Ministers, Welsh Ministers or the Northern Ireland Department of Justice, as stipulated in subsections (2) to (4).

1027. Restrictions in Schedule 7B to the Government of Wales Act 2006 prevent the Senedd from removing, without the consent of the appropriate UK Government Minister, any function of a Minister of the Crown, that relates to a qualified devolved function in that Act. Subsection (6) disapplies the relevant restriction in Schedule 7B to the Government of Wales Act 2006, in respect of the concurrent powers provided in Clause 127 of the Bill, by adding the Crime and Policing Act 2025 (as it would become), to the lists of enactments in paragraph 11(6)(b) of Schedule 7B to the Government of Wales Act 2006, to which the general restriction referenced above will not apply. This allows the Senedd to alter the concurrent arrangements in future without needing the UK Government’s consent.

Clause 129: Consultation with devolved authorities about regulations under section 127

1028. This clause requires the Secretary of State, before making regulations under Clause 127, to consult devolved governments about any provision in the regulations which would be within the legislative competence of the relevant devolved legislature, by virtue of Clause 128.

Clause 130: Criminal liability of bodies corporate and partnerships where senior management commits an offence

1029. This clause enables a corporate body or partnership to be held criminally liable where a senior manager commits any offence while acting within the actual or apparent authority granted by the organisation.

1030. At present, for most offences, whether a corporate body will be criminally liable relies on the application of the common law "identification doctrine", under which the offence must be carried out by a person representing the "directing mind and will" of the body corporate. The provisions in this clause do not replace or amend the common law identification doctrine, but provides a new statutory route to corporate liability for all offences. In doing so, they replace provisions

in sections 196 to 198 of the Economic Crime and Corporate Transparency Act 2023 which made provision for corporate liability where a senior manager commits an offence while acting in the scope of their actual or apparent authority, in relation to economic crime offences only.

1031. Subsection (1) provides that the corporate body or partnership will be guilty of an offence if the offence is carried out by a “senior manager”. A senior manager is an individual who plays a significant role in the making of decisions about how the whole or a substantial part of the activities of the body are to be managed or organised, or the actual managing or organising of the whole or a substantial part of those activities. This covers both those in the direct chain of management as well as those in, for example, strategic compliance roles. “Substantial part of the business” relates to the importance of the activity over the operations of a business as a whole.

1032. “Senior management” would normally include a company’s directors and other senior officers such as a Chief Financial Officer or Chief Operating Officer, whether or not they are members of the Board. This would include organisations such as charities where,

because of restrictions on trustees receiving benefits from the charity, the organisation's salaried chief officers are not usually members of the Board. Other individuals who have significant roles in relation to a substantial part of the organisation's activity, such as its human resources function, would also be included. The term "senior management" is not limited to individuals who perform an executive function or are board members, it covers any individual who falls within the definition irrespective of their title, remuneration, qualifications or employment status.

1033. The senior manager must be acting within the actual or apparent scope of their authority. This does not mean that the senior manager must have been authorised to carry out a criminal offence. It would be enough that the act was of a type that the senior manager was authorised to undertake, or which would ordinarily be undertaken by a person in that position. For instance, if a Chief Financial Officer commits fraud by deliberately making false statements about a company's financial position, the company would be liable for the offence since the act of making statements about the company's financial position is within the scope of that person's authority.

1034. Subsection (2) ensures criminal liability will not attach to an organisation based and operating overseas for conduct carried out wholly overseas, simply because the senior manager concerned was subject to the UK's extraterritorial jurisdiction: for instance, because that manager is a British citizen. Domestic law does not generally apply to conduct carried out wholly overseas unless the offence has some connection with the UK. This is an important matter of international legal comity. However, certain offences, regardless of where they are committed, can be prosecuted against individuals or organisations who have a close connection to the UK. Subsection (2) makes sure that any such test will still apply to organisations when the new rule applies.

