These notes refer to the Criminal Justice and Immigration Bill as introduced in the House of Commons on 7th November 2007 [Bill 1]

CRIMINAL JUSTICE AND IMMIGRATION BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Criminal Justice and Immigration Bill as introduced in the House of Commons on 7th November 2007. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

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. The Criminal Justice and Immigration Bill was initially introduced in the House of Commons on 26th June 2007 and has been carried over from the previous Parliamentary session under Standing Order No. 80A. In the previous session the Bill completed 8 out of 16 scheduled Public Bill Committee sittings. The Bill and these explanatory notes contain amendments to clauses and Schedules in Part 1 of the Bill as agreed by the Public Bill Committee.

4. A glossary of abbreviations and terms used in these explanatory notes is contained in Annex A to the notes.

SUMMARY

Part 1: Youth Rehabilitation Orders

5. Part 1 (clauses 1 to 8 and Schedules 1 to 4) introduces youth rehabilitation orders (YROs), a new generic community sentence for children and young people. It sets out the requirements that may be attached to a YRO, makes provision for their enforcement, revocation, amendment and transfer to Northern Ireland, and abolishes certain existing community sentences which are to be replaced by the YRO.

Part 2: Sentencing

6. Clause 9 sets out the purposes of sentencing in relation to young offenders.

7. Clause 10 restricts the use of suspended sentence orders to indictable and either way offences.

8. Clause 11 clarifies courts' sentencing powers to make it clear that a court is not required to impose a community sentence in cases where the offence is serious enough to justify such a sentence.

9. Clause 12 makes some changes to the method by which courts determine the tariff (that is, the minimum time that a person must spend in custody) when they are imposing an indeterminate sentence.

10. Clause 13 ensures that courts can pass two or more consecutive intermittent custody or custody plus sentences.

11. Clause 14 makes technical amendments to the provisions in the Criminal Justice Act 2003 (the 2003 Act) governing the period of time an offender must spend in custody before becoming eligible for the home detention curfew scheme.

12. Clause 15 provides for the parole arrangements for foreign national prisoners liable to deportation sentenced under the Criminal Justice Act 1991 to be brought into line with those applicable to other prisoners.

13. Clause 16 provides for non-dangerous offenders who breach the terms of their licence or who re-offend to be recalled to prison for a fixed period of 28 days. The role of the Parole Board is changed in such cases so that it acts as an appellant authority rather than routinely reviewing all recalls. It provides for other offenders (except those serving extended sentences) to be released by the Secretary of State without referral to the Parole Board, if he considers that it is safe to do so. Prisoners serving extended sentences will, as now, be released only after a recommendation by the Parole Board.

14. Clause 17 removes the requirement for the Parole Board, at each hearing, to fix a date for the next one. Instead, the Secretary of State will refer cases to the Parole Board. He must refer each case at least every twelve months, and may do so before then if he sees fit. The Board may make a recommendation to the Secretary of State that a person's case be referred to it.

15. Clause 18 removes the rule that the Secretary of State may recall a life prisoner only on the recommendation of the Parole Board (except in certain circumstances). Instead, the Secretary of State may recall such a person when he sees fit. This brings the arrangements for lifers into line with those for other prisoners released on licence.

16. Clauses 19 and 20 amend the criteria for the availability of the early removal scheme, under which offenders liable to be deported may be released from custody early. The clauses also extend the scheme to other offenders if they show a settled intention of residing permanently outside the UK.

17. Clause 21 extends the circumstances in which a court may make a referral order in respect of a young offender.

18. Clause 22 reduces from 40 to 20 hours the minimum period of unpaid work that may be imposed for breach of a community order.

19. Clause 23 and Schedule 5 introduce youth default orders which will enable a court to impose an unpaid work requirement, curfew requirement or attendance centre requirement on a young offender in lieu of an unpaid fine.

20. Clause 24 amends the provisions in the 2003 Act in relation to adult fine defaulters to restrict those provisions to those over 18 years and provide for an attendance centre requirement to be imposed on young adult (those aged under 25) fine defaulters, with the duration of the requirement being linked to the amount of the unpaid fine.

21. Clause 25 affords the staff of Her Majesty's Court Service (HMCS) access to benefit records held by the Department for Work and Pensions (DWP) for the purpose of fine enforcement.

Part 3: Appeals

22. Clause 26 alters the test applied by the Court of Appeal when considering appeals against conviction. The amendment to section 2 of the Criminal Appeal Act 1968 (the 1968 Act) provides that a conviction is not unsafe if the Court of Appeal is satisfied that the appellant is guilty of the offence. The Court of Appeal is given an express power to refer a case to the Attorney General if they consider that there has been serious misconduct by any person involved in the investigation or prosecution of the case subject to appeal.

23. Clause 27 alters the test for ordering a retrial (or that the trial should resume) where the Court of Appeal allow a prosecution appeal against a terminating ruling.

24. Clause 28 provides that where a discretionary life sentence or indeterminate sentence is referred to the Court of Appeal by the Attorney General on the grounds that it is unduly lenient, the Court may not, on re-sentencing, give the offender any discount in the new sentence to reflect any anxiety and distress arising from being sentenced for a second time. This is an extension of the prohibition which already applies to mandatory life sentences for murder.

Part 4: Her Majesty's Commissioner for Offender Management and Prisons

25. Part 4 (clauses 29 to 52 and Schedules 6 to 10) establishes HM Commissioner for Offender Management and Prisons. The Commissioner will be a statutory office holder legally independent of the Secretary of State, equipped with statutory powers of investigation. The role of the Commissioner will be to provide independent adjudication of complaints from offenders and immigration detainees (in relation to treatment whilst in detention) and to investigate deaths of prisoners, young people detained in Secure Training Centres, residents of Approved Premises (formerly known as Bail and Probation Hostels) and those detained in certain types of immigration detention accommodation. The Commissioner will also be able to investigate other incidents of concern on request of the Secretary of State. These functions are for the most part currently performed by the Prisons and Probation Ombudsman (PPO) on a non-statutory basis and transitional provision is made in respect of the investigation of complaints residing with the PPO on commencement of this Part.

Part 5: Other criminal justice provisions

26. Clause 53 and Schedule 11 extend the adult conditional caution scheme, provided for in Part 3 of the 2003 Act, to young offenders aged 16 and 17 years. The provisions allow for a caution with specific conditions attached to it to be given where there is sufficient evidence to charge a suspect with an offence which he or she admits, and the suspect agrees to the caution. It would be for the prosecutor to decide whether a conditional caution was appropriate, and in most cases for the police to administer it. If the suspect failed to comply with the conditions, he or she would be liable to be prosecuted for the offence. The Bill provides for the publication of a Code of Practice for youth conditional cautions.

27. Clause 54 and Schedule 12 amend the Rehabilitation of Offenders Act 1974 (the 1974 Act) to bring warnings, reprimands, simple cautions and conditional cautions within the ambit of that Act. Once such warnings and cautions become "spent" an ex-offender is not obliged to declare them, for example, when applying for a job (save in excepted circumstances). Clause 55 makes consequential amendments to Part 5 of the Police Act 1997 (the 1997 Act) which provides the statutory framework for the Criminal Records Bureau (CRB).

28. Clause 56 and Schedule 13 amend Schedule 3 to the 2003 Act which revised the procedure to be followed by magistrates' courts in determining whether cases triable either way should be tried summarily or on indictment, and provides for the sending to the Crown Court of those cases which need to go there. The new procedures were designed to enable cases to be dealt with in the level of court which is appropriate to their seriousness, and to ensure that they reach that court as quickly as possible. The amendments to Schedule 3 restore the power of magistrates' courts to commit cases tried summarily to the Crown Court for sentence.

29. Clause 57 create a presumption that, if defendants fail to attend for trial without good cause, magistrates will use their powers to try them in their absence and sentence them if convicted.

30. Clause 58 extends the range of proceedings in magistrates' courts where the Crown Prosecution Service (CPS) may be represented by a designated caseworker rather than a Crown Prosecutor.

31. Clauses 59 to 61 amend the legal aid provisions in the Access to Justice Act 1999 to: allow rights to representation to be applied for and granted provisionally before the point of charge; allow HMCS staff processing means tested applications to access Her Majesty's Revenue and Customs (HMRC) and DWP records for the purposes of assessing financial eligibility; and widen the powers to pilot schemes relating to the grant of legal aid.

32. Clause 62 alters the scheme, provided for in section 133 of the Criminal Justice Act 1988, for the award of compensation for miscarriages of justice. The changes impose a time limit for making applications for compensation, place an upper limit on the amount of compensation that may be awarded, restrict the compensation that may be paid for loss of earnings, and enable the Assessor to make deductions from the total level of compensation in the light of any contributory conduct or any previous convictions held by the applicant.

33. Clause 63 repeals section 8 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 which requires the Secretary of State to lay before Parliament an annual report on the workings of that Act.

Part 6: Criminal Law

34. Clauses 64 to 66 make it an offence to possess extreme pornographic images, including those depicting acts which threaten or appear to threaten a person's life, acts which result in or appear to result in serious injury, bestiality or necrophilia; they also provide for the exclusion of classified films etc. and set out defences and the penalties for the offence.

35. Clauses 68 and 69 extend the definition of an indecent photograph in the Protection of Children Act 1978 (and the equivalent Northern Ireland legislation) to include a tracing or other image derived from a photograph.

36. Clause 70 increases the maximum penalty for publication of obscene material and for the possession of such material for gain under the Obscene Publications Act 1959.

37. Clauses 71 to 73 and Schedule 14 make changes to the offence of loitering or soliciting for the purposes of prostitution under section 1 of the Street Offences Act 1959 so that it no longer uses the term "common prostitute" and create a new sentence, as an alternative to a fine, for persons convicted of loitering or soliciting. The new disposal will involve referring the offender to a supervisor to help the offender to address the causes of their offending.

38. Clause 74 and Schedule 15 amend the Nuclear Material (Offences) Act 1983 (the 1983 Act) and the Customs and Excise Management Act 1979 in order to give effect to amendments made in 2005 to the Convention on the Physical Protection of Nuclear Material. The amendments made to the 1983 Act create a number of new criminal offences, including offences relating to damage to the environment and to the importation and exportation of nuclear material.

39. Clause 75 increases the penalty for an offence under section 55 of the Data Protection Act 1998, including the offence of unlawfully obtaining or disclosing personal data. In addition to the current fine, the offences are made punishable by imprisonment up to a maximum of 2 years following conviction on indictment.

Part 7: International co-operation in relation to criminal justice matters

40. Clauses 76 to 81 and Schedule 16 give effect to the European Council Framework Decision on the mutual recognition of financial penalties. Clause 77 provides for the submission by the Lord Chancellor to another member State of a certificate requesting enforcement of a financial penalty incurred by an offender in England and Wales who is normally resident in that other member State. Clause 78 provides for the receipt, by the Lord Chancellor, from another member State of like certificates requesting the enforcement of a financial penalty incurred by an offender in that other State who is normally resident in England and Wales and for the transmission of such a certificate to a designated officer in the relevant local justice area. Clauses 79-80 and Schedule 16 set out the procedure for a magistrates' court to validate such incoming requests and the grounds for refusal of such requests.

41. Clause 82 amends the Crime (International Co-operation) Act 2003 so that the Treasury may provide for functions conferred on the Secretary of State in relation to requests mutual legal assistance from overseas authorities may be exercisable instead by HMRC in relation to direct tax matters.

Part 8: Violent offender orders

42. Part 8 of the Bill (clauses 83 to 102) makes provision for a new civil preventative order – the violent offender order (VOO). It sets out the qualifying offences which may trigger an application for a VOO; the procedure in respect of applications for and the making, variation, renewal or discharge of a VOO; makes provision for interim orders and appeals; provides for breach of an order or interim order to be a criminal offence; sets out requirements on persons subject to a VOO to notify the police of certain personal information and of changes to such information; provides for a failure to comply with the notification requirements to be a criminal

offence; and provides for the police and others to provide information to the Secretary of State for the purposes of verifying the information supplied in pursuance of the notification requirements.

Part 9: Anti-social behaviour

43. Clause 103 and Schedule 17 introduce powers for the courts to close, on a temporary basis, premises associated with significant and persistent disorder or persistent serious nuisance to members of the public. They set out the procedure for the issue of closure notices by the police and local authorities and for the making of applications for closure orders; and make provision for the enforcement (including by making breach of an order a criminal offence), extension and discharge of closure orders and for appeals against the grant or refusal of an order.

44. Clauses 104 to 107 and Schedule 18 create a new offence of causing nuisance or disturbance on NHS premises (and HSS premises in Northern Ireland) and confer powers on a constable or an authorised member of NHS staff to remove a person reasonably suspected of committing the offence from the premises concerned. Provision is made for the Secretary of State to issue guidance on the exercise, by NHS staff, of the removal powers.

45. Clause 108 provides for the annual review of Anti-Social Behaviour Orders, including orders made under section 1B or 1C of the Crime and Disorder Act 1998 (ASBOs) made against a child or young person under the age of 17. Clause 109 equires a court to consider making an individual support order in all cases where an ASBO is made in respect of a child or young person.

46. Clause 110 extends the list of local authorities in England which may enter into a parenting contract or apply for a parenting order.

Part 10: Policing

47. Clauses 111 and 112 and Schedules 19 and 20 amend the procedures for dealing with matters in respect of the conduct and performance of police officers and special constables and in respect of the investigation of complaints and incidents of police misconduct.

48. Clause 113 amends section 57 of the Police Act 1996 to amplify the powers of the Secretary of State to provide financial assistance to organisations which promote the efficiency or effectiveness of the police.

49. Clause 114 extends the functions of Her Majesty's Inspectorate of Constabulary (HMIC) so that it may inspect the full range of police authority functions or any particular function.

Part 11: Special Immigration Status

50. Part 11 (clauses 115 to 122) makes provision for a new immigration status for designated foreign nationals who have committed terrorism or other serious criminal offences and who cannot currently be removed from the UK because of the operation of section 6 of the Human Rights Act 1998. Provision is made as to the effect of a designation on a person's immigration status, the conditions that may be imposed on a person so designated, appeals and support.

Part 12: General

51. Part 12 (clauses 123 to129 and Schedules 21-23) deals with the making of orders and regulations under the Bill, contains consequential amendments and repeals of existing legislation, and provides for the commencement and extent of the Bill.

BACKGROUND

Part 1 – Youth Rehabilitation Orders

52. In September 2003, the Government published "Youth Justice – the next steps" (available at http://www.homeoffice.gov.uk/documents/cons-youth-justice-next-steps/) a companion document to the Green Paper "Every Child Matters". This paper set out possible reforms to the Youth Justice System. A summary of the responses to this consultation together with the Government's response was published in March 2004 (available at http://www.homeoffice.gov.uk/documents/cons-youth-jus-next-steps-summ/). Part 1 of the Bill gives effect to the proposals to create a YRO.

Part 2 - Sentencing

53. Clause 9 gives effect to the proposal to set out the purpose of juvenile sentencing which was set out in "Youth Justice – the next steps."

54. In May 2007 the Government published "Penal Policy - a background paper" (available at http://www.justice.gov.uk/penalpolicy.htm). The paper set out the Government's commitment to use prison and probation resources to best effect to protect the public, punish the offender and reduce re-offending. The paper set out two specific legislative measures to achieve this namely, new arrangements for the recall of non-dangerous offenders who breach the terms of their licence and limiting the use of Suspended Sentence Orders (SSOs) to more serious offences. Clauses 10, 16 and 17 give effect to these provisions.

Part 3 - Appeals

55. In September 2006 the Government published "Quashing convictions – report of a Review by the Home Secretary, Lord Chancellor and Attorney General" (available at http://www.cjsonline.gov.uk/downloads/application/pdf/quashing_convictions_consult.pdf) This paper addresses the Government's view that the Court of Appeal should not be able to overturn 'safe' convictions on the grounds of deficiencies in the trial or pre-trial process. The purpose of this consultation paper was to consider how best to

achieve that outcome. The Government's response was published in October 2007 (available at. http://www.cjsonline.gov.uk/downloads/application/pdf/Quashing%20Convictions%20Consultation%20Response.pdf).

Part 4 – HM Commissioner for Offender Management and Prisons

56. The Prison and Probation Ombudsman (PPO) was established in 1994 on the recommendation of the Woolf inquiry into the riots at Strangeways and other prisons in 1990. In 2004 he was given responsibility for investigating deaths in prison custody, in order to help fulfil the State's obligation to provide swift and effective investigation of such deaths. There has been a commitment on the part of the Home Office since 1998 to put the PPO on a statutory footing. This was confirmed in the 2002 Criminal Justice White Paper *Justice for All* (CM 5563). A measure to put the PPO on a statutory footing was included in the January 2005 Management of Offenders and Sentencing Bill, but the Bill did not progress due to the calling of the General Election.

Part 5 - Other Criminal Justice Provisions

57. The Home Office issued a consultation on extending the ambit of the Rehabilitation of Offenders Act 1974 to cautions in 1999 (available at http://www.homeoffice.gov.uk/documents/cons-1999-rehab-offenders). Clause 54 amends the 1974 Act to this end.

Part 6 – Criminal Law

58. A joint Home Office/Scottish Executive consultation on extreme pornographic material was published in August 2005. A summary of the responses to this consultation together with the Government's response was published in August 2006 (http://www.homeoffice.gov.uk/documents/cons-extreme-porn-3008051/). Clauses 64-70 give effect to these proposals.

59. "Paying the Price" a public consultation paper on prostitution was published in July 2004 (available at http://www.homeoffice.gov.uk/documents/paying_the_price.pdf). A Co-ordinated Prostitution Strategy and a summary of responses to Paying the Price was published in (available at http://www.homeoffice.gov.uk/documents/cons-paying-the-price/). The strategy included proposals to reform the offence of loitering or soliciting; clauses 71 to 73 give effect to these proposals.

60. The offences introduced by clause 74 and Schedule 15 are needed in order to facilitate UK ratification of amendments made in 2005 to the Convention on the Physical Protection of Nuclear Material (CPPNM). The original CPPNM was concluded under the auspices of the International Atomic Energy Agency in 1980. It entered into force in 1987, and there are currently 127 Parties. The UK is a Party, having signed the Convention in 1980 and ratified it in 1991.

61. The proposals (in clause 75) to amend the Data Protection Act 1998 to allow for custodial sanctions for those convicted of offences under section 55 of that Act were set out in a consultation paper in July 2006 "Increasing penalties for deliberate and wilful misuse of personal data". The Government's response was published in February 2007. Both documents are available at http://www.dca.gov.uk/consult/misuse_data/cp0906.htm.

Part 7 –International Co-operation in relation to Criminal Justice Matters

62. Clauses 76 to 81 implement the Council Framework Decision on the application of the principle of mutual recognition to financial penalties (2005/214/JHA), which was adopted in 2005. The Framework Decision allows a financial penalty imposed on an offender in one European Union Member State to be transferred to another Member State for enforcement. Responsibility for the enforcement of financial penalties received from another Member State will rest with the magistrates' court where the offender is located and its designated Fines Officer, in line with their responsibilities for enforcement of fines imposed domestically.

Part 8 – Violent Offender Orders

63. The Government announced its intention to introduce violent offender orders in 'Rebalancing the criminal justice system in favour of the law-abiding majority' published in July 2006 (available at http://www.homeoffice.gov.uk/documents/CJS-review.pdf/CJS-review-english.pdf). A consultation paper was subsequently issued by the Home Office in April 2007 and a summary of the response published in June 2007 ('Stakeholder consultation on Violent Offender Orders: Summary of responses and next steps' available at http://www.homeoffice.gov.uk/documents/response-violent-offender.pdf).

Part 9 – Anti-social behaviour

64. The Government published its consultation paper "Strengthening powers to tackle anti-social behaviour" in November 2006 (available at http://www.homeoffice.gov.uk/documents/cons-asb-powers/). A summary of the responses to this consultation together with the Government's response was published in May 2007 and is available at http://www.homeoffice.gov.uk/documents/response-asb-powers?version=1. Clause 104 gives effect to the proposals to introduce premises closure orders.

65. The Department of Health published a consultation paper "Tackling nuisance or disturbance behaviour on NHS healthcare premises in June 2006 (available at http://www.dh.gov.uk/Consultations/ClosedConsultations/ClosedConsultationsArticle/fs/en?CONTENT_ID=4138711&chk=mE2N5d). The consultation document proposed new powers for NHS health bodies to deal with individuals causing a nuisance or disturbance on NHS premises (these are contained in clauses 105-108). A summary of the responses to this consultation together with the Government's response was published in November 2006 (available at http://www.dh.gov.uk/Consultations/ResponsesToConsultations/ResponsesToConsult

ationsDocumentSummary/fs/en?CONTENT_ID=4140248&chk=Z%2B9but)

Part 10 - Policing

66. A fundamental review of the police officer disciplinary arrangements was published in January 2005. The report is available at http://press.homeoffice.gov.uk/documents/police-disciplinary-arrangements/. Clauses 111 to 112 give effect to those recommendations which require primary legislation.

Part 11- Special Immigration Status

67. Part 11 gives effect to the Home Secretary's commitment to legislate to deny leave to enter or remain to certain foreign nationals who can not be removed from the UK compatibly with the United Kingdom's obligations under the European Convention on Human Rights (ECHR). The commitment was made following the judgment of the Court of Appeal in *S and others vs Secretary of State for the Home Department* in August 2006.

TERRITORIAL EXTENT

68. In the main the Bill's provisions extend to England and Wales only, but certain provisions also extend to Scotland or Northern Ireland, or both. In relation to Wales and Northern Ireland, the Bill addresses both devolved and non-devolved matters.

69. The provisions of the Bill relating to the following reserved matters also extend to Scotland:

- the establishment of HM Commissioner for Offender Management and Prisons in so far as the Commissioner's remit extends to non-devolved (immigration) matters (Part 4);

- the new offences relating to nuclear material and nuclear facilities together with the other related amendments to the 1983 Act and the Customs and Excise Management Act 1979 (clause 74 and Schedule 15);

- the amendment to the Data Protection Act 1998 to increase in penalties for unlawfully obtaining etc. personal data (clause 75);

- the amendments to the Ministry of Defence Police Act 1987 and the Railways and Transport Safety Act 2003 in relation to the misconduct and performance procedures for Ministry of Defence Police and British Transport Police officers (Parts 2 and 3 of Schedule 19); and

- the new special immigration status for certain foreign nationals (Part 11).

70. This Bill does not contain provisions that trigger the Sewel Convention in Scotland. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

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

- YROs to the extent that the provisions allow for such Orders made in England and Wales to be enforced in Northern Ireland and for certain orders made in Northern Ireland to be enforced by means of arrangements for YROs in England and Wales (clause 3 and Schedule 3);

- youth default orders, to the extent that the provisions allows for such orders made in England and Wales to be enforced in Northern Ireland. (Clause 23(6)

- the establishment of HM Commissioner for Offender Management and Prisons to the extent that the Commissioner's remit extends to certain immigration matters in Northern Ireland (Part 4);

- the amendments to the compensation for miscarriages of justice regime in the Criminal Justice Act 1998 (clause 62);

- the repeal of the requirement to undertake an annual review of the operation of Criminal Justice (Terrorism and Conspiracy) Act 1998 (clause 63);

- the new offence of possession of extreme pornographic material and amendment to the definition of an indecent photograph in the Protection of Children (Northern Ireland) Order 1998 (clauses 64 to 67 and 69);

- the new offences relating to nuclear material and nuclear facilities together with the other related amendments to 1983 Act and the Customs and Excise Management Act 1979 (clause 74 and Schedule 15);

- the amendment to the Data Protection Act 1998 to increase in penalties for unlawfully obtaining etc. personal data (clause 75);

- mutual legal assistance in respect of revenue matters (clause 82);

- the amendments to the Ministry of Defence Police Act 1987 in relation to the misconduct and performance procedures for Ministry of Defence Police officers (Part 2 of Schedule 19); and

- the new special immigration status for certain foreign nationals (Part 11).

72. In addition, the Bill contains provisions relating to one transferred matter, namely the new offence of causing nuisance or disturbance on HSS premises (clause 107 and Schedule 18). These provisions extend to Northern Ireland only.

73. In relation to Wales, the subject matter of the Bill has not been transferred except for:

- YROs – to the extent that they draw on local authority or NHS services;
- Premises closure orders – to the extent that they confer powers or duties on local authorities; and
- Review of ASBOs – to the extent that they impose powers or duties on local authorities.

THE BILL

COMMENTARY ON CLAUSES

Part 1: Youth Rehabilitation Orders

Clause 1 and Schedule 1: Youth Rehabilitation Orders

74. Clause 1 and Schedule 1 provide for YROs. This is the new community sentence for offenders aged under 18. It combines several existing community sentences into one new generic community sentence. When imposing a YRO, the court will be able to choose from a 'menu' of different requirements that the offender must comply with.

75. *Subsection (1)* provides that a YRO may impose on the offender one or more of the following requirements:

- an activity requirement;
- a supervision requirement;
- if the offender is aged 16 or 17, an unpaid work requirement;
- a programme requirement;
- an attendance centre requirement;

- a prohibited activity requirement;
- a curfew requirement;
- an exclusion requirement;
- a residence requirement;
- a local authority residence requirement;
- a mental health treatment requirement;
- a drug treatment requirement;
- a drug testing requirement;
- an education requirement.

76. *Subsection (2)* provides that a YRO may also impose an electronic monitoring requirement as described in paragraph 25 of Schedule 1. An electronic monitoring requirement must be imposed where a YRO imposes a curfew or exclusion requirement (*paragraph 2* of Schedule 1*)* unless in the particular circumstances of the case, the court is satisfied it would be inappropriate to do so or it is not practicable for the reasons set out in paragraph 25(3) or (6).

77. *Subsections (3) and (4) and paragraphs 3 and 4* of Schedule 1 provide for a YRO with intensive supervision and surveillance and a YRO with fostering.

78. *Subsection (4)* provides that a court may not impose a YRO with intensive supervision and surveillance or a YRO with fostering unless the offence is punishable with imprisonment and the court is satisfied that the offence (on its own or with others) is so serious that but for the availability of these orders, a custodial sentence would be appropriate (or where the offender is under 12, would be appropriate if the offender had been 12). For offenders under the age of 15, the court must be satisfied that they are persistent offenders.

79. *Paragraph 3* of Schedule 1 provides that if the conditions in subsection (4) are met the order may impose an "extended activity requirement" (for a number of days between 90 and 180). An order containing such a requirement is "a YRO with intensive supervision and surveillance". Such an order must also impose a supervision requirement, a curfew requirement and an electronic monitoring requirement (unless inappropriate or impracticable) and may also impose other requirements.

80. *Paragraph 4* of Schedule 1 sets out additional conditions to those in subsection (4) of clause 1 which must be met before a court can impose a YRO with fostering. The court has to be satisfied that the behaviour which constituted the

offence was due to a significant extent to the circumstances in which the offender was living and that the imposition of such a requirement would assist in the offender's rehabilitation. The court must also consult the local authority and (where practicable) the parents or guardians of the offender prior to imposing this requirement. A YRO with fostering must also impose a supervision requirement. The offender must be given the opportunity of legal representation (*paragraph* 19).

81. *Subsection (6)* of clause 1 applies the restrictions which apply to other community sentences under sections 148 and 150 of the 2003 Act to the YRO. The effect is that a YRO must not be imposed on an offender unless the court considers the offence or offences serious enough to warrant it; that the requirements forming part of the YRO must be the most suitable for the offender and the restrictions on liberty imposed by the order must be commensurate with the seriousness of the offence. A YRO will not be available in a case where the penalty is fixed by law, such as murder, or where there is a mandatory custodial sentence.

82. *Paragraph 5* of Schedule 1 provides that a YRO with intensive supervision and surveillance may not impose a fostering requirement. Paragraph 5 also provides that if the offender fails to comply with a pre-sentence drug testing order the court may impose a YRO with intensive supervision and surveillance. There is already existing provision in section 152(3)(b) of the 2003 Act which provides that if a juvenile or adult offender fails to comply with a pre-sentence drug testing order under section 161(2) of that Act, the court may pass a custodial sentence.

83. Part 2 of Schedule 1 makes detailed provision about the requirements which may be imposed in a YRO. They are largely self explanatory and not all details are repeated here. *Paragraphs 6 to 8* deal with the activity requirement. An offender may be required to participate in specified activities including residential exercises. Other than where intensive supervision and surveillance is imposed, an activity requirement cannot be for more than a total of 90 days.

84. *Paragraph 8(3)* provides that the court may not include an activity requirement unless it has consulted a member of the youth offending team or an officer of a local probation board and it is satisfied that it is feasible to secure compliance with the requirement. *Paragraph 8(4)* states that an activity requirement, which requires co-operation with anybody other than the responsible officer (defined in clause 6 below) may only be included with that other person's consent.

85. *Paragraph 9* of Schedule 1 provides for a supervision requirement and reflects, with modifications, paragraph 2 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000 (the 2000 Act). The offender may be required to attend appointments arranged by the responsible officer.

86. *Paragraph 10* of Schedule 1 provides for an unpaid work requirement and is modelled on section 199 of the 2003 Act. An unpaid work requirement may be for between 40 and 240 hours and could include, for example, graffiti cleaning,

community artwork or work to repair or improve community facilities. Unpaid work is currently available, for 16 and 17 year olds, as part of the community punishment order.

87. *Paragraph 11* of Schedule 1 provides for a programme requirement. A programme requirement is a new requirement for juveniles and is designed to allow juvenile offenders to engage in programmes that will address their offending behaviour, teach life skills or other positive interventions. It is modelled on section 202 of the 2003 Act. *Paragraph 11(1)* defines a "programme requirement" as a requirement that the offender participates in a specified systematic set of activities which may include a residential programme.

88. *Paragraph 12* provides for an attendance centre requirement which enables the court to require an offender to attend an attendance centre for up to 12 hours for an offender aged under 14, and between 12 and 24 hours for an offender aged 14 or 15 and for between 12 and 36 hours if the offender is aged 16 or over.

89. *Paragraph 13* provides for a prohibited activity requirement. It is modelled on section 203 of the 2003 Act. It allows the court to require an offender to refrain from participating in certain activities at specified times. *Paragraph 13(3)* makes it clear that the court can make a prohibited activity requirement which prohibits a defendant from possessing, using or carrying a firearm.

90. *Paragraph 14* provides for a curfew requirement. This paragraph re-enacts, with some modification, section 37 of the 2000 Act. A curfew requirement may require the offender to remain at a place specified by the court for between two hours and twelve hours in any given day. The order might, for example, require the offender to stay at home during the evening and night hours. *Paragraph 14(3)* limits the curfew period to a maximum of six months. Under *paragraph 14(4)* the court must obtain and consider information about the place specified in the order and the attitude of the person likely to be affected by the presence of the offender.

91. *Paragraph 15* of Schedule 1 provides for an exclusion requirement. This paragraph re-enacts, with modification, section 40A of the 2000 Act. An exclusion requirement may prohibit the offender from entering a place or area for up to 3 months . *Paragraph 15(3)* makes it clear that the order may stipulate that the prohibition may operate only for certain periods of time and may specify different places for different periods.

92. *Paragraph 16* of Schedule 1 provides for a residence requirement. A residence requirement may require that an offender live with a specified individual (who must consent to the requirement by virtue of *paragraph 16(2)*) or, if the offender is 16 or over, at a specified place and is modelled on current powers available as part of the supervision order. Under *paragraph 16(6)*, before making a residence requirement specifying a place, the court must consider the home surroundings of the offender. *Paragraph 16(7)* provides that the court must only specify a hostel or other institution

as a place of residence on the recommendation of a member of a youth offending team, an officer of a local probation board, or a local authority social worker.

93. *Paragraph 17* of Schedule 1 provides for a local authority residence requirement and is modelled on paragraph 5 of Schedule 6 to the 2000 Act. The order may require the offender to live in accommodation provided by or on behalf of a specified local authority for up to 6 months and may also stipulate that the offender may not live with a specified person. The court may not impose a local authority residence requirement unless it is satisfied that the behaviour leading to the offence was due to a significant extent to the offender's living circumstances and that the requirement will assist in his rehabilitation. The court must consult the offender's parent or guardian (if practicable) and the local authority which is to receive the offender.

94. *Paragraph 18* of Schedule 1 provides for a fostering requirement and is modelled on current powers that are available as part of supervision order in paragraph 5A of Schedule 6 to the 2000 Act. An offender may be required to live with a local authority foster parent for a specified period, generally subject to a maximum of 12 months. *Paragraph 18(6)* makes it clear that this paragraph does not affect the power of a local authority to place an offender subject to a local authority residence requirement with a local authority foster parent.

95. *Paragraph 19* of Schedule 1 makes it a precondition for imposing a local authority residence requirement or fostering requirement that the offender has had the opportunity to be legally represented

96. *Paragraphs 20 and 21* of Schedule 1 provide for a mental health treatment requirement. Mental health treatment is currently available as part of the supervision order and is provided for in paragraph 6 of schedule 6 to the 2000 Act. The court may direct the offender to submit to mental health treatment under the treatment of either or both a registered medical practitioner or chartered psychologist. Treatment may be provided in a hospital or care home (but not a hospital where high security psychiatric services are provided), or as a non-resident patient. Under *paragraph 20(3)*, before including a mental health treatment requirement, the court must be satisfied that the offender's mental condition requires treatment and is treatable, but is not such that it warrants making a hospital or guardianship order under the Mental Health Act 1983. The offender must be willing to comply with treatment..

97. *Paragraph 21* of Schedule 1 deals with mental health treatment at a place other than that specified in the order. *Paragraph 21(1)* allows the medical practitioner or chartered psychologist to vary the arrangements in a mental health treatment if the offender has expressed a willingness to comply with the varied arrangements.

98. *Paragraph 22* of Schedule 1 provides for a drug treatment requirement and *paragraph 23* for a drug testing requirement. These are modelled upon those available to juveniles of all ages subject to an action plan order and supervision order

in section 70 of and Schedule 6 to the 2000 Act. The offender may be required to undergo drug treatment by or under the direction of a specified person with the necessary qualifications. The court must be satisfied that the offender is dependent on or has a propensity to misuse any drug and requires and may be susceptible to treatment. The treatment can be residential or non-residential, but the type of treatment cannot be specified. The offender must be willing to comply with the requirement.

99. *Paragraph 23(1)* of Schedule 1 provides for a drug testing requirement which may require the offender to provide samples in accordance with instructions given by his responsible officer for drug testing purposes. A drug testing requirement may only be imposed with a drug treatment requirement and only for an offender who is willing to comply with that requirement.

100. *Paragraph 24* of Schedule 1 provides for an education requirement. An education requirement is currently available as part of a supervision order and action plan order under section 63 (read with paragraph 7 of Schedule 6) and 70(1)(e) respectively of the 2000 Act. The order may require the offender to comply with approved education arrangements i.e. made by the offender's parent or guardian and approved by the local authority. The court must be satisfied that suitable arrangements exist for the offender's appropriate full-time education needs and that such a requirement is necessary for the offender's future good conduct or prevention of further offending.

101. *Paragraph 25* of Schedule 1 provides for the electronic monitoring requirement. Electronic monitoring is currently available as a requirement of youth community orders under section 36B of the 2000 Act. *Paragraph 25(3)* provides that where it is proposed to include an electronic monitoring requirement as part of a YRO, this may only be done with the consent of any person (other than the offender) whose compliance would be required. For example this person might be the offender's parent or guardian. *Paragraph 25(4)* provides that this requirement must include provision for making a person responsible for monitoring and *paragraph 25(5)* provides that the person must be of a description specified in an order made by the Secretary of State (such an order is not subject to any parliamentary procedure).

102. Under *paragraph 26* the Secretary of State may by order amend the maximum number of hours which may be specified in an unpaid work or curfew requirement. The Secretary of State may also by order amend the time periods specified in relation to the curfew requirement, exclusion requirement, local authority residence requirement and fostering requirement. An order made under this paragraph is subject to the affirmative resolution procedure.

103. Part 3 of the Schedule makes further provision for the procedure for making YROs. Under *paragraph 27* prior to imposing a YRO, the court must obtain and consider information about the offender's family circumstances and the likely effect

of such an order on those circumstances.

104. *Paragraph 28* of Schedule 1 requires a court to consider whether requirements are incompatible with each other. As far as practicable, the court must ensure that any requirement imposed is such as to avoid any conflict with the offender's religious beliefs and any interference with the times at which the offender works or attends school. The offender's responsible officer must also take steps to ensure that any instructions or directions given avoid any such conflict. Under *paragraph 28(4)* the Secretary of State has the power to add further restrictions by order (subject to the negative resolution procedure).

105. *Paragraph* 29 of Schedule 1 provides for the operative date of YROs. Where a YRO is imposed on an offender who is already serving a detention and training order, the court may order that the YRO will commence either with the commencement of the period of supervision of the detention and training order, or on the expiry of the detention or training order or on the day after the order is made. In all other cases the YRO will commence the day after the day on which the order was made. A court may not make a YRO if the offender is already serving a similar order or a reparation order unless the existing order is revoked.

106. *Paragraph 30* of Schedule 1 makes provision for concurrent and consecutive orders. Where the court is dealing with an offender for two or more offences, it may impose more than one YRO but it may not impose YROs of different kinds(for example, it may not impose a YRO with intensive supervision and surveillance and any other YRO). If the court imposes more than one YRO with intensive supervision and surveillance or with fostering, under *paragraph 30(3)* they must begin at the same time. Under *paragraph 30(4)* the court must direct whether similar requirements in different orders are to be served concurrently or consecutively. Where they are to be served consecutively, the aggragate of the periods imposed for requirements of a particular kind must not exceed the maximum period for a single such requirement (see paragraph 30(6)). Under *paragraph 30(5)* two or more fostering requirements cannot be served consecutively.

107. Part 4 of Schedule 1 makes further general provision for where the court makes a YRO. *Paragraph 31* provides that the order must specify a date not more than 3 years after it is made by which the requirements must have been complied with. The order may also specify different dates for two or more requirements within the order. In relation to a YRO with intensive supervision and surveillance, the specified date must not be earlier than 12 months after the order takes effect.

108. *Paragraph 33*of Schedule 1 makes provision for copies of orders to be provided by the court to the offender and to other relevant persons depending on the circumstances. The court has to provide copies of the order it makes to certain people who are relevant to the carrying out of the order: to the offender, if the offender is under 14, to his parent or guardian (or, if the offender is in local authority care or accommodation, that authority), and the youth offending team member or an officer

of a local probation board assigned to the court. Under *paragraph 33(3)* if the order is made by any Crown Court or a magistrates' court outside the area in which the offender will be carrying out the order, the court must send a copy of the order, and any other documents and information relating to the case that the sentencing court thinks the second court would find of assistance, to the magistrates court and provide a copy of the order to the local probation board in that area.

109. Paragraph 34 of Schedule 1 enables the Secretary of State by order (subject to the affirmative resolution procedure) to make provision allowing or requiring YROS to be reviewed by the courts. It is intended that the decision to extend reviews to YROs would be based on consultation with the courts. An order under this paragraph may repeal or amend any provision of this Part 1 of the Bill or Chapter 1 of Part 12 of the 2003 Act dealing with the general provisions about sentencing.

Clause 2 and Schedule 2: Breach, revocation or amendment of youth rehabilitation orders.

110. This clause introduces Schedule 2 which sets out procedures relating to the enforcement, revocation or amendment of YROs.

111. Paragraph 1(2) of Schedule 2 provides that a breach of attendance centre rules counts as a breach of a YRO which imposes an attendance centre requirement. Part 2 of Schedule 2deals with breaches of the requirements of a YRO. Under *paragraph 3(1)* of Schedule 2, if an offender's responsible officer is of the opinion that the offender has failed to comply with a YRO without reasonable excuse, he or she must give the offender a warning or start enforcement proceedings. *Paragraph 3(2)* sets out the contents of this warning, i.e. a description of the failure and that it is unacceptable, and that two further breaches during the **"**warned period**"** of 12 months from the date of the warning will make the offender liable to enforcement proceedings. *Paragraph 3(4)* defines the **"**warned period**"** as a period of 12 months beginning with the date on which the warning was given.

