

CRIME AND COURTS BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Crime and Courts Bill [HL] as introduced in the House of Lords on 10th May 2012. They have been prepared by the Home Office and the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.
3. A glossary of abbreviations and terms used in these Explanatory Notes is contained in Annex A of these Notes.

SUMMARY

4. The Bill is in three Parts. Part 1 establishes the National Crime Agency (“NCA”). Part 2 contains various provisions in respect of the modernisation of the courts and tribunals system. Part 3 contains provisions in relation to border control and drug driving as well as standard provisions in respect of, amongst other things, orders and regulations, commencement and extent.
5. Part 1 provides for the NCA. Clauses 1 to 4 and 8 and Schedules 1, 2 and 4 establish the Agency, set out its functions, provide for the appointment of a Director General as the operationally independent head of the NCA, and make provision for the governance of the NCA. Clause 5 and Schedule 3 provide a framework for the NCA and other law enforcement agencies to collaborate in order to assist each other in the discharge of their functions. Clause 6 places a duty on the Director General to publish certain information. Clauses 7 and 12 and Schedule 7 make provision for the disclosure of information by and to the NCA and for the use of information by the Agency. Clauses 9 and 10 and Schedule 5 provide for the powers of the Director General and other NCA officers, including by making provision to enable the Director General to give designated NCA officers some or all of the powers of a constable, a customs officer or an immigration officer. Clause 11 and Schedule 6 provide for the NCA to be inspected by Her Majesty’s Inspectors of Constabulary, and for regulations to make provision for oversight by the Independent Police Complaints Commission. Clauses 13 and

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

14 place restrictions on certain NCA officers taking industrial action and make provision for the determination of such NCA officers' pay and allowances. Clause 15 and Schedule 8 abolish the Serious Organised Crime Agency ("SOCA") and the National Policing Improvement Agency ("NPIA") and make transitional and consequential provision.

6. Part 2 contains provisions to further modernise courts and tribunals and in respect of judicial appointments. Clause 17 and Schedules 9 to 11 establish a single county court and single family court in England and Wales. Clause 18 and Schedule 12 make provision in respect of judicial appointments, including in relation to: the number of Supreme Court Judges; when a selection commission can be convened for the appointment of Supreme Court judges; taking account of diversity considerations to distinguish between candidates who are of equal merit; calculating the maximum number of judges in the Supreme Court, Court of Appeal and High Court by reference to the number of full-time equivalent judges; the composition of the Judicial Appointments Commission; the selection of commissioners and commissioners' terms of office; and the transfer of powers of the Lord Chancellor in relation to judicial appointments to the Lord Chief Justice and Senior President of Tribunals.

7. Clause 19 and Schedule 13 make provision for court judges to sit in tribunals, and for tribunal judges to sit as court judges. Clause 20 facilitates the contracting out of all functions of fines officers and makes provision for the costs of collecting fines and other financial penalties to be recovered from offenders in certain circumstances. Clause 21 provides for the sharing of information about social security, earnings and tax credit information in connection with fee-remission applications. Clause 22 allows for the filming and broadcasting of judicial proceedings in specified circumstances. Clause 23 enables provision about community sentencing to be made by regulations.

8. Part 3 contains miscellaneous and general provisions. Clause 24 removes full rights of appeal against the refusal of a family visit visa. Clause 25 removes the in-country right of appeal of persons excluded from the UK by the Secretary of State. Clause 26 and Schedule 14 make further provision in respect of the powers of immigration officers. Clause 27 and Schedule 15 create a new offence of drug driving and make further provision for the taking of preliminary tests to determine the level of drugs in a person's blood or urine.

9. Clauses 28 to 31 and Schedule 16 deal with the making of orders and regulations under the Bill and provide for the short title, commencement and extent.

BACKGROUND

Part 1: The National Crime Agency

The National Crime Agency

10. In July 2010 the Home Office set out the Government's plans for policing reform in *Policing in the 21st Century*¹, including proposals for a new National Crime Agency ("NCA") to lead the fight against serious and organised crime and strengthen border security. Further details of the Government's proposals for the creation of the NCA were announced by the Home Secretary on 8 June 2011 (House of Commons, Official Report, column 232-234). The accompanying *The National Crime Agency: A plan for the creation of a national crime-fighting capability* (Cm 8097²) set out the proposed structure of the NCA comprising four commands:

- Organised Crime Command;
- Border Policing Command;
- Economic Crime Command;
- Child Exploitation and Online Protection Centre ("CEOP").

11. The four commands would be underpinned by an intelligence hub, tasking and co-ordination arrangements and a National Cyber Crime Unit.

12. The NCA will build on the work of the Serious Organised Crime Agency ("SOCA") which was established by Part 1 of the Serious Organised Crime and Police Act 2005.

13. The establishment of the NCA is part of the Government's wider organised crime strategy, *Local to global: reducing the risk from organised crime*³, published on 28 July 2011.

14. Part 1 of the Bill provides for the establishment of the NCA and the abolition of SOCA and the National Policing Improvement Agency ("NPIA").

Abolition of National Policing Improvement Agency

15. The National Policing Improvement Agency ("NPIA") was established by section 1 of the Police and Justice Act 2006. The Agency was formed in April 2007.

16. The Home Office's plans for policing reform set out in *Policing in the 21st Century*⁴ included proposals for streamlining the national policing landscape by, amongst other things, phasing out of the NPIA. On 4 July 2011, the Home Secretary announced plans to set up a

¹ <http://www.homeoffice.gov.uk/publications/consultations/policing-21st-century/policing-21st-full-pdf>

² <http://www.homeoffice.gov.uk/publications/crime/nca-creation-plan>

³ <http://www.homeoffice.gov.uk/publications/crime/organised-crime-strategy>

⁴ <http://www.homeoffice.gov.uk/publications/consultations/policing-21st-century/policing-21st-full-pdf?view=Binary>

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

police information and communications technology company⁵ which would take on certain functions of the NPIA. In written statements on 15 December 2011 (House of Commons, Official Report, column 125WS-127WS) and 26 March 2012 (House of Commons, Official Report, column 94WS-95WS), the Home Secretary set out further proposals. Clause 15(2) of the Bill provides for the abolition of the NPIA. The statutory duty conferred on the NPIA by section 3 of the Proceeds of Crime Act 2002 to provide a system for the training, monitoring, accreditation and withdrawal of accreditation of financial investigators will move to the NCA as provided for in paragraph 98 of Schedule 8.

Part 2: Courts and Justice

Clause 17: Civil and family proceeding in England and Wales Single County Court for England and Wales

17. County courts are constituted under the County Courts Act 1984. There are approximately 170 county courts in England and Wales, prescribed by article 6 of and Schedule 3 to the Civil Courts Order 1983⁶, as amended. Each county court has a separate legal identity and serves a defined geographical area. Certain civil matters, for example in respect of proceedings in contract and tort or actions for the recovery of land, can be dealt with by all county courts, whereas other civil cases, for example family proceedings, certain contested probate actions and bankruptcy claims, are handled by designated county courts.

18. In January 2008, the Judicial Executive Board commissioned Sir Henry Brooke to conduct an inquiry into the question of civil court unification. He published his report⁷, entitled *Should the Civil Courts be Unified?*, in August 2008. In the report, Sir Henry recommended that consideration should be given to whether the county courts should become a single national court.

19. In March 2011, the Ministry of Justice subsequently published a consultation document (Consultation Paper CP6/2011) entitled *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system*⁸. The consultation paper, which was aimed at reforming the civil justice system in England and Wales, sought views on whether a single county court should be established. On 9 February 2012, accompanied by a written ministerial statement (House of Commons, Official Report, column 53WS)⁹, the Government published its response to the consultation (CM 8274)¹⁰, announcing its intention

⁵ <http://www.homeoffice.gov.uk/media-centre/speeches/acpo-summer?version=1>

⁶ S.I. 1983/713

⁷ *Should the Civil Courts be Unified?* Sir Henry Brooke, Judicial Office 2008, which is available at:

<http://www.judiciary.gov.uk/publications-and-reports/reports/civil/civil-courts-unification>

⁸ <http://www.justice.gov.uk/downloads/consultations/solving-disputes-county-courts.pdf>

⁹ <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/chan264.pdf>

¹⁰ https://consult.justice.gov.uk/digital-communications/county_court_disputes/results/solving-disputes-in-cc-response.pdf

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

to implement its proposals for the establishment of a single county court. Clause 17 of the Bill implements those proposals.

Single family court for England and Wales

20. Family proceedings are currently heard at first instance in the magistrates' courts (family proceedings courts), the county courts and the High Court. While the Family Procedure Rules 2010¹¹ largely govern the practices and procedures of all courts dealing with family proceedings, each court's family jurisdiction is constituted and governed by a variety of different statutes. For example section 33(1) of the Matrimonial and Family Proceedings Act 1984 allows the Lord Chancellor to designate certain county courts as "divorce county courts", which have jurisdiction to hear and determine any matrimonial matters.

21. In March 2010, the Family Justice Review Panel, chaired by David Norgrove and commissioned by the Ministry of Justice, the Department for Education, and the Welsh Government, began their review of the family justice system in England and Wales. In November 2011 the Family Justice Review Panel published their final report *Family Justice Review – Final Report*¹² in which they recommended a single family court, with a single point of entry, which should replace the current three tiers of court. Prior to publication of the Panel's final report the Government consulted on the Panel's interim report and recommendation *Family Justice Review – Interim Report*¹³. An analysis of consultation responses was integrated into the Panel's final report; however, in summary the majority of respondents to the consultation (75%) agreed that a single family court should be created.

22. A written ministerial statement on 6 February 2012 (House of Commons, Official Report, column WS3) announced the publication of the Government's response to that Panel's final report (CM 8273)¹⁴. The response noted "*we [the Government] will establish a single Family Court for England and Wales, with a single point of entry, as the Review recommended*". Clause 17(3) of the Bill gives effect to this.

Clause 18: Judicial appointments

23. The Constitutional Reform Act 2005 ("the CRA") made a number of substantial changes to the process for selecting and appointing various judicial office holders within the United Kingdom. Part 4 of the CRA, which established the Judicial Appointments Commission, now governs the selection and appointment process for appointing judicial office holders to the courts in England and Wales, together with appointments to specified tribunals in the United Kingdom. A Supreme Court of the United Kingdom was also established by section 23 of the CRA. A separate process for selecting and appointing the President, Deputy President and Justices of the UK Supreme Court is governed by Part 3 of the CRA.

¹¹ S.I. 2010/2955

¹² <http://www.justice.gov.uk/downloads/publications/moj/2011/family-justice-review-final-report.pdf>

¹³ <http://www.justice.gov.uk/downloads/publications/moj/2011/family-justice-review-interim-rep.pdf>

¹⁴ <https://www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf>

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

24. In November 2011, the Ministry of Justice published a consultation document entitled *Appointments and Diversity: A Judiciary for the 21st Century* (CP19/2011)¹⁵. The consultation sought views on legislative changes to achieve the proper balance between executive, judicial and independent responsibilities and to improve clarity, transparency and openness in the judicial appointments process. In addition the consultation also sought views on creating a more diverse judiciary that is reflective of society. The Government published its response to the consultation on 11 May 2012. Clause 18 of, and Schedule 12 to, the Bill are intended to give effect to the aims outlined above.

Clause 19: Deployment of the judiciary

25. The deployment of the judiciary is a function referred to in the CRA and the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”). Section 7 of the CRA includes in the list of the Lord Chief Justice’s responsibilities as President of the Courts of England and Wales, the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales. Part 2 of Schedule 4 to the 2007 Act provides that the Senior President of the Tribunals has the function of assigning judges and members to the chambers of the First-tier Tribunal and Upper Tribunal.

26. The establishment of Her Majesty’s Courts and Tribunals Service (“HMCTS”) on 1 April 2011 was designed to provide the Ministry of Justice with the opportunity to manage its resources more flexibly according to changing pressures and demands. However, the Lord Chief Justice and Senior President of Tribunals lack the ability to share judicial resource in order to respond to changes in demands. Clause 19 introduces Schedule 12 which makes amendments that will enable the Lord Chief Justice to deploy judges more flexibly across different courts and tribunals of equivalent or lower status.

Clause 20: Payment of fines and other sums

27. In England and Wales the Lord Chancellor by virtue of section 36 of the Courts Act 2003 (“the 2003 Act”) may appoint fines officers for the purpose of managing the collection and enforcement of court fines. Fines officers play a crucial role in the operation of the fine collection scheme detailed in Schedule 5 to the 2003 Act. For example, the role of a fines officer includes chasing payment via texts or letters, and issuing notification to the Department for Work and Pensions for benefit deductions in the event of non-payment of a court fine in certain cases.

28. In 2008 HMCTS launched the Criminal Compliance and Enforcement Blueprint. The fundamental principle of this strategy was to ensure criminal financial penalties imposed by the court were complied with earlier and reduce the use of costly enforcement actions such as issuing a warrant of distress. The costs of collection incurred by HMCTS while attempting the recovery of financial penalties are currently funded via the public purse.

¹⁵ <http://www.justice.gov.uk/downloads/consultations/judicial-appointments-consultation-1911.pdf>

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

29. To support the implementation of the above strategy and increase the incentive for early compliance, clause 20 of the Bill will enable the imposition and recovery of a charge imposed on offenders for the costs of collecting or pursuing financial penalties and clarifies the role of the fines officer.

Clause 21: Disclosure of information for calculating fees of courts, tribunals etc

30. In line with chapter 6 ‘Fees, Charges and Levies’ of HM Treasury’s *Managing Public Money*¹⁶, HMCTS, the UK Supreme Court (“UKSC”) and the Public Guardian charge fees for the services they provide. To help individuals of limited financial means to gain access to these services, HMCTS, the UKSC and the Public Guardian operate fee remission systems for their users. For example the Civil Proceedings Fees Order 2008¹⁷, sets out the fees payable in civil proceedings (Schedule 1) and the accompanying remission system for those fees (Schedule 2).

31. Currently, to qualify for certain fee remissions an individual must supply HMCTS, the UKSC or the Public Guardian with a completed application form and up-to-date hard copy proof of state benefit entitlement, issued by either the Department for Work and Pensions (“DWP”) or Her Majesty’s Revenue and Customs (“HMRC”) confirming which benefit they receive. Failure to provide evidence can result in the application being refused.

32. To streamline the fee remission process and ensure that it remains compatible with the reforms to the state benefit system provided for in the Welfare Reform Act 2012, clause 21 allows HMCTS, the UKSC and the Public Guardian to obtain certain information from the DWP, HMRC or a Northern Ireland Department in order to determine whether an individual qualifies for a fee remission. The Government intends that ultimately the information will, in most cases, be disclosed via a shared IT database. This data gateway therefore removes the need for an individual to supply a hard copy of their benefit entitlement notice in order to satisfy their entitlement for certain fee remissions.

Clause 22: Enabling the making, and use, of films and other recordings of proceedings

33. In England and Wales, the recording and broadcasting of the proceedings of a court or tribunal is prohibited by section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981. It is an offence to breach section 41 of the Criminal Justice Act 1925 and it is a contempt of court to breach section 9 of the Contempt of Court Act 1981. By virtue of section 47 of Constitutional Reform Act 2005, the Supreme Court of the United Kingdom is exempt from the prohibition in the Criminal Justice Act 1925 and proceedings are routinely recorded and broadcast.

34. The Lord Chancellor and Secretary of State for Justice made a written ministerial statement (House of Commons, Official Report, column 17WS and 18WS) on 6 September 2011 stating his intention to allow, in limited circumstances and with certain safeguards, the

¹⁶ http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm

¹⁷ S.I. 2008/1053

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

recording and broadcasting of certain aspects of court proceedings. Clause 22 provides the Lord Chancellor with powers to bring forward secondary legislation, with the consent of the Lord Chief Justice, to give effect to this.

Clause 23: Community and other non-custodial sentencing of adults

35. On 27 March 2012, the Ministry of Justice published a consultation on community sentencing entitled *Punishment and Reform: Effective Community Sentences* (Cm 8334).¹⁸ The consultation seeks views on a set of proposed reforms to the way sentences served in the community operate in England and Wales. The consultation is scheduled to conclude on 22 June 2012.

36. Given the timing of the consultation clause 23 is designed as a placeholder to allow the Secretary of State for Justice to bring forward amendments in the light of responses to the consultation.

Part 3: Miscellaneous and General

Clause 24: Appeals against refusal of entry clearance to visit the UK

37. Under section 90 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) individuals who submit an application to visit the UK for the purpose of visiting a qualifying family member have a full appeal right against a refusal to grant entry clearance. A qualifying family member for these purposes is defined in the Immigration Appeals (Family Visitor) Regulations 2003¹⁹ and includes, for example, the applicant’s spouse, father, mother, son and daughter. Section 4 of the Immigration, Asylum and Nationality Act 2006 inserts a new section 88A and sections 90 and 91. However, section 4 has been commenced to apply only in relation to points based system applications, which means that section 90 continues in force for other applications.

38. In July 2011, the Home Office published a consultation document entitled “Family Migration: A Consultation”²⁰. The consultation sought views on a wide range of family migration proposals, including whether the full right of appeal for family visitors should be retained. A full response to the consultation will be published in due course. As regards full appeal rights for family visitors it is proposed first to restrict (by narrowing the definition of “qualifying family member” and introducing a sponsor status requirement) and then to remove the full right of appeal. Applicants will continue to be able to appeal on European Convention on Human Rights (“ECHR”) and race discrimination grounds. The first stage will be implemented through regulations made under section 88A of the 2002 Act, which will be

¹⁸ https://consult.justice.gov.uk/digital-communications/effective-community-services-1/supporting_documents/effectivecommunitysentences.pdf

¹⁹ S.I. 2003/518

²⁰ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary>

further commenced for this purpose; clause 24 of the Bill gives effect to the second stage of these proposals.

Clause 25: Restriction on right of appeal from within the United Kingdom

39. The power to exclude a foreign national from the UK is a prerogative power and the decision to do so must be made personally by the Secretary of State (normally the Home Secretary). The Secretary of State will take such a decision if information presented to her leads her to conclude that the exclusion of a person from the UK would be conducive to the public good. The exclusion decision itself is a direction, provided to officials, requiring a mandatory refusal of all applications for entry clearance or entry to the UK courtesy of paragraph 320(6) of the Immigration Rules²¹.

40. In March 2011 the Court of Appeal in the case of *Secretary of State for the Home Department v MK (Tunisia)* [2011] EWCA Civ 333 upheld the decision of Mr Justice Collins in the High Court that, despite being subject to an exclusion order, the claimant had an in country right of appeal against the decision of the Secretary of State to cancel his leave to enter under article 13(7)(a) of the Immigration (Leave to Enter and Remain) Order 2000²². The claimant had originally been granted refugee status and indefinite leave to enter the UK in 2001. The claimant had no right of appeal against the exclusion decision itself, but he did have a right of appeal under section 82(2)(e) of the 2002 Act, which gives a statutory right of appeal against a variation of a person's leave to enter or remain in the UK if, when the variation takes effect, the person has no leave to remain. Under section 92(2) of the 2002 Act, this was an in country right of appeal, and under section 3D of the Immigration Act 1971 ("the 1971 Act"), a person has continuing leave while an appeal could be brought under section 82(1) of the 2002 Act. The Court of Appeal found that section 3D of the 1971 Act did not provide a power to exclude a person from entering the UK to exercise an in country right of appeal, and that the claimant had a right to return to the UK from abroad to exercise that right.

41. To ensure exclusion decisions remain effective, clause 25 removes the in country right of appeal against the decision of a Secretary of State to cancel an individual's leave to enter or remain in the United Kingdom where the Secretary of State has decided to exclude that individual from the United Kingdom on the grounds that the individual's presence in the United Kingdom would not be conducive to the public good.

Clause 27: Drugs and Driving

42. The Misuse of Drugs Act 1971 ("MD Act") prohibits the production, import, export, possession and supply of "controlled drugs" (subject to regulations made under the MD Act). The definition of the term controlled drugs is set out in section 2 of the MD Act. However, it is not an offence under the MD Act to have a controlled drug in your body. Supplementing

²¹ <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

²² S.I. 2000/1161

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

the above, section 4 of the Road Traffic Act 1988 (“the 1988 Act”) makes it a criminal offence to drive, or be in charge of, a mechanically propelled vehicle when under the influence of drink or drugs. The difficulties involved in proving impairment due to drugs means that section 4 of the 1988 Act is not often used in drug driving cases. While section 5 of the 1988 Act makes it a separate offence to drive or be in charge of a motor vehicle with an alcohol concentration above the prescribed limit, no similar offence exists for drugs.

43. In December 2009, Sir Peter North CBE QC was appointed by the then Secretary of State for Transport, to conduct an independent review of the law on drink driving and drug driving. Sir Peter North CBE QC’s *Report of the Review of Drink and Drug Driving Law*²³ was published in June 2010 and made a variety of recommendations in regards to drink and drug driving, including that further consideration should be given to introducing a new specific offence of driving or being in charge of a motor vehicle with a concentration of a controlled drug above a specified limit. Following Sir Peter North CBE QC’s report the Transport Select Committee published, in December 2010, a report on drink and drug driving law (HC 460)²⁴. The Committee favoured the adoption of a “zero-tolerance” offence for illegal drugs which are known to impair driving.

44. The Secretary of State for Transport made a written ministerial statement on 21 March 2011 (House of Commons, Official Report, column 44WS to 46WS) which announced the publication of the Government’s response to the reports by Sir Peter North CBE QC and the Transport Select Committee on Drink and Drug Driving (CM 8050)²⁵. The response endorsed Sir Peter North CBE QC’s recommendation that the case for a new offence relating to drug-driving should be examined further. Clause 27 of the Bill provides for such an offence.