1035. Subsections (4) to (6) make procedural provision for prosecutions of partnerships under the new rule and applies laws applying to the prosecution of companies to such cases. It requires any fine imposed for an offence committed by a partnership to be paid from the partnership's assets.

1036. Subsection (7) repeals sections 196 to 198 and 217(5)(f) of and Schedule 12 to the Economic Crime and Corporate Transparency

Act 2023 which make like provision but limited to economic crime related offences.

Commencement

1037. Clause 135(2) provides for the following provisions to come into force on Royal Assent: Clause 31 (guidance); Clause 44 (power to scan for child sexual abuse images at the border); Clauses 95 (access to driver licensing information) and Clause 96 (testing of persons in police detention for presence of controlled drugs) for the purpose of making regulations; Clause 109 (appeals to police appeals tribunals) for the purpose of making rules; Clauses 127 to 129 (international law enforcement data-sharing agreements) and Clauses 131 to 137 (final provisions).

1038. Clause 128(3) provides for the following provisions to come into force two months after Royal Assent: Clause 43 (child sex offences: grooming aggravating factor); Clause 103 (proceedings for civil recovery: costs and expenses); Clause 104 (extension of polygraph condition to certain offenders); Clause 105 (duty of offender to notify details); Clause 122 (prevention of terrorism and state threats: weapons etc); Clause 125 and Schedule 17 (sentence for offence of breach of

foreign travel restriction order); Clause 126 (length of terrorism sentence with fixed licence period: Northern Ireland); and Clause 130 (criminal liability of bodies corporate and partnerships where senior manager commits offence).

1039. Clause 135(7)(a) provides for the following provisions to come into force insofar as they apply to Scotland by commencement order made by Scottish Ministers: Chapter 4 of Part 5 (except Clause 66(2)) (management of sex offenders).

1040. Clause 135(7)(b) and (8) provides for the following provisions to come into force insofar as they apply to Northern Ireland by commencement order made by the Department of Justice: Chapter 4 of Part 5 (except Clause 66(2)) (management of sex offenders); Clause 73 (administering etc harmful substance (including by spiking)); Clauses 73 and 74 (offences of encouraging or assisting serious self-harm); and Clause 102(2) and Schedule 15 (confiscation).

1041. The remaining provisions will be brought into force by means of commencement regulations made by the Secretary of State (Clause 135(1)).

1042. Clause 136 requires the Secretary of State to consult Scottish Ministers and the Department of Justice in Northern Ireland before bringing into force Chapters 2 and 3 of Part 4 (cuckooing). Clause 136 further requires the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland to consult each other before bringing into force Clause 66(1) which places restrictions on relevant sex offenders applying for replacement identity documents in a new name.

Financial implications of the Bill

1043. The main public sector financial implications of the Bill fall to criminal justice agencies (including the police, prosecutors, HM Courts and Tribunals Service, the Legal Aid Agency, and HM Prison and Probation Service), local authorities, clinical commissioning groups, local health boards and fire and rescue. The estimated annual cost of the measures in the Bill in respect of England and Wales once fully implemented is £48.65 million with a one-time transition cost of £186.65 million. The estimated annual average monetised benefit of provisions with the Bill is £11.81 million. 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 as they apply to England and Wales are set out in the economic impact assessments or economic notes published alongside the Bill.

Parliamentary approval for financial costs or for charges imposed

1044. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. However, a money resolution is not required for widening the jurisdiction of a court or judicial tribunal or for creating new criminal offences and accordingly this Bill does not require a money resolution.

1045. Generally, a ways and means resolution is required where a Bill gives rise to, or confers power that could give rise to, new charges on the people (broadly speaking, new taxation or similar charges). This Bill does not give rise to such charges and, as a result, does not require a ways and means resolution.

Compatibility with the European Convention on Human Rights

1046. The Home Secretary, the Rt Hon Yvette Cooper MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

> "In my view the provisions of the Crime and Policing Bill are compatible with the Convention rights".

1047. The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights: these memorandums are available on the Government website.