112. *Paragraph 4* of Schedule 2 requires the responsible officer to start court enforcement proceedings if the offender has failed to comply with the requirements of the order and has been given two previous warnings during a 12 month period. However, the responsible officer may start court enforcement proceedings without having previously issued warnings to the offender if, for example, the breach is particularly serious.

113. *Paragraph 5* of Schedule 2 sets out the procedure for a justice of the peace to issue a summons requiring the attendance of the offender at court (or a warrant for his arrest) if it appears that he has failed to comply with any of the requirements of a YRO. Failure to answer a summons can lead to the issue of a warrant for the offender's arrest *(paragraph 5(7))*.

114. Paragraph 6 of Schedule 2 sets out the ways in which a youth court or other magistrates' court when dealing is satisfied that the offender has failed to comply with the YRO. It must deal with him or her in one of those ways if the order is still in force. It can order him to pay a fine not exceeding £250 for offenders under the age of 14, or £1,000 in any other case. It can amend the order by adding or substituting requirements subject to the limitations set out in sub paragraphs (6) to (9). It can deal with the offender in respect of the offence for which the order was made, in any way in which the court could have originally dealt with the offender. The court must take into account the extent to which the offender has complied with the order. The court may not, if it amends the YRO (rather than re-sentencing the offender) impose an order with intensive supervision and surveillance or with fostering if the order did not already impose such a requirement.

115. If the court decides to re-sentence, it must revoke the original order if it is still in force. If the court is re-sentencing and the offender has wilfully and persistently failed to comply with a YRO, the court may under sub paragraphs (13) to (15), be able to impose a YRO with intensive supervision and surveillance or a custodial sentence, even if it could not have done so for the original offence. An offender can appeal where the court re-sentences for the original offence.

116. *Paragraph 7* of Schedule 2 sets out magistrates' court powers to refer offenders in breach of a YRO to Crown Court. If the YRO was made by a Crown Court, the magistrates' court may refer the offender to a Crown Court. The offender can be remanded in custody until being brought before the Crown Court. In these cases the magistrates' court must send the Crown Court details of the failure to comply with the order.

117. *Paragraph 8* of Schedule 2 sets out the Crown Court's powers to deal with failure to comply with a relevant YRO whether dealt with directly or on committal from a magistrates' court under paragraph 7.

118. *Paragraph 9* of Schedule 2 provides that reasonable refusal to undergo surgical, electrical or other treatment as part of mental health or drug treatment requirement. It is not to be treated as a breach of the order.

119. *Paragraph 10* of Schedule 2 confers on the Secretary of State order making powers to amend the maximum limit of fines specified in paragraphs 6 and 8 for breach of an order to take account of inflation. An order made under this paragraph will be subject to the negative resolution procedure.

120. Part 3 of Schedule 2 deals with the revocation of a YRO. Under *paragraph 12* either the offender or the responsible officer may apply to a youth court or other magistrates' court to have the order revoked, due to circumstances that have arisen since the order was made. An example might be if the offender has become very ill and is unable to complete the requirements. The court can revoke the order or revoke it and re-sentence the offender as if he has just been convicted. If the court re-

sentences it must take into account the extent to which the offender complied with the original order and the offender can appeal.

121. *Paragraph 13* of Schedule 2 gives similar powers to the Crown Court in the case of orders it has made which do not contain a direction that further proceedings are to be in the magistrates' court.

122. Part 4 of Schedule 2 deals with the amendment of YROs. *Paragraph 13* enables YROS to be amended by youth courts and other magistrates' courts. A change of residence may necessitate amendment of the order to refer to an alternative local justice area. The change may be made on application by either the offender or his responsible officer. The appropriate court may generally amend or cancel any requirements of the order and where the offender moves, must do so for requirements that are not available in the area to which he or she is to move. The appropriate court will be the youth court in the local justice area specified in the YRO or if the offender is over 18 at the time a magistrates court in that area.

123. *Paragraph 14* of Schedule 2 gives similar powers to the Crown Court in the case of orders it has made which do not contain a direction that further proceedings are to be in the magistrates' court.

124. *Paragraph 15* of Schedule 2 limits the court's power to amend the requirements of a YRO on change of the offender's address, to ensure that any new requirements can be complied with in the offender's new area of residence.

125. *Paragraph 16* of Schedule 2 deals with the possible effects of amendments to requirements on other parts of the order. If the court substitutes a new fostering requirement, the new requirement can last for 18 months from the date of the original fostering requirement instead of 12. The court may not amend the YRO by imposing a mental health treatment requirement, drug testing or drug treatment requirement without the offender's expression of willingness to comply with the requirement. If the offender fails to express his willingness to comply with any of the above three requirements, the court may either revoke the order or re-sentence – in either case the court must take into account the extent to which the offender has complied with the requirements of the order.

126. Under *paragraph 17* of Schedule 2 the court may, on application by the offender or responsible officer, extend the maximum 12 month period in which any unpaid work has to be performed if it appears to be in the interests of justice to do so having regard to changes in circumstances.

127. Part 5 of Schedule 2 deals with the powers of courts in relation to a YRO where the offender is subsequently convicted for another offence. *Paragraph 18* sets out what a youth court or magistrates' court convicting for the subsequent offence can do in this situation. It may, if it appears to the court to be in the interests of justice, revoke the order and re-sentence the offender for the original offence as if he had just

been convicted of it. If it re-sentences him, the court must take into account the extent to which the offender complied with the order. The offender has the right of appeal if the court re-sentences. If the youth court or magistrates' court convicting for the subsequent offence is dealing with the new offence but the YRO was made in the Crown Court, it can refer the offender to the Crown Court.

128. *Paragraph 19* makes similar provision in relation to the powers of a Crown Court following conviction of a subsequent offence.

129. *Paragraph 25* of Schedule 2 gives the Secretary of State power to amend the maximum length of a fostering requirement. An order under this paragraph will be subject to the affirmative resolution procedure.

130. Part 6 of Schedule 2 contains supplementary provisions about the court's powers and duties under Parts 2-4 of that Schedule including bringing the offender before the court; powers to remand and adjourn; and the provision of copies

Clause 3 and Schedule 3: transfer of the youth rehabilitation order to Northern Ireland.

131. Clause 3 introduces Schedule 3 which sets out the procedure for transferring YROs to Northern Ireland.

132. Part 1 of Schedule 3 concerns the making or amendment of a YRO where an offender resides or will reside in Northern Ireland.

133. *Paragraphs 1 and 2* of Schedule 3 define the circumstances in which a court may make or amend a YRO where the offender resides or proposes to reside in Northern Ireland. The court must be satisfied that the requirements of the YRO do not exceed the requirements that may be imposed in a corresponding order made by a court in Northern Ireland. The court must also be satisfied that suitable arrangements for the offender's supervision can be made in Northern Ireland and, where appropriate, that provision can be made for the offender to comply with the requirements of the YRO in the locality in Northern Ireland where he proposes to live. The court may not require a local authority residence requirement or a fostering requirement to be complied with in Northern Ireland.

134. Under *paragraph 3* of Schedule 3 when an order is made or amended where the offender resides or proposes to reside in Northern Ireland, the order must specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or amendment is made.

135. A YRO made or amended under Part 1 of Schedule 3 will have effect as if it were a corresponding order made by a court in Northern Ireland (see *paragraph 9*). The YRO must specify the corresponding Northern Ireland order and, before making the YRO, the court must explain to the offender the requirements of Northern Ireland

law relating to the corresponding order and the relevant powers of the courts.

136. *Paragraph 5* of Schedule 3 modifies the provisions in Part 1 of the Bill so that they are relevant to Northern Ireland. In particular, it provides that references to the responsible officer have effect as references to the person who is to be responsible for the offender's supervision under the order, ie. for the performance of supervisory, enforcement or other related functions under the relevant Northern Ireland legislation (see *paragraph 6*)

137. Part 2 of Schedule 3 applies where an order has been made or amended under Part 1. *Paragraph 9* sets out the effect of a YRO in Northern Ireland and *paragraph 10* has the effect that the offender must keep in touch with the person responsible for his or her supervision in Northern Ireland.

138. *Paragraph 11* of Schedule 3 provides the Crown Court in Northern Ireland with the power to direct that proceedings in Northern Ireland be before the appropriate court of summary jurisdiction in Northern Ireland where the YRO has been made or amended by the Crown Court.

139. *Paragraph 12* provides that, where a YRO has transferred, the home court may," substitute "where a YRO has been transferred to Northern Ireland, the court in Northern Ireland (the "home court") may, subject to a number of exceptions, exercise any power which it could exercise in relation to a corresponding order in Northern Ireland. *Paragraph 13* gives the home court the power to require an offender to appear before the relevant court in England or Wales. The power may be exercised if it appears to the home court that the offender has failed to comply with one or more of the requirements of the order, in which case the home court must send a certificate specifying the failure, together with other details of the case, to the court in England and Wales (see *paragraph 14*). The power may also be exercised if the home court considers that it would be in the interests of justice for the court in England and Wales to exercise its powers under Schedule 2 to revoke or amend the order.

140. *Paragraph 15* of Schedule 3 sets of the powers available to a court in England or Wales where an offender is required to appear before it by virtue of paragraph 13. The court may issue a warrant for the offender's arrest and it may exercise any power which it could exercise under the YRO if the offender resided in England or Wales. *Paragraph 16* provides that the court in England and Wales cannot amend the YRO unless provision can be made for the offender to comply with the amended provisions in Northern Ireland and that arrangements for supervision can be made.

141. *Paragraph 17* of Schedule 3 provides that, if the law in Northern Ireland changes to make further types of orders available to courts in Northern Ireland dealing with offenders aged under 18 at the time of conviction, the Secretary of State may by order (subject to the negative resolution procedure) make appropriate amendments to Schedule 3

Clause 4: Meaning of "the responsible officer"

142. This clause defines who the responsible officer is in relation to a YRO. Under *subsection (1)*, where the order only imposes a curfew requirement or exclusion requirement together with an electronic monitoring requirement, the responsible officer will be the person responsible for the electronic monitoring. In a case where the only requirement is an attendance centre requirement the responsible officer will be the officer in charge of the attendance centre. In any other case the responsible officer will be a member of a youth offending team or an officer of a local probation board. *Subsection (3)* gives the Secretary of State order making powers (subject to the affirmative resolution procedure) to amend subsections (1) and (2) and, where necessary or expedient, make any consequential changes as a result to other provisions of Part 1 of this Bill or Chapter 1 of Part 12 of the 2003 Act (general provisions about sentencing). *Subsection (4)* provides that such an order may provide for the court to decide in individual cases which description of "responsible officer" is to apply. Any such order will be subject to the affirmative resolution procedure

Clause 5: Responsible officer and offender: duties in relation to the other

143. Clause 5 establishes the statutory duties of the responsible officer and offender in relation to each other. Under *subsection (1)* the responsible officer must make any necessary arrangements for the offender to fulfil the requirements of the order, promote the offender's compliance with the requirements, and take enforcement action in the case of non-compliance. *Subsection (2)* makes an exception for responsible officers who are electronic monitoring providers. *Subsection (3)* provides that in giving instructions in relation to the YRO the responsible officer must ensure, as far as practicable, that any instruction avoids any conflict with an offender's religious beliefs, with his attendance at school or at any other educational establishment or with the requirements of any other YRO to which he is subject. *Subsection (4)* provides the Secretary of State with an order making power (subject to the negative resolution procedure) to add to the restrictions in subsection (3). Under *subsection (5)* an offender must keep in touch with his responsible officer, in accordance with any instructions in that regard from the responsible officer. The offender must also notify the responsible officer of any change of residence. Under *subsection (6),* if the offender does not keep in touch as required, or if he changes his residence without notifying the responsible officer, he or she is liable to breach proceedings.

Clause 6 and Schedule 4: Abolition of certain youth orders and related amendments

144. Clause 6 abolishes five existing community sentences for young offenders namely, curfew orders, attendance centre orders, exclusion orders, supervision orders and action plan orders, which will be replaced by the YRO. The clause also introduces Schedule 4 which makes consequential amendments to other legislation.

Clause 7: Youth rehabilitation orders: interpretation

145. This clause defines various terms for the purposes of Part 1.

Clause 8: Isles of Scilly

146. This clause provides for Part 1 to have effect in the Isles of Scilly with such exceptions, adaptations and modifications as the Secretary of State may specify by order (subject to the negative resolution procedure).

Part 2: Sentencing

Clause 9: Purposes etc of sentencing: offenders aged under 18

147. This clause sets out that the principal aim of the courts in sentencing young offenders must be as the prevention of offending, reflecting the principal statutory aim of the youth justice system as a whole as set out in section 37 of the Crime and Disorder Act 1998 (the 1998 Act). The clause complements section 142 of the 2003 Act which sets out the purposes of adult sentencing.

148. *Subsection (1)* inserts a new section 142A into the 2003 Act setting out the purposes of sentencing for offenders under the age of 18 years. The new section requires the court when dealing with an offender to have regard primarily to the principal aim of preventing offending by children and young people. It also requires the court to have regard to the following purposes of sentencing:

- the punishment of offenders,
- the reform and rehabilitation of offenders,
- the protection of the public, and
- the making of reparation by offenders to persons affected by their offences.

149. In addition the court must also have regard to the welfare of the offender, as required by the Children and Young Persons Act 1933.

150. New section 142A(5) sets out the circumstances in which that section does not apply, namely:

- where the sentence for the offence is fixed by law (eg a mandatory sentence of detention imposed for murder);
- where offences require certain custodial sentences (i.e certain firearms offences; in certain offences of using someone to mind a weapon; and certain serious, violent or sexual offences to which sections 226 or 228 of the 2003 Act applies); and
- where certain orders are made under the Mental Health Act 1983.

151. *Subsection (2)* amends section 142 of the 2003 Act to ensure that where young people reach their 18th birthday before being sentenced the courts have regard to the adult purposes of sentencing.

152. *Subsection (3)* amends section 44 of the Children and Young People Act 1933, which requires courts to have regard to the welfare of a child or young person brought before it, so that that requirement is subject to the duty on the court introduced by the new section 142A of the 2003 Act.

153. *Subsection (4)* amends section 37 of the 1998 Act, which sets out the aim of the youth justice system and places a duty on the courts (amongst others) to take account of that aim, so that that duty is subject to the duty on the court introduced by the new section 142A of the 2003 Act.

Clause 10: Abolition of suspended sentences for summary offences

154. This clause abolishes the power of the court to suspend a custodial sentence in accordance with Section 189 of the 2003 Act where it is passing a sentence of imprisonment for a summary-only offence or offences, except in the limited circumstances set out below. This applies to the Crown Court and the magistrates' courts. The power to suspend custodial sentences under Section 189 is unchanged as regards indictable and either-way offences.

155. The court retains the power to pass a suspended sentence for a summary-only offence where it is imposing a custodial sentence for a summary-only offence or offences at the same time as it passes a suspended sentence in respect of an indictable only or either-way offence or offences.

Clause 11: Restriction on imposing community sentences

156. Clause 11 amends section 148 of the 2003 Act, which makes provision as to when it is appropriate to impose a community sentence. It provides that nothing in section 148 requires the court to impose a community sentence even though the offence is serious enough to justify such a sentence.

Clause 12: Indeterminate Sentences: determination of tariffs

157. Section 82A of the 2000 Act requires a court determining the minimum period to be served in custody by an offender subject to a discretionary life sentence or indeterminate sentence for public protection to determine the tariff with reference to the period that the offender would have served in custody if sentenced to a determinate term. Section 82A(3) requires the court to determine the notional determinate term commensurate with the seriousness of the offence, to halve it to take account of the early release provisions and to give credit for time spent on remand.

158. This clause increases the courts' discretion when determining tariffs under section 82A in certain limited cases by giving courts discretion to reduce the notional determinate term by less than half in certain cases.

159. The discretion not to halve the notional determinate term applies in two sorts of case. The first case ('Case A') is limited to the tariff determination for discretionary life sentences and applies where the circumstances of the offence or offences make the crime exceptionally serious (without being serious enough to justify a whole-life tariff, which requires a very extreme degree of exceptionality), and the court is of the opinion that to halve the notional determinate term would not adequately reflect the seriousness of the offence(s). The court may then reduce the tariff by any amount ranging from one-half to nil, as is appropriate to reflect the seriousness of the case.

160. The second case ('Case B') applies to both discretionary life sentences and indeterminate sentences of imprisonment (or juvenile or young adult equivalents) for public protection. Case B preserves a power developed in case law (as referred to in *R v Lang & Ors* [2005] EWCA Crim 2864), which addresses a technical problem that occasionally arises: it allows a court not to apply the full 50 per cent reduction in exceptional cases when to do so would result in a situation where the offender would not serve any extra time in custody. This situation historically has arisen where the offender is already serving a determinate custodial sentence and the minimum term would expire before the offender is eligible for release, because tariffs of indeterminate sentences cannot be served consecutively with other custodial sentences. Where Case B applies, the court may reduce the notional determinate term by less than half but by no less than one third.

Clause 13: Consecutive terms of imprisonment

161. Clause 13 amends the 2003 Act in respect of consecutive custody plus and intermittent custody sentences and general restrictions on consecutive sentences for released prisoners.

162. *Subsection (2)* inserts a new subsection (7A) into section 181 of the 2003 Act which states that when calculating whether the aggregate length of consecutive terms of imprisonment is within the 65 week maximum limit for consecutive terms referred to in section 181(7)(a), account is to be taken of all the custody periods but only the longest of the licence periods.

163. *Subsection (3)* amends section 264A(3), (4)(b) and (5). The effect of these amendments is that where intermittent custody sentences are ordered by a court to be served consecutively the offender will be required to serve all the custody periods plus all the licence periods.

164. *Subsection (4)* amends section 265 to clarify the position on imposing consecutive sentences on different occasions. Subsection (4)(a) amends section 265(1), the effect of which is that if an offender has been released on licence under Part II of the Criminal Justice Act 1991 or Chapter 6 of Part 12 of the 2003 Act then a subsequent sentence may not be ordered to be served consecutively to the sentence from which he has already been released. Subsection (4)(b) inserts new subsections (1A) and (1B) into section 265, these provide that for the purposes of determining

whether someone has already been released on licence, any temporary release on licence under section 183(1)(b)(i) in respect of an intermittent custody sentence is to be discounted.

Clause 14: Minimum conditions for early release under section 246(1) of the Criminal Justice Act 2003

165. This clause amends the statutory formula set out in section 246(2) of the 2003 Act that determines the period of time a prisoner must spend in custody before becoming eligible for early release under the Home Detention Curfew scheme. The amendment will ensure that prisoners will spend at least half of the custodial period in custody, subject to a minimum of 4 weeks before they can be released on Home Detention Curfew.

Clause 15: Application of section 35(1) of the Criminal Justice Act 1991 to prisoners liable to removal from the UK

166. Clause 15(1) provides that section 46(1) and part of section 50(2) of the Criminal Justice Act 1991 are to cease to have effect. The practical effect of that provision is that foreign national prisoners liable to removal from the United Kingdom and sentenced under the provisions of the Criminal Justice Act 1991 to sentences of 4 years and over will no longer be ineligible, at the halfway point of sentence, to have their cases considered by the Parole Board for early release on licence under section 35(1) of the same Act. The provisions only apply to offenders whose offences were committed before 4 April 2001. Under the existing provisions of the 1991 Act such prisoners' applications for early release can only be determined by the Secretary of State. This provision is made to address the fact that existing provisions were the subject of a declaration of incompatibility as regards Article 14 (when read with Article 5) of the ECHR in the case of *R (Hindawi and Headley) v Secretary of State for the Home Department* [2006] UKHL 54.

167. Clause 15(2) ensures that the definition of "*liable to removal from the United Kingdom*" which is used in the 1991 Act applies equally here .

Clause 16: Release of prisoners after recall

168. This clause retains the power in section.254 of the 2003 Act for the Secretary of State to recall determinate sentence prisoners while on licence. Such prisoners will continue to have the right to be informed of the reason for their recall and to make representations against the decision to recall. However, the requirement to refer a recalled prisoner's case to the Parole Board and, following such a reference, the power of the Board to recommend re-release are removed (as to these, see clause 17).

169. This clause inserts three new sections into the 2003 Act, which provide a new re-release procedure for prisoners recalled under section 254.

New Section 254A Re-release after recall: offences other than specified offences

170. This new section 254A sets out a re-release procedure for those prisoners eligible for consideration for recall for a fixed term of up to 28 days. Subsection (1)

excludes from eligibility under this section prisoners serving a sentence for a serious sexual or violent offence as specified in Schedule 15 to the 2003 Act and those prisoners serving an extended sentence under the provisions of the 1998 Act, 2000 Act or 2003 Act.

171. Subsections (2) to (4) require the Secretary of State to re-release an eligible prisoner 28 days after being returned to prison (if the prisoner has not been released earlier under subsection (5)), provided that he or she is satisfied at the time of recall that the prisoner will not present a risk of serious harm on release, unless the prisoner has been released previously under these provisions . A prisoner who is entitled to re-release under this provision must be informed that he or she will be released after 28 days.

172. Whether or not the prisoner is eligible for re-release under subsection (4), the Secretary of State also has a power in subsection (5) to re-release any eligible recalled prisoner at any point during the period of the recall if he or she is satisfied that it is not necessary for the protection of the public for that prisoner to remain in prison (subsection (6)).

173. Subsection (7) requires the Secretary of State to refer to the Parole Board the case of any recalled prisoner who within 28 days of recall exercises the right under section.254(2) to make representations against the decision of the Secretary of State to recall him or her. The Secretary of State is also required to refer to the Board at the end of 28 days the case of any prisoner recalled under this section who has not made representations and has not been re-released by that time.

174. Subsection (8) provides that if the Parole Board recommends immediate re-release, the Secretary of State must give effect to that recommendation.

175. Subsection (9) refers to prisoners serving a sentence of intermittent custody. Should such a prisoner be recalled from licence before the expiry of the custodial element of the sentence and subsequently be re-released he or she will be on licence until the end of one of the licence periods specified in the intermittent custody order.

176. Subsection (10) provides an order-making power to amend the number of days of the fixed-term recall (subject to the affirmative resolution procedure) should the Secretary of State choose to do so.

177. Subsection (11) defines “specified offence” for the purpose of assessing a prisoner’s eligibility for fixed-term recall by reference to section 224 of the 2003 Act, that is, as an offence specified in Schedule 15 to that Act.

New Section 254B Re-release after recall: specified offences

178. Subsection (1) defines those eligible for re-release in accordance with section 254B as prisoners serving a sentence imposed for an offence specified in Schedule 15 to the 2003 Act other than an extended sentence.

179. The Secretary of State has the power under subsection (2) to re-release any recalled prisoner falling within this section at any point during the period of the recall, provided that he is satisfied that it is not necessary for the protection of the public for that prisoner to remain in prison (subsection (3)).

180. Subsection (4) requires the Secretary of State to refer to the Parole Board the case of any recalled prisoner who within 28 days of recall exercises the right under section 254(2) to make representations against the decision of the Secretary of State to recall him or her. The Secretary if State is also required to refer to the Board at the end of 28 days the case of any prisoner recalled under this section and who has not made representations and has not been re-released by that time.

181. Subsection (5) provides that if the Parole Board recommends immediate re-release, the Secretary of State must give effect to that recommendation.

182. Subsection (6) refers to prisoners serving a sentence of intermittent custody. Should such a prisoner be recalled from licence before the expiry of the custodial element of the sentence and subsequently be re-released he or she will be on licence until the end of one of the licence periods specified in the intermittent custody order.

183. Subsection (7) provides an order-making power to amend the number of days of the fixed-term recall (subject to the affirmative resolution procedure).

184. Subsection (8) defines "specified offence" for the purpose of assessing a prisoner's eligibility for fixed-term recall with reference to section 224 of the 2003 Act, that is, as an offence specified in Schedule 15 to that Act.

New Section 254C Re-release after recall: extended sentences

185. This new section 254C applies to those prisoners recalled under section 254(1) who are serving an extended sentence imposed under the provisions of either the 1998 Act, 2000 Act or 2003 Act.

186. The Secretary of State is required to refer all such cases to the Parole Board and must give effect to any subsequent recommendation by the Parole Board to re-release a prisoner immediately.

Clause 17: Further review and release of prisoners after recall

187. *Subsections (1) to (4)* amend section 256 of the 2003 Act to remove the requirement for the Parole Board to fix the date of the next review of a prisoner recalled under Section.254(1) and for whom the Board has declined to recommend immediate release or to fix a future re-release date under s.256(1)(b). Instead, the

Parole Board may determine a reference by making no recommendation as to a prisoner's release.

188. *Subsection (5)* inserts a new section 256A, dealing with further review, into the 2003 Act. This requires the Secretary of State to refer recalled prisoners to the Parole Board at least every 12 months after the prisoner's last review by the Board, with discretion to refer the case earlier. The Parole Board also has the power to recommend referral at any time before the expiry of 12 months from the prisoner's last Parole Board review.

189. When determining a referral by the Secretary of State, the Parole Board may recommend immediate release, fix a date for future release or make no recommendation as to release.

Clause 18: Recall of life prisoners: abolition of requirement for recommendation by Parole Board

190. This clause amends section 32 of the Crime (Sentences) Act 1997 to remove the requirement for a Parole Board recommendation before the Secretary of State may decide whether to recall a life sentence prisoner or a prisoner serving an indeterminate sentence for public protection.

Clause 19: Removal under Criminal Justice Act 1991 (offences before 4th April 2005 etc)

191. This Clause amends the early removal scheme in sections 46A and 46B of the Criminal Justice Act 1991 under which prisoners who are liable to deportation may be released from prison for the purpose of removing them from the UK.

192. *Subsection (2)* inserts a new section 46ZA, which defines a new category of prisoners who are not liable to removal from the UK at the end of their sentence but who have demonstrated a settled intention to reside permanently outside the UK upon release.

193. *Subsection (4)* extends the early removal scheme to those prisoners.

194. *Subsection (5)* provides that removal under the early removal scheme is not available once the prisoner has reached the halfway point of the sentence.

195. *Subsection (6*) removes existing exclusions which bar certain categories of prisoner from removal under the early removal scheme. Consequently, removal of these exclusions will ensure that a prisoner who falls into one or more of the following categories may be removed early under the scheme:

- a prisoner serving an extended sentence;

- a prisoner serving a sentence under the Prisoners (Return to Custody Act) 1995;

- a prisoner subject to registration under the Sexual Offenders Act 2003.

- a prisoner subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983.

196. This clause also extends the possibility of removal under the early removal scheme to the 14 day period immediately prior to the halfway point of the sentence.

197. *Subsection (8)* makes the early removal scheme available to prisoners serving a sentence of less than three months.

198. *Subsections (7) and (9)* make consequential amendments arising from the inclusion of the new category of prisoners who are to be eligible for removal under the early removal scheme.

Clause 20 Removal under Criminal Justice Act 2003

199. This clause makes broadly similar provision to that made by clause 19, but in relation to the equivalent provisions of the 2003 Act. The amendments make similar extensions to the availability of removal from the UK under the early removal scheme as set out in Chapter 6 of Part 12 of that Act.

200. *Subsection (4)*, as read with the new definition inserted by *subsection (2)*, extends the availability of the early removal scheme to prisoners who are not liable for removal from the UK at the end of their sentence but who have demonstrated a settled intention to reside permanently outside the UK upon removal.

201. *Subsection (5)(b)* removes a number of exclusions which bar certain categories of prisoner from removal under the early removal scheme. Those exclusions mirror the exclusions removed by clause 19(6). *Subsection (5)(a)* removes a time restriction which is found only in the 2003 Act early removal scheme provisions. The result will allow the removal under the scheme of -

- those a serving custodial period of less than 6 weeks, and

- those who have not served at least 4 weeks of their sentence and one-half of the custodial element of that sentence.

202. *Subsections (6), (7) and (8)* make consequential amendments arising from the inclusion of the new category of prisoners who are to be eligible for removal under the early removal scheme.

Clause 21: Referral orders: referral conditions

203. This clause amends section 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (the "2000 Act") which sets out the circumstances in which a magistrates' court must or may impose a referral order when sentencing a child or young person. When a child or young person is given a referral order, he or she is required to attend a youth offender panel, which is made up of two volunteers from the local community and panel adviser from a youth offending team (YOT). The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is the prevention of reoffending by the offender.

204. Under section 16 of the Sentencing Act, a referral order cannot be given at present to an offender where the sentence: is fixed by law; is so serious that the court decides a custodial sentence is absolutely necessary; or the offence is relatively minor and the court proposes to give an absolute discharge.

205. Subject to those exceptions, under the 2000 Act a referral order must be given to a child or young person where the following conditions are met, namely:

- the offence is punishable with imprisonment,
- the offender pleads guilty to the offence and any connected offence,
- the offender has not previously been convicted of an offence, and
- the offender has never been bound over to keep the peace.

206. *Subsection (2)* amends section 17(1) of the 2000 Act so as remove the last of the condition that the offender must never have been bound over to keep the peace. As a result the fact that the offender has previously been bound over to keep the peace would not be a bar on the making of a mandatory referral order.

207. A referral order may be given to a child or young person where the following conditions are met, namely:

- the offence is one that is not punishable with imprisonment,
- the offender pleads guilty to the offence and any connected offence,
- the offender has not previously been convicted of an offence, and
- the offender has never been bound over to keep the peace.

208. A referral order may also be given to a child or young person where the offender is being dealt with for two or more connected offences and the following conditions are met, namely:

- the offender pleads guilty to at least one of those offences and not guilty to at least one,
- the offender has not previously been convicted of an offence, and
- the offender has never been bound over to keep the peace.

209. *Subsection (3)* inserts a new subsection (2) into section 17 of the 2000 Act, the effect of which is modify the conditions that must be met before a discretionary referral order may be made. As with mandatory referral orders, the fact that the offender has previously been bound over to keep the peace would no longer be a bar to making a discretionary order. In addition, it would now be possible to make a discretionary order where the offender had one previous conviction and where, in respect of that previous conviction, a referral order had not been made.

210. *Subsection (4)* repeals section 17(5) of the 2000 Act. As a result a conditional discharge would no long be treated as a conviction for the purposes of section 17.

Clause 22: Imposition of unpaid work requirement for breach of community order

211. This clause amends paragraphs 9 and 10 of Schedule 8 to the 2003 Act, which governs the way in which the courts deal with offenders who breach their community orders. One of the three ways in which a court must deal with such an offender is by amending the terms of the community order so as to impose more onerous requirements under paragraphs 9(1)(a) and 10(1)(a). Where the court deals with an offender in this way, this clause reduces the minimum period of unpaid work that may be imposed for breach of a community order from 40 to 20 hours, where the community order does not already contain an unpaid work requirement. Subsection (2) gives this effect in the magistrates' courts and subsection (3) in the Crown Court.

212. The clause does nothing to alter the position regarding breach of a community order that already contains an unpaid work requirement; in such a case there is no minimum amount by which the period of unpaid work may be increased. In addition, this clause affects neither the 40 hour minimum period of unpaid work that may be imposed as a requirement of a community order at the point of sentence, nor the existing maximum of 300 hours that applies to unpaid work, whether imposed as a sentence or for breach.

Clause 23: Youth Default Orders

213. At present where a magistrates' court would, but for section 89 of the 2000 Act which restricts courts from imprisoning persons aged under 21, have power to commit to prison a person under the age of 18 for a default consisting in failure to pay a sum

adjudged to be paid by a conviction, for instance a fine, the court may take enforcement proceedings against the parent or guardian under section 81 of the Magistrates' Courts Act 1981. This clause makes provision in *subsections (1) and (2)* for a magistrates' court to impose a youth default order if a person aged under 18 defaults on a fine imposed following a conviction, instead of taking proceedings against the parent or guardian. A youth default order may require the court to order the young person in default to undertake unpaid work (if they are aged 16 or 17), attend an attendance centre or be subject to a curfew.

214. *Subsection (4)* provides for a power to impose electronic monitoring of a curfew requirement imposed under subsection (2).

215. *Subsection (5)* allows a court to postpone making a youth default order if expedient.

216. *Subsection (6)* provides that certain provisions relating to YROs have effect in relation to youth default orders with the modifications set out in Schedule 5.

217. *Subsections (7) and (8)* provide for the youth default order to cease to have effect if the sum owed is paid in full and for the total number of hours or days specified in the default order to be reduced by a proportion if part payment is made.

Schedule 5: Youth Default Orders: Modification of provisions applying to youth rehabilitation orders

218. *Paragraph 2* modifies paragraph 10 of Schedule 1 to amend the number of hours of unpaid work that can be specified in the youth default order. It sets out in a table the maximum number of hours of unpaid work which may be required. This differs according to the amount which the offender has failed to pay.

219. *Paragraph 3* modifies paragraph 12 of Schedule 1. It sets out in a table the number of hours which the offender may be required to attend an attendance centre. This differs according to the amount which he has failed to pay.

220. *Paragraph 4* modifies paragraph 14 of Schedule 1. It sets out in a table the maximum number of days of curfew which may be imposed, which differs according to the amount owed by the offender.

221. *Paragraph 5* modifies Schedule 2 to apply the provisions for breach, revocation or amendment to youth default orders.

222. *Paragraph 6* provides the Secretary of State with the power to amend by order (subject to the affirmative resolution procedure) the amounts of money or number of hours or days set out in the tables in paragraphs 2, 3 and 4.

223. *Paragraph 7* modifies Schedule 3 (transfer of orders to Northern Ireland) as it applies to youth default orders.

Clause 24: Power to impose attendance centre requirement on fine defaulter

224. This clause re-enacts, with appropriate modifications to make them applicable to the new sentencing framework, one of the fine default provisions in section 60 of the 2000 Act. That provision gives a court with the power to commit a fine defaulter aged under 25 to prison a power to send him or her to an attendance centre instead. Clause 24 achieves the re-enactment by amending section 300 of the 2003 Act, which provides similar powers to impose unpaid work requirements or curfew requirements on fine defaulters as an alternative to committal to prison. Under section 300, an order imposing an unpaid work requirement or a curfew requirement is called a "default order".

225. *Paragraph 7* modifies Schedule 3 (transfer of orders to Northern Ireland) as it applies to youth default orders

Clause 25: Disclosure of information for enforcing fines

226. Clause 25 inserts new paragraphs 9A, 9B and 9C into Part 3 of Schedule 5 to the Courts Act 2003.

New paragraph 9A of Part 3 of Schedule 5 to the Courts Act 2003.

227. Paragraph 9A empowers a designated officer in a magistrates' court to ask for information about a person's benefit status from the Secretary of State, in order to assist a court in deciding whether to make an application for benefits deductions. A person's benefit status consists of the particular benefit of which he is in receipt, which deductions apply and how much money is finally received after those deductions have been made (paragraph 9C). It also allows certain other information, such as name and address, to be obtained. This enables the person in respect of whom the request is made to be identified.

New paragraph 9B of Part 3 of Schedule 5 to the Courts Act 2003.

228. Paragraph 9B places restrictions on the way in which this information can be used once it has been obtained and creates an offence to ensure that it is not used or disclosed in an unauthorised manner or otherwise than in accordance with the purposes intended.

Part 3: Appeals

Clause 26: Appeals against conviction

229. Clause 26 amends the 1968 Act. Section 2 of the 1968 Act sets out the 'test' which the Court of Appeal must apply when deciding whether to allow an appeal, and provides that the Court of Appeal 'shall allow an appeal against conviction if they think that the conviction is unsafe'.

230. *Subsection (2)* inserts new subsections (1A) and (1B) into section 2. New subsection (1A) provides that a conviction is not unsafe if the Court of Appeal are satisfied that the appellant is guilty of the offence. It would be for the Court to form their own view as to guilt on the evidence available to them; where they were in any doubt the Court would be under no obligation to seek to resolve it by calling for further evidence. New subsection (1B) makes it clear that even if the Court of Appeal are satisfied the offender is guilty of the offence, they can still allow the appeal if maintaining the conviction would be incompatible with the appellant's rights under the European Convention on Human Rights

231. *Subsection (3)* makes two minor amendments to section 23 of the 1968 Act. Section 23 gives the Court of Appeal a discretion to order the attendance of witnesses and receive evidence not adduced at the trial if they think it necessary or expedient in the interests of justice to do so. In considering whether to receive any evidence the Court must under section 23(2) have regard in particular to -

> "(a) whether the evidence appears to the Court to be capable of belief;
>
> (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
>
> (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
>
> (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings"

232. The effect of the new section 2(1A) is that the Court may not quash a conviction if they are satisfied of the appellant's guilt (subject to subsection (1B)). The amendments to section 23 are related to this change. Section 23(2)(b) and (c) are amended to require the Court of Appeal to have regard in particular to whether the evidence may afford grounds either to allow or to dismiss the appeal and whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue relevant to the determination of the appeal (whether or not raised by the appellant). The amendments do not confer new powers on the Court of Appeal as it is already possible for the Court to admit fresh evidence at the request of the respondent to the appeal (see, for example, *R v Craven* [2001] 2 Cr App R 12). Further, the amendments do not require the Court to consider new evidence or to reconsider the evidence at trial in order to determine guilt. Only if the Court are satisfied on the evidence before them (including any they may choose to receive under section 23 if they consider it in the interests of justice to do so) does new subsection (1A) come into play.

233. In *R v Smith* [1999] 2 Cr App R 238, the Court of Appeal quashed a conviction because the evidence establishing the appellant's guilt was adduced under cross-examination after his application that there was no case to answer had been wrongly rejected by the judge. *Subsection (4)* inserts new section 30A to the 1968 Act. This provides that, in determining the appeal (in accordance with section 2 as amended) the Court may not disregard evidence solely on the ground that it was given after the wrongful rejection of a submission of no case.

234. *Subsection (5)* makes express statutory provision for the Court of Appeal to refer to the Attorney General serious misconduct in the investigation or prosecution. This is considered appropriate in the light of the changes to section 2 of the 1968 Act, in case preventing convictions from being quashed in those cases where the Court is satisfied as to guilt is seen as removing a deterrent to misconduct.

Clause 27: Determination of prosecution appeals

235. Clause 27 alters the test in subsection (5) of section 61 of the 2003 Act for ordering a retrial (or that the trial should resume) where the Court of Appeal allow a prosecution appeal against a terminating ruling. At present where the prosecution successfully appeal against a judge's decision that proceedings should stop (for example on a submission at the end of the prosecution evidence that the defendant has no case to answer), the defendant must be acquitted unless the Court consider it "necessary in the interests of justice" for the trial to continue or for a fresh trial to take place. The substituted subsection (5) has the effect that the trial must continue or a fresh trial must take place unless the Court consider that the defendant could not receive a fair trial.

Clause 28: Review of sentence on a reference by Attorney General

236. Clause 28 inserts new subsections (3A) and (3B) into the Criminal Justice Act 1988.

237. Under Part 4 of the Criminal Justice Act 1988, the Attorney General has the power to refer certain Crown Court sentences to the Court of Appeal on the grounds that they are unduly lenient. The Court of Appeal then has the discretion as to whether to quash the sentence and, if so, what sentence they may impose in its place. Where the Court of Appeal increases a sentence on a reference by the Attorney General, it has a non statutory practice of allowing a "double jeopardy discount" by not increasing the sentence as much as it would otherwise do, on the grounds that the defendant is suffering distress and anxiety from going through the sentencing process a second time.

