These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 1: Sentencing

General

Section 63: Duty to consider compensation order

361. Section 63 amends section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 and strengthens the obligation on the court to consider ordering a person convicted of an offence to pay compensation.

362. The section inserts a new subsection (2A) in section 130, which places the court under an express duty to consider making a compensation order in any case where it is empowered to do so under that section. Compensation may be ordered for any loss or damage, personal injury or bereavement, or to make payments for funeral.

363. *Subsection (2)* inserts a similar provision into the Armed Forces Act 2006.

Section 64: Duty to give reasons for and to explain effect of sentence

364. Section 64 replaces the existing section 174 of the 1991 Act with a new version of that section retaining a general duty to explain a sentence and reducing the specific requirements on the court.

365. The substituted version of section 174 retains, in *subsection (2)*, the general duty on a court to explain in open court and in ordinary language the court's reasons for deciding on a sentence. The substituted section 174 also retains the general duty, in *subsection (3)*, to explain to an offender the effect of the sentence and the implications of the offender not complying with the sentence.

366. *Subsection (4)* makes corresponding amendments to the Armed Forces Act 2006.

367. The substituted section 174 provides, in *subsection (4)*, that the Criminal Procedure Rules may prescribe cases in which either the duty to state the court's reasons for deciding on the sentence, or the duty to explain the matters mentioned in *subsection (3)* does not apply. It also provides that Criminal Procedure Rules may make provision about how an explanation of the matters mentioned in section *subsection (3)* is to be given.

368. The substituted section 174 goes on to set out, in *subsections (6) to (8)*, a revised and reduced list of the particular duties on courts to explain aspects of a sentence. These duties include, in *subsection (6)*, identifying relevant sentencing guidelines and

explaining how they were applied or why they were not applied. In *subsection (7)* there is a duty to explain the impact on the sentence of a reduction for a guilty plea. In *subsection (8)* a court must explain, in giving a juvenile a discretionary custodial sentence, why a non-custodial sentence could not be justified, and in making a youth rehabilitation order with intensive supervision and surveillance or with fostering, why the order is appropriate.

369. The substituted section 174 removes specific duties to explain the court's consideration of the thresholds for imposing a custodial sentence or community order. The new section 174 also removes the particular exception from the general duty to explain a sentence where the sentence is fixed by law (mandatory minimum sentences). These considerations are now covered by the general duty on courts contained in *subsections (2) and (3)* of the substituted section 174.

370. Section 65: Sentencing where there is aggravation related to transgender identity

371. Section 65 amends section 146 of the 1991 Act. Section 146 provides that it is a factor increasing the seriousness of an offence, which affects the severity of the sentence, if the offender demonstrates, or was motivated by, hostility based on the victim's sexual orientation or disability. The section adds transgender identity (or presumed transgender identity) to the personal characteristics which will constitute an aggravating factor. The umbrella term "transgender" is not defined but *subsection (6)* (which inserts new subsection (6) into section 146) makes it clear that "being transgender" includes, but is not limited to, being transsexual.

372. Section 65 also amends Schedule 21 to the 1991 Act, which sets out the starting points which a court should adopt when determining a minimum term for a mandatory life sentence imposed for murder.

Community orders

Section 66: Duration of community order

373. Section 66 makes provision about when a community order comes to an end.

374. Currently a community order must specify a date by which all the requirements in the order must have been complied with. This date may not be more than three years after the date of the order. However, there is no express provision about when the order itself comes to an end.

375. *Subsections (1) and (2)* amend section 177(5) of the 1991 Act and insert new subsections (5A) and (5B). These amendments provide that a community order comes to an end on the date specified under section 177(5). (This is subject to specific provision in relation to an unpaid work requirement, where the order continues in force until the requirement is complied with.) Where an order imposes two or more requirements, a court may specify end dates for each of those requirements, and where it does so, the last of those end dates must be the same as the date specified under section 177(5) (that is, the date at which the order comes to an end).

376. *Subsections (3) and (4)* allow magistrates' courts and the Crown Court respectively to extend the duration of an order by up to 6 months where the offender has breached a requirement in an order.

377. *Subsection (5)* allows magistrates' courts and the Crown Court to extend the duration of an order otherwise than for breach of the order.

Section 67: Breach of community order

378. Section 67 amends Schedule 8 to the 1991 Act, which makes provision about breach of a requirement imposed as part of a community order and a court's powers in relation to such a breach.

379. Schedule 8 already provides a court with the option of dealing with breach of an order by either varying the order to make its requirements more onerous (for example, by extending the duration of a requirement or adding a new one), or revoking the order and re-sentencing the offender as if the offender had just been convicted. There is currently no option to take no action.

380. Schedule 8 provides that in dealing with an offender for breach the court must take into account the extent to which he has already complied with the order. If the offender has willfully and persistently failed to comply with a community order the court can re-sentence the offender to custody even if the original offence was not serious enough to justify a custodial sentence.

381. The section gives a court the option of taking no action in relation to a breach. It also gives a court a new power to fine an offender in relation to a breach (and in that case the order will continue in force).

382. *Subsection (2)* amends paragraph 9(1) of Schedule 8 in two ways: it provides a magistrates' court with the option of taking no action; and it provides the court with a new power to impose a fine on the offender of not more than £2,500 in relation to the breach.

383. *Subsection (5)* makes substantially the same provision as *subsection (2)*, but in relation to the Crown Court

384. *Subsection* (7) inserts a new provision giving the Secretary of State a power by order (subject to the negative Parliamentary procedure) to amend the maximum amount of a fine which may be imposed by the magistrates' court or Crown Court in relation to a breach of a community order. The power may only be exercised if it appears to the Secretary of State that there has been a change in the value of money. The power replicates the power of the courts in relation to breach of a youth rehabilitation order (see paragraph 10 of Schedule 2 to the 2008 Act).

Suspended sentence orders

Section 68 and Schedule 9: Changes to powers to make suspended sentence order

385. Section 68 amends provisions relating to suspended sentences. Currently a court cannot suspend prison sentences that are longer than 12 months. The courts are also currently required to attach at least one "community requirement" to a suspended sentence even if they consider that no community requirement is necessary in the circumstances. (Community requirements are available to address issues of offender behaviour through treatment programmes such as alcohol or drug addiction and poor cognitive skills.)

386. *Subsection (1)* amends section 189 of the 1991 Act to enable courts to suspend longer sentences of imprisonment, namely those between 14 days and two years. The amended section also provides the court with discretion as to whether or not to impose community requirements. The section retains the current position whereby the sentence of imprisonment will not take effect unless the offender fails to comply with a community requirement or is convicted of a further offence during the period of suspension.

387. *Subsection (2)* provides that, where a court imposes consecutive sentences, the power to make a suspended sentence order is limited to cases where the sentence does not exceed two years in total.

388. *Subsections (3) and (4)* clarify that the provisions relating to the length of supervision periods (the period during which the offender is subject to one or more community requirements) apply only to those orders with community requirements.

389. *Subsection (6)* gives effect to Schedule 9, which makes consequential and transitional provision (see below).

390. *Subsection (7)* provides that the new provisions apply to offences committed before, and after, the section comes into force where the offender is sentenced after the section comes into force.

Schedule 9: Changes to powers to make suspended sentence orders: consequential and transitory provision

391. *Paragraphs 1 to 19* of Schedule 9 make various amendments which are consequential on the changes to powers to make suspended sentence orders introduced by section 68, in particular to ensure requirements that are only appropriate for suspended sentences with community requirements do not apply where they would be inappropriate or unnecessary for suspended sentence without community requirements.

392. *Paragraph 20* of Schedule 9 contains a transitory provision to apply the new provisions to detention in young offender institutions, since pending the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (which will abolish a sentence of detention in a young offender institution), such a sentence is still possible.

Section 69: Fine for breach of suspended sentence order

393. At present the court has no power to impose a fine for breach of a suspended sentence order. Section 69 inserts a new provision into paragraph 8 of Schedule 12 to the 1991 Act. This will enable the court to impose a fine of up to £2,500 for breach of a suspended sentence order where it decides not to give effect to the custodial sentence.

394. A suspended sentence order is breached where an offender fails to comply with any community requirement or is convicted of another offence during the period for which the sentence is suspended. Any fine is enforced as it would be had it been imposed on conviction

395. *Subsection (3*) inserts a new provision giving the Secretary of State a power by order (subject to the negative Parliamentary procedure) to amend the maximum amount of a fine which may be imposed by the magistrates' court or Crown Court in relation to a breach of a suspended sentence order. The power may only be exercised if it appears to the Secretary of State that there has been a change in the value of money. The power replicates the power of the courts in relation to breach of a youth rehabilitation order (see paragraph 10 of Schedule 2 to the 2008 Act). It also replicates a power conferred by section 67(7) of the Act in relation to a fine for breach of a community order.

Requirements under community orders and suspended sentence orders

Section 70: Programme requirement

396. Section 70 amends section 202 of the 1991 Act which makes provision in relation to "programme requirements". These may be imposed as part of a community order or a suspended sentence order with a view to addressing particular aspects of offender behaviour such as treatment of alcohol or drug addiction and poor cognitive skills.

397. *Subsection (4)* amends section 202(1) of the 1991 Act by reducing the number of matters the court must specify when imposing a programme requirement. It removes the requirement for a court to specify (a) the particular accredited programme in which the offender must participate, and (b) the place at which the offender must participate in an accredited programme. It retains the requirement for a court to specify the number of days on which the offender must take part in an accredited programme. By the amendments to section 202(6) of the 1991 Act, it will be for the responsible officer to determine those matters.

398. *Subsection (5)* repeals section 202(4) and (5) of the 1991 Act, which specify a number of conditions that have to be met before a court may impose a programme requirement. These conditions currently require a court to include only certain

accredited programmes, and prevent the court from including a programme requirement if compliance with that requirement would involve the co-operation of someone other than the offender and the responsible officer, unless that person has consented. The effect of *subsection (5)* is that those conditions will no longer apply.

Section 71: Curfew requirement

399. Section 71 amends section 204 of the 1991 Act, which makes provision in relation to curfew requirements.

400. *Subsection (2)* amends section 204(2) by increasing the maximum period in any day for which the court may impose a curfew requirement from twelve to sixteen hours.

401. *Subsection (3)* amends section 204(3) by increasing the maximum period for which a curfew requirement may be imposed from six to twelve months from the date on which the community order is made.

402. It remains the case that, before imposing a curfew requirement, the court must obtain and consider the effect that the curfew might have on other people living at the curfew address. Compliance with a curfew requirement is normally monitored electronically by the offender wearing a 'tag'.

Section 72: Foreign travel prohibition requirement

403. Section 72 amends sections 177 and 190 of the 1991 Act to enable a court to impose a prohibition on foreign travel as a requirement in a community order or suspended sentence order. The effect of the new requirement is to prohibit travel to a country or countries (or territory or territories) outside the British Islands (the United Kingdom, the Channel Islands and the Isle of Man).

404. Currently courts can already impose a number of requirements that restrict offenders' movements in some way. These include curfews, residence requirements, and exclusion requirements. However, there is no requirement which gives courts an express power to prohibit an offender from travelling outside the British Islands.

Section 73: Mental health treatment requirement

405. Section 73 amends section 207 of the 1991 Act which makes provision about mental health treatment requirements in community orders or suspended sentence orders.

406. Currently, a court cannot make a mental health treatment requirement unless it is satisfied on the evidence of a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983 that the mental condition of the offender requires treatment and may be susceptible to it, and other disposals under the Mental Health Act 1983 are not warranted.

407. Section 73 removes the condition that a court can only impose a mental health treatment requirement on the evidence of a registered mental health practitioner approved for the purposes of section 12. It remains the case that the court may not include a mental health treatment requirement unless the offender has expressed willingness to comply with it.

Section 74: Drug rehabilitation requirement

408. Section 74 amends section 209 of the 1991 Act, which makes provision in relation to drug rehabilitation requirements.

409. It removes the requirement that the treatment and testing period of a drug rehabilitation requirement must be at least six months. The effect of this is that there will be no minimum treatment and testing period. The change provides the court with greater discretion in determining the appropriate length of the requirement.

Section 75: Alcohol treatment requirement

410. Section 75 amends section 212 of the 1991 Act, which makes provision in relation to alcohol treatment requirements.

411. It removes the requirement that the period of an alcohol treatment requirement must be at least six months. The effect of this is that there will be no minimum period. The change provides the court with greater discretion in determining the appropriate length of the requirement.

Section 76: Alcohol abstinence and monitoring requirement

412. Section 76 inserts new section 212A into the 1991 Act. This has the effect of creating a new alcohol abstinence and monitoring requirement which may be imposed as a requirement of a community order or suspended sentence order.

413. Under new section 212A(1)(a) a court has the power to order an offender either to abstain from consuming alcohol for a specified period or not to consume alcohol so that during a specified period they have a level of alcohol higher than a level specified by the order in their body. An offender on whom such a requirement is imposed would have to submit to monitoring for the purposes of ascertaining whether they were complying with the requirement under new section 212A(1)(a).

414. New section 212A(2) limits the maximum period of the new requirement to 120 days. (However, *subsection (7)* of section 76 amends section 223(3) of the 1991 Act with the effect that the Secretary of State has a power to amend the maximum period. This power would be exercisable subject to the affirmative resolution procedure, and is common to a number of other requirements.)

415. New section 212A(3) gives the Secretary of State a power to prescribe a minimum period for the requirement.

416. New section 212A(4) gives the Secretary of State a power to prescribe the level of alcohol an offender must not exceed under a requirement set out under new section 212A(1)(a)(ii). Such a requirement may not be imposed unless an order has been made to prescribe alcohol levels. An order which prescribes alcohol levels may do so by reference to the proportion of alcohol in the offender's breath, blood, urine or sweat, or by some other means.

417. New section 212A(6) gives the Secretary of State a power by order to prescribe arrangements for monitoring of compliance with the requirement. Such an order may prescribe arrangements for monitoring by electronic or other means.

418. New section 212A(8) to (12) makes provision about the conditions for imposing the new requirement. There are four conditions.

419. The first is that consumption of alcohol must be an element of the offence before the court, or the court must be satisfied that consumption of alcohol was a contributing factor to the commission of the offence.

420. The second is that the court must be satisfied that the offender is not dependent on alcohol.

421. The third is that the court must not include an alcohol treatment requirement (under section 212 of the 1991 Act) in the order.

422. The fourth is that the court must have been notified by the Secretary of State that arrangements for monitoring have been made in the local justice area.

423. *Subsections (2) to (11)* of section 76 make further amendments to the 1991 Act and the Armed Forces Act 2006 as a consequence of the creation of the new requirement. *Subsection (6)* amends section 215 of the 1991 Act to prevent the court from imposing

an electronic monitoring requirement in respect of the new requirement. This is because electronic monitoring provisions may be included in the new requirement itself (see new section 212A(7)(a)).

Section 77: Piloting of alcohol abstinence and monitoring requirements

424. Section 77 requires the provisions creating the new alcohol abstinence and monitoring requirement to be commenced initially for the purposes of a pilot. *Subsection (1)* allows the Secretary of State (after having made a piloting order or orders) to make a general commencement order. Under *subsection (5)(a)* an order made by the Secretary of State may amend the alcohol abstinence and monitoring requirement provisions under section 76 to enable the provisions to be brought into force generally with amendments, and *subsection (5)(b)* would allow the Secretary of State to amend other provisions of the Act in consequence of these changes. *Subsection (6)(a)* makes it clear that *subsection (5)(a)* includes a power to confer order or rule making powers on the Secretary of State.