Environment Act 2021

1048. The Home Secretary is of the view that the Bill as introduced into the House of Commons contains provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. A statement that the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law has been made.

Statement on Bills affecting trade between Northern Ireland and other parts of the United Kingdom

1049. The Home Secretary is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the UK. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

1050. The following documents are relevant to the Bill and can be read at the stated locations:

- The Terrorism Acts in 2018: Report of the Independent Reviewer Of Terrorism Legislation on the operation of the Terrorism Acts 2000 and 2006, March 2020, Jonathan Hall Q.C., Independent Reviewer of Terrorism Legislation.
- The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2018 by the Independent Reviewer of Terrorism Legislation, October 2020.
- Confiscation of the proceeds of crime after conviction: A consultation paper, Law Commission, 17 September 2020.

- Confiscation of the proceeds of crime after conviction: A final report, Law Commission, 9 November 2022.
- Harmful Online Communications: The Criminal Offences: A Consultation paper, Law Commission, 11 September 2020.
- Modernising Communications Offences: A final report, Law Commission, 21 July 2022.
- Government interim response to the Law Commission's review, 'Modernising Communications Offences', 4 February 2022
- Intimate image abuse: A consultation paper, Law Commission, 26 February 2021.
- Report on Child Sexual Exploitation by Organised Networks Investigation, Independent Inquiry into Child Sexual Abuse, February 2022.
- The Terrorism Acts in 2020: Report of the Independent Reviewer Of Terrorism Legislation on the operation of the Terrorism Acts 2000 And 2006, and the Terrorism Prevention and Investigation Measures Act 2011, Jonathan Hall QC, Independent Reviewer of Terrorism Legislation, April 2022.
- The Government Response to the Annual Report on the Operation of the Terrorism

Acts in 2020 by the Independent Reviewer of Terrorism Legislation, January 2023.

- Terrorism in Prisons, Jonathan Hall QC, Independent Reviewer of Terrorism Legislation, April 2022.
- Tackling Terrorism in Prisons: A Response to the Independent Reviewer of Terrorism Legislation's Review of Terrorism in Prisons, Ministry of Justice, April 2022.
- Intimate image abuse: a final report, Law Commission, 7 July 2022.
- Corporate criminal liability: an options paper, Law Commission, 22 June 2022.
- Report of the Independent Inquiry into Child Sexual Abuse, IICSA, 20 October 2022
- Two legislative measures to improve the law enforcement response to serious and organised crime: Government consultation, Home office, 24 January 2023.
- Review of the Computer Misuse Act 1990: consultation and response to call for information, Home Office, 7 February 2023.
- The Terrorism Acts in 2021: Report of the Independent Reviewer Of Terrorism Legislation on the operation of the Terrorism Acts 2000 And 2006, and the Terrorism Prevention and Investigation Measures Act

2011, Jonathan Hall QC, Independent Reviewer of Terrorism Legislation, March 2023.

- The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2021 by the Independent Reviewer of Terrorism Legislation, February 2024.
- Community Safety Partnerships Review and Anti-Social Behaviour Powers: Government consultation, Home office, 27 March 2023.
- New measures to tackle child sexual abuse, Home Office, 3 April 2023
- Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime: Government consultation, Home office, 18 April 2023.
- Preventing the use of SIM farms for fraud: Government consultation, Home office, 3 May 2023.
- Mandatory reporting of child sexual abuse: call for evidence, Home Office, 22 May 2023
- Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articled in crime – Government response to consultation and summary of public responses, Home Office, 30 August 2023

- Government response to the Law Commission's review of confiscation, Home Office, 25 October 2023.
- Terms of reference for the review of investigatory arrangements which follow police use of force and police driving related incidents, Home Office, October 2023.
- Mandatory reporting of child sexual abuse consultation, Home Office, 2 November 2023
- Government Response to the Consultation: "Preventing the use of SIM farms for fraud", November 2023.
- Consultation on two legislative measures to improve the law enforcement response to serious and organised crime – Summary of consultation responses and conclusion, Home Office, 14 November 2023.
- Review of the Computer Misuse Act 1990 – Analysis of Consultation Responses, Home Office, 14 November 2023.
- Community Safety Partnerships Review and Anti-Social Behaviour Powers: Government Response, 14 November 2023.
- Mandatory reporting of child sexual abuse: Government response, Home Office, 8 May 2024.