238. This practice was prohibited for life sentence minimum terms imposed for murder by section 272 of the 2003 Act, which inserted subsection (3A) into section 36 of the 1988 Act. Clause 28 extends the prohibition to cases to which new subsection (3B) refers. These cases are discretionary life sentences and indeterminate sentences.

The effect is that the practice of allowing a "double jeopardy" discount is abolished in unduly lenient sentence references in the following cases: a sentence of imprisonment for life; a sentence of detention during Her Majesty's pleasure or for life under section 90 or 91 of the 2000 Act and a sentence of custody for life under section 93 or 94 of that Act; a sentence of imprisonment or detention for public protection under section 225 of the 2003 Act and a sentence of detention for public protection under section 226 of that Act.

Part 4: Her Majesty's Commissioner for Offender Management and Prisons

Clause 29 and Schedule 6: Appointment etc of Commissioner

239. This clause and the related Schedule 6 make general provision for the creation of the office of Her Majesty's Commissioner for Offender Management and Prisons.

240. The Commissioner's functions are outlined in *subsection (2)*. The main functions are:

- dealing with complaints;
- investigating deaths in custody; and
- carrying out other investigations at the request of the Secretary of State.

241. These functions are currently performed by the PPO on a non-statutory basis.

242. *Subsection (4)* provides for the funding of the Commissioner's office. Schedule 6 makes provision for the appointment, tenure and remuneration of the Commissioner, and staffing of the Commissioner's office, and the making of annual and other reports.

Clause 30 and Schedule 7: Eligible complaints: general

243. This clause and the related Part 1 of Schedule 7 make provision for the handling of eligible complaints by the Commissioner. The clause provides the Commissioner with the discretion to determine the procedures for the making of complaints to him or her, providing that such procedures do not preclude the making of complaints orally.

244. The Commissioner will be able to act on eligible complaints which are made to him or her by certain categories of person, including:

- persons in prison custody (including unconvicted persons held in prison on remand and persons held in Young Offender Institutions, but the intention is to exclude persons held in Secure Training Centres), and persons formerly in prison custody;

- residents and former residents of Approved Premises (including voluntary residents), as that term is defined in section 9 of the Criminal Justice and Court Services Act 2000;

- persons who are or have been under community supervision;

- persons who have had reports prepared on them by local probation boards (or probation trusts as proposed in the Offender Management Bill 2007);

- persons who are or have been detained in certain immigration detention premises; and

- persons under prison or immigration escort.

245. The Commissioner will only be able to act on those complaints which relate to matters specified in Part 1 of Schedule 7. Such matters include, for example, the way in which the complainant has been treated whilst held in certain premises and to the conduct (including the merit of decisions) of certain persons.

246. *Subsection (4)* enables the Secretary of State by order (subject to the affirmative resolution procedure) to specify matters which are excluded matters for the purposes of the Commissioner's complaints remit.

247. *Subsections (3)(b) and (5)* prevent the Commissioner from reviewing adjudicated decisions of certain independent judicial and other bodies. However, the intention is not to exclude a matter simply because it might result in such proceedings. For example, the Commissioner will be able to exercise his or her discretion and decline to act on a complaint where the complainant's solicitors are in the process of preparing a writ on the same subject. Once proceedings have been commenced or an appeal is under way, the Commissioner will again be able to exercise his or her discretion as to whether he wants to continue to deal with the case. The Commissioner may decline to act where the matter was at large before a court, but if the matter is undetermined or the subject matter of the complaint remains unresolved then it will be open to the Commissioner to deal with it.

248. *Subsection (6)* enables the Commissioner to investigate complaints relating to information provided to the bodies listed in subsection (5). This will allow, for example, the Commissioner to investigate a complaint relating to the factual accuracy of a pre-sentence report prepared by a probation officer. However, the Commissioner's investigation will be prohibited from covering the actual determination of the court, which is a decision falling within subsection (5).

249. *Subsection (9)* provides for a person to be entitled to complain on behalf of the relevant person (as that term is defined in *subsection (10)*) in relation to a complaint if that person is dead or unable to act for himself or herself.

250. In 2006-2007, the PPO investigated a total of 1,560 prison complaints and 22 probation complaints. Complaints about licence conditions formed the largest proportion of complaints from prisoners. Other common types of complaint related to reports, supervision and throughcare.

Clause 31: Eligible complaints: specific requirements applicable to all complaints
251. This clause sets out time-limits and certain other conditions which determine whether complaints are ineligible to be dealt with by the Commissioner. The Commissioner will have the discretion to waive these conditions.

252. *Subsection (2)(b)* requires that the substance of any complaint must first be communicated to the responsible authority (as that term is defined in *subsection (4))* and the authority has had a reasonable opportunity to deal with it, before it is eligible to be dealt with by the Commissioner.

Clause 32: Treatment by Commissioner of complaints
253. This clause sets out the actions the Commissioner may take in relation to a complaint; and enables the Commissioner to determine the extent of any complaint investigation and the procedures applicable to any action to be taken.

254. In addition to (or instead of) investigating a complaint, *subsection (3)(b)* enables the Commissioner to provide other forms of assistance to complainants. Such assistance could come in the form of invoking grievance resolution procedures, including settlement by mediation or conciliation.

255. The Commissioner may exercise his or her discretion and choose to decline to act on complaints, for example where he considers a more appropriate forum exists. The Commissioner may also decline to deal with complaints which he considers are insubstantial or incapable of worthwhile resolution. The Commissioner may defer dealing with a complaint if, for example, having consulted with the police and Crown Prosecution Service, it appeared to him that immediate action might prejudice a criminal investigation.

256. Where the Commissioner declines to deal with a complaint, defers or stops investigating it or re-opens a previously rejected complaint, he or she is then required, in accordance with *subsection (7)*, to notify the complainant with a brief explanation of the reasons. The Commissioner may also notify the complainant's representative or such other persons as the Commissioner thinks fit.

Clause 33: Report on the outcome of an investigation
257. This clause requires the Commissioner to inform the complainant of the outcome where he has investigated or otherwise dealt with a complaint. The

Commissioner has discretion to report on the outcome to other persons as he thinks fit and may publish the whole or any part of a report.

Clause 34: Recommendations by Commissioner

258. This clause specifies that the Commissioner is able to make recommendations to the Secretary of State and other controlling authorities (as that term is defined in clause 50(1)) about any matter arising from a complaint.

259. These recommendations may relate, for example, to the resolution of the complaint or redress (including financial) for the benefit of the complainant or any other individual similarly affected, or suggested improvements in the administrative processes of the controlling authority. Under *subsection (2),* where the Commissioner makes such recommendations, the controlling authority to whom they relate must within 28 days of receipt inform the Commissioner in writing about what it proposes to do about them.

Clause 35 and Schedule 8: Investigation of deaths

260. This clause and the related Schedule 8 set out the Commissioner's death investigation function, and provide for an investigation's aims, scope and procedure.

261. The Commissioner will be able to investigate deaths of certain persons, including:

- persons in prison custody (including unconvicted persons held in prison on remand, persons held in Young Offender Institutions, and persons detained in Secure Training Centres);
- residents of Approved Premises (including voluntary residents);
- persons detained in certain immigration detention premises; and
- persons under prison or immigration escort.

262. The Commissioner must investigate a death if the person died while being held in the premises, or in the forms of custody or escort, specified in Schedule 8. Under paragraphs 3 and 6 of Schedule 8, the Commissioner may also investigate a death if it appears to be linked to events which occurred while the deceased was being held at those premises (or in those forms of custody or escort).

263. The mandatory aims of a death investigation by the Commissioner are set out in *subsection (3).* Within that framework, *subsection (4)* allows the Commissioner to set terms of reference that may vary according to the circumstances of a case. This will allow him, for example, to include other deaths from the categories of persons covered by his death investigation remit where a common factor between the deaths is suggested.

264. Under *subsection (5)* the Commissioner may defer an investigation of a death if requested to do so by a person who is conducting a criminal investigation in relation to the death. *Subsection (7)* enables the Commissioner to reopen the investigation of a death by his office (or by the PPO).

265. *Subsection (8)* specifies that the Commissioner may make recommendations to a controlling authority (as that term is defined in clause 50 (1)) about matters arising from an investigation. There will be no duty on the authority to respond within a specified time, as recommendations arising from matters covered by an investigation into a death are likely to require wide consideration within the authority. It is envisaged that protocols agreed between the Commissioner and controlling authorities should provide the best way of gaining broadly based and realistic responses which will translate into action.

266. In 2006-07, a total of 185 deaths were reported to the PPO. The majority of deaths were of prisoners. There were 13 deaths of residents of Approved Premises.

Clause 36: Reports on the outcome of a death investigation

267. This clause sets out those to whom the Commissioner must report in writing once he or she has completed an investigation; and provides for the Commissioner to report to other persons as he or she thinks fit. The Commissioner is required to take all reasonable steps to share the report with at least one person who was closely connected to the deceased, such as a partner or relative.

268. *Subsection (7)(c)* provides the Commissioner with the discretion to decide whether to publish the whole or part of a report relating to an investigation. It is envisaged that such reports may be published in paper or electronic form, and may be as written, or subject to editing, paraphrasing or anonymising. The name of the deceased must not be published without the consent of a personal representative of that person.

Clause 37: Investigations requested by the Secretary of State

269. This clause sets out the Commissioner's function to investigate certain other matters at the request of the Secretary of State.

270. *Subsections (5), (6), (8)* and *(9)* make provision concerning limitations and requirements relating to requests made under this clause which relate to certain matters in Scotland.

271. *Subsection (10)* provides for the Commissioner to determine the scope and procedure of an investigation under this clause, subject to any directions given to him by the Secretary of State. Subject to any such directions, *subsection (11)* permits the Commissioner to re-open a previous investigation under this clause or an investigation carried out previously by the PPO.

272. The PPO has conducted a number of investigations at the request of the Secretary of State. For example, in June 2003 the Secretary of State asked the PPO to investigate a major disturbance and fire that occurred at Yarl's Wood Immigration Removal Centre in February 2002. The PPO's terms of reference were to inquire into the events at the centre of the incident and their causes, and to make recommendations designed to minimise the risk of recurrence in the Home Office Immigration and Nationality Directorate estate.

Clause 38: Reports on the outcome of an investigation under section 37

273. This clause makes provision concerning procedures relating to reports of investigations by the Commissioner of matters at the request of the Secretary of State.

274. *Subsection (2)(c)* provides the Commissioner with the discretion to decide whether to publish the whole or part of a report relating to an investigation, subject to any directions given by the Secretary of State.

Clause 39: Powers of Commissioner to obtain information etc.

275. This clause provides the Commissioner with powers to require the provision of information or documents for the purposes of any investigation. It also provides the Commissioner with the same powers as the High Court in relation to attendance and examination of witnesses and the production of documents.

276. The Commissioner may require a person to secure that he or she is given access to any premises, in order to inspect the premises, or any documents or computer records as required. *Subsection (7)* specifies that the Commissioner has no power to require access to premises solely used as a dwelling.

277. It is envisaged that the Commissioner will continue to rely upon good investigative practices and the contractual obligations of staff in ensuring co-operation from witnesses. However, these powers will enable the Commissioner to ensure the provision of relevant information or attendance of key witnesses in the event of non-cooperation.

Clause 40: Exceptions etc. to Commissioner's powers under Section 39

278. This clause sets out certain exceptions to the Commissioner's powers to compel persons to co-operate with a complaint or an investigation.

279. *Subsections (2) and (3)* enable the Commissioner to overcome certain restrictions and privileges that might otherwise prevent him from obtaining information and assistance from public servants.

Clause 41: Obstruction and contempt

280. This clause enables the Commissioner to refer to the High Court certain matters relating to the failure of a person to co-operate with an investigation. Provision is made to allow the High Court to deal with such a matter as if the person was in contempt of court.

Clause 42: Working with other ombudsmen etc.

281. This clause provides for the Commissioner and a listed person (as that term is defined in *subsection (6)*), such as the Parliamentary Ombudsman or the Public Services Ombudsman for Wales, to co-operate in the circumstances specified in *subsections (1*) and *(2).*

282. There are two sets of such circumstances. The first is where the Commissioner forms the opinion that a matter he or she is dealing with or considering is a matter that could be dealt with by another listed person and he or she consults that person about it. The second is where a listed person forms the opinion that a matter he or she is dealing with or considering is a matter that could be dealt with by the Commissioner and he or she consults the Commissioner about it.

283. *Subsection (4)* specifies that the co-operation provided for under this clause may include the conducting of a joint investigation, preparation of a joint report, and the publishing of such a report. By virtue of *subsection (5)* the power to conduct joint investigations or prepare and publish joint reports will not be available where the listed person is the Scottish Public Services Ombudsman.

284. *Subsection (7)* requires the Commissioner to obtain the consent of the complainant before carrying out a joint investigation with the Parliamentary Ombudsman, the Health Service Ombudsman (for England) or the Local Government Ombudsman (for England).

285. *Subsection (8)* enables the Secretary of State to amend the list in *subsection (6)* or *(7)* by order (subject to the negative resolution procedure). *Subsection (9)* enables the Secretary of State to make such consequential amendments to an Act of Parliament as may be necessary because of a change made to *subsections (6) or (7).*

Clause 43: Legal and other representation

286. This clause provides that it is for the Commissioner to determine the circumstances relating to the representation of persons by lawyers or other persons in connection with complaints or investigations under clause 35 or 37.

Clause 44: Disclosure of information etc

287. This clause provides that the Commissioner must not disclose information that is defined to be protected information in *subsection (1)*, which includes any information obtained in the course of carrying out the Commissioner's functions, except in the circumstances specified in *subsection (3). Subsection (2)* specifies that information ceases to be classified as protected information for the purposes of the clause after 70 years.

288. *Subsection (3)* specifies the circumstances in which disclosure of protected information will be permissible. *Subsections (4) to (8*) provide more detail about further limits upon disclosure in some of those circumstances. The placing of restrictions upon the circumstances in which information can be disclosed reflects the extensive powers of the Commissioner under this Part to obtain information. The Commissioner is given discretion to disclose information for purposes connected with his functions, for the purpose of certain legal proceedings, and in certain other limited circumstances.

289. *Subsections (9)* to *(11)* provide that the Commissioner and no other person referred to in subsection (11) shall be required to give evidence in any proceedings, unless the proceedings in question are specifically referred to in subsection (3)(d) to (g).

290. *Subsection (12)* provides that for the purposes of defamation law, the publication of any matter by the Commissioner for purposes connected with his functions shall be absolutely privileged.

Clause 45: Disclosure prejudicial to national security or contrary to public interest

291. This clause provides for the Secretary of State to give a notice to the Commissioner stating that disclosure of a specified piece of information or class of information, would, in the Secretary of State's opinion, prejudice national security or otherwise be contrary to the public interest.

292. *Subsection (2)* provides that nothing in this Part authorises or requires the Commissioner to disclose information covered by such a notice.

Clause 46: Notification of matters of potential concern to the police or other authorities

293. This clause enables the Commissioner to notify the police or appropriate controlling authority (as that term is defined in clause 50(1)) if the Commissioner forms the opinion that there should be a criminal investigation, or that action should be undertaken by a controlling authority, in relation to any matter.

Clause 47: Power to pay expenses

294. This clause provides the Commissioner with the discretion to pay expenses incurred by a person who has made an eligible complaint (or by those assisting with

an eligible complaint) or an investigation under clause 35 or 37, in accordance with any relevant guidelines set by the Treasury. This allows the Commissioner to pay, for example, reasonable travel costs incurred by those attending an interview.

Clause 48 and Schedule 9: Consequential amendments relating to Part 4
295. This clause gives effect to Schedule 9 which contains consequential amendments relating to this Part. Schedule 9 makes some minor amendments to legislation governing relevant bodies to enable the consultation and co-operation with the Commissioner specified in clause 42.

296. Amendment is also made to Schedule 3 of the Parliamentary Commissioner for Administration Act 1967 so as to prevent the Parliamentary Ombudsman from investigating certain matters falling under this Part. The intention is to avoid potential overlap of provision between the Parliamentary Ombudsman and HM Commissioner for Offender Management and Prisons.

Clause 49: The Prisons and Probation Ombudsman
297. This clause prevents the PPO from investigating any complaint, death or matter referred by the Secretary of State after the commencement of this Part. Provision is made to allow matters falling under the PPO's remit prior to the commencement of this Part to be continued to be dealt with or investigated after commencement. Provision is also made to enable the Commissioner to take on certain existing investigations of the PPO's.

Clause 50 and Schedule 10: Interpretation of Part 4
298. This clause provides definitions of certain terms used in this Part. *Subsection (1)(a)* defines a controlling authority as any person listed in Schedule 10 . *Subsection (1)(b)* enables the Secretary of State to specify in an order (subject to the negative resolution procedure) other persons to be regarded as controlling authorities.

299. *Subsection (2)* enables the Secretary of State to specify in an order (subject to the affirmative resolution procedure) descriptions of immigration detention premises which are to be excepted premises for the purposes of this Part, or if the order so provides, for the purposes of a specified provision of this part.

Clause 51: Power to modify certain provisions of Part 4
300. This clause enables the Secretary of State by order (subject to the affirmative resolution procedure) to add, amend or repeal certain matters included in the Commissioner's complaints remit (Schedule 7), certain descriptions of deaths included in the Commissioner's deaths remit (Schedule 8), and descriptions of events covered by the Commissioner's function to conduct investigations at the request of the Secretary of State (clause 37 (3)). Provision is also made to enable the Secretary of State by order (subject to the negative resolution procedure) to make certain modifications to clause 44 ('Disclosure of information etc.').

Clause 52: Power to confer new functions on the Commissioner

301. This clause enables the Secretary of State by order (subject to the affirmative resolution procedure) to confer additional functions on the Commissioner.

Part 5: Other Criminal Justice Provisions

Clause 53: Alternatives to prosecution for offenders under 18

302. Clause 53 gives effect to Schedule 11 which makes provision for Youth Conditional Cautions. Similar provision for adult conditional cautions is made in Part 3 of the 2003 Act, as amended by sections 17 and 18 of the Police and Justice Act 2006. The Schedule also amends section 65 of the 1998 Act which relates to reprimands and final warnings.

Schedule 11: Alternatives to prosecution for offenders under 18

303. *Paragraph 2* amends section 65 of the 1998 Act. That section provides for the giving of reprimands and final warnings to children and young offenders. *Paragraph 2(2)* amends section 65(1) of the 1998 Act which sets out the conditions that must be satisfied before a reprimand or warning may be given. Paragraph 2(2)(a) amends section 65(1)(b) – which requires a constable to be satisfied that, on the evidence, there would be a realistic prospect of the offender being convicted - so as to bring it into line with the equivalent test for adult conditional cautions (which is replicated for youth conditional cautions), namely that there is sufficient evidence to charge the offender with the offence. No practical difference is intended between the existing and revised test. Paragraph 2(2)(b) amends the test in section 65(1)(d) so that no young person may be given a reprimand or warning where he or she has previously been given a youth conditional caution. *Paragraph 2(3)* amends section 65(3) so as to require a constable, when considering whether to warn a young person (who has previously received a warning), to be satisfied that the offence is not so serious as to require either (as now) the person to be charged or a youth conditional caution to be given. *Paragraph 2(4)* amends section 65(6), which places a duty on the Secretary of State to issue guidance in respect of reprimands and warnings. As a result of the amendment, such guidance will need to set out the criteria for determining whether an offence is not so serious as to require the offender to be charged (as now), or given a youth conditional caution.

304. Section 65(8) of the 1998 Act prohibits the giving of any caution to a child or young person other than a reprimand or warning. *Paragraph 2(6)* amends this provision so as to exclude youth conditional cautions from the prohibition (children and young persons will, as now, be ineligible to receive a ‘simple’ police caution).

305. *Paragraph 3* inserts new sections 66A to 66H into the 1998 Act.

New section 66A of the 1998 Act: Youth conditional cautions for offenders aged 16 and 17

306. New section 66A of the 1998 Act defines a youth conditional caution and provides that it may be given to a young person aged 16 or 17 if the offender has not previously been convicted of an offence and five other requirements, listed in new section 66B, are met. The conditions which may be imposed are restricted to those aimed at the rehabilitation of the offender, ensuring that the offender makes reparation for the offence or punishing the offender.

307. New section 66A(4) provides that the conditions that may be included in a youth conditional caution may include the imposition of a financial penalty and/or a requirement for attendance at a specified place at a specified time (which might include completion of a specified activity). The provision for a financial condition is subject to new section 66C. New section 66A(5) provides that where a condition involves an attendance requirement, the maximum number of hours is restricted to no more than 20 hours in total. This 20 hour limit does not apply to an attendance requirement imposed for the purpose of facilitating the offender's rehabilitation. This is to permit rehabilitative conditions involving, for example, drug or alcohol treatment programmes that may take longer than 20 hours in total. By virtue of new section 66A(6) this figure of 20 hours may be amended by order (subject to the affirmative resolution procedure). A youth conditional caution may be given by an authorised person as defined in new section 66A(7).

New section 66B of the 1998 Act: The five requirements

308. New section 66B of the 1998 Act sets out the requirements which need to be met for a youth conditional caution to be given. The requirements are that there is evidence against the offender; that a 'relevant prosecutor' (as defined in new section 66H*)* considers that the evidence would be sufficient to charge him or her and that a conditional caution should be given; that the offender admits the offence; that the offender has been made aware of what the caution (and failure to comply with it) would mean; and that he or she signs a document containing details of the offence, the admission, the offender’s consent to the caution, and the conditions imposed. Where the offender is aged 16 the explanation about the effect of a youth conditional cautions must be made in the presence of an appropriate adult.

New section 66C of the 1998 Act: Financial penalties

309. This new section makes provision in relation to a condition that the offender pay a financial penalty, called a “financial penalty condition”. New section 66C(1) specifies that a financial penalty condition may not be attached to a youth conditional caution given in respect of an offence unless the offence in question is one prescribed, or of a description prescribed, in an order made by the Secretary of State (subject to the negative resolution procedure). New section 66C(2) requires that an order under new section 66C(1) must also specify the maximum amount of the financial penalty that may be specified for each offence or description of offence.

310. New section 66C(3) provides that the maximum financial penalty prescribed for an offence must not exceed £100. New section 66C(4) provides that this limit may be amended by order (subject to the affirmative resolution procedure save where the £100 limit is being updated only to account for inflation in which case the negative procedure applies).

311. The financial penalty condition is intended to be a requirement to pay money that is imposed for the purposes of punishing an offender. It does not preclude an offender also being required to pay compensation to victims for the purpose of making reparation for the offence, or to pay a sum of money to a charity by way of indirect reparation to the community.

New section 66D of the 1998 Act: Variation of conditions

312. New section 66D makes express provision for the conditions attached to a youth conditional caution to be varied with the consent of the offender. Such variation may include the addition or omission of any condition.

New section 66E of the 1998 Act: Failure to comply with the conditions

313. This clause also extends the possibility of removal under the early removal scheme to the 14 day period immediately prior to the halfway point of the sentence.

314. *Subsection (8)* makes the early removal scheme available to prisoners serving a sentence of less than three months.

315. *Subsections (7) and (9)* make consequential amendments arising from the inclusion of the new category of prisoners who are to be eligible for removal under the early removal scheme.

New section 66F of the 1998 Act: Restriction on sentencing powers where youth conditional caution given

316. New section 66F provides that, save in exceptional circumstances, a court may not, when sentencing an offender who has been given a youth conditional caution in the period of two years preceding the commission of the offence for which he is being sentenced, sentence that person to a conditional discharge. Where the court is satisfied that exceptional circumstances are present, the sentencer must state in open court why he or she is so satisfied.

New section 66G of the 1998 Act: Code of practice

317. This new section makes provision for the Secretary of State, with the consent of the Attorney General, to publish a Code of Practice setting out, amongst other things, the circumstances in which youth conditional cautions may be given, how they are to be given and who may give them, the conditions which may be imposed and for what period, and arrangements for monitoring compliance.

318. The Secretary of State is required to publish the Code in draft and to consider any representations regarding it. The completed Code must then be laid before Parliament. The Code is then brought into force by an order subject to the negative resolution procedure.

New section 66H of the 1998 Act: Interpretation

319. New section 66H defines various terms used in Chapter 1 of Part 4 of the 1998 Act, as amended.

320. Paragraph 4 of Schedule 11 amends section 114 of the 1998 Act to specify the appropriate parliamentary procedure for each of the new order-making powers conferred by new sections 66A, 66C, 66G and 66H.

Clause 54 and Schedule 12: Protection for spent cautions under the Rehabilitation of Offenders Act 1974

321. Clause 54 introduces Schedule 12 which amends the 1974 Act so as to provide protection of spent cautions.

322. The 1974 Act supports the rehabilitation into society of reformed offenders. Under the Act, following a certain period of time (which varies according to the severity of the sentence passed), all convictions (except those resulting in prison sentences of over 30 months) are regarded as "spent". As a result the offender is regarded as rehabilitated. For most purposes the Act treats a rehabilitated person as if he or she had never committed an offence and, as such, they are not obliged to declare them, for example, when applying for a job. There are certain exceptions, including where an ex-offender is applying for certain positions or jobs, such as those involving work with vulnerable adults or children.

323. The 1974 Act currently applies only to convictions. Schedule 12 amends the 1974 Act so as to apply its provisions, with appropriate modifications, to adult and youth conditional cautions, other cautions (for example, 'simple' cautions issued by the police), reprimands and warnings given to children and young people, and cautions given in a jurisdiction outside England and Wales (see the definition of a caution in new section 8A(2) of the 1974 Act inserted by *paragraph 3* of Schedule 12).

324. *Paragraph 4* of Schedule 12 inserts new section 9A into the 1974 Act; this makes provision in respect of the unauthorised disclosure of spent cautions (mirroring the provisions in section 9 of the 1974 Act relating to the unauthorised disclosure of spent convictions). New section 9A makes it an offence for a relevant person (that is, someone who in the course of his official duties has access to caution information) to disclose caution information otherwise than in the cause of his or her duties or for any person to obtain caution information through fraud, dishonesty or bribery. New section 9A(5) enables the Secretary of State, by order (subject to the affirmative resolution procedure), to except specified classes of disclosure from the ambit of the offence. A similar order-making power is contained in section 9(5) of the 1974 Act,

although the power has not been exercised.

325. *Paragraph 6* of Schedule 12 inserts a new Schedule 2 into the 1974 Act. Paragraph 1 of new Schedule 2 sets out the rehabilitation period for spent cautions. In the case of 'simple' police cautions, reprimands and warnings, and cautions given in a jurisdiction outside England and Wales, the caution becomes spent at the time it is given. In the case of adult and youth conditional cautions the caution becomes spent after three months. This rehabilitation period for a conditional caution is extended where the offender is subsequently prosecuted and convicted for the offence in respect of which the conditional caution was given. In such cases the rehabilitation period for the caution is extended so that it is the same as the rehabilitation period for the offence.

326. Paragraph 3 of new Schedule 2 sets out the protection afforded to persons relating to their spent cautions and the ancillary circumstances in relation to such cautions (this term is defined in paragraph 2 of new Schedule 2 and includes the offence in respect of which the caution was given and any proceedings in relation to that offence). As a result of the protections afforded, no one may ask a question in civil proceedings that might lead to the disclosure of a spent caution and any person with a spent caution applying for a job can truthfully answer "no" if asked if he or she has ever been cautioned. Failure to disclose a spent caution may not be taken as grounds for dismissing a person from employment. Under new paragraph 4 of Schedule 2 the Secretary of State may, by order (subject to the affirmative resolution procedure), specify exceptions to the protections afforded under paragraph 3. It is expected that such exceptions will be similar to those specified in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023), as amended, which, amongst other things, sets out kinds of employment, such as working with children and vulnerable adults, where spent cautions must still be disclosed.

327. Paragraph 5 of new Schedule 2 ensures that the protections afforded by paragraph 3 do not affect the operation of the caution itself (for example, if the conditions attached to a conditional cautions apply for a period longer than 3 months) or the operation of any enactment, for example section 65 of the Crime and Disorder Act 1998 which prevents the police from giving a child or young person more than 2 warnings and/or reprimands.

328. Paragraph 6 of new Schedule 2 applies, with modifications, section 7 of the 1974 Act which places limitations on the effect of rehabilitation under the Act.

Clause 55: Criminal conviction certificates and criminal record certificates

329. Clause 55 makes amendments to Part 5 of the Police Act 1997 (the 1997 Act) consequential upon bringing cautions within the ambit of the 1974 Act. Part 5 of the 1997 Act provides the statutory framework for the disclosure of criminal records (under the aegis (in England and Wales) of the Criminal Records Bureau (CRB)) for employment and other purposes. *Subsection (2)* amends section 112 of the 1997 Act so that details of any unspent conditional caution would appear on a criminal

conviction certificate (known as a CRB 'Basic Disclosure'). *Subsection (3)* amends section 113A(6) of the 1997 Act so that details of spent cautions are included on criminal record certificates (CRB 'Standard Disclosures') and enhanced criminal record certificates (CRB 'Enhanced Disclosures').

Clause 56: Allocation of offences triable either way etc.

330. Clause 56 introduces Schedule 13, which amends Schedule 3 to the 2003 Act.

331. Schedule 3 to the 2003 Act amends a number of Acts so as to provide a new scheme for determining the appropriate venue for either way cases together with a common mechanism, based on section 51 of the 1998 Act, for moving appropriate cases from the magistrates' court to the Crown Court.

332. The amendments made by Schedule 3 achieve this through, firstly, a revised procedure (called allocation) for deciding whether a case that is triable either way should be heard in the magistrates' court or in the Crown Court; secondly, abolition of committal and transfer proceedings and the substitution of a sending procedure like that already used to get indictable-only cases to the Crown Court; and, thirdly, abolition of the general power, contained in section 3 of the 2000 Act, to commit for sentence, except on a guilty plea 'before venue' or where an indefinite or extended sentence is required. Under the scheme, the general power of committal for sentence is abolished for cases that magistrates decide to hear.

333. Most of the provisions of Schedule 3 to the 2003 Act is not yet in force.

334. The principal amendment in Schedule 13, which is made by *paragraph 7*, is to preserve the general power of a magistrates' court to commit to the Crown Court for sentence an offender whom it has convicted after a summary trial, if it considers that a Crown Court sentence should be available. Paragraph 22 of Schedule 3 to the 2003 Act provided for this general power under section 3 of the 2000 Act to be replaced with a more limited power. As set out above, this limited the power to commit for sentence to cases where a defendant enters a guilty plea 'before venue' (that is, before the court has made an allocation decision) to a serious either way offence which is beyond the magistrates' powers of punishment. Paragraph 22 has not been brought into force and *paragraph 7* of Schedule 13 to the Bill removes it from Schedule 3 (so that the general power in section 3 of the 2000 Act will be preserved).

335. Although the general power to commit for sentence is preserved, *paragraph 8* of Schedule 13 amends Schedule 3 to the 2003 Act to make amendments of section 3 of the 2000 Act. The most important of these is the repeal of subsection (2)(b). This subsection refers to the longer than commensurate sentence for violent and sexual offences in section 80 of the 2000 Act. As that section has now been repealed and the longer than commensurate sentence no longer exists (and has been replaced by the dangerousness provisions in Chapter 5 of the 2003 Act to which the new section 3A power refers) section 3(2) is redundant.

336. *Paragraph 3* modifies the warning about the possibility of committal for sentence that is to be given to a defendant offered summary trial under section 20(2) of the Magistrates' Courts Act 1980. Under that section, as substituted by paragraph 6 of Schedule 3 to the 2003 Act, the court must explain to the defendant that the case appears suitable for summary trial, that he can consent to be tried summarily or choose to be tried on indictment; and, in the case of a specified offence, if he consents to be tried summarily and is convicted, he may be committed to the Crown Court for sentence if he qualifies for a sentence of imprisonment for public protection or an extended sentence. The modified warning makes clear that the possibility of committal to the Crown Court for sentence also exists if the magistrates' court considers that a Crown Court sentence should be available (because the magistrates' sentencing powers are inadequate). The amendment made by paragraph 3 is in consequence of the restoration of the general power to commit for sentence (as discussed in the preceding paragraphs).

337. The remaining paragraphs make minor amendments to Schedule 3 to the 2003 Act.

Clause 57: Trial or sentencing in absence of accused in magistrates' courts

338. Clause 57 amends section 11 of the Magistrates' Courts Act 1980, which makes provision for the circumstances in which a magistrates' court may proceed in the absence of the defendant.

339. *Subsection (2)* amends subsection (1) of section 11. The present subsection (1) provides that, where at the time and place appointed for trial or adjourned trial the prosecutor appears but the accused does not, the court has a discretion to proceed in the accused's absence. New subsection (1)(b) provides that in those circumstances, where the accused is 18 or over, the court must proceed with a trial in the absence of the accused unless it would be contrary to the interests of justice. Where the accused is under 18, the court's discretion to proceed in absence is unchanged (new subsection (1)(a)).

340. *Subsection (3)* inserts a new subsection (2A). This provides that the court may not proceed if it considers that there is an acceptable reason for his absence. *Subsection (4)* inserts a new subsection (3A) which provides that, where a court does impose a custodial sentence inn the offender's absence, the person must be brought before the court before being taken to prison to start serving the sentence.

341. *Subsection (5)* inserts two new subsections (5) and (6). New subsection (5) makes clear that the court is not required to enquire into the reason for an accused's absence before deciding whether to proceed in his absence, although it is intended that the court should take account of facts known to it (eg about the effect of severe weather on public transport) in deciding whether an acceptable reason for the accused's absence exists. New subsection (7) requires the court to state in open court its reasons for not proceeding in absence where the accused is 18 or over.

Clause 58: Extension of powers of non-legal staff

342. This clause amends section 7A of the Prosecution of Offences Act 1985, which sets out the powers and rights of audience of a Crown Prosecutor which a member of staff of the CPS who is not a Crown Prosecutor may have if he or she is designated under that section by the Director of Public Prosecutions.

343. The effect of the amendments made by *subsections (2) and (4)* is that members of staff designated under section 7A will, in addition to their existing powers, be able to: (a) conduct trials in magistrates' courts, (b) conduct proceedings in magistrates' courts in relation to certain offences previously excluded from their remit (for example, an offence triable only on indictment or one for which the accused has elected to be tried by jury, or the court has found that it should be so tried), (c) conduct applications or other proceedings relating to "preventative civil orders", and (d) conduct certain proceedings assigned to the Director of Public Prosecutions by the Attorney General under section 3(2)(g) of the Prosecution of Offences Act 1985 (these include proceedings on an application under section 2 of the Dogs Act 1871).

344. *Subsection (3)* amends subsection (5) of Section 7A to make a consequential change to the definition of bail in criminal proceedings and to define preventative civil orders. These include restraining orders, parenting orders and other civil orders which follow criminal proceedings (such as ASBOs, drinking banning orders and football banning orders).

345. *Subsection (5)* amends section 15 of the Prosecution of Offences Act 1985 to enable designated members of staff to undertake binding over proceedings in the magistrates' court.

Criminal Legal Aid

346. Sections 12 to 18 of, and Schedule 3 to, the Access to Justice Act 1999 (the 1999 Act, as amended by the Criminal Defence Service Act 2006, deal with the Criminal Defence Service. Under section 12 of the Access to Justice Act, the Legal Services Commission (the LSC) is required to set up the Criminal Defence Service to secure that people involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require. Broadly speaking, advice and assistance is available for the investigation stage and representation for proceedings.

347. Section 14 and Schedule 3 deal with representation in criminal proceedings. "Representation" is defined in section 26. It covers the preparation of a case and advocacy at any hearing. Paragraph 1(1) of Schedule 3 says that a right to representation for the purposes of any kind of criminal proceedings before a court may be granted to an individual such as is mentioned in relation to that kind of proceedings in section 12(2). The grant of a right to representation is subject to a test of the interests of justice (paragraph 5(1) of Schedule 3). Paragraph 5(2) sets out factors to be considered in deciding what the interests of justice consist of.

348. Schedule 3 was amended by the Criminal Defence Service Act 2006 to add regulation-making powers to provide for the transfer of the responsibility for granting rights to representation from the courts to the LSC and the re-introduction of a test of financial eligibility (paragraphs 2A and 3B of Schedule 3). These powers were exercised, in relation to criminal proceedings in magistrates' courts, in the Criminal Defence Service (Representation Orders and Consequential Amendments) Regulations 2006 (S.I. 2006/2493) and the Criminal Defence Service (Financial Eligibility) Regulations 2006 (S.I. 2006/2492). Applications for representation orders are handled by Her Majesty's Court Service on behalf of the LSC.

Clause 59: Provisional grant of right of representation

349. This clause amends Part 1 of and Schedule 3 to the 1999 Act to allow for the provisional grant of a right to representation in prescribed circumstances.

350. *Subsection (6)* inserts a new paragraph 1A into Schedule 3. This provides for regulations (subject to the affirmative resolution procedure) to set out circumstances in which a right to representation may be provisionally granted to individuals involved in an investigation which may result in criminal proceedings, for the purpose of those proceedings. Regulations may make provision about the stage of an investigation at which the right may be provisionally granted, and the circumstances in which any provisional grant ceases to be provisional and becomes a full grant, or where it is to be withdrawn.

351. *Subsection (2*) amends section 14(1) and *subsection (3)* amends section 15(1) of the 1999 Act so as to refer to provisional grants.

352. *Subsection (4)* makes regulations under new paragraph 1A subject to the affirmative resolution procedure.

353. *Subsection (5)* adds to the definition of 'proceedings' for the purposes of the definition of 'representation' in section 26 of the 1999 Act.

354. *Subsection (7)* amends paragraph 2A of Schedule 3 to provide that any provisional grant of a right to representation under regulations made under new paragraph 1A is to be made by the Legal Services Commission.

355. *Subsections (8)* and *(9)* make consequential amendments to paragraphs 3A(1) and 3B of Schedule 3 so as to refer to provisional grants.

356. *Subsection (10)* amends Schedule 3 and provides that the right of appeal set out in paragraph 4 does not apply in relation to any right granted under new paragraph 1A.

357. *Subsection (11)* makes consequential amendments to paragraph 5 of Schedule 3 so as to refer to provisional grants and inserts a new sub-paragraph (2A) which defines 'proceedings' for the purposes of any provisional grant.

Clause 60: Disclosure of information to enable assessment of financial eligibility

358. This clause amends the 1999 Act to allow the relevant authority to request and receive information from the Secretary of State (in practice the Secretary of State for Work and Pensions) and HMRC for purposes relating to the assessment of a person's eligibility for legal aid, and places certain restrictions on the disclosure of that information.

359. *Subsection (2)* amends section 25(9) of the 1999 Act, making regulations under new paragraphs 6 and 8 of Schedule 3 subject to the affirmative resolution procedure.

360. *Subsection (3)* inserts new paragraphs 6 to 8 of Schedule 3. New paragraph 6 provides that the relevant authority may make an information request to the DWP or HMRC for the purpose of making a decision about a person's financial eligibility for legal aid in accordance with paragraph 3B(1) and (2) or regulations under paragraph 3B(3) of Schedule 3. It further sets out the categories of information which may be requested (with a power to add further such categories by regulations subject to the affirmative resolution procedure). New paragraph 7 provides that a person to whom information is disclosed under paragraph 6 may disclose that information where necessary or expedient for those purposes. Except in these circumstances, or in accordance with any enactment or order of a court, or if information has already been lawfully disclosed to the public, any disclosure is an offence. A person guilty of this offence is liable on conviction on indictment to imprisonment for up to two years, a fine or both, or on summary conviction, to imprisonment for no more than twelve months, a fine not exceeding the statutory maximum (£5,000) or both. New paragraph 8 defines 'benefit status', 'the Commissioners' and 'information' for the purposes of new paragraphs 6 and 7.

Clause 61: Pilot schemes

361. This clause inserts a new section 18A into the 1999 Act to provide for a power to pilot schemes under secondary legislation concerning the Criminal Defence Service.