425. *Subsection (7)* contains a power exercisable by the Secretary of State, after having made a piloting order or orders, to make an order to repeal section 76, to amend the 1991 Act to reverse the effect of that section on that Act or to make other consequential amendments or repeals.

426. *Subsection (9)* provides for an order under the new section to be made by statutory instrument. *Subsection (10)* provides that a general commencement order, or an order to amend or to repeal section 76, may not be made unless the order has been laid before and approved by each House of Parliament.

Section 78: Overseas community orders and service community orders

427. Section 78 makes amendments to provisions of the Armed Forces Act 2006 relating to both service and overseas community orders which can be made by service courts. These amendments flow from changes made to the 1991 Act by Chapter 1 of Part 3 of the Act.

428. *Subsections (2) and (3)* provide that the foreign travel prohibition requirement introduced by section 67 of the Act and the alcohol abstinence and monitoring requirement introduced by section 76 are not available for inclusion as a requirement in an overseas community order.

429. *Subsection (4)* makes provision which applies in the Services context the Act provisions about the duration of community orders made by civilian courts. *Subsections (6) and (8)* make a change to the provisions about overseas and service community orders that is consequential on section 66(5).

430. *Subsections (5) and (9)* make provision in relation to the imposition of fines for breaches of overseas community orders.

431. *Subsection (10)* makes provision which makes a change in the service context which results from the provisions in section 74 to disapply the minimum term of a drug rehabilitation requirement.

432. As with other amendments made to armed forces legislation, this section is designed to ensure that sentencing law and practice of service courts is, where practicable, aligned with the law and practice of civilian courts in England and Wales.

Youth sentences

Section 79: Referral orders for young offenders

433. Section 79 amends sections 16 and 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (PCC(S)A 2000), which set out the circumstances in which the court has the power to give a referral order to an offender under the age of 18.

434. A referral order refers the offender to a youth offender panel and requires the offender to attend meetings of the panel and enter into a contract with the panel to undertake rehabilitative activities for a period of between 3 and 12 months.

435. Sections 16(2) and 17(1) of the PCC(S)A 2000 impose a duty on a youth court or magistrates' court either to make a referral order or to discharge offenders absolutely where they have pleaded guilty to their first offence (or where they are before the court for more than one offence, at least one of these offences) unless certain exceptions apply. Those exceptions are: if the offence (or at least one of the offences) that the offender is being sentenced for is fixed by law (section 16(1)(a)) or the court proposes to impose a custodial sentence or a hospital order in respect of the offence (or where the offender is before the court for more than one offence, at least one of these offences). Where the exceptions apply the duty does not apply.

436. Typically, these exceptions apply only in a very few cases so the powers of the court when sentencing a first time offender who has pleaded guilty are very limited. The court can never impose a community sentence on an offender where section 16 of the PCC(S)A 2000 applies.

437. Sections 16(3) and 17(2) to (2C) of the PCC(S)A 2000 provide a discretionary power for a youth or magistrates' court either to make a referral order or absolutely discharge offenders where they have pleaded guilty to the offence (or where they are before the court for more than one offence, at least one of these offences), even if it is not their first offence. But the court may only do so in circumstances where the offender has not previously received a referral order (section 17(2B)) or has received a referral order on one occasion but is recommended as suitable for another by an 'appropriate officer' (usually an officer of the local youth offending team) (section 17(2C)).

438. *Subsection (1)* amends section 16(1)(c) of the PCC(S)A 2000 to widen the powers of a youth or magistrates' court to deal with offenders where they have pleaded guilty to their first offence (or where they are before the court for more than one offence, at least one of these offences). As a result of this amendment, where the exceptions in 16(1)(a) and (b) do not apply, the court will no longer have to choose between making a referral order or absolutely discharging the offender: it will now be able to choose to conditionally discharge the offender instead.

439. *Subsection (2)* amends section 17 PCC(S)A 2000. It removes the existing conditions set out in section 17(2A) to (2C) and amends section 17(2) in order to widen the powers of a youth or magistrates' court to deal with an offender who has pleaded guilty to an offence (or, where the offender is before the court for more than one offence, to at least one of those offences), even if it is not the offender's first offence. As a result of the amendment, the court is no longer prevented from offering referral orders to offenders who have previously received referral orders in the past. There is no limit to the number of referral orders that a repeat offender can receive. The offender does not need to be recommended as suitable for a second or subsequent referral order by an appropriate officer.

Section 80: Breach of detention and training order

440. A detention and training order (DTO) is a custodial sentence for young offenders aged between 12 and 17 created by sections 100 to 107 PCC(S)A 2000. In broad terms, the offender spends the first half of the specified period in custody (detention and training)

and the second half in the community subject to various requirements and under the supervision of the youth offending team.

441. *Subsections (2)* to (7) amend section 104 of the PCC(S)A 2000 to extend the powers of the court to punish an offender who has breached their DTO by failing to comply with the supervision requirements imposed on them

442. *Subsection (2)* retains the power of the court to impose a period of detention in punishment for the breach. It also creates a new power for the court to impose an additional period of supervision.

443. *Subsection (3)* inserts new subsections (3A) to (3D), which make further provision about the periods of supervision or detention, into section 104:

- new subsection (3A) sets the maximum period for which the court may impose supervision or detention as a punishment for breach. This is to be the shorter of 3 months or the period beginning with the date of the failure to comply with the requirement and the last day of the term of the DTO.
- new subsection (3B) stipulates how that period is to be determined if the failure to comply with a requirement took place over two or more days.
- new subsection (3C) is especially important as it provides that the court may impose a period of supervision or detention for breach even after the term of the DTO has finished. This means that those subject to a DTO will not be able to avoid being given a further period of detention or supervision by delaying their breach hearings until after the term of their DTO expires as has happened following the case of *H v Doncaster Youth Court, Doncaster Youth Offending Service*[1] where the court had held that a further period of detention could only be imposed from the date on which the court made a finding that the offender had failed to comply with supervision requirements, rather than from the actual failure to comply, and only up to the end of the original DTO period.
- new subsection (3D) provides that where the court imposes a period of detention or supervision for breach, it takes immediate effect and can overlap with a period of supervision under the DTO.

444. *Subsection* (4) inserts new section 104(4A) into the PCC(S)A 2000. This provides that where an offender is over 18 when a court orders a further period of detention in respect of a breach of a DTO, the offender will be sent to prison. This subsection needs to be read with section 74(8) of the Act which provides that an offender aged between 18 and 21 will not be sent to prison under section 104(4A) until such time as section 61 of the Criminal Justice and Court Services Act 2000 is commenced (and the sentence of detention in a young offenders institution is abolished). Until that time 18 to 21 year olds will be sent to youth detention accommodation, which includes young offender institutions (see section 107 of the PCC(S)A 2000).

445. *Subsection (6)* extends the right of appeal to the Crown Court that currently exists where an offender is given a further period of detention for breach of a DTO to the new power to impose an additional period of supervision.

446. *Subsection (7)* inserts new sections 104A and 104B into the PCC(S)A 2000. New section 104A applies certain provision in the PCC(S)A 2000 relating to DTOs to orders under section 104(3)(aa) that an offender serve a further period of supervision, with the necessary modifications:

- section 104A(1) and (2) applies section 103 (which provides for how a period of supervision under a DTO operates);

1 [2008] EWHC 3463

- section 104A(3) to (5) applies section 104 (which deals with breach of DTO supervision requirements) and section 105 (which makes provision for when an offender commits an offence when subject to supervision).

447. In broad terms, the further period of supervision works in a similar way to the period of supervision under a DTO. In particular, requirements can be imposed on the offender under section 103 of the PCC(S)A 2000, as applied, and enforced under section 104 of that Act, again as applied. And, if the offender commits an imprisonable offence while subject to a further period of supervision, then the offender can be detained in youth detention accommodation under section 105, as applied.

448. The fact that a court can deal with an offender who breaches requirements imposed in respect of a further period of supervision in the same way that it can deal with someone who has breached the supervision requirements of a DTO, means that there could be a series of orders under section 104(3)(aa). If an offender breaches a DTO and is given a further of supervision which the offender then also breaches, the court can once again respond by imposing further supervision (or detention or a fine). And if requirements attached to that further period of supervision are also then breached, another period of supervision could be ordered in respect of that breach and so on. This continues to be the case until the offender completes the order of the court without breaching it.

449. New section 104B provides for the interaction between the new power to impose periods of detention beyond the end of the original DTO and other sentences. Subsections (1) to (4) provide for the interaction between a period of further detention and a DTO. New subsection 104B(5) provides a power for the Secretary of State to make regulations to provide for the interaction between a period of detention imposed for breach and custodial sentences other than a DTO.

450. A further period of detention can be imposed for breach after the term of the DTO has ended. It can also be imposed in respect of the breach of a requirement attached to a period of further supervision under section 104(3)(aa), which may itself have been imposed after the end of the DTO. It is therefore possible for a period of detention to be imposed under section 104(3)(a) after the offender has turned 18 or even 21. For this reason it is necessary to set out for the courts how the breach period will interact with adult sentences.

451. S*ubsections (10) and (11)* apply the provision made by the section to any breach of a DTO that occurs after commencement.

Section 81: Youth rehabilitation order: curfew requirement

452. A youth rehabilitation order is a community sentence provided for by the 2008 Act. As part of the sentence a court may impose one or more of 18 different requirements that the offender must comply with for a period of up to three years. The requirements can include curfew, supervision and mental health treatment requirements. These requirements are similar to requirements that can be attached to community orders for adults.

453. Section 81 mirrors the amendments to the curfew requirement for community orders in section 71 of the Act by increasing the maximum number of hours in a day for which a curfew can be imposed from twelve to sixteen hours a day and the length of time for which a curfew requirement may be imposed from six to twelve months.

Section 82: Youth rehabilitation order: mental health treatment requirement

454. Section 82 amends paragraph 20 of Schedule 1 to the 2008 Act to make provision for mental health treatment requirements in youth rehabilitation orders. It mirrors the amendments to mental health treatment requirements in section 73 for adults by removing the requirement for evidence from a medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983. It remains the case that the

court cannot include a mental treatment requirement unless the youth has expressed a willingness to comply with it.

Section 83: Youth rehabilitation order: duration

455. This section amends the current provisions in Schedules 1 and 2 to the the 2008 Act which set out the duration of youth rehabilitation orders. Under the current provisions where an order has multiple requirements which may themselves be time limited it can be unclear when the order is completed. In some cases this can result in the requirements being completed before the end date of the order requiring the case to be returned to court to revoke the order.

456. *Subsection (1)* amends Schedule 1 to the 2008 Act to enable the court to specify different completion dates for different requirements attached to an order and for the end date of the order to be the same as the last completion date for a requirement.

457. *Subsection (2)* inserts new sub-paragraphs (6A) to (6D) in paragraph 6 of Schedule 2 to allow a magistrates' court to extend the end date of an order by up to 6 months where a further requirement is imposed but only on one occasion. If the order is extended under these provisions then it may extend beyond the three year maximum length set out in Schedule 1.

458. *Subsection (3)* inserts new sub-paragraphs (6A) to (6D) in paragraph 8 of Schedule 2 which makes the same amendments to the powers in the Crown Court as subsection (2) does to the powers of the magistrates' court.

459. *Subsection (5)* inserts a new paragraph 16A in Schedule 2 relating to the exercise of powers of the magistrates' court or Crown court when dealing with breach of a youth rehabilitation order to cancel or replace requirements in the order. Sub-paragraph (1) of new paragraph 16A allows a court to amend the end date of an order where either the offender or responsible officer requests this. Further provisions limit the extension of the end date to a maximum period of 6 months beyond the end date of the original order and allow the overall length of the order to extend beyond the maximum of three years where the order is so extended. This power to extend is limited to one occasion only. Sub-paragraph (6) provides that the court amending the length of the order must be a youth court where the offender is aged under 18 at the time the application to extend is made or an adult magistrates' court where the offender has reached the age of 18.

Section 84: Youth rehabilitation order: fine for breach

460. Section 84 provides for the fine available to a court to deal with breach of a youth rehabilitation order under Schedule 2 to the 2008 Act to be increased to a maximum amount of £2,500. Currently the maximum fine in both the magistrates' courts and the Crown Court is £250 if the offender is aged under 14, or £1,000 in any other case.

Fines

Section 85: Removal of limit on certain fines on conviction by magistrates' court

461. Section 85 removes limits on fines of £5,000 or more (however that amount is expressed) on conviction by the magistrates' court. The section applies to fines set out in primary and secondary legislation. The section also modifies powers to create offences which are punishable on summary conviction by a fine with a limit of £5,000 or more, so that they are punishable by a fine of any amount. The section gives the Secretary of State a power to disapply the removal of limits and to set alternative limits, subject to certain restrictions. The section applies to sentences on summary conviction, i.e. on conviction in a magistrates' court for an offence which is triable only summarily or triable either way (see *subsection (16)*).

462. *Subsection (1)* provides that relevant offences which are punishable on summary conviction by fines of £5,000 or more (however that sum is expressed), are punishable by a fine of any amount. Where the maximum amount of a fine which may be imposed on summary conviction is £5,000, that sum is expressed in different provisions in different ways. In some cases the amount is expressed as the specific figure of £5,000. In some cases it is expressed as 'an amount not exceeding the prescribed sum,' or 'the statutory maximum,' or 'level 5 on the standard scale.' In each case the amount is £5,000. This subsection applies in respect of each of those formulations, and any other formulation which has the same effect.

463. *Subsection (2)* provides that where a relevant power could be exercised to create an offence punishable on summary conviction by a fine of £5,000 or more, the power may be exercised to create an offence punishable by a fine of any amount.

464. *Subsection (3)* provides that an offence or power is relevant if it is a common law offence or it is contained in an Act or secondary legislation immediately before *subsection (1)* of this section comes into force. It is a relevant offence or power whether or not it is in force at that time.

465. *Subsection (4)* sets out a series of limitations on the provisions in *subsections (1) and (2)*. These limitations relate to fines for offences committed before the day on which *subsection (1)* of this section comes into force, to the operation of restrictions on fines that may be imposed on a person under 18, and to fines imposed by a Crown Court following committal for sentence from the magistrates' court, where the Crown Court is exercising its own sentencing jurisdiction.

466. *Subsection (5)* gives the Secretary of State powers by regulations to disapply *subsection (1) or (2)*. *Subsection (6)* gives the Secretary of State power by regulations to make alternative provision in respect of offences or powers in respect of which the power in *subsection (5)* is exercised.

467. *Subsections (7) and (8)* deal with the situation where a fine is expressed as a proportion of £5,000 (however expressed). For instance, some offences under the Companies Act 2006 contain offences punishable by a fine of an amount per day not exceeding 10% of the statutory maximum. The Secretary of State may make regulations to specify or describe a higher amount than £5,000 for these purposes

468. *Subsection (9)* imposes the same limitations in respect of regulations under section 85 as are imposed by *subsection (4)* (described above).

469. *Subsections (10) and (11)* make further provision about the scope of the powers to make regulations in this section.