- The nature of violent crime in England and Wales: year ending March 2024, Office of National Statistics, 26 September 2024.
- The hidden harms of stalking, Office of National Statistics, 26 September 2024.
- The police response to stalking: Report on the super-complaint made by the Suzy Lamplugh Trust on behalf of the National Stalking Consortium, College of Policing / His Majesty's Inspector of Constabulary and Fire and Rescue Services / Independent Office for Police Conduct, 27 September 2024.
- Factsheet on the government's policy package on police accountability, Home Office, 23 October 2024.
- Knives and offensive weapons: personal liability measures on senior executives of online platforms or marketplaces: Consultation, Home Office, 13 November 2024.
- The Terrorism Acts in 2022: Report of the Independent Reviewer Of Terrorism Legislation on the operation of the Terrorism Acts 2000 And 2006, and the Terrorism Prevention and Investigation Measures Act 2011, Jonathan Hall QC, Independent

Reviewer of Terrorism Legislation, November 2024.

- The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2022 by the Independent Reviewer of Terrorism Legislation, November 2024.
- Report on the government review on introducing costs protections in civil recovery proceedings in the High Court under Part 5 of the Proceeds of Crime Act 2002, Home Office, December 2024.

Annex A – Glossary

ACE	Asset Confiscation Enforcement
Affirmative resolution procedure	Affirmative procedure is a type of parliamentary procedure that applies to statutory instruments ("SIs"). Its name describes the form of scrutiny that the SI receives from Parliament. An SI laid under the affirmative procedure must be actively approved by both Houses of Parliament.
ASB	Anti-social behaviour
AI	Artificial Intelligence
CAID	Child Abuse Image Database
CBO	Criminal Behaviour Order
CCE	Child criminal exploitation
CCEPO	Child criminal exploitation prevention order
CJA 2003	Criminal Justice Act 2003
CPN	Community Protection Notice
CPS	Crown Prosecution Service
CSA	Child sexual abuse
CSAM	Child sexual abuse material
CTA 2008	Counter Terrorism Act 2008
CTSA 2021	Counter Terrorism and Sentencing Act 2021
DGA	Domain Generation Algorithms

DPP	Director of Public Prosecutions
DVLA	Driver and Vehicle Licencing Agency
ECCT 2023	Economic Crime and Corporate Transparency Act 2023
EROC	Early Resolution of Confiscation
FPN	Fixed Penalty Notices
GPS	Global Positioning System
IOPC	Independent Office for Police Conduct
IP	Internet Protocol
LPB	Local Policing Body
MAPPA	Multi-Agency Public Protection Arrangements
MDP Act	Ministry of Defence Police Act 1987
NCA	National Crime Agency
Negative resolution procedure	Negative procedure is a type of parliamentary procedure that applies to SIs. Its name describes the form of scrutiny that the SI receives from Parliament. An SI laid under the negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion – or 'prayer' – to reject it is agreed by either House within 40 sitting days.
NPCC	National Police Chiefs' Council

NPIA	National Police Improvement Agency
PACE	Police and Criminal Evidence Act 1984
PAT	Police Appeals Tribunal
PCC	Police and Crime Commissioner
PNC	Police National Computer
POCA	Proceeds of Crime Act 2002
PSPO	Public Spaces Protection Order
RSO	Registered sex offender
SAR	Suspicious Activity Report
SI	Statutory instrument
SIM	Subscriber Identity Module
SMS	Short Messaging Service
SPA 2019	Stalking Protection Act 2019
TACT 2000	Terrorism Act 2000
The 1959 Act	Restriction of Offensive Weapons Act
The 1971 Act	Misuse of Drugs Act 1971
The 1991 Act	Criminal Justice Act 1991
The 1988 Act	Criminal Justice Act 1988
The 1996 Act	Police Act 1996
The 1998 Act	Crime and Disorder Act 1998
The 2000 Act	Criminal Justice and Court Services Act 2000
The 2002 Act	Police Reform Act 2002
The 2003 Act	Sexual Offences Act 2003
The 2005 Act	The Drugs Act 2005
The 2007 Act	Offender Management Act 2007
The 2011 Act	Police Reform and Social Responsibility Act 2011