362. *Subsection (2)* removes subsection (5) of section 17A, a provision about a specific kind of pilot scheme.

363. *Subsection (3)* inserts a new section 18A. This provides that any instruments under sections 12–15, 17, 17A or 22(5) or paragraphs 1A–5 of Schedule 3 may be made so as to have effect only for a specified period of up to twelve months, unless the Lord Chancellor extends this period by order where necessary to ensure the effective operation of a scheme or to coordinate it with another relevant pilot scheme, for up to eighteen months. The Lord Chancellor may further extend this period in

order to cover any gap between the end of the pilot and full implementation. Any pilot scheme may apply in relation to one or more areas, type of court, type of offence or class of person.

364. *Subsection (4)* inserts a new subsection (9B) into section 25, and provides that any instrument under new section 18A will be subject to the affirmative resolution procedure.

Clause 62: Compensation for miscarriages of justice

365. Clause 62 amends the current provision for compensating victims of miscarriages of justice in section 133 of the Criminal Justice Act 1988 (the 1988 Act).

366. Section 133(1) of the 1988 Act sets out the test which the Secretary of State applies in determining whether there is a right to compensation in a particular case. Section 133(1) is not amended by this Bill.

367. There is currently no time limit for making an application to the Secretary of State for compensation in respect of a miscarriage of justice. This means that applications can be received in respect of convictions that were quashed many years ago. *Subsection (3)* amends section 133(2) of the 1988 Act to impose a time limit of two years within which an application under that section must be made. The two-year period begins with the date on which the conviction of the applicant was reversed or the date on which he was granted a pardon.

368. *Subsection (3)* also inserts a new section 133(2A) into the 1988 Act. This allows an application made outside the new time limit to be treated as made within the time limit if the Secretary of State considers that there are exceptional circumstances which justify doing so. For example, the Secretary of State might regard the applicant being incapacitated for all or almost all of the two-year period as an exceptional circumstance. However it is not anticipated that the Secretary of State would regard the applicant being unaware of the right to apply for compensation as an exceptional circumstance.

369. Compensation can only be paid to those who have been pardoned or whose convictions have been "reversed". Section 133(5) of the 1988 Act currently provides that a conviction has been "reversed" if it has been quashed, either on an appeal out of time or following one of several types of reference. *Subsection (5)* inserts two new subsections (5A) and (5B) into section 133 of the 1988 Act. The new subsection (5A) amends the definition of "reversed" for the purposes of section 133 in cases in which the conviction has been quashed but a retrial has been ordered. In such a case the conviction will now only be reversed when the person is acquitted of all offences at retrial (or when the prosecution indicates that it has decided not to proceed with a retrial). In such a case, it is the occurrence of one of these two events that will trigger the right to apply for compensation and the two-year time period within which an application should be made. The new subsection (5B) provides that references to a retrial in new subsection (5A) include proceedings in a magistrates' court following

remission of a case from the Crown Court.

370. If the Secretary of State decides that there is a right to compensation under section 133(1), the amount of compensation is assessed by an assessor.

371. *Subsections (4) and (7)* replace the existing section 133(4A) of the 1988 Act, which currently makes provision about the assessment of the amount of compensation, with a new section 133A. Currently:

- There is no limit on the amount of compensation payable in respect of a miscarriage of justice. In determining the amount to be paid, the assessor uses principles analogous to those governing the assessment of damages for civil wrongs. Assessments are, as far as possible, intended to put the applicant back to the financial position he or she would have been in but for the miscarriage of justice.

- Section 133(4A) of the 1988 Act requires the assessor, when assessing the element of an award attributable to suffering, harm to reputation or similar damage (i.e. non-pecuniary loss), to take account of: (a) the seriousness of the offence and the severity of the punishment suffered by the applicant as a result of the conviction; (b) the conduct of the investigation and prosecution of the offence; and (c) other convictions of the applicant and any punishment resulting from them.

- The Note for Guidance sent to successful applicants states that the assessor may also make a deduction from the non-pecuniary loss element of an award to take account of conduct of the applicant which can be construed as contributing to the miscarriage of justice.

- As contributory conduct and other convictions and punishments have not been taken into account in assessing the pecuniary element of an award, significant levels of awards could be made to applicants who have other serious convictions or who may have contributed to the occurrence of the miscarriage of justice.

372. The new section 133A(2) preserves the effect of the existing section 133(4A)(a) and (4A)(b) of the 1988 Act (as to which, see the second bullet point in the paragraph above).

373. The new section 133A(3) provides that the assessor may make deductions from the overall award, not just from the non-pecuniary element, by reason of any conduct of the applicant which caused or contributed to the conviction and of other convictions of the applicant and any resulting punishments.

374. The new section 133A(4) allows the assessor to make only a nominal award if he considers there to be exceptional circumstances which justify doing so. This might

be the result, for example, in cases in which the applicant's own conduct was a major contributory factor in the miscarriage of justice, and/or the applicant has either a lengthy criminal record or has been convicted of particularly serious offences (whether before or after the miscarriage of justice in respect of which the claim is being made).

375. New section 133A(5) introduces an overall cap of £500,000 on the amount of compensation payable in respect of a particular miscarriage of justice. No compensation will be payable for pecuniary or non-pecuniary loss in excess of the cap. The same cap applies in respect of claims made by victims of violent crime to the Criminal Injuries Compensation Authority.

376. New section 133A(6) introduces a limit on the amount of compensation payable in respect of each year of an applicant's lost earnings or earnings capacity. That limit will be one and a half times the median annual gross earnings, as published by the Office for National Statistics, at the time of the assessment (rather than at the time the loss was suffered). Applicants, no matter what their actual or projected level of earnings, will not be compensated for any losses of earnings or earnings capacity at a rate higher than the limit. The same limit applies in respect of claims made by victims of violent crime to the Criminal Injuries Compensation Authority.

377. The new section 133A(7) and (8) enables the cap on overall compensation and the limit on compensation for a year's lost earnings or earnings capacity to be amended by the Secretary of State by order (subject to the affirmative resolution procedure). For example, if the overall cap on compensation under the Criminal Injuries Compensation Scheme were to be amended, the cap on compensation for miscarriages of justice might be amended in line. If the Office for National Statistics were to adopt a different method of calculation of, or expression for, average earnings, the terminology relating to the limit for lost earnings or earnings capacity for a miscarriage of justice would be amended in line.

378. *Subsection (8)* of clause 62 amends section 172 of the 1988 Act to make it clear that the new section 133A extends to England and Wales and to Northern Ireland.

379. *Paragraph 13* of Schedule 22 sets out some transitional provisions dealing with the application of the new measures in clause 62. Paragraph 13(1) provides that the two-year time limit introduced by clause 62(3) will only apply to applications for compensation made in relation to convictions reversed or pardons given on or after the date on which clause 62 comes into force (the commencement date).

380. As a result of paragraph 13(2), the provisions for the assessment of compensation in the new section 133A will apply in relation to applications made on or after the commencement date, and also to applications made before the commencement date but in respect of which the Secretary of State has not, before that

date, determined whether there is a right to compensation.

381. Paragraph 13(3) and (4) provides that the changes to the definition of "reversed" introduced by clause 62(5) apply to any conviction quashed on an appeal out of time (whether before or after the commencement date) if an application for compensation in relation to that conviction has not been made before the commencement date.

382. Paragraph 13(5) and (6) apply a time limit to applications for compensation in relation to convictions reversed and pardons given before the commencement date. Such applications must be made within the two years beginning with the commencement date. Applications made outside this time limit can be treated as made within the time limit if the Secretary of State considers that there are exceptional circumstances which justify doing so.

Clause 63: Annual report on the Criminal Justice (Terrorism and Conspiracy) Act 1998

383. Clause 63 repeals section 8 of the Criminal Justice (Terrorism and Conspiracy) Act 1998, which requires a report on the working of that Act to be laid before both Houses of Parliament at least annually.

Part 6: Criminal Law

Clause 64: Possession of extreme pornographic images

384. This clause creates a new offence of possession of extreme pornographic images. *Subsection (1)* provides that it is an offence to be in possession of an extreme pornographic image.

385. *Subsections (2) to (8)* set out the definition of "extreme pornographic image". What is meant by 'pornographic' is explained in *subsection (3)*. In order to be considered pornographic, an image needs to have been produced solely or mainly for the purpose of sexual arousal. Whether this threshold has been met will be an issue for a jury to determine. *Subsection (4)* makes it clear that where an individual image forms part of a larger series of images, the question of whether it is pornographic must be determined by reference both to the image itself and also the context in which it appears in the larger series of images.

386. *Subsection (5)* expands on subsection (4). It provides that where a narrative, such as a mainstream or documentary film, contains images which might be considered 'pornographic' if looked at in isolation, outside the context of the story-line or purpose of the narrative, those images may be found not to be pornographic by virtue of the context in which they appear, if it appears that the series of images itself was not produced solely or principally for the purpose of sexual arousal.

387. *Subsection (6)* lists the types of image which are defined as an "extreme image" for the purposes of the offence. These are images of:

- acts which threaten or appear to threaten a person's life; this could include depictions of hanging, suffocation, or sexual assault involving a threat with a weapon;

- acts which result in, or appear to result (or be likely to result) in, serious injury to a person's anus, breasts or genitals; this could include the insertion of sharp objects or the mutilation of breasts or genitals;

- acts which involve or appear to involve sexual interference with a human corpse; or

- acts which show a person performing or appearing to perform an act of intercourse or oral sex with an animal.

In all cases the act and the participants depicted in the image must appear to be real to the viewer.

388. *Subsection (7)* sets out the definition of an image. It states that for the purposes of this offence, 'an image' means either still images, such as photographs, or moving images, such as those in a film. The term 'image' also incorporates any type of data, including that stored electronically (as on a computer disk), which is capable of conversion into an image. This covers material available on computers, mobile phones or any other electronic device.

389. *Subsection (8)* states that references to parts of the body also include body parts that may have been surgically constructed or enhanced.

390. *Subsection (9)* requires the consent of the Director of Public Prosecutions for proceedings to be instigated.

Clause 65: Exclusion of classified films etc.

391. This clause provides that images which form part of and are contained in a recording of the whole or part of a film, or other work which has been classified by a designated authority under the Video Recordings Act 1984 (the 1984 Act) are excluded from the offence in clause 64.

392. An "excluded image" is defined in *subsection (2)* as an image which forms part of a series of images contained in a recording of the whole or part of a classified work. A "recording" is defined in *subsection (7)* as any disc, tape or other device capable of storing data electronically and from which images may be produced. This therefore includes images held on a computer. So, for example, if a person has a video recording of a film which has been classified by the British Board of Film Classification, and that film contains images which might otherwise be caught by the

offence in clause 64, those images would be excluded images for the purposes of the offence in clause 64. Images that have been altered in any way are not covered by this exclusion.

393. However, *subsection (3)* goes on to state that an image is not excluded if it is contained in a recording of an extract from a classified work and it appears that the image was extracted solely or principally for the purpose of sexual arousal. Subsection (7) defines "extract" to include a single image. So, for example, if a video recording contains images extracted from a number of classified films and it appears that they have been extracted for the purpose of sexual arousal, those images would not be excluded images, notwithstanding that they have been taken from films which have been classified by a designated authority.

394. *Subsection (4)* provides that when an extracted image is one of a series of images, in establishing whether or not it appears to have been extracted for the purpose of sexual arousal, regard is to be had to the image itself, and to the context it which it appears in the series of images. This is the same test as set out in subsection (4) of clause 64. Subsection (5) of clause 64 also applies in determining this question.

395. *Subsection (5)* states that in determining whether a recording is a recording of a whole or part of a classified work, alterations due to technical reasons, such as a failure in the recording system, or due to inadvertence, such as setting the wrong time for a recording, or the inclusion of extraneous material such as advertisements, should be disregarded.

396. *Subsection (6)* makes it clear that nothing in clause 65 affects any duty of a designated authority to take into account the offence in clause 64 when considering whether to issue a classification certificate in respect of a video work.

397. *Subsection (7)* sets out the definitions used in this clause. *Subsection (8)* states that section 22(3) of the Video Recordings Act 1984 applies. This relates to the effect of alterations on films classified under that Act.

Clause 66: Defence

398. Clause 66 sets out the defences to the offence of possession of extreme pornographic images. These are set out in *subsection (2)*. They are the same as for the possession of indecent images of children in section 160(2) of the Criminal Justice Act 1988. They are:

- that the person had a legitimate reason for being in possession of the image; this will cover those who can demonstrate that their legitimate business means that they have a reason for possessing the image;

- that the person had not seen the image and therefore did not know, nor had cause to suspect, that the images held were extreme pornographic images; this will cover those who unwittingly stumble across such images; and

- that the person had not asked for the image - it having been sent without request - and that, once he was aware that he had possession of the image, he had not kept it for an unreasonable period of time; this will cover those who are sent unsolicited material for example as an unsolicited email message, and once they are aware of it, act quickly to delete it.

Clause 67: Penalties etc. for possession of extreme pornographic images

399. The penalties that will apply to persons found guilty of an offence under clause 65 are set out in this clause.

400. On conviction on indictment, the maximum sentence is imprisonment for three years for possession of images covered by clause 64(6)(a) or (b) (life threatening acts, or serious injury), and imprisonment for two years for possession of images covered by clause 64(6)(c) or (d) (necrophilia or bestiality). The combined effect of the clause and the transitional provision in *paragraph 14 of Schedule 22* is that initially the maximum sentence on summary conviction of the offence will be 6 months imprisonment. On the commencement of section 154(1) of the 2003 Act, the maximum sentence on summary conviction in England and Wales will rise to 12 months.

401. In cases where the sentence given is for a term of imprisonment of at least 24 months, and where the offender was 18 or over at the time of the offence, he will also be subject to the registration requirements under Part 2 of the Sexual Offences Act 2003.

Clause 68: Indecent photographs of children

402. *Subsection (2)* of this clause amends section 1B(1)(b) of the Protection of Children Act 1978 (the 1978 Act) to include members of the Secret Intelligence Service in the defence from prosecution for an offence under section 1(1)(a) of the 1978 Act, i.e. making an indecent photograph or pseudo-photograph of a child, if it was necessary for him or her to do so in the exercise of any of the functions of that Service.

403. *Subsection (3)* of this clause amends section 7 of the 1978 Act to extend the definition of "photograph" to include derivatives of photographs, such as tracings or other forms of data. As a result, references to a photograph in the 1978 Act will include tracings or other images, whether made by electronic or other means, that are not in themselves photographs or pseudo-photographs (as defined in the 1978 Act) but which are derived from the whole or part of a photograph or pseudo-photograph, or a combination of either or both. This amendment will mean that an offence under section 1 (indecent photographs of children) of the 1978 Act, will cover derivatives of indecent photographs or pseudo-photographs, alongside indecent photographs and

pseudo-photographs themselves. These derivatives include line-traced and computer traced images, for example, pencil traced images using tracing paper or computer traced images of photographs taken on a mobile phone.

404. The definition in section 7 of the 1978 Act also extends to the offence in section 160 of the 1988 Act relating to possession of indecent photographs or pseudo-photographs of a child.

405. *Subsection (4)* of this clause amends a minor drafting error in section 7(9)(b) of the 1978 Act.

Clause 69: Indecent photographs of children (Northern Ireland)

406. This clause amends the Protection of Children (Northern Ireland) Order 1978. The effect is to make the same changes to corresponding Northern Ireland legislation as clause 68 does to the legislation in England and Wales.

Clause 70: Maximum penalty for publication etc. of obscene articles

407. This clause raises the maximum penalty on indictment for offences under the Obscene Publications Act 1959 from three years' imprisonment to five years' imprisonment. The new sentence will not apply to offences committed before the commencement of this clause (see paragraph 16 of Schedule 22)..

Clause 71: Amendment to offence of loitering etc for the purposes of prostitution

408. This clause amends the offence of loitering or soliciting for the purposes of prostitution, as set out in section 1 of the Street Offences Act 1959 (the 1959 Act). The section currently makes it an offence for a 'common prostitute' (whether male or female) to loiter or solicit in a street or public place for the purpose of prostitution.

409. *Subsection (2)* removes the term 'common prostitute' from section 1 of the 1959 Act, but inserts the word 'persistently.' This means that the offence is committed only if the person acts persistently.

410. Persistent conduct is defined by the amendments made by *subsection (3)* as conduct which takes place on two or more occasions in any three-month period.

411. The amendments made by s*ubsection (3)(b)* makes it clear that this offence is committed only by those offering services as a prostitute, not by those receiving such services. (Those receiving services may however be committing offences under the Sexual Offences Act 1985.)

412. *Subsection (4)* repeals section 2 of the 1959 Act, which allows a person cautioned for an offence under section 1 of that Act to apply to a magistrates' court to have the caution removed from the police record. Section 2 appears to have fallen into disuse and is no longer thought to serve a useful purpose.

Clause 72 and Schedule 14: Orders to promote rehabilitation

413. *Subsections (1) and (2)* amend section 1 of the Street Offences Act 1959 to introduce a new penalty for those convicted of loitering or soliciting for the purpose of prostitution, allowing the court to make an 'order' instead of imposing a fine or any other penalty.

414. The order will require the offender to attend a series of three meetings with a named supervisor or another person directed by the supervisor. The purpose of the order is to promote rehabilitation, by assisting the offender to address the causes of their involvement in prostitution and to find ways of ending that involvement. The offender may only be the subject of one order at any time.

415. *Subsection (3)* inserts a new section 1A into the 1959 Act, and sets out further details about the new order.

416. An order can only be made if a suitable person has agreed to act as 'supervisor'. A person is only suitable to act as a supervisor, if he or she appears to the court to have the appropriate qualifications or experience for helping the offender to make the best use of the meetings.

417. The order must specify the local justice area in which the offender resides or will reside while the order is in force. The order must also specify a date by which the three meetings must take place. This must be no later than six months from the date the order is made.

418. Specific details about the time, location and duration of the three meetings will not be included in the order. These will be at the discretion of the supervisor, who is responsible for making arrangements necessary to enable the three meetings to take place.

419. The supervisor is also responsible for notifying the court once the order has been complied with. Unless an order is revoked, it will cease to be in force at the end of the day on which the court is told by the supervisor that the order has been complied with, or at the end of the day specified in the order, whichever is first.

420. *Subsection (4)* introduces Schedule 14 to the Bill which inserts a new schedule into the 1959 Act. This new Schedule makes further provision about the new order, including the consequences of breach, and the mechanism for amendment.

421. Paragraph 1 of the new Schedule to the 1959 Act defines 'the offender' and 'the supervisor' for the purposes of the Schedule and makes clear that a failure to attend any meeting at the time and place identified by the supervisor constitutes failure by the offender to comply with the order.

422. Paragraph 2 of the new Schedule sets out what will happen when it appears to the supervisor that the offender has breached the order. Sub-paragraph (1) requires

the supervisor to notify a justice of the peace if he or she is of the opinion that the offender has failed to comply with the order without reasonable excuse. If it appears to the justice of the peace that the offender has failed to comply with the order, he may issue a summons, under sub-paragraph (2), requiring the offender to appear at a specified place and time. Alternatively, if the supervisor has notified the court in writing and on oath, the justice of the peace may issue a warrant for the offender's arrest. The summons or warrant must require the offender to appear or be brought before the appropriate court.

423. Paragraph 3 of the new Schedule deals with instances where the offender fails to appear in answer to a court summons issued under paragraph 2. In such cases, the magistrates' court may issue a warrant for the arrest of the offender, requiring the offender to be brought before the appropriate court.

424. Paragraph 4 of the new Schedule sets out the powers of a magistrates' court when an offender appears or is brought before it following a summons or warrant issued under paragraphs 2 or 3, and it is proved to the court's satisfaction that the offender has failed to comply with the order without a reasonable excuse. In such cases, the court must revoke the order, if it is still in force, and may deal with the offender for the breach. The court has the power to impose any penalty that would have been available to it if the offender had just been convicted by the court of the original offence. This includes making another order under new section 1(2A) of the 1959 Act.

425. Under paragraph 4(4) a person sentenced under paragraph 4 may appeal against the sentence to the Crown Court.

426. The procedure to be followed to change the supervisor specified in the order is set out in paragraphs 5 and 6 of the new Schedule. It is only possible for the supervisor to be changed if the current supervisor is unable to continue acting in that capacity.

427. The current supervisor, the offender, or a police officer may apply to the appropriate court to specify a different supervisor in the order. If the court is satisfied that the supervisor is unable to continue in his or her role, it must either amend the order to include a different supervisor, or, if no other supervisor is available, revoke the order. Any new supervisor must be a suitable person as defined in the new section 1A of the 1959 Act.

428. Sub-paragraphs 5(4) and 5(5) define the appropriate court for the purposes of making an application, with provisions similar to those at sub-paragraphs 2(3) and 2(4).

429. Paragraph 6 provides that if the court revokes the order (because no other supervisor is available) it can deal with the offender for the original offence, imposing any penalty which would have been available to it if the offender had just been

convicted by the court of that offence. It cannot, however, impose another order under new section 1(2A) of the 1959 Act.

430. Paragraph 7 of the new Schedule deals with changes to the local justice area specified in the order. Both the offender and the supervisor are able to apply for the specified local justice area to be changed to the area in which the offender resides or will reside. The court must make the change following an application from the supervisor and may do so following an application from the offender.

431. Paragraph 8 of the new Schedule provides that if a court proposes to change the supervisor (or revoke the order) following an application under paragraph 5 made by a person other than the offender, it must summon the offender to appear. If the offender fails to attend in answer to the summons, the court may issue a warrant for the offender's arrest.

432. Paragraph 9 of the new Schedule deals with the detention of an offender when he or she is arrested under a warrant issued under the Schedule (for example, following a breach and subsequent non-appearance at court) and cannot be brought immediately before the court named in the warrant.

433. The offender can be detained for a maximum period of 72 hours following arrest, and must be brought before a court within that period. If it is not reasonably practicable to bring the offender before the court specified in the warrant within that period, he or she may be brought before any youth court (if the warrant provided for him to be brought before a youth court), or (in any other case) before any magistrates' court other than a youth court.

434. Where the offender is aged under 18 he must be detained in a place of safety within the meaning of the Children and Young Persons Act 1933. Section 107 of that Act defines "place of safety" as: a community home provided by a local authority or a controlled community home, any police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person.

435. Those detained under this new Schedule are deemed to be in legal custody, but they will not be in "police detention" for the purposes of the Police and Criminal Evidence Act 1984.

436. Paragraph 10 of the new Schedule sets out the procedure to be followed if the offender is brought before an 'alternative' court. The alternative court is able either to order the release of the offender or to remand him to appear at a later date before the appropriate court. Section 128 of the Magistrates' Court Act 1980 will apply with minor amendments. This section deals with the powers of magistrates' courts to remand in custody or on bail.

437. An offender committed to custody under paragraph 10 will be committed to prison, unless he or she is aged under 18 at the time of committal, in which case he or she will be committed to accommodation provided by or on behalf of a local authority.

438. Paragraph 11 of the new Schedule sets out the procedure for adjourning a hearing relating to an offender held by either a youth court or other magistrates' court under the Schedule.

439. Paragraph 12 of the new schedule deals with the process of notifying the offender, the supervisor and the relevant court(s), following any change to the terms of the order.

Clause 73: Rehabilitation of offenders: orders under section 1(2A) of the Street Offences Act 1959

440. Clause 73 deals with rehabilitation periods for those given orders under the new section 1(2A) of the 1959 Act.

441. *Subsection (2)* amends section 5 of the 1974 Act to apply a specific rehabilitation period for those sentenced to an order under section 1(2A) following conviction for loitering or soliciting. The rehabilitation period is 6 months from the date of conviction.

442. *Subsection (3)* inserts a new subsection (3A) in section 6 of the 1974 Act. This provides for a case in which an offender is dealt with again for the offence for which the order was made the rehabilitation period for the original sentence has ended and the rehabilitation period for the new sentence ends later than that for the original order. The effect is that the offender is not treated as a rehabilitated person under the 1974 Act until the longer rehabilitation period has expired.

Clause 74: Offences relating to the physical protection of nuclear material and nuclear facilities

443. The provisions of clause 74 and Schedule 15 are needed in order to facilitate UK ratification of amendments made in 2005 to the CPPNM. The original CPPNM was concluded under the auspices of the International Atomic Energy Agency in 1980. It entered into force in 1987, and there are currently 127 Parties. The UK is a Party, having signed the Convention in 1980 and ratified it in 1991.

444. Article 7(1) of the existing CPPNM lists a number of descriptions of conduct relating to nuclear material and requires State Parties to make each type of conduct *"a punishable offence…under its national law"*. Article 7(2) requires the offences to be *"punishable by appropriate penalties which take into account their grave nature"*. The conduct listed in existing Article 7(1) includes (for example):

"an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property"

and

"a theft or robbery of nuclear material".

445. Article 8 of the CPPNM requires each State Party to establish jurisdiction over these offences not only when they are committed in its territory but also when they are committed on board a ship or aircraft registered in that State, by a national of that State or by a person who is presented in its territory and whom the State does not extradite. Therefore, among other things, the CPPNM requires State Parties to create extraterritorial offences.

446. The offences required by the existing CPPNM are implemented in UK law through a mixture of generally applicable criminal offences (for example murder, criminal damage and theft offences) and by the provisions of the 1983 Act. The 1983 Act was passed to implement the CPPNM. It was brought into force in 1991 to coincide with UK ratification. The 1983 Act created offences to fill particular gaps in UK law and also created extraterritorial offences as required by the CPPNM. Thus section 1 of the Act in effect created extraterritorial versions of a number of existing UK offences; and section 2 created new offences constituted either by conduct in the UK or conduct outside the UK. All the offences are capable of being committed by a person of any nationality.

447. Amendments to the CPPNM were agreed on 8 July 2005. Among other things, new descriptions of conduct were added to Article 7. In order to facilitate UK ratification of the amended Convention, it is necessary to create a number of new criminal offences – including extraterritorial offences. These new offences relate principally to acts directed at a nuclear facility, the misuse of nuclear material with intent to cause damage to the environment (or recklessly as to whether environmental damage is caused), and involvement outside the UK in the unlawful importing, exporting or shipping of nuclear material. It is also necessary to increase the penalty for existing UK offences relating to the import, export and shipment of nuclear material.

448. Clause 74 and Schedule 15 amend the 1983 Act to create the necessary new offences and to make related amendments to that Act. They also make related amendments to the penalties for various offences under Customs and Excise Management Act 1979.

Schedule 15 Offences relating to nuclear material and nuclear facilities

449. Part 1 of Schedule 15 adds the necessary new offences by amendment to the 1983 Act. It also deals with penalties for the new offences and the existing ones and makes various other related changes.

450. The offences in Article 7 of the CPPNM as amended relate only to nuclear material used for peaceful purposes (and not used or retained for military purposes) and to nuclear facilities used for peaceful purposes (and not containing any nuclear material used or retained for military purposes). Section 6(1) of the 1983 Act defines *"nuclear material"* by reference to the CPPNM. *Paragraph 6(4)* of Schedule 15 adds a definition of *"nuclear facility"* to that section. The term is also defined consistently with the CPPNM.

451. *Paragraph 2* inserts a new subsection (1A) into section 1 of the 1983 Act. It gives extraterritorial extent to various existing offences (such as murder, grievous bodily harm or criminal damage) where the act constituting the offence was an act directed at, or interfering with the operation of, a nuclear facility and causes death, injury or damage as a result of the emission of radiation or the release of radioactive material. The penalty for the extraterritorial offences is, on conviction on indictment, a maximum of life imprisonment. The penalty is provided for by new section 1A(1) and (4), inserted by *paragraph 3* of Schedule 15.

452. *Paragraph 3* inserts new sections 1A, 1B, 1C and 1D into the 1983 Act.

453. New section 1A deals only with penalties. As well as providing the penalty for the offences in new subsection (1A) of section 1, this new section increases the penalty for a number of offences which exist already in the law of England and Wales and Northern Ireland (both as a result of the 1983 Act and otherwise) to the extent that they contribute to the implementation of existing and amended Article 7 of the CPPNM. In these cases the new penalty is, on conviction on indictment, a maximum of life imprisonment. As mentioned above, the CPPNM requires that the offences should be punishable by penalties that are severe enough to reflect the grave nature of the offences. For example, existing England and Wale and Northern Ireland offences relating to causing death, injury and property damage are relied on to implement the CPPNM requirement for an offence dealing with acts directed at a nuclear facility. However, the maximum penalty is not in all cases sufficiently severe. Therefore, new section 1A(1) and (2)(b) increases the penalty to a maximum of life imprisonment. In relation to Scotland, all of the relevant offences relied upon to implement the Convention already have a maximum penalty of life imprisonment, with the exception of an offence under section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995. The latter is a summary only offence and would not be relied upon for prosecuting conduct with severe consequences.

454. New section 1B creates new offences relating to damaging the environment, as required by Article 7(1)(a) and Article 7(1)(e) of the amended CPPNM. Article 7(1)(a), to the extent that it deals with environmental damage, requires an offence constituted by –

"the intentional commission of…an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause…substantial damage…to the environment."

455. Article 7(1)(e) in the amended CPPNM, to the extent that it deals with environmental damage, requires an offence constituted by –

"the intentional commission of…an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause…substantial damage…to the environment by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated."

456. New section 1B(1) and (2) implements Article 7(1)(a) as it relates to environmental damage. New section 1B(1) and (3) implements Article 7(1)(e) as it relates to environmental damage. New section 1B(4) provides for a maximum penalty of life imprisonment on conviction on indictment.

457. New section 1C creates the necessary new extraterritorial offences of (without lawful authority) importing or exporting nuclear material or shipping such material as stores. The amended Convention requires each State Party to have in its law a suitably serious offence covering conduct outside its territory which involves the movement of nuclear material into or out of any State in the world without lawful authority. It also requires each State to ensure that, as far as conduct in its territory is concerned, the unlawful import or export (etc.) of nuclear material is punishable by penalties which take account of the grave nature of such conduct. Offences already exist in UK law which cover (broadly speaking) activities in the UK relating to the import from and export to the UK without lawful authority of nuclear material – although changes are required to the penalties, as discussed below.

458. New section 1C makes it a criminal offence to be knowingly concerned *outside the UK* in the unlawful import, export or shipment as stores of nuclear material from or to any country, whatever the nationality of the person concerned. An unlawful export, import or shipment is defined as one that is contrary to an applicable prohibition or restriction having effect under or by virtue of the law of the country concerned (subsection (3)). Evidence of the unlawfulness of the activity may be provided in a statement in a certificate issued by or on behalf of the government of the country concerned (subsection (4)).

459. New section 1D applies enforcement and procedural provisions of the Customs and Excise Management Act 1979 to the offence created by new section 1C.

460. *Paragraph 4* of Schedule 15 replaces section 2 of the 1983 Act. In doing so, it makes the necessary changes to the 1983 Act to ensure that certain new offences required by the amended CPPNM are implemented. References to *"relevant injury or damage"* are defined in new section 2(9).

461. The offence in new section 2(1) and (2) is concerned with activities involving nuclear material which do not necessarily cause death, injury or damage to property but where the offender intends this to be the outcome, or intends to enable someone else to cause this outcome, or is reckless about whether this outcome is caused. This replaces the existing section 2(1) and (2) in implementing the CPPNM requirement (Article 7(1)(a)) to have offences dealing with the misuse of nuclear material where death, injury or property damage is intended or is likely but does not actually occur.

462. The offence in new section 2(1) and (3) covers any act directed at a nuclear facility or interfering with the operation of a nuclear facility where the offender intends to cause death, injury or property damage as a result of the emission of radiation or release of radioactive substances, or intends someone else to be able to cause these kinds of harm or is reckless about whether this would be the result. It does not matter whether harm is actually caused. This offence complements new subsection (1A) of section 1 and the offence in new section 1B(1) and (3). Together with existing UK offences relating to causing death, injury and property damage, these offences implement Article 7(1)(e) of the revised CPPNM.

463. The offences in new section 2(1), (4) and (7) concern the making of threats. These provisions re-enact (with modifications) the existing provisions of section 2(1), (3) and (4) of the 1983 Act and add additional threat offences required by the amended CPPNM. For example, new section 2(1), (4) and (5)(b) creates an offence of threatening to cause environmental damage by means of nuclear material.

464. A person guilty of any of these offences is liable, on conviction or indictment, to a maximum penalty of imprisonment for life (subsection (8)).

465. Paragraph 4 also adds new section 2A to the 1983 Act. New section 2A creates extraterritorial offences of attempting or conspiring to commit certain of the offences implementing Article 7 of the CPPNM. It also creates extraterritorial offences of secondary participation in certain of those offences. The purpose is to do what is necessary to implement Article 7(1)(h), (i), (j) and (k) of the amended CPPNM.

466. *Paragraph 5* inserts a new section 3A into the 1983. The purpose of section 3A is to implement Article 2(4)(b) of the CPPNM. The new section provides that nothing in the 1983 Act applies in relation to acts done by the armed forces of any country or territory in the course of an armed conflict or in the discharge of their

functions. The section also provides for the Secretary of State to be able to issue a certificate, to be taken as conclusive evidence in any proceedings, determining whether or not an act done by armed forces was an act to which the 1983 Act does not apply by virtue of new section 3A.

467. *Paragraph 6* provides new and amended definitions that are necessary for the existing and new offences, principally definitions of "nuclear facility", "the environment", and "radioactive material". The definition of "nuclear facility" is consistent with the definition in the CPPNM. The definition of "the Convention" is also amended, as once the amended Convention enters into force, its name will change to the "Convention on the Physical Protection of Nuclear Material and Nuclear Facilities".

468. Paragraph 6 also amends section 6(2) of the 1983 Act. This section provides that if, in any proceedings, a question arises whether material was used for peaceful purposes, a certificate of the Secretary of State stating that it was or was not so used at the relevant time is to be conclusive of that question. The procedure is extended so that it relates also to the question whether a nuclear facility was used for peaceful purposes

469. Part 2 of Schedule 15 makes amendments to penalty provisions of the Customs and Excise Management Act 1979 which impose the penalties for various offences. The purpose is to increase the penalty for existing UK offences relating to the unlawful import, export and shipment of nuclear material. This is because the CPPNM requires the penalty for such an offence to be one which takes account of the grave nature of the conduct.

470. *Paragraph 9* provides a power to extend these same provisions of the Customs and Excise Management Act 1979, as amended, to the Channel Islands, the Isle of Man or any British overseas territory, with or without any necessary changes. The purpose is to facilitate the extension of the amended CPPNM to such territories (with their agreement) if it is decided to do so. An Order in Council made under this paragraph is not subject to any parliamentary procedure.

Clause 75: Imprisonment for unlawfully obtaining etc. personal data

471. This clause amends section 60 of the Data Protection Act 1998 so that a person convicted of an offence under section 55 of that Act will be liable to imprisonment, a fine or both. Section 55(1) and (3) of the Act provide that a person is guilty of an offence if they knowingly or recklessly, without the consent of the data controller, obtain or disclose or procure the disclosure of personal data to another person. Section 55(4) and (5) provide that a person is guilty of an offence if they sell or offer to sell personal data obtained in breach of section 55(1).

472. Clause 75(3) inserts new subsections (3A) and (3B) into section 60 of the Data Protection Act. New subsection (3A)(a) provides for a maximum term of imprisonment of twelve months on summary conviction for an offence under section

55, and new subsection (3A)(b) provides for a maximum term of two years on conviction on indictment.

473. New section 60(3B) provides that the reference to a penalty of 12 months' imprisonment on summary conviction in subsection (3A)(a) is to be read as six months in Northern Ireland. It will also be read as six months in England and Wales, in relation to offences committed before section 282(1) of the 2003 Act is commenced, and in Scotland, until section 45(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 is commenced. Those provisions increase the maximum term of imprisonment which may be imposed on summary conviction in England and Wales and Scotland to 12 months.

Part 7: International Co-operation in relation to Criminal Matters

Clause 76 Requests to other Member States

474. This clause is concerned with requests made to other Member States for enforcement of financial penalties imposed in England and Wales. It firstly amends Schedule 5 to the Courts Act 2003, which is concerned with the powers of the courts and fines officers to enforce fines, costs and compensation. *Subsection (1)* adds the issue of a certificate requesting enforcement under the Council Framework Decision to the steps which can be taken against a defaulter regarding a financial penalty within the meaning of this section. This step is only available where the defaulter is normally resident, or has property or income, in another Member State.

475. *Subsection (2)* allows a certificate requesting enforcement of a financial penalty under the Council Framework Decision to be issued by a designated officer of a magistrates' court in circumstances not covered by Schedule 5 to the Courts Act 2003. This would be the case where the offender is under 18 years of age or a legal person. It is a condition that the penalty has not been paid in full within the time allowed and that there is no appeal outstanding.

476. *Subsection (3)* describes the circumstances in which it is considered that no appeal is outstanding for the purposes of subsection (2)(c).

477. *Subsection (4)* provides that subsection (2)(e) also applies to corporate bodies as if references to the offender normally being resident in another member State were to the corporate body having its registered office in a Member State other than the UK.

478. *Subsection (5)* defines "financial penalty" for the purposes of this section.

Clause 77: Procedure on receipt of certificate by Lord Chancellor

479. This clause requires that a certificate issued under clause 76 is given to the Lord Chancellor, together with a certified copy of the decision imposing the penalty.

480. *Subsection (3)* requires the Lord Chancellor to forward the documents specified in subsection (2) to the central authority or the competent authority of the Member State in which it appears that the offender is normally resident, or has property or income.

481. *Subsection (4)*, in accordance with the terms of the Council Framework Decision, precludes any further steps being taken to enforce the financial penalty in England and Wales once it has been sent to another Member State, except in circumstances prescribed by the Lord Chancellor by order (subject to the negative resolution procedure). This would allow the responsibility for enforcement to revert to the courts in England and Wales in certain circumstances where, for example, the other Member State is unable to enforce the financial penalty in full.

482. *Subsection (5)* corresponds to clause 76(4) regarding corporate bodies.

Clause 78: Requests from other Member States

483. This clause is concerned with financial penalties received for enforcement from other Member States. This applies where the Lord Chancellor receives a certificate requesting enforcement of a financial penalty under the Council Framework Decision together with a copy of the original decision imposing the financial penalty.

484. Under *subsections (2) to (4)*, the Lord Chancellor is required to give the documents specified in subsection (1) to the designated officer for the local justice area where it appears the offender is resident or, where the certificate has been sent because the offender has property or income in England and Wales, to the designated officer for such local justice area as appears appropriate . The Lord Chancellor is also required to indicate in an accompanying notice whether any grounds for refusal to enforce the financial penalty may apply in the particular case, together with the reasons for that opinion.

485. *Subsection (5)* provides that this section also applies to corporate bodies as if references to the offender normally being resident in England and Wales were to the corporate body having its registered office there.

486. *Subsection (6)* states that the terms “decision” and “financial penalty” have the meaning given to them in the Council Framework Decision.

Clause 79: Procedure on receipt of certificate by designated officer

487. The designated officer and the magistrates’ court must to comply with certain requirements when the Lord Chancellor acts under clause 78 to forward the specified documents to the designated officer.

488. *Subsection (2)* requires that the designated officer refers the matter to the magistrates’ court. Subsection (3) then requires that the court satisfies itself whether any grounds for refusal to enforce the financial penalty apply, as specified in Part 1 of

Schedule 16. The designated officer is required by *subsection (4)* to inform the Lord Chancellor of the court's decision.

489. *Subsections (5) to (7)* require that, unless a ground for refusal exists, the financial penalty will be treated as if it were a sum adjudged to be paid on a conviction by the magistrates' court from the date that it made its decision. The enforcement regime for fines and other financial penalties, as laid down in Part 3 of the Magistrates Court Act 1980 and Schedules 5 and 6 to the Courts Act 2003 and subordinate legislation, will apply to the enforcement of the financial penalty.