TERRITORIAL EXTENT AND APPLICATION

45. With the exception of certain provisions in Part 2 which extend to England and Wales only and clause 27 and Schedule 15 (drugs and driving) which extend to Great Britain, the Bill extends to the whole of the United Kingdom. In relation to Wales the provisions relate to non-devolved matters. In relation to Scotland and Northern Ireland the Bill addresses both devolved and non-devolved matters.

46. The following provisions in the Bill which extend to Scotland relate to matters which are reserved or otherwise not within the legislative competence of the Scottish Parliament:

- The amendments to the Constitutional Reform Act 2005 providing for a maximum full-time equivalent number of Supreme Court judges rather than a fixed number (clause 18 and Part 1 of Schedule 12);

²³[http://webarchive.nationalarchives.gov.uk/20100921035225/http://northreview.independent.gov.uk/docs/North Review-Report.pdf](http://webarchive.nationalarchives.gov.uk/20100921035225/http://northreview.independent.gov.uk/docs/North%20Review-Report.pdf)

²⁴<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/460/460.pdf>

²⁵<http://www.official-documents.gov.uk/document/cm80/8050/8050.pdf>

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

- The amendments to the Constitutional Reform Act 2005 in respect of the procedure for judicial appointments (clause 18 and Part 4 of Schedule 12);
- The provisions in respect of the flexible deployment of judges and members of tribunals (clause 19 and Schedule 13);
- The creation of an information gateway (clause 21);
- The removal of appeal rights in respect of applicants for family visit visas (clause 24);
- The removal of the in-country right of appeal in exclusion cases (clause 25);
- The extension of the enforcement powers of immigration officers (clause 26 and Schedule 14);
- The creation of a specific offence of drug driving (clause 27 and Schedule 15); and
- Consequential amendments of references to the courts of England and Wales (Schedules 9 to 11).

47. In addition, the provisions in Part 1 of the Bill relate to a mix of reserved and devolved matters. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. Insofar as the provisions in the Bill relate to devolved matters or confer functions on the Scottish Ministers, the Scottish Government has confirmed that it will seek the necessary legislative consent motion. If there are amendments relating to devolved matters which further trigger a requirement for a legislative consent motion, the consent of the Scottish Parliament will be sought for them.

48. In relation to Wales, apart from consequential amendments and the acknowledgements (in clause 17) that Acts of the National Assembly for Wales may already be able to confer jurisdiction on courts, the provisions of the Bill do not relate to devolved matters or confer functions on the Welsh Ministers. If amendments are made to the Bill that trigger a requirement for a legislative consent motion, the consent of the National Assembly for Wales will be sought for them.

49. The provisions of the Bill relating to the following excepted or reserved matters also extend to Northern Ireland:

- The amendments to the Constitutional Reform Act 2005 providing for a maximum full-time equivalent number of Supreme Court judges rather than a fixed number (clause 18 and Part 1 of Schedule 12);

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

- The amendments to the Constitutional Reform Act 2005 in respect of the procedure for judicial appointments (clause 18 and Part 4 of Schedule 12);
- The provisions in respect of the flexible deployment of judges and members of Tribunals (clause 19 and Schedule 13);
- The creation of an information gateway (clause 21);
- The removal of appeal rights in respect of applicants for family visit visas (clause 24);
- The removal of the in-country right of appeal in exclusion cases (clause 25); and
- The extension of the enforcement powers of immigration officers (clause 26 and Schedule 14).

50. In addition, the provisions in Part 1 of the Bill relate to a mix of excepted or reserved and transferred matters. Insofar as these provisions relate to transferred matters, the Northern Ireland Administration has confirmed that it will seek the necessary legislative consent motion. If amendments are made to the Bill that further trigger a requirement for a legislative consent motion, the consent of the Northern Ireland Assembly will be sought from them.

COMMENTARY ON CLAUSES

Part 1: The National Crime Agency

Clause 1: The National Crime Agency

51. *Subsection (1)* establishes the National Crime Agency (“NCA”) which will be made up of NCA officers. *Subsection (2)* provides for the NCA to be headed by a Director General who will also be an NCA officer. The NCA will be under the direction and control of the Director General who will be operationally independent of Ministers.

52. *Subsections (3) to (11)* provide for the functions of the NCA. These consist of the functions conferred by this clause (*subsection (3)(a)*), the functions set out in the Proceeds of Crime Act 2002 (*subsection (3)(b)*) and other functions conferred by this Bill and by other enactments (*subsection (3)(c)*). Those other functions will include, for example, being a protection provider for the purpose of the protection of witnesses and other persons under section 82 Part 2 of the Serious Organised Crime and Police Act 2005.

53. The NCA’s principal functions will be the crime reduction function (*subsection (4)*) and the criminal intelligence function (*subsection (5)*).

54. The crime reduction function relates to securing efficient and effective activities to combat organised crime and serious crime (whether by the NCA, other law enforcement

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

agencies, or other persons). *Subsections (6) to (10)* amplify the nature of this function and how it may, or may not, be discharged. In discharging this function, the NCA may itself undertake activities to combat serious crime and organised crime, including by preventing, detecting or investigating such crime, or otherwise. *Subsection (11)* explains the reference to ‘activities to combat crime’. When discharging functions relating to organised or serious crime, the NCA may carry out activities in relation to any kind of crime (paragraph 5 of Schedule 1). This reflects the role of the NCA in the reduction of crime in other ways (*subsection (11)(c)*) and mitigating the consequences of crime (*subsection (11)(d)*). This acknowledges that the investigation and prosecution of organised criminals is only one of the strategies that may be deployed to tackle organised criminality and that there are a range of disruption tactics that will need to be deployed by the NCA in order to reduce the harm and impact caused by organised criminal groups. In addition to undertaking activities of its own, the NCA may discharge this function by ensuring that other law enforcement agencies and others also carry out activities to combat serious and organised crime (*subsection (8)*). The NCA will also discharge its crime-reduction function by improving co-operation between law enforcement and other agencies to combat serious crime or organised crime and by improving co-ordination of their collective efforts to combat serious crime or organised crime (*subsection (9)*).

55. In addition to undertaking activities of its own, the NCA may discharge its crime-reduction function in other ways by: ensuring that other law enforcement agencies and others also carry out activities to combat serious and organised crime (*subsection (8)*); and by improving co-operation between law enforcement and other agencies to combat serious crime and organised crime and by improving co-ordination of their collective efforts to combat serious crime and organised crime (*subsection (9)*).

56. The role of the NCA in tackling serious crime and organised crime does not include the function of the NCA itself prosecuting offences or, in Scotland, the NCA itself instituting criminal proceedings (*subsection (10)*). In England and Wales the prosecutorial function will be undertaken by the Crown Prosecution Service and the Serious Fraud Office and in Northern Ireland the prosecutorial function will be undertaken by the Public Prosecution Service, whilst in Scotland responsibility for instituting criminal proceedings and prosecuting offences rests with the Crown Office and Procurator Fiscal Service.

57. *Subsection (12)* gives effect to Schedule 1.

Schedule 1: The NCA & NCA Officers

58. *Paragraph 1* provides that the NCA will carry out its functions on behalf of the Crown. In form, the NCA will be a crown body without incorporation. The NCA will be classified as a Non-Ministerial Department.

59. *Paragraph 2* places a duty on the Director General to secure that NCA functions are discharged efficiently and effectively.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

60. *Paragraph 3* identifies the financial year of the NCA and includes a transitional provision whereby the first financial year of the Agency begins on the day that the NCA is formally established (by virtue of the commencement of clause 1) and ends on the following 31 March.

61. *Paragraph 4* provides that the NCA will be able to charge for any service it provides to a person at their request.

62. *Paragraph 5* provides that for the purposes of the discharge of NCA functions which relate to organised or serious crime, the NCA may carry on activities in relation to any kind of crime (*subsection (1)*). This enables the NCA to tackle other crimes that are not serious and/or organised where the outcome will support the disruption or other mitigation of an organised crime group or another serious and/or organised crime. *Subsection (2)* provides that an NCA officer designated with operational powers is not prevented from exercising their powers in relation to a crime that is not serious or organised where they reasonably suspect that an offence is about to be or is being committed.

63. *Paragraph 6* preserves the role of the Lord Advocate in respect of the investigation and prosecution of crime in Scotland. The NCA may only carry out its activities in relation to an offence which it suspects has been committed (or is being committed) in Scotland, if it does so with the agreement of the Lord Advocate (*subsection (1)*). In carrying out such activities in Scotland an NCA officer must comply with any directions from the Lord Advocate or the procurator fiscal (*subsection (2)*). And if an NCA officer suspects an offence has been committed or is being committed in Scotland the NCA officer must notify the procurator fiscal as soon as is practicable (*subsection (3)*).

64. *Paragraph 7* provides for the selection and appointment of the Director General. The Director General is to be appointed by the Secretary of State (in practice, the Home Secretary) following consultation with Scottish Ministers and the Department of Justice in Northern Ireland. The terms and conditions of appointment are to be determined by the Secretary of State, save that *sub-paragraph (6)* provides for a maximum term of up to five years (there is no bar on re-appointment). The provisions in sections 10 to 14 of the Constitutional Reform and Governance Act, which governs the appointment of civil servants, will not apply to this appointment (*sub-paragraph (7)*). Appointment will be on merit and the process will comply with the Code of Practice on Public Appointments as set out by the Commissioner for Public Appointments.

65. *Paragraph 8* provides that the Home Secretary may require the Director General to retire or resign in the interests of efficiency or effectiveness, or by reason of any misconduct. Before calling upon the Director General to retire or resign, the Home Secretary must: write to the Director General setting out his or her reasons for so doing; give the Director General the opportunity to make written representations; and consider any such representations made by the Director General. The Home Secretary must also consult Scottish Ministers and the Department of Justice in Northern Ireland.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

66. *Paragraph 9* provides that the Director General is responsible for the selection and appointment of other NCA officers and determining their terms and conditions (with the agreement of the Minister for Civil Service), in accordance with the Civil Service Management Code and any other Civil Service policy set by the Minister for the Civil Service.

67. *Paragraph 10* provides that the Director General may delegate his or her functions to a designated senior NCA officer. A designation may extend to one or more senior NCA officers. A senior officer means an NCA officer who is at, or above, a grade specified for this purpose by the Home Secretary in the framework document. The power to delegate is subject to any restriction or limitation on the exercise of the function, for example, the Director General's functions in respect of directed tasking under clause 5.

68. *Paragraph 11* ensures that the role and responsibilities of the Director General will not be affected by a change in the individual holding the office of Director General. Additionally, it provides that any NCA officer may take up the role and/or responsibilities of any other NCA officer except the Director General.

69. *Paragraph 12* provides that where a person already holds an office with operational powers on becoming an NCA officer – such as the office of constable, officer of Revenue and Customs, or immigration officer – that office is suspended whilst that person remains an NCA officer. The office held is revived once the person ceases to be an NCA officer and returns to his or her previous service. These provisions cease to apply to a person who resigns from or ceases to hold their original office. The effect of the suspension provided for in paragraph 11 is that a person is not bound by their office whilst serving as an NCA officer. The only exception is the office of special constable, which a person may continue to hold without suspension while serving as an NCA officer.

70. *Paragraph 13* provides for secondments/attachments to the NCA and establishes that individuals seconded into or attached to the NCA from other organisations will be NCA officers. It further provides that police officers on secondment or attachment to the NCA will be under the direction and control of the Director General.

71. *Paragraph 14* provides for the NCA to be able to draw on the expertise and contribution of volunteer officers. *Sub-paragraphs (1)-(3)* provide for the Director General to select such persons for appointment on an unpaid and part-time basis, and for them to be known as “NCA specials”. The terms and conditions for the appointment are to be determined by the Director General. *Sub-paragraph (4)* provides that the unpaid nature of NCA specials does not prevent the reimbursement of expenses incurred; or the provision of subsistence, accommodation or training; or a payment to compensate for loss of salary attributable to injury or death resulting from their activity as an NCA special. *Sub-paragraph (5)* provides that the Director General may designate an NCA special with the powers and privileges of a constable, but not the powers of a customs officer or immigration officer. *Sub-paragraph (6)* provides that an NCA special can only be designated with the powers and

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

privileges of a constable in England and Wales and the adjacent United Kingdom waters, and not in Scotland, Northern Ireland or overseas. *Sub-paragraphs (7) and (8)* exclude NCA specials from some provisions applying to other NCA officers. *Sub-paragraphs (9) and (10)* also exclude NCA specials from the effects of Clauses 13 and 14 relating to restrictions on the right to strike in relation to NCA officers holding operational powers. *Sub-paragraph (11)* provides for the suspension of the powers of an NCA special whenever that person acts as special constable. The effect of this provision is to ensure a person is not able to use the powers of an NCA special when he acts as a special constable. *Sub-paragraph (12)* provides that a person is not a civil servant by virtue of being an NCA special.

Clause 2: Modifications of NCA functions

72. This clause enables the Secretary of State, by order (subject to the super-affirmative procedure (*subsection (5)*), to make further provision about NCA counter-terrorism functions. By virtue of *subsection (1)(a)* the power may be used to add, remove or otherwise modify such functions. By virtue of *subsection (1)(b)* any order may contain other provisions in connection with, or consequential upon, the altering of NCA functions.

73. *Subsection (2)* provides that if an order is made under *subsection (1)* an NCA officer may only carry out activities in Northern Ireland in relation to the discharge of a function in relation to counter-terrorism with the prior agreement of the Chief Constable of the Police Service of Northern Ireland.

Clause 3: Strategic priorities

74. This clause gives the Home Secretary power to determine strategic priorities for the NCA. Such priorities may, for example, include protecting the public against illegal drugs, human trafficking and cyber crime. These ‘strategic priorities’ are to be set in consultation with “the strategic partners” (who are defined in clause 16), the Director General, and anyone else the Home Secretary considers appropriate.

Clause 4: Operations

75. This clause enshrines the operational independence of the Director General and determines how this relates to the strategic direction set by the Home Secretary. The Home Secretary will set the strategic priorities of the NCA, and will issue a framework document for the NCA (see further below). As part of the annual plan, the Director General will explain how he or she intends that the strategic and operational priorities will be given effect to. It will be for the Director General to determine which operations to mount and how they will be conducted (*subsection (1)*). The Director General must have regard to the strategic priorities, annual plan and framework document in exercising his or her functions (*subsection (2)*).

76. *Subsections (3) to (9)* make provision in respect of the annual plan. They provide that at the beginning of each financial year, the Director General must publish an annual plan setting out how the Director General intends that NCA functions are to be exercised for that year. The plan must include any strategic and operational priorities (operational priorities must be consistent with the current strategic priorities), and explain how the Director General

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

intends to deliver against both sets of priorities (*subsection (4)*). In developing the annual plan, the Director General must consult the “strategic partners” (defined in clause 16) and anyone else he or she considers appropriate (*subsection (6)*). The duty to consult and approve the plan with Scottish Ministers and the Department of Justice in Northern Ireland, as two of the strategic partners, only applies in so far as the plan relates to activities in Scotland and Northern Ireland respectively (*subsections (7) and (8)*). The Home Secretary must approve the annual plan before it is issued by the Director General (*subsection (8)*).

77. *Subsection (10)* gives effect to Schedule 2.

Schedule 2: The framework document and annual report

78. Part 1 of Schedule 2 makes provision in respect of the NCA framework document. The framework document will be in effect a joint statement of how the Home Secretary and Director General propose to work together, and how they wish the NCA to operate.

79. *Paragraph 1* provides that the framework document will set out the ways in which the NCA is to operate. In particular it will set out the ways in which NCA functions are to be exercised and the ways in which the NCA is to be administered, for example, the governance and accountability of the Agency including the respective roles of the Home Secretary and Director General; the arrangements in respect of financial, human resource and performance management; and the proactive disclosure of information.

80. *Paragraph 2* places a duty on the Secretary of State to issue the framework document and keep it under review and revise it as and when appropriate.

81. *Paragraph 3* provides that the Home Secretary must have regard to the framework document in exercising functions in relation to the NCA. Similarly clause 4(2) provides that the Director General must have regard to the framework document when exercising his or her functions.

82. *Paragraph 4* requires that the Home Secretary must consult and obtain the approval of the Director General before issuing any framework document. *Paragraph 5* requires the Secretary of State to consult Scottish Ministers and the Department of Justice in Northern Ireland in preparing the first framework document or in the Home Secretary’s view any significant revision thereof.

83. *Paragraph 6* requires the Secretary of State to lay the framework document (and any subsequent revisions) before Parliament and arrange for it to be published in the manner which the Home Secretary considers appropriate. The Scottish Ministers and the Department of Justice in Northern Ireland are required to lay a copy of the report before the Scottish Parliament and the Northern Ireland Assembly respectively.

84. Part 2 of Schedule 2 makes provision in respect of the NCA annual report.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

85. *Paragraph 7* places a duty on the Director General to issue an annual report on the exercise of the NCA functions during that year which must include an assessment of the extent to which the annual plan has been carried out.

86. *Paragraph 8* requires the Director General to arrange publication of the annual report in a manner which he or she considers appropriate but the Director General must send a copy of it to the strategic partners and the Secretary of State. The Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland are required to lay a copy of the report before Parliament, the Scottish Parliament and the Northern Ireland Assembly respectively.

Clause 5: Relationships between NCA and other agencies: tasking etc

87. *Subsections (1) to (4)* provide for ‘voluntary’ arrangements to perform a task. Subsection (1) enables the Director General to request a UK police force or a UK law enforcement agency to perform a task if the Director General considers that performance of the task would assist the NCA to exercise functions and explains how performance of the task would assist the exercise of functions (subsections (1) and (2)).

88. Similar provisions are made for UK police forces and UK law enforcement agencies to request the NCA to perform a task (subsections (3) and (4)).

89. *Subsections (5) to (9)* provide for ‘directed’ arrangements to perform a task. In certain limited and specified circumstances (see below) the Director General may direct the chief officer of an England and Wales police force or the Chief Constable of the British Transport Police to perform a task specified in a direction where the performance of the task would assist the NCA to exercise functions; it is expedient for the directed person to perform that task; and voluntary arrangements cannot be made or made in time (subsections (5) and (6)). The directed person must comply with the direction (subsection (9)). Directions to the Chief Constable of the British Transport Police will require prior consent from the relevant Secretary of State (subsection (9)). Schedule 3 (NCA relations with other agencies) has effect (subsection 10). Arrangements in respect of the apportionment of costs, in accordance with Schedule 3 Part 5, are applied to these voluntary and directed tasking arrangements (subsection 11). This section may be amended by Order (subject to the affirmative resolution procedure), by which the Secretary of State may amend the list of partners subject to directed tasking and the persons for whom the DG of the NCA is required to seek consent. This is detailed in Schedule 3 paragraph 30 (subsection 12).

Schedule 3: Relationships between NCA and other agencies

Part 1: Co-operation

90. *Paragraph 1* places a duty on NCA officers to co-operate with specified persons in order to assist them in their activities to combat crime. It also places a reciprocal duty on members of the armed forces, coastguard and those specified persons to co-operate with NCA officers in the discharge of NCA functions.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

91. *Paragraph 2* enables the NCA to enter into co-operation arrangements with other persons for the purposes of discharging any of its functions, such as Police Collaboration Agreements under the Police Act 1996

Part 2: Exchange of information

92. *Paragraph 3* creates a duty on chief officers of UK police forces and the British Transport Police to keep the NCA informed about certain information and when requested to disclose that information to the NCA. *Sub-paragraph (1)* creates a duty on police forces to inform the Director General of the NCA about any information held by them which is considered by the chief officer to be relevant to the exercise by the NCA of any of its functions. This duty applies to chief officers of police forces in England and Wales, Northern Ireland and Scotland, and the British Transport Police. *Sub-paragraph (2)* creates a duty on the chief officer to then disclose that information to the NCA if the Director General makes a request for it. *Sub-paragraph (3)* provides that paragraph 3(1) does not require a chief officer to keep the Director General informed of information that appears to the chief officer to be information obtained from the NCA.

93. *Paragraph 4* imposes a duty on the Director General of the NCA to keep chief officers of UK police forces and the British Transport Police informed about certain information and is reciprocal in nature to the duty in paragraph 3(1). *Sub-paragraph (1)* creates a duty on the Director General to notify chief officers of any information that the NCA possesses which is considered by the Director General to be relevant to the exercise of a function of the chief officer or any other member of that police force. This duty applies to the Director General in respect of chief officers of police forces in England and Wales, Northern Ireland and Scotland and the British Transport Police. *Sub-paragraph (2)* provides that the duty imposed by paragraph 4(1) does not require the Director General to keep the chief officer informed of information which appears to the Director General to be information obtained from chief officer or any other member of that police force.

Part 3: Assistance within the UK

94. *Paragraph 5* allows for the NCA to provide assistance (in the form of officers and other such support) to operate under the direction and control of a UK police force, a UK law enforcement agency, an Island police force or an Island law enforcement agency if they make a specified request for assistance. If a request is made the Director General of the NCA may provide such assistance as the Director General of the NCA considers appropriate.

95. *Paragraph 6* enables a UK police force or a UK law enforcement agency to provide assistance (whether in the form of officers to operate under the direction and control of the NCA or other support) if the Director General of the NCA makes a request for assistance. The person providing the assistance may provide such assistance as they consider appropriate.

96. *Paragraph 7* enables the Home Secretary to direct the Director General of the NCA to provide specified assistance to an England and Wales police force and other listed persons if it

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

appears to the Home Secretary that it is appropriate for directed assistance to be given by the Director General of the NCA.

97. *Paragraph 8* enables the Director General of the NCA to direct a listed person in subparagraph (1) to provide specified assistance to the NCA. Such directions may only be given if the Director General of the NCA considers it appropriate for the NCA to receive directed assistance and is subject to the prior consent of the relevant minister as specified in Paragraph 8(3).