The 2014 Act	Anti-social Behaviour, Crime and Policing Act 2014
The 2022 Act	Police, Crime, Sentencing and Courts Act 2022
The 2023 Act	The Economic Crime and Corporate Transparency Act 2023
UK	United Kingdom
URL	Uniform Resource Locator
VAWG	Violence Against Women and Girls
YDO	Youth diversion order
YOT	Youth Offending Teams

Annex B - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	Yes	No	No	No	No
Clause 2	Yes	Yes	No	No	No	No	No
Clause 3	Yes	Yes	No	No	No	No	No
Clause 4	Yes	Yes	No	No	No	No	No
Clause 5	Yes	Yes	Yes	No	No	No	No
Clause 6	Yes	Yes	No	No	No	No	No
Clause 7	Yes	Yes	Yes	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 8	Yes	Yes	No	No	No	No	No
Clause 9	Yes	No	No	No	No	No	No
Clause 10	Yes	Yes	No	No	No	No	No
Clause 11	Yes	Yes	No	In part	No	In part	No
Clause 12	Yes	Yes	No	No	No	No	No
Clause 13	Yes	Yes	No	Yes	No	Yes	No
Clause 14	Yes	Yes	Yes	No	No	No	No
Clause 15	Yes	Yes	No	No	No	No	No
Clause 16	Yes	Yes	No	No	No	No	No
Clauses 17 to 31	Yes	Yes	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Clauses 32 to 34	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 35	In part	In part	No	In part	Yes	In part	Yes
Clause 36	Yes	Yes	No	No	No	No	No
Clause 37	Yes	Yes	No	No	No	Yes	Yes
Clauses 38 to 41	Yes	Yes	No	Yes	No	Yes	No
Clause 42	Yes	Yes	No	No	No	No	No
Clause 43	Yes	Yes	No	In part	No	In part	No
Clause 44	Yes	Yes	No	Yes	No	Yes	No
Clauses 45 to 54	Yes	No	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 55	Yes	Yes	No	Yes	Yes	Yes	No
Clause 56	Yes	Yes	No	No	No	No	No
Clause 57	Yes	Yes	No	No	No	No	No
Clause 58	Yes	Yes	No	No	No	No	No
Clause 59	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 60	Yes	Yes	No	In part	Yes	In part	Yes
Clause 61	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 62	No	No	No	Yes	Yes	Yes	Yes
Clause 63	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 64	Yes	Yes	No	No	No	No	No
Clause	No	No	No	No	No	Yes	Yes

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
65							
Clause 66	Yes	Yes	No	Yes	Yes	In part	Yes
Clause 67	In part	In part	No	In part	Yes	In part	Yes
Clause 68	Yes	Yes	No	Yes	Yes	Yes	Yes
Clauses 69 to 72	Yes	Yes	No	No	No	No	No
Clause 73	Yes	Yes	No	No	No	Yes	Yes
Clauses 74 and 75	Yes	Yes	Yes	No	No	Yes	Yes
Clause 76	Yes	Yes	No	No	No	No	No
Clause 77	Yes	Yes	No	No	No	No	No
Clauses 78	Yes	Yes	No	Yes	Yes	Yes	Yes