490. *Subsection (8)* provides that, where the certificate indicates that a financial penalty has been partially paid before its transfer, references in subsection (6) to the amount of the financial penalty should be read as referring to the amount that remains unpaid.

Clause 80: Recognition of financial penalties: supplemental

491. The possible grounds for refusal against enforcement of a financial penalty are as set out in Schedule 16. These reflect the grounds for refusal adopted in Article 7 of the Council Framework Decision and address:

- Double jeopardy where an offender has already been dealt with for the same conduct in the executing State or in a State other than the State issuing or executing the financial penalty;

- The absence of dual criminality, unless the conduct concerned is specified in the list contained in Part 2 of Schedule 16. This is a list of 39 offences, reproduced from Article 5(1) of the Framework Decision, where it has been agreed that co-operation should not be subject to a dual criminality requirement. The list is similar to that used in the Framework Decision on the European Arrest Warrant (2002/584/JHA) and other mutual recognition instruments;

- Territoriality, if the conduct took place outside the territory of the State which issued the certificate;

- The age of criminal responsibility under the law of the executing State;

- Where the offender was not present and did not have an adequate opportunity to defend himself or herself; or

- Where the financial penalty falls below 70 Euros (some £50) (the threshold specified in the Framework Decision).

492. Under *subsections (2) and (3),* the Lord Chancellor may, by order (subject to the affirmative resolution procedure where primary legislation is amended or repealed, otherwise the negative resolution procedure applies), make further provision for the purpose of giving effect to the Council Framework Decision.

Clause 81: Interpretation of sections 76 to 80
493. This clause defines the terms "central authority", "competent authority" and "Framework Decision on financial penalties" for the purposes of the sections concerned.

Clause 82: Power to transfer functions under Crime (International Co-operation) Act 2003 in relation to direct taxation
494. This clause amends section 27(1) of the Crime (International Co-operation) Act 2003 and repeals paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 so that the Treasury may, by order (subject to the negative resolution procedure), provide for functions conferred on the Secretary of State under sections 10, 11 and 13 to 26 of the Crime (International Co-operation) Act 2003 (that is functions in relation to requests from overseas authorities to obtain evidence in the UK, and to the processing of domestic and overseas evidence freezing orders) to be exercisable instead by Her Majesty's Commissioners for Revenue and Customs in relation to direct tax matters.

Part 8: Violent Offender Orders

Clause 83: Violent offender orders
495. This clause provides for a new civil order, a Violent Offender Order (VOO), which is designed to protect the public from the risk of serious violent harm caused by a qualifying offender (as defined in clause 84).

496. *Subsection (1)(a)* establishes that VOOs may contain such prohibitions, restrictions or conditions that the court making the order considers necessary to protect the public from the risk of serious violent harm caused by the offender. *Subsection (1)(b)* provides that the minimum period of the order is two years (unless the order is renewed or discharged using the powers under clause 87).

497. *Subsection (2)* defines the public as either the general public or any particular member of the public in the United Kingdom. Serious violent harm is defined as being serious physical or psychological harm caused by the offender committing one or more specified offences, as defined in *subsection (3).*

Clause 84: Qualifying offenders
498. This clause specifies the criteria which must be met before a person can be eligible for a violent offender order. A person can be a qualifying offender if he comes within subsection (2) or (4).

499. *Subsection (2)* provides that to be a 'qualifying offender' one of the following conditions must have been met. The offender must have (a) been given a custodial sentence of at least 12 months for a specified offence; (b) been found not guilty of a specified offence by reason of insanity; or (c) been found by a court to have a disability and to have done the act charged in respect of a specified offence. The offence or act may have been committed before or after the commencement of this Part of the Bill. In respect of a person within (b) or (c), the court must also have made an order within *subsection (3)* for him to be a qualifying offender.

500. *Subsection (4)* relates to offences committed outside England and Wales, and in effect provides that the criteria listed in subsection (2)(a) apply in respect of relevant offences committed in other jurisdictions, and that those listed in subsection (b) and (c) apply in respect of equivalent findings of courts. Similarly, there must have been an order made equivalent to one mentioned in subsection (3).

501. *Subsection (5)* defines a relevant offence for the purposes of subsection (4) as one that was both a criminal offence in the country where it was committed, and would have constituted a specified offence if it had been committed in England and Wales. *Subsection (6)* provides that an act punishable under the law of a country outside England and Wales constitutes an offence under that law however it is described in that law.

502. *Subsection (7)* sets out that an act committed in a foreign jurisdiction, and that is an offence under that law, will be taken to be an act that would have constituted a specified offence if committed in England and Wales, unless the offender serves notice on the person applying for the order denying that this is the case, giving reasons for this and requiring the applicant to prove the condition is met. *Subsection (8)* allows the court to permit the offender to require the applicant to prove the condition is met without having served such a notice.

Clause 85: Applications for violent offender orders

503. This clause sets out who may apply for a VOO to be made, and in what circumstances.

504. *Subsection (1)* provides that a chief officer of police may apply for a VOO to be made in respect of a person who lives in his police area, or who he believes is in or is intending to come to that area, providing that certain conditions are met.

505. *Subsection (2)* sets out these conditions as being that the person is a qualifying offender (as defined in clause 84), and has since the 'appropriate date' (as defined in *subsection (5)*) demonstrated behaviour giving reasonable cause to believe that a VOO is necessary.

506. *Subsection (3)* provides that an application for a VOO may be made to any magistrates' court whose commission area includes any part of the applicant's police area or any place where it is alleged that the person acted in such a way as to

demonstrate the behaviour referred to in subsection (2).

507. *Subsection (4)* contains a reserve order-making power (subject to the negative resolution procedure) to enable other persons or bodies to apply for a VOO.

Clause 86: Making of violent offender orders

508. This clause sets out the conditions which must be met before a court can make a violent offender order.

509. Under *subsection (2)* a court can only make a VOO where it is satisfied that the person is a "qualifying offender" as defined in clause 84 and that the person has, since the appropriate date, acted in such a way as to make it necessary to make a violent offender order for the purpose of protecting the public from the risk of serious harm caused by the person.

510. *Subsection (3)* specifies that before a VOO can be awarded the court must also have regard to whether the person would, at any time when such an order would be in force, be subject to any other legislative measures that would operate to protect the public from the risk of such harm.

511. *Subsection (4)* ensures that a VOO cannot come into force at any time when the offender is subject to a custodial sentence, is on licence or is subject to a hospital order or a supervision order made in respect of any offence.

512. *Subsection (5)* enables an order to be applied for or made at such a time as described in subsection (4).

Clause 87: Variation, renewal or discharge of violent offender orders

513. This clause provides for the offender subject to an order or the various chief officers of police listed in *subsection (2)* to apply for an order to be varied, renewed or discharged.

514. The offender might, for example, seek to vary an order if he finds the prohibitions are operating on him unduly harshly. He might apply for a discharge if he intended to emigrate. A chief officer of police who believes the offender is moving to his or her area might apply for a variation if, for example, the order was made when the offender was living in another part of the country and only restricted the offender's behaviour in that original area.

515. *Subsection (6)* provides that the order may not be discharged before the end of the period of two years beginning with the date on which it comes into force unless consent to its discharge is given by the offender and one of the chief officers of police listed in subsection (6).

Clause 88: Interim violent offender orders
516. This clause enables the court to make an interim order when an application for a VOO is made (or has been made) under clause 85.

517. The purpose is to enable prohibitions to be placed on the offender's behaviour pending the application for the full order being determined. *Subsection (5*) ensures that the interim order can only be made for a maximum of four weeks (unless renewed). *Subsection (6)* ensures that the interim order will, at the latest, cease to have effect when a decision is made on the full order.

Clause 89: Appeals
518. This clause provides for appeals to the Crown Court against the making of a VOO or an interim order, or against a decision to make or refuse an order varying or discharging a VOO or an interim order.

519. *Subsection (3)* provides that on an appeal the Crown Court may make such orders as may be necessary and may also make such incidental or consequential orders as appear to it to be just. *Subsection (4)* provides that an order of the Crown Court made on an appeal shall be treated for the purposes of the provisions relating to variation and discharge of orders (clause 87) as an order of the magistrates' court from which the appeal was brought.

Clause 90: Offenders subject to notification requirements
520. This clause provides that all offenders subject to full or interim VOOs will also be subject to notification requirements.

Clause 91: Notification requirements: initial notification
521. This clause sets out the information the offender needs to supply to the police when he or she first makes a notification and the timescales within which he or she is required to provide that information.

522. *Subsection (1)* requires the offender to notify the required information to the police within 3 days of the full or interim VOO coming into force. *Subsection (3)* provides that when determining the period of 3 days, any time in which the offender is remanded in or committed to custody, serving a sentence of imprisonment or a term of service detention, detained in a hospital or outside the United Kingdom should be disregarded.

523. The details in *subsection (2*) include the offender's home address. The term 'home address' is defined in *subsection (4).* This provides that where an offender is homeless or has no fixed abode his 'home address' means an address or location where he can be regularly found. This might, for example, be a shelter, a friend's house, a caravan or a park bench.

Clause 92: Notification requirements: changes

524. This clause sets out the requirements on a relevant offender to notify the police when there are changes to his notified details. As a result of *subsection (2)(c)* an offender must notify the police, within 3 days, of the address of any premises in the UK at which he has stayed for a 'qualifying period' and, which he has not already notified to the police. This place might be a friend or relative's house or a hotel where he has stayed. A 'qualifying period' is defined at *subsection (8)* and is a period of 7 days, or two or more periods, in any twelve months, which taken together amount to 7 days.

525. *Subsection (4*) allows an offender to notify the police before a notifiable event occurs. The advance notification must give a date when the event is expected to occur.

Clause 93: Notification requirements: periodic notification

526. This clause provides (at *subsection (1))* that an offender must re-notify the police of the details set out in clause 91(2) within one year after each notification date, unless during this period he re-notifies, because of a change of circumstances, under clause 92.

527. This means that where a person becomes subject to the notification requirements and there is no 'notifiable event' under clause 92, he will have to re-notify within a year of his initial notification and annually thereafter. Where a person does notify his having stayed away from home for 7 days, for example, he will have to re-notify the police of the information set out in clause 91(2) within a year of giving the notification of having stayed away from home. If within that year he notifies another period spent away from home, or a change of name or address, the need to re-notify the details set out in clause 91(2) will be put back to a year after that latter notification.

528. *Subsection (5)* provides that nothing in this clause applies to an offender who is subject to an interim VOO.

Clause 94: Notification requirements: travel outside United Kingdom

529. *Subsection (1)* provides a power for the Secretary of State to make regulations (subject to the affirmative resolution procedure) setting out notification requirements for relevant offenders who travel outside the UK. The regulations would oblige such persons to notify certain details concerning their travel plans to the police. The regulations made under this clause would be similar to those made under section 86 of the Sexual Offences Act 2003 (See Sexual Offences 2003 (Travel Notification Requirements) Regulations 2004 (SI 2004/1220)).

Clause 95: Method of notification and related matters

530. This clause describes how and where an offender is required to notify information to the police under the clauses relating to initial notification, change of details and periodic notification. Under *subsection (1)* the offender must notify the police of the relevant information by attending any police station in the offender's

local police area and giving an oral notification to any police officer or other authorised person at that station. The term 'local police area' is defined in *subsection (5).*

Clause 96: Notification requirements to be complied with by parents of young offenders

531. This clause provides that, in the case of an offender under 18, the court may make a direction in respect of a person with parental responsibility for the offender which requires them to comply with the notification requirements in place of the offender until either the offender attains the age of 18 or until an earlier date specified by the court. This is to ensure that these requirements are complied with. *Subsection (5)* also allows the police to apply to the court for a parental direction to be made. This will cover cases where the court, for whatever reason, did not make a direction at the stage referred to above but an order subsequently seems appropriate.

Clause 97: Parental directions: notification requirements imposed on parents of young offenders

532. This clause provides that a court may vary, renew or discharge a parental direction. This may be required where, for example, there is a direction in respect of the father and the father subsequently becomes divorced from the mother and the offender goes to live with the mother.

Clause 98: Offences

533. *Subsection (1)* establishes that failure, without reasonable excuse, to comply with any prohibition, restriction or condition of a full or interim VOO is a criminal offence. Under *subsection (2),* a failure to comply with a notification requirement, without reasonable excuse, in also an offence. *Subsection (6)(a)* provides that someone found guilty on summary conviction of an offence under this subsection is liable to imprisonment for a term not exceeding 12 months or a statutory fine not exceeding the statutory maximum (£5,000) or both. *Subsection (6)(b)* provides that someone found guilty on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

534. Where the offender has failed to comply with a notification requirement *subsection (4)* provides that the offence of failing to give a notification continues throughout the period during which the required notification is not given. An offender cannot be prosecuted more than once for the same failure.

535. An offence will not be committed where the person has a "reasonable excuse" for failure to comply with a term of an order, or a notification requirement. This might be, for example, where an offender does not provide the information in the required time scale because he is in hospital following an accident.

Clause 99: Supply of information to the Secretary of State etc.

536. Clauses 99 and 100 provide a power for the police to verify that an offender has notified the correct details in compliance with clauses 91-94, and that he or she is

not omitting any details (such as another name or address he or she uses). This will be done by comparing the details provided at notification against information the offenders will have provided to certain bodies performing Government functions.

537. Under *subsection (2)* a chief officer of police can share such information, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, with the Secretary of State or a person providing services to the Secretary of State in connection with a relevant function. *Subsection (7)* defines "relevant function" such that this clause includes those bodies which perform social security, child support, employment and training functions on behalf of the Secretary of State for Work and Pensions, those who perform functions in relation to passports on behalf of the Home Secretary, and those who perform functions under Part 3 of the Road Traffic Act 1988 on behalf of the Secretary of State for Transport (i.e. the Driver and Vehicle Licensing Agency).

538. By virtue of *subsection (1)*, the details the police may provide to these bodies are an offender's date of birth, national insurance number, any names he or she has notified, and his or her home address and any other addresses notified. This information may have been supplied by an offender at his initial notification, when notifying a change, or at his periodic notification.

539. Under *subsection (3)* this information may only be shared for the purpose of checking that the information supplied to the police by the offender is accurate and for the purpose of compiling a report of the comparison. It could not, for example, be used by DWP to pursue someone for a child support payment.

540. *Subsection (5)* provides that any transfer of data must comply with the Data Protection Act 1998.

Clause 100: Supply of information by Secretary of State etc.

541. This clause provides that the report complied under subsection (3)(b) of clause 99 may be provided to the police. The police may retain the information and use it in the prevention, detection, investigation or prosecution of offences but for no other purpose. This would include an offence under clause 98 of failing to comply with the notification requirements or by providing false information at notification (see *subsection (3)* of that clause). In addition, the information may be used to prevent, detect, investigate or prosecute other offences: for example, information that identified the possible whereabouts of an offender who was wanted for robbery could be used by the police in investigating that offence.

Clause 101: Information about release or transfer

542. This clause allows the Secretary of State to make regulations (subject to the negative resolution procedure) requiring those who are responsible for an offender while he is being detained in any of the ways mentioned in *subsection (1*) to notify other relevant authorities of the fact that they have become so responsible, of his release or transfer to another institution. The regulations may specify the person

responsible for the offender (for example, the Chief Executive of a hospital) and the person who must be notified. An example might be the governor of a prison being required to inform the local chief officer of police when a relevant offender is about to be released from his prison.

Clause 102: Interpretation of Part 8
543. This clause sets out definitions for the purposes of Part 8.

Part 9: Anti-social Behaviour

Clause 103 and Schedule 17: Closure Orders: premises associated with persistent disorder or nuisance
544. This clause and Schedule 17 insert a new Part 1A into the Anti-social Behaviour Act 2003, which makes provision for closure orders in respect of premises associated with persistent disorder or nuisance. The provisions are very similar to those in Part 1 of that Act, which relate to closure orders in respect of premises where Class A drugs are used unlawfully.

New Section 11A of the Anti-social Behaviour Act 2003: Part 1A closure notice
545. New section 11A(1) sets out the test which must be satisfied before a police officer not below the rank of a superintendent or a local authority can authorise the issue of a Part 1A closure notice. The officer or authority must have reasonable grounds for believing that a person has engaged in anti-social behaviour on the premises in the preceding 3 months and that the premises are associated with significant and persistent disorder or persistent serious nuisance.

546. New section 11A(2) requires that the authorising officer must be satisfied that the local authority has been consulted and that reasonable steps have been taken to identify those living on the premises or with an interest in it before the authorisation for the issue of the notice is given.

547. New section 11A(3) requires that the local authority must be satisfied that the chief officer of police for the area has been consulted and that reasonable steps have been taken to identify those living on the premises or with an interest in it before the authorisation for the issue of the notice is given.

548. New section 11A(4) states that the authorisation for the issue of a closure notice can be given initially orally or in writing, but should be confirmed in writing if given orally.

549. New section 11A(5) sets out the required contents of a Part 1A closure notice. It must give notice that an application will be made to court for a Part 1A closure order and must include details of the time and place of the court hearing and a statement that access to the premises during the period of the notice is prohibited to anyone other than someone who is usually resident in, or is the owner of, the premises. It must explain the effects of a Part 1A closure order, state that non-

compliance with the notice amounts to an offence and also contain information about local advice providers of legal and housing matters.

550. New section 11A(6) and (7) set out requirements in relation to service of a Part 1A closure notice. Once authorised, a constable or an employee of the local authority must serve the notice by fixing a copy of it to at least one prominent part of the premises in question, fixing it to each normal means of access and to any outbuildings. They must also give a copy to those people identified as living in or having control of, responsibility for or an interest in the property.

551. New section 11A(8) provides that the notice must also be served on any person who occupies any other part of the building in which the premises are located if their access will be impeded should the Part 1A closure order be made. New section 11A(9) allows the server of the notice to enter any premises for the purposes of fixing the Part 1A closure notice to a prominent place, using reasonable force if necessary. New section 11A(10) enables the Secretary of State by regulations (subject to the negative resolution procedure) to exempt premises or descriptions of premises from the application of the new section 11A.

New Section 11B of the Anti-social Behaviour Act 2003: Part 1A closure order

552. New section 11B(1) provides that once a Part 1A closure notice has been issued, an application must be made to the magistrates' court for the making of a Part 1A closure order. Under new section 11B (2) the application must be made by either a constable or employee of the local authority, depending on who issued the Part 1A closure notice.

553. New section 11B(3) provides that the court must hear the application within 48 hours. The 48 hours runs from the time the Part 1A closure notice was fixed on the premises. New section 11B(4) sets out the test of which the court must be satisfied before making a Part 1A closure order. The court must be satisfied that a person has engaged in anti-social behaviour on the premises (but not necessarily within the preceding 3 months), that the use of premises is associated with significant and persistent disorder or persistent serious nuisance, and that the making of the order is necessary to prevent future disorder or nuisance of that description.

554. New section 11B(5) sets out that the effect of a Part 1A closure order is to close the premises altogether, including to owners and residents, for up to 3 months. New section 11B(6) enables the court to include provisions in the order relating to access to any part of the building or structure of which the premises forms a part.

555. New section 11B(7) allows the court to adjourn the hearing for up to 14 days to allow the occupier or the other persons mentioned to show why a Part 1A closure order should not be made, for example because the problems have ceased or the occupiers have been evicted. New section 11B(8) provides that the Part 1A closure notice continues to have effect until the end of any such adjournment. A Part 1A closure order may be made in relation to the whole or part of the premises affected by

the notice (New section 11B(9)).

New Section 11C of the Anti-social Behaviour Act 2003: Part 1A closure order: enforcement

556. When a Part 1A closure order is made, a constable (or a person authorised by the chief officer of police) in respect of orders applied for by a constable or a person authorised by the local authority in respect of orders applied for by that authority may enter the premises and secure it against entry by any other person, using reasonable force if necessary. The same authorised persons may also enter the premises at any time to carry out essential maintenance or repairs.

New Section 11D of the Anti-social Behaviour Act 2003: Closure of premises associated with persistent disorder or nuisance: offences

557. This new section creates offences of remaining on or entering premises which are subject to a Part 1A closure notice or order without reasonable excuse. It also creates an offence of obstructing a person who is serving a Part 1A closure notice or securing closed premises against entry. The current maximum penalty is a fine of £5000, imprisonment for 6 months or both. The maximum period of imprisonment will increase to 51 weeks on the commencement of section 281(5) of the 2003 Act.

New Section 11E of the Anti-social Behaviour Act 2003: Part 1A closure order: extension and discharge

558. This section allows the police or local authority to apply for an extension for a Part 1A closure order for which they originally applied for up to a maximum period of 6 months (including the period for which the original order had effect – see new section 11E(6)). Such an application must be authorised by a police officer not below the rank of superintendent or the local authority, who must:

- have reasonable grounds for believing that the extension of the order is necessary for the purpose of preventing the occurrence of significant and persistent disorder or persistent serious nuisance to the public; and

- be satisfied that the police or local authority (whichever is not making the application) has been consulted about the intention to make the application.

559. New section 11E(4) provides that the justice of the peace can issue a summons directed to any person on whom the relevant Part 1A closure notice was served or anyone else who has an interest in the closed premises. If the court is satisfied that extension of the order is necessary to prevent the occurrence of significant and persistent disorder or persistent serious nuisance for a further period not exceeding 3 months it may grant the extension (new section 11E(5)).

560. New section 11E(7) allows a constable or a local authority (depending which applied for the Part 1A closure order), a person on whom the relevant Part 1A closure notice was served or anyone else with an interest in the closed premises to make a complaint to the justice of the peace for a Part 1A closure order to be discharged. On

the making of such a complaint, the justice of the peace may issue a summons to a constable or to the local authority as appropriate (new section 11E(8)). New section 11E(10) sets out the persons on whom a notice (stating the date, place and time at which the complaint will be heard) must be served. New section 11E(9) states that the court may not discharge a Part 1A closure order unless it is satisfied that the order is no longer necessary to prevent the occurrence of significant and persistent disorder or persistent serious nuisance.

New Section 11F of the Anti-social Behaviour Act 2003: Part 1A closure order: appeals

561. This new section allows for appeals to the Crown Court against Part 1A closure orders by all interested parties, and against a refusal to make one by the police or local authority that made the application for the order.

New Section 11G of the Anti-social Behaviour Act 2003: Part 1A closure order: access to other premises

562. This new section ensures that a court may make an order concerning access to any part of a building or structure in which closed premises are situated, where the part itself is not affected by a Part 1A closure order. Thus, a person who occupies or owns such a part of a building or structure may apply to the court for an order, for example, enabling him to retain the access to that part that he had before the Part 1A closure order took effect (particularly if the Part 1A closure order had rendered access to his part of the building or structure more difficult or impossible).

New Section 11H of the Anti-social Behaviour Act 2003: Part 1A closure order: reimbursement of costs

563. This new section allows the court to consider and make an order that the owner of premises in respect of which a Part 1A closure order is made must reimburse any costs incurred by the police or local authority in clearing, securing or maintaining the premises.

New Section 11I of the Anti-social Behaviour Act 2003: Part 1A closure notice or order: exemption from liability

564. This new section creates a partial exemption from liability for certain damages for the police or local authority in carrying out their functions under the new Part 1A of the 2003 Act. It does not extend to any acts in bad faith or acts which are in breach of their duties as a public authority to exercise their functions compatibly with the European Convention on Human Rights.

New Section 11J of the Anti-social Behaviour Act 2003: Part 1A closure notices and orders: compensation

565. This new section allows for compensation payments to be made to a person by the court out of central funds where it is satisfied that the person has incurred a financial loss as a result of the issue of a Part 1A closure notice or a Part 1A closure order having effect and that:

- the person is not associated with the use of the premises which gave rise to the significant and persistent disorder or persistent serious nuisance;

- if he is the owner or occupier, that he took reasonable steps to prevent that use;

- it is appropriate in all the circumstances to compensate the person for that loss.

566. New section 11J(3) imposes a time limit for the making of such an application for compensation.

Clause 104: Offence of causing nuisance or disturbance on NHS premises

567. This clause creates a new offence of causing a nuisance or disturbance to NHS staff on NHS premises to address behaviour which disrupts NHS staff in the performance of their duties and affects the delivery of healthcare.

568. *Subsection (1)* sets out the required elements of the offence. In order to commit the offence, a person must cause a nuisance or disturbance on NHS premises to an NHS staff member. A nuisance or disturbance can include any form of behaviour which breaches the peace. It must be caused to an NHS staff member, rather than any other person, and at the time the nuisance or disturbance is caused, the NHS staff member must either be working at the premises or be there for some other purpose relating to his work, such as travelling to work, walking between buildings or taking a break. Equally the nuisance or disturbance must be caused on NHS premises. If these conditions of the offence are satisfied, the person may be asked to leave the premises by a police constable or NHS staff member, and if he or she refuses to leave, he or she may commit the offence.

569. A person will not commit the offence if he or she has a reasonable excuse for causing the nuisance or disturbance or refusing to leave the premises. Behaviour consequential to the receipt of upsetting news or bereavement may, for example, constitute a reasonable excuse.

570. *Subsection (1)(c)* provides that a person who is on the premises for the purpose of obtaining medical advice, treatment or care will not be able to commit the offence. This could include patients attending for consultations, to collect medication or test results or convalescing after treatment. *Subsection (3)* sets out the situations where a person will not be regarded as legitimately on the premises for medical purposes. It provides that a person who remains on the premises after receiving medical advice, treatment or care, or who returns to the premises seeking the same medical advice, treatment or care as he or she received a short time before with no change to his or her condition, will be capable of committing the offence.

571. *Subsection (4)* outlines the scope of the offence by defining the terms “NHS premises”, “NHS staff member” and other related terms. NHS premises refers to any hospital owned or managed by an English NHS Trust, a Primary Care Trust or an NHS foundation trust and includes buildings, other structures and vehicles on hospital

grounds. NHS vehicles do not fall within the definition when they are outside hospital grounds. The definition of NHS staff member includes staff who are not directly employed by the health body. These could include an agency worker, a contractor, a student or a volunteer.

Clause 105: Power to remove person causing nuisance or disturbance

572. This clause provides that a person authorised by an English NHS Trust, Primary Care Trust or NHS foundation trust or a police constable may remove a person reasonably suspected of committing, or of having committed, the offence under clause 104. These health bodies, if they choose to exercise this power of removal, will be required to authorise at least one member of staff (to be known as the "authorised officer") to exercise the power of removal. The authorised officer may authorise the removal of a person by other NHS staff members. He or she may also carry out the removal himself or herself.

573. *Subsection (4)* provides that the power of removal is not to be exercised if the authorised officer has reason to believe that the person to be removed requires medical advice, treatment or care or that removal would endanger the person's physical or mental health. In practice, this means that if an authorised officer has any reason to believe that the person to be removed falls within one of these categories, he or she will need to consult a medical practitioner to determine whether, in fact, the person does fall within one of these categories and whether removal can take place. This imposes a safeguard on the exercise of the powers of removal to prevent the removal by the authorised officer or those he or she authorises of anyone who may need medical help or may be vulnerable.

Clause 106: Guidance about the power to remove etc

574. *Subsection (1)* of this clause gives the Secretary of State a power to produce guidance about the exercise of the power of removal and *subsection (2)* sets out the types of issues that may be covered in the guidance. In particular, the guidance is expected to outline the procedures for authorising NHS staff members to authorise and exercise the power of removal. This may include, for example, the grade and role of staff considered suitable. The guidance is also likely to include reference to the type of training that these staff would be expected to have received before their authorisation; an outline of the matters to be taken into account by an authorised officer in deciding whether a person has committed or is committing an offence under clause 104 and whether that person should be removed; reference to the need to consult a medical practitioner to determine whether a person requires medical advice, treatment or care or whether removal would harm his physical or mental health; and an outline of administrative procedures that would be expected to be followed, for example, for informing persons using the premises of the offence and power of removal and the keeping of records of its exercise.

575. *Subsection (3)* requires the Secretary of State to consult such persons as he considers appropriate before publishing any guidance under this clause.

576. *Subsection (4)* provides that English NHS trusts, Primary Care Trusts, NHS foundation trusts and the authorised officers themselves must have regard to this guidance when exercising their functions under, or in connection with, these clauses.

Clause 107 and Schedule 18: Nuisance and disturbance on HSS premises

577. Schedule 18 makes provision for Northern Ireland corresponding to that made for England by clauses 104 to 106. Instead of a reference to causing a nuisance or disturbance to an NHS staff member on NHS premises, the provisions for Northern Ireland refer to staff working for Health and Social Services trusts at hospitals vested in, or managed by, such trusts.

Clause 108: Review of anti-social behaviour orders etc.

578. *Subsection (1)* inserts two new sections, 1J and 1K, into Part 1 of the Crime and Disorder Act 1998. ASBOs are civil orders to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. ASBOs are issued for a minimum period of two years.

579. Section 1J creates the obligation to carry out a one year review of ASBOs issued to persons under 17 and sets out how it should be carried out.

New Section 1J of the 1998 Act

580. New section 1J(1) makes ASBOs subject to review regardless of how they were obtained (on complaint, or on conviction, or in the county court), provided that the subject was aged under 17 on the day that the order was made.

581. New section 1J(2) ensures that a review will be carried out only if the subject is still aged under 18 and requires the order to be reviewed before the end of each "review period" (see below).

582. New section 1J(3) specifies the review periods. There are two types. The first review (new section 1J(3)(a)) is to be carried out for the period covering the first year of the ASBO, but if there has been a supplemental order (see below) within that first year, that further order has the effect of re-setting the clock on the review period. The second and subsequent reviews (new section 1J(3)(b)) are to be carried out on a one yearly cycle starting from the day after the first review period. However, again, the clock can be re-set if a supplemental order is made within that second (or subsequent) review period. This will avoid a review having to be carried out when a similar process – the case review leading up to an application to vary an order or to obtain an Individual Support Order (ISO) – has already achieved the same end.

583. New section 1J(4) defines supplemental orders for the purposes of new section 1J(3). The result is that varying the ASBO, or making an ISO in relation to it, has the effect of re-setting the clock for the review period.

584. New section 1J(5) makes it clear that a review is not carried out on an ASBO if the order is discharged before the end of the review period.

585. New section 1J(6) sets out what the case review team must consider when conducting the review, including further support to the subject and possible further action to vary or discharge the ASBO.

586. New section 1J(7) requires the case review team to have regard to Home Office guidance when carrying out the review.

New Section 1K of the 1998 Act

587. New section 1K sets out which agencies are responsible for carrying out and participating in the review.

588. New section 1K(1) requires the applicant agency to carry out the review of any ASBO that it applied for.

589. New section 1K(2) requires that for ASBOs obtained on conviction (where the applicant may be the CPS, or the order may be made by the Court itself), the police are to carry out the review, unless the ASBO specifies otherwise.

590. New section 1K(3) and (4) require the police and the local authority to co-operate with each other's reviews. New section 1K(5) obliges other applicant agencies (eg. registered social landlords) to co-operate with the police and local authority, and similarly both the police and the local authority are duty bound to co-operate with, for example, a registered social landlord's review.

591. New section 1K(6) enables the agency carrying out the review to invite another person or body (eg. the local youth offending team) to participate in the review, distinct from those already obliged to do so.

592. New section 1K(7) gives the definition of police and local authority for the purposes of this clause, ie. the police or local authority where the subject resides or appears to reside.

593. *Subsection (2)* amends section 1(1A) of the 1998 Act, which sets out the definition of a relevant authority, to extend that definition to cover these provisions.

594. *Subsection (3)* enables an agency other than the police (the default option set out in new section 1K(2)) to be specified as the agency responsible for carrying out the yearly review of an order obtained on conviction. The means for doing so is through a designation by the Court, either at the time the ASBO is made or subsequently when it is varied by a further Court order.

595. *Paragraph 23* of Schedule 22 to the Bill (transitional etc. provisions) sets the timing criteria for ASBOs to be subject to the new review requirement. In addition to all the requirements set out above, to qualify for a review, an ASBO must:

- be less than nine months old when these provisions come into force; or
- have been varied nine months (or less) before the requirement comes into force.

Clause 109: Individual support orders

596. ISOs are civil orders that can be attached to stand-alone ASBOs for 10-17 year olds.

597. ISOs last for up to 6 months and impose positive conditions designed to tackle the underlying causes of a young person's anti-social behaviour. The support will be tailored to the individual's needs and can require a young person to attend up to two sessions a week. For example, the young person may be required to attend an anger management course

598. *Subsection (1)* inserts new subsections into section 1AA of the 1998 Act, which deals with ISOs. The new subsections will allow ISOs to be made more than once, and to be made subsequent to the making of the original ASBO, provided that the Court is satisfied that the other conditions for doing so have been met: that it is on application from the original applicant agency; that the subject is still under 18; that his ASBO is still in force; and that it will help prevent further anti-social behaviour on his part.

599. *Subsection (2)* extends the first condition for an ISO so that an order can also be made if it is desirable in the interests of preventing repetition of anti-social behaviour which led to a variation. *Subsection (3)* makes a corresponding amendment to section 1AA(5) (which sets out the requirements that may be specified in an ISO).

600. *Subsection (4)* applies the definition of relevant authority in section 1(1A) of the 1998 Act to the ISO provisions in section 1AA.

601. *Subsection (5)* sets a time limit on any ISO subsequent to the original hearing, so that it cannot be made to last beyond the lifetime of the ASBO.

602. *Subsection (6)* allows ISOs to be made in the county court, should the ASBO be made as a result of proceedings there, either at the time or subsequently.

603. *Subsection (7)* allows ISOs to be made for ASBOs obtained on conviction, provided that the other criteria for doing so are met; and also allows whoever is carrying out the annual review to make an ISO application.

604. *Paragraph 23* of Schedule 22 to the Bill sets the timing criteria for ISOs, so that they may be applied for only when the ASBO:

- is less than nine months old when the provisions come into force;
- or has been varied nine months (or less) before the provisions come into force.

Clause 110: Parenting contracts and parenting orders: local authorities

605. *Subsection (2)* amends the definition of a local authority in section 29(1) of the Anti-social Behaviour Act 2003 so as to include district councils as well as county councils within the list of councils which may enter into a parenting contract or apply for a parenting order. The effect of the current definition is that a district council is not included where there is also a county council (i.e. in a "two tier" area).

606. *Subsection (3)* inserts a new subsection (8A) into section 26B of the Anti-social Behaviour Act 2003. This specifies that if a child lives in a district council area, within a county council area, both local authorities should be consulted by the registered social landlord before applying for the parenting order.

607. *Subsection (4)* amends section 27 of the Anti-social Behaviour Act 2003 by substituting a new subsection (3A) and inserting a new subsection (3B). The effect of the new subsection (3A) is that breach proceedings have to be brought by the local authority that applied for the order unless either the child or young person, or the person alleged to be in breach of the order (i.e. the parent or guardian), is living in the area of another local authority – in which case proceedings can instead be taken by that authority. The effect of new subsection (3B) is that, where there is both a district council and a county council (i.e. in a "two tier" area), either council can take breach proceedings.

Part 10: Policing

Clause 111 and Schedule 19: Police misconduct and performance procedures

608. This clause gives effect to Schedule 19, Part 1 of which amends the Police Act 1996 to make changes in relation to the procedures for dealing with police conduct, efficiency and effectiveness. Part 2 of Schedule 19 makes equivalent changes to the Ministry of Defence Police Act 1987 for the purposes of the Ministry of Defence Police, and Part 3 makes equivalent changes to the Railways and Transport Safety Act 2003 for the purposes of the British Transport Police.

609. *Paragraph 2* of Schedule 19 amends section 36 of the 1996 Act. That section places a duty on the Secretary of State to exercise his or her powers under specified provisions of the 1996 Act in such a manner as to promote the efficiency and effectiveness of the police. The amendment adds a reference to section 84 (as substituted by paragraph 7 of Schedule 19) to the list of specified provisions: that section makes provision for the representation of police officers at disciplinary and other hearings.

610. *Paragraph 3* of Schedule 19 amends section 50 of the 1996 Act. That section confers a power on the Secretary of State to make regulations as to the government, administration and conditions of service of police forces. Section 50(3) requires that such regulations must make provision for taking disciplinary proceedings against police officers and specifies the possible sanctions. Paragraph 3(2) substitutes a new section 50(3) which again requires regulations to be made setting out the procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of members of police forces, but does not mandate the possible sanctions, other than that of dismissal.

611. *Paragraph 4(2)* amends section 51(2)(ba) of the 1996 Act to allow the Secretary of State to make regulations relating to the efficiency and effectiveness of special constables. This mirrors the existing power, in section 50(2)(e) of the 1996 Act, to make regulations as to the efficiency and effectiveness of police officers.

612. *Paragraph 4(3)* inserts a new subsection (2A) in section 51 of the 1996 Act to provide that regulations must be made setting out the procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of special constables, including procedures for dismissal. The intention is to mirror for special constables the arrangements to be put in place for regular police officers.

613. *Paragraph 5* makes an amendment to section 59(3) of the 1996 Act (which provides, subject to exceptions, that a police officer may only be represented by another officer at any misconduct or performance proceedings) consequential to the amendment to section 84 which provides a regulation-making power.

614. *Paragraph 6* amends section 63(3) of the 1996 Act to extend the regulations that the Police Advisory Board of England and Wales are to be consulted on to include the regulations that deal with the representation of members of a police force (ie regular police officers) and special constables at disciplinary and other proceedings, regulations dealing with appeals against the findings and outcomes of misconduct and performance proceedings, and rules as to the procedure on appeals to the Police Appeals Tribunal.

615. *Paragraph 7* substitutes a new section 84 in the 1996 Act which provides that the Secretary of State is to make regulations (subject to the negative resolution procedure) in connection with the representation of police officers and the relevant authority (including the Independent Police Complaints Commission) in misconduct

and performance proceedings and enabling panels hearing such proceedings to receive advice.

616. The regulations are to specify when a police officer has a right to legal or other representation, and when he or she is to be notified of that right. The regulations must also provide that proceedings at which the officer can be dismissed cannot take place unless he has been notified of his or her right to such representation.

617. *Paragraph 8(2)* substitutes new section 85(1) and (2) of the 1996 Act, making provision that the Secretary of State is to make regulations (subject to the negative resolution procedure) setting out the circumstances when a police officer may appeal to a police appeals tribunal and allowing the police appeals tribunal to deal with the appellant in any way in which the original misconduct or performance proceedings could have dealt with the officer concerned.

618. *Paragraph 8(3)* substitutes a new section 85(4) which provides that the police appeals tribunal rules that are made under section 85(3) may make provision specifying the circumstances in which a case may be determined without a hearing, the entitlement of the appellant or respondent to be represented at a hearing by a legal representative or other persons, and for the tribunal to be able to require a person to attend a hearing and give evidence or produce documents.

619. New section 85(4A) and (5A) allow the regulations or rules to make different provision for different cases and specify that the regulations are subject to the negative resolution procedure.

620. *Paragraph 9* amends section 87 of the 1996 Act to extend the power of the Secretary of State to issue guidance concerning the efficiency and effectiveness and the maintenance of discipline of special constables as the new performance regulations will include special constables for the first time.

621. *Paragraph 10* amends section 97 to remove references to a disciplinary sanction of 'requirement to resign' as this disciplinary outcome will not be available in the new police officer misconduct or performance proceedings.

622. *Paragraph 11(1), (2), and (3)* amend Schedule 6, changing the persons who will sit on a police appeals tribunal for senior and non-senior police officers (including special constables). *Paragraph 11(6)* provides definitions for this purpose. *Paragraph 11(4) and (5)* make amendments consequential on the amendments to section 85.