98. *Paragraphs 9 and 10* concern directed assistance to and from the NCA in relation to Scotland. These enable Scottish Ministers to direct the Director General of the NCA to provide specified assistance to the Police Service of Scotland if Scottish Ministers consider it appropriate for the Police Service of Scotland to receive directed assistance from the NCA and the Home Secretary consents. Scottish Ministers will also have the power to direct the Police Service of Scotland to provide specified assistance to the NCA if Scottish Ministers consider it appropriate for the NCA to receive directed assistance from the Police Service of Scotland.

99. *Paragraphs 11 and 12* make similar provision in relation to Northern Ireland. This enables the Department of Justice in Northern Ireland to direct the Director General of the NCA to provide specified assistance to the Police Service of Northern Ireland, if the Department of Justice in Northern Ireland considers it appropriate for the Police Service in Northern Ireland to receive such directed assistance and the Home Secretary consents. It also provides the Department of Justice in Northern Ireland with the power to direct the Police Service of Northern Ireland to provide specified assistance to the NCA, subject to the Department of Justice in Northern Ireland considering it appropriate for the NCA to receive such directed assistance and subject to consultation with the Northern Ireland Policing Board and other persons that the Department of Justice in Northern Ireland considers appropriate to consult.

100. *Paragraph 13* provides that directed assistance powers can only be used where there is a special need for assistance and where it is expedient for the directed party to provide it. It must also be the case that voluntary arrangements cannot be made, or cannot be made in time.

101. *Paragraph 14* describes the form that assistance may take, including (but not limited to) the loan of persons or equipment.

102. *Paragraph 15* provides that individuals who are provided under the assistance provisions will fall under the direction and control of the assisted person.

Part 4: Use of police facilities etc by NCA

103. It is not expected that the NCA will maintain its own custody facilities. Accordingly Part 4 of Schedule 3 enables the NCA to use premises, equipment, facilities or services of

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

police forces, and immigration and customs facilities in accordance with an agreement made between the NCA and such bodies.

104. *Paragraph 16* provides for voluntary arrangements to be made between the Director General and police and crime commissioners, or the chief constable of police forces listed in Schedule 1 to the Police Act 1996 (police forces in England and Wales outside London), for the NCA to make use of their police facilities.

105. *Paragraph 17* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the Metropolitan Police Force.

106. *Paragraph 18* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the City of London Police Force.

107. *Paragraph 19* enables the Director General to make voluntary arrangements for the NCA to use immigration or customs facilities. *Paragraph 20* enables, in the absence of a satisfactory voluntary arrangement under paragraphs 16, 17 and 18, the Secretary of State to direct the Director General and the appropriate person to make arrangements for the NCA to make use of specified facilities.

108. *Paragraph 21 and 22* enable, in the absence of a satisfactory voluntary arrangement, the Department of Justice in Northern Ireland, with the consent of the Secretary of State, to direct the Director General and the Northern Ireland Policing Board to make arrangements for the NCA to use the facilities made available by the Police Service of Northern Ireland.

109. *Paragraph 23* provides that facility-sharing arrangements must specify or describe the facilities that are the subject of such arrangements (sub-paragraph (1)), and may be varied or terminated by the parties (sub-paragraph (2)) unless it was made in compliance with a direction, in which case consent must be obtained from the person who gave the direction (sub-paragraph (3)).

110. *Paragraph 24* provides that before a person ('D') gives a direction under this Part of the Schedule to a person ('P'), D must notify P of the proposal, and consider representations from P.

111. *Paragraph 25* provides that facilities means premises, equipment and other material, facilities and services.

Part 5: Payment for tasks, assistance or facilities

112. *Paragraphs 26 to 28* make provision for the NCA, police fund holding bodies and law enforcement agencies to pay for tasks, assistance or facilities. However, the parties involved may decide that there should be no such charging.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

113. *Paragraph 29* defines the ‘appropriate amount’ that should be paid as an amount agreed by both parties or, in the absence of such agreement, an amount determined by the Secretary of State. If one of the parties is devolved, the Secretary of State must consult with the appropriate devolved body.

Part 6: General

114. *Paragraph 30* provides an order making power (subject to the affirmative resolution procedure) by which the Secretary of State may amend the list of partners subject to directed tasking and assistance arrangements (at section 5 or paragraph 8). The Secretary of State may, in particular, add or remove persons (who were added) other than the Commissioners for Her Majesty’s Revenue and Customs, the Chief Constable for the Police Service of Scotland, any person operating only in Scotland, the Chief Constable of the Police Service in Northern Ireland, and any person operating only in Northern Ireland. The Secretary of State may also amend the requirements for the Director General to seek prior consent from agencies or bodies before issuing directions. Before using this power, the Secretary of State must consult the affected person.

115. *Paragraph 31* places a duty on a person given a direction to comply with it (*sub-paragraph (1)*) and limits the extent of a direction by ensuring that it must not relate to any prosecution function (*sub-paragraph(2)*).

Clause 6: Duty to publish information

116. *Subsection (1)* places a duty on the Director General to publish information about the exercise of the NCA’s functions and other matters relating to the NCA. *Subsections (2)* and *(3)* specify that in carrying out this duty, the Director General must comply with any requirements set out in the Framework Document.

117. *Subsection (4)* provides the duty to publish information is subject to Schedule 7. This imposes limits on the information that can be published. For example, information obtained from HM Revenue and Customs can only be published with their consent.

Clause 7: Information gateways

118. Clause 7 is a broad information gateway. *Subsection (1)* authorises any person to disclose information to the NCA if the disclosure is made for the purposes of the exercise of any NCA function. This provision is subject to Schedule 7 and paragraph 1 in particular.

119. The only exception to the general power in *subsection (1)* is set out in *subsection (2)* which provides *subsection (1)* does not authorise a person serving in the Security Service, Secret Intelligence Service or GCHQ to disclose information to the NCA so any disclosure of information by such a person to the NCA would be made in accordance with the relevant intelligence service arrangements.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

120. *Subsection (3)* provides information obtained by the NCA in connection with the exercise of any NCA function may be used by the NCA in connection with the exercise of any other NCA function. For example, information obtained in the course of gathering criminal intelligence may be used in connection with NCA's crime reduction function.

121. *Subsection (4)* provides that the NCA may disclose information in connection with the exercise of any NCA function if the disclosure is for any "permitted purpose". The term "permitted purpose" is defined in clause 16(1). This would apply in situations where for example, the NCA has received information on suspected criminal activity (such as a 'Suspicious Activity Report' (SAR) – which help banks and financial institutions protect themselves and their reputation from criminals and help law enforcement to track down and arrest them) and has decided to share this information with an organisation or person outside the NCA (such as financial institution) for the purpose of preventing or detecting crime.

122. *Subsection (5)* provides that a disclosure of information in accordance with Part 1 of the Bill does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information however imposed (including any other enactment restricting disclosure of information). In practice, this provision allows the police, law enforcement agencies, banks and other financial institutions to share information with the NCA about organised crime activity, which could involve the disclosure of personal banking records. *Subsection (6)* provides this section is subject to Schedule 7.

123. *Subsection (7)* (information: restrictions on disclosure), provides for the restrictions on the disclosure of information.

Clause 8: Other functions etc

124. *Subsections (1) and (2)* add the NCA to the list of bodies subject to the duty in sections 11 (which relates to England) and 28 (which relates to Wales) of the Children Act 2004. Sections 11 and 28 of the Children Act imposes a duty on specified agencies to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children. The aim of this duty is to:

- ensure that agencies give appropriate priority to their responsibilities towards the children in their care or with whom they come into contact; and
- encourage agencies to share early concerns about safety and welfare of children and to ensure preventative action before a crisis develops.

125. This duty will be particularly relevant to the work of the NCA in tackling child sex abuse and the human trafficking of children.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

126. *Subsections (3) and (4)* provide a general power to the NCA to assist governments or other bodies exercising functions of a public nature outside the British Islands.

127. *Subsection (6)* gives effect to Schedule 4 (NCA General).

Schedule 4: NCA: general

128. *Paragraph 1* allows the Secretary of State to make regulations governing the equipment used by the NCA. *Sub-paragraph (2)* enables regulations to be made, for example, in relation to the use of specified equipment. The use of equipment may also be prohibited under the regulations. The NCA is required to comply with any conditions specified in the regulations on the use of equipment. Before making such regulations under paragraph 1, the Secretary of State must first consult the DG of the NCA and any other persons considered appropriate (*sub-paragraph (3)*).

129. Equipment under *paragraph 1* includes vehicles, headgear and protective and other clothing (*sub-paragraph (4)*).

130. Regulations made under this section are subject to the negative resolution procedure.

131. *Paragraph 2* establishes the NCA's liability in respect of unlawful conduct of any persons acting under the auspices of the NCA in the same way that an employer is liable for the unlawful conduct of employees in the course of their employment.

132. *Sub-paragraphs (2) to (4)* sets out the circumstances under which the NCA will be liable for the unlawful actions of persons carrying out functions in relation to the NCA. *Sub-paragraph (2)* sets out the NCA's liability in relation to constables or other persons carrying out functions whilst seconded to the NCA or when provided for the assistance of the NCA under Part 3 of Schedule 3. *Sub-paragraph (3)* covers the NCA's liability in relation to the conduct of a person other than an NCA officer who is a member of an NCA-led international joint investigation team, when that person is carrying out functions as a member of that team. *Sub-paragraph (4)* covers the unlawful conduct of a person carrying out surveillance under section 76A of the Regulation of Investigatory Powers Act 2000.

133. *Sub-paragraph (5)* provides that the NCA will be a joint tortfeasor when the unlawful conduct is a tort.

134. *Sub-paragraph (6)* provides that where the Secretary of State receives reimbursement through an international agreement for any sums of money paid by the NCA by virtue of paragraph 2, the Secretary of State must pay the sum to the NCA by way of reimbursement.

135. *Paragraph 3* sets out various summary offences relating to obstructing or assaulting members an international joint investigation team led by the NCA, in accordance with obligations under international agreements to which the United Kingdom is a party.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

136. *Sub-paragraph (1)* makes it an offence to assault a member of an international joint investigation team led by the NCA and who is carrying out functions as a member of that team and *sub-paragraph (3)* makes it an offence to resist or wilfully obstruct a member of that team in similar circumstances. *Sub-paragraphs (2)* and *(4)* provide for the penalties for the two offences.

137. *Paragraph (4)* is concerned with certain provisions of sex, disability, race and employment discrimination legislation in Northern Ireland and the operation of those provisions in relation to persons seconded to the NCA. *Sub-paragraph (1)* provides that a person seconded to the NCA is to be treated as an employee of the NCA for the purposes of the provisions listed under *sub-paragraph (3)*. *Sub-paragraph (3)* provides that for the purposes of *sub-paragraph (4)* the NCA is to be treated as the employer of a persons seconded to the NCA.

138. *Paragraph 5* sets out and defines the various terms that have been used in the Schedule.

Clause 9: Director General: customs powers of Commissioners & operational powers

139. This clause provides the Director General with the same powers of the Commissioners of HM Revenue and Customs in relation to any customs matter (*subsection (1)*) and also provides for the Secretary of State to designate the Director General to hold operational powers (*subsection (2)*) (these include one or more of the powers and privileges of a constable; a customs officer; or an immigration officer). *Subsection (5)* provides the mechanism by which such powers are to be conferred on the Director General (set out in detail in *Part 2 of Schedule 5*). *Subsection (6)* provides that the Secretary of State may only exercise the powers of designation if certain conditions are met i.e. that he/she is required to do so under *subsection (5)* or that he/she is required or otherwise authorised to do so by regulations under *paragraph 4 of Schedule 5*. *Subsection (3)* provides that the Home Secretary may modify or withdraw a designation provided under *subsection (2)*.

140. *Subsection (4)* gives effect to Schedule 5 (police, customs and immigration powers).

Clause 10: Operational powers of other NCA officers

141. This clause provides the Director General with the ability to designate other NCA officers with operational powers. These include one or more of the powers and privileges of a constable, the powers of an officer of Revenue and Customs, or the powers of an immigration officer (*subsection (1)*).

142. The Director General may only designate an NCA officer with operational powers if he or she is satisfied that the NCA officer is capable of exercising those powers, has received adequate training and is otherwise a suitable person to exercise such powers (*subsection (2)*). The Director General is able to modify or withdraw a designation given under *subsection (1)* by giving notice to the NCA officer concerned (*subsection (3)*).

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

Schedule 5: Police, customs and immigration powers

Part 1: Director General: Commissioners' powers exercisable under section 9(1)

143. *Paragraph 1* sets out a further limitation on the Commissioner powers exercisable by the Director General. *Clause 9* sets out that the powers of the Commissioners are only exercisable in relation to any customs matter. *Paragraph 1* provides that if a power of the Commissioners is exercisable in relation to both a customs matter and any other matter the power is only exercisable by the Director General in relation to a customs matter (as defined in *Clause 9*).

144. *Paragraph 2* applies to an enactment if it provides for the issuing of warrants which authorise the Commissioners to exercise any power in relation to a customs matter. The paragraph provides that for the purpose of enabling the Director General to exercise that power in relation to a customs matter the enactment has effect as if the Director General were one of the Commissioners.

145. *Paragraph 3* provides that the Director General cannot exercise the power of the Commissioners to consent to a disclosure of HMRC information under *paragraph 2(1) of Schedule 7* or the power of the Commissioners to consent to a further disclosure of HMRC information under *paragraph 2(2) of Schedule 7*.

Part 2: Director General: designation under section 9

146. *Paragraph 4* provides that the Secretary of State must appoint an advisory panel to make recommendations as to the operational powers that the Director General should have (*sub-paragraph (1)*). The panel must be appointed whenever there is an appointment of a Director General, and at any other time that the Secretary of State considers is appropriate. *Sub-paragraph (2)* provides that the requirement to establish an advisory panel is subject to the any regulations under *paragraph 5*. *Sub-paragraph (3)* sets out the membership of the panel which must consist of a person to chair the panel (which must not be a serving civil servant) and other expert members in the training of NCA officers and the respective operational powers – police powers, customs powers and immigration powers. The panel may only consider whether the Director General has received adequate training in respect of the operational powers. The requirements as to capability and suitability for the Director General to exercise operational powers will be addressed as part of the selection and appointment process (*paragraph 7(2)*) of *Schedule 1*). The chair must consider the information given by the expert members in order to decide whether the Director General has received adequate training in order to exercise the operational powers in question and produce a report with recommendations as to the operational powers the Director General should have. (*sub-paragraph (5)*).

147. *Paragraph 5* provides that the Secretary of State may make regulations to set out the circumstances in which the Director General must be designated with operational powers other than on the recommendation of the advisory panel. Regulations may provide that the Secretary of State must designate the Director General with operational powers if specified conditions are met (*sub-paragraph (2)*). *Sub-paragraph (3)* provides that the conditions may

relate to the training received by a person in one or more of the operational powers before their appointment as Director General.

Part 3: Further provision about designations under sections 9 or 10

148. *Paragraph 6* provides that an operational power designation may be subject to limitations specified in the designation. This may include limitations on which operational powers the NCA officer has or limitations on the purposes for which an NCA officer may exercise operational powers.

149. *Paragraph 7* provides that the designation of operational powers does not have any limitation of time unless the designation specifies a period for which it is to have effect. Any designation, however, remains subject to any subsequent modification or withdrawal and only has effect while a person remains an NCA officer.

150. *Paragraph 8* provides that the Director General or other NCA officer may be designated with operational powers whether or not that person already has, or previously had, any such powers. *Subsection (3)* provides that if a person is both an NCA officer designated with operational powers and a special constable none of the powers that a person has as an NCA officer are exercisable at any time when the person is exercising any power of privilege of a special constable.

151. *Paragraph 9* provides that an NCA officer must produce evidence of his or her designation if they exercise or purport to exercise any operational power in relation to another person and the other person requests the officer to produce such evidence (*sub-paragraph (1)*). This paragraph does not specify the form in which such evidence should take. A failure to produce evidence of designation does not make the exercise of the power invalid (*sub-paragraph (2)*).

Part 4: Designations: powers and privileges of constables

152. *Paragraph 10* provides that where the Director General is designated with police powers and privileges, the Director General has in England and Wales and adjacent UK waters all the powers and privileges of an English and Welsh constable and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas. The exercise of police powers is subject to any limitations in the designation.

153. *Paragraph 11* provides that where an NCA officer (other than the Director General) is designated with police powers and privileges, the NCA officer has: in England and Wales and adjacent UK waters, all the powers and privileges of an English and Welsh constable; in Scotland and the adjacent UK waters, all the powers and privileges of a Scottish constable; in Northern Ireland and the adjacent UK waters, all the powers and privileges of a Northern Ireland constable; and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas (*sub-paragraph (1)*). The exercise of police powers is subject to any limitations in the designation. Furthermore, the exercise of the powers and

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

privileges of a constable in Scotland and Northern Ireland are subject to further requirements by virtue of *sub-paragraphs (3) and (6)*.

154. Paragraph 11 provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer only if a Scottish general authorisation is in force between the Scottish Ministers and the Director General (*sub-paragraph (4)*). *Sub-paragraph (5)* provides that the powers and privileges of Scottish constable are exercisable by an NCA officer if a Scottish operational authorisation (i.e. an agreement between the Director General and an officer of the Police Service of Scotland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. *Sub-paragraph (7)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer only if a Northern Ireland general authorisation is in force between the Department of Justice in Northern Ireland and the Director General. *Sub-paragraph (8)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer if a Northern Ireland operational authorisation (i.e. an agreement between the Director General and an officer of the Police Service of Northern Ireland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. A Northern Ireland operational authorisation must conform with a Northern Ireland general authorisation.

155. *Paragraph 12* provides that the exercise of the powers of a constable by the Director General or other designated NCA officer is subject to the same territorial restrictions as a constable exercising those powers. *Paragraph 13* applies to an enactment if it provides for the issuing of warrants which authorise a constable to exercise any power or privilege of a constable. The paragraph further provides that for the purpose of enabling a designated officer to exercise his powers or privileges the enactment has effect as if the designated officer were a constable.

156. *Paragraph 14* provides that when exercising direction and control of the NCA in relation to the exercise by NCA officers of the powers and privileges of a Scottish constable, the Director General must comply with instructions given by the Lord Advocate or prosecutor fiscal in relation to the investigation of offences.

157. *Paragraph 15* provides that those NCA officers designated with policing powers and privileges will not be regarded as being in police service for the purposes of employment legislation.

Part 5: Designations: powers of officers of Revenue and Customs

158. *Paragraphs 16-18* provide that NCA officer (*paragraph 16*) who has been designated with customs powers has the same powers as an officer of Revenue and Customs in relation to any customs matter. The definition of a 'customs matter' is set out in *Clause 9* which excludes the matters to which section 7 of the Commissioner for Revenue and Customs Act 2005 applies and taxes and duties. Therefore the exercise of customs powers by the Director General of the NCA and designated NCA officers is in relation to non-revenue matters. In both cases the exercise of customs powers in relation to non-revenue matters is subject to any

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

limitations in the designation. Where a customs power is exercisable in relation to both a customs matter and any other matter, the power is only exercisable by an NCA officer in relation to the customs matter (*paragraph 17*).

159. *Paragraph 18* provides that where an enactment enables a warrant to be issued which authorises an officer of Revenue and Customs to exercise any power in relation to a customs matter, a designated NCA officer is to be treated as if he or she were an officer of Revenue and Customs for the purposes of enabling them to exercise those powers.

Part 6: Designations: powers of immigration officers

160. *Paragraph 19* enables any NCA officer, designated with the powers of an immigration officer, to exercise all the powers of an immigration officer. The exercise of immigration powers is subject to any limitations in the designation.

161. *Paragraph 20* provides that where an enactment enables a warrant to be issued which authorises an immigration officer to exercise any power of an immigration officer, an NCA officer designated with immigration powers is to be treated as an immigration officer for the purposes of enabling them to exercise those powers.

Part 7: Offences relating to designations

162. *Paragraphs 21 to 23* set out various summary offences relating to obstructing, assaulting or impersonating designated officers. They parallel similar offences in relation to police officers, customs officers and immigration officers in various enactments.

163. *Paragraph 21* makes it an offence to resist or wilfully obstruct a designated officer acting in the exercise of an operational power or to resist or wilfully obstruct a person assisting a designated officer in the exercise of such a power. *Paragraph 22* makes it an offence to assault a designated officer acting in the exercise of an operational power or to assault a person assisting a designated officer in the exercise of such a power. *Paragraph 23* makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated officer. It is also an offence for a designated NCA officer to make any statement or act in a way that falsely suggests that he has powers above and beyond those he or she in fact has.

164. *Sub-paragraph (2)* of each of *paragraphs 21 to 23* sets out the maximum penalties for the three offences in England and Wales, Scotland, and Northern Ireland.

Part 8: Modification of enactments etc

General

165. *Paragraph 25* provides that the Director General shall pay all proceeds of forfeitures under the customs and excise Acts to the Commissioners of Revenue and Customs.

166. *Paragraph 26* provides that, where an enactment relates to a power or privilege of a constable, an officer of Revenue and Customs, a power of the Commissioners for Her

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

Majesty's Revenue and Customs or immigration officer and the enactment refers to a constable, an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer, those references should be read as the Director General or other NCA officer as appropriate.

167. *Paragraph 27* confers a power on the 'relevant national authority' to make such provision as considered appropriate in consequence of the Director General having the powers of the Commissioners under clause 9 or designated offices having operational powers.

168. *Paragraph 28* provides a power to the 'relevant national authority' to amend by order the functions of a person so that they can be exercised by that person in relation to the NCA, the Director General or NCA officers.