470. *Subsections (12) and (13)* provide that regulations made under this section are to be made by statutory instrument, using the affirmative resolution procedure.

471. *Subsection (14)* makes particular provision to deal with the possibility that the power under the Criminal Justice Act 1982 to raise the sum specified as level 5 on the standard scale to reflect increases in the value of money may be exercised before the day on which *subsection (1)* of this section comes into force. It provides that, if that happens, references in this section to £5,000 have effect as if they were references to the new sum.

Section 86: Power to increase certain other fines on conviction by magistrates' court

472. Section 86 makes provision in relation to fines or maximum fines of fixed amounts which are less than £5,000. (Such fines are not affected by section 85(1) or (2). Nor are they affected by the powers in section 88, which only relate to amounts expressed as levels 1 to 4 on the standard scale.)

473. *Subsections (1) and (2)* provide that the Secretary of State may make regulations in respect of relevant offences which are punishable by a fine of a fixed amount (i.e. a sum set out as a figure in the legislation) of less than £5,000. The regulations may specify or describe an amount in place of the original amount.

474. *Subsections (3) and (4)* provide that the Secretary of State may make regulations in respect of powers to create offences which are punishable by a fine of a fixed amount (i.e. a sum set out as a figure in the legislation) of less than £5,000. The regulations may specify or describe an amount in place of the original amount.

475. *Subsection (5)* provides that the amount which may be specified or described may not exceed the greater of £5,000 or the sum specified as level 4 on the standard scale. (Section 88 gives the Secretary of State powers to amend levels 1 to 4 on the standard scale.)

476. *Subsection (6)* sets out a series of limitations on the powers in this section. These limitations relate to fines for offences committed before the day on which section 85(1) comes into force, to the operation of restrictions on fines that may be imposed on a person under 18, and to fines imposed by a Crown Court following committal for sentence from the magistrates' court, where the Crown Court is exercising its own sentencing jurisdiction.

477. *Subsections (7) and (8)* make further provision about the scope of the powers to make regulations in this section.

478. *Subsections (9) and (10)* provide that regulations made under this section are to be made by statutory instrument, using the affirmative resolution procedure.

479. *Subsection (11)* makes particular provision to deal with the possibility that the power under the Criminal Justice Act 1982 to raise the sum specified as level 5 on the standard scale to reflect increases in the value of money may be exercised before the day on which section 86(1) comes into force. It provides that, if that happens, references in this section to £5,000 have effect as if they were references to the new sum.

Section 87: Power to amend standard scale of fines for summary offences

480. Section 87 gives the Secretary of State power by order to alter the sums specified as levels 1 to 4 on the standard scale of fines for summary offences.

481. *Subsection (1)* provides that the Secretary of State may by order substitute for the sums specified as levels 1 to 4 on the standard scale, such sums as the Secretary of State considers appropriate. Level 1 is currently £200, level 2 is £500, level 3 is £1,000 and level 4 is £2,500.

482. *Subsection (2)* prevents the Secretary of State from altering the sums in a way which alters the ratio of the levels to each other.

483. *Subsections (5) and (6)* provide that orders made under this section are to be made by statutory instrument, using the affirmative resolution procedure.

484. *Subsection (7)* provides that an order altering the sums does not affect fines for offences committed before the order comes into force.

Section 88: Withdrawal of warrants of control issued by fines officer

485. Section 88 relates to the withdrawal of "warrants of control", as the current warrants of distress will be termed when the provisions in Part 3 of the Tribunals, Courts and Enforcement Act 2007 come into force (until then, they will continue, by way of transitional saving, to be termed warrants of distress). Section 88 makes a number of amendments to Schedule 5 of the Courts Act 2003 including the insertion of four new paragraphs.

486. Section 88(4) inserts a new paragraph 37A into Schedule 5 to the Courts Act 2003. Paragraph 37A allows a fines officer, in certain circumstances, to issue a replacement notice indicating an intention to take further action under paragraph 38 of the Schedule (for example to issue a warrant of distress, which may be a replacement for a warrant previously withdrawn, or to make an attachment of earnings order). Paragraph 37A also allows for an appeal against the replacement notice to be made to the magistrates' court within 10 working days.

487. Section 88(8) inserts a new paragraph 40A, into Schedule 5 to the Courts Act 2003. Paragraph 40A provides fines officers with the power to withdraw warrants that they have issued, in specified circumstances. A fines officer may withdraw a warrant of control if there is an outstanding sum due and if the fines officer is satisfied that the warrant was issued by mistake (which in this context will include a mistake made in consequence of the non-disclosure or misrepresentation of a material fact).

488. Section 88(8) also inserts a new paragraph 40B into Schedule 5 to the Courts Act 2003. Paragraph 40B provides magistrates' courts with a power to discharge a distress warrant issued by a fines officer (the court presently has power under section 142(1) of the Magistrates' Court Act 1980 to discharge its own warrant, but not to discharge one issued by a fines officer). If the fines officer has issued a distress warrant and refers the case to the magistrates' court the court may discharge the warrant if there is an outstanding amount to be paid and the power conferred by section 142(1) of the 1980 Act would have been exercisable by the court if the court had issued the warrant. In other words, the court is now able to reopen the case to rectify mistakes, if the distress warrant had been issued by a fines officer, in the same way it can do so if the warrant was issued by the court.

489. Section 88(8) inserts a new paragraph 40C into Schedule 5 to the Courts Act 2003. Paragraph 40C places duties on fines officers where a warrant of control has been withdrawn or discharged. Where the warrant has been withdrawn by the fines officer or discharged by the court and the court has not discharged a collection order, then the fines officer must take (or retake) one or more of the steps specified in a further steps notice, or deliver a replacement notice and take one or more steps specified in that notice, or refer the case to (or back to) the magistrates' court.

Repeal of uncommenced provisions

Section 89 and Schedule 10: Repeal of sections 181 to 188 of Criminal Justice Act 2003

490. Section 89(1) repeals those sections of the 1991 Act which would have introduced custody plus and intermittent custody orders for sentences of less than 12 months (sections 181 to 188). Those provisions have never been commenced. Sentences of less than 12 months are now to be brought within Chapter 6 of Part 12 of the 1991 Act: see section 111. Schedule 10 makes amendments which are consequential on the repeal of sections 181 to 188.

Chapter 2: Bail

Section 90 and Schedule 11: Amendment of bail enactments

491. Section 90 gives effect to Schedule 11 which amends the Bail Act 1976 ("the 1976 Act"), the Bail (Amendment) Act 1993 ("the 1993 Act") and other legislation concerning bail.

492. The 1976 Act creates a general presumption in favour of bail, both before and after an offender is convicted. This general presumption is subject to certain exceptions which are set out in Schedule 1 to the Act: for example, if the defendant has previously failed to surrender to bail and the court believes that if released he would fail to do so again. Schedule 1 contains a number of Parts which set out the different exceptions that apply

depending on whether the person has been accused or convicted of an indictable or summary offence that may or may not be punishable with imprisonment.

493. The 1993 Act creates a right for the prosecution to appeal to the Crown Court against the decision of a magistrates' court to grant bail to a person charged with or convicted of an offence punishable by imprisonment.

Schedule 11: Amendment of enactments relating to bail

494. Schedule 11 amends the 1976 Act so that certain of the exceptions to the presumption that bail should be granted to a defendant will not apply where there is no real prospect that the defendant will be sentenced to a custodial sentence if convicted ("the no real prospect test"). This new test (which increases the availability of bail) is limited to non-extradition proceedings and to adult defendants who have not been convicted.

495. Those aged under 18 will continue to be subject to the existing exceptions in Schedule 1 to the 1976 Act restricting the grant of bail. This is to ensure that those offenders aged under 18 who would otherwise be granted bail under the new test can continue to be given "looked after" status by the local authority (see Chapter 3 of Part 3 of the Act). This means that the young person is assessed by the local authority and receives appropriate assistance and supervision.

496. Although the new restriction on the exceptions to bail does not apply to under-18s by virtue of this Schedule, a similar restriction on remand to youth detention accommodation is imposed by the youth remand provisions in Chapter 3 of Part 3 of the Act.

497. Paragraph 5 inserts a new section 3AAA into the 1976 Act which sets out conditions for the imposition of electronic monitoring requirements in respect of children and young people released on bail whilst subject to extradition proceedings. The conditions specified are broadly equivalent to those set out for domestic cases in section 3AA of the same Act.

498. Paragraph 8 amends section 7 of the 1976 Act which applies to a person who has been released on bail and fails to surrender to custody. In such circumstances the power to remand the person in custody will be subject to the "no real prospect" test, i.e. that there must be a real prospect that the person would be sentenced to a custodial sentence if convicted of the offence. This new test is limited to non-extradition proceedings and to adult defendants who have not been convicted.

499. Paragraphs 13 and 25 amend Parts 1 and 1A of Schedule 1 to the 1976 Act. These Parts deal with those cases in which the person is accused or convicted of an indictable or a summary offence which is punishable with imprisonment. The effect of the amendments is that certain exceptions to the right to bail do not apply where there is no real prospect of a custodial sentence and the matter relates to non-extradition proceedings and to adult defendants who have not been convicted.

500. Paragraph 15 amends Part 1 of Schedule 1 to the 1976 Act by inserting a new exception to the right to bail which is not subject to the new 'no real prospect test'. This new exception to bail relates to a person who, if released on bail, might commit an offence involving domestic violence. Paragraph 26 makes equivalent provision for Part 1A of Schedule 1.

501. Paragraphs 27 to 30 amend Part 2 of Schedule 1 to the 1976 Act, which deals with cases in which a person is accused or convicted of a non-imprisonable offence. The effect of the amendments is to make certain existing exceptions to the right to bail applicable only where the defendant is under the age of 18 or has been convicted of the offence. This has the same effect as the "no real prospect" test in Parts 1 and 1A of Schedule 1 which disapplies certain exceptions to the right to bail.

502. Schedule 11 also amends the 1993 Act to extend the existing power of appeal so that the prosecution may appeal to the High Court against the decision of a judge of the Crown Court to grant bail to a person charged with or convicted of an imprisonable offence. This new route of appeal is restricted to a decision of a judge of the Crown Court that was not, itself, made on appeal from the magistrates' court under the existing provisions in the 1993 Act.

Chapter 3: Remands of children otherwise than on bail

Remands

Section 91: Remands of children otherwise than on bail

503. Section 91 is concerned with a child who has not been granted bail and who either (a) has been charged with or convicted of an offence and is awaiting trial or sentence or (b) is the subject of extradition proceedings.

504. *Subsection (3)* provides that the court must remand that child to local authority accommodation unless one of the sets of conditions set out in sections 98 to 101 is met. (Sections 98 and 99 provide two sets of conditions, one set of which must be met for a child charged with or convicted of a criminal offence; and sections 100 and 101 provide equivalent alternate sets of conditions for children concerned in extradition proceedings).

505. *Subsection (6)* defines a child as a person under the age of 18. This has the effect of applying these provisions to all under 18s who are before the court in the above circumstances. Currently, 17 year olds are remanded to prison either under section 27 of the Criminal Justice Act 1948 in the case of those charged with or convicted of an offence or the Extradition Act 2003 for those involved in extradition proceedings.

Section 92: Remands to local authority accommodation

506. Section 92 sets out the practical effect of and arrangements for a remand to local authority accommodation.

507. *Subsection (4)* provides that a local authority designated by the court must receive the child and provide or arrange suitable accommodation for them. The powers and duties of a local authority to place a child that is remanded under this section are set out in section 22C of the Children Act 1989.

Section 93: Conditions etc on remands to local authority accommodation

508. *Subsection (1)* of section 93 provides that a court may impose conditions on a child who it has remanded to local authority accommodation. These conditions are the same as the court may apply to a child who is remanded on bail pursuant to section 3 of the Bail Act 1976. *Subsection (3)* also provides that the court may impose requirements on the designated local authority to secure compliance with any of the conditions imposed on the child.

509. *Subsection (2)* additionally allows the court to order that compliance with any requirements imposed under *subsection (1)* be secured by means of electronic monitoring. In the case of children who are charged with or convicted of an offence the conditions imposed in section 94 must be met. These are same as those which apply to electronic monitoring imposed pursuant to section 3A of the Bail Act 1976. In the case of children concerned in extradition proceedings, the conditions in section 96 must be met.

Section 94: Requirements for electronic monitoring

510. Section 94 applies in cases other than extradition cases and sets out five requirements that must be satisfied before a court may impose electronic monitoring on a child remanded to local authority care pursuant to section 92.

Section 95: Requirements for electronic monitoring: extradition cases

511. Section 95 provides for a modified version of the five requirements in section 94 in respect of children concerned in extradition proceedings. The effect of the requirements is broadly the same as for section 94 but the drafting reflects the fact that the child is subject to extradition proceedings in England and Wales.

Section 96: Further provisions about electronic monitoring

512. Section 96 provides that when imposing a condition of electronic monitoring the court must make a person responsible for the monitoring and that they must be of a description specified by the Secretary of State.

513. *Subsection* (2) confers a power on the Secretary of State to prescribe by order the description of persons who may be responsible for electronic monitoring, and *subsection (3)* confers a power to make rules regulating electronic monitoring in general and the functions of the person responsible for carrying out the monitoring in particular. Both the order and the rules must be made by statutory instrument and the rules are subject to the negative resolution procedure in Parliament.

Section 97: Liability to arrest for breaking conditions of remand

514. Section 97 confers a power for a constable to arrest without a warrant a child who the constable has reasonable grounds for suspecting has breached any of the conditions imposed under section 93. It also imposes a duty on the constable to bring the child before a court as soon as reasonably practicable and in any event within 24 hours.

515. If the court determines that the child has broken any of the conditions imposed under the original remand it can remand the child on new conditions or, if it thinks the test for remand to youth detention accommodation is met, remand the child to youth detention accommodation. If it is not satisfied that the conditions have been breached then the child must be remanded to local authority accommodation, again subject to the same conditions as those originally imposed.

Remands to youth detention accommodation

516. A child can be only be remanded to youth detention accommodation under the provisions of this chapter if at least one of four sets of conditions set out in sections 99, 100, 101 or 102 is met.

Section 98: First set of conditions for a remand to youth detention accommodation

517. Section 98 applies to a child charged with or convicted of an offence and describes the first set of conditions that, if met, would allow the court to remand the child to youth detention accommodation. This set of conditions includes a requirement relating to the seriousness of the offence which must be either a violent or sexual offence or one that is punishable if committed by an adult with a sentence of imprisonment of fourteen years or more.

Section 99: Second set of conditions for a remand to youth detention accommodation

518. Section 99 defines an alternative set of conditions that would enable the court to remand a child charged or convicted of an offence to youth detention accommodation. This set of conditions focuses on the behaviour of the offender while on remand. It applies if the

child faces a realistic prospect of receiving a custodial sentence. In these circumstances, if they have or are alleged to have committed an offence while on remand in custody and have a recent history of absconding while on remand, or, alternatively, the offence forms part of a recent history of committing imprisonable offences while on remand (on bail or in custody) then they may be remanded securely pursuant to this section.

Section 100: First set of conditions for a remand to youth detention accommodation: extradition cases

519. Section 100 sets out an equivalent set of conditions to those in Section 98, this time for a child in an extradition case.