623. *Paragraphs 12 to 16* make amendments to the Ministry of Defence Police Act 1987 in relation to the Ministry of Defence Police and *paragraphs 17 to 21* relating the to Railways and Transport Safety Act 2003 in relation to the British Transport Police.

Clause 112 and Schedule 20: Investigation of complaints of police misconduct etc.

624. This clause gives effect to Schedule 20 which amends Schedule 3 to the Police Reform Act 2002. Schedule 3 makes provision about the handling and investigation of: (a) complaints about the conduct of a person serving with the police ("a complaint"), (b) matters which are not the subject of a complaint but where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings ("a conduct matter"), and (c) cases which are not the subject of a complaint and which are not a conduct matter but where a person who was, broadly, in the care of the police has died or sustained a serious injury ("a DSI matter"). The full definitions of these terms appear in section 12 of the Police Reform Act 2002.

625. *Paragraph 2* of Schedule 20 amends paragraph 6(4) of Schedule 3 to remove references to 'requirement to resign or retire', 'reduction in rank or other demotion' or 'the imposition of a fine' as these disciplinary sanctions will no longer exist in the new disciplinary arrangements for members of a police force and special constables ("police officers").

626. *Paragraph 3* inserts new paragraphs 19A to 19D into Schedule 3. The new paragraph 19A places a duty on the person investigating a complaint, where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings, or a recordable conduct matter, to assess whether the conduct concerned if proved would amount to misconduct or gross misconduct and what form any likely disciplinary proceedings in respect of the conduct could be expected to take.

627. The assessment must be made after consultation with the appropriate authority. The appropriate authority is, in the case of a senior officer, the police authority for the area of the police force of which he is a member and, in the case of a person who is not a senior officer, the chief officer under whose direction or control the person is (see section 29 of the Police Reform Act 2002). On completing the assessment, the person investigating must notify the person whose conduct is the subject of the investigation, giving the information required by new paragraph 19A(7) and such other information to be prescribed in regulations (subject to the negative resolution procedure). The notification is not to be given if it might prejudice the investigation in question or any other investigation (including a criminal one). New paragraph 19A also provides for revised assessments to be made when the investigator considers it appropriate due to, for example, fresh evidence being available.

628. New paragraph 19B provides that in the same cases to which the obligation to carry out an assessment under paragraph 19A applies, if the person subject to the investigation provides the investigator with a statement or document relating to the complaint or matter under investigation (including one suggesting new lines of enquiry or witnesses), then the investigator will be under a duty to consider it. The

time limits for providing documents and statements are to be prescribed and notified to the person concerned in the notice given under new paragraph 19A. There is also a duty for the investigator to consider relevant documents provided by other persons (in addition to the person subject to the investigation) who are to be prescribed (subject to the negative resolution procedure).

629. New paragraph 19C provides for the Secretary of State by regulations (subject to the negative resolution procedure) to set out the procedure to be followed in connection with any interview of a person who is subject to an investigation in a case to which the obligation to carry out an assessment under new paragraph 19A applies.

630. New paragraph 19D provides that the person investigating such a case must supply the appropriate authority with such information as the authority requests in order that the appropriate authority can discharge its duty to consider whether it is appropriate for a police officer to be suspended from his office as constable and (in relation to a member of a police force) membership of that force.

631. *Paragraph 4* of Schedule 20 amends paragraph 20A(7) of Schedule 3 which sets out the special conditions that must be satisfied before a police officer disciplinary matter can be dealt with using the accelerated disciplinary procedure. These amendments remove the requirement that there may have been an imprisonable offence but require that there is sufficient evidence to establish gross misconduct.

632. *Paragraphs 5 and 7* omit paragraphs 20B(5) and 20E(5) of Schedule 3 so that where the appropriate authority certifies a case as one where the special conditions are satisfied and therefore the accelerated disciplinary procedures apply, there will no longer be an automatic requirement to send a copy of the file to the DPP. *Paragraph 8* omits paragraph 20G as a consequential amendment.

633. *Paragraph 9* amends paragraph 21A of Schedule 3 to provide that where an investigation into a DSI matter identifies that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, and the investigation is therefore reclassified as a conduct matter, then the original investigator for the DSI matter can continue as the investigator of the conduct matter (subject to the IPCC determining under paragraph 15(5) of Schedule 3 that the investigation should take a different form).

634. *Paragraph 10(4)* inserts new sub-paragraphs (7) to (10) in paragraph 22 of Schedule 3. The new sub-paragraph (7) provides that the Secretary of State may by regulations (subject to the negative resolution procedure) make provision to require the report on an investigation within paragraph 19B(1)(a) or (b) (where conduct has been identified that may lead to disciplinary proceedings) to include such matters as required by the regulations and for the investigation report to be accompanied by such documents or other items as may be specified.

635. The new sub-paragraph (8) places a duty on the person who submits the investigation report to supply the appropriate authority with copies of such other documents or items to enable that authority to comply with his or its obligations under the misconduct procedures in regulations or to ensure that a police officer receives a fair hearing. This provision is to be used in the event that an investigation report does not attach documents the appropriate authority consider sufficient for him or it for these purposes.

636. *Paragraph 11(2) and (3)* amends paragraph 23 of Schedule 3 so that the IPCC must refer to the DPP a report on an investigation submitted to it following a investigation conducted under paragraph 18 (investigations managed by the IPCC) or 19 (investigations by the IPCC itself) of Schedule 3, if the report indicates to the IPCC that a criminal offence may have been committed and either (a) the IPCC considers the case should be so referred or (b) matters in the report fall within a prescribed category. The regulations setting out categories of cases which must be referred are subject to the negative resolution procedure.

637. *Paragraph 11(5)* substitutes new sub-paragraphs (6) and (7) into paragraph 23 of Schedule 3, which provide that the IPCC must, on receipt of an investigator's report, require the appropriate authority to determine whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or neither and what action it must or will take (both disciplinary action and other action). The appropriate authority must then submit a memorandum to the IPCC setting out its determinations. These amendments take account of the fact that the proposed new Police (Conduct) Regulations will set out the disciplinary action the appropriate authority must or may take as a result of its determination on whether there is a case to answer.

638. *Paragraph 12* amends paragraph 24 of Schedule 3 so that the appropriate authority must refer to the DPP a report on an investigation submitted to it following an investigation conducted under paragraph 16 (investigations conducted by appropriate authority on its own behalf) or 17 (investigations conducted by appropriate authority but supervised by the IPCC) of Schedule 3, if the report indicates to the authority that a criminal offence may have been committed and either (a) the appropriate authority considers the case should be so referred or (b) matters in the report fall within a prescribed category.

639. By virtue of the new subsections (5A) and (5B) inserted into paragraph 24, in cases where the IPCC has supervised an investigation into a recordable conduct matter, the appropriate authority will be required to inform the IPCC of its determination as to whether the conditions for referring the case to the DPP are satisfied. Where the appropriate authority informs the IPCC that it has determined that the conditions for referral are not satisfied, then the IPCC will make its own determination and may direct that the appropriate authority refer the case to the DPP.

640. The new sub-paragraph (6) substituted into paragraph 24 also requires the appropriate authority, on receipt of an investigator's report (on a case investigated under paragraph 16 or 17 of Schedule 3), to determine whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or neither and what action it must or will take (both disciplinary action and other action). These amendments take account of the fact that the proposed new Police (Conduct) Regulations will set out the action the appropriate authority must or may take as a result of its determination on whether there is a case to answer.

641. *Paragraph 14* amends paragraph 24B of Schedule 3 to clarify that where, following completion of an investigation into a DSI matter, that matter is recorded as a conduct matter, the person who investigated the DSI matter may continue as the investigator of the conduct matter (subject to the IPCC determining under paragraph 15(5) that the investigation should take a different form under paragraph).

642. *Paragraph 15(2)* amends paragraph 25 of Schedule 3 to give complainants additional rights of appeal following an investigation by the appropriate authority (either on its own behalf or under supervision by the IPCC). The new provisions will allow complainants to appeal to the IPCC against the determination of the appropriate authority as to whether a person who was the subject of the investigation has a case to answer in respect of misconduct or gross misconduct or neither (and in relation to being given inadequate information about this determination); and also against a decision of an appropriate authority not to send the investigation report to the DPP.

643. *Paragraph 15(3)* amends paragraph 25(3) to extend the matters the IPCC can require the appropriate authority to cover in its memorandum to the IPCC following an appeal. The memorandum can now include the appropriate authority's determination on case to answer, the action it must or has decided to take (whether under the Police (Conduct) Regulations or otherwise), and where the appropriate authority has determined that the report of the investigation should not be sent to the DPP, the reasons for that determination.

644. The amendment made by *paragraph 15(4)(a)* to paragraph 25(5) of Schedule 3 clarifies the operation of that sub-paragraph, which caters for both cases where it is clear from the appeal what ground of appeal is being pursued and where the ground of appeal is not clear. The amendment at *paragraph 15(4)(b)* extends the list of matters that the IPCC is required to determine (if appropriate) on an appeal, to reflect the new grounds of appeal.

645. *Paragraph 15(6)* inserts a new sub-paragraph (9A) into paragraph 25 which provides that where the appropriate authority has determined that the conditions for referring a case to the DPP are not met and the complainant has appealed against this determination, the IPCC will be required to determine whether it considers the conditions are satisfied. Where the IPCC determines that the conditions are satisfied it shall direct the appropriate authority to refer the case to the DPP.

646. *Paragraph 16* amends paragraph 27 of Schedule 3 to allow the IPCC to make a recommendation to the appropriate authority in respect of whether a person has a case to answer in respect of misconduct or gross misconduct or has no case to answer; and to provide that where a recommendation is made by the IPCC that disciplinary proceedings are brought, the form of those proceedings must be specified.

Clause 113: Financial Assistance under section 57 of the Police Act 1996.

647. Section 57(1) of the Police Act 1996 gives the Secretary of State power to maintain or contribute to organisations, services and facilities that promote the efficiency and effectiveness of the police. *Subsection (1)* inserts new subsections (1A) to (1D) into section 57.

648. The new subsection (1A) makes it clear that the Secretary of State can provide financial assistance in exercising his power under section 57(1). The new subsection (1B) provides that financial assistance may in particular be given by way of grant, investment in a body corporate, loan or guarantee and that the Secretary of State can set the terms and conditions on which the assistance is given. These new subsections clarify but do not extend the Secretary of State's existing powers under section 57(1).

649. New subsection (1B) also requires the consent of the Treasury to financial assistance (except for grants) made under the section 57(1) power. This is to ensure that the terms and conditions attached to any loans, investment or guarantees are in line with Government Accounting Rules and follow best practice.

650. New subsection (1C) states that the terms and conditions the Secretary of State can impose for the giving of financial assistance include those relating to repayment with or without interest.

651. New subsection (1D) requires that where financial assistance under section 57 is given on terms and conditions requiring that the body make payments to the Secretary of State (e.g. repayments of capital or interest relating to a loan), those payments will be paid into the Consolidated Fund.

652. *Subsection (2)* provides that any outstanding loan already made by the Secretary of State to a body under section 57(1) for the purposes of promoting the efficiency and effectiveness of the police (such as a loan to the Forensic Science Service) will, from the date of Royal Assent, be treated as a loan made in accordance with section 57 of the 1996 Act as amended by clause 113. In practice, this will mean that Treasury will be treated as having given its consent to existing loans and the loans will be treated as being in compliance with Government Accounting Rules.

Clause 114: Inspection of Police Authorities

653. This clause extends Her Majesty's Inspectorate of Constabulary's (HMIC's) powers of inspection in police authorities. It provides for HMIC to carry out general inspections of the performance of all the functions of police authorities, rather than limit these powers to the inspection of a police authority's compliance with best value in Part 1 of the Local Government Act 1999.

654. The intention is that this clause mirrors the provision made by section 152 of the Local Government and Public Involvement in Health Act 2007. That section broadens the Audit Commission's powers to enable the general inspection of the performance of best value authorities rather than again limit their powers to compliance with best value. With both organisations having powers of inspection in police authorities that are on an equal footing, the intention is to develop a joint police authority inspection programme combining the expertise and resources of the Audit Commission and HMIC.

Part 11: Special Immigration Status

Clause 115: Designation

655. This clause allows the Secretary of State to designate a "foreign criminal" who is liable to deportation but who cannot be removed from the United Kingdom because of section 6 of the Human Rights Act 1998 and a family member of such a person (*subsections (1) to (3)*). Under *subsections (4) and (5)* a person who has a right of abode in the United Kingdom may not be designated and the Secretary of State may not designate a person where the effect of designation would breach the United Kingdom's obligations under the Refugee Convention, or the person's rights under Community treaties.

Clause 116: "Foreign criminal"

656. This clause defines the term "foreign criminal" as it is used in clause 115.

657. *Subsection (1)* provides that a "foreign criminal" is a person who is not a British citizen, and who satisfies one or more of the conditions set out in *subsections (2) to (4).*

658. The condition in *subsection (2)* (Condition 1) is that section 72(2)(a) and (b) or (3)(a) to (c) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) applies to the person. This applies where a person has been convicted of an offence, either in the United Kingdom or abroad, and has been sentenced to a period of imprisonment of at least two years. If the conviction was outside the United Kingdom, there is a further requirement that the person could have been sentenced to a period of imprisonment of at least two years had his conviction been in the United Kingdom for a similar offence.

659. The condition in s*ubsection (3)* (Condition 2) is satisfied where section 72(4)(a) or (b) of the 2002 Act applies to a person and the person has been sentenced

to a term of imprisonment of any length. Section 72(4)(a) applies where a person is convicted of an offence specified by order of the Secretary of State, and section 72(4)(b) where a person is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under section 72(4)(a).

660. *Subsection (4)* specifies that Condition 3 applies where Article 1F of the Refugee Convention applies to a person. Where Article 1F applies, the person concerned cannot be a refugee.

661. *Subsections (5) and (6)* make clear that provision for the rebuttal and non-application of the presumption that a person constitutes a danger to the community is irrelevant to the question of whether a person is a foreign criminal.

Clause 117: Effect of designation

662. Clause 117 sets out the effect of designation.

663. *Subsection (1)* specifies that a designated person does not have leave to enter or remain in the United Kingdom.

664. *Subsection (2)* ensures that, for the purposes of a provision of the Immigration Acts and any other enactment concerning or referring to immigration or nationality, a designated person is a person subject to immigration control, is not to be treated as an asylum-seeker or former asylum-seeker regardless of his status, and is not in the United Kingdom in breach of the immigration laws. *Subsection (3)* provides that time spent as a designated person may not be relied on by a person for the purpose of an enactment about nationality.

665. *Subsection (4)* specifies that a designated person shall not be deemed to have been given leave in accordance with paragraph 6 of Schedule 2 to the Immigration Act 1971 and may not be granted temporary admission to the United Kingdom under paragraph 21 of that Schedule. A person is deemed to have leave under paragraph 6 in certain circumstances which include, for example, where notice giving or refusing leave is not given before the end of twenty four hours after the examination of the person by an immigration officer under paragraph 2 of Schedule 2 to the Act. This provision has been disapplied as a designated person does not have leave to enter or remain in the United Kingdom (subsection (1)).

666. *Subsection (5)* notes that clauses 119 and 120 make provision about support for designated persons and their dependants.

Clause 118: Conditions

667. This clause allows the Secretary of State or an immigration officer to impose conditions on a designated person, it specifies the nature of the conditions, and makes failure to comply with a condition an offence.

668. *Subsection (1)* allows the Secretary of State or an immigration officer to impose conditions on a designated person. These may relate to residence, employment or occupation, or reporting to the police, the Secretary of State or an immigration officer, as set out in *subsection (2)*.

669. *Subsection (3)* provides that the powers for electronic monitoring shall apply in relation to the conditions imposed under *subsection (1)* in the same way as they do when someone is granted temporary admission under paragraph 21 of Schedule 2 to the Immigration Act 1971. This means that where a residence restriction is imposed on an adult, or where a reporting restriction could be imposed, he may be required to cooperate with electronic monitoring.

670. *Subsection (4)* permits the Secretary of State to make payments to a person in respect of travelling expenses which the person has incurred or will incur in complying with a reporting condition.

671. *Subsection (5)* creates an offence of failing to comply with a condition under this clause without reasonable excuse. The maximum penalties for this offence are set out in *Subsection (6)*. Further, under *subsection (7)* the ancillary provisions in the Immigration Act 1971 which apply in relation to an offence under any provision of section 24(1) (e.g. the power of arrest) will also apply in relation to an offence committed under subsection (5).

672. *Subsection (8)* specifies that the reference in *subsection (6)(b)* to 51 weeks, being the maximum period of imprisonment for an offence under subsection (5), shall be treated as a reference to six months in the application of the clause to Scotland and Northern Ireland.

Clause 119: Support

673. This clause sets out provisions for the support of individuals designated under clause 115 and their dependants.

674. *Subsections (1) and (2)* specify that Part VI of the Immigration and Asylum Act 1999 (the 1999 Act), which makes provision for support for asylum-seekers, will apply – subject to certain modifications - to designated persons and their dependants as it applies to asylum-seekers and their dependants. This allows the Secretary of State to provide, or arrange the provision of, support for designated persons and their dependants who appear to be destitute (or to be likely to become destitute within a prescribed period).

675. *Subsection (3)* specifies the ways in which this support may be provided under section 95 of the 1999 Act. The Secretary of State may provide accommodation, essential living needs, and in other ways where necessary to reflect exceptional circumstances of a particular case.

676. *Subsection (4)* provides that, unless the Secretary of State thinks it appropriate because of exceptional circumstances, the support provided under section 95 of the 1999 Act must not be wholly or mainly in cash.

677. *Subsection (5)* provides that section 4 of the 1999 Act shall not apply to designated persons.

678. *Subsection (6)* disapplies certain alternative statutory provisions relating to the provision of assistance under the homelessness provisions which would otherwise apply to a person who has been designated.

Clause 120: Support: supplemental

679. This clause lays out supplementary provisions relating to the support that may be provided under clause 119, and it ensures the correct operation of Part VI of the 1999 Act in relation to designated persons.

680. *Subsection (1)* ensures that any references to Part VI of the 1999 Act or to a provision of that Part in other enactments includes a reference to that Part or provision as applied by clause 119. Section 96 of the 1999 Act lays out the ways in which support may be provided to asylum seekers, but clause 119(3) makes equivalent provision for designated persons. References to section 96 or a provision thereof will be treated as including a reference to clause 119(3) or the corresponding provision. All references to asylum seekers will be treated as including a reference to designated persons.

681. *Subsection (2)* provides that any provision of Part VI of the 1999 Act requiring or permitting the Secretary of State to have regard to the temporary nature of support for asylum-seekers shall require him instead to have regard to the nature and circumstances of support for designated persons.

682. *Subsection (3)* provides that the rules governing the procedure for bringing and hearing appeals made under section 104 of the 1999 Act apply.

683. *Subsection (4)* provides that any instrument made under Part VI of the 1999 Act may make provision in respect of that Part as it applies by virtue of clause 119, otherwise than by virtue of that section, or both, and may make different provision for that Part as it applies by virtue of clause 119 and otherwise than by virtue of clause 119.

684. *Subsection (5)* modifies the provisions which apply to the notice to be given to a designated person required to quit accommodation provided under Part VI of the 1999 Act.

685. *Subsection (6)* allows the Secretary of State, by order (subject to the affirmative resolution procedure), to repeal, modify or disapply (to any extent) the provision that support by virtue of clause 119(3) may not be provided wholly or

mainly by way of cash unless the Secretary of State thinks it appropriate because of exceptional circumstances.

686. *Subsection (7)* provides that an order under section 10 of the Human Rights Act 1998 (by which a Minister of the Crown may by order make amendments to legislation which has been declared to be incompatible with a Convention right) which amends a provision mentioned in clause 119(6) may amend or repeal that subsection.

Clause 121: End of designation

687. This clause explains when designation comes to an end and the impact this has on support.

688. *Subsection (1)* lists the events which cause designation to lapse. These include where a person: (a) is granted leave to enter or remain in the United Kingdom, (b) is notified by the Secretary of State or an immigration officer of a right of residence in the United Kingdom by virtue of the Community treaties, (c) leaves the United Kingdom or (d) is made the subject of a deportation order under section 5 of the Immigration Act 1971.

689. *Subsection (2)* makes clear that support may not be provided by virtue of clause 119 after designation lapses, subject to the exceptions set out in subsections (3) and (4). *Subsection (3)*(Exception 1) allows that if designation lapses under subsection (1)(a) or (b), support may be provided in respect of a period which begins when the designation lapses and ends on a date determined in accordance with an order of the Secretary of State (subject to the negative resolution procedure). *Subsection (4)* (Exception 2) specifies that if designation lapses under subsection (1)(d), support may be provided in respect of any period during which an appeal against the deportation order may be brought, any period during which an appeal against the deportation order is pending, and after an appeal ceases to be pending, such period as the Secretary of State may specify by order (subject to the negative resolution procedure).

Clause 122: Interpretation: general

690. This clause defines other terms as they are used in this Part of the Bill, in particular, "family" and "right of abode in the United Kingdom". It also provides that a reference in an enactment to the Immigration Acts includes a reference to clauses 115 to 121.

Part 12: General

Clause 123: Orders and regulations

691. This clause makes provision in connection with the various powers under the Bill to make orders or regulations. The affirmative resolution procedure applies to instruments made under the powers listed in *subsection (3)*. The effect of *subsection (4)* is that all other powers are subject to the negative resolution procedure, except for powers listed in that subsection (namely the powers to make commencement orders

under clause 128, to make an order under paragraph 25(5) of Schedule 1 (power to specify the description of a person responsible for monitoring an electronic monitoring requirement attached to a YRO), and to make an Order in Council under paragraph 9 of Part 2 of Schedule 15 (power to extend certain provisions of the Customs and Excise Management Act 1979 to the Channel Islands, the Isle of Man or any British overseas territory)) where no parliamentary procedure applies. *Subsection (2)* provides that any power under the Bill to make orders or regulations includes a power to make provision generally or only for specified cases or circumstance and to make different provision for different cases, circumstances or areas. This subsection also enables orders and regulations to make incidental, supplemental, consequential, transitional, transitory or saving provisions.

Clause 124 and Schedules 21 and 22: Consequential etc. amendments and transitional and saving provision

692. This clause enables the Secretary of State by order to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of the Bill. It is a power to make consequential provisions for those purposes at any time, including amendments to primary and secondary legislation. The affirmative resolution procedure will apply to any order which amends or repeals primary legislation. The clause also introduces Schedules 21 (minor and consequential amendments) and 22 (transitory provisions).

Schedule 21: Minor and consequential amendments

693. *Paragraph 1* amends section 81(3) of the Magistrates' Court Act 1980 to ensure that the court cannot impose a youth default order unless the court has inquired into the defaulter's means in his presence on at least one occasion since the conviction.

694. *Paragraph 2(4)* amends Schedule 31 to the 2003 Act, which operates in conjunction with section 300 of that Act, as amended by clause 24. Section 300, as amended, gives a court which has the power to commit an offender to prison for fine default the alternative of imposing a default order with an unpaid work requirement, a curfew requirement or an attendance centre requirement. Schedule 31 modifies the provisions governing the length of the unpaid work and curfew requirements of community orders set out in sections 199 and 204 of the 2003 Act, respectively. It sets out in tabular form the maximum periods of unpaid work or curfew which may be imposed corresponding to the amount of the sum in default.

695. *Paragraph 2(4)* amends Schedule 31 to make similar provision for default orders with attendance centre requirements. The attendance centre requirement of a community order is governed by section 214 of the 2003 Act. That provision is modified so that the minimum number of hours at an attendance centre to which an offender may be made subject under a default order remains at 12, but a table sets the maximum number of hours corresponding to the sum in default.

696. *Paragraph 3* ensures that section 19XA(1) of the Wildlife and Countryside Act 1981 (constables' powers in connection with samples) correctly refers to constables' powers of entry in section 19 of that Act.

697. *Paragraph 4* makes a consequential amendment to section 37B of PACE so that where a young offender aged 16 or 17 is referred by the police to a prosecutor for a decision on charging, the prosecutor may decide whether or not that person should be given a youth conditional caution.

698. *Paragraph 5* corrects an amendment made in error to section 160(1) of the Criminal Justice Act 1988 by the Sexual Offences Act 2003.

699. *Paragraph 6* makes a consequential amendment to the Protection of Children (Northern Ireland) Order 1978 to take account of the revised definition of a photograph in clause 69.

700. *Paragraph 7(2)* amends section 44 of the Criminal Justice Act 1991 to provide that the definition of "liable to removal from the United Kingdom" applies to extended sentence prisoners. This is required as a result of clause 19(6), which removes exclusions to the early removal scheme and which means that extended sentence prisoners may now be eligible for early removal under the scheme.

701. *Paragraph 7(3)* amends section 46 of the Criminal Justice Act 1991 to provide that the definition of "liable to removal from the United Kingdom" applies to sections 46A, 46ZA and 46B, which set out the early removal scheme.

702. *Paragraph 8* amends section 38 of the 1998 Act to extend the youth justice services provided by Youth Offending Teams to include the provision of assistance to relevant prosecutors for the purpose of determining whether a youth conditional caution should be given to an offender, and the supervision and rehabilitation of offenders who have been given a youth conditional caution.

703. *Paragraph 9* amends section 19(4) of the Powers of Criminal Courts (Sentencing) Act 2000 to prevent a court making an order under section 1(2A) of the Street Offences Act 1959 (inserted by clause 72) alongside a referral order.

704. *Paragraph 10* amends section 1 of the Criminal Justice and Court Services Act 2000 to remove the reference to authorised persons so that assistance can be given to prosecutors (as well as authorised persons) in determining whether youth conditional cautions should be given and which conditions to attach to youth conditional cautions.

705. *Paragraph 11* repeals subsection (1)(c) of section 36 of the Police Reform Act 2002. This subsection allowed regulations to include inferences to be drawn from a failure to mention a fact when questioned or charged.

706. *Paragraph 12* amends the definition of "cautioned" in section 133(1) of the Sexual Offences Act 2003 to remove reference to a caution having been given by a police officer. This will ensure that conditional cautions, which may be given by persons other than a police officer, are covered by the definition of cautions for the purposes of that Act.

707. *Paragraphs 14 and 16* amend the 2003 Act to remove details about the payment of financial penalties as a result of a conditional caution from the Act. They will be included in the Code of Practice.

708. *Paragraphs 15* amend the 2003 Act so that a relevant prosecutor may, with consent, add or omit a condition following breach of the original condition under the conditional cautions scheme.

709. *Paragraph 18* ensures that where enforcement powers for wildlife inspectors contained in the Wildlife and Countryside Act 1981 are extended to other wildlife legislation, including penalties for offences in relation to those powers, the offences themselves are also extended.

710. *Paragraph 19* corrects two minor errors in the Police and Justice Act 2006.

711. *Paragraph 20* amends section 1 of the Offender Management Act 2007 to remove the reference to authorised persons so that assistance can be given to anyone able to issue a conditional caution and to assist them with which conditions to attach to conditional cautions.

Clause 125 and Schedule 23: Repeals and revocations
712. This clause introduces Schedule 23 (repeals and revocations).

Clause 126: Financial provisions
713. This clause authorises out of money provided by Parliament any expenditure incurred by a Minister of the Crown under the Bill. It also authorises any additional expenditure incurred under any other Acts, where that additional expenditure results from the Bill.

Clause 127: Extent
714. This clause sets out the extent of the provisions of the Bill. This is detailed in paragraphs 66 to 71 above.

Clause 128: Commencement
715. This clause provides for commencement. The provisions mentioned in paragraph 717 and 718 below will come into force either on Royal Assent or 2 months after Royal Assent. The other provisions of the Bill are, with one exception, to be brought into force by means of orders made by the Secretary of State or the Lord Chancellor. The exception is clause 107 and Schedule 18 (nuisance or disturbance on HSS premises) which will be brought into force by order made by statutory rule by

the Northern Ireland Department of Health, Social Services and Public Safety (*subsection (4)* read with clause 123(5)).

Clause 129: Short title
716. This clause sets out the short title of the Bill.

COMMENCEMENT

717. The following provisions of the Bill will come into force on Royal Assent:

- Clause 56 and Schedule 13 which amend Schedule 3 to the 2003 Act, which makes provision in relation to the allocation of offences triable either way and the sending of cases to the Crown Court. Commencement of the amendments to Schedule 3 to the 2003 Act will not have any material effect until Schedule 3, as amended, is itself commenced;

- Clause 113 which amends section 57 of the Police Act 1996 which makes provision for the Secretary of State to provide and maintain organisations which promote the efficiency and effectiveness of the police; and

- Part 12, save for the provisions introducing Schedules 21, 22 and 23 (minor and consequential amendments, transitory, transitional and saving provisions and repeals and revocations) and those Schedules themselves.

718. The following provisions of the Bill will come into force two months after Royal Assent:

- Clause 63, which repeals the requirement to publish an annual report on the workings of the Criminal Justice (Terrorism and Conspiracy) Act 1998; and

- Clauses 68 and 69 which extend the definition of an indecent photograph in the Protection of Children Act 1978 (and the equivalent Northern Ireland legislation) to include a tracing or other image derived from a photograph.

719. All other provisions will be brought into force by means of commencement orders.

FINANCIAL EFFECTS OF THE BILL

720. The net effect of the Bill for the public sector (principally Her Majesty's Courts Service (HMCS), the Legal Services Commission (LSC), the National Offender Management Service (NOMS), the Crown Prosecution Service and police and local authorities) is estimated to be savings of some £14.5M/£15.5M/£15.4M in the financial years 2008-2009, 2009-2010 and 2010-2011 respectively. These figures are based on a number of assumptions about implementation which are subject to review.

721. In addition to the net savings identified above, the provisions in the Bill once fully implemented will result in a net reduction of up to 1383 in the requirement for prison places. The estimated impact on the prison population of individual provisions in the Bill is:

- The abolition of the use of suspended sentence for summary offences (clause 10) – a saving of 400 prison places;

- Greater discretion for courts to make offenders serving indeterminate sentences serve a higher proportion of tariff (clause 12) – an increase of 25 places;

- The new arrangements so that in appropriate cases non-dangerous prisoners can be given a fixed term, punitive recall to prison for 28 days (clauses 16-18) - a saving of 1,000 places;

- The changes to the provisions for the early release prisoners liable for deportation and to the early removal scheme (clauses 19 and 20) - a saving of 60 places;

- Amendment to the test applied by the Court of Appeal for quashing convictions (clauses 26) – an increase of 20 places;

- The abolition of discount for unduly lenient sentence (clause 28) – an increase of 4 places;

- The new offence of possession of extreme pornography (clauses 64-67) – an increase of 7 places;

- The increase in the penalty for the misuse of personal data (clause 75) - an increase of 1 place; and

- Violent Offender Orders (clauses 83-102) - an increase of 20 places.

722. The main financial implications of the Bill for the public sector lie in the following areas.

Part 1: Youth Rehabilitation Orders.
723. The YRO is designed to combine existing community sentences for children and young people into one generic sentence. There will be an estimated one off training cost of £669K in 2008/09.

Part 2: Sentencing
724. Extending the use of referral orders is expected to lead to a saving for the Youth Justice Board of £194K for each of the financial years 2008-2009, 2009-2010 and 2010-2011.

Part 4: Her Majesty's Commissioner for Offender Management and Prisons
725. Placing the PPO on a statutory basis will be cost neutral. The Ombudsman's budget in 2006/07 was £6.3M.

Part 5: Other Criminal Justice Provisions
726. The introduction of Youth Conditional Cautions is estimated to result in savings of £98K for HMCS, £68K for the Police and £323K for Youth Offending Teams for the financial years 2008-2009, 2009-2010 and 2010-2011. The impact on the LSC and the CPS is expected to be broadly neutral.

727. The amendment to allocating either-way cases between magistrates' courts and the Crown Court, and sending cases from the former to the latter will allow these provisions, originally set out in the 2003 Act, to be implemented. This in turn will lead to saving of up to £1.6M for magistrates' courts and of up to £0.8M for the LSC in each of the financial years 2008-2009, 2009-2010 and 2010-2011.

728. The extension of powers of the CPS designated caseworkers will lead to savings for the CPS estimated at £5M for each of the financial years 2008-2009, 2000-2010 and 2010-2011.

729. It is estimated that the cost to the LSC of establishing a statutory gateway to make it easier to obtain information from government departments for the purposes of granting criminal legal aid will be £1M in 2008/09.

730. The provision on compensation for miscarriages of justice is expected to result in savings for the Ministry of Justice of £2.5M for each of the financial years 2008-2009, 2009-2010 and 2010-2011.

Part 6: Criminal Law
731. The provisions on extreme pornographic material will result in estimated costs to HMCS of £200K, the CPS of £65K and to LSC of £128K for each of the financial years 2008-2009, 2009-2010 and 2010-2011. Police and NOMS costs are estimated

at £11K and £20K a year respectively over the same period.

732. There will be estimated savings for the police arising from the creation of orders to promote rehabilitation of persons involved in prostitution estimated at £34K in the financial year 2008-2009, £44k in the financial year 2009-2010 and £46K in the financial year 2010-2011. Savings to HMCS are estimated at £167K/£253K/£278K over the same period.

733. LSC costs arising from the increase in the penalty for the misuse of personal data are estimated at £16K for each of the financial years 2008-2009, 2009-2010 and 2010-2011.

Part 7: International Co-operation in relation to Criminal Justice Matters

734. Costs for HMCS of the provisions relating to the mutual recognition of financial penalties are estimated at £760K in the financial year 2008-2009 and £500K in the financial years 2009-2010 and 2010-2011. These are likely to be offset by the income from fines imposed by other Member States but enforced in England and Wales.

Part 8: Violent Offender Orders

735. There will be costs for CPS, LSC and HMCS for the clauses relating to Violent Offender Orders. The Government does not expect to implement these until the financial year 2009-2010. For the CPS these costs are estimated at £53K for the financial year 2009-2010 and £64K for the financial year 2010-2011. For the LSC these costs are estimated at £228K for the financial year 2009-2010 and £280K for the financial year 2010-2011. For HMCS these costs are estimated at £57K for the financial year 2009-2010 and £69K for the financial year 2010-2011. Police costs are estimated at £725K per annum over this period.

Part 9: Anti-social Behaviour

736. Premises Closure Orders will give rise to costs to the police of £135K and to local authorities of £250K in each of the financial years 2008-2009, 2009-2010 and 2010-2011. The costs to HMCS for each of the same years are £49K and the costs to the LSC for each of the same years are £292K.

737. The provisions on the offence of causing nuisance or disturbance on NHS premises will result in estimated costs of £174K for the CPS, for each of the financial years 2008-2009, 2009-2010 and 2010-2011. Police costs are estimated at £360K, costs to HMCS at £701K and costs to LSC at £75K for each of these years. One off training costs for NHS Trusts are estimated at £270K over the financial years 2008-2009, 2009-2010 and 2010-2011.

738. Costs for HMCS arising from the requirement to conduct an annual review of ASBOs issued to under 17s are estimated at £41K for each of the financial years 2008-2009, 2009-2010 and 2010-2011. Costs to the LSC are estimated at £72K for

each of the same financial years.

Part 10: Policing

739. The new framework for dealing with police misconduct and performance issues is expected to lead to savings to police authority budgets of £10M for each of the financial years 2008-2009, 2009-2010 and 2010-2011.

Part 11: Special immigration status

740. Costs of the provision relating to restricted immigration status are estimated at up £1.1M for the Borders and Immigration Agency for each of the financial years 2008-2009, 2009-2010 and 2010-2011

741. The other provisions of the Bill are largely cost neutral, or will result in minor savings.

742. The overall net impact of the provisions in the Bill in the financial years 2008-2009, 2009-2010 and 2010-2011 on the following will be respectively:

- HMCS - estimated savings of £114K/£403K/£416K.
- CPS - estimated savings of £4.8M/£4.7M/£4.7M.
- LSC - estimated costs of £783K/£11K/£63K.
- Police authorities - estimated savings of £9.6M/£8.9M/£8.9M.
- Local authorities - estimated costs of £250K/£250K/£250K.

EFFECTS OF THE BILL OF PUBLIC SECTOR MANPOWER

743. The current number of staff in the office of the PPO is 92 full time equivalent posts. We expect staffing numbers to remain the same when the role of the Ombudsman is placed on a statutory footing.

SUMMARY OF REGULATORY IMPACT ASSESSMENTS

744. 18 regulatory impact assessments and one overarching regulatory impact assessment have been published alongside the Bill. They are available from the Vote Office. The individual RIAs deal with the following provisions.

- YROs

- Modification of power to make Referral Order
- Access by Her Majesty's Court Service to Department of Work and Pensions records
- Prison and Probation Ombudsman
- Youth Conditional Caution
- Extension of powers of CPS designated caseworkers
- Criminal Legal Aid
- Miscarriages of Justice compensation
- Extreme pornographic material
- Prostitution
- Increase in penalties for misuse of personal data
- Premises Closure Orders
- Statutory one year review of juvenile Anti Social Behaviour Orders
- Offence of creating nuisance or disturbance on NHS premises
- New police misconduct procedures
- Special Immigration Status
- Sentencing and Appeals Provisions
- Violent Offender Orders

745. The Bill impacts mainly on the public sector (primarily the police, courts and other agencies within the criminal justice system). Where the private and voluntary sectors will be engaged, the business sectors affected are: providers of offender management services, including custodial establishments; internet service providers and others who may unknowingly distribute extreme pornographic material; holders of personal data; and commercial owners or occupiers of premises that may be subject to a premises closure order.

746. The costs of the Bill are outlined in paragraphs 720 to 742 of these Explanatory Notes. In general, the benefits of the Bill fall into the following

categories.

- building public confidence in the sentencing framework by imprisoning serious and dangerous offenders while others receive tough and effective community sentences;

- ensuring that prison and probation resources are targeted at serious and violent offenders;

- strengthening the pre-court and community penalties available for young offenders so that, wherever possible, offending by children and young persons is effectively addressed without the need to resort to custody;

- ensuring that the police and their community safety partners have appropriate powers to tackle anti-social behaviour at its roots and thereby reinforce a culture of respect;

- ensuring that the UK does not provide a safe haven for foreign criminals and terrorists and send a clear signal that such people cannot expect to secure a settled status in this country.

EUROPEAN CONVENTION ON HUMAN RIGHTS

747. 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 the Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Rt. Hon Jack Straw MP, Secretary of State for Justice and Lord Chancellor, has made the following statement:

"In my view the provisions of the Criminal Justice and Immigration Bill are compatible with the Convention rights."

Part 1: Youth Rehabilitation Orders

748. Part 1 introduces the youth rehabilitation order (YRO). This is the new community sentence for juvenile offenders. In essence, it combines a number of existing sentences into one new generic sentence. When imposing a YRO, the court will be able to choose from a 'menu' of different requirements that the offender must comply with depending on the individual circumstances of the offender. The YRO must be complied with within three years of taking effect.

749. The Government is of the view that Article 8 of the ECHR is engaged both in relation to the rights of the juvenile and the rights of the parent or guardian. Prior to imposing a YRO, the court must obtain and consider information about the offender's family circumstances and the likely effect of such an order on those circumstances. The Government considers that any interference with private and family life will be

potentially justifiable as proportionate and necessary in the interests of public safety, the prevention of disorder or crime or for the protection of the rights and freedoms of others.

750. Leaving aside the YRO with intensive supervision and surveillance and a YRO with fostering, a YRO may impose any of the following combination of requirements: an activity requirement, a supervision requirement; an unpaid work requirement (if the offender is aged 16 or 17); a programme requirement; an attendance centre requirement; a prohibited activity requirement; a curfew requirement; an exclusion requirement; a residence requirement; a local authority residence requirement; a mental health treatment requirement; a drug treatment requirement; a drug testing requirement; or an education requirement. Providing the statutory conditions are met, it will be up to the court to decide which requirements are justified and proportionate in each individual case. A court cannot impose requirements which are incompatible with each other. The court is also required to ensure that the requirements are the most suitable for the individual offender and that any restraints on liberty are commensurate with the seriousness of the offences. Both the court and the responsible officer are also required to ensure as far as practicable that any requirement avoids conflict with the offender's religious beliefs or the times at which he attends work or school.