169. *Paragraph 29* provides that before the Secretary of State exercises a power under *paragraph 26* or *27* in relation to enactments that confer any functions on the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs must be consulted (*sub-paragraph (2)(a)*). Before the Secretary of State exercises the power in relation to an enactment which extends to Scotland or Northern Ireland, the Secretary of State must consult the Scottish Ministers or the Department of Justice in Northern Ireland respectively (*sub-paragraphs (2)(b)* and *(c)*).

170. *Paragraph 30* sets out and defines the various terms that have been used in this Schedule.

Clause 11: Inspections and complaints

171. *Subsection (1)* provides for inspection of the NCA by Her Majesty's Inspectors of Constabulary ("HMIC"). HMIC are appointed under section 54 of the Police Act 1996 for the purpose of independently inspecting and reporting on the efficiency and effectiveness of police forces in England and Wales.

172. *Subsection (2)* enables the Secretary of State to request an inspection by HMIC (under subsection (1) HMIC will conduct inspections of the NCA on its own initiative).

173. *Subsection (3)* HMIC to report the outcome of their inspections of the NCA to the Secretary of State (in practice the Home Secretary).

174. *Subsection (4)* enables the Secretary of State to direct HMIC to carry out other duties relating to the efficiency and effectiveness of the NCA.

175. *Subsection (5)* provides that paragraphs 2 and 5 of Schedule 4A to the Police Act 1996 (which enable HMIC to draft inspection programmes and frameworks to be approved by the Secretary of State) applies to inspection functions of HMIC in relation to the NCA.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

176. *Subsection (6)* inserts a new section 26C into the Police Reform Act 2002. New section 26C(1) enables the Secretary of State to make regulations (subject to the negative resolution procedure) conferring functions on the Independent Police Complaints Commission (“IPCC”) in relation to the exercise of functions by the Director General of the NCA and other NCA officers. Under new section 26C(2)(a) such regulations may apply, with or without modifications, the provisions of Part 2 of the Police Reform Act 2002 or of regulations made under it. Part 2 confers functions on the IPCC in respect of complaints about, or matters indicating misconduct or death or serious injury involving, persons serving with police forces in England and Wales; such functions include the examination of police forces’ complaint handling procedures and undertaking, management or supervision of investigations into complaints or other matters. The purpose of these provisions is not simply to replicate Part 2 of the Police Reform Act 2002, because the arrangements will need to be tailored to the circumstances of the NCA, but they will ensure that the IPCC has oversight of the NCA in broadly the same way as it has in relation to the police. Under new section 26C(2)(b), such regulations may make provision for the NCA to make payments to the IPCC in respect of the exercise of its functions under the new section 26C.

177. New section 26C(3) confines the scope of the IPCC’s oversight of the NCA to the exercise of its functions in, or in relation to, England and Wales. New section 26C(4) enables the IPCC and the Parliamentary Commissioner for Administration (“PCA”) to jointly investigate a matter in relation to which both of them have functions (limited to matters in relation to which the NCA exercises certain asset recovery functions). New section 26C(5) enables an NCA officer to disclose information to the IPCC, or a person acting on its behalf, for the purposes of the IPCC exercising a function conferred under new section 26C. New section 26C(6) enables the IPCC and the PCA to disclose information to each other for the purposes of the exercise of any functions under new section 26C(4) or the Parliamentary Commissioner Act 1967. New section 26C(7) and (8) enable regulations to make further provision about the disclosure of information under new section 26C(5) and (6) or in relation to the onward disclosure of information by the IPCC of information provided to it by the NCA, and disapplies Schedule 7 (unless provision is made to the contrary).

178. *Subsection (7)* makes amendments to article 4(4) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (“the 2007 Order”) so as to provide that complaints relating to the acts or omissions of NCA officers exercising functions in Scotland are subject to the oversight of the Police Complaints Commissioner for Scotland as set out in an agreement between the Commissioner and the NCA; such an agreement has been made between the Commissioner and SOCA under article 4(4) of the 2007 Order. The Police and Fire Reform (Scotland) Bill includes provision which renames the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner and confers more extensive investigatory powers on that body.

179. *Subsection (8)* amends section 60ZA of the Police (Northern Ireland) Act 1998 so as to provide that complaints and conduct matters arising from NCA officers exercising functions in Northern Ireland are subject to oversight by the Office of the Police Ombudsman

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

for Northern Ireland as set out in an agreement between the Police Ombudsman and the NCA (which has been made under that section), or as established by order made by the Secretary of State.

180. *Subsection (9)* gives effect to Schedule 6.

Schedule 6: Inspections and complaints

181. *Paragraph 1* requires the Secretary of States to consult Scottish Ministers before requesting an HMIC inspection of NCA activities in Scotland. Sub-paragraph (2) provides that, in relation to any inspection wholly or partly in Scotland, HMIC may conduct the inspection jointly with the Scottish inspectors following consultation with the Scottish inspectors on whether a joint inspection is appropriate (sub-paragraph (3)).

182. *Paragraph 2* requires the Secretary of State to consult the Department of Justice in Northern Ireland before requesting an HMIC inspection of NCA activities in Northern Ireland.

183. *Paragraph 3* places a duty on the Secretary of State to arrange for every HMIC report to be published. However, sub-paragraph (2) provides that parts of an HMIC report may be excluded from publication if the Secretary of State believes that publication would be against the interests of national security, impede the prevention or detection of crime, or jeopardise the safety of any person. Reports must be sent to the NCA and the appropriate Devolved Administration, should the inspection have been carried out in Scotland or Northern Ireland (sub-paragraph (3)).

184. *Paragraph 4* places a duty on the Director General of the NCA to comment on each HMIC report, to publish those comments and to send a copy to the Secretary of State and to the Devolved Administrations where they have an interest.

185. *Paragraph 5* requires the Director General of the NCA to disclose information and documents to HMIC or Scottish inspectors as specified in any notification given by them for the purposes of their exercise of inspection functions in relation to the NCA. Sub-paragraph (4) enables an NCA officer to disclose information to HMIC or Scottish inspectors for the purposes of their exercise of inspection functions in relation to the NCA. Sub-paragraphs (5) and (6) enable the Secretary of State to make regulations to make further provision about the disclosure of information under paragraph (5), or in relation to the onward disclosure of information by HMIC or Scottish inspectors of information provided to them by the NCA, and disapplies Schedule 7 (unless provision is made to the contrary). *Paragraph 6* places a duty on the Director General to give the policing inspectorates access to NCA premises and material.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

186. *Paragraph 6* requires the Director General to give HMIC or Scottish inspectors access to NCA premises and other things on such premises for the purposes of their exercise of inspection functions in relation to the NCA.

187. *Paragraph 7* contains definitions of various expressions used in Schedule 6.

188. *Paragraphs 8 to 17* make consequential amendments to the Police Reform Act 2002, arising from the abolition of the NPIA and SOCA, and the conferral of functions on the IPCC in respect of its oversight of the NCA by virtue of clause 11(6).

189. *Paragraph 18* makes consequential amendments to article 2 and 4 of the Police, Public Order and Criminal Justice (Scotland) Act (Consequential Provisions and Modifications) Order 2007 (“the 2007 Order”) arising from the provisions in clause 11(7) in relation to the oversight of the NCA by the Police Complaints Commissioner for Scotland. Sub-paragraph (4) preserves the powers in the Scotland Act 1998, under which the 2007 Order was made, to amend or revoke the amendments made to the 2007 Order by clause 11 and Schedule 6.

190. *Paragraph 19* makes a consequential amendment to section 61 of the Police (Northern Ireland) Act 1998, requiring the Office of the Police Ombudsman for Northern Ireland to send a copy of its annual report on the discharge of its functions to the NCA if the report concerns the NCA.

Clause 12: Information: restriction on disclosure etc

191. *Subsection (1)* gives effect to Schedule 7 (information: restrictions on disclosure), which provides for the restrictions on the disclosure of information.

192. *Subsection (2)* provides that Schedule 7 applies to disclosures of information made for the purposes of the NCA’s criminal intelligence function. Information relevant to the NCA’s criminal intelligence function will predominantly be that which contains information on known or suspected criminal activity (such as crime reports, surveillance logs, suspicious activity records, analytic research on known criminals or locations); or information that when combined with known or suspected criminal activity can lead to the identification of further criminality, or opportunities to protect the public (such as company records, regulated sector memberships and transport manifests).

193. *Subsection (3)* specifies that any duty to disclose information imposed on an NCA officer is subject to the restrictions on disclosure set out in Schedule 7. *Subsection (4)* provides that *subsections (2) and (3)* do not limit Schedule 7.

194. *Subsection (2)* gives effect to Schedule 7.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

Schedule 7: Information: restrictions on disclosure

195. This schedule sets out the restrictions on the disclosure of information to and from the NCA. It also sets out the offences relating to wrongful disclosure in breach of the restrictions set out in the Schedule.

196. *Paragraph 1* provides that nothing in Part 1 of the Act permits the disclosure of information to or from the NCA which is in contravention of the Data Protection Act 1998 (“DPA”) or of Part 1 of the Regulation of Investigatory Powers Act 2000 (“RIPA”).

197. *Paragraph 2* makes provisions for the restrictions of the disclosure of HMRC and customs information. *Sub-paragraph (1)* provides that an NCA officer must not disclose HMRC information, personal customs information or personal customs revenue information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information, a person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms “HMRC information”, “personal customs information” and “relevant authority”.

198. *Paragraph 3* restricts the onward disclosure of social security information. *Sub-paragraph (1)* provides that an NCA officer must not disclose social security information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information to a person, that person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms “relevant authority” and “social security information”.

199. *Paragraph 4* makes provisions for the restrictions of the disclosure of intelligence service information. *Sub-paragraph (1)* provides that an NCA officer must not disclose intelligence service information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information, a person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms “intelligence service” and “intelligence service information” and “relevant authority”.

200. *Paragraph 5* makes provision that the Director General must not disclose information under their duty to make arrangements for the publication of information set out in clause 6 if this would breach a requirement imposed by the framework document.

201. *Paragraph 6* covers restrictions on the disclosure of information obtained by the NCA in connection with its functions under Part 6 of the Proceeds of Crime Act 2002 (“POCA”). *Sub-paragraph (1)* provides that an NCA officer must not disclose information obtained by the NCA in connection with the exercise of any function under POCA unless one of two conditions is met. *Sub-paragraph (2)* provides the condition in relation to the exercise of a function under Part 6 of POCA. *Sub-paragraph (3)* provides the condition in relation to the exercise of any function under POCA, other than a Part 6 function.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

202. *Paragraph 7* covers restrictions on the onward disclosure of other types of information (i.e. information other than information obtained by an NCA officer under the NCA's functions under POCA). *Sub-paragraph (1)* provides that if an NCA officer has disclosed information to a person ("the original recipient"), that person must not further disclose the information unless it is for a purpose connect with any relevant function of the relevant recipient or otherwise for a permitted purpose and the Director General consents to the disclosure. *Sub-paragraph (2)* excludes from the ambit of paragraph 7 the onward disclosure of information if the disclosure of that information by the NCA officer to the original recipient (a) consisted of its publication in accordance with a duty imposed on the NCA officer by an enactment; (b) was of information obtained by the NCA in connection with the exercise of functions under Part 6 of POCA; or (c) was disclosed for the purposes of functions of the Lord Advocate under Part 3 of POCA or functions of Scottish Ministers under Part 5 of that Act. *Subparagraph (3)* defines the term "relevant function".

203. *Paragraph 8* covers restrictions on the further disclosure of information obtained by the NCA under Part 6 of POCA and disclosed to the Commissioners. *Sub-paragraph (1)* applies this to information disclosed by an NCA officer under paragraph 6(2). *Sub-paragraph (2)* provides that it may be further disclosed if the disclosure is for a purpose connected with any relevant function of the Commissioners or otherwise for a permitted purposes. *Sub-paragraph (3)* provides that this may only be further disclosed by a person other than the commissioner if the disclosure is for a purpose connected with any relevant function of the Commissioners or otherwise for a permitted purposes, and that the Director General consents to the disclosure.

204. *Paragraph 9* covers restrictions on the further disclosure of information obtained by the NCA under Part 6 of POCA and disclosed to the Lord Advocate.

205. *Paragraph 10* covers the offence of wrongful disclosure of information. *Sub-paragraph (1)* provides that an NCA officer commits an offence by disclosing information in breach of a relevant duty. *Sub-paragraph (2)* provides that any person commits an offence if they disclose information that breached a relevant duty. *Sub-paragraph (3)* provides for the defence by a person charged with this offence that the disclosure was either lawful or that the information had already and lawfully been made available to the public. *Sub-paragraph (4)* covers the consent for a prosecution to be made in England and Wales and Northern Ireland. *Sub-paragraph (5)* provides that this offence does not prejudice the pursuit of any remedy or action taken in relation to a breach of a relevant duty. *Sub-paragraph (6)* states that a person guilty of the offence is liable on conviction on indictment to either a prison term not exceeding 2 years or a fine, or both. *Sub-paragraph (7)* provides that a person guilty of the offence is liable on summary conviction to either a prison term not exceeding 12 months in England and Wales, 12 months on conviction in Scotland, 12 months on conviction in Northern Ireland or a fine not exceeding the statutory minimum, or both. *Sub-paragraph (8)* provides that the maximum prison term in England and Wales is 6 months for an offence committed before the commencement of section 282 of the Criminal Justice Act 2005, to be increased to 12 months on commencement.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

206. *Paragraph 11* clarifies that a consent to a disclosure of information under any provision of Schedule 7 may be given in relation to a particular disclosure or disclosures made in circumstances specified or described in the consent.

207. *Paragraph 12* defines the terms “Commissioners” and “PCA 2002” used in this Schedule.

Clause 13: NCA officers with operational powers: labour relations

208. *Subsections (1) to (3)* – prohibit any person (for example, a trade union) from calling a strike by NCA officers designated with operational powers, including the Director general of the NCA, and provide that the Home Secretary may take civil action against any person who calls such a strike.

209. *Subsection (4)* allows the Home Secretary to seek an injunction restraining a threatened strike by NCA officers holding operational powers.

210. *Subsection (5)* provides that, notwithstanding subsections (1) to (3), any trade union representing NCA officers can still be an independent trade union for the purposes of relevant employment legislation.

211. *Subsection (6)* makes it clear that relevant employment legislation cannot prevent the Home Secretary from enforcing the no-strike provisions.

212. *Subsection (7)* provides that the Home Secretary may suspend and subsequently reinstate the no-strike provisions by order (subject to affirmative resolution).

213. *Subsection (8)* explains what is meant by terms used in clause 13.

Clause 14: NCA officers with operational powers: pay and allowances

214. *Subsection (1)* enables the Home Secretary to make regulations (subject to negative resolution) providing for the establishment, maintenance and operation of procedures for determining the pay, allowances and other terms and conditions of NCA officers designated with operational powers including the Director General of the NCA.

215. *Subsection (2)* allows such regulations to provide for decisions on the pay, allowances and other *Subsection (2)* allows such regulations to provide for decisions on the pay, allowances and other terms and conditions of NCA officers designated with operational powers to be made by reference to, for example, non-binding recommendations from an independent pay review mechanism.

216. *Subsection (3)* explains what is meant by the terms used in clause 14.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

Clause 15: Abolition of SOCA and NPIA

217. *Subsections (1) and (2)* abolish the Serious Organised Crime Agency and the National Policing Improvement Agency respectively.

218. *Subsection (3)* gives effect to Schedule 8.

Schedule 8: Abolition of SOCA and NPIA

Part 1: Transitional, transitory and saving provision

219. *Paragraph 1* provides for the Secretary of State to make, and lay before Parliament, staff or property transfer schemes.

220. *Paragraph 2* defines a staff transfer scheme as a scheme which provides for a designated member of staff of SOCA or the NPIA, a designated constable or member of civilian staff in an England and Wales police force (for example in the Metropolitan Police E-Crime Unit which will form part of the NCA as set out in the NCA plan) and a designated member of personnel or staff in any other body (in connection with an order modifying the functions of the NCA) to become NCA officers, and employed in the civil service of the state.

221. *Paragraph 3* defines a property transfer scheme. A property scheme may provide for the transfer to the NCA of designated property, rights or liabilities from SOCA, NPIA, the chief officer of, or the policing body for an England & Wales police force or any other person. A property transfer scheme may also create rights or impose liabilities.

222. *Paragraph 4* provides a staff or property transfer scheme to make provision for any reference to a transferor in any document to have effect as, or as including a reference to the NCA.

223. *Paragraph 6* provides for the Secretary of State to pay such an amount (if any) as the Secretary of State thinks appropriate to a person who ceases to be a SOCA board member (i.e. Chair and the ordinary members) at the changeover.

224. *Paragraph 7* provides that the repealing of sections 7 and 20 of the Serious Organised Crime and Police Act 2005 (annual reports and accounts) will not affect the application of those sections after the changeover (*paragraph 11*) to times before the changeover.

225. *Paragraph 8* ensures that amendments to pensions legislation consequent upon the abolition of SOCA and the NPIA do not have the effect of extinguishing pension rights accrued before abolition.

226. *Paragraph 9* is required to ensure that transition arrangements are provided for Scottish Police Reform and the creation of the NCA. In particular, it provides a power to make any necessary provisions to ensure that the NCA provisions have full effect depending on the timing of the creation of the Police Service of Scotland and the creation of the NCA.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

227. *Paragraph 10* is required to ensure transition arrangements are in place if the NCA is created prior to the planned merger of the offices of the Director of Revenue and Customs Prosecutions and the Director of Public Prosecutions.

228. *Paragraph 11* sets out and defines the various terms that have been used in this Schedule.

229. *Paragraph 25* of the Schedule protects the pension arrangements for those officers of precursor agencies who are eligible for membership of the police pension scheme on moving into the NCA. It also provides for serving police officers to retain their eligibility for the police pension scheme on being appointed as Director General of the NCA or on taking up key posts within the NCA designated by the Director General.

Clause 16: Interpretation of Part 1

230. *Subsection (1)* defines various terms used in Part 1, including “chief officer”, “functions”, “NCA function” “operational power”, “law enforcement agency” and “permitted purpose”. The definition of “strategic partners” refers to those other law enforcement agencies and other key bodies to which, for example, the Director General must send a copy of the NCA’s Annual Report.

231. *Subsection (2)* defines the various powers that can be delegated to an NCA officer. It also provides that references to the “Police Service of Northern Ireland” (“PSNI”) are taken to include the PSNI Reserve.

232. *Subsection (3)* provides that any subsequent reference to the “functions” or “officers” of the National Crime Agency should be understood within the terms of this Bill.

233. *Subsection (4)* identifies those terms which are defined elsewhere in Part 1 of the Bill.

Part 2: Courts and Justice

Clause 17: Civil and family proceedings in England and Wales

234. Clause 17 (1), (2) and (5) creates a single county court with a national jurisdiction for the whole of England and Wales, sitting at various locations within England and Wales in a similar way to the High Court and the Crown Court. The principal provision is *subsection (1)*, which inserts into the County Courts Act 1984²⁶ a new section A1, providing for the establishment of a single county court.

235. *Subsection (1)* of the new section A1 provides for there to be a county court exercising jurisdiction in England and Wales, and for the jurisdiction of that court to be that which is conferred on it by or under the County Courts Act 1984 or any other Act, or any Act or

²⁶ 1984 c.28

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

measure of the National Assembly for Wales. This mirrors the position for the individual county courts at present, but on a national basis for the single court.

236. *Subsection (2)* of the new section A1 provides for the single county court, to be a court of record with a seal. This again mirrors the position for the individual county courts at present (each of which is in its own right a court of record with its own seal), but on a national basis for the single court, with a single seal.

237. *Subsection (2)* repeals sections 1 and 2 of the County Courts Act 1984, which provide for there to be individual county courts, each for its own district and with its own seal. These sections are replaced by the new section A1. With their repeal the geographical jurisdictional boundaries in the existing county court structure are removed.

238. *Subsection (3)* inserts a new section 31A of the Matrimonial and Family Proceedings Act 1984 to provide for the creation of a family court with jurisdiction throughout England and Wales. The family court will exercise the jurisdiction and powers conferred on it by statute, including the jurisdiction and powers currently exercised by county courts and magistrates' courts in relation to family proceedings. The family court will be a court of record and shall have a seal. Records of the court's proceedings will be maintained (new section 31A(2)).

239. *Subsection (4)* repeals Part 2 of, and associated provisions in, the Children, Schools and Families Act 2010 (which relates to the publication of information relating to family proceedings).

240. *Subsection (5)* introduces Schedule 9, which makes amendments to the County Courts Act 1984 and in numerous other statutes in connection with and in consequence of the single county court replacing the existing county courts.

241. *Subsection (6)* introduces Schedules 10 and 11 which make further amendments to the Matrimonial and Family Proceedings Act 1984 and other enactments in connection with and in consequence of the creation of the single family court.

Schedule 9: Single county court in England and Wales

242. Schedule 9 makes amendments, particularly in the County Courts Act 1984 itself, but also in a wide range of other legislation referring to the existing county courts, in connection with and in consequence of the establishment of the single county court.

Part 1 of Schedule 9: Amendments of the County Courts Act 1984

243. Part 1 of the Schedule contains amendments to the County Courts Act 1984 ("the 1984 Act"), other than the principal provisions establishing the single county court which are contained in clause 17. Of particular importance are the amendments made by paragraphs 2

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

and 3 in relation to sittings of the single county court, and paragraphs 4 to 6 in relation to the judges of the single county court.

244. *Paragraph 2* amends section 3 of the 1984 Act by substituting for subsections (1) and (2) (which provide for where and when the existing county courts may sit) four subsections which make flexible provision for the single county court to be able to sit anywhere in England and Wales, for sittings to be able to be continuous or intermittent or occasional, for sittings to be able to be simultaneously held in different places, and for the places where the county court sits, and the days and times at which it sits in any place, to be determined in accordance with directions given by the Lord Chancellor after consulting the Lord Chief Justice.