Section 101: Second set of conditions for a remand to youth detention accommodation: extradition cases

520. Section 101 sets out an equivalent set of conditions to those in Section 99, this time for a child in an extradition case.

Section 102: Remands to youth detention accommodation

521. This section contains general provisions regarding arrangements when a child is remanded to youth detention accommodation.

522. It provides that the Secretary of State and the Youth Justice Board for England and Wales may direct that the child be placed in a youth detention establishment of one of the kinds in *subsection (2)* namely a secure children's home, a secure training centre, a young offender institution or a new form of youth detention accommodation specified by the Secretary of State pursuant to the existing order-making power in section 107(1)(e) of the Powers of the Criminal Courts (Sentencing) Act 2000.

523. The Secretary of State, or the Youth Justice Board, must consult the local authority designated by the court before directing where the child must be placed. *Subsection (7)* specifies which authority may be designated.

524. *Subsections (4) and (5)* make specific provision regarding the giving of reasons and, in the case of the magistrates' court, the recording of reasons for the remand.

Supplementary

Section 103: Arrangements for remands

525. Section 103 gives the Secretary of State, and the Youth Justice Board, the power to make arrangements for accommodation in a secure children's home for those children who are subject to a remand to youth detention accommodation. Existing legislation enables the Secretary of State to make arrangements for remands to secure training centres and young offender institutions.

526. *Subsections (2)* and *(6)* give the Secretary of State the power to make regulations (subject to the negative resolution procedure in Parliament) enabling the Secretary of State, the Youth Justice Board or another provider of youth detention accommodation to recover the costs of youth detention accommodation from designated local authorities. It also gives the power to recover associated costs, such as those for providing transport for the child from the court to the chosen form of accommodation.

527. Conversely, *subsection (4)* gives the Secretary of State the power to make payments to a local authority for the purpose of enabling it to exercise its functions in respect of children who are remanded to local authority accommodation or to make payments in respect of remands to youth detention accommodation.

528. *Subsection (7)* allows the Secretary of State to provide by regulations that those of his functions that are capable of being exercised concurrently by the Youth Justice

Board are to be exercised solely by the Secretary of State either generally or in relation to a particular type of case. Such regulations are subject to the affirmative resolution procedure.

Section 104: Looked after child status

529. Section 104(1) provides that any child remanded to youth detention accommodation is to be treated as looked after by the designated authority.

530. *Subsection (2)* gives the Secretary of State the power to apply with modifications or not apply, any legislation (including an Act or Measure of the National Assembly of Wales) to a child who is treated as looked after by virtue of being remanded under this Chapter (children who are remanded to local authority accommodation are treated as looked after by virtue of provisions in the Children Act 1989).

Section 105 and Schedule 12: Minor and consequential amendments

531. Section 105 gives effect to Schedule 12 which makes various amendments and repeals which are consequential on the new scheme for remands of children otherwise than on bail introduced by Chapter 3 of Part 3.

532. In general these are very straightforward and involve replacing references to sections of the Children and Young Persons Act 1969 or repealing legislation that created powers and duties associated with remand under that Act. Of note however are:

- *Paragraphs 1 to 3* which amend the Criminal Justice Act 1948. This previously required 17 year olds to be remanded to prison. Under the Act they will be remanded to local authority accommodation or youth detention accommodation.
- *Paragraph 10* which amends section 32 of the Children and Young Persons Act 1969. It has the effect of providing that where a child is remanded to local authority accommodation and they abscond, if found they will be escorted back to local authority accommodation and the cost will be met by that local authority. Where the child is remanded in youth detention accommodation they will be escorted back to youth detention accommodation at the cost of the Secretary of State.
- *Paragraph 13* which inserts a reference to this Act into the Local Authority Social Services Act 1970. The effect of this is to include the functions carried out by local authorities in relation to children remanded to local authority accommodation under the Act in the definition of social services functions for the purposes of the Local Authority Social Services Act 1970. This, in turn, brings children who are remanded to local authority accommodation under the Act into the definition of a 'looked after child' set out in section 22 of the Children Act 1989. In this way a child who is remanded to local authority accommodation under the Act becomes a "looked after child" within the meaning of the Children Act 1989.

Section 106: Regulations under this Chapter

533. Section 106 specifies which regulations made under Chapter 3 are subject to negative procedure and which are subject to affirmative procedure. Any regulations made under this Chapter may make different provision for different cases and may include supplementary, incidental, transitional, transitory or saving provision.

Section 107: Interpretation of Chapter 3

534. Section 107 provides definitions of terms used in Chapter 3.

Chapter 4: Release on licence etc

Calculation of days to be served

Section 108: Crediting of periods of remand in custody

535. Section 108 replaces section 240 of the 1991 Act with a new section 240ZA, dealing with the crediting of time spent on remand in custody against any subsequent sentence of imprisonment or detention. Under section 240 the court directs the amount of remand time to be counted towards a prisoner's sentence. The insertion of section 240ZA provides for such time, instead, to be calculated and applied administratively. All time that meets the criteria of the provision will be counted to reduce a subsequent sentence. There is no longer discretion to disapply any such time.

536. *Subsection (4)* of new section 240ZA prevents time spent on remand from counting if the prisoner is also serving another sentence or is otherwise detained in connection with another matter *(subsection (10)* lists the types of detention which count for this purpose).

537. *Subsection (5)* of new section 240ZA prevents the same remand time counting several times against two or more sentences (whether or not they are served consecutively or concurrently).

538. *Subsection (6)* of new section 240ZA prevents remand time shortening any recall under section 255B where the maximum length of the recall is 28 days. (The possibility of a 28 day fixed recall period was introduced by the 2008 Act which provides that lower risk prisoners who are suitable for such a recall must be released automatically at the end of that period.)

539. *Subsection (9)* of new section 240ZA makes it clear that consecutive and concurrent sentences, where a prisoner has not been released between serving such sentences, are counted as one sentence for the purposes of deducting remand time. Together with *subsection (5)* of new section 240ZA, this prevents the same remand time counting several times against the overall sentence envelope created by the consecutive or concurrent sentences.

Section 109: Crediting of periods of remand on bail

540. Section 109 amends section 240A of the 1991 Act which gives the court power to direct that time spent remanded on bail subject to electronic monitoring ("tagged bail") counts towards any subsequent sentence imposed, provided that that sentence is imposed for the same offence for which the defendant was remanded or a related offence. Two days successfully completed on tagged bail count as one day of the sentence. The new provisions set out how the time to be credited has to be calculated.

541. *Subsection (3)* inserts new subsections (3) to (3B) into section 240A. These set out the stages of the calculation. Under Step 1 the first day is counted even if the electronic monitor is not put in place until late that day. However, the last day is not counted if the offender spends the last part of that day in custody: that day will count towards the sentence served.

542. Step 2 prevents credit for tagged bail counting towards a subsequent sentence where during such time on bail the offender was also subject to an electronically monitored curfew requirement in connection with any other sentence (which includes being released on HDC) or temporarily released from prison in relation to another sentence.

543. Under Step 3 days where the offender breached the conditions of the release on bail are not to be counted.

544. Step 4 provides that each day spent on tagged bail effectively counts as half a day against the sentence. If such a calculation results in a number of days that include a half day, that half day can be counted as a whole day under Step 5.

545. New subsection (3A) prevents the same remand time counting several times against two or more sentences (whether or not they are to be served consecutively or concurrently).

546. New subsection (3B) prevents remand time shortening any recall under section 255B where the maximum length of the recall is 28 days (that is, where a prisoner receives the type of 'fixed term recall' introduced by the 2008 Act which provides for automatic release at the end of that 28 day period).

Section 110 and Schedule 13: Amendments consequential on sections 108 and 109

547. Section 110 makes amendments consequential on sections 108 and 109, mainly amending the references to the repealed section 240 of the 1991 Act so as refer to section 240ZA instead.

548. *Subsection (8)* amends section 243 of the 1991 Act in relation to persons extradited to the United Kingdom. For those persons who qualify under section 243 of the 1991 Act, the changes provide for all days remanded in custody in another jurisdiction while awaiting extradition to the United Kingdom to be counted against a subsequent sentence imposed.

549. *Subsection (13)* gives effect to Schedule 13, Part 1 of which replicates in the Armed Forces Act 2006 the effect of the provisions in section 108 for the crediting of remand time towards a subsequent sentence. This ensures the same provisions are applied in respect of sentences imposed under Armed Forces legislation. Part 2 of Schedule 13 makes consequential amendments to other Acts.

Release

Section 111 and Schedule 14: Prisoners serving less than 12 months

550. Section 111 provides for prisoners serving sentences of less than 12 months to be released unconditionally at the half way point. It does so by inserting a new section 243A into the 1991 Act. This replicates the corresponding provision in the Criminal Justice Act 1991 ("the 1991 Act"). In effect, it replaces the provisions for release of those serving sentences of less than 12 months (section 181: custody plus) originally provided for in the 1991 Act.

551. Section 111 introduces Schedule 14 which makes consequential amendments in relation to the new section 243A to ensure that the new provision works with the existing release and recall scheme in Chapter 6 of Part 12 of the 1991 Act.

552. *Paragraph 14* of the Schedule provides that consecutive sentences which add up to 12 months or more are to be treated as a single sentence of 12 months or more. This means that where a sentence of less than 12 months is served consecutively with another sentence and either (i) the other sentence is 12 months or more, or (ii) the two sentences add up to 12 months or more, then release for the sentence of less than 12 months would be on licence for the remainder of the sentence. However, where consecutive sentences add up to less than 12 months, release will be unconditional.

553. Sentences of less than 12 months were previously all dealt with under the the 1991 Act (by virtue of transitional provisions, this remained the case even after the 1991 Act was brought into force). *Paragraph 17* of the Schedule removes those transitional provisions, so that from the commencement of Chapter 4 such sentences are dealt with under the 1991 Act.

Section 112: Restrictions on early release subject to curfew

554. Section 112 amends section 246 of the 1991 Act which provides for early release on HDC, which includes electronic monitoring. The amendments exclude a number of categories of prisoner from the HDC scheme. They will prevent anyone serving a sentence of four years or more from being eligible for the scheme. They also make ineligible those previously released and recalled under the scheme for breach of licence conditions (during a previous or current sentence). Also excluded will be those previously returned to prison under section 116 of the PCC(S)A 2000 for committing a further offence before the expiry of a previous sentence. These changes bring the 1991 Act scheme in line with the scheme under the 1991 Act, so that the statutory provisions for HDC will be the same for all prisoners.

555. *Subsection (5)* inserts a new subsection (4ZA) into section 246 of the 1991 Act. This deals with concurrent and consecutive sentences for the purpose of determining whether an offender is serving a term of 4 years or more.

Further release after recall

Section 113: Cancellation of revocation of licence

556. Section 113 amends section 254 of the 1991 Act to provide that when prisoners have been recalled erroneously (for example, as a result of incorrect information about the breach), a licence revocation may be cancelled. This will apply even after the Parole Board have considered the recall and made a decision on release.

Section 114: Further release after recall

557. Section 114 replaces section 255A to 255D of the 1991 Act, which provide for the release of prisoners after recall, with new sections 255A to 255C. There are two different recall schemes under these provisions. Under section 255B prisoners, if not released executively or by the Parole Board within 28 days, are released at the completion of 28 days detention. Under section 255C prisoners are subject to detention to the end of their sentence unless released executively or by the Parole Board. Section 255A identifies which scheme will apply to a prisoner and sets out the criteria for suitability for automatic release. Recalled prisoners serving extended sentences and those not suitable for automatic release will be dealt with under section 255C.

558. The changes made by the substituted provisions are as follows:

- The combination of the previous section 255C and 255D allows for the executive release of recalled extended sentence prisoners.
- The re-writing of section 255B removes previous restrictions on automatic release for certain categories of prisoner so that such prisoners may be considered for automatic release if they are assessed as sufficiently low risk and suitable.
- New sections 255B(6) and (7) and 255C(6) and (7) prevent prisoners recalled during their HDC period from being re-released prior to their automatic release date unless satisfactory arrangements for further HDC electronic monitoring can be put in place. These are prisoners who have been released on HDC under section 246 and recalled under section 254.
- New section 255B(8) and (9) allows for the Secretary of State, on receipt of new information, to alter the basis of the recall, so that an offender originally intended for automatic release will be dealt with under the standard release provision (section 255C).

559. The amendment to section 244(1) of the 1991 Act by *subsection (2)* of section 115 makes it clear that for those serving a sentence of 12 months or more a recall under section 254 can override the automatic release date at the half-way point of the sentence.

This means where the 28-day automatic recall period ends after the duty to release at the half-way point under section 244, the full 28 days can be served before release. Similarly, the duty to release at the half-way point will not apply if the Parole Board has not directed release under section 255C.

Other provisions about release

Section 115: Supervision of young offenders after release

560. Section 115 amends the 1991 Act to include a provision – section 256B – for the supervision of young adult prisoners released from a sentence of Detention in a Young Offenders' Institution ("DYOI") – available for 18 to 20 year olds. This will ensure that prisoners released from a DYOI sentence of less than 12 months will receive 3 months' supervision. This provision recasts a similar provision in section 65 of the 1991 Act, which was repealed by the 1991 Act. Such supervision can include specific requirements relating to drug testing and electronic monitoring.

561. It also inserts a new section 256C into the 1991 Act to provide for what is to happen if the offender breaches the terms of the supervision. It gives the court powers to summons the offender, issue a warrant of arrest and impose a penalty for the breach.

Section 116: Miscellaneous amendments relating to release and recall

562. Section 116 makes amendments to the 1991 Act.

563. *Subsection (2)* removes the duty of the Secretary of State to consult the Parole Board before releasing extended sentence prisoners on compassionate grounds. This brings such release of extended sentence prisoners into line with that of all other determinate sentence prisoners.

564. *Subsections (5) to (7)* amend sections 260 and 261 of the 1991 Act; these amendments are consequential on the fact that extended sentence prisoners can be removed from prison in order to be removed from the United Kingdom.

565. *Subsection (8)* corrects a drafting error in section 263(2) of the 1991 Act, which should refer to "section 246" rather than "section 244".

566. *Subsection (9)* clarifies the previous drafting and practice under the 1991 Act in relation to the duration of the licence period for prisoners released from concurrent sentences. Release cannot take place until the latest release point of all the sentences and is on a licence expiring on the latest end date of all the sentences. No change of policy is being made.

Section 117: Replacement of transitory provisions

567. Section 117 amends a number of provisions of Chapter 6 of Part 12 of the 1991 Act so that the release provisions of that Chapter apply to sentences of Detention in a Young Offender Institution. This section revokes the 1991 Act (Sentencing) (Transitory Provisions) Order 2005 which had the same effect.

Section 118: Repeal of uncommenced provisions

568. Section 118 removes various provisions which have not been commenced. One of these is a section of the 1991 Act. Some of them are amendments of that Act or Part 2 of the 1991 Act (which also relates to release and recall).

Life sentence prisoners

Section 119: Removal of prisoners from the United Kingdom

569. Section 119 inserts two new sections into the Crime (Sentences) Act 1997 to provide a power for the Secretary of State to remove from the UK foreign national prisoners who are serving indeterminate sentences once they have served the minimum term ("tariff") set by the court. The Secretary of State may remove such a prisoner whether or not the Parole Board has directed the prisoner's release. Provision is also made for prisoners who are removed under this power and subsequently return to the UK to be detained in pursuance of their sentence.