751. Non-statutory guidance, which has proved to work well in the past in the context of existing orders for juveniles and for the adult generic community order, will provide a description of places or activities which may be specified in a YRO and will also cover the arrangements to be made with regard to the attendance of offenders subject to activity, supervision, programme or attendance centre requirements, to ensure that the requirements are suitable, reasonable and proportionate to the circumstances of each offender.

The activity requirement

752. The activity requirement is defined in paragraphs 6 to 8 of Schedule 1. The court specifies the number of days within the maximum number and has to authorise any delegation to the responsible officer. The court or the responsible officer may also impose a residential exercise as part of an activity requirement or a programme requirement. The Government is of the view that this is a proportionate interference with the right to family life on the grounds set out in Article 8.2. A residential exercise authorised by a responsible officer can only be for a maximum of seven days and the consent of the parent or guardian must be obtained if practicable. The Government is of the view that, having regard to its obligations under section 6 of the Human Rights Act, a court would not impose a residential programme unless it was proportionate or necessary in the circumstances of the individual case in accordance with Article 8(2).

Unpaid work requirement

753. A YRO may also impose an unpaid work requirement on an offender who is aged 16 or 17 at the time of conviction. The requirement is defined in paragraph 10 of Schedule 1. Unpaid work must not be for more than 240 hours. An unpaid work requirement was also available for this age group as a requirement of the community order under section 199 of the Criminal Justice Act 2003. Article 4 is engaged. In the Government's view the requirement for a child to carry out unpaid work does not constitute forced or compulsory labour within the meaning of Article 4 as explained in *Van der Mussele v Belgium* [1983] 6 EHRR 163. It is work that will be justified and proportionate and required in the general interest and will be for the purpose of making reparation for wrongdoing that might directly assist the victim or the wider community.

Residence requirement

754. Paragraph 16 of Schedule 1 defines the residence requirement and paragraph 17 defines a local authority residence requirement. The former is a requirement that an offender live with a specified individual (with that person's consent) or at a specified place. Where a "place of residence requirement" is imposed the offender must be 16 or over at the time of conviction. For such a requirement the court is required to consider the home surroundings of the offender. The "local authority residence requirement" is a requirement that the offender live in local authority accommodation for up to a maximum of six months. Prior to imposing such a requirement, the court must consult the parent or guardian of the offender if practicable and the offender must be afforded the opportunity of legal representation. The Government does not consider that the requirement would amount to a deprivation of liberty under Article 5 of the Convention. The Government notes that a local authority residence requirement is already available as a requirement of a supervision order. To the extent that Article 8 is engaged, an interference will be justifiable in accordance with Article 8.2.

Mental health and drug treatment and testing requirements

755. Paragraphs 20 and 21 of Schedule 1 define a mental health treatment requirement, paragraph 22 a drug treatment requirement and paragraph 23 a drug testing requirement. In the Government's view, these requirements are justified under Article 8(2) as being in accordance with the law and necessary in the interests of public safety, the prevention of disorder or crime or for the protection of the rights and freedoms of others. In relation to these measures, it will be for the court to decide when to impose these requirements and to consider whether it is justified and proportionate in each case. Drug testing may only be ordered in conjunction with a drug treatment requirement. Such a requirement may not be imposed unless the offender expresses a willingness to comply with that requirement. The Government notes that the drug treatment and testing requirements were made available to juveniles of all ages subject to an action plan order and supervision order, in the

Criminal Justice Act 2003. The Government also notes that a mental health treatment requirement is available as a requirement of a supervision order.

756. The Secretary of State intends to issue non-statutory guidance, to which a mental health treatment provider or a drug treatment or testing provider would have regard when exercising their functions pursuant to a requirement under a YRO. Guidance will provide that, when administering any treatment under a YRO, a treatment provider should maintain and have regard to a care plan for the offender, which will set out the nature of the offender's treatment from time to time, including the number and frequency of appointments. Treatment providers will maintain maximum flexibility in their treatment of the offenders, and be able to provide treatment as is appropriate and necessary according to their clinical and professional judgment, but the guidance will be aimed at ensuring that treatment is reasonable and proportionate in the particular circumstance of each offender.

Other requirements

757. A YRO may also impose a programme requirement, attendance centre requirement, prohibited activity requirement, exclusion requirement or an education requirement, defined by paragraphs 11, 12, 13, 15 and 24 of Schedule 1 respectively. These requirements will be tailored to the particular needs and circumstances of the offender. A programme requirement is a new requirement and is designed to allow juvenile offenders to engage in programmes that will address their offending behaviour, teach life skills or other positive interventions. It may also include a residential requirement. The Government believe this to be justifiable on the same basis as in relation to a residential activity requirement. The Government also notes that, other than the programme requirement, these requirements are all available as part of existing youth community orders.

Intensive supervision and surveillance

758. Clause 1(3)(a) provides that a court may impose a YRO with intensive supervision and surveillance. This puts the existing Intensive Supervision and Surveillance Programme, administered by the Youth Justice Board, on a statutory footing. The YRO with intensive supervision and surveillance is designed as an alternative to custody for serious young offenders. Accordingly, clause 1(4) provides that a court may not impose this order unless the offence is punishable with imprisonment and the court is satisfied that the offence(s) was so serious that the custodial threshold has been met. For offenders under the age of 15, the court must also be satisfied that they are a persistent offender. This threshold is designed to ensure that a court should not make this kind of YRO unless a detention and training order would also be available for that young offender. The YRO with ISS provides an alternative to custody which is a less significant restriction on liberty. Without this alternative, custody may be the only option for these serious young offenders.

Electronic monitoring

759. Electronic monitoring in the context of the YRO is monitoring to ensure compliance with other requirements imposed by the order. It is defined in paragraph 25 of Schedule 1. A YRO with a curfew or exclusion requirement *must* impose this requirement, unless it would be inappropriate in the particular circumstances or impracticable to do so. The court will retain discretion in all cases as to whether to impose this requirement and will have to consider whether it is justified and proportionate in each individual case. As regards Article 3, it is not considered that the level of surveillance involved in the electronic monitoring of a person's whereabouts is intrusive enough to breach that Article. Those cases where Article 3 has been found to have been breached have involved treatment of a different order of severity. It is considered that where monitoring of whereabouts is imposed as part of a sentence, there is a qualitative difference to the type of treatment considered in other cases to have breached Article 3. The court will have weighed up the alternative sanctions and determined that it is an appropriate response to the offence and the continuing risk posed by the offender. It is recognised that for some particularly vulnerable people, monitoring could be distressing. However, the assessment of the youth offending team for the court will serve to identify any psychiatric vulnerability that would render the person unsuitable for electronic monitoring. In the context of young offenders, the Government considers that this is a proportionate response to serious offending. The Government notes that electronic monitoring of this kind is not a new requirement and is available as a requirement of all youth community orders under section 36B of the Powers of Criminal Courts (Sentencing) Act 2000.

Fostering requirement

760. Clause 1(3)(b) introduces the YRO with fostering. A fostering requirement (defined in paragraph 18 of Schedule 1) is a requirement that the offender live for the specified period (which at the outset is no more than 12 months but may be extended by the court to 18 months in certain circumstances) with one or more named local authority foster parents. A supervision requirement must also be imposed. Clause 1(4) sets out safeguards. A court may not impose a YRO with fostering unless the offence is punishable with imprisonment and the court is satisfied that the custodial threshold has been met. For offenders under the age of 15, the court must be satisfied that they are a persistent offender. This threshold is designed to ensure that a court should not make a YRO with fostering unless a detention and training order would also be available for that young offender. In addition, under paragraph 4 of Schedule 1 the court has to be satisfied that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living and that the imposition of such a requirement would assist in the offender's rehabilitation. The court must not impose a YRO with fostering unless it has first consulted the offender's parents or guardians (if practicable) and the local authority and the offender has had the opportunity to be legally represented.

761. Given that the alternative is a custodial sentence and the offending behaviour

is due to a significant extent to the offender's living arrangements, the Government's view is that this requirement would be a proportionate response to the risks posed by the offender in order to deter a repetition of offending behaviour. The child or young person will receive a stable home life from specially trained foster parents and undertake structured activities in the daytime to tackle the causes of their behaviour The intervention is designed to benefit the young person, the family and the wider community and is justifiable for the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others. .

762. As regards Article 5, the Government does not consider that this requirement would be a deprivation of liberty within the meaning of that Article. The Government is of the view that the extent to which an offender's liberty will be curtailed is not sufficient to justify a conclusion that liberty has been deprived and not merely restricted (*Guzzardi v Italy* [1981] 3 EHRR 333). Foster parents will have no specific powers to enforce the residence requirement or to override the wishes of the parents. A fostering requirement will not be available under a YRO with ISS. The Government notes that a fostering requirement is also available as a requirement of a supervision order (introduced by Schedule 2 to the Anti-social Behaviour Act 2003).

Breach proceedings

763. Schedule 2 deals with breaches, revocation and amendment of YROs and largely replicates, with modifications, Schedule 8 to the 2003 Act. If an offender breaches a requirement under the YRO he or she may be issued with a statutory warning. Unlike the adult provisions, an offender may receive two warnings in a twelve month period before breach proceedings in a court *must* be instituted. In other cases, for example, if the breach is serious, however, a warning is not necessary and breach proceedings may be instituted. In the event of breach, unlike in the case of adults, a fine may be imposed. If Article 14 is engaged, the government is of the view that this would be a justified difference in treatment on breach of a community order. The Government is of the view that fines are an effective means of dealing with breach of juvenile community sentences. This is due to the fact that the court has a power (and a duty in relation to those under the age of 16) to order that the parent or guardian pay the fine. This disposal, where imposed, may engage the parent in the criminal process and encourage better parenting.

764. The court's power to re-sentence is limited to a power to impose any sentence that the court which sentenced the offender could have imposed on that offender for the offence. The consequence of this is that a young offender could not receive an adult sentence even if he or she was aged 18 or over at the time of breach. This is consistent with the approach taken in relation to referral orders and it is the Government's view that this it is compatible with Articles 6 and 7 of the Convention.

765. In the case of a wilful and persistent breach of a YRO, the court may impose a YRO with ISS notwithstanding the original offence was not such as to attract a sentence of imprisonment and the offence was not so serious as to justify such a

sentence. In the case of a wilful and persistent breach of a YRO with ISS, the court may impose a custodial sentence even if the original offence was not so serious as to justify such a sentence. If an offender wilfully and persistently breaches a YRO for a non-imprisonable offence, and then receives a YRO with ISS which he or she *also* wilfully and persistently breaches, the court will be able to give that offender a detention and training order for a term not exceeding 4 months. The Government is of the view that this is lawful and proportionate penalty for an offender who wilfully and persistently breaches two community orders. The Government also notes that custody may be imposed on an adult offender under Schedule 8 to the 2003 Act for a non-imprisonable offence, where that offender wilfully and persistently fails to comply with a community order.

766. There is a right of appeal available if the court revokes the existing order and re-sentences the offender. There is no right of appeal available from a fine or variation of the Order. The Government considers that neither Article 6 nor Article 13 require there to be an available right of appeal from a "secondary order" made on breach of a YRO.

Part 2: Sentencing

Purposes etc of sentencing: offenders aged under 18

767. Clause 9 inserts section 142A into the 2003 Act and sets out purposes of sentencing for offenders aged under 18 at the time of sentencing. Under this clause, the court must have regard *primarily* to the principal aim of the youth justice system which is to prevent offending by children and other persons aged under 18 (as set out in section 37 of the Crime and Disorder Act 1998).

768. The court must also have regard to other purposes of sentencing which are the punishment of offenders; the reform and rehabilitation of offenders; the protection of the public and the making of reparation by offenders to persons affected by their offences. In addition, the court must have regard to the welfare of the child or young person before them, as set out in section 44 of the Children and Young Persons Act 1933. Section 44 is being amended, however, to make it clear that where a court is sentencing a juvenile offender this duty is subject to the principal aim of the youth justice system.

769. The Government is of the view that this clause does not raise any significant issues in relation to the Convention but it does note that Article 3 of the Convention on the Rights of the Child provides that in all actions concerning children their bests interests are to be a primary consideration. The duty under section 44 of the Children and Young Persons Act 1933, to have regard to the welfare of the particular child or young person before the court, will continue to apply. Indeed, there are numerous safeguards in the youth justice system in order to benefit the welfare of juvenile offenders. The guiding principle of the Practice Direction (Crown Court: Young Defendants) [2000] 1 WLR 659 is that a trial should not expose a young defendant to avoidable intimidation or humiliation and should be conducted with regard to his or

her welfare. This clause clarifies, however, that where the court is sentencing a juvenile offender it must primarily have regard to the principal aim of the youth justice system.

Early removal of prisoners from the United Kingdom

770. Clauses 19 and 20 amend the existing early removal scheme (ERS) in two principal ways. The ERS in its current guise appears in substantially the same form in the Criminal Justice Acts of 1991 and 2003 (sections 46A and 46B and section 260 and 261 respectively). In both cases, the ERS provides the Secretary of State with a discretion so as to enable him to remove from prison a prisoner who is "liable to removal from the United Kingdom" (as defined identically in each Act). Eligibility for removal begins at a set point before the date on which he would otherwise be required to be released from custody. A prisoner removed under the ERS may only be removed for the purpose of removal from the UK. If he or she returns to the UK prior to the expiry of the sentence from which he or she has been removed, he or she is liable to imprisonment for a period equivalent to that which he or she did not serve by virtue of his or her early removal.

771. The first amendment which the Bill proposes seeks to add a new category of prisoner who is eligible for the ERS i.e. those who are "eligible for removal" from the UK. Clauses 19 and 20 define these prisoners as those who have a settled intention of residing permanently abroad following removal. Consequently, the ERS so far as this category is concerned is capable of applying both to British and foreign nationals, in contrast with the current scheme which applies only to those who may be removed from the UK (i.e. foreign nationals who may be removed under immigration legislation).

772. Taken as a whole, the Government does not consider that the first proposed amendment gives rise to any concern as to its compatibility with the ECHR. The proposal expands the ERS on the basis of an objectively discernable criterion which does not discriminate on the basis of nationality or any other category-focused basis. Consequently, although the construction of an early release scheme (a species of which the ERS might be said to be) may fall within the ambit of Article 5 for the purposes of Article 14 (see *Clift v SSHD* [2006] UKHL 54), there is no discriminatory treatment so as to engage Article 14. Even if there could be said to be such treatment the Government does not consider that any discrimination rests upon one of the subsets of "status" listed in Article 14.

773. The second proposed substantive amendment seeks to remove from both Acts the list of those who are excluded from eligibility for the ERS. That list appears in section 46A(3) of the 1991 Act and section 260(3) of the 2003 Act. This might be said to engage Article 14, taken with Article 5. That is because, from a certain angle, the ERS is the mirror of the home detention curfew scheme (HDC) which is a discretionary release power primarily applied to domestic national prisoners and any foreign national prisoners who are not liable to removal from the UK (usually EEA nationals). HDC enables the early release into the community, rather than removal

from the UK, of certain prisoners at a time prior to their mandatory release date. Other than the important difference between release (for HDC) and removal (for the ERS), the two schemes are broadly equivalent in terms of eligibility periods and, until now, those who are eligible for them and those who are statutorily ineligible.

774. There is no current proposal to remove the exclusions in respect of the HDC. Accordingly, removing the statutory exclusions for ERS will create a disparity in the two schemes as to who is eligible. That raises a potential argument that the disparity in treatment between the two schemes is contrary to Article 14, taken with Article 5.

775. The Government rejects such an argument. First, it is far from clear that there is any discriminatory treatment at all, for reasons very close to those already set out in paragraph 772, given that the amendment applies to the new form of ERS, which also applies to certain British nationals. However, the Government recognises that there may remain a counter argument from domestic nationals to the effect that the ERS will still apply for the most part to foreign nationals and is therefore discriminatory in their favour.

776. If the above argument is sufficient to engage Article 14, the Government would argue that any discrimination which might be said to engage Article 14 is justified in the pursuit of a legitimate aim and is a proportionate means of pursing that aim, with the effect that the proposal is compatible with that Article.

777. The Government takes the view that the proposed measure would be justified in pursuit of a legitimate aim in light of the difficult choices which the Secretary of State faces as how best to use limited prison and probation resources in the management, supervision and rehabilitation of offenders. The alleged discriminatory treatment in deleting the ERS exclusions ensures that the Secretary of State will enjoy an increased ability to remove from prison those who, in general, will not pose a continuing risk to the public in the UK. Such individuals will pose no such risk because, on release, they will no longer be resident in the UK. Increased removal of such prisoners will make more widely available resources for ensuring the effective management and supervision in prison and the community of those who cannot be so removed and who pose a direct risk to the protection of the public in the UK. It is perfectly proper that the Secretary of State be able to focus limited resources for use in the supervision and rehabilitation of those who pose a direct risk to the public in the UK.

778. Turning to proportionality the Government would stress that the effect of this amendment is not to guarantee the removal of those now eligible for the ERS but who were ineligible under the existing exclusions. Rather, this proposal simply expands ERS eligibility. An absolute discretion to remove (or not to remove) remains and the existence of such a discretion means that where concerns raised in respect of a prisoner who would previously have been excluded from the ERS, those concerns can fully be taken into account and may, in appropriate case, inform a decision to refuse removal under the ERS. On that basis, the Government takes the firm view that the

impact of any difference in treatment that might be said to engage Article 14 is not so significant that it can be said to be disproportionate measure for the purposes of Article 14.

Fixed Term Recalls

779. Clause 17 seeks to replace the existing recall and re-release procedure, which applies in respect of determinate sentence prisoners, with a more nuanced approach. The new approach is designed to take account of the degrees of seriousness of risk of re-offending and to public protection that may be presented by recalls of certain types of offenders and by the behaviour underlying a particular recall.

780. At present, a determinate sentence prisoner serving a sentence of 12 months or more will be released on licence into the community for a specified portion of her/his sentence. Conditions are imposed upon the licence the effect of which is to require the offender to do or refrain from doing certain things. If he breaches those conditions he may be recalled, meaning that the licence is revoked and he or she may be returned to prison. Upon return to prison the Parole Board will consider whether he or she should be re-released and will make a ruling in respect of that. The relevant re-release and recall provisions governing the operation of recall and re-release are contained in sections 254 and 256 of the 2003 Act. At present, the same provisions apply to all determinate sentence prisoners and there is no fixed period beyond which a recalled prisoner cannot be detained, although the Criminal Justice Act 1991 does require a recalled prisoner to be mandatorily re-released at the three-quarter point of sentence if the Parole Board has not already directed that he or she be released before that point.

781. By contrast, the new recall and re-release scheme will consist of two procedural strata. The first procedure will require a recalled prisoner to be re-released a maximum of 28 days after the date on which he or she was returned to prison following the recall and licence revocation. Her or his case will not be referred to the Parole Board but if the prisoner wishes to challenge the decision to recall her or him, she or he will have an absolute right to request that the Secretary of State refer the case to the Parole Board at any time. The Secretary of State will have to comply with that request. The second procedure will not involve an obligation to re-release a prisoner after 28 days have lapsed. Instead, during the first 28 days the Secretary of State will have a power to re-release a prisoner if he is satisfied that an acceptable release plan is in place that will satisfy any public protection concerns. If no such re-release takes place after 28 days, the Secretary of State will be obliged to refer the case to the Parole Board for its consideration.

782. The two procedures will apply to different types of recalled prisoner. The first procedure will apply to any determinate sentence prisoner not convicted of an offence listed in Schedule 15 to the 2003 Act. Those offences are generally of a sexual or violent nature. The second procedure will automatically apply to any offender convicted of a Schedule 15 offence and may apply, at the Secretary of State's discretion, to any other prisoner. So it is possible in respect of a non-Schedule 15 offender that she or he may be subject to either of the strata depending on the

circumstances of the recall.

783. The Government considers that the proposals enshrined in clause 16 may raises two potential ECHR issues. First, it is clear that the recall of a determinate sentence prisoner to custody following release on a standard licence (rather than under some other early release scheme such as HDC) engages Article 5(4) (see *Smith and West v Parole Board* [2005] UKHL 1). Thus, following recall, a prisoner must be able to take proceedings before a court-like body (which requirement the Parole Board satisfies) to determine whether it remains lawful to detain him or her. In accordance with *Smith and West*, the proceedings in question must allow for the possibility of an oral hearing. In the Government's view both of the new procedures are compatible with Article 5(4). Although there will be no routine referral of cases to the Parole Board under the first procedure, clause 16 ensures that there exists an ability to require the Secretary of State to refer a case to the Parole Board at all times. Once a reference is made the Parole Board will be able to decide whether an oral hearing is warranted, according to the criteria identified in *Smith and West*.

784. The second issue arises from the question as to whether Article 6 is engaged. The current view about whether a decision to recall a prisoner amounts to the imposition of a criminal charge or the determination of a civil right is reflected in *Smith and West* in which there formed a consensus that such a decision does not engage Article 6. That consensus was reached because of the preventative nature of the recall decision, which seeks to protect the community into which an offender has been released from further harm rather than to punish him or her.

785. However, it might be argued that the idea that, under the first procedure, recall is effected for a fixed term of 28 days without automatic reference to the Parole Board undermines the idea of recall as a purely preventative measure. The argument would then run that the 28 day period is more properly described as being punitive in nature and is imposed across the range of cases without any consideration of the circumstances of each case. According to this analysis, recall becomes effectively a re-sentencing exercise resulting in a fresh imposition of a period of imprisonment and for this reason should be characterised for ECHR purposes as the determination of a criminal charge so as to engage Article 6.

786. The Government rejects that analysis. The fact that mandatory re-release will occur after 28 days does not alter the fundamental purpose of licence supervision and recall from licence, which is to protect the public from the risk of further harm where behaviour on licence suggests that such a risk has increased. Thus, recall remains genuinely preventative in nature. The fact that a fixed period of detention may result in a number of cases cannot change that fact. Any attempt to compare that period with a further custodial sentence so as to engage Article 6 is undercut by the fact that a prisoner may apply to the Parole Board for independent consideration of his or her case at any time following return to prison. A review of the case will assess a particular recall's preventative utility and not whether it has achieved some sort of

punitive effect.

Youth Default Orders

787. Clause 23 introduces youth default orders. At present where a magistrates' court would, but for section 89 of the 2000 Act, have power to commit to prison a person under the age of 18 for a default consisting in failure to pay a sum adjudged to be paid by a conviction, for instance a fine, the court may take enforcement proceedings against the parent or guardian under section 81 of the Magistrates' Courts Act 1981. A youth default order would enable the court to order the young offender to comply with an unpaid work requirement (if aged 16 or 17); an attendance centre requirement or a curfew requirement. The amount of time that a young person could be subject to any of these requirements would depend on the amount in default. The unpaid work requirement could be for 20 to 100 hours; an attendance centre requirement could be from between 8 and 24 hours and a curfew requirement for 20 to 120 days. These requirements may be electronically monitored. The provisions in Schedule 5 (breach, revocation or amendment of youth rehabilitation orders) apply to youth default orders with modifications.

788. Neither the unpaid work requirement for 16 and 17 year olds, nor the requirement to attend an attendance centre is new. Section 300 of the 2003 Act extended the unpaid work requirement to 16 and 17 year olds, and section 60(1)(b) of the 2000 Act made attendance centre orders applicable to any age group up to 25 years old. The imposition of a curfew requirement to juvenile offenders to those under 16 is a new burden however. The Bill does not provide for a right of appeal from a youth default order.

789. The Government does not consider that Article 6 or 13 require an available right of appeal from a default order or a youth rehabilitation order or from any subsequent order made on breach of a default order or youth default order. Magistrates would have to take into account an individual's Convention Rights before imposing such an order and judicial review would be available as a remedy where any error of law was identified.

790. The Government considers that a youth default order with a curfew requirement imposed on a defaulter under 16 was a justifiable and proportionate interference with a child's family and private life in accordance with Article 8(2).

<u>Disclosure of information for enforcing fines</u>

791. Clause 25 engages the rights of fined people to respect for private life (Article 8). The effective recovery of fines is necessary to prevent crime and disorder, and any interference with the fined person's rights will be limited to that which is necessary in pursuit of that aim. The information will only be sought in respect of those who have been fined by a court and can only be sought and used for the specific purpose of enforcing the fine.

Part 3: Appeals

Appeals against convictions

792. Clause 26 amends the test in section 2 of the Criminal Appeal Act 1968 so that a conviction is not to be regarded as "unsafe" (and therefore quashed on appeal) if the Court of Appeal is satisfied that the appellant is guilty of the offence of which he or she was convicted. The clause provides an exception where dismissing the appeal would be incompatible with the appellant's Convention rights.

793. The purpose of the amendment is to give effect to the government's policy set out in the Consultation Paper on *Quashing Convictions* published by the Home Secretary, the Lord Chancellor and the Attorney General in September 2006. The intention is that where the Court of Appeal is itself satisfied that the appellant committed the offence of which he or she has been convicted, the conviction should not be quashed as unsafe because of an irregularity before or during the trial process.

794. Article 6 entitles every defendant to a criminal charge to a fair trial. It is clear that Article 6 does not require that a trial be by jury. The division in English law between the functions of judge and jury is not mandated by the Convention and there is no Convention reason why the Court of Appeal cannot, if it feels able to on the evidence before it, make a judgement on guilt as part of looking at the question of safety of the conviction.

795. It is accepted by the ECtHR that unfairnesses in the trial process can be cured by the Court of Appeal in appropriate circumstances – *Edwards v UK* [1993] EHRR 417. The Court of Appeal already has discretion to consider new evidence in considering appeals. It is not proposed significantly to alter or extend those powers or to require the Court of Appeal to form a view as to guilt. If the court is satisfied in the light of all the evidence it considers it appropriate to take into account that the appellant is guilty of the offence, the amendment will prevent the conviction being quashed for other reasons e.g. a misdirection to the jury by the trial judge or improper behaviour by the prosecution.

796. Where gross prosecutorial or police malpractice is evident, this may clearly have an effect on the fairness of proceedings and may go to guilt or innocence. But a trial featuring prosecutorial misconduct will not necessarily be in breach of the Convention if it results in the conviction of the guilty. If there is nonetheless sufficient evidence on which the Court of Appeal can be clear of the guilt of the accused, e.g. because of admissions, unequivocal guilty pleas, or new evidence, it may well be that the proceedings regarded as a whole can still be fair. If the Court is satisfied as to guilt but nevertheless feels that dismissing the appeal would breach the appellant's Convention rights, for example in a case of entrapment where the appellant would not have committed the offence at all but for prosecution misconduct, the clause preserves the Court's power to dismiss the appeal.

797. The Government do not believe that acquittal of a guilty defendant is the

appropriate remedy for mistakes or misconduct in the prosecution process. Rather they should lead to disciplinary or criminal sanctions against those who have behaved improperly. The clause therefore makes express provision for the Court of Appeal to refer cases of misconduct to the Attorney General.

Part 4: Her Majesty's Commissioner for Offender Management and Prisons

798. Part 4 provides for the appointment of a Commissioner for Offender Management and Prisons with the function of investigating complaints and deaths at certain premises such as prisons and probation hostels.

799. Until now the Prisons and Probation Ombudsman has operated without any statutory basis. There has therefore been a question about the extent to which his investigations into deaths in prison custody have been able to contribute, together with other inquiries such as a coroner's inquest, to the United Kingdom's compliance with the Article 2 obligation to conduct an effective investigation. In particular, there has been an issue as to whether the Ombudsman is sufficiently independent of the Secretary of State to comply with the requirement that the person carrying out the investigation should be independent of those who may be implicated in the death.

800. Clause 29 puts the Ombudsman on a statutory footing (to be known as the "Commissioner for Offender Management and Prisons") which will ensure that the ECHR requirement of independence is satisfied. The Strasbourg case-law also imposes other requirements on investigations under Article 2 such as the need for the investigation to be prompt, effective and involve the family of the deceased. The Commissioner's investigations will comply with all these requirements. His or her investigations will usually take place immediately after the death has occurred and while the evidence is still fresh. The Commissioner will also have expertise in matters relating to prisons and so will be well placed to evaluate, draw conclusions and make recommendations. In addition, he or she will normally disclose his or her report to the family of the deceased.

801. The Commissioner's report will be available to the Coroner in preparing for the inquest. Strasbourg case law makes it clear that the investigative obligation does not have to be discharged by a single procedure but can be discharged by different investigations when taken together. The inquest will remain the primary means of satisfying the Article 2 investigative obligation in the prisons deaths context, especially since an inquest, in addition to satisfying the other requirements mentioned above, always takes place in public and enables the family of the deceased to participate fully by questioning witnesses. But the new statutory Commissioner will considerably enhance the extent to which compliance with Article 2 is achieved.

802. Amongst the powers given to the Commissioner, clause 44 contains a prohibition on the disclosure of protected information (as defined in clause 44(1)) except in specified circumstances (given in clause 44(3)). If one of these sets of circumstances is present the clause provides only a power, rather than a duty, to disclose information and it will be a matter for the Commissioner to consider whether

an individual exercise of the power is compatible with his or her obligations under Article 8. This being the case it is considered that this clause is compatible with that Article.

Part 5: Other criminal justice provisions

Alternatives to prosecutions for offenders under 18 – youth conditional cautions

803. Clause 53 and Schedule 11 make provision for the giving of youth conditional cautions to offenders aged 16 and 17. The youth conditional caution is modelled upon the conditional cautions for adults in the 2003 Act with appropriate changes for young offenders. It will only be available where the offender has not previously been convicted of an offence and five requirements are satisfied.

804. The conditions imposed must have the object of facilitating the rehabilitation of the offender; and/ or ensuring the offender makes reparation for the offence; and/or punishing the offender. The conditions may include that the offender attend a specified place at specified times which cannot be for more than 20 hours in total. The conditions could alternatively or also include a financial penalty but only if the youth conditional caution is in respect of an offence prescribed or of a description prescribed by the Secretary of State - which must prescribe the maximum penalty which cannot be more than £100 (though this figure can be changed by Order). The Secretary of State must prepare a Code of Practice in relation to youth conditional cautions. Provision is made for breach of the conditions (which could result in the young offender being prosecuted for the original offence) and a constable will have a power of arrest where he or she has reasonable grounds for believing that a young person has failed, without reasonable excuse, to comply with any of the conditions attached to a youth conditional caution.

805. The Convention issues in relation to a youth conditional cautions are similar to those relating to conditional cautions for adults. As far as the unpaid work condition is concerned it may engage Article 4. The decision to accept a youth conditional caution involving activities might be considered to be work. However, the young offender must agree in writing to the terms of the youth conditional caution after its consequences have been explained to them and they are entitled to legal advice in reaching that decision. Such activities will be undertaken voluntarily. If the offender does not wish to accept a youth conditional caution they can choose to face prosecution in the normal way. There is no additional sanction for breach – failure to comply with a condition does not lead to the imposition of any additional penalty; rather the consequence is simply potential prosecution for the original offence. In the Government's view, compliance with a youth conditional caution is therefore not subject to the menace of a penalty as required by *Van der Mussele*.

806. The youth conditional caution should benefit society by diverting certain low level young offenders out of the criminal justice system, but it also gives clear and immediate benefits to the offender who by accepting a youth conditional caution will

have liability for their offending discharged swiftly and will not face prosecution for their offence or risk a criminal conviction. Accordingly, even if it could be said that carrying out work under a youth conditional caution is carried out subject to the menace of a penalty, the Government considers that the obligations involved are not excessive or disproportionate in light of the benefits to both society as a whole and to the offender.

807. Turning to the power of arrest for failure to comply, the provisions include a power to detain the offender whilst a decision is made on how to deal with the young offender. Such detention will be justified under Article 5(1)(c) of the Convention. The fact that the person was given a youth conditional caution in respect of the offence indicates that it is unlikely he or she will receive a custodial sentence if prosecuted. Nevertheless, the youth conditional caution scheme as a whole is not limited to offences with non custodial penalties and the person's circumstances may have altered since he was given the youth conditional caution. In addition, there may be practical reasons why a short period of detention is necessary to ensure the defendant is present at the police station whilst the police ascertain if the defendant has in fact breached his or her youth conditional caution and for a decision on charging to be taken, though this period of detention will normally be quite limited. Guidance on this will be given in the Code of Practice on youth conditional cautions that the Secretary of State will issue.

808. More generally a youth conditional caution will engage Article 6. However, in agreeing to a youth conditional caution the offender is choosing to waive his Article 6 rights to a trial by a court. The European Court of Human Rights held in the case of *Deweer v Belgium* [1980] 2 EHRR 439 that such a waiver in the context of adults "has undeniable advantages for the individual concerned as well as for the administration of justice, [and] does not in principle offend against the Convention". However, it has also held that any such waiver "must not run counter to any important public interest, must be established in an unequivocal manner and requires minimum guarantees commensurate to the waiver's importance" (*Thompson v UK*, Judgement of 15th June 2004 (Application no. 36256/97)). The youth conditional caution scheme ensures this by providing that a conditional caution may only be issued if the five criteria are met and by providing for a Code of Practice to be issued. This will be similar to the revised Code of Practice for conditional cautions for adults and will provide, among other things that:

- offenders will be advised of their right to seek legal advice to ensure they give informed consent to accepting both the caution and the conditions;

- a youth conditional caution will only be given where the prosecutor considers that it is appropriate to do so;

- the admission by the offender that he or she committed the offence may be made at any time prior to the giving of the youth conditional caution by the authorised person, so long as the offender admits to the authorised person that

they committed the offence. To avoid any suggestion that an admission has been obtained by offering an inducement, the decision on whether a youth conditional caution should be given can only be made by a relevant prosecutor;

- the prosecutor may not authorise the offer of a youth conditional caution in order to secure an admission that could then provide sufficient evidence for a realistic prospect of conviction;

- conditions, which are decided on by the prosecutor, will have to be proportionate to the offence, clearly defined and appropriate.

809. The CPS will publish guidance to prosecutors on the approach to be taken in deciding whether to officer a youth conditional caution for an offence. The DPP will issue guidance under section 37A of the Police and Criminal Evidence Act 1984. The requirements set out in statute, together with the Code of Practice and guidance to be issued, in the Government's view means that the youth conditional caution provisions will meet the requirements of the Convention.

Trial or sentencing in absence of the accused in magistrates' courts

810. Clause 57 amends section 11 of the Magistrates' Courts Act 1980, which provides that at the time and place appointed for trial or adjourned trial the prosecutor appears but the accused does not, the court *may* proceed in the accused's absence. The new section 11(1B) provides that in those circumstances, and where the accused is 18 or over, the court *must* proceed with a trial in the absence of the accused unless it would be contrary to the interests of justice. Where the accused is under 18, the court's discretion to proceed in absence is unchanged. Whatever the age of the accused, the court may not proceed if it considers that there is an acceptable reason for his absence. Clause 57(3) and (4) create exceptions to the current section 11(3), which prohibits the imposition of a custodial sentence in the accused's absence. The effect of the exceptions in new section 11(3A) is that an accused may be sentenced in his or her absence where:

- he or she has been convicted at a trial at which he or she was present, where he or she was bailed to appear at a later sentencing hearing and fails to do so (new subsection (3A)(a)); or

- he or she has been convicted in his or her absence at a trial, where he or she was bailed to attend at that trial or any adjourned trial (new section (3A)(b)).

811. In these circumstances the court will be able to impose a custodial sentence notwithstanding the absence of the accused. Where it does so, however, new section 11(3B) requires that the person must be brought before the court before being taken to prison to start serving the sentence.

812. Article 6 is engaged, in particular Articles 6(1) and 6(3). The Government

does not consider that the clause gives rise to any ECHR issues in terms of the right to notification of proceedings and the entitlement to participate. By retaining the provision in section 11(2) (which provides that, before proceedings in absence of the accused, the Court must be satisfied that the summons was served on the accused within a reasonable time before the trial or adjourned trial or the accused has appeared on a previous occasion to answer the information) and by limiting the power to sentence in absence to situations where the defendant has been bailed to appear in Court, sufficient safeguards will be continue to apply to ensure that a defendant is notified of the proceedings against him or her. The Government also considers that defendants' rights to attend and participate will remain unaffected. A defendant currently has a right to be present and to be represented at his or her trial however he or she may choose not to exercise those rights by voluntarily absenting himself or herself and failing to instruct his lawyers adequately so that they can represent him or her: this will continue to be the case. In relation to the proposed power to sentence in absence, a defendant will still be entitled to be present.

813. The Government considers that the provisions are Article 6 compatible because: (a) by virtue of the proposed interests of justice test, the magistrates will have a wide discretion as to whether or not to proceed in the absence of the defendant; and (b) if they do proceed in the absence of the defendant, it will still be open to the defendant to obtain a fresh determination of the issues on appeal in the Crown Court.

814. In relation to the proposed power to sentence in absence, the Government considers that this provision is Article 6 compatible because: (a) the court would have to take into account the interests of justice (and therefore Article 6) before deciding to impose a custodial sentence in the absence of the defendant; (b) there is an opportunity for a fresh determination on the question of sentence; and (c) the additional safeguard that a defendant could not in fact be committed to custody to serve that sentence without appearing before the court. On this occasion, the court would consider whether the defendant had an acceptable reason for his or her absence or whether the court had exercised its power to proceed in absence wrongly. If so, the court would have discretion to reconsider the sentence in the interests of justice.

Compensation for Miscarriages of Justice

815. Clause 62 amends the current provision for compensating victims of miscarriages of justice in section 133 of the Criminal Justice Act 1988, including by introducing a limit (of £500,000) on the total amount of compensation that may be awarded to a person for a particular miscarriage of justice and providing that the assessor may make deductions from overall compensation by reason of: conduct by the applicant that may have caused or contributed to the conviction; and any other convictions of the applicant and punishment resulting from them.

816. Article 3 of Protocol 7 of the ECHR provides:

"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the

ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such a conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact at the time is wholly or partly attributable to him."

817. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) makes very similar provision.

818. Article 3 of Protocol 7 has not been ratified by the UK and is not a "convention right" as defined by section 1 of the Human Rights Act 1998. Nevertheless, the Government has considered whether imposing limits on compensation and providing for deductions from compensation for financial loss (as well as non-financial loss) on the grounds of convictions and/or contributory conduct is compatible with Article 3 of Protocol 7 ECHR and Article 14 ICCPR.

819. The Government considers that the overall cap on compensation of £500,000, and the cap on compensation for each year's loss of earnings or earnings capacity, are so compatible. In particular, the Strasbourg case law suggests that relatively modest levels of compensation may be acceptable.

820. In relation to deductions from compensation by reason of previous convictions, in the Government's view whilst it is permissible to take these into account**,** only in exceptional circumstances should they reduce compensation to a nominal sum. This view is reflected in new section 133A(4) which provides that if the assessor considers there to be exceptional circumstances which justify doing so, he or she may determine compensation to be a nominal amount.

Part 6: Criminal Law

Extreme Pornographic Images

821. The Government believes that the new offence in clause 64 constitutes an interference with Convention rights under Articles 8 and 10 but that for the reasons set out below this is justified as being in accordance with the law, and necessary in a democratic society for the prevention of crime, for the protection of morals and for the protection of the rights and freedoms of others.