245. *Paragraph 3* amends section 4 of the 1984 Act, which provides for the use of public buildings for individual county courts, so that it provides for the use of such buildings for sittings of the single county court.

246. *Paragraph 4* substitutes for section 5 of the 1984 Act, which makes provision in respect of those judges (other than district judges) who may sit in the county courts, a new section 5. While, in practice, Circuit judges and district judges will remain the principal judges of the county court, the effect of this amendment and, in particular, subsection (2) of the new section 5, will be to enable a wider range of other judges to sit, on a flexible basis, in the single county court as “judges of the county court”. The new section 5 does not reproduce those provisions of the present section 5 which provide for the assignment of circuit judges to districts, since, with the establishment of the single county court on a national basis, these are no longer required. *Paragraphs 5 and 6* similarly amend sections 6 and 8 of the 1984 Act to remove those provisions which relate to the assignment to districts of district judges and deputy district judges respectively.

247. *Paragraph 7* amends section 12 of the 1984 Act to replace the provision for the district judge for a district to keep such records as may be prescribed by the Lord Chancellor in regulations with a provision enabling the Lord Chancellor to provide by regulations for the keeping of records for the single county court.

248. *Paragraphs 8 and 9* make amendments to sections 13 (*officers of the court not to act as solicitors of that court*) and 14 (*penalty for assaulting officers*) of the 1984 Act, which make provision in relation to district judges of a county court, so that the provision operates instead in terms of judges of the single county court more generally.

249. *Paragraph 10* of the Schedule makes a large number of amendments to the remainder of the 1984 Act. A number of the amendments repeal existing provisions of the 1984 Act which provide for there to be specific county courts to exercise specialist jurisdictions, such as Admiralty and contentious probate jurisdiction (see sub-paragraph (3) in particular). Any such specialist jurisdiction will instead be conferred on the single county court as a whole,

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

and exercised by such judges and in such locations as are determined under existing allocation powers (such as section 1 of the Courts and Legal Services Act 1990²⁷).

250. Other provisions in *paragraph 10* remove or amend provisions which confer powers or functions specifically on district judges or circuit judges, so that those provisions instead confer the powers or functions on the court or on a judge of the court without specifying whether this is a district judge, circuit judge or other judge (see, for example, sub-paragraphs (12) to (20)). The allocation of powers and functions to tiers of judge in the single county court will then be determined under existing powers of direction.

251. Further, other provisions in *paragraph 10* amend or remove provisions in the 1984 Act which operate by reference to an individual county court, or to a court's jurisdiction in relation to a specific district, so that they operate for the single county court as a whole (see, for example, sub-paragraphs (35), (36), (42), (48), and (51) to (53)); and other provisions simply amend references to "a county court" or "a court" or "any court" or to "county courts" or "courts" in the plural so that they refer instead to "the county court" and will operate appropriately in relation to the single county court (see, for example, sub-paragraphs (62) to (66)).

Part 2 of Schedule 9: Other amendments

252. Part 2 makes consequential amendments to other Acts of Parliament which make reference to county courts and the judges who sit in them. The amendments are similar to those made to the County Courts Act 1984 by Part 1 of the Schedule. However, in relation to other Acts, by far the most numerous amendments are those which substitute, for references to "a county court", etc., references to "the county court". Other amendments remove or modify provisions which tie jurisdiction to specific county courts or districts and judges for a district, and a small number of amendments repeal provisions which confer specialist jurisdiction on a specific county court or courts - in particular *paragraph 30*, which repeals those provisions of the Copyright, Designs and Patent Act 1988 which establish a Patents County Court (intellectual property jurisdiction will be re-allocated and structured under existing powers).

Schedule 10: The family court

253. *Paragraph 1* inserts new sections 31B to 31Q into the Matrimonial and Family Proceedings Act 1984.

254. New section 31B (Sittings) provides that sittings of the family court and any other business of the court may take place anywhere in England and Wales. Sittings of the family court at any place may be continuous, intermittent or occasional (new section 31B(2)) and the court shall have power to adjourn cases from place to place at any time (new section 31B(3)). Under new section 31B(4) the Lord Chancellor, after consulting the Lord Chief Justice, shall direct where the family court shall sit and the days and times at which it will sit. The Lord

²⁷ 1990 c.41

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

Chief Justice may nominate a judicial office holder to exercise the Lord Chief Justice's functions under new section 31B (new section 31B(5)). It is expected that any delegation of powers would be to the President of the Family Division as the Head of Family Justice.

255. New section 31C (Judges) lists, at subsection (1), the judges of the family court, and includes (amongst others) all levels of judiciary currently able to deal with family proceedings in the High Court, county courts and magistrates' courts. Decisions of the family court made by judges of the High Court and above and by former Court of Appeal and High Court judges will be binding on those listed at paragraphs (j) to (y) of subsection (1). Such decisions will also be binding on legal advisers and assistant legal advisers except where they are carrying out functions of the court with a judge listed in paragraphs (a), (b) and (c) of subsection (2). Subsection (3) prevents any judge or officer of the court, or any partner or employer they may have, from engaging as a legal representative or agent for any party in proceedings in the family court. This is modified in subsection (4) for the purposes of part-time judiciary so as to provide that such a judge may not act as a judge in any proceedings in which the judge or a partner or employer of the judge is engaged as a legal representative of any party.

256. New section 31D (Composition of the court and distribution of its business) provides at subsection (1) for the Lord Chief Justice or his or her nominated judicial office holder to make rules, with the agreement of the Lord Chancellor, about the composition of the family court and the allocation of the work of the court to the appropriate level of judiciary. Rules about the composition of the family court may provide for the court to be constituted differently for the purpose of deciding different matters (subsection (2)(a)). For example, such rules may prescribe certain types of proceedings or applications within proceedings that are to be heard by a judge, a single justice of the peace or by a two or three magistrate bench. Rules may also allocate different types of proceedings to specified levels of judiciary and provide that only judges authorised for the purpose may deal with certain proceedings (new section 31D(3)), thereby ensuring that different types of cases are heard by those judges with the relevant expertise. This power to limit the range of proceedings that certain types of judge may deal with does not apply to High Court judges and above (subsection (4)). Before making Rules under new section 31D, the Family Procedure Rule Committee, which is the statutory body responsible for making rules of court governing the practice and procedure to be followed in family proceedings, must be consulted.

257. New section 31E (Family court has High Court and county court powers in all family court proceedings) enables the family court to make any order that could be made by the High Court if the proceedings were in the High Court, or any order that could be made by the county court if the proceedings were there (subsection (1)). The family court will be able to issue warrants making provision for anything which, were the matter in the High Court, could be included in a writ (subsection (2)). The power in subsection (1) will not extend to orders of a type listed in section 38(3) of the County Courts Act 1984 or to other orders prescribed by regulations made under that section (subsection (3)). The Lord Chancellor has the power to make provision in regulations dealing with the effect and execution of warrants issued by the

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

family court. The provision in those regulations will mirror existing provision in relation to High Court writs or county court warrants (subsection (5)).

258. New section 31F (Proceedings and decisions) bestows on the family court certain powers relating to hearings and orders that mirror existing powers contained in the County Courts Act 1984 and the Magistrates' Courts Act 1980. This includes the power to adjourn hearings (subsection (1)). Provision is also made regarding the nature of orders of the family court (subsection (2)), their effect (subsection (3)), what may be contained in orders requiring something to be done, other than the payment of money (subsection (4)), what may be included in an order requiring the payment of money (subsection (5)) and the ability of the family court to vary, suspend, rescind or revive its orders (subsection (6)). The family court will have the ability to proceed in the absence of one or more parties, but this is subject to rules of court (subsection (7)) and it will have the same power as the High Court to enforce an undertaking given by a solicitor in relation to any proceedings before it (subsection (8)). Subsection (9) is a general provision enabling the family court to adopt and apply the general principles of practice in the High Court.

259. New section 31G (witnesses and evidence), which is modelled on section 97 of the Magistrates' Courts Act 1980, sets out the circumstances in which the family court may summons a witness to give evidence and produce documents (subsection (2)) and specifies the penalties that the court may impose (subsection (4)) where a person fails to attend before the court or produce documents, without just excuse (subsection (3)). New section 31G(6) provides that where a self representing party appears to be unable to cross-examine a witness effectively, the court may put, or cause to be put, questions to the witness.

260. The family court will have the power to deal with all types of contempt of court that may currently be dealt with in family proceedings in the High Court, county courts and magistrates' courts. New section 31H (Contempt of court: power to limit court's powers) enables the Lord Chancellor, after consulting the Lord Chief Justice, to make regulations limiting or removing any of those powers in specified circumstances (subsection (1)). Such regulations may make different provision for different purposes (new section 31Q(1)(b)) and may be used, for example, to impose limits on the penalties imposed for certain types of contempt by specified tiers of judiciary in the family court.

261. New section 31I (Powers of the High Court in respect of family court proceedings), which is modelled on section 41 of the County Courts Act 1984, provides at subsection (1) that the High Court may transfer proceedings pending in the family court to the High Court (which will continue to have all jurisdiction to deal with family proceedings that it currently has) where it considers it desirable to do so, without prejudice, and subject to, the matters set out in subsection (2).

262. New section 31J (Overview of certain powers of the court under other Acts) sets out for convenience certain powers of the family court contained in the Senior Courts Act 1981 and the County Courts Act 1984.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

263. New 31K (Appeals) provides that any party dissatisfied with a decision of the family court may appeal to the Court of Appeal, subject to any order made under section 56(1) of the Access to Justice Act 1999 which may alter the destination of appeals (subsection (1)). This provision does not confer or remove any right of appeal conferred under any other enactment (subsection (2)). Provision may be made by Order (made by the Lord Chancellor after consultation with the Lord Chief Justice or his or her nominee) as to when appeals may be made in relation to decisions on the transfer, or proposed transfer, of proceedings from or to the family court (subsections (3), (4) and (8)). Where requested by a party at any hearing where there is a right to appeal, a judge shall make a note of the matters referred to in subsection (5) which, when signed by the judge may be provided to the party and be used at any subsequent appeal hearing (subsection (6)).

264. New section 31L (Enforcement) makes specific provision at subsection (1) mirroring for the family courts the powers contained in section 140 of the Senior Courts Act 1981 in relation to the enforcement of the payment of a fine or penalty imposed by the court. Subsection (2) enables rules of court (which will be the Family Procedure Rules made under section 75 of the Courts Act 2003) to make provision for the recovery of periodical payments and the apportioning of payments in circumstances where there are two or more orders under which the same person is required to make periodical payments to the same recipient. Subsections (4) to (7) replicate the provisions in section 62 of the Magistrates' Courts Act 1980 allowing a person with whom a child has his or her home to take certain steps in their own name in relation to an order requiring periodical payments or a lump sum to be paid to a child, without affecting the right of the child to proceed in his or her own name.

265. New section 31M (Records of proceedings), which is modelled on section 12 of the County Courts Act 1984, provides for the Lord Chancellor to make regulations, after consulting the Lord Chief Justice, for the keeping of records (subsections (1) and (3)). Entries made in a book or other document kept under such regulations or a signed and certified copy of such an entry will be admitted as evidence of the entry (subsection (2)).

266. New section 31N (Summonses and other documents) mirrors, for the purposes of the family court, the provisions of section 133(1) of the County Courts Act 1984 in relation to proof of service of a summons (subsection (1)), and applies sections 133(2) (subsection (2)) and 135 and 136 of that Act (subsection (3)).

267. New section 31O (Legal advisers and assistants) provides that a person may only be a legal adviser to the family court (or an assistant legal adviser) if he or she is a justices' clerk (or an assistant justices' clerk) (subsections (1) and (2)). Provisions based on sections 28, 29, 31 and 32 of the Courts Act 2003 relating to justices' clerks and assistant justices' clerks are made regarding the functions (subsections (5) and (6)), independence (subsection (7)) and immunity (subsections (8), (9) and (10)) of legal advisers and assistant legal advisers.

268. New section 31P (Legal advisers and assistants: costs and indemnity), which is modelled on provisions relating to justices' clerks and assistant justices' clerks under sections

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

34 and 35 of the Courts Act 2003, gives legal advisers and assistant legal advisers statutory immunity against being ordered to pay the costs of legal actions arising out of the execution of their duties when carrying out the functions of the family court or of a judge of the family court (subsection (1)) except in the circumstances set out in subsection (2). The section empowers a court instead to order the Lord Chancellor to pay costs that would have been ordered against the legal adviser or assistant legal adviser (subsection (3)). The Lord Chancellor may, after consulting the Lord Chief Justice, make regulations covering when the court is to exercise the power under subsection (3) to order costs and how those costs are to be determined (subsection (4)). Subsections (6) and (7) respectively set out the circumstances in which the Lord Chancellor must or may indemnify a legal adviser or assistant legal adviser in respect of costs incurred or damages awarded in connection with proceedings arising out of the execution of their duties. It is for the Lord Chancellor to determine whether and to what extent a legal adviser or assistant legal adviser is to be indemnified under subsections (6) and (7) (subsection (8)).

269. Section 31Q (Orders, regulations and rules under Part 4A) relates to the various powers of the Lord Chancellor to make provision in secondary legislation which are conferred under Part 4A of the Matrimonial and Family Proceedings Act 1984. The parliamentary procedures to apply to the statutory instruments made under those powers are specified (subsection (3)).

270. *Paragraphs 2 to 83* make amendments to other enactments arising out of the creation of the family court. Principally these amendments are to enable existing family legislation to apply to proceedings in the new family court.

271. *Paragraph 84* contains repeals and revocations to legislation in consequence of Parts 1 and 2 of the Schedule.

Schedule 11: Transfer of jurisdiction to family court

272. *Paragraphs 1 to 174* makes amendments to legislation providing for the transfer of jurisdiction to the family court. Principally these amendments reflect the fact that the county court and magistrates' courts will no longer deal with family proceedings and to transfer their family jurisdiction to the new family court.

273. *Paragraph 175* contains repeals and revocations in consequence of Part 1 of the Schedule.

Clause 18: Judicial appointments

274. Clause 18 gives effect to Schedule 12.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

Schedule 12: Judicial appointments

Part 1: Judges of the Supreme Court: number and selection

275. Part 1 of Schedule 12 amends aspects of the Constitutional Reform Act 2005 (“the CRA”) which created the Supreme Court of the United Kingdom. The changes relate to the number of judges who are appointed to the Supreme Court and how they are selected.

276. *Paragraph 2* amends section 23 of the CRA to allow for there to be fewer than 12 full-time equivalent judges at any time. The paragraph provides that rather than specifying that the Court consists of 12 judges, the court will instead consist of those persons appointed as its judges but there may be no more than the full-time equivalent of 12 at any time.

277. *Paragraph 3* amends section 26 of the CRA which makes provision for the selection of Supreme Court judges. *Sub-paragraph (2)* amends section 26(5) and *sub-paragraph (3)* inserts a new subsection (5A) into section 26 of the CRA to provide that the Lord Chancellor must convene a selection commission for a new appointment to the Court if there is a vacancy in the office of President of the Supreme Court or the office of Deputy President of the Court (or if it appears to the Lord Chancellor that there will soon be such a vacancy) or if the Lord Chancellor or the senior judge of the Court in consultation with the other, consider it desirable that a recommendation for appointment be made. The new section 26(5B) provides that the senior judge means the President of the Court or if there is no President, the Deputy President or, if there is no President and no Deputy President, the most senior ordinary judge of the Supreme Court.

278. *Paragraph 4* inserts new subsections (1A) to (1D) into section 27 of the CRA, which deals with the selection process for judges of the Supreme Court. These new subsections set out requirements in relation to the composition of selection commissions for Supreme Court appointments. A selection commission must include:

- a minimum of 5 members and in every case must consist of an odd number of members;
- at least one serving judge of the Supreme Court ;
- at least one non-legally-qualified member; and at least one member of each of the following bodies:
 - the Judicial Appointments Commission;
 - the Judicial Appointments Board for Scotland; and
 - the Northern Ireland Judicial Appointments Commission.

279. Further provisions in relation to the composition of selection commissions for the appointment of the President of the Court and Deputy President of the Court are made; in particular, that they must not be a member of a selection commission convened to select their

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

replacement. Where a selection commission is convened to select a person for appointment as the President of the Court, the Lord Chancellor may be member of the selection commission but cannot chair the selection commission. *Paragraph 4(2)* provides for a definition of “non-legally-qualified”.

280. *Paragraph 5* inserts a new section 27A into the CRA, conferring a duty on the Lord Chancellor to make regulations to make further provision about the membership of selection commissions and the selection process to be applied in any case where a selection commission is required. The regulations must also secure that in every case there must come a point where a selection by the selection commission is accepted. New section 27A(2) outlines what the regulations may make provision for and new subsection (3) lists the persons whom the Lord Chancellor must consult before making the regulations. These regulations must be made with the agreement of the senior judge and are subject to the affirmative resolution procedure by virtue of paragraph 7(9) of Schedule 12 which amends section 144(5) of the CRA.

281. *Paragraph 6* inserts new section 27B into the CRA. This sets out the procedure which the Lord Chancellor must follow when issuing guidance about the Supreme Court selection process and specifies the circumstances in which such guidance can be revoked. Specifically, it confers a duty on the Lord Chancellor to consult the senior judge of the Supreme Court before laying a draft of the proposed guidance before both Houses of Parliament. The guidance will be subject to the affirmative resolution procedure.

282. *Paragraphs 7 and 8* make consequential amendments, repeals and revocations. In particular, section 27(2) and (3) of, and Parts 1 and 2 of Schedule 8 to, the CRA are repealed, as are sections 28 to 31 and 60(5) of the CRA. *Paragraph 7(4)* inserts a new section 26(7A) into the CRA to define for the purposes of that section and Schedule 8 when a person is considered as having been selected.

Part 2: Diversity

283. Part 2 provides for measures to promote consideration of diversity in the appointments process.

284. *Paragraph 9(3)* amends section 63 of the CRA. New section 63(4) of the CRA provides that neither the requirement to select candidates for judicial office solely on merit, nor Part 5 of the Equality Act 2010, prevents the selecting body from preferring one candidate over another, where two persons are judged to be of equal merit, for the purposes of increasing diversity within the judiciary.

285. *Paragraph 11* amends section 2 of the Senior Courts Act 1981 to allow the maximum number of ordinary judges of the Court of Appeal to be made up of a full-time equivalent (“FTE”) of 38 ordinary judges, rather than a maximum of 38 individual judges. It also includes reference as to how to calculate the FTE, namely by taking the number of full-time

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

ordinary judges and adding, for each ordinary judge who is not full-time, such fraction as is reasonable.

286. *Paragraph 12* amends section 4 of the Senior Courts Act 1981 to allow the maximum number of puisne judges in the High Court to be made up of a FTE of 108, rather than a maximum of 108 individual puisne judges. It also includes reference as to how to calculate the FTE, namely by taking the number of full-time puisne judges and adding, for each puisne judge who is not full-time, such fraction as is reasonable.

Part 3: Judicial Appointments Commission

287. Part 3 makes changes to the number of members of, and composition of, the Judicial Appointments Commission (“the JAC”) by amending Schedule 12 to the CRA. In particular it removes some of the detailed provisions of that Schedule and introduces new regulation-making powers to set out the provisions relating to the areas that have been removed.

288. *Paragraph 15* amends Schedule 12 to the CRA to enable the Lord Chancellor, with the agreement of the Lord Chief Justice, to determine the number of Commissioners of the JAC through regulations. Paragraph 1 of Schedule 12 currently requires that the JAC consist of a chairman and 14 other Commissioners.

289. *Paragraph 16* repeals paragraphs 2(2) to (5) and 4 to 6 of Schedule 12 to the CRA which provide for the composition of the JAC. Currently the JAC must consist of five judicial members, two professional members, five lay members, one member holding an office listed in Part 3 of Schedule 14 to the CRA (which lists members of tribunals and other similar office holders appointed by the Lord Chancellor) or an office listed in paragraph 2(2A) of Schedule 12 to the CRA, and one lay justice member.

290. *Paragraph 17* inserts new paragraphs 3A to 3C into Schedule 12 to the CRA. New paragraph 3A provides that the number of Commissioners who are judicial office holders must not be greater than the number of non-judicial office holders. New paragraph 3B enables the Lord Chancellor to make provision about the composition of the JAC in regulations agreed with the Lord Chief Justice. These regulations will make provision for the categories of different members of the JAC, but the Lord Chancellor must exercise his or her power so that the JAC includes judicial office holders, employed or practising lawyers and lay members. The regulations may include provisions about the number of Commissioners of any specified category (for example, the number of lay members) and make provision about the eligibility for appointment as a Commissioner or Chairman. New paragraph 3C enables the Lord Chancellor, with the agreement of the Lord Chief Justice, to make regulations defining the terms:

- “lay member” for the purposes of Part 4 of Schedule 12 to the CRA; and

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

- “holder of judicial office” for the purposes of the exercise of the regulation making powers in paragraph 3A (number of Commissioners), paragraph 3B(2)(a) (composition of Commission) and also paragraph 20(5) of Schedule 12 to the CRA which provides that Committees of the Commission must include at least one judicial member if exercising the function of selection.

291. *Paragraph 18* substitutes paragraphs 7 to 10 of Schedule 12 which deal with matters relating to the selection of Commissioners with a new paragraph 6A which provides for the Lord Chancellor to make regulations, with the agreement of the Lord Chief Justice, in connection with the selection or nomination of commissioners. New paragraph 6A(2) provides details of the matters that may be addressed in such regulations, including provision that selection or nomination is to be by a person, or body, specified in or appointed under the regulations; the matters which the selecting body or person is to, or is not to, have regard to; that the selecting body or person can determine its own selection procedure for the purpose of appointing a Commissioner; and requiring that there is a Commissioner who has special knowledge of Wales or of some other area or of a particular matter; and for payment to selectors of remuneration, fees and expenses incurred while carrying out their duties.