570. New section 32A sets out the criteria for removal and the powers of the Secretary of State to remove a prisoner. This provision applies to those who are removed from prison (whether before initial release or after recall at any time). Subsection (4) allows for release by the Parole Board or compassionate release to apply to the prisoner up until the actual removal from the UK. Subsection (5) imports the definition for a person liable to removal from section 259 of the 1991 Act as it applies for determinate sentence prisoners.

571. New section 32B applies where, after removal, the offender returns. If not initially released by the Parole Board before removal then the offender will be treated as if he had not previously been released. If the Parole Board directed release prior to the removal then the offender will be treated as if recalled for breach of licence. Where the sentence is a life sentence, this will apply at any time until death. Where the sentence is an indeterminate sentence for public protection, then it will apply at any time until the licence ceases to have effect under section 31A.

Application and transitional provision

Section 120: Application and transitional etc provision

572. Section 120 gives effect to Schedule 15 (see below).

Schedule 15: Application of sections 109 to 120 and transitional and transitory provision

573. Schedule 15 contains provision for the application and commencement of the release and recall sections. This provision sets out whether the commencement of the section affects those being sentenced, those recalled or those yet to be initially released after sentence.

574. *Paragraph 4* of Schedule 15 makes it clear that the changes to eligibility for early release on HDC will not affect those who are already released on the scheme prior to the commencement of the changes to section 246 of the 1991 Act.

Section 121: Simplification of existing transitional provisions

575. *Subsection (1)* applies the release and recall provisions of Chapter 6 of Part 12 of the 1991 Act to all prisoners regardless of the date of offence or the date of sentence.

576. *Subsection (2)* provides that provisions relating to the release of fine defaulters and contemnors under Chapter 6 of Part 12 of the 1991 Act will apply to all prisoners regardless of the date of committal.

577. *Subsection (3)* has the effect of repealing fully the release and recall provisions of the 1991 Act and the transitional and savings provisions under Part 2 of Schedule 2 to the 1991 Act (Commencement No 8. and Transitional and Saving Provisions) Order 2005 which saved the relevant release and recall provisions of the 1991 Act. Any 1991 Act provisions needing to be retained for those prisoners in custody at the time of

commencement are restated in Schedule 20B of the 1991 Act, which is inserted by Schedule 16 (see below).

578. *Subsection (4)* repeals section 86 of the PCC(S)A 2000, which provides in certain cases for a prisoner's licence to extend to the end of his sentence. Such provision is no longer required for any new releases because section 249 of the 1991 Act will apply; this makes the same provision.

579. *Subsections (5) and (6)* give effect to the Schedules which in effect preserve the provisions which determine the release point and licence length for offenders who were sentenced before 4 April 2005, where the release and licence periods differ from those in Chapter 6 of Part 12 of the 1991 Act.

Schedule 16: Amendments of Criminal Justice Act 2003: transitional and consequential provisions

580. *Paragraph 2 of Schedule 16* inserts a new section 267A into Chapter 6 of Part 12 of the 1991 Act to give effect to new Schedule 20A inserted by *paragraph 3 of Schedule 16*. New Schedule 20A of the 1991 Act makes transitional provision for sentences where the offence was committed before 4 April 2005 where the 1991 Act release provisions will apply,

581. Paragraphs 1 and 2 of Schedule 20A set out definitions for, and the application of, the Schedule.

582. Paragraph 3 of Schedule 20A provides that the old rules for counting days spent in custody before sentence (which included time spent in police custody) continue to have effect, as a modification to the new rule in section 240ZA.

583. Paragraph 4 of Schedule 20A modifies the HDC provisions under the 1991 Act so that those provisions can apply to prisoners who previously fell to be released under the 1991 Act.

584. Paragraph 5 of Schedule 20A provides that those offenders who have been released on licence under the 1991 Act, whether release on ordinary licence, release on HDC, or compassionate release, are to be treated as though they have been released under the 1991 Act provisions. Any specified 1991 Act licence conditions remain valid even where there is no equivalent condition in the 1991 Act.

585. Paragraph 5(6) of Schedule 20A provides that any suspension of the licence by the court under the 1991 Act provision of section 38(2) will continue to apply even though that section has been repealed.

586. Paragraph 5(7) of Schedule 20A provides that any supervision licence issued under section 40A of the 1991 Act (that is, on release from a period of return to custody by the courts in accordance with section 116 of the PCC(S)A 2000) will continue to apply as though it was a licence issued under Chapter 6 of the 1991 Act, but should the conditions of the supervision be breached the offender continues to be liable to be dealt with by the court in accordance with section 40A(4) to (6) of the 1991 Act and not in any other way.

587. Paragraph 5(8) of Schedule 20A ensures that the length of the licence period that would be applicable under the 1991 Act is not affected by treating such persons as though they have been released under the 1991 Act provisions.

588. Paragraph 6 of Schedule 20A provides that where an offender has been recalled under the provisions of the 1991 Act before the commencement date, the recall is to be treated as though it was a recall under the 1991 Act provisions and references to, and decisions of, the Parole Board will be treated accordingly. However, treating the recall under the 1991 Act provisions will not affect the licence lengths and re-release arrangements to which the offender was subject under the 1991 Act. These arrangements have been saved under Schedule 20B and will continue to apply.

589. Paragraph 7 of Schedule 20A ensures that rules made in respect of Added Days awarded on prison adjudications under the 1991 Act provisions have effect if they had been made under the 1991 Act provisions, so that the awarding of added days can be carried forward.

590. Paragraph 8 of Schedule 20A provides that any person removed from prison early for the purposes of removal from the UK under the 1991 Act provisions is to be treated as though they have been removed under the 1991 Act provisions; and that references in the relevant section of the 1991 Act to extended sentences and their relevant custodial periods include section 85 of the PCC(S)A 2000.

591. Paragraph 9 of Schedule 20A provides that any time spent in custody awaiting extradition, awarded by the court under the 1991 Act provisions, is to be treated as having been awarded under the 1991 Act provisions.

592. Paragraph 10 of Schedule 20A defines the custodial period of a 1991 Act extended sentence, imposed in accordance with section 85, as being one half of the custodial term for the purposes of section 264 of the 1991 Act.

593. Paragraph *5 of Schedule 16* amends the 1991 Act to remove the release and recall provisions from Schedule 12 to the 1991 Act in respect of sentences imposed prior to 1 October 1992. These provisions preserve the rules which applied under the Criminal Justice Act 1967 ("the 1967 Act"), the predecessor to the 1991 Act. The relevant provisions are restated in the 1991 Act by virtue of Schedule 20B.

594. Paragraphs *9* to *12 of Schedule 16* amend the Extradition Act 2003 to remove the references to the 1991 Act and make the correct references to the 1991 Act.

595. Paragraph *14 of Schedule 16* amends the 1991 Act to ensure the provisions for crediting time spent remanded on bail whilst subject to an electronically monitored curfew apply to sentences for offences committed prior to 4 April 2005 (in addition to sentences for offences committed on or after that date).

596. Paragraph *15 of Schedule 16* fully repeals the provisions of section 247 of the 1991 Act that require a direction from the Parole Board before extended sentence prisoners may be released between the half way point and the end of the custodial part of their sentence and consequentially removes the saving provisions for that section. The savings for those prisoners who remain subject to Parole Board direction are now provided in Schedule 20B.

597. Paragraph *16 of Schedule 16* removes the provisions of section 262 and Schedule 20 of the 1991 Act which modified the 1991 Act provisions for the those prisoners liable to removal from the United Kingdom. These provisions will no longer be required when all releases are made under the 1991 Act.

598. Paragraph *17 of Schedule 16* amends section 265 of the 1991 Act in respect of the restriction on consecutive sentences for released prisoners by removing subsection (1A). Subsection (1A) applies the restriction set out in subsection (1) to persons convicted of offences committed before 4 April 2005 and to those serving less than 12 months. As the whole of Chapter 6 of Part 12 will now apply to these people, subsection (1A) will no longer be needed.

599. Paragraphs *18* to *22 of Schedule 16* are consequential on the full repeal of Part 2 of the 1991 Act, removing provisions which amended, saved or made transitional arrangements in respect of that Part.

Schedule 17: Restatement of transitional provision

600. *Paragraphs 1 to 8* amend various sections in Chapter 6 of Part 12 of the 1991 Act to make clear that those sections are subject to the release, licence and removal provisions

of Schedule 20B, which apply to those prisoners who were subject to the release arrangements of the 1991 Act.

601. *Paragraph 9* inserts new section 267B (modifications of Chapter 6 in certain transitional cases) into the 1991 Act to give effect to Schedule 20B and *paragraph 10* inserts Schedule 20B into the 1991 Act.

602. Paragraph 1 of Schedule 20B sets out the definitions of the various terms referred to in Schedule 20B and determines that, where an offence has been committed between two dates, the offence is deemed to have been committed on the latest of those dates. Schedule 20B applies to those who were sentenced before the commencement date. For sentences of 12 months or more, excluding offences sentenced under section 85 of the PCC(S)A 2000, the offence would also need to be committed prior to 4 April 2005. However, 2003 Act sentences are defined for the purposes of calculating concurrent and consecutive sentences. Where there are no provisions in Schedule 20B for sentences imposed before the commencement date then the provisions in Chapter 6 of Part 12 will apply unmodified.

603. Paragraph 2 of Schedule 20B lists the relevant dates when previous legislation brought changes to release and recall arrangements into effect; this explains the reference to such dates in the rest of the Schedule.

604. Paragraph 3 of Schedule 20B applies the provisions of Part 2 of Schedule 20B to those prisoners subject to:

- 1991 Act sentences
- extended sentences imposed under section 85 of the 2000 Act
- extended sentences imposed under section 227 or 228 of the 1991 Act before 14 July 2008

and disapplies those provisions in respect of those 1991 Act prisoners who have been released on licence from their sentence, recalled, but are unlawfully at large at the date of commencement. Such prisoners, once returned to custody, will no longer retain the 1991 Act re-release arrangements at the three-quarter point of the sentence but will fall to be treated as if recalled under section 254 of the 1991 Act and liable to detention to end of sentence.

605. Paragraph 4 of Schedule 20B identifies the prisoners still in custody at the point of commencement to whom the release provisions in paragraphs 5 and 6 apply. These are commonly referred to as the DCR (Discretionary Conditional Release) prisoners who were long term prisoners under the 1991 Act and not converted to automatic release at the half way point of sentence.

606. Paragraph 5 of Schedule 20B applies a duty to automatically release on licence, at the two-thirds point of the sentence, any of those prisoners serving a sentence (or custodial period of an extended sentence) specified in paragraph 4. The duty to release at the two-thirds point applies in place of section 244 of the 1991 Act.

607. Paragraph 6 of Schedule 20B provides eligibility for release by the Parole Board at one half of the sentence (or one-half of the custodial period of extended sentences) for prisoners falling into the criteria in paragraph 4 (those subject to automatic release on licence at the two thirds point of the sentence under paragraph 5). Paragraph 6 applies the duty to release on the direction of the Parole Board in place of the release provisions of section 244 of the 1991 Act.

608. Paragraph 7 of Schedule 20B applies to those prisoners serving an extended sentence imposed in accordance with section 85 of the PCC(S)A 2000 who do not fall within paragraph 4. Paragraph 8 of Schedule 20B applies a duty on the Secretary of State to release a person to whom paragraph 7 applies automatically on licence at the half way

point of the custodial term. The duty to release at the half- way point is in place of section 243A or section 244 of the 1991 Act.

609. Paragraph 10 of Schedule 20B provides the duty on the Secretary of State to re-release a prisoner, to whom paragraph 9 applies, unconditionally at the three-quarter point of the sentence. Prisoners to whom paragraph 9 applies are those who were convicted of an offence committed before the Crime and Disorder Act 1998 came into force who have been released and recalled before the changes made by the 2008 Act came into force. This does not include those sentenced under section 86 of the PCC(S)A 2000 as section 86 requires the offender to be on licence to the end of the sentence on initial release and any subsequent release following recall.

610. Paragraph 12 of Schedule 20B applies the duty on the Secretary of State to re-release a prisoner, to whom paragraph 11 applies, on licence at the three-quarter point of the sentence. Prisoners to whom paragraph 11 applies are those who were convicted of an offence committed after the Crime and Disorder Act 1998 came into force who have been released and recalled before the changes made by the 2008 Act came into force. However, it does not apply to those who have been released and recalled more than once as such prisoners would be liable to detained until the end of sentence in accordance with Chapter 6 of Part 12 of the 1991 Act. Nor does it apply to those prisoners recalled from an extended sentence that had been imposed in accordance with section 85 of the PCC(S)A 2000. Such sentences have their own re-release arrangements in the Schedule.

611. Paragraph 13 of Schedule 20B identifies the prisoners to whom the release provisions of paragraph 14 apply. These are prisoners in custody at the time of commencement who were sentenced to an extended sentence in accordance with section 85 of the PCC(S)A 2000 and who were recalled before the changes made by the 2008 Act came into force. It does not apply if the prisoner has been released and recalled more than once as such prisoners would be liable to detained until the end of sentence in accordance with Chapter 6 of Part 12 of the 1991 Act.

612. Paragraph 14(1) of Schedule 20B applies a duty on the Secretary of State, in respect of those prisoners to whom paragraph 13 applies, where the custodial period of the extended sentence was one of less than 12 months, to release on licence once the prisoner has served the aggregate of half the custodial term plus the extension period. The licence period would thereafter continue to end of sentence.

613. Paragraph 14(2) of Schedule 20B applies the duty on the Secretary of State, in respect of those prisoners to whom paragraph 13 applies, where the custodial period of the extended sentence was one of 12 months or more, to release on licence once the prisoner has served the aggregate of three-quarters of the custodial term and the extension period. The licence period would thereafter continue to end of sentence.

614. Paragraph 15 of Schedule 20B provides release provisions for those prisoners serving extended sentences in accordance with section 227 or 228 of the 1991 Act that were imposed before changes made by the 2008 Act came into force. Release is in accordance with section 247 of the 1991 Act at the half way point but only where the Parole Board make a direction for release. Such prisoners are only automatically released once the custodial period has been served providing there has been no recall from licence following earlier release by the Parole Board. This paragraph replaces the transitional provision made when parts of section 247 were repealed by the 2008 Act.

615. Paragraph 17 of Schedule 20B provides for a licence to remain in force to the three-quarters point of the sentence for those prisoners identified under *paragraph 4* (DCR prisoners) and also to those identified under paragraph 16(2) and (3) – namely, *(i)* those who were short term prisoners under the 1991 Act who have not previously been released from sentence and *(ii)* 1991 Act prisoners serving sentences of 12 months or more who have been released and recalled before changes made by the 2008 Act came into force. Paragraph 16(4) and 16(5) exclude from paragraph 16 those prisoners who have been released and recalled more than once, those prisoners serving a section 85

extended sentence and those where the provisions of section 86 have been applied to the sentence. Section 249 of the 1991 Act (duration of licence) is disapplied unless there is a subsequent recall from licence in accordance with section 254 of that Act.

616. Paragraph 16(6) of Schedule 20B provides that release on HDC and a subsequent recall for inability to monitor, will not affect the expiry date of the licence at the three-quarter point when the person is re-released at the half way point of the sentence; such a recall does not count under paragraph 16(4) for the purposes of working out whether a prisoner has been released and recalled more than once.