822. The material to be covered by this new offence is at the most extreme end of the spectrum of pornographic material which is likely to be thought abhorrent by most people. It is not possible at law to give consent to the type of activity covered by the offence, so it is therefore likely that a criminal offence is being committed where the activity which appears to be taking place is actually taking place. The House of Lords upheld convictions for offences of causing actual and grievous bodily harm in the case of *Brown [1994] 1 AC 212* which involved a group of sado-masochists who had engaged in consensual torture. The threshold that the clauses have set is very high, so while those taking part might argue that they had consented to it, such consent is not

valid at law.

823. In the case of images of staged activity , the Government believes that banning possession is justified in order to meet the legitimate aim of protecting the individuals involved from participating in degrading activities. This is also the case with images of bestiality, which while involving harm to animals can also involve the non-consensual participation of humans who are harmed in the process of making the images.

824. The Government considers that the new offence is a proportionate measure with the legitimate aim of breaking the demand and supply cycle of this material, which may be harmful to those who view it. Irrespective of how these images were made, banning their possession can be justified as sending a signal that such behaviour is not considered acceptable. Viewing such images voluntarily can desensitise the viewer to such degrading acts, and can reinforce the message that such behaviour is acceptable.

825. The Government considers that the restrictions on this material also achieve the aim of protecting others, particularly children and vulnerable adults, from inadvertently coming into possession of this material, which is widespread on the internet.

Extension of definition of photograph in the Protection of Children Act 1978

826. Clause 72 amends the definition of "photograph" in the Protection of Children Act 1978. The definition is extended to include tracings, produced electronically or by any other means, and data stored electronically which is capable of conversion into such a tracing. The tracing can be derived from either a photograph, or a pseudo-photograph (as defined in the Protection of Children Act), parts of a photograph or pseudo-photograph, or a combination of both. This definition applies to offences committed under the Protection of Children Act, including the making of indecent images of children, as well as the offence of possession of indecent images of children under section 160 of the Criminal Justice Act 1988.

827. Clause 73 amends the Protection of Children (Northern Ireland) Order 1978. The effect is to make the same changes to corresponding Northern Ireland legislation.

828. The Government believes that the extension of this definition constitutes an interference with Article 8 and 10 rights but that for the reasons set out below this is justified as being in accordance with the law, and necessary in a democratic society for the prevention of crime, for the protection of morals and for the protection of the rights and freedoms of others.

829. It is an offence both to make and possess indecent images of children. Technological advancements mean that it is now possible to make electronic tracings of images, without having to keep the original image. This means that it is possible to keep indecent images of children in the form of tracings without keeping the

photograph(s) or pseudo-photograph(s) from which such images are derived. This amendment is designed to close this loophole which has been created by the advance of technology. The tracing itself, when derived from a photograph, is evidence of child abuse, so a child has been harmed in the making of the tracing. Although this will not necessarily be the case where an image has been derived from an indecent pseudo-photograph of a child, pseudo-photographs, in the same way as photographs, serve to reinforce inappropriate feelings towards children, one of the most vulnerable groups in society.

830. The Government believes that extending the definition to include tracings is necessary in order to protect children, and to keep up with technological advancements which allow the spread of indecent images of children.

Increase of penalty for publication of obscene articles

831. Clause 71 amends the Obscene Publications Act 1959 to increase the maximum penalty on indictment for the publication etc of obscene articles under section 2 of that Act from three years to five years. It is the Government's view that any interference with Article 5 would be justified under Article 5(1)(a) as lawful detention after conviction by a competent court. This increase in penalty does not offend against the prohibition on retrospective penalties in Article 7 as the increase will not apply to any offence committed before the commencement of this clause.

Offences relating to nuclear material and nuclear facilities

832. The purpose of clause 79 and Schedule 16 is to make amendments to the Nuclear Material (Offences) Act 1983 ("the 1983 Act") and the Customs and Excise Management Act 1979 in order to facilitate ratification by the United Kingdom of amendments made in 2005 to Article 7 of the Convention on the Physical Protection of Nuclear Material ("the Convention").

833. Article 7 of the Convention requires each State Party to make certain descriptions of conduct a punishable offence under its national law and to provide for appropriate penalties which take into account the grave nature of the conduct in question. Articles 8, 9 and 10 require each State Party to establish jurisdiction over these offences not only when they are committed in its territory but also when they are committed on board a ship or aircraft registered in that State, by a national of that State or by a person who is presented in its territory and whom the State does not extradite.

834. The offences required by Article 7 include theft of nuclear material, demanding nuclear material by threat or force, using nuclear material without lawful authority with intent to cause death, injury or damage to property and threatening to use nuclear material in that way. Article 7 applies only to nuclear material *"used for peaceful purposes"*.

835. The 1983 Act was passed in order to complete the implementation of Article 7 in UK law (implementation was already partly achieved by means of existing

statutory and common law offences). The 1983 Act creates a number of offences. In particular, as required by the Convention, it creates offences constituted by conduct outside the UK committed by a person of any nationality. Section 6(1) provides that the offences only apply to nuclear material used for peaceful purposes. Section 6(2) provides that –

> *"If in any proceedings a question arises whether any material was used for peaceful purposes, a certificate issued by or under the authority of the Secretary of State and stating that it was, or was not, so used at a time specified in the certificate shall be conclusive of that question."*

836. Article 7 was amended in 2005. A number of additional descriptions of conduct have been added. These include additional offences in relation to nuclear material used for peaceful purposes and a number of new offences relating to nuclear *facilities* used for peaceful purposes. As far as nuclear material is concerned, the new offences include offences of using nuclear material with intent to cause damage to the environment and moving nuclear material into or out of any State without lawful authority. As far as nuclear facilities are concerned, the new offences include an offence dealing with attacks on nuclear facilities intended to cause death, injury, property damage or environmental damage by means of exposure to radiation or the release of radioactive substances. The definition of *"nuclear facility"* (so far as material to Article 7) is as follows–

> *"…a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of…"*

837. In addition to restricting the application of revised Article 7 to nuclear material and facilities used for peaceful purposes, Article 2(5) of the amended Convention provides that –

> *"This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material."*

838. Article 2(4)(b) of the amended Convention provides that the Convention does not govern the activities of armed forces during an armed conflict or activities undertaken by a State's military forces in the exercise of their official duties.

839. Clause 79 and Schedule 16 are intended to create the new offences necessary to give effect to amended Article 7 of the Convention. The new offences relate to nuclear material and nuclear facilities used for peaceful purposes. Paragraph 6(4) of Schedule 16 inserts new provisions into the 1983 Act which provide that nuclear material is not used for peaceful purposes if it is used or retained for military purposes and that a facility is not used for peaceful purposes if it contains any nuclear material used or retained for military purposes. Paragraph 6(5) amends section 6(2) of the 1983 Act – which provides for the Secretary of State to be able to certify whether nuclear material is used for peaceful purposes or not – so that it relates also to

facilities. Therefore, if in any proceedings a question arises whether a nuclear facility was used for peaceful purposes (including whether it contained nuclear material used for military purposes), the question will be settled conclusively by a certificate of the Secretary of State. A certificate will similarly settle the question of whether nuclear material used for peaceful purposes was or was not used for military purposes.

840. Where the procedure in amended section 6(2) is triggered in any prosecution under the 1983 Act, the effect will be that one element of the alleged offence will be established conclusively by a certificate of the Secretary of State. As such, section 6(2) limits to an extent both the right to a court and the presumption of innocence guaranteed by Article 6 of the ECHR. However, the Government considers that the limitation on the right to a court is justified on the grounds that it pursues legitimate aims and goes no further than is necessary to achieve those aims; and that the limitation on the presumption of innocence is confined within reasonable limits.

841. The offences are serious ones. The majority are punishable on conviction on indictment by a maximum penalty of life imprisonment. The offences are aimed primarily at deterring and punishing activities by terrorists and organised criminals and activities which could compromise nuclear non-proliferation. If misused or attacked by such people, nuclear material and nuclear facilities could potentially cause very serious injury and damage. Among other things, the certification procedure addresses potential difficulties of proof in order to prevent these difficulties from undermining the effectiveness of the offences. Where the nuclear facility or material is located outside the United Kingdom, the Secretary of State would, for example, be able to seek and take account of the views of other States and of the IAEA and reach a conclusion which takes account of those views. The procedure also addresses potential sensitivities about the presentation of evidence about the peaceful or non-peaceful status of a nuclear facility.

842. Although a certificate of the Secretary of State will have the effect of conclusively establishing an element of the alleged offence, the other elements of each offence (including intention or recklessness where relevant) will fall to be proved beyond reasonable doubt and determined by the court in the usual way.[1] The procedure is not triggered unless the question of whether material or a facility was used for peaceful purposes does in fact arise in any proceedings.

843. Further, judicial review of the Secretary of State's decision is not ousted and this acts as a check on decisions which are legally wrong, arbitrary or irrational.

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[1] One of the new offences is an extraterritorial offence covering the unlawful movement of nuclear material into or out of a State (see new section 1C inserted by paragraph 3 of Schedule 16). For the purpose of that offence there is a provision to the effect that a statement in a certificate of a foreign government that the movement was unlawful is to be evidence that it was unlawful. However, the statement will not be conclusive. The Government does not therefore consider that this procedure raises ECHR concerns.

844. Article 2(4)(b) of the amended Convention (described above) is implemented by new section 3A, added to the 1983 Act by paragraph 5 of Schedule 16. New section 3A(1) provides that the new offences, and the existing ones in the 1983 Act, do not apply to acts done by the armed forces of a country or territory in the course of an armed conflict or in the discharge of their functions. New section 3A(2) provides that if the question arises in any proceedings whether an act done by the armed forces was an act done in the course of an armed conflict or in the discharge of their functions, a certificate issued by the Secretary of State stating that it was, or was not, such an act is to be conclusive of that question.

845. The new section 3A(2) procedure engages rights under Article 6 of the ECHR in the same way as the section 6(2) procedure and is intended to address similar difficulties. For the same reasons the Government considers that the limitation which the procedure imposes on the right to a court pursues legitimate aims and goes no further than is necessary to achieve those aims, and that the limitation which it imposes on the presumption of innocence is confined within reasonable limits. Further, as with section 6(2), the Secretary of State's determination will be judicially reviewable.

846. Provisions similar to those in new section 3A(2) and (3) exist in section 1 of the Nuclear Explosions (Prohibition and Inspections) Act 1998 and section 48 of the Anti-terrorism, Crime and Security Act 2001.

847. Finally, the Government also considers that the fairness of a trial – taken overall – would not be compromised by the operation of new section 3A(2) or amended section 6(2). It is not inconceivable that, in practice, both procedures might be engaged in the same proceedings, but this does not affect the Government's conclusion. All other elements of the offence would be determined by the court in the usual way applying the usual criminal standard of proof.

Imprisonment for unlawfully obtaining etc. personal data

848. Clause 75 will increase the penalties available for offences under section 55 of the Data Protection Act 1998, to include the possibility of two years' imprisonment on indictment and six months' imprisonment on summary conviction, in addition to the existing fines.

849. Under section 55, offences are committed if a person knowingly or recklessly obtains, discloses or procures the disclosure of personal data without the consent of the data controller, or if a person sells or offers to sell personal data obtained in this way. There are a number of defences, including that disclosure was justified as being in the public interest. Clause 75 would not change the ingredients of the offences or the available defences.

850. The increased penalties are designed to strengthen the protection of individuals' rights under Article 8 and under the Data Protection Act and EC Data Protection Directive. They are intended to provide a greater deterrent to those who

trade in wrongfully obtained personal data.

851. There may be cases where the offences and the increased penalties engage Article 10 because they inhibit people from communicating and receiving information. Press organisations have argued that increasing the penalties will give rise to a "chilling effect" which is incompatible with journalists' rights under Article 10(1).

852. Any such interference will be prescribed by law because the power to impose the new penalties will be set out in the amended Data Protection Act. Any interference will also be necessary to pursue a legitimate aim provided for in Article 10(2), since the purpose of the increased penalties is to provide greater protection for the rights of others, to prevent crime and to prevent the wrongful disclosure of confidential information.

853. Reports from the Information Commissioner have provided clear evidence that there is a lucrative trade in wrongfully obtained personal data, and that the existing fines do not sufficiently deter the activities which are prohibited by section 55. The increased penalties are considered to be a proportionate way of addressing this problem. Together with the existing definitions of the offences and defences, they strike an appropriate balance between the Article 10 rights of the people who wish to disclose personal information and the Article 8 rights of the individuals to whom the information relates.

854. Ultimately, the court will be responsible for ensuring that each individual sentence is compatible with the Convention, because the court is a public authority which must act compatibly with the Convention under section 6 of the Human Rights Act 1998. The court must decide the level of sentence which is justified by the defendant's conduct, balancing any interference with the defendant's Article 10 rights against the need to protect obligations of confidentiality and the Article 8 rights of third parties.

855. The increased penalties will also engage Article 5. However, imprisonment will only be imposed after trial and conviction by the relevant court, in accordance with the procedural protections which apply in all criminal proceedings.

Part 8: Violent offender orders

856. Part 8 makes provision for VOOs. A VOO is a civil preventative order, designed to protect the public from the risk of future serious violent harm caused by the person subject to the order. In order to be eligible for a VOO, a person must come within clause 84; essentially he must have committed a specified offence and have been sentenced to at least 12 months in custody in respect of that offence. A VOO will contain such prohibitions as the court making the order considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by the person subject to the order. The provisions on VOOs are largely modelled on those for Sexual Offences Prevention Orders contained in Part 2 of the Sexual

Offences Act 2003.

857. The Government is of the view that the provisions on VOOs engage Article 6, however only in so far as Article 6 deals with the determination of a person's civil rights. The Government considers that VOOs will be civil in nature, like other orders such as Sexual Offences Prevention Orders and ASBOs; they will not have any punitive purpose. Persons in respect of whom a VOO is made will be able to apply for the order to be varied or discharged. They will also have a statutory right of appeal against the making of the VOO, against any variation or renewal of a VOO and against any refusal of a court to vary or discharge a VOO. The Government is of the view that the requirements of Article 6(1) relating to the determination of a person's civil rights are met and that the provisions of Article 6 relating to criminal charges are not engaged.

858. The Government is of the view that the provisions on VOOs do not engage Article 7. The VOO is not imposed as an additional punishment for a specified offence. The purpose of the VOO is to prevent the risk of future serious violent harm and before a VOO can be made, an up to date assessment of risk would be needed. Breach of the terms of a VOO will by law be made a criminal offence, in line with arrangements already in place for other civil orders. However, this is in line with Article 7 as breach of a VOO will be a criminal offence at the time that the breach is committed.

859. When making a VOO, a court will need to ensure that it does so compatibly with the Convention rights. A court may, for example, impose a VOO which contains a prohibition on a person having contact with a member of his family, because the court considers that this is necessary to protect that family member from the risk of serious violent harm. This would engage Article 8. However, the Government is of the view that this can be justified under Article 8(2) as being in accordance with the law and necessary in the interests of public safety, the prevention of disorder or crime or for the protection of the rights and freedoms of others.

860. Similarly, a court may wish to impose a VOO which contains a prohibition on a person leaving his or her home during certain hours, thereby imposing a curfew. Provided the curfew was a "restriction" of liberty, rather than a "deprivation" of liberty it would not engage Article 5. This is because Article 5 has been held not to be concerned with mere restrictions on movement (see, for example, *Raimondo v Italy* [1994] 18 EHRR 237 at [99], a decision of the European Commission of Human Rights). The Government does not consider that a prohibition in a VOO on leaving a residence between (for example) 7pm and 7am would constitute a deprivation of liberty. In practice, however, the Government does not consider that such a prohibition is likely to be imposed.

861. All persons subject to a VOO will also be subject to the notification requirements contained in clauses 91 to 97. Under these provisions, a person will be required to provide to the police on at least a yearly basis personal information such as

his or her name, date of birth, home address and the address of any other premises at which he or she regularly resides or stays. A person gives a notification by attending in person at a police station and giving the information orally. These requirements engage Article 8. However, the Government considers that they can be justified as in accordance with the law and necessary in the interests of public safety, the prevention of disorder or crime, or for the protection of the rights and freedoms of others. Imposing notification requirements on all offenders subject to a VOO in this way will enable the police to keep up to date records of relevant information, in order to monitor compliance with the terms of the VOO.

862. When a person attends for giving such notification, the police can require the person to allow his or her fingerprints to be taken and/or photograph any part of him in order to verify his identity. The police will need to exercise this power compatibly with the Convention rights. The exercise of this power would engage Article 8. However, the Government is of the view that it can be justified as in accordance with the law and necessary in the interests of public safety, the prevention of disorder or crime, or for the protection of the rights and freedoms of others. Exercising this power will help the police to monitor whether the notification requirements are being complied with. The police will be able to check that the person providing the notification is in fact the person subject to the VOO. They will also be able to check whether he has given false information as to his identity. This is important as failing to give a required notification or giving false information will constitute a criminal offence. Confirming the identity of the person will also assist the police in their further work of monitoring compliance by the person with the terms of his VOO.

863. Clause 94 contains a power for the Secretary of State to make regulations setting out requirements to notify when a person subject to a VOO travels outside the United Kingdom. Such requirements would include giving notice of the date of leaving the United Kingdom and the country to which the person will travel. Such power to make regulations will need to be exercised compatibly with the Convention rights. Such regulations would engage Article 8. However, the Government is of the view that they could be justified as in accordance with the law and necessary in the interests of public safety, the prevention of disorder or crime, or for the protection of the rights and freedoms of others. Exercising this power will assist the police in monitoring and enforcing compliance with a VOO. It will enable them to keep up to date with the movements of offenders subject to a VOO, to know precisely when an offender is outside the UK, and to deploy resources for the monitoring of compliance accordingly.

864. Clauses 96 and 97 contain a power for a court to make a parental direction where a VOO is made in respect of a person who is under 18. Where a parental direction is made, the person having parental responsibility for the child (the "parent") is treated as being subject to the notification requirements, instead of the child. Further, the parent must ensure that the child accompanies the parent to the police station whenever a notification is given.

865. A court will have to exercise its power to make parental directions compatibly with the Convention rights. If a direction is made, it is likely to engage Article 8. However, the Government considers that this can be justified as in accordance with the law and necessary in the interests of public safety, the prevention of disorder or crime, or for the protection of the rights and freedoms of others. As with notification requirements placed upon adult offenders subject to a VOO, this will enable the police to keep up to date records of relevant information, in order to monitor compliance with the terms of the Order. Putting the requirement on the parent rather than the child will greatly increase the likelihood of compliance; this mirrors similar provisions already in place for Sexual Offences Prevention Orders.

866. Clause 99 contains provision for the supply of information notified to the police under clauses 91(1), 92(1) or 93(1). Under this clause, the police can, for the purposes of the prevention, detection, investigation or prosecution of the offences under Part 8 disclose such information to the Secretary of State or to a person providing services to the Secretary of State, for the purpose of checking the accuracy of the information and preparing a report. Clause 100 contains provision for this report to be disclosed to the police. These clauses are likely to engage Article 8. However, the Government is of the view that they can be justified as being in accordance with the law and necessary in the interests of public safety, the prevention of disorder or crime, or for the protection of the rights and freedoms of others.

Part 9: Anti-social behaviour

Premises closure orders

867. Part 1A closure notices engage subjects' Article 8 rights to respect for private and family life and their Article 1 Protocol 1 rights of property. However, the Government considers that any interference caused by the police or local authority imposing a Part 1A closure notice would be reasonably limited: the effect would merely be to restrict the use of the premises to residents and owners rather than to deny access to all persons, and the maximum duration of the restrictions (before a magistrates' court would have the opportunity for scrutiny) would be 48 hours. Any interference is considered justified since it would be prescribed by law and be proportionate in pursuit of legitimate aims. In the case of Article 8 the aims are the prevention of disorder (or crime) and the protection of the rights and freedoms of others, and in the context of Article 1 Protocol 1 the aim is upholding the public interest with respect to possessions that are not being peacefully enjoyed.

868. Safeguards include that: the police and local authority, as public bodies, are bound to act compatibly with the Convention; both have experience dealing with disorder and housing related problems; both bodies must consult one another before issuing notices; and non-statutory guidance will help ensure notices are only served as a matter of last resort. To the extent that the issue of Part 1A closure notices engages Article 6 because civil rights are affected, even though the police or local authority's decision may not satisfy Article 6 safeguards per se, the availability of review and appeal to a court with such safeguards makes the process permissible under the

Convention (*Bryan v United Kingdom*).

869. Similar Article 8 and Article 1 Protocol 1 arguments apply in respect of court imposed Part 1A closure orders. Although Part 1A closure orders prevent anyone (including residents and owners) from accessing the premises for up to 3 months at a time, the court, another body bound to act compatibly with the Convention, is equipped with the Article 6 safeguard so that it will only reach its decision after a fair hearing of the issues. Also, the court can only make a Part 1A closure order to the extent that it is satisfied it is *necessary* to prevent the occurrence of the significant and persistent disorder or persistent serious nuisance to members of the public. Furthermore, a Part 1A closure order will not affect property rights in the premises, such that tenants or owner occupiers would still be able to return to the premises after the order ceases to have effect. These provisions are also without prejudice to the local authorities' existing duties to guard against homelessness by providing accommodation where appropriate.

Individual support orders

870. The provisions that extend the availability of ISOs (so as to cover ASBOs under sections 1B and 1C of the Crime and Disorder Act 1998, and to allow applications to be made in proceedings subsequent to those in which the original ASBO was made) are considered to be compatible with the convention rights. Article 6 is satisfied as the ISO is made by a court, and any requirements under the order which impinge on the subject's Article 8 rights to respect for a private and family life are justified in the interests of preventing disorder or crime or protecting the rights of others. ISOs may only be imposed if it would be desirable in the interests of preventing anti-social behaviour to do so.

Offence of causing nuisance or disturbance on hospital premises

871. Clauses 104 to 107 and Schedule 18 create a new criminal offence which will be committed where a person causes, without reasonable excuse and whilst on NHS premises (HSS premises in Northern Ireland), a nuisance or disturbance to an NHS staff member on the premises in connection with his or her work and refuses to leave the premises when asked to do so by a police constable or NHS staff member. A person will not commit the offence if he or she is on the premises for the purpose of obtaining medical advice, care or treatment for himself or herself or is otherwise there in accordance with medical advice. The penalty on conviction will be a fine not exceeding level 3 on the standard scale.

872. A power to remove a person reasonably suspected of committing or having committed the offence from the NHS premises concerned is also created and conferred on police constables and any NHS staff member who has been authorised by an NHS trust, Primary Care Trust or NHS foundation trust to exercise the power of removal ("the authorised officer"). An authorised officer may also authorise other NHS staff members to remove a person the authorised officer reasonably suspects has committed or is committing the offence. The power of removal will not be exercisable by an authorised officer if that authorised officer has reason to believe that the person

to be removed may require medical treatment, care or advice or that removal would endanger that person's physical or mental health.

873. The Secretary of State is given the power to issue guidance about the exercise of the powers of removal and it is intended that such guidance will set out detailed guidelines as to the procedures and training that could be put in place by NHS trusts, Primary Care Trusts and NHS foundation trusts to ensure that there are safeguards in place to prevent inappropriate use of the powers. Both the authorised officers and the NHS bodies will be under a duty to have regard to this guidance.

874. The offence and the related powers of removal are aimed at tackling low level nuisance behaviour which causes difficulties for staff in NHS hospitals and can, therefore, have a negative impact on the delivery of healthcare.

875. Articles 2, 3, 6, 8, 9, 10, 11 and 14 of the Convention are considered to have potential application to these provisions.

876. Articles 2 or 3 could be engaged if the powers of removal were exercised so as to remove someone who was in need of medical treatment from NHS premises and this removal prevented the person from receiving medical treatment leading to death (Article 2) or to suffering which fell within the terms of Article 3. The Government does not consider that the provisions are incompatible with Articles 2 and 3 because a variety of safeguards against such a situation arising are built into the provisions as detailed below.

877. A person will not commit the offence (and thus the power of removal will not be available) if he or she is on NHS premises for the purpose of obtaining medical advice, care or treatment or is otherwise there in accordance with medical advice. Even if a person had not entered onto hospital premises with the purpose of seeking medical advice or obtaining treatment, an authorised officer will not be able to authorise his removal if he or she has reason to believe that the person may need medical treatment or advice or removal would endanger his or her physical or mental health. In addition, the guidance which NHS bodies and the authorised officer will be under a duty to have regard to will provide guidelines on the matters to be taken into account when deciding whether there is reason to believe that a person may need medical treatment or advice or that removal may endanger a person's physical or mental health, and when a medical practitioner would be expected to be consulted in cases of doubt, to ensure that this safeguard is robust. Other safeguards relating to the training of authorised officers and procedures to be in place with regard to the exercise of the power of removal will also be outlined in the guidance.

878. The Government does not consider that there is any question of the provisions being incompatible with Article 6 as any person suspected of having committed the offence will be presumed innocent until proved guilty according to law and will only be guilty of the offence if found guilty by a court in accordance with the standard criminal justice processes. The Government does not consider that any argument that

could be made that a police constable or authorised officer who exercises the power of removal is "determining a person's civil rights or obligations" and that there should be some form of prompt, independent, fair and public hearing before a person is removed would be entertained by a court and so does not consider that the fact there is no hearing before a person is removed is a breach of Article 6.

879. If the power of removal is exercised to remove persons who are visiting relatives in hospital, it is possible that this could be regarded as an interference with family life (both as an interference with the visitor's rights and the rights of the person being visited) and Article 8 could be engaged. However, the Government considers that any interference with the Article 8 rights resulting from the exercise of the power of removal would be in accordance with law and would be in pursuit of a legitimate aim. In particular, removing a person causing a nuisance to NHS staff would enable those staff to undertake their duties more efficiently and would therefore benefit the health of patients in that NHS facility (falling within the category of "protection of health"), would protect the NHS staff themselves from being subject to interferences with their own rights and freedoms and may prevent a nuisance situation from deteriorating further into a situation of violence (falling within "the prevention of disorder and crime"). In addition, the Government considers that any interference would be "necessary in a democratic society" (i.e. proportionate to the legitimate aim pursued) as a person who has a reasonable excuse for causing a nuisance or disturbance will not commit the offence (and be subject to the power of removal) and so if, for example, a visitor had received distressing news about a relative's health this would be regarded as a reasonable excuse for nuisance behaviour and that person would not commit the offence. The Government therefore considers that these provisions are compatible with Article 8 of the Convention.

880. The Government considers that it is possible the exercise of the powers of removal could engage Articles 9, 10 and 11 if used to remove persons who had come to protest or preach on a hospital site (and in so doing had committed the offence) on any number of subject matters such as abortion, genetic testing or research techniques used by the hospital. The rights conferred by these Articles are all qualified rights, however, and so an interference with these rights is justified if it is prescribed by law, is for a legitimate aim and is necessary in a democratic society (i.e. is proportionate).

881. These provisions of the Bill will be in accordance with law, pursue a number of legitimate aims, including the protection of health, the prevention of crime and the protection of the rights and freedoms of others and are, in the Government's view, proportionate. The offence will only be committed if a nuisance or disturbance is caused to NHS staff on NHS premises and if the protestors refuse to leave when asked. If it is then deemed appropriate for the protestors to be removed, they will only be removed from the NHS premises and will be able to continue their protest at another location. The Government's view is that any interference with their rights in relation to the protest will be proportionate to the need for NHS staff to be able to deliver healthcare in an environment where they are not inhibited and distracted from doing so, to the detriment of other patients, as a result of nuisance behaviour. The

Government therefore considers that these provisions are compatible with Articles 9, 10 and 11 of the Convention.

882. The Government has considered whether, if any of the other Articles were engaged, Article 14 which provides that the Convention rights and freedoms should be secured without discrimination, would also be engaged by these provisions of the Bill. The Government does not consider that these provisions would apply to any particular group (whether on grounds of race, religion, nationality, language or otherwise) in a discriminatory way as only persons who cause a nuisance or disturbance to NHS staff on NHS premises without reasonable excuse, who are not on the premises for the purpose of obtaining medical care, treatment or advice or otherwise in accordance with medical advice, and who refuse to leave when asked to do so, will be affected. Guidance will be provided on what might constitute a reasonable excuse for nuisance behaviour, for example, the receipt of distressing news or a communication problem due to language barriers.

883. Respondents to the public consultation about the need for this offence did suggest that persons with mental health problems, learning disabilities, autistic spectrum disorders, dementia and other medical conditions which affect behaviour (which could be considered "other status" for the purposes of Article 14) could be affected by these provisions in a discriminatory way. However, the Government considers the fact that a person will not commit an offence if he or she is on the premises to obtain medical treatment, care or advice or otherwise in accordance with medical advice, and will not be removed if the authorised officer has reason to believe that the person may need medical care, treatment or advice or to remove him or her would endanger his physical or mental health, as well as safeguards relating to the training of authorised officers and procedures to be followed in exercising the powers (including when medical practitioners would be expected to be consulted before the power of removal is used), should ensure that the powers are not used in a way which discriminates against such persons. The Government does not therefore consider that Article 14 of the Convention is engaged.

Part 10: Policing

Misconduct and efficiency procedures

884. Part 1 of Schedule 19 amends the Police Act 1996 to introduce changes in the police misconduct and performance procedures. Paragraph 11(2) and (3) amends the composition of police appeals tribunals. Part 2 of that Schedule makes equivalent amendments to the Ministry of Defence Police Act 1987 for the purposes of police appeals tribunals for members of the Ministry of Defence Police and Part 3 makes equivalent amendments to the Railways and Transport Safety Act 2003 for the purposes of the British Transport Police. The Government are of the view that Article 6(1) does not apply to proceedings at a PAT.

885. A PAT is a bespoke system for hearing appeals by police officers against dismissal and other serious police disciplinary sanctions arising out of procedures for

dealing with misconduct or unsatisfactory performance or attendance. The Government is extending this system to apply to special constables as well as members of a police force.

886. The ECtHR has long held that disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of Article 6(1). This exclusion did not however apply to claims for purely pecuniary rights arising in law, as these do concern a 'civil right'. The 1999 ECHR case of *Pellegrin v France* (Application no. 28541/95) became the leading case and ruled that the only disputes excluded from the scope of Article 6(1) were those which were raised by public servants who exercise public power and duties designed to safeguard the interests of the State. It was held that the State has a legitimate interest in requiring of these public servants a special bond of trust and loyalty; and the police and armed forces were cited as a prime example of such servants.

887. The recent case of *Eskelinen and others v Finland* (Application no. 63235/00) has revisited the principle in *Pellegrin* and ruled that the fact that a person is in a sector which participates in the exercise of power conferred by public law is no longer in itself decisive. It must now be demonstrated that the person did not have a right of access to a court and that the exclusion of rights under Article 6 is justified. This justification must be on the basis that the subject matter of the dispute relates to the exercise of State power or that it called into question the special bond of trust and loyalty. Therefore ordinary labour disputes concerning allowances for example, will not be excluded from Article 6(1).

888. The Government considers that disputes concerning the termination of service of police officers arising out of procedures for dealing with police misconduct and unsatisfactory performance or attendance remain excluded from the scope of Article 6(1). Applying the new tests under *Eskelinen*, police officers are excluded from access to the normal courts in relation to claims arising from dismissal (and other sanctions); and the justification for this is that such disputes fall squarely within those that call into question the special bond of trust and loyalty between public servant and State. Police officers are, by virtue of their office, in a special position of public trust. The State expects and requires police officers to exercise their powers and duties in accordance with high standards of integrity, competence and professionalism. Any issues of misconduct or unsatisfactory performance or attendance by police officers directly undermine the special relationship that exists between police officers and the State.

889. Notwithstanding that Article 6(1) does not apply, the Government is satisfied that the composition of the PAT proposed in paragraph 11 of Schedule 19 to the Bill is appropriate to guarantee a fair hearing for police officers. For senior officers, the PAT will be chaired by a lawyer appointed under an independent procedure overseen by the Ministry of Justice and the other members will be Her Majesty's Chief Inspector of Constabulary and the permanent secretary to the Home Office (or persons nominated by them). For non-senior officers, the PAT will again be chaired by an

independent lawyer and the other members will comprise a senior officer, a member of the police authority for the force of which the officer concerned is a member and a retired staff association member. These persons will be appointed by the relevant police authority. Although in the case of non-senior officers the persons on the PAT might include an officer or a retired officer from the same force as the officer concerned, we consider that it is necessary for PATs to be composed of persons with relevant policing experience. Assessing matters such as police misconduct can only properly be done by persons with such experience, and the PAT has a balanced membership, including a member from both the staff side and a serving officer, as well as a member of the police authority, which is structurally independent of the police force. Further, the chair of the PAT is entirely independent.

890. In short, the Government considers that Article 6(1) of the ECHR does not apply to disputes concerning the dismissal of police officers under the misconduct or performance procedures, but are satisfied that the appeals process guarantees such officers a fair hearing.

Part 11: Special immigration status

891. The provisions in Part 11 will enable the Government to deny leave to enter or remain to non-British citizens who are liable to deportation but who cannot be removed from the UK because of Convention rights and who are:

- excluded from the protection of the Refugee Convention under Article 1F (i.e. those who have committed war crimes, crimes against peace or crimes against humanity; those who have committed serious non-political crimes prior to arrival in the United Kingdom; those who are guilty of acts, such as terrorism, that are contrary to the purposes and principles of the United Nations); or

- guilty of serious criminality in or outside the United Kingdom.

892. A person will not be designated if to do so would breach the United Kingdom's obligations under the Refugee Convention or their rights under the Community treaties.

893. The provisions will allow reporting and residency conditions to be imposed on designated persons. Designated persons will be denied the right to work and access to mainstream benefits. Where it appears to the Secretary of State that such persons are destitute or are likely to become destitute they may be supported by the Border and Immigration Agency.

894. The rights which are most relevant are Article 1 Protocol 1 ECHR (protection of property) and Article 14 ECHR (prohibition of discrimination) in the application of Article 1 Protocol 1.

895. These provisions may fall within the ambit of Article 1 Protocol 1 for the reasons set out below. Not all persons in the UK who are not British citizens[2] will be designated. Therefore, it is accepted that certain categories of non-British citizens will be treated differently to those non-British citizens who are designated. However, the Government does not think this difference in treatment is discriminatory.

896. The leading case in this area is *Carson v Secretary of State for Work and Pensions* [2005] UKHL 37. The test is essentially: (1) Do the facts fall within the ambit of one or more of the Convention rights?; (2) Was there a difference in treatment in respect of that right between the complainant and others put forward for comparison?; (3) Was the difference in treatment on one or more proscribed grounds?; (4) Were those others in an analogous situation?; (5) Was the difference in treatment objectively justifiable and proportionate? [3]

897. It is well established that a state may control the entry into and expulsion of aliens from its territory. This is achieved in the United Kingdom through a statutory scheme of immigration control which is contained in the Immigration Acts. The statutory scheme sets out who requires leave to enter or remain in the United Kingdom. The Court of Appeal clearly noted, in the judgment of *S & Others* [2006] EWCA Civ 1157, that the Secretary of State was entitled to introduce a new category or status within the statutory scheme of immigration control that could be applied to persons who, through their own conduct, were not entitled to leave to enter or remain.

898. Designated persons are persons who, because of their conduct, the Secretary of State is concerned to remove from the United Kingdom. However, where that person cannot be removed compatibly with the State's obligations in the Human Rights Act 1998, they will be designated. This is in recognition of the fact that whilst there is a legal barrier to removal designated persons are not in the same position as other non-British citizens, such as refugees or persons exercising rights in Community treaties. They do not have rights to residency in the United Kingdom or rights to access mainstream benefits flowing from a recognised status (e.g. refugee status). Unlike these other non-British citizens in the UK, were it not for the legal barrier to removal, designated persons would be removed from the United Kingdom.

899. The Government does not consider that it is discriminatory to create a mechanism that allows for designated persons to be treated differently within the statutory scheme of immigration control. As noted above and as recognised by the Court of Appeal, it is the State's right to control entry into and expulsion of aliens from its territory.

900. It is the practical effects flowing from designation in respect of Article 1 Protocol 1 which, in the Government's opinion, result in differential treatment which

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[2] Within the meaning of section 2 of the 1971 Immigration Act.
[3] *Carson v Secretary of State for Work and Pensions [2005] UKHL 37.*

is not discriminatory. In the first instance, the Government does not consider that designated persons are in a comparable situation to any other category of non-British citizen in the UK for the reasons set out above (i.e. designated persons do not have residency rights or any other recognised status in international law).[4]

901. In any event the Government thinks that the differential treatment flowing from these provisions is justified and proportionate on the grounds of maintaining effective immigration control. These provisions apply only in respect of serious criminality and exclusion from the Refugee Convention. They will not be applied where to do so would breach the United Kingdom's obligations under the Refugee Convention or a person's rights under Community treaties.

902. Clauses 119 and 120 provide for a support scheme which will apply to designated persons. It is based upon Part VI of the Immigration and Asylum Act 1999 and so, in general, does not raise any new issues. There is one small potential difference of application between Part VI and these provisions which may raise issues under Article 1 of the First Protocol to the ECHR. A person designated under these provisions may, unlike asylum seekers and their dependants arriving in the UK and being treated under Part VI, have accumulated property rights prior to being designated; for example by holding a secure tenancy. A person granted leave without conditions may have been provided with social housing and acquired a secure tenancy with rent being paid either through employment or housing benefit. A designated person is no longer entitled to work and is ineligible for housing benefit and the resulting loss of income may mean that the person is unable to pay their rent and hence loses their secure tenancy.

903. Assuming there is an interference with the above right, it is the Government's view that the interference is in the public interest. It is in the public interest that the Secretary of State decides the basis on which resources, such as housing, are allocated in respect of persons who are subject to immigration control. Part 11 allows for the provision of accommodation to designated persons and their dependants. Furthermore, any interference is in the public interest for the reasons set out above in respect of Article 14.

[4] *Carson*, para 14. Also endorsed by the ECtHR in the immigration context, see *Moustaquim v Belgium [1991] 13 EHRR 802*.

ANNEX A

GLOSSARY

1959 Act	Street Offences Act 1959
1968 Act	Criminal Appeal Act 1968
1974 Act	Rehabilitation of Offenders Act 1974
1978 Act	Protection of Children Act 1978
1983 Act	Nuclear Material (Offences) Act 1983
1988 Act	Criminal Justice Act 1988
1997 Act	Police Act 1997
1998 Act	Crime and Disorder Act 1998
1999 Act	Immigration and Asylum Act 1999
2000 Act	Powers of Criminal Courts (Sentencing) Act 2000
2002 Act	Nationality, Immigration and Asylum Act 2002
2003 Act	Criminal Justice Act 2003
ASBOs	Anti-Social Behaviour Orders including orders made under section 1B or 1C of the 1998 Act
CPPNM	Convention on the Physical Protection of Nuclear Material
CPS	Crown Prosecution Service

CRB	Criminal Records Bureau
DPP	Director of Public Prosecutions
DSI matter	Death or serious injury matter
DWP	Department of Work and Pensions
ECHR	European Convention on Human Rights
ERS	Early removal scheme
HDC	Home detention curfew
HMCS	Her Majesty's Court Service
HMIC	Her Majesty's Inspectorate of Constabulary
HMRC	Her Majesty's Revenue and Customs
IPCC	Independent Police Complaints Commission
ISO	Individual support order
ISS	Intensive Supervision and Surveillance
ISSP	Intensive Supervision and Surveillance Programme
LSC	Legal Services Commission
NOMS	National Offender Management Service
PACE	Police and Criminal Evidence Act 1984
PAT	Police appeals tribunal
PPO	Prisons and Probation Ombudsman
SSO	Suspended Sentence Order

VOO	Violent offender order
YOT	Youth offending team
YRO	Youth rehabilitation order

CRIMINAL JUSTICE AND IMMIGRATION BILL

EXPLANATORY NOTES

These notes refer to the Criminal Justice and Immigration Bill as introduced in the House of Commons on 7th November 2007 [Bill 1]

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