292. *Paragraph 19* replaces paragraph 11 of Schedule 12 to the CRA which deals with the vice-chairman of the JAC, with a new paragraph 11 providing a regulation-making power for the Lord Chancellor, in agreement with the Lord Chief Justice, to appoint a Commissioner as vice-chairman of the JAC and makes provision for the vice-chairman to carry out the functions of the chairman.

293. *Paragraph 20* replaces paragraph 13 of Schedule 12 to the CRA which deals with the maximum term of office for a Commissioner with a new paragraph 13 providing a regulation-making power for the Lord Chancellor, in agreement with the Lord Chief Justice, to determine the period for which a Commissioner may hold office, and sets out what may be included in any such regulations, including the number of times a person can be appointed, the length of appointment and the total period for which they may hold office as a commissioner. Currently a Commissioner may serve a maximum of two terms of up to five years apiece.

294. *Paragraph 21* replaces sub-paragraphs (1) and (2) of paragraph 14 of Schedule 12 to the CRA which deal with circumstances where persons cease to be a Commissioner or Chairman on the basis that they are no longer eligible for the particular appointment that they have been appointed to, with a new sub-paragraph (1). This provides a regulation-making power for the Lord Chancellor, exercisable in agreement with the Lord Chief Justice, to provide when a Commissioner ceases to be a Commissioner or when the Chairman ceases to be the Chairman, and to provide a power to disapply or suspend these provisions in individual cases.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

295. By virtue of the amendment made to section 144(5)(e) of the CRA by *paragraph 25*, all regulations made under Part 1 of Schedule 12 to the CRA, as amended, are subject to the affirmative resolution procedure.

296. *Paragraphs 22 to 26* make supplementary and consequential amendments to the CRA and the Tribunals, Courts and Enforcement Act 2007.

Part 4: Judicial appointments: selection, and transfer of powers of Lord Chancellor

297. Part 4 provides for responsibility for certain decisions in relation to judicial appointments to be transferred from the Lord Chancellor to the Lord Chief Justice and Senior President of Tribunals.

298. The Lord Chief Justice will acquire the power to appoint persons to a number of courts-based judicial offices below the High Court and will acquire the power to decide upon selections made by the JAC in relation to appointments to a number of other courts-based judicial offices where Her Majesty, the Queen, has the power to appoint. The Lord Chancellor will retain the power to decide upon selections by the JAC or selection panel in relation to appointments to the High Court and above and will retain the power to appoint in relation to a number of other courts-based judicial offices.

299. In relation to those offices where the Lord Chief Justice will, in future, have the power to appoint, most if not all of those offices are held by the holders on a renewable fixed-term basis. The power to extend, or to refuse to extend, such fixed-term appointments will also be transferred to the Lord Chief Justice but the Lord Chancellor will retain power to remove persons from office.

300. The Lord Chancellor will retain overall responsibility and accountability for judicial terms and conditions of appointment and service.

301. The Senior President of Tribunals will acquire the power to appoint persons as judges or other members of the First-tier Tribunal, other members of the Upper Tribunal, Chamber Presidents and Deputy Chamber Presidents of the First-Tier Tribunal or the Upper Tribunal and deputy judges of the Upper Tribunal. The Senior President of Tribunals will also acquire the power to decide upon selections made by the JAC in relation to appointments as judges of the Upper Tribunal for which Her Majesty, the Queen, has the power to appoint.

302. Where any of the offices for which the Senior President of Tribunals will, in future, have the power to appoint are held by the holder on a renewable fixed-term basis, the Senior President of Tribunals will be responsible for the extension (or refusing to extend) such fixed term appointments. The Lord Chancellor will retain power to remove a person from office and, again, the Lord Chancellor will retain responsibility for judicial terms and conditions of appointment and service.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

303. *Paragraph 27* amends Part 1 of Schedule 14 to the CRA (appointments by Her Majesty) so as to transfer responsibility for deciding upon selections made by the JAC in relation to certain judicial appointments from the Lord Chancellor to the Lord Chief Justice or the Senior President of Tribunals. *Paragraph 28* makes consequential amendments to paragraphs 1(2)(d) and 1(3) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

304. *Paragraph 30* amends section 21 of the Courts Act 1971 which deals with the appointment of Recorders who are fee-paid Crown Court and county court judges who hold office for a renewable fixed-term. Section 21(3) deals with the terms of appointment of a Recorder. Subsection (3)(c) provides that the terms of appointment must specify the circumstances in which the Lord Chancellor may either terminate the appointment or decline to extend the term of the appointment. *Paragraph 30(2)* replaces subsection (3)(c) with a new subsection (3)(c) and (d), the effect of which is that the Lord Chancellor retains the power to remove a person from office as a Recorder (subsection (3)(c)) whilst a refusal to extend the term of an appointment (subsection (3)(d)) becomes a matter for the Lord Chief Justice. *Paragraphs 30(3) to 30(5)* amend section 21(4A) to (4C), to make further provision in respect of the extension of the term of appointment of a Recorder, to reflect the fact that decisions in respect of such extensions are now to be taken by the Lord Chief Justice rather than the Lord Chancellor. *Paragraph 30(6)* inserts a new section 21(4D) to provide that the Lord Chief Justice can decline to extend the term of a Recorder's appointment in circumstances provided for under new section 21(3)(d). *Sub-paragraph (8)* inserts a new subsection (8) to provide that subject to the preceding provisions of section 21 a person holds and vacates office as a Recorder in accordance with the terms of the person's appointment and those terms are to be such as the Lord Chancellor may determine. *Sub-paragraph (8)* also inserts a new subsection (9) into section 21 which enables the Lord Chief Justice to nominate a senior judge to exercise functions under section 21(4) to (4D).

305. *Paragraph 32* relates to the appointment of deputy Circuit judges by the Lord Chief Justice. *Paragraph 32(3)* amends section 24(1)(a) of the Courts Act 1971 to transfer the power to appoint persons as deputy Circuit judges from the Lord Chancellor to the Lord Chief Justice, but any decision to appoint a person must be made with the concurrence of the Lord Chancellor (reversing the current roles). *Paragraph 32(5)* inserts new subsections (5A) to (5D) into section 24 of the Courts Act 1971 to provide for the circumstances in which a deputy Circuit judge may be removed from office by the Lord Chancellor (new section 21(5A)), the extension of a deputy Circuit judge's fixed-term of appointment by the Lord Chief Justice (new section 21(5B) and (5C)), and the determination of other terms of appointment by the Lord Chancellor (new section 21(5D)).

306. *Paragraph 33* amends section 91 of the Senior Courts Act 1981, which deals with the appointment of deputy and temporary Masters, Registrars etc. of the High Court. *Paragraph 33(2)* amends section 91(1) to transfer to the Lord Chief Justice (from the Lord Chancellor) the power to appoint such office holders. *Paragraph 33(3)* substitutes section 91(1ZA) to provide that the Lord Chief Justice cannot appoint a holder of relevant office (as defined in

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

section 91(1ZC)) as a deputy Master etc without the agreement of the Lord Chancellor. *Paragraph 33(4)* inserts new subsections (6A) to (6D) into section 91 to provide for the circumstances in which a deputy or temporary Master etc. may be removed from office by the Lord Chancellor (new section 91(6A)), the extension of a deputy or temporary Master's etc. fixed-term appointment by the Lord Chief Justice (new section 91(6B) and (6C)), and the determination of other terms of appointment by the Lord Chancellor (new section 91(6D)).

307. *Paragraph 33(6) and (7)* makes consequential amendments to the CRA and Tribunals, Courts and Enforcement Act 2007.

308. *Paragraph 34* amends section 102 of the Senior Courts Act 1981 which provides for the appointment of deputy district judges for the High Court. *Sub-paragraph (2)* amends section 102(1) to allow the Lord Chief Justice (rather than the Lord Chancellor) to appoint persons as deputy district judges. *Sub-paragraph (3)* amends section 102(1B) so that the Lord Chief Justice cannot appoint without the agreement of the Lord Chancellor a person who holds the office of district judge or a person who ceased to hold the office of district judge within two years ending with the date when the appointment takes effect. *Sub-paragraph (4)* inserts new subsections (5ZA) to (5ZE) into section 102 to provide for the circumstances in which a deputy district judge may be removed from office by the Lord Chancellor (new section 102(5ZA)), the extension of a deputy district judge's fixed-term of appointment by the Lord Chief Justice (new section 102(5ZB) and (5ZC)), the determination of other terms of appointment by the Lord Chancellor (new section 102(5ZD)) and the delegation of the Lord Chief Justice's functions under section 102 (new section 102(5ZE)). *Paragraph 34(5) and (6)* makes consequential amendments to the Senior Courts Act 1981 and the CRA as a result of the above changes.

309. *Paragraph 35* makes similar provisions to those outlined above, but in relation to deputy district judges for the county court, by amending section 8 of the County Courts Act 1984.

310. *Paragraph 36* makes like provisions for Deputy District Judges (Magistrates' Courts) by amending section 24 of the Courts Act 2003.

311. *Paragraph 37* introduces a requirement into section 94A of the CRA for the Lord Chancellor and the Lord Chief Justice to seek the concurrence of the other before making certain judicial appointments, selection for which is not undertaken by the JAC.

312. *Paragraph 38* amends Part 2 of Schedule 14 to the CRA so that the transfer of the power to appoint in relation to particular courts-based judicial offices from the Lord Chancellor to the Lord Chief Justice is reflected in that Schedule.

313. *Paragraphs 39 and 40* amend the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act") to confer upon the Senior President of Tribunals (in place of the Lord Chancellor)

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

the power to appoint Chamber Presidents for the First-tier Tribunal or the Upper Tribunal. *Paragraph 41* stipulates which functions the Senior President of Tribunals may not delegate.

314. *Paragraph 42(2)* amends Schedule 2 to the 2007 Act to confer on the Senior President of Tribunals the power to appoint judges and other members of the First-tier Tribunal. *Paragraph 42* further amends Schedule 2 to set out the grounds on which the Lord Chancellor may remove judges and other members of the First-tier Tribunal appointed on a fee-paid basis from office, and makes provisions regarding the extension of fixed-term appointments by the Senior President of Tribunals.

315. *Paragraph 43* makes similar provisions in relation to the appointment of other members of the Upper Tribunal by amending Schedule 3 to the 2007 Act, and also confers upon the Senior President of Tribunals the power to appoint deputy judges of the Upper Tribunal by way of amendment to paragraph 7(1) of Schedule 3.

316. *Paragraph 44* amends Schedule 4 to the 2007 Act to transfer certain functions from the Lord Chancellor to the Senior President of Tribunals in relation to the appointment of Chamber Presidents and deputy Chamber Presidents. *Sub-paragraph (14)* inserts new paragraph 5A into Schedule 4 to provide for the removal of Chamber Presidents and deputies from office and extensions of their appointments where they are fixed-term ones.

317. *Paragraph 45(2)* substitutes a new section 94B(1)(b) of the CRA to provide that for certain appointments (where section 94B applies) the Lord Chancellor and the Senior President of Tribunals are not to make an appointment (or recommendation for appointment) without the concurrence of the other. *Paragraph 46* makes consequential amendments to Part 3 of Schedule 14 to the CRA to reflect the transfer of the Lord Chancellor's power to appoint in relation to certain tribunals-based judicial offices to the Senior President of Tribunals. *Paragraph 47* amends section 50 of the Equality Act 2010 to amend the definition of "public office" so as to bring into its scope those judicial offices for which the Lord Chief Justice and the Senior President of Tribunals will, in future, have the power appoint. It will therefore be unlawful for the Lord Chief Justice or the Senior President of Tribunals to discriminate against, harass or victimise persons who are, or wish to be, appointed to those judicial offices for which the Lord Chief Justice and the Senior President of Tribunals will have the power to appoint. *Paragraph 48* makes consequential amendments to section 51 of the Equality Act 2010.

318. *Paragraph 49* amends section 9 of the Senior Courts Act 1981 so that requests may only be made to a Circuit judge, Recorder or Tribunal judge to sit in the High Court if they are a member of a pool selected by the JAC for such purposes.

319. *Paragraph 50* repeals several sections of the CRA, and inserts a new section 94C into that Act. The new section 94C will require the Lord Chancellor to make regulations with the agreement of the Lord Chief Justice to:

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

- (a) make further provision about the process to be applied where the Lord Chancellor has requested the JAC to select persons for appointment as a High Court judge or to one of the offices listed in Schedule 14 to the CRA or to a pool mentioned in the amendment made by paragraph 49. Although the JAC will have the power under section 88(1) of the CRA to determine the selection process to be applied by it, the regulations may make further provision about the entire process;
- (b) make further provision about the membership of the selection panels convened for selecting persons for appointment as Lord Chief Justice, Heads of Division, Senior President of Tribunals or ordinary judges of the Court of Appeal;
- (c) make further provision about the process to be applied in a case where such a selection panel is required to be convened.

320. The regulations must also secure that in every case there must come a point where a selection by the JAC or selection panel is accepted. New section 94C(2) sets out what the regulations may in particular provide for. Notably, such regulations may give functions to the Lord Chancellor including the powers to require a selection panel to reconsider a selection or any subsequent selection, and to reject a selection (except where the Lord Chancellor is a member of the selection panel convened to appoint a Lord Chief Justice). Furthermore, under these regulations the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals (depending upon who has the power to decide upon a selection by the JAC) could be given power to reject or require reconsideration of initial or subsequent selections by the JAC made on a request under section 87, and to require reconsideration by the JAC of a decision where a selection process has not identified candidates of sufficient merit.

321. *Paragraphs 51 to 76* provide for other and consequential changes to be made to the CRA in relation to selection processes and complaints about the selection/appointment process. *Paragraph 54(2)* inserts three subsections (1A), (1B) and (1C) into section 70, setting out requirements in relation to the composition of selection panels for selecting persons for appointment as Lord Chief Justice or Heads of Division. Similarly, sections 75B and 79 are amended (*paragraphs 56(2) and 59(2)*) to set out requirements for the composition of selection panels for selecting persons for appointment as the Senior President of Tribunals and ordinary judges of the Court of Appeal, respectively. The new subsections notably require that the panel must consist of an odd number of members and not less than five, that at least two members must be non-legally qualified (which may be defined in regulations made under new section 94C), that at least two must be judicial members and that at least two must be members of the JAC. In the case of a selection panel convened to appoint a Lord Chief Justice, the Lord Chancellor may be a member of that panel, although may not chair the panel.

322. *Paragraph 60* provides for the Lord Chancellor, by order and after consulting the Lord Chief Justice for England and Wales, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, to provide that section 85 of the CRA does not apply to appointments to an office listed in Schedule 14 to the CRA that is specified in the order. In

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

essence this will provide that certain offices may be removed from the scope of the JAC. Those offices may only be those that do not require particular legal qualifications.

323. *Paragraph 61* amends section 86 of the CRA, in relation to the duties to make appointments or recommendations for appointment.

324. *Paragraph 62* amends section 87 of the CRA, which concerns the Lord Chancellor's power to request the JAC to select a person for a recommendation or appointment. *Sub-paragraph (2)* inserts new subsection (1A) which provides that the Lord Chancellor may request the JAC to select a person for membership of a pool from which requests may be made under section 9(1) of the Senior Courts Act 1981 to assist with the business of the Senior Courts.

325. *Paragraph 63* makes consequential amendments to section 88 of the CRA, which deals with the selection process. It amends section 88(4) to provide that only one person may be selected in relation to each request for membership of selection pools for the purposes of section 9(1) of the Senior Courts Act 1981.

326. *Paragraph 64* substitutes a new section 94 into the CRA. If the Lord Chancellor gives the JAC notice of a request which the Lord Chancellor expects to make under section 87, the JAC must seek to identify persons it considers would be suitable for selection on the request. The Lord Chancellor, however, may with the agreement of the Lord Chief Justice make regulations about how the JAC is to comply with this duty. *Paragraph 65* provides further detail and consequential amendments to section 95 of the CRA regarding the Lord Chancellor's power to withdraw or modify a request made under section 69, 78 or 87 of the CRA or paragraph 2(5) of Schedule 1 to the 2007 Act.

327. *Paragraphs 67 to 73* concern consequential amendments to sections 99 to 105 of the CRA which concern complaints about the selection/appointment process, including referrals to the Judicial Appointments and Conduct Ombudsman ("Ombudsman"). *Paragraph 67* incorporates a definition of "LCJ complaint" and "SPT complaint" into section 99 of the CRA, and *paragraph 68* imposes a duty upon the Lord Chief Justice and Senior President of Tribunals to investigate complaints made to them. *Paragraphs 69 to 72* concern the duties of the Ombudsman to investigate complaints and submit reports to the Lord Chief Justice, Senior President of Tribunals and the Lord Chancellor. *Paragraph 74* amends section 144(5) of the CRA to add to the list of orders and regulations that are subject to the affirmative resolution procedure. *Paragraphs 75 and 76* make further consequential amendments to the CRA.

Part 5: Abolition of office of assistant recorder

328. From April 2000, appointments to the office of Assistant Recorder (fee-paid judicial office holders with a fixed term of appointment) were no longer made, with all subsequent appointments being made to the office of Recorder. However, residual references to the office of Assistant Recorder still remain in legislation. *Paragraph 77* removes any reference to this

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

office in the Courts Act 1971, and provides for consequential amendments as a result of this removal to be made to that Act, the Judicial Pensions and Retirement Act 1993, the Senior Courts Act 1981, the Courts Act 2003, the CRA and the 2007 Act.

Clause 19: Deployment of the judiciary

329. Section 7(2) of the CRA lists responsibilities of the Lord Chief Justice as President of the Courts of England and Wales; paragraph (c) refers to the “maintenance of appropriate arrangements” for the deployment of the judiciary of England and Wales. Similarly, Part 2 of Schedule 4 to the 2007 Act specifies that the Senior President of the Tribunals has the function of assigning judges and members to the chambers of the First-tier Tribunal and Upper Tribunal.

330. In the tribunals, the scheme of assignment is in part specified in the 2007 Act itself and supplemented by a policy which the Senior President of Tribunals is required to publish (by paragraph 13 of Schedule 4). Within the court system the arrangements for deploying judges are largely uncodified. Each piece of legislation dealing with court jurisdiction specifies which judicial office holders may sit in that court, and arrangements for their deployment to that court is overseen by the Lord Chief Justice.

331. Judges of the First-tier Tribunal and Upper Tribunal cannot at present be deployed into the courts at all. The purpose of clause 19 and Schedule 13 is to resolve these difficulties. See also the provisions inserted by *Schedules 9 and 10* about who are to be judges of the county court and family court.

332. Clause 19 expands the Lord Chief Justice’s deployment responsibilities insofar as they are not already covered by section 7(2) of the CRA, and requires him to have regard to the similar responsibilities of the Senior President of Tribunals. The responsibilities are to maintain appropriate arrangements for the deployment to tribunals of judiciary who are deployable to tribunals, and for the deployment to courts in England and Wales of judiciary who are deployable to those courts. Further, it provides that Schedule 13 has effect.

Schedule 13: Deployment of the judiciary

333. In summary, Schedule 13 expands the lists in statute of the judicial office holders who are capable of sitting in each type of court and tribunal.

334. Schedule 13 is divided into six parts:

- Parts 1 and 2 are concerned with the judicial office holders who may sit in the Senior Courts (i.e. Court of Appeal, High Court and Crown Court);
- Part 3 is concerned with the judicial office holders who may sit in the magistrates’ courts;

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

- Part 4 is concerned with the judicial office holders who may sit in the First-tier Tribunal and Upper Tribunal;
- Parts 5 and 6 are concerned with the judicial office holders who may sit in the Employment Appeal Tribunal and the Employment Tribunal.

Part 1: Deployment under section 9 of the Senior Courts Act 1981

335. Part 1 provides for a wider range of judicial office holders to provide assistance with the transaction of judicial business in the Senior Courts. The intended position is shown in **Annex B**. It also provides that selection for appointment to the office of deputy judge of the High Court under section 9(4) of the Senior Courts Act 1981 should be by the JAC.

336. *Paragraph 1* amends section 9 of the Senior Courts Act 1981 (“the 1981 Act”). *Sub-paragraph (2)* provides that a person who has been a puisne judge of the High Court or has been a Court of Appeal judge can be requested to sit in the family and county courts. *Sub-paragraph (3)* adds the Senior President of Tribunals to those who may be requested to sit in the Court of Appeal or the High Court. *Sub-paragraphs (4) and (5)* provide that the Upper Tribunal judges and the President of the Employment Tribunals are added to the table and able to be requested to sit in the High Court. *Sub-paragraph (6)* provides that a request to the Senior President of Tribunals may only be made after consulting the Lord Chancellor. *Sub-paragraph (7)* provides for the concurrence of the Judicial Appointments Commission in relation to a request for a Circuit judge to sit in the Criminal Division of the Court of Appeal. *Sub-paragraph (8)* specifies which judges must comply with a request and those judges that do not have to comply with a request.

337. New subsections (8A) and (8B) of section 9 of the 1981 Act (inserted by *sub-paragraph (3)*) expressly provides the Lord Chancellor with the power to remove deputy judges of the High Court and determine the terms of their appointments.

338. *Paragraph 3* inserts the deputy judge of the High Court into Table 1 of Part 2 of Schedule 14 to the CRA which requires appointments made under section 9(4) of the 1981 Act, to be made following a Judicial Appointments Commission selection process.