617. Paragraph 18 of Schedule 20B identifies the prisoners to whom the licence period in paragraph 19 is to apply. These are prisoners serving an extended sentence imposed in accordance with section 85 of the PCC(S)A 2000 where the prisoner has not yet been released on licence. In accordance with paragraph 19 where the custodial term is less than 12 months, the licence shall expire at the end of the aggregate of half the custodial term and the extension period. However, where the custodial term is one of 12 months or more, the licence shall expire at the end of the aggregate of three-quarters of the custodial term and the extension period. Section 249 of the 1991 Act (duration of licence) is disapplied unless there is a subsequent recall from licence in accordance with section 254 of that Act.

618. Paragraph 20 of Schedule 20B applies the concurrent or consecutive term provisions in paragraphs 21 and 22 to those prisoners serving two or more sentences of imprisonment imposed on or after 1 October 1992 (the commencement of the 1991 Act), where the sentences were imposed at the same time or, where they were imposed at different times but there has been no release from one sentence before the imposition of the next.

619. Paragraph 21 of Schedule 20B provides that where there are two or more sentences and all sentences are 1991 Act sentences, the concurrent and consecutive provisions of the 1991 Act are disapplied because the sentences form a single term with one another. Where one of those sentences is a section 85 extended sentence it is the custodial term of the extended sentence that is used to create the single term. In such a case, the licence period of the single terms is defined by paragraph 21(5).

620. Paragraph 22 of Schedule 20B provides that where there are two or more sentences that are imposed consecutively and some of the sentences are 1991 Act sentences and some are 2003 Act sentences, the sentences are aggregated in accordance with section 264 of the 1991 Act, but the aggregation under section 264 does not affect the length of the custodial period in respect of the 1991 Act sentence. Release does not take place until all the custodial periods relevant to each of the sentences have been served. Paragraph 22 is disapplied where one or more of the concurrent or consecutive sentences is subject to the release provisions of the the 1967 Act; for such cases paragraphs 32 and 33 will apply.

621. Paragraph 23 of Schedule 20B sets out the application of Part 3 of Schedule 20B which applies to those prisoners who are subject to sentences imposed prior to 1 October 1992 ("1967 Act sentences"). But that Part does not apply to prisoners who have been released from a 1967 Act sentence, recalled from licence and are unlawfully at large on the date of commencement. Such prisoners, once returned to custody, will no longer retain the 1967 Act re-release arrangements at the two-thirds point of the sentence but will fall to be treated as if recalled under section 254 of the 1991 Act and liable to detention to end of sentence.

622. Paragraph 25 of Schedule 20B provides for automatic unconditional release at the two-thirds part of the sentence to persons to whom *paragraph 24* applies - 1967 Act prisoners who have not already been released or have been released and recalled before changes made by the 2008 Act came into force. Where a prisoner has served six months or one third of the sentence (whichever is longer) the Parole Board can direct release. These paragraphs do not apply where an extended sentence certificate was issued when

the 1967 Act sentence was imposed – release from such sentences is as provided by paragraph 27.

623. For the purposes of working out whether a person has been recalled paragraph 24(4) provides that release on HDC and a subsequent recall for inability to monitor are to be discounted.

624. Paragraph 26 of Schedule 20B applies where a person, identified in paragraph 24, is released on licence by the Parole Board. The licence will expire at the two-thirds point of the sentence, provided that there is no recall from licence in accordance with section 254 of the 1991 Act (in which case the provisions of the 1991 Act will apply without modification). Paragraph 26 applies in place of the provisions of section 249 of the 1991 Act in respect of the duration of the licence.

625. Paragraph 27 of Schedule 20B identifies prisoners who are subject to an extended sentence certificate. Such a certificate extended the licence period to the end of sentence.

626. Paragraph 28 of Schedule 20B provides for the automatic release of prisoners identified under the criteria of *paragraph 27* after they have served two thirds of their sentence. They will be eligible for release by the Parole Board once they have served six months or one third of the sentence, whichever is longer.

627. Paragraph 29 of Schedule 20B provides for Prison Rules to be able to provide for the loss of remission awarded against 1967 Act sentences to be treated in the same way as added days awarded against the 1991 Act and the 1991 Act sentences - so that any date on which the offender becomes entitled to or eligible for release and any licence expiry date will be deferred by the number of days so awarded.

628. Paragraph 30 of Schedule 20B applies the concurrent or consecutive terms provisions in paragraphs 31 to 33 to those prisoners serving two or more sentences of imprisonment where at least one of those sentences is a 1967 Act sentence and either the sentences were imposed at the same time or they were imposed at different times but there has been no release from one sentence before the imposition of the next.

629. Paragraph 31 of Schedule 20B provides that where there are two or more sentences that are all 1967 Act sentences, the concurrent and consecutive provisions of the 1991 Act are disapplied because the sentences form a single term with one another.

630. Paragraph 32 of Schedule 20B disapplies the concurrent and consecutive provisions of the 1991 Act where there are concurrent and consecutive sentences where one or more sentence is a 1967 Act sentence and one or more sentence is a 1991 Act sentence, because the sentences form a single term with one another and the single term is treated as though it was a 1967 Act sentence. Where one of the sentences is a section 85 extended sentence, it is the custodial term of the extended sentence that is used to create the single term. In such a case, the licence period of the single term is defined by paragraph 32(5).

631. Paragraph 32(6) of Schedule 20B provides that where a prisoner is subject to a sentence comprising a 1967 Act sentence, a 1991 Act sentence and a 2003 Act sentence, the 1967 Act sentence and the 1991 Act sentence must be single termed before either the provisions of section 263(2)(c) of the 1991 Act are applied to determine how long the licence period will be on release or paragraph 33(3) is applied to determine how long the prisoner must remain in custody before being entitled to release.

632. Paragraph 33 of Schedule 20B provides for the treatment of consecutive sentences where one or more of the sentences are 1967 Act sentences and one or more of the sentences are 2003 Act sentences. The Secretary of State cannot release the prisoner until the aggregate of the custodial periods in respect of each sentence have been served. The length of the custodial period that must be served in respect of the 1967 Act sentence is not affected by the application of section 264 of the 1991 Act.

633. Paragraph 34 of Schedule 20B provides that where a prisoner is granted discretionary release by the Parole Board (that is, before any automatic obligation to release), it is the Parole Board who have the responsibility for setting, varying or cancelling any licence conditions. It also provides that where the Board had responsibility for a prisoner's licence conditions before 2 August 2010, that responsibility continues.

634. Paragraph 35 of Schedule 20B provides that a person who is committed to prison before 4 April 2005 for a term of 12 months or more in respect of default of payment of a fine, or for contempt of court, is to be unconditionally released at the two- thirds point of the term.

635. Paragraph 36 of Schedule 20B sets the criteria for application of paragraph 37 - referring to those prisoners who are in custody at the time of commencement, who have passed the half way point of their sentence (or the half way point of the custodial term in respect of those serving extended sentences), but not yet been released.

636. Paragraph 37 provides a power for the Secretary of State in respect of those prisoners identified in paragraph 36, who are liable to removal from the UK, but have not been removed under the Early Removal Scheme, to be removed after the half way point of the sentence (or of the custodial term in the case of extended sentences). The Secretary of State has the power to remove such prisoners with or without a release direction from the Parole Board.

Chapter 5: Dangerous Offenders

Section 122 and Schedules 18 and 19: Life sentence for second listed offence

637. Section 122 inserts a new section 224A (life sentence for second listed offence) into the 1991 Act, together with a new Schedule 15B (which is set out in Schedule 18). Schedule 19 contains related consequential and transitory provision.

638. New section 224A provides that a court must impose a life sentence on a person aged 18 or over who is convicted of an offence listed in Part 1 of Schedule 15B of that Act which is serious enough to justify a sentence of imprisonment of 10 years or more, if that person has *previously* been convicted of an offence listed in any Part of Schedule 15B and was sentenced to imprisonment for life or for a period of 10 years or more in respect of that previous offence. Parts 2 to 4 of new Schedule 15B include offences under legislation which is no longer applicable, offences in other UK jurisdictions and those of other member States of the European Union, as well as offences under service law.

639. However, the court is not obliged to impose a life sentence where it is of the opinion that there are particular circumstances which relate to the offence, the previous offence or the offender which would make it unjust to do so in all the circumstances.

New section 224A

640. Subsection (1) of new section 224A sets out the conditions under which the new mandatory life sentence must be imposed. The offender must be an adult when convicted, and the present offence must be listed in Part 1 of Schedule 15B and have been committed after the coming into force of section 224A. The sentence condition and the previous offence condition must also be met (see below).

641. Subsection (2) of new section 224A gives the court a discretion not to impose the life sentence where it is of the opinion that there are particular circumstances which relate to the offence, the previous offence or the offender, which would make it unjust to do so in all the circumstances.

642. Subsection (3) of new section 224A sets out the sentence condition. The present offence must be serious enough to justify the imposition of a sentence of imprisonment of 10 years or more. The court must consider what sentence it would have imposed but for section 224A, and disregarding any extension period it would have imposed under

new section 226A (which relates to the new extended sentence). This consideration includes, for example, any guilty plea made by the offender, as well as any aggravating or mitigating factors.

643. Subsection (4) of new section 224A sets out the previous offence condition. The offender must have been previously convicted of an offence listed in any Part of Schedule 15B, and on conviction must have received a relevant life sentence or a relevant determinate sentence.

644. Subsection (5) of new section 224A sets out what is meant by a relevant life sentence. A relevant life sentence is one where the offender was not eligible for release during the first 5 years of the sentence (not taking into account any period spent on remand or bail). The term 'life sentence' in subsection (5) includes a sentence of imprisonment or detention for public protection (see subsection (10), which refers to the definition of 'life sentence' in section 34 of the Crime (Sentences) Act 1997).

645. Subsections (6) and (7) of new section 224A set out when an extended sentence (defined in subsection (10), see below) is relevant. An extended sentence is relevant if the custodial term was 10 years or more.

646. Subsection (8) of new section 224A provides that any other determinate sentence of imprisonment or detention of 10 years or more is a relevant sentence.

647. Subsection (9) of new section 224A ensures that any reduction of a sentence for the purpose of taking account of time spent on remand, either in custody or on bail, is to be disregarded when considering whether the previous offence condition has been met. It may be that in some jurisdictions where a previous offence might have been committed time spent on remand is, or may be, applied to reduce the length of the sentence, so the provision deals with that possibility.

648. Subsection (10) of new section 224A defines "extended sentence" and "life sentence." The definitions include equivalent sentences imposed under the law of Scotland, Northern Ireland and other member States of the European Union.

649. "Sentence of imprisonment or detention" is defined to include any sentence of a period in custody imposed for an offence.

650. Subsection (11) of new section 224A provides that offences in respect of which the new mandatory life sentence under that section is imposed are not to be regarded as offences for which the sentence is fixed by law. Among other things, this obliges the court to follow any relevant sentencing legislation when determining the sentence, if it decides that to impose the mandatory life sentence would be unjust.

Section 122(2) and (3) and Schedules 18 and 19

651. Subsection (2) of section 122 introduces Schedule 18. Schedule 18 inserts new Schedule 15B into the 1991 Act. New Schedule 15B sets out particularly serious sexual and violent offences which are relevant for the purposes of (a) the new life sentence requirements in new section 224A, (b) the extended sentence provisions under new section 226A (see section 124) and (c) the release arrangements under new section 246A for persons serving extended sentences under new sections 226A and 226B (see section 125).

652. New Schedule 15B contains those offences which are listed in Schedule 15A, which is relevant for the purposes of indeterminate sentences for public protection and extended sentences under section 227 of the 1991 Act and will be repealed. In addition, new Schedule 15B contains certain child sex and terrorism offences as well as the offence of causing or allowing the death of a child or vulnerable adult (under section 5 of the Domestic Violence, Crime and Victims Act 2004). In Part 2, it also includes offences which were abolished before the coming into force of new Schedule 15B, and

would, if committed on the relevant day, constitute an offence listed in Part 1 of new Schedule 15B.

653. Subsection (3) of section 122 introduces Schedule 19. Schedule 19 makes consequential and transitory provisions in respect of new section 224A.

Section 123: Abolition of certain sentences for dangerous offenders

654. Section 123 repeals provision in sections 225 and 226 of the 1991 Act for sentences of imprisonment for public protection and detention for public protection (the equivalent sentence for persons under 18).

655. It leaves in place the provision in section 225 which requires life imprisonment to be imposed where the offence for which an offender is convicted carries a maximum sentence of life imprisonment and the court considers the seriousness of the offence justifies a life sentence. It also leaves in place the equivalent provision in section 226 with respect to detention for life.

656. Section 123 also repeals sections 227 and 228 of the 1991 Act which provide for extended sentences for certain violent or sexual offences (listed in Schedule 15 to that Act).

Section 124: New extended sentences

657. Section 124 inserts new sections 226A and 226B in the 1991 Act. Those sections create new extended sentences for adults and persons under 18 respectively. The sentences may be imposed in respect of the sexual and violent offences listed in Schedule 15 to the 1991 Act (referred to as "specified offences") where certain conditions are met. For both sentences, the court must consider that the offender presents a substantial risk of causing serious harm through re-offending.

658. For adults, two further conditions apply as alternatives. Either the court must consider that the current offence is serious enough to merit a determinate sentence of at least 4 years, or at the time the present offence was committed the offender must have previously been convicted of an offence listed in new Schedule 15B.

659. The second of these alternative conditions does not apply in respect of persons under 18.

660. Where these conditions are made out, the court may impose an extended period for which the offender is to be subject to a licence (an 'extension period') of up to 5 years for a violent offence and up to 8 years for a sexual offence. Schedule 15 lists violent and sexual offences separately. Specific provision is made about the release on licence of persons serving sentences under these new sections - see section 125 below.

New section 226A

661. Subsection (1) of new section 226A provides that the new section applies where (a) an offender aged 18 is convicted of a specified offence (whenever that offence was committed); (b) the court considers that the offender presents a significant risk to members of the public of serious harm through the commission by the offender of further specified offences; (c) the court is not obliged to impose a life sentence because of the seriousness of the offence by virtue of section 224A (life sentence for second listed offence) or 225(2) (life sentence for dangerous offenders); and (d) either condition A or condition B is met.

662. The 'significant risk' test in subsection (1)(b) is the same as the test for indeterminate sentences for public protection, which are abolished by section 123.

663. Subsection (2) of new section 226A sets out condition A, which is that when the current offence was committed the offender had a previous conviction for an offence listed in

Schedule 15B (in relation to the scope of the offences listed there see paragraph 633 above).

664. Subsection (3) of new section 226A sets out condition B, which is that the current offence is serious enough that, if the court imposed an extended sentence under this section, it would specify an appropriate custodial term of at least 4 years.

665. Subsection (5) of new section 226A sets out the structure of the new extended sentence. It consists of the appropriate custodial term followed by an extension period, which is a further period during which the offender is to be subject to a licence.

666. Subsection (6) of new section 226A provides that the court must determine the custodial term in accordance with section 153(2) of the 1991 Act (provision for length of discretionary custodial sentences).

667. Subsection (7) of new section 226A stipulates that the extension period must be a period of such length as the court considers necessary to protect the public from serious harm caused by the offender's commission of further offences listed in Schedule 15.