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
and 79							
Clauses 80 to 85	Yes	Yes	No	Yes	No	Yes	No
Clauses 86 to 91	Yes	Yes	No	No	No	No	No
Clause 92	Yes	Yes	No	Yes	No	Yes	No
Clause 93	Yes	Yes	No	No	No	No	No
Clause 94	Yes	Yes	No	Yes	No	Yes	No`
Clause 95	Yes	Yes	No	Yes	Yes	Yes	Yes
Clauses 96 to 100	Yes	Yes	No	No	No	No	No
Clause 101	Yes	Yes	No	No	No	No	No
Clause	In part	In	No	No	No	In part	Yes

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
102		part					
Clause 103	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 104	Yes	Yes	No	No	No	No	No
Clause 105	Yes	Yes	No	No	No	No	No
Clauses 106 to 108	Yes	Yes	No	No	No	No	No
Clause 109	Yes	Yes	No	In part	No	In part	No
Clauses 110 to 121	Yes	Yes	No	Yes	No	Yes	No
Clauses 122 to 125	Yes	Yes	No	Yes	No	Yes	No
Clause 126	No	No	No	No	No	Yes	No
Clauses 127	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
to 129							
Clause 130	Yes	Yes	No	Yes	Yes	Yes	Yes
Schedule 1	Yes	Yes	No	No	No	No	No
Schedule 2	Yes	Yes	Yes	No	No	No	No
Schedule 3	Yes	Yes	No	No	No	No	No
Schedule 4	Yes	Yes	No	No	No	No	No
Schedule 5	Yes	Yes	No	Yes	Yes	Yes	Yes
Schedule 6	Yes	Yes	No	Yes	No	Yes	No
Schedule 7	Yes	No	No	No	No	No	No
Schedule 8	Yes	Yes	No	No	No	No	No
Schedule 9	In part	In part	No	In part	Yes	In part	Yes

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Schedule 10	Yes	Yes	No	Yes	No	Yes	No
Schedule 11	Yes	Yes	No	No	No	No	No
Schedule 12	Yes	Yes	No	Yes	No	Yes	No
Schedule 13	Yes	Yes	No	No	No	No	No
Schedule 14	Yes	Yes	No	No	No	No	No
Schedule 15	No	No	No	No	No	Yes	Yes
Schedule 16	Yes	Yes	No	Yes	No	Yes	No
Schedule 17	In part	In part	No	In part	No	In part	No

Minor or consequential effects

1 The following provisions that apply to England

and Wales have effects outside England and Wales, all of which are, in the view of the Government of the UK, minor or consequential.

2 Clause 11(1) and (3) amend section 141 of the 1988 Act and section 1 of the 1959 Act respectively. Section 141 of the 1988 Act extends and applies to England and Wales, Scotland and Northern Ireland. Section 1 of the 1959 Act extends and applies to England and Wales, and Scotland. In each case, the amendments made by the Bill restate the existing law in Scotland and Northern Ireland and, as such, the amendments affect the application of the relevant provisions in England and Wales only.

Subject matter and legislative competence of devolved legislatures

3 The provisions of the Bill relate, amongst other things, to crime, public order, policing, anti-social behaviour, knives and sentencing. Subject to certain exceptions these are all matters within the legislative competence of the Scottish Parliament and Northern Ireland Assembly.

4 In relation to Scotland, the Bill includes measures which apply to Scotland and relate, wholly or partly, to the following reserved matters: defence of the realm; national

security; special powers, and other special provisions, for dealing with terrorism; import and export controls; telecommunications; and internet services.

5 In relation to Northern Ireland, the Bill includes measures which apply to Northern Ireland and relate, wholly or partly, to the following excepted or reserved matters: defence of the realm; Ministry of Defence Police; national security; special powers and other provisions for dealing with terrorism; import and export controls; telecommunications; and internet services.

6 The Bill generally deals with reserved matters in Wales, including matters relating to civil or criminal proceedings; defence; national security; crime, public order and policing; anti-social behaviour; dangerous items; telecommunications and wireless telegraphy; transport security; prisons and offender management; and criminal law.

CRIME AND POLICING BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Crime and Policing Bill as introduced in the House of Commons on 25 February 2025 (Bill 187).

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