Part 2: Deployment of judges to the Crown Court

339. *Paragraph 4* amends section 8 of the 1981 Act which expands the list of judges who are capable of exercising the jurisdiction of the Crown Court. Following the changes, the Senior President of Tribunals, judges of the First-tier and Upper Tribunals, county court and High Court district judges, deputy district judges and Masters and members of a panel of chairmen of employment tribunals in England and Wales will all be able to exercise the jurisdiction of the Crown Court if deployed to that court by the Lord Chief Justice.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

Part 3: Deployment of judges to the magistrates' court

340. *Paragraph 5* amends section 66 of the Courts Act 2003 to expand the list of judges who have the powers of a justice of the peace who is a District Judge (Magistrates' Courts). The offices which have been added are, the Master of the Rolls, an ordinary judge of the Court of Appeal, the Senior President of Tribunals, judges of the First-tier and Upper Tribunals, county court and High Court district and deputy district judges and Masters and members of a panel of chairman of employment tribunals in England and Wales.

Part 4: Deployment of judges to the first-tier tribunal and the upper tribunal

341. *Paragraph 7* amends section 4(1) of the 2007 Act to provide that any judge specified in new section 6A (inserted by *paragraph 9* of Schedule 13) is a judge of the First-tier Tribunal.

342. *Paragraph 8* amends section 6(1) of the 2007 Act to provide that the following judges are also judges of the First-tier and Upper Tribunals: the Lord Chief Justice of England and Wales, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Judge Advocate General and a deputy judge of the High Court.

343. *Paragraph 9* inserts a new section 6A into the 2007 Act which expands the list of judges who are First-tier Tribunal judges to include a deputy Circuit Judge, a Recorder, High Court Masters, county court and High Court deputy district judges, Deputy District Judges (Magistrates' Courts), the Vice Judge Advocate General and Assistant Judge Advocates General.

Part 5: Deployment of judges to the employment appeal tribunal

344. *Paragraph 10* amends section 22 of the Employment Tribunals Act 1996 ("the 1996 Act") by expanding the list of judicial office holders that may be nominated by the Lord Chief Justice to sit in the Employment Appeal Tribunal. Currently, only judges of the Court of Appeal or the High Court may be nominated to sit in the Employment Appeal Tribunal. Following the changes, the Senior President of Tribunals, the Judge Advocate General, deputy judges of the High Court, Circuit Judges, judges of the Upper Tribunal, district judges and District Judges (Magistrates' Courts) will be able to be nominated by the Lord Chief Justice.

Part 6: Deployment of judges to the employment tribunals

345. *Paragraph 11* amends section 5D of the 1996 Act which relates to the provision of judicial assistance in the employment tribunals. The list of judges that may be deployed to the employment tribunals is expanded to include the Lord Chief Justice and (with the Lord Justice's consent) any of the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court in England and Wales, a deputy judge of the High Court, a Recorder, a county court or High Court deputy district judge, a Deputy District Judge (Magistrates' Court), High Court Masters and

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

both the Judge Advocate General and any non-temporary assistants. Lastly, the paragraph makes it possible for the Senior President of Tribunals to sit in employment tribunals.

Clause 20: Payment of fines and other sums

346. Clause 20 makes provision (a) to enable the recovery of charges for some or all of the administrative costs of collecting or pursuing criminal financial penalties from offenders who have defaulted on that sum; and (b) to facilitate the performance of the functions of fines officers by staff provided under contract.

347. *Subsection (1)* inserts a new section 75A into the Magistrates' Courts Act 1980 ("the 1980 Act"), which deals with the recovery of fine collection costs. A charge may be made in relation to the administrative costs incurred for the purpose of collecting or pursuing criminal financial penalties (new section 75A(1)). The charge would be added to the amount outstanding of the financial penalty imposed on conviction and treated in the same way (new section 75A(2)). This also means the charge would be recoverable in the same way and subject to the same sanctions for default. The offender must be notified of the obligation to pay the charge (new section 75A(3)): this will either be done in the collection order where the court has made such an order (a collection order is an order, which the court is required under paragraph 12 of Schedule 5 to the Courts Act 2003 to make unless it is impracticable or inappropriate to do so, relating to the payment of the financial penalty and containing information about the amount of the financial penalty and how it is to be paid) or via some other form of notice where no collection order is made.

348. The collection costs will not be chargeable where the court has allowed time to pay or where a person is paying by instalments and the sum has been satisfied within the time allowed or the payments are up to date (75A(4) and (5)). The collection costs do not apply to costs related to taking control of goods (75A(6)).

349. *Subsection (2)* inserts a new section 36A into the Courts Act 2003 ("the 2003 Act") which makes it clear that the role and functions of the magistrates' court fines officer under that Act are to be treated as not involving the making of judicial decisions or the exercise of judicial discretion. This would facilitate the performance of those functions by staff provided under contract under section 2(4) of the 2003 Act.

350. *Subsections (3) to (8)* make amendments to other legislation consequential on the main changes made by subsections (1) and (2). *Subsection (3)* inserts provision into Schedule 5 to the 2003 Act to ensure that collection orders contain an explanation of the possibility of collection costs being chargeable in the event of default. *Subsection (4)* amends section 85 of the 1980 Act to provide that collection costs may be remitted in the same way as a fine to which they are added. *Subsection (5)* amends section 139 of the 1980 Act, which makes provision for how the balance of receipts on account of fines is to be applied: the amendment makes the provision subject to directions which may be made under section 139A of that Act. *Subsection (6)* inserts that new section 139A into the 1980 Act. The new section 139A enables the Lord Chancellor to give directions for money received in respect of collection

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

costs to be paid to the person who charged the amount, which allows for flexibility in the arrangements for applying that money, for example if fine collection functions were to be performed under contract. *Subsection (7)* amends section 24(2) of the Criminal Justice Act 1991 to ensure that regulations about applications by courts for benefit reductions for payment of fines may make provision about deductions in connection with the sum being increased on account of collection costs. *Subsection (8)* amends section 56(3) of the Education and Skills Act 2008 (which provides for non-participation fines imposed in respect of failure to attend education or training to cease to be enforceable as fines once the person in question has reached 18, except in so far as necessary to complete enforcement which is already under way) so that it covers amounts in respect of collection costs incurred in relation to such a fine in the same way as amounts in respect of the fine itself.

Clause 21: Disclosure of information for calculating fees of courts, tribunals etc

351. Clause 21 makes provision for the disclosure of information about tax credits, social security information and information about a person's income, gains or capital in order to determine a person's eligibility for a remission from paying fees to courts, tribunals or the Public Guardian.

352. *Subsection (1)* provides that the Secretary of State (in practice, the Secretary of State for Work and Pensions), or a relevant Northern Ireland Department, or a person providing services to them, may disclose social security information to a relevant person in order for that person to determine whether an applicant is eligible for a fee remission.

353. *Subsection (2)* enables Her Majesty's Revenue and Customs to disclose tax credit information or information about a person's income, gains or capital to a relevant person in order for that person to determine whether an applicant is eligible for a fee remission.

354. *Subsection (3)* provides that information disclosed to a relevant person under *subsection (1)* or *(2)* may only be shared with another relevant person who needs the information to assess whether someone is eligible for a fee remission. And it cannot be used for any other purpose than in connection with determining fee remission.

355. *Subsection (4)* explains the limited circumstances in which information received for the purpose of deciding whether someone is eligible for a fee remission under either *subsection (1)* or *(2)* may be further disclosed. Further disclosure is only permitted where that information has already been disclosed to the public with lawful authority, where it is disclosed in a form such that information about an individual cannot be identified from it or where disclosure is necessary to comply with a court order or statutory duty.

356. *Subsection (5)* provides that it is an offence to disclose or use this information other than for the purposes specified.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

357. *Subsection (6)* explains that where a person is charged with an offence under *subsection (5)*, it is a defence that they reasonably believed that the disclosure or use of information was lawful.

358. *Subsection (7)* sets out the applicable penalties where a person is guilty of the offence at *subsection (5)*. A conviction on indictment may attract a sentence of imprisonment for a term not exceeding two years, a fine or both. On summary conviction a person is liable to a term of imprisonment not exceeding 12 months, a fine not exceeding the statutory maximum, or both.

359. *Subsection (8)* provides that in relation to summary convictions for the offence at *subsection (5)*, a prison sentence not exceeding 6 months applies to offences committed in England and Wales before the implementation of section 154(1) of the Criminal Justice Act 2003 (which provides that a magistrates court does not have the power to impose a sentence of more than 12 months for one offence) or for offences committed in Northern Ireland.

360. *Subsection (9)* provides that, in England, Wales, and Northern Ireland, a person may only be prosecuted for an offence under this clause by or with the consent of the relevant Director of Public Prosecutions.

361. *Subsection (10)* defines the terms used in this clause. It sets out what is meant by a relevant person and includes a list of court, tribunal and other fee-charging provisions to which the disclosure regime applies.

Clause 22: Making, and use, of films and other recordings of judicial proceedings

362. The purpose of this clause is to permit filming and broadcast of proceedings in courts and tribunals in certain circumstances. It is expected that such circumstances will be set out in secondary legislation and where appropriate in non-statutory operational guidance.

363. *Subsection (1)* provides that the Lord Chancellor may, by order made with the agreement of the Lord Chief Justice, provide that the enactments in subsection (2) do not apply. Any such order is subject to the negative resolution procedure (see clause 28(10)).

364. *Subsection (2)* contains the enactments that may be disapplied. They are section 41 of the Criminal Justice Act 1925 which prohibits photography or drawing in court and section 9 of the Contempt of Court Act 1981 which prohibits sound recordings in court without the permission of the court.

365. *Subsection (3)* provides that, where an order has been made, a court or tribunal may direct that the enactments in subsection (2) may continue to apply, or will only be disapplied if certain conditions are satisfied. The court may only give such a direction if this is necessary to ensure the fairness of any particular proceedings or to ensure that any person involved in the proceedings is not unduly prejudiced.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

366. *Subsection (4)* provides that any direction under subsection (3), or a decision not to make a direction, is not subject to appeal

367. *Subsection (5)* defines ‘recording’ and ‘prescribed’.

368. *Subsections (6) and (7)* amend section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 so as to provide that the restrictions they impose are to be read as being subject to this clause.

Clause 23: Community and other non-custodial sentencing of adults

369. Clause 23 gives the Secretary of State a power to make regulations (subject to the affirmative resolution procedure) governing the way in which adult offenders are dealt with other than by imposing a custodial sentence.

Part 3: Miscellaneous and general

Clause 24: Appeals against refusal of entry clearance to visit the UK

370. Clause 24 amends section 88A of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), and section 4 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”) so as to remove full rights of appeal for persons refused a visa for a family visit to the United Kingdom.

371. The original section 88A of the 2002 Act, as inserted by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Act”), restricted rights of appeal against refusal of entry clearance if the decision to refuse was taken on certain grounds specified by an order of the Secretary of State.

372. Sections 90 and 91 of the 2002 Act restrict rights of appeal against refusal of entry clearance by non-family visitors (those visiting family members, as specified in an order of the Secretary of State, retain an appeal right) and students respectively.

373. Section 4 of the 2006 Act was intended to substitute sections 88A, 90 and 91 of the 2002 Act with one provision (a new section 88A) which would restrict all appeals against refusal of entry clearance to limited grounds (human rights and race discrimination), with the exception of those in the categories listed. The categories of applicant who would retain a full right of appeal were certain family visitors (new section 88A(1)(a)) and dependants of persons in the United Kingdom (new section 88A(1)(b)) to be prescribed by regulations.

374. Section 4 of the 2006 Act has been commenced, but only so far as it relates to applications of a kind identified in immigration rules²⁸ as requiring to be considered under a “Points Based System”. That partial commencement resulted in the substitution of the original section 88A inserted by the 2004 Act, whilst sections 90 and 91 remain in force.

²⁸ <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

Sections 90 and 91 will be substituted when section 4 of the 2006 Act is further commenced in relation to appeal rights for family visitors and dependants. It is intended to further commence section 4 of the 2006 Act in mid-2012 in so far as it relates to appeal rights for family visitors. Regulations will be laid under section 88A(1) that specify the type of family member to be visited and the immigration status the person to be visited must have. That partial commencement for the purposes of family visitors will substitute the existing section 90.

375. Clause 24 amends the partially commenced section 88A (*subsection (1)*) and the yet to be fully commenced section 4 of the 2006 Act (*subsection (2)*) by deleting paragraph (a) from both versions of section 88A(1), thus removing family visitors from the categories of applicant who retain a full right of appeal (*subsection (3)*). The clause also removes from both sections the supplementary provisions to make regulations under section 88A(1)(a) contained in sections 88A(2)(a) and (c) (*subsections (4) and (5)*). When commenced clause 24 will repeal the secondary legislation to be laid under section 88A(2) in mid-2012.

376. *Subsection (6)* ensures correct referencing across the 2006 Act and *subsection (7)* ensures that the power to make commencement orders under section 62 of the 2006 Act allows section 4(1) to be commenced as amended by this clause.

Clause 25: Restriction on right of appeal from within the United Kingdom

377. Clause 25 amends the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) by inserting a new subsection (2A) into section 92 (*subsection (2)*) and a new section 97B (*subsection (3)*), which provides for a certification power for the Secretary of State, acting in person, to remove the application of the in country right of appeal provisions in section 92 of the 2002 Act where:

- A person’s leave is cancelled under section 82(2)(e) of the 2002 Act wholly or partly on the grounds that it would not be conducive to the public good to allow them to have leave to enter or remain in the UK; and
- That decision is taken whilst the individual is outside the UK.

378. *Subsection (4)* inserts a reference to the new section 97B into section 99 of the 2002 Act. Section 99 provides that any outstanding appeal against the decision will lapse upon certification. This appeal will be replaced by an out of country appeal right.

Clause 26: Powers of immigration officers

379. *Subsection (1)* amends section 93(5) of the Police Act 1997, to extend the list of “authorising officers” who can authorise applications to interfere lawfully with property and

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

wireless telegraphy. Property interference within the Code of Practice^[1] is taken to include entry on, or interference with property or interference with wireless telegraphy. Therefore, whilst not defined in the Act property interference is any activity which, if not authorised, would be illegal or actionable in the civil courts as a trespass to land or to goods such as bag searching, installing recording equipment on possessions, vehicles and premises. Wireless telegraphy includes radio, TV and mobile telephone communications and Global Positioning System information.

380. The purpose of this amendment is to provide for immigration officers working in Criminal and Financial Investigation (“CFI”) teams in the UK Border Agency (“UKBA”) to be able to apply to exercise property interference powers equivalent to those already used by customs officials pursuant to section 93(5)(h) of the Police Act 1997. CFI teams have responsibility for investigating smuggling of drugs, firearms and weapons and organised immigration and customs crimes. At present, only customs officials within UKBA can apply for authorisation to interfere with property from a senior official, designated by the Secretary of State, for the purpose of investigating customs offences. In practice, the amendment to section 93(5) will enable the UKBA’s Chief Operating Officer, who is the authorising officer for customs purposes, to be further designated to authorise applications from immigration officers for the purpose of investigating organised immigration crime.

381. *Subsection (2)* similarly amends section 32(6) of the Regulation of Investigatory Powers Act 2000 (“RIPA”) to extend the list of “senior authorising officers” who can authorise applications for intrusive surveillance to include a senior official in the department of the Secretary of State by whom functions relating to immigration are exercisable. At present, the UKBA is able to authorise applications from immigration officers investigating serious organised immigration for directed surveillance and Covert Human Intelligence Sources (“CHIS”), and the “senior authorising officer” can authorise applications for intrusive surveillance from customs officials for customs investigations. This amendment will enable the UKBA’s Chief Operating Officer, who is “senior authorising officer” for customs purposes, to be designated to authorise applications from immigration officers for organised immigration crime investigations. “Intrusive surveillance” is defined under RIPA as covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle. This kind of surveillance may take place by means either of a person or device located inside the residential premises or private vehicle of the person who is subject to the surveillance, or by means of a device placed outside which consistently provides a surveillance product of equivalent quality product that which would be obtained from a device located inside.

^[1] Covert Surveillance and Property Interference Revised Code of Practice
<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert?view=Binary>

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

382. *Subsection (3)* introduces amendments to the Proceeds of Crime Act 2002 (“POCA”) made by subsections (4) and (5).

383. *Subsection (4)* provides for immigration officers to be “appropriate officers”, as defined in section 47A of POCA, for the purposes of the search and seizure powers set out in sections 47B to 47S of that Act. This will enable immigration officers to seize property and search people, vehicles and premises, subject to certain conditions, with a view in particular to preventing the dissipation of property that may be used to satisfy a confiscation order, actual or anticipated. These powers are currently restricted to customs officers, constables and accredited financial investigators.

384. *Subsection (5)* amends section 378 of POCA (which lists the appropriate officers and senior appropriate officers who may apply for the orders and warrants set out in set out in Chapter 2 of Part 8 of that Act) by including immigration officers as “appropriate officers” for the purposes of confiscation, detained cash and money laundering investigations under POCA. This will allow immigration officers to apply as part of any such investigations for production, disclosure and account monitoring orders (and customer information orders if they are sufficiently senior or authorised to do so by a senior officer), as well for search and seizure warrants. At present, only accredited financial investigators, constables or customs officers (and, in the case of confiscation investigations, employees of the Serious Organised Crime Agency) are “appropriate officers” for these purposes. This provision will also allow immigration officers, who are of an equivalent rank to a police superintendent, to act as a “senior appropriate officer” in a confiscation investigation, which will permit them to apply for, or to vary, a customer information order or to authorise another to do so. The amendment will, therefore, provide immigration officers with powers equivalent to those used already by other law enforcement officers when conducting investigations of the sort referred to above.

385. *Subsection (6)* amends section 24 of the UK Borders Act 2007 (the 2007 Act). First, it provides a new definition of “unlawful conduct”, covering both immigration and nationality offences, for the purposes of the exercise by immigration officers of the power to search for cash under section 289 of POCA. Secondly, it provides for the definition of “unlawful conduct” in section 241 of POCA to apply to the exercise by immigration officers of all the other powers in Chapter 3 of Part 5 of POCA, as it does already to the exercise of those powers by constables and customs officers. This will address the problem which immigration officers encounter currently whereby if, when on premises, they discover cash which is known to be the product of, for example, drug dealing, they are unable to seize it as it is not related “unlawful conduct” as defined in section 24(2)(b) of the 2007 Act.

386. *Subsection (7)* applies sections 136 to 139 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) to immigration officers (subject to the restrictions contained in *subsection (8)* and paragraphs 38 to 40 of Schedule 14 to the Bill). Sections 136 to 139 of the 1994 Act allow various law enforcement powers applicable in one country of the UK to be exercised in another country of the UK. The relevant powers are those concerning the execution of warrants, arrest or detention of suspects, and search powers available on arrest.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

At the moment these provisions apply to police constables, officers of Revenue and Customs and designated customs officials.

387. *Subsection (8)* provides that an immigration officer may only exercise powers under sections 136 to 139 of the 1994 Act when exercising a function (i) relating to the entitlement of non-UK nationals to enter, transit across or be in the UK (including a function relating to conditions or other controls on any such entitlement) or (ii) under or for the purposes of one or more of the nationality-related enactments mentioned in *subsection (8)(b)*.

388. *Subsection (9)* introduces the amendments made to the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”) by subsections (10) to (12). *Subsection (10)* amends section 24 of the 1995 Act so that it applies to immigration officers as it does Revenue and Customs officials. Section 24 relates to the detention and questioning of those suspected of committing a criminal offence. The amendment provides an immigration officer in Scotland with powers to detain and question when the officer suspects that a person has committed or is committing an immigration or nationality offence punishable by imprisonment.

389. *Subsection (11)* amends section 26A of the 1995 Act which provides a power of arrest in Scotland. The amendment enables an authorised immigration officer to arrest without warrant someone whom the officer reasonably suspects to be guilty of an immigration or nationality offence which the officer has reasonable grounds to suspect has been, or is being, committed. This provision further provides defines that an ‘authorised immigration officer’ means an immigration officer acting with the authority (general or specific) of the Secretary of State.

390. *Subsection (12)* amends 26B of the 1995 Act. Section 26B is an interpretation section. *Subsection (12)* inserts definitions of ‘immigration offence’ and ‘nationality offence’, thus limiting the range of matters in relation to which immigration officers may use the substantive provisions within the 1995 Act pursuant to the Bill.

391. *Subsection (13)* amends the definition of ‘officer of law’ in section 307 of the Criminal Procedure (Scotland) Act 1995 to include immigration officers acting with the authority (general or specific) of the Secretary of State. It also provides that such immigration officers shall only be “officers of law” in relation to immigration offences and nationality offences, as defined in Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995. In particular, the ‘officer of the law’ status allows immigration officers to seek, obtain and execute common law search warrants in Scotland.

392. *Subsection (14)* gives effect to Schedule 14.

Schedule 14: Power of immigration officers: further provisions

393. *Paragraphs 1 to 4* make further amendments to Part 3 of the Police Act 1997 to provide for immigration officers to apply for authorisation to interfere with property and

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

wireless telegraphy. Authorisation will be sought from a senior official, who is also an immigration officer within the UKBA and designated for this purpose.

394. The amendments make the necessary changes to Part 3 so that:

- the senior UKBA official designated for the purpose must not grant an authorisation for property and wireless interference save where the application is made by an immigration officers (paragraph 2(3));
- an authorisation for property and wireless interference may only be granted for the purpose of preventing or detecting an immigration or nationality offence (paragraph 2(4) to (6));
- a deputy, who is also designated for this purpose, may authorise urgent applications in the absence of the authorising officer (paragraph 3);
- the Prime Minister may exclude from a copy of any report of the Chief Commissioner to be laid before Parliament any matters which may prejudice the functions of the Secretary of State relating to immigration (paragraph 4).