668. Subsection (8) of new section 226A sets out the maximum extension periods of 5 years for a violent offence and 8 years for a sexual offence.

669. Subsection (9) of new section 226A stipulates that the appropriate custodial term and the extension period must not together exceed the maximum term of imprisonment that may be imposed for the offence.

670. Subsection (10) of new section 226A follows from the fact that sentences under that section are to be available in respect of offences whenever committed. It allows the court to impose the new extended sentence on an adult offender who has committed an offence which was abolished before 4th April 2005, but which, if committed on the date the offender was convicted, would have constituted a specified offence. And subsection (11) makes section 226A work for offences committed before that date.

New section 226B

671. New section 226B makes similar provision to new section 226A, in respect of persons aged under 18. It contains no equivalent to condition A (see new section 226A(2)).

Section 125 and Schedule 20: New extended sentences: release on licence

672. Section 125 sets out the release arrangements for the new extended sentence (see new sections 226A and 226B, inserted by section 125). Different release arrangements will apply depending on the seriousness of the offence in respect of which the sentence was imposed. Offenders who have committed an offence listed in Parts 1 to 3 of Schedule 15B, or whose offending merits a custodial term of 10 years or more, will be considered for release on licence by the Parole Board once the offender has served two-thirds of the appropriate custodial term, and will be released automatically at the end of the appropriate custodial term if the Parole Board has not already directed release. Offenders who have not committed a Schedule 15B offence but have committed an offence meriting an appropriate custodial term of less than 10 years will be released automatically after two-thirds of the appropriate custodial term.

673. The section also provides for the Parole Board to apply the same release test for the new extended sentence as it currently applies to indeterminate sentences for public protection and life sentences (see section 28 of the Crime (Sentences) Act 1997).

674. *Subsection (2)* amends section 244 of the 1991 Act to exclude the new extended sentence from the automatic release provisions that apply to other determinate sentences.

675. *Subsection (3)* of the new section inserts a new section 246A in the 1991 Act (release on licence of prisoners serving extended sentence under section 226A or 226B).

New section 246A

676. *Subsection (1)* of new section 246A provides that the section applies to a prisoner ("P") who is serving an extended sentence under new section 226A or 226B. It therefore applies to both adults and juveniles.

677. *Subsection (2)* of new section 246A provides that the Secretary of State must automatically release the prisoner after the requisite custodial period has been served. The requisite custodial period is defined in subsection (8) as two-thirds of the appropriate custodial term. But subsection (2) does not apply where the prisoner's appropriate custodial term is 10 years or more or the sentence was imposed in respect of an offence listed in Parts 1 to 3 of Schedule 15B.

678. *Subsection (3)* of new section 246A provides that where the prisoner's appropriate custodial term is 10 years or more or the prisoner's sentence was imposed in respect of an offence listed in Parts 1 to 3 of Schedule 15B, the Secretary of State must release the prisoner on licence in accordance with subsections (4) to (7) ., Those provisions provide for the Parole Board to be able to direct release after the requisite custodial period. There is no automatic release until the appropriate custodial term is completed.

679. *Subsection (4)* of new section 246A provides that the Secretary of State must refer P's case to the Parole Board when the two-thirds point of the appropriate custodial term has been reached. Where the Parole Board declines to direct P's release, the Secretary of State must refer his case to the Parole Board for further consideration at least every 2 years.

680. *Subsection (5)* of new section 246A provides that the Secretary of State must release the prisoner in accordance with a direction from the Parole Board, provided that the prisoner has reached the two-thirds point of the appropriate custodial term.

681. *Subsection (6)* of new section 246A sets out the test to be applied by the Parole Board when considering whether to direct a prisoners' release. The test replicates the release test currently applied by the Parole Board to indeterminate sentences for public protection and life prisoners (see section 28 of the Crime (Sentences) Act 1997).

682. *Subsection (7)* of new section 246A provides for the automatic release of P at the end of the appropriate custodial term where P has not previously been released automatically or released on a direction by the Parole Board. Where P has previously been released and recalled to custody the automatic release provision at the end of the appropriate custodial term will not apply (and P's further release will be dealt with under section 255C of the 1991 Act).

683. *Subsection (8)* of new section 246A provides that the "appropriate custodial term" means the term imposed by the court as the custodial element of the new extended sentence. This is the sentence imposed by the court excluding the extended licence period. This subsection further defines the "requisite custodial period" as two-thirds of the appropriate custodial term, where a single sentence is imposed. Where a prisoner is serving consecutive or concurrent sentences the requisite custodial term is calculated in accordance with the aggregation of the sentences under sections 263(2) and 264(2).

684. *Subsection (4)* introduces introduces Schedule20, which makes consequential amendments to the release and recall provisions in Chapter 6 of Part 12 of the 1991 Act. These amendments add references to extended sentence and the new section 246A , so that the appropriate provision in Chapter 6 of Part 12 applies to prisoners released under the new arrangements (for example to allow licences to be set for such offenders and for them to be recalled once released).

Schedule 20: Release of new extended prisoners: consequential provision

685. *Paragraph 6(3)* (new section 250(5A) of the 1991 Act) provides for the Parole Board to set licence conditions where P is initially released by the Parole Board. Where the prisoner is released automatically the Secretary of State sets the conditions.

686. *Paragraph 9(2)* (new section 260(2A) of the 1991 Act) provides for the removal of P from prison for the purposes of deportation where P has passed the two-thirds point of the sentence but the Parole Board have not directed release.

687. *Paragraph 9(4)* (inserting the new subsection (7)(za) in section 260 of the 1991 Act) provides for early removal to apply 270 days prior to the two-thirds point for the new extended sentence, rather than 270 days prior to the half way point as for other determinate sentences.

688. *Paragraph 10(3)* (new section 261(6)(za) of the 1991 Act) provides for a prisoner who returns to the jurisdiction during the currency of the sentence, after being released from prison early and removed under section 260 of that Act, to be liable to serve the period to the two-thirds point that was not served prior to removal.

689. *Paragraph 12(2)* ensures that when aggregating consecutive sentences the two-thirds point of the new extended sentence is appropriately calculated.

Section 126: Sections 123 to 125: consequential and transitory provision

690. Section 126 introduces Schedule 21, which includes provision that is consequential on sections 123, 124 and 125. It also contains transitory provision.

Section 127: dangerous offenders subject to service law

691. Section 127 introduces Schedule 22, which applies the provision made in Chapter 5 of Part 3 in respect of offenders subject to service law and makes consequential and transitory provision.

Section 128: Power to change test for release on licence of certain prisoners

692. Section 128 gives the Secretary of State a power to set a release test, or tests, that the Parole Board must apply when considering the release of prisoners serving indeterminate sentences under section 225 or 226 of the 1991 Act (IPP prisoners), prisoners serving extended sentences imposed under section 226A or 226B of that Act and determinate sentence prisoners subject to Parole Board release whose release provisions have been saved under Schedule 20B of the 1991 Act (collectively, "discretionary release prisoners").

693. *Subsection (1)* gives the Secretary of State a power to make orders setting out when the Parole Board must direct release of discretionary release prisoners. The order may set out either requirements which, if satisfied, mean the Parole Board must direct a prisoner's release or requirements that must be satisfied for release to be refused.

694. *Subsection (3)* provides that orders can amend the legislation which sets out the release criteria for IPP prisoners, for discretionary release prisoners. Orders may also make provision for prisoners whose case is being considered by the Board at the time when a release test is amended. They may make separate provision for IPP prisoners, extended sentence prisoners and the other determinate sentence prisoners. They may include consequential provision.

695. *Subsections (4) and (5)* provide that any order made under the section must be made by statutory instrument subject to the affirmative procedure.

696. *Subsection (6)* defines IPP prisoners and new extended sentence prisoners so as to include both adults and juveniles.

Chapter 6: Prisoners etc

Section 129: Employment in prisons: deductions etc from payments to prisoners

697. Section 129 makes amendments to the Prison Act 1952 ("the 1952 Act") in respect of the employment and payment of prisoners and persons required to be detained in remand centres, secure training centres and young offender institutions. It makes particular provision in respect of reductions in, deductions from and levies on the earnings of prisoners and persons in young offender institutions who are aged 18 or over.

698. *Subsection (1)* removes 'employment' from the existing rule-making power in section 47(1) of the 1952 Act. Rules about employment of prisoners and persons in young offender institutions who are aged 18 or over are to be made under the power in new section 47A inserted by *subsection (4)*

699. *Subsection (2)* amends section 47 of the 1952 Act by inserting new subsection (1A) so that the Secretary of State may continue to make rules about the employment of persons required to be detained in remand centres or secure training centres and persons aged 17 years or younger required to be detained in young offender institutions (see subsection (11)(a)).

700. *Subsection (4)* inserts a new section 47A into the 1952 Act. This confers a number of new powers on the Secretary to State to make prison rules (to which the negative Parliamentary procedure will apply):

- about the employment of prisoners and the making of payments to prisoners in respect of work or other activities undertaken by them (or in respect of their unemployment);
- about the making, by the governor, of reductions in such payments to a prisoner.
- about the ways in which a governor may use the amounts generated by way of reductions – which can be for the benefit of victims or communities, for the purposes of the rehabilitation of offenders, or for other purposes prescribed in rules.
- enabling amounts generated by way of reductions for making payments into an account of a kind to be prescribed. (It is envisaged that such accounts will be for the benefit of the prisoner. The accounts are to be of a kind prescribed in rules, and the rules may also make provision for making payments out of the account to the prisoner before or after the prisoner's release on fulfilment by the prisoner of conditions which are prescribed in rules.);
- to allow for payments of amounts generated by way of reductions to be made after the deduction of amounts of a prescribed description. This is to enable running and administration costs to be taken into account;
- to allow for the making deductions from, or imposing levies on, payments to a prisoner for work, other activities, or in respect of unemployment, where those payments are not made by or on behalf of the governor. It is envisaged that this power will apply in respect of a prisoner's earnings etc. from a range of sources other than the governor;
- to provide for either the governor or the Secretary of State to make deductions or impose levies but that, where the governor does so, the governor must pay amounts generated to the Secretary of State.

701. *Subsections (7) and (8)* of section 129 amend the Prisoners' Earnings Act 1996 to remove its application in England and Wales. It remains applicable in Scotland.

702. *Subsection (12)* gives the Secretary of State a power to make payments in connection with measures that appear to him to be intended to rehabilitate offenders, prevent re-offending or limit the impact of crime.

703. *Subsection (13)* provides that in making such payments, the Secretary of State must have regard to the amounts generated from reductions, deductions and levies made or imposed by virtue of rules under new section 47A.

Section 130: Transfer of prisoners: prosecution of other offences

704. Section 130 inserts new section 3A into the Repatriation of Prisoners Act 1984. New section 3A will provide prisoners transferred to England, Wales or Scotland, in accordance with international prisoner transfer arrangements, with statutory protection from prosecution in Great Britain in relation to offences committed prior to transfer taking place, except in specified circumstances.

705. *Subsection (3)* of new section 3A sets out the circumstances in which prisoners transferred to England, Wales or Scotland pursuant to international prisoner transfer arrangements may be prosecuted in Great Britain for offences committed prior to transfer taking place.

Section 131: Transit of prisoners

706. Section 131 inserts new sections 6A, 6B, 6C and 6D into the Repatriation of Prisoners Act 1984. These new sections will enable the Isle of Man, the Channel Islands or countries with which the UK has prisoner transfer arrangements to transfer, via an airport or port in England, Wales or Scotland, a prisoner serving a sentence of imprisonment to or from a third country, for the purpose of the serving that sentence.

707. New sections 6A and 6B provide the relevant Minister responsible for executing the transit with the power to hold a prisoner who is in transit through England, Wales or Scotland pursuant to prisoner transfer arrangements for as long is reasonable and necessary to enable the transit to take place. They also provides a power to search a prisoner taken into detention for the purpose of transit. They also confer ancillary powers on the Minster to designate any person as having the powers of a constable for the purpose of executing a transit order and confer a power on a constable or any person so designated with a power to arrest the prisoner without warrant should that prisoner escape or be unlawfully at large.

708. New section 6C sets out the procedure to be followed where a prisoner enters the United Kingdom through one jurisdiction and exits through another. Transit may only take place in these circumstances where the relevant Minister in each jurisdiction concerned consents to transit.

709. New section 6D provides a power to detain a prisoner who makes an unscheduled stop in England, Wales or Scotland in the course of being transferred between two other countries or territories, for a period of no more than 72 hours, or until a transit order is issued, as long as the UK has prisoner transfer arrangements with one of those two countries or territories.

Chapter 7: Out of court disposals

Penalty notices

Section 132 and Schedule 23: Penalty notices for disorderly behaviour

710. Penalty notices for disorder ("PNDs") were introduced by Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 ("the 2001 Act"). They may be issued where a police officer has reason to believe that a person has committed a "penalty offence", that is one of the offences listed in section 1 of the 2001 Act (which include drunk

and disorderly behaviour, possession of cannabis, petty retail theft and causing criminal damage). Recipients of a PND have 21 days either to ask to be tried for the alleged offence or to pay in full the fixed penalty so as to discharge their liability to be convicted for the penalty offence. Failure to do either of these things may result in the registration of a fine against the individual equal to one and a half times the penalty amount.

711. Section 132 gives effect to Schedule 23, which confers a new power on Chief Officers of Police to set up within their area a scheme which will allow police officers, where appropriate, to issue penalty notices with an education option. This gives recipients the opportunity to discharge their liability to be convicted of the penalty offence by paying for and completing an educational course related to the offence for which the notice was given. An educational course might, for example, seek to make individuals aware of the social and health implications of their conduct and would be designed to reduce the likelihood of further offending.

712. The Schedule also:

- ensures that a PND may not be given to a person under the age of 18;
- removes the requirement that a police officer issuing a PND to an individual other than at a police station must be in uniform; and
- removes the requirement that police officers in a police station may not give a PND unless they are "authorised constables".

713. *Paragraph 3* of the Schedule amends section 2 of the 2001 Act so as to allow a constable to offer an education option to a person given a PND where an educational course scheme which relates to the offence committed has been established by the Chief Officer of the police force concerned. Recipients of a penalty notice with an education option will have the opportunity to discharge their liability to be convicted of the penalty offence by paying for and completing the course. For example, a person suspected of committing the offence of being drunk and disorderly might be offered a penalty notice with an option of paying for and completing an alcohol awareness course instead of paying the penalty amount or asking to be tried.

714. Paragraph 3 also:

- amends section 2 of the 2001 Act so as to prevent PNDs from being given to persons aged under 18;
- repeals section 2(6) to (9) of the 2001 Act which makes provision for the Secretary of State by order (subject to the affirmative Parliamentary procedure) to allow PNDs to be given to persons under the age of 18 but over the age of 10, and to provide for the parents of a person aged under 16 who is given a PND to be informed of the notice and to be liable to pay the penalty; and
- confers a power on the Secretary of State to make regulations (subject to the negative Parliamentary procedure) about the revocation of PNDs.

715. *Paragraph 3* further amends section 2 of the 2001 Act so as to remove the requirement that:

- a police officer issuing a PND at a location other than a police station must be in uniform;
- a police officer issuing a PND in a police station must be an "authorised constable".