395. Guidance will be produced by the UK Border Agency in due course stipulating that applications for authorisation for intrusive surveillance to are to be made only by immigration officers working in Criminal and Financial Investigation teams.

396. *Paragraphs 14 to 38* make further amendments to POCA to bring the powers of immigration officers under that Act into line with those of customs officers. The changes to the powers of immigration officers include:

- the senior UKBA official designated for the purpose must not grant an authorisation for carrying out intrusive surveillance save where the application is made by an immigration officers (paragraph 7);
- a deputy, who is also designated for this purpose, may authorise urgent applications in the absence of the senior authorising officer (paragraph 8);
- any grant, renewal or cancellation of an authorisation for intrusive surveillance must be notified to the ordinary Surveillance Commissioner (paragraph 9);
- except in urgent cases, authorisations granted for intrusive surveillance will not take effect until they have been approved by an ordinary Surveillance Commissioner and written notice of the Commissioner's decision has been given to the person who granted the authorisation (paragraph 10);

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

- a Surveillance Commissioner may quash or cancel an authorisation (paragraph 11);
- immigration officers are subject to the obligation to comply with any request of a Surveillance Commissioner to supply documents or information required by that Commissioner for the purpose of enabling him or her to carry out the Commissioner's functions (paragraph 12); and
- an authorisation by a senior official within the UKBA is not subject to the prohibition on authorisations extending to Scotland (paragraph 13).

397. Guidance will be produced by the UK Border Agency to restrict applications for authorisation for intrusive surveillance to only those immigration officers working in Criminal and Financial Investigation teams.

398. *Paragraphs 14 to 38* make further amendments to POCA to bring the powers of immigration officers under that Act into line with those of customs officers. The changes to the powers of immigration officers include:

- Introducing a power for an immigration officer to seize property, and to retain such property pursuant to a restraint order, when exercising an immigration function;
- Granting senior immigration officers (that is, those of an equivalent rank to a senior police officer) the power to approve seizures of property, and to search premises, people and vehicles;
- Conferring on senior immigration officers (that is, those of an equivalent rank to a senior police officer) the power to give notice for the forfeiture of cash without a court order (so as to avoid wasting public funds in going to court where cash is unclaimed);
- Allowing immigration officers to release cash that is the subject of a forfeiture notice;
- Allowing immigration officers to apply for search and seizure warrants for the purposes of confiscation, money laundering, and detained cash investigations. In the context of detained cash investigations, the amendments will also allow immigration officers to retain relevant material seized under such a warrant;
- Enabling immigration officers to apply for production orders, customer information orders (so long as they are sufficiently senior/have the appropriate authorisation) and account monitoring orders for the purposes of confiscation and money laundering investigations;
- Enabling immigration officers to apply for production orders and customer information orders for detained cash investigations;

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

- Allowing senior immigration officers to apply for, or to vary, a customer information order or to approve such an application by an immigration officer;
- In exercising these functions, immigration officers will be subject to a code of practice made under section 377 of POCA (paragraph 37);
- In cases of serious default by an immigration officer during an investigation, compensation may be payable to the victim by the Secretary of State (paragraph 19).

399. *Paragraph 39* amends section 24 of the UK Borders Act 2007 to provide that approval for a search for cash by an immigration officer, under POCA, may only be given by a person who is of an equivalent rank to a police inspector (namely a senior immigration officer).

400. *Paragraph 40* contains a saving provision so that sections 1(4), 3(5), 7(5) and 11(4) (the glossing provisions) of the Borders, Citizenship and Immigration Act (BCIA) 2009 continue to apply to the provisions of any Act amended by section 26 or Schedule 14 of the Bill. The glossing provisions of the BCIA taken together ensure that references in relevant legislation to Her Majesty's Revenue and Customs (HMRC), the Commissioners for HMRC (the Commissioners) or an officer of Revenue and Customs are construed as including a reference to the Secretary of State, the Director of Border Revenue or a designated customs official or designated customs revenue official as the case may be. This is necessary to facilitate the machinery of government change introduced by BCIA as a result of which HMRC has the lead responsibility for customs matters in-country and, in operational terms at least, the Home Office (through UKBA and the UK Border Force) has the lead responsibility for the same customs matters at the border.

401. *Paragraphs 41 to 43* modify the application of the Criminal Justice and Public Order Act 1994 so that immigration officers have the same powers as a constable when exercising cross border powers under sections 136 to 139 of the Criminal Justice and Public Order Act 1994.

402. *Paragraphs 44 to 49* amend the Criminal Law (Consolidation) (Scotland) Act 1995 so that the provisions in that Act relating to the questioning and detention and treatment of suspects apply to immigration officers and their investigations.

403. *Paragraph 50* makes consequential amendments relating to legal aid in Scotland. The consequential amendments add immigration and nationality offences to section 8A of the Legal Aid (Scotland) Act 1986 so that legal advice and assistance will be available in certain circumstances. The provision also amends regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (criminal advice and assistance: automatic availability in certain circumstances) so that it also includes immigration or nationality offences. These modifications are necessary to ensure that those detained, questioned or arrested have access to legal aid (subject to certain restrictions).

Clause 27: Drugs and driving

404. *Subsection (1)* introduces an offence of driving or being in charge of a motor vehicle with a specified controlled drug in the blood or urine in excess of the specified limit for that drug. The new offence is inserted as a new section 5A in the Road Traffic Act 1988 (“the 1988 Act”). A “controlled drug” is defined in section 11 of the 1988 Act, as amended by *subsection (2)(a)*, by reference to the Misuse of Drugs Act 1971 (“MD Act”). The definition of a controlled drug is set out in section 2 of the 1971 Act, which in turn refers to substances specified in Schedule 2 to that Act (and also to drugs subject to temporary control by virtue of the making of a temporary class drug order). Legal controls apply over controlled drugs to prevent them being misused, for example being obtained or supplied illegally.

405. It is already an offence under section 4 of the 1988 Act to drive whilst impaired by drugs (or alcohol), and the section 4 offence will remain in place alongside the new offence. Unlike the section 4 offence, the new offence will not require proof of impairment. In this respect it is similar to the offence in section 5 of the 1988 Act of driving or being in charge of a motor vehicle with an alcohol concentration above the prescribed limit. The penalties available for the new offence, set out in *subsection (4)* (which amends Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988), are the same as those for the offence in section 5 of the 1988 Act (ie the penalties set out in Schedule 2 to the Road Traffic Offenders Act 1988 as increased, for England and Wales, by certain provisions of the Criminal Justice Act 2003 which are not yet in force).

406. New section 5A(8) of the 1988 Act introduces a regulation-making power (exercisable by the Secretary of State in relation to England and Wales and by the Scottish Ministers in relation to Scotland) to specify which controlled drugs are covered by the offence, and the specified limit in relation to each. Such regulations will be subject to the affirmative resolution procedure (by virtue of the amendment to section 195 of the 1988 Act made by *subsection (3)*). There is already a requirement in section 195(2) and (2A) of the 1988 Act to consult before making regulations under the 1988 Act.

407. New section 5A(2) of the 1988 Act allows for different specified limits to be set for different controlled drugs. For some controlled drugs the specified limit might be set at a level where the average person’s driving would be impaired. However for other controlled drugs which are also associated with road safety problems (as they can impair driving), it may not be technically possible to determine a level which impairs most people’s driving. This may be, for example, because tolerances vary widely in the population, or because the drug is often taken in conjunction with other drugs and is associated with abuse or risk-taking behaviour. For such drugs a specified limit may be set at a lower level than may be considered likely to impair most people’s driving. In some cases the level may be very low (for example minimum detectable amounts); this can be described as a zero tolerance approach. New section 5A(9) provides that specified limits could be zero.

408. New section 5A(3) of the 1988 Act provides for a defence if a specified controlled drug is taken in accordance with medical advice. The offence in section 4 of the 1988 Act

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

would continue to be used to deal with those whose driving is impaired by specified controlled drugs taken in accordance with medical advice. It would also continue to be used to deal with those whose driving is impaired by drugs which are not specified for the purposes of the offence (including other prescribed drugs and 'legal highs'). New section 5A(4) of the 1988 Act provides that the defence is not available if medical advice about not driving for a certain period of time after taking the drug has not been followed.

409. New section 5A(6) of the 1988 Act provides for a defence for someone who is accused of being in charge of a motor vehicle with a controlled drug in the blood or urine above the specified limit for that drug, if it can be shown that there was no likelihood of the person driving the vehicle while over the specified limit. This is similar to the defence in section 5(2) of the 1988 Act.

410. *Subsections (5) and (6)* make transitional provision for the period before the coming into force of certain provisions of the Criminal Justice Act 2003 that increase, for England and Wales, the maximum terms of imprisonment for summary offences.

411. *Subsection (7)* introduces Schedule 15.

Schedule 15: Drugs and driving: minor and consequential amendments

412. Where careless driving by someone who has taken drugs has caused a death, and a case-specific impairment due to drugs cannot be established, that person may be charged with the offence of causing death by careless, or inconsiderate, driving in section 2B of the 1988 Act. *Paragraph 2* amends section 3A of the 1988 Act so that if the person had a controlled drug in the blood or urine in excess of the specified limit for that drug, the person could be charged with the more serious offence in that section of causing death by careless driving when under the influence of drink or drugs.

413. *Paragraph 3* amends section 6C of the 1988 Act so as to allow up to three preliminary tests of saliva or sweat to be taken when testing for drugs. The current position is that one test can be taken, but this would be insufficient for the purposes of the new offence, given that current drug screening technology can test for a limited range of drugs only using a single preliminary test. Evidential testing for drugs would continue to be through blood or urine samples. Saliva or sweat tests would therefore not be used in the same way as breath tests are for drink driving. For drink driving breath tests are the most frequent method used for both preliminary and evidential testing.

414. *Paragraph 4* amends section 6D of the 1988 Act to allow for a power of arrest after a preliminary drug test relating to the new section 5A offence.

415. *Paragraph 10* amends section 15 of the Road Traffic Offenders Act 1988 to provide for certain assumptions to be made about the level of a drug in the body at the time of a

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

suspected offence compared to the time when an evidential test is taken. The amendments parallel provisions related to the prescribed drink drive limit.

Clause 28: Orders and regulations

416. This clause sets out the parliamentary procedure in respect of various order- and regulation-making powers provided for in the Bill. *Subsection (3)* introduces Schedule 16 which sets out the super-affirmative procedure which applies to orders made under clause 2 (modification of the NCA's function).

Schedule 16: Super-affirmative procedure

417. *Paragraph 1* requires the Secretary of State to consult the persons who would be affected by an order. If following consultation the Secretary of State wishes to proceed with the making of an order, *paragraph 2* requires the Secretary of State to lay a draft order and explanatory document before Parliament, but he or she may not do so for 12 weeks from the beginning of the consultation process. *Paragraph 3* provides that any orders must be approved by Parliament through the use of the affirmative procedure (approval by a resolution of each House of Parliament) unless the procedure described in the following paragraph applies.

418. *Paragraph 4* provides for an enhanced affirmative procedure if either House of Parliament so requires, or a Committee of either House so recommends (and the recommendation is not rejected by the House). Such a resolution or recommendation must be made within 30 days of the laying of a draft order. The enhanced procedure extends the scrutiny period for an order to 60 days, and requires the Secretary of State to have regard to any recommendations or representations made by Parliament during this period. Following the conclusion of the scrutiny period, the Secretary of State would have the option of laying a revised draft order.

Clause 29: Consequential amendments

419. This clause enables the Secretary of State and Lord Chancellor, by order, to make provision consequential upon the Bill, including consequential amendments to other enactments. Any such order which amends primary legislation is subject to the affirmative resolution procedure; otherwise the negative resolution procedure applies.

Clause 30: Transitional, transitory or saving provisions

420. This clause enables the Secretary of State and Lord Chancellor, by order, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Bill. Such an order is not subject to any parliamentary procedure.

Clause 31: Short title, commencement and extent

421. *Subsection (1)* sets out the short title for the Bill.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

422. *Subsections (2) to (5)* provide for commencement (see paragraphs 426 to 428 for further details).

423. *Subsections (6) to (8)* set out the extent of the provisions in the Bill (see paragraphs 45 to 50 for further details)

424. *Subsection (9)* enables the provisions in clause 24 or 25 (which removes the full right of appeal against refusal of a family visit visa and the in-country right of appeal in exclusion cases) to be extended to the Channel Islands and Isle of Man by Order in Council; such an order is not subject to any parliamentary procedure.

COMMENCEMENT

425. Clauses 28 to 31 of the Bill (general) come into force on Royal Assent.

426. Clause 20(2) (which enables all functions of fines officers to be contracted out) comes into force two months after Royal Assent.

427. All other provisions will be brought into force by means of commencement orders made by the Secretary of State or, in the case of the provisions in clauses 17 to 19, 20(1), (3) to (8), 21 and 22 and Schedules 9 to 13, by the Lord Chancellor.

FINANCIAL EFFECTS OF THE BILL

428. The main financial implications of the Bill for the public sector lie in the following areas. The figures set out in the paragraphs below are based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the impact assessments published alongside the Bill.

Part 1: The National Crime Agency

429. The government is committed to delivering the NCA within the budget of its precursor organisations (principally SOCA, which has a Home Office delegated budget of £425 million in 2012/13 including the budget related to NPIA functions that were transferred on 1 April 2012, and which is abolished by clause 15) reduced in line with the plans in the 2010 Spending Review. In 13/14, SOCA's indicative budget is £411 million, which will transfer to the NCA on vesting. The budget for the NCA in 2014/15, the first full financial year of operation, which includes functions transferred from the NPIA, is provisionally estimated to be £403 million. As with SOCA, there are likely to be supplementary funding streams and the NCA may receive additional funds for undertaking specific projects. As the NCA evolves it may take on additional functions on behalf of law enforcement; the cost of these functions will be met from existing budgets.

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

430. Clause 15 also abolishes the NPIA. The Agency had a budget of £390 million in 2011/12. As a prelude to its abolition, the Agency is expected to be wound down and its functions transferred to successor organisations or discontinued by December 2012. As part of this process its budget will be apportioned between its successor organisations.

Part 2: Courts and Justice

431. Clause 20 of the Bill will allow the imposition of a charge on offenders for the costs of collecting or pursuing financial penalties, such as fines or compensation orders. The actual charges would depend on future cost structures of compliance and enforcement activities and the final choice of charging mechanism. However, based on an illustrative charging mechanism, it is estimated that clause 20 could raise annual revenue of around £3 million in 2013/14, £4 million in 2014/15 and rising to £5 million in future years.

432. Clause 21 of the Bill establishes an information sharing gateway allowing social security, earnings and tax credit information to be disclosed for the purpose of calculating certain fees charged by Her Majesty's Courts and Tribunal Service, the Office of the Public Guardian and the UK Supreme Court to users who are also recipients of various state benefits. It is estimated that there will be a one-off cost of some £1 million at nominal prices in 2013/14 to establish the IT information sharing gateway and annual running costs of around £0.1 million per year. Compared to what would have happened otherwise, the IT gateway is estimated to deliver a quantifiable financial saving to the Ministry of Justice that increases from effectively zero in 2013/14 to about £0.3 million per year at nominal prices when reforms to the state benefit system as provided for in the Welfare Reform Act 2012 are fully implemented in 2017/18.

Part 3: Miscellaneous and general

433. By limiting appeal rights in family visit visa cases, clause 24 of the Bill is predicted to deliver savings in nominal prices of around £13 million to HMCTS and the UK Border Agency ("UKBA") in 2014/15 and an annual saving of some £18 million in future years from reduced appeal volumes. It is estimated that UKBA will also benefit from an increase in application fees of approximately £0.3 million in 2013/14 and £1 million in future years. A reduction in the number of appeal cases may result in a loss of fee income for HMCTS of an estimated £3 million in 2014/15 and £4 million annually thereafter in nominal prices. The cost to UKBA of processing additional visit visa applications will cost £0.6 million in 2013/14 and around £2 million in future years. The net annual saving to HMCTS is some £5 million in 2014/15 and £6 million in future years. The net annual saving to UKBA is -£0.3 million in 2013/14, £4 million in 2014/15 and £6 million in future years.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

434. The NCA is expected to have a staff of some 4000 officers (full time equivalents) once it is established in 2013. Existing staff of the precursor organisations will be transferred to the Agency on its establishment, the biggest contingent being from SOCA, which had 3806 staff

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

on 1 April 2012 including those transferred from NPIA. The creation of the Agency will not, of itself, lead to a net change in public sector manpower.

435. The NPIA had a staff of 1449 on 1 April 2012. The majority of its remaining staff will transfer to successor organisations by December 2012. However, the abolition of the NPIA may lead to a net reduction in public sector manpower given the budget reductions agreed for the 2010 Spending Review and the reduced overall requirement for corporate services staff as successor bodies take on NPIA functions.

436. No other provisions of the Bill are expected to have an impact on public sector manpower.

SUMMARY OF IMPACT ASSESSMENTS

437. The Bill is accompanied by two overarching impact assessments (in respect of Parts 1 and 3, and Part 2) which have been placed in the Lords Printed Paper Office. A further nine impact assessments are available on individual provisions. The impact assessments, signed by Ministers, are available on the Bill website²⁹. The individual impact assessments deal with the following provisions:

- The establishment of the NCA (Part 1);
- Single county court (clause 17);
- Single family court (clause 17);
- Judicial appointments (clause 18);
- Payment of fines and other sums (clause 20);
- Disclosure of information for calculating fees of courts, tribunals etc (clause 21); and
- Appeals against refusal of entry clearance to visit the UK (clause 24).

438. A full equality impact assessment has been produced in relation to the provisions in respect of judicial appointments and is also published on the Bill website.

439. Privacy impact assessments have also been published on the Bill website for the following provisions:

²⁹ www.homeoffice.gov.uk/crime-courts-bill

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

- NCA use and disclosure of information (Part 1); and
- Disclosure of information for calculating fees of courts, tribunals etc (clause 21).

440. The provisions of the Bill impact mainly on the public (in particular, persons refused a visa to visit family members in the UK and persons eligible for fee remission in respect of certain legal proceedings) and public sector (primarily the staff of SOCA and the NPIA, the police and other law enforcement agencies, the UK Border Agency and UK Border Force, the UK Supreme Court, HM Courts and Tribunals Service, the Public Guardian, the judiciary, the Judicial Appointments Commission and the BBC). Part 2 of the Bill will also impact on other broadcasters including ITN and BSkyB.

EUROPEAN CONVENTION ON HUMAN RIGHTS

441. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Minister of State for Crime Prevention and Anti-social Behaviour Reduction, Lord Henley, has made the following statement:

"In my view the provisions of the Crime and Courts Bill are compatible with the Convention rights."

442. The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights; the memorandum is available on the Bill webpage of the Home Office website³⁰.

³⁰ www.homeoffice.gov.uk/crime-courts-bill

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

ANNEX A

GLOSSARY

1971 Act	Immigration Act 1971
1988 Act	Road Traffic Act 1988
2002 Act	Nationality, Immigration and Asylum Act 2002
2003 Act	The Courts Act 2003
2007 Act	Tribunals, Courts and Enforcement Act 2007
CEOP	Child Exploitation and Online Protection Centre
CRA	Constitutional Reform Act 2005
DWP	Department for Work and Pensions
ECHR	European Convention on Human Rights
HMCTS	Her Majesty's Courts and Tribunals Service
HMRC	Her Majesty's Revenue and Customs
MD Act	The Misuse of Drugs Act 1971
NCA	National Crime Agency

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

NPIA	National Policing Improvement Agency
PSNI	Police Service of Northern Ireland
SOCA	Serious Organised Crime Agency
UKBA	UK Border Agency
UKSC	UK Supreme Court

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

ANNEX B

Judge	Competent to sit on request	Authorisation required	Duty to comply with request?
A judge of the Court of Appeal.	The High Court and the Crown Court.	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes
A person who has been a judge of the Court of Appeal.	The Court of Appeal, the High Court, the family court, the county court and the Crown Court.	Lord Chief Justice request to sit with the concurrence of the Lord Chancellor	No
A puisne judge of the High Court.	The Court of Appeal.	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes
A person who has been a puisne judge of the High Court.	The Court of Appeal, the High Court, the family court, the county court and the Crown Court.	Lord Chief Justice request to sit with the concurrence of the Lord Chancellor	No
The Senior President of Tribunals.	The Court of Appeal and the High Court	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes, unless holder of office is a judge of the Court of Session or of the High Court or Court of Appeal in Northern Ireland.
Circuit Judge	The Criminal Division of the	For Criminal Division of the	Yes

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10 May 2012 [HL Bill 4]*

	Court of Appeal and the High Court	<p>Court of Appeal: Lord Chief Justice request to sit with the concurrence of the Judicial Appointments Commission.</p> <p>For High Court: Lord Chief Justice request to sit from judges within Judicial Appointments Commission selected pool after consulting Lord Chancellor.</p>	
Recorder	The High Court	Lord Chief Justice request to sit from judges within Judicial Appointments Commission selected pool after consulting Lord Chancellor.	Yes
Judge of the Upper Tribunal and President of Employment Tribunals	The High Court	Lord Chief Justice request to sit from judges within Judicial Appointment Commission selected pool after consulting Lord Chancellor.	Yes

CRIME AND COURTS BILL [HL]

EXPLANATORY NOTES

*These notes refer to the Crime and Courts Bill [HL]
as introduced in the House of Lords on 10th May 2012
[HL Bill 4]*

*Order to be Printed,
10th May 2012*

© Parliamentary copyright House of Lords 2012

*Applications for reproduction should be made in writing to the Information Policy Team,
Office of Public Sector Information, Kew, Richmond, Surrey, TW9 4DU*

LONDON: THE STATIONERY OFFICE

Printed in the United Kingdom by
The Stationery Office Limited

£x.00