716. *Paragraph 4* inserts a new section 2A into the "2001 Act". This confers power on the Chief Officer of a police force to establish an educational course scheme in relation to one or more kinds of penalty offence committed in the Chief Officer's area. It stipulates the necessary arrangements a scheme must include; requires that an educational course must aim to reduce the likelihood of the recipient of the penalty notice re-offending;

and makes provision about who may provide an education course. It is for the Chief Officer to set the course fee (which must be paid by the person who attends the course). The Chief Officer may arrange for courses to be provided by his or her force, another force, or by a private provider.

717. New section 2A also:

- allows the Chief Constable of the British Transport Police Force to establish an educational course scheme in relation to penalty offences committed on a railway and other places where that force has jurisdiction; and
- confers power on the Secretary of State by regulations (subject to the negative Parliamentary procedure) to specify the minimum and maximum level of an educational course fee, and allow for the sharing, between the police and those involved in running educational courses, of personal information about an individual who has selected the education option.

718. *Paragraph 5* amends section 3 of the "2001 Act" (which concerns the amount of the penalty and the form of the penalty notice) in particular:

- to repeal the provision allowing the Secretary of State to specify by order a different level of penalty for persons of different ages (currently £80 for persons aged 18 or over or £50 in the case of person aged under 18 – see S.I. 2002/1837);
- to confer a new power on the Secretary of State by regulations (subject to the negative Parliamentary procedure) to require a penalty notice with an education option to include, or be accompanied by, additional information to that which is provided in a PND without that option.

719. *Paragraph 6* inserts new subsections (6) to (10) into section 4 of the 2001 Act (which concerns the effect of a penalty notice with an education option).

720. New subsections (6) to (8) allow for a sum equal to one and a half times the amount of the penalty to be registered as a fine for enforcement against a recipient of a PND with an education option where the recipient:

- fails within a period of 21 days beginning with the date on which the notice was given either to ask to attend an educational course, or to pay the penalty, or ask to be tried for the offence to which the notice relates; or
- asks within that 21 period to attend a course, but then fails to pay the course fee or pays the fee but fails to attend or complete the course in accordance with regulations made under subsection (9).

721. New subsections (9) and (10) confer a number of new powers on the Secretary of State to make regulations (subject to the negative Parliamentary procedure) in order to make provision:

- as to when an offender will be treated as having attended or not attended a course;
- allowing for extensions of time for attendance on a course (for instance where the offender is unwell) and as to who should determine requests for an extension;
- as to the consequences of the offender failing to attend;
- allowing for the delegation of certain determinations (for instance as to whether extensions of time for completing a course should be granted).

722. *Paragraph 7* amends section 5 of the 2001 Act so as to prevent a criminal prosecution for a penalty offence being brought against a person given a penalty notice with an education option who:

- asks during the 21 day suspended enforcement period to attend an educational course, unless that person subsequently fails to pay the fee for the course or fails to attend and complete the course; or
- having asked to attend, then pays the fee and completes the course in accordance with regulations made under section 4(9).

723. *Paragraph 8* allows the Secretary of State to issue guidance about educational course schemes under section 6 of the 2001 Act.

724. Section 10 of the 2001 Act concerns enforcement of fines registered against a person given a penalty notice who then fails to pay the penalty amount. Subsection (5) allows a magistrates' court to set aside a fine in the interests of justice. *Paragraph 10* of the Schedule inserts a new subsection (7) into section 10. It confers a new power on the Secretary of State to make regulations (subject to the negative Parliamentary procedure) specifying the directions or orders the court may or must give if it sets aside a fine relating to a penalty notice with an education option.

725. *Paragraph 11* inserts a new section 10A into the 2001 Act. This sets out the Parliamentary procedures relating to any power of the Secretary of State to make orders or regulations under Chapter 1 of Part 1 of the 2001 Act, provides for them to be made by statutory instrument, and confers supplementary powers. New section 10A replaces existing provisions currently found in sections 1(4) and (5), 2(8) and (9) and 3(5) and (6), which are repealed.

726. *Paragraphs 13 and 14* make amendments consequential upon the repeal of the requirement that constables must be uniform when giving penalty notices, in particular to the Police Reform Act 2002 (which allows for community support officers, accredited persons and accredited inspectors to issue fixed penalty notices).

727. *Paragraph 15* repeals section 87 of the Anti-social Behaviour Act 2003, which amended section 2 of the 2001 Act so that PNDs could be issued to persons aged under 18 years.

Cautions

Section 133: Conditional cautions: involvement of prosecutors

728. Section 133 amends sections 22 to 25 of the 1991 Act. The section enables the authorised person (usually a police officer) to make a decision to offer a conditional caution by removing the requirement that, before the authorised person can offer a conditional caution to an offender, they must refer the matter to the relevant prosecutor (usually the Crown Prosecution Service) to decide that there is sufficient evidence to charge the offender with the offence, and that a conditional caution should be given. The section enables those decisions to be taken by the authorised person without reference to the relevant prosecutor.

729. Section 133 also enables the authorised person to vary conditions in the conditional caution without reference to the relevant prosecutor. The other requirements for a conditional caution remain unchanged, including that the offender admits that they committed the offence and that they consent to being given a conditional caution.

730. The intention is that the Code of Practice issued under section 25 of the 1991 Act or guidance will specify those matters that should still be referred to the relevant prosecutor for a decision about whether a conditional caution should be given or to vary conditions.

Section 134: Conditional cautions: removal etc of certain foreign offenders

731. Section 134 amends section 22 of the 1991 Act so as to make available new types of conditions that can be attached to a conditional caution given to an offender who

is a foreign national and who does not have leave to enter or remain in the United Kingdom. The object of these conditions is to bring about the departure of the foreign offender from the UK and ensure that they do not return to the UK for a period. These conditions may be attached to a conditional caution, whether or not it is in addition to a condition with one or more of the existing objectives in section 22(3) of the 1991 Act (namely facilitating the rehabilitation of the offender; ensuring that the offender makes reparation for the offence; or punishing the offender).

732. This section also defines the category of foreign offenders who could be offered such conditions as those offenders whose immigration status makes them liable for removal from the UK. This means a person who has no leave to enter or remain in the UK and in respect of whom there is a power to enforce their departure from the UK. As with all conditional cautions, the offender must admit the offence and agree to accept the conditional caution.

733. If the foreign offender does not comply with these conditions he or she may be prosecuted for the original offence.

Youth cautions

Section 135 and Schedule 24: Youth cautions

734. Section 65 and 66 of the Crime and Disorder Act 1998 ("the 1998 Act") created a system of reprimands and warnings known as the Final Warning Scheme. These are out of court disposals for young offenders for use where prosecution is not in the public interest.

735. *Subsection (1)* of section 135 repeals sections 65 and 66 of the 1998 Act abolishing the Final Warning Scheme.

736. *Subsection (2)* inserts new section 66ZA, which creates a new 'youth caution', and new section 66ZB, which sets out the effect of the new youth caution.

737. New section 66ZA does the following:

738. *New subsection (1)* sets out the circumstances in which a constable may give a young person a youth caution. They are broadly the same as those in which a warning or reprimand can currently be given. However, unlike reprimands and warnings which cannot be offered if a young person has previously been convicted of an offence or given a youth conditional caution, the new youth caution contains no such restriction. This mirrors changes made to youth conditional cautions (see section 137).

739. *New subsection (1)(a)* provides that to issue a youth caution the constable must decide that there is sufficient evidence to charge the young person with an offence. The effect of the test is the same as for issuing a reprimand or warning but the wording has been amended for consistency with the requirement for conditional cautions and youth conditional cautions.

740. *New subsections (2) to (7)* replicate relevant provision from section 65 of the 1998 Act on reprimands and warnings. This includes provision:

- requiring appropriate adults to be present when persons under 17 are given a youth caution,
- requiring the effect of receiving a youth caution to be explained to the person given the caution,
- for the publication of guidance by the Secretary of State, and
- preventing cautions, other than youth cautions and youth conditional cautions, from being given to children and young people.

741. New section 66ZB does the following:

742. *New subsection (1)* provides that if a young person receives a youth caution then the police must refer them to the appropriate youth offending team as soon as is practicable. The purpose of this is to ensure that the youth offending team has complete records of the young person's involvement with the police and so that they can be considered for assessment, upon receiving a first or subsequent youth caution. Under section 66 of the 1998 Act this was only required for warnings, not reprimands.

743. *New subsections (2) and (3)* provide the power for the youth offending team to assess a young person and put in place a rehabilitation programme, where a young person receives a youth caution and they consider this appropriate. It also places a duty on the youth offending team to assess a young person if they receive a second or subsequent referral under subsection (1). Following this assessment, the youth offending team should put in place a rehabilitation programme to prevent further offending unless this is deemed inappropriate. This subsection broadly mirrors the threshold for assessment and intervention that existed for reprimands and warnings.

744. *New subsection (4)* replicates section 66(3) of the 1998 Act by making provision for the Secretary of State to publish guidance setting out what should be included in any rehabilitation programme and the steps that will need to be taken if the offender fails to participate in these programmes.

745. *New subsections (5) and (6)* provide that, save for in exceptional circumstances, a court may not conditionally discharge an offender if they have been given a youth caution in the two years preceding the commission of the offence for which they are being sentenced (unless that youth caution was the offender's first and only caution). Where the court is of the opinion that exceptional circumstances are present it must state in open court why it is of that opinion.

746. *New subsection (7)* replicates section 66(5) of the 1998 Act by making provision that where a young person has received a youth caution and has failed to participate in a rehabilitation programme provided as part of that caution, this may be cited in court in any subsequent criminal proceedings involving that person in the same way that a prior conviction would be.

747. *Subsection (5)* of section 135 provides that any reprimand or warning given to a person prior to the commencement of this section will subsequently be considered a youth caution for the purposes of the Act. For example a reprimand would be considered a first youth caution for the purposes of determining whether there was a duty on the youth offending team to assess a young person under section 66ZB(2), if they were subsequently to be given a youth caution following the commencement of the Act.

748. *Subsections (6) and (7)* of section 135 ensure that a referral and rehabilitation programme provided under section 66 of the 1998 Act before the commencement of this section is to be treated as equivalent to a rehabilitation programme provided under section 66ZB of that Act.

Schedule 24: Youth cautions: consequential amendments

749. *Schedule 24* is given effect by section 135(3) and makes various amendments and appeals which are consequential on the repeal of reprimands and warnings under the 1998 Act and the introduction of youth cautions by section 136.

Youth cautions

Section 136: Youth conditional cautions: previous convictions

750. Section 136 omits paragraph (a) from section 66A(1) of the 1998 Act. That paragraph prevents a youth conditional caution from being given to a young person who has previously been convicted of an offence. This will allow a youth conditional caution to be given to a young person when they have admitted to committing an offence for

which such a disposal is appropriate, even if they have been convicted of other more serious offences in the past.

Section 137: Youth conditional cautions: references to youth offending teams

751. Section 137 inserts a new subsection (6A) into section 66A of the 1998 Act, the effect of which is to require an authorised person who gives a young person a youth conditional caution to refer that young person to the youth offending team as soon as is practicable. The purpose of this is to ensure that the youth offending team has complete records of the young person's involvement with the police and so that they can be considered for assessment to identify rehabilitative programmes. The referral under this provision will also enable the youth offending team to apply for a "parenting order" if voluntary parenting support is not engaged with (parenting orders are created by section 25 of the Anti-Social Behaviour Act 2003).

Section 138: Youth conditional cautions: involvement of prosecutors

752. Section 138 amends sections 66A, 66B, 66C, 66D and 66G of the Crime and Disorder Act 1998.

753. *Subsection (2)* amends section 66A(4). It removes the requirement that the conditions attached to a youth conditional caution be specified by a relevant prosecutor. A condition that a youth attend at a specified place at specified times may still be attached to a youth conditional caution but the place and times must be specified in that condition by whoever offers the caution.

754. *Subsection (3)* amends section 66B(2). It would allow the decisions as to whether there is sufficient evidence to charge the offender and whether a youth conditional caution should be given to be made by an authorised person. At the moment these decisions have to be taken by a relevant prosecutor (usually the Crown Prosecution Service). The decision taken here is not a charging decision. It is an assessment of the evidence for the purposes of deciding whether to caution only.

755. *Subsection (4)* amends section 66C(5). It removes the requirement that a relevant prosecutor must, if payment of a financial penalty is a condition, specify the amount of the penalty, to whom it must be paid and how it may be paid. Instead, these details must be specified in the condition by whoever offers the caution.

756. *Subsection (5)* amends section 66D. It allows conditions to be varied by any relevant prosecutor or authorised person. At the moment they can only be varied by the relevant prosecutor. An authorised person will be able to vary the conditions, even where they were initially decided by a relevant prosecutor.

757. *Subsection (6)* amends section 66G, which relates to the code of practice that is issued by the Secretary of State. The amendment is consequential upon the amendment made by subsection (4).

758. The intention is that the Code of Practice introduced under section 66G Act or guidance will specify those matters that should be referred to the relevant prosecutor for a decision about whether a conditional caution should be given or to vary conditions.

Chapter 8: Rehabilitation of Offenders

Section 139: Establishment or alteration of rehabilitation periods

759. Section 139 extends the scope of the Rehabilitation of Offenders Act 1974 so that custodial sentences of up to and including 4 years may become spent. It also inserts new *subsection (2)* into section 5 of the ROA to amend the times at which different sentences may become spent. The table in section 5(2) provides for the following -

a. Custodial sentences of over 30 months and up to and including 4 years become spent 7 years after the end of the sentence (which would include any licence period). In respect of those under 18 at the date of conviction, those sentences become spent 3 and a half years after the end of the sentence (including any licence period).

b. Custodial sentences of over 6 months and up to and including 30 months are capable of being spent 4 years after the end of the sentence (including any licence period). In respect of those who are under 18 at the date of conviction, those sentences become spent 2 years after the end of the sentence (including any licence period).

c. Custodial sentences of up to and including 6 months are capable of being spent 2 years after the end of the sentence (including any licence period). In respect of those under 18 at the date of conviction, those sentences become spent 18 months after the end of the sentence.

d. Removal from Her Majesty's service becomes spent 12 months after the date of conviction. For those under 18 at the date of conviction the period will be 6 months.

e. Sentences of service detention become spent 12 months after the day on which the sentence is completed. For those under 18 at the date of conviction the period will be 6 months.

f. Fines become spent 1 year after the date of conviction. In respect of those under 18 at the date of conviction, they will become spent 6 months after the date of conviction.

g. Compensation orders become spent when they are paid in full.

h. Community orders become spent 1 year after the date provided as the end date of the order. In respect of those under 18 at the date of conviction, the equivalent order will become spent 6 months after the end of the date of the order.

i. Relevant orders become spent on the day provided for in the order as the end date of the order.

760. Section 139 also inserts new *subsections (3) to (7)* into section 5 of the ROA. *Subsection (3)* provides for a rehabilitation period of 24 months from the date of conviction in relation to any community or youth rehabilitation order which otherwise has no specified end date. *Subsection (4)* allows an absolute discharge, or other sentence not otherwise dealt with in the provisions, to be spent immediately. *Subsection (6)* provides an order making power for the Secretary of State to amend the rehabilitation periods set out in section 5(2) and (3), subject to affirmative procedure. *Subsection (7)* retains the position in relation to consecutive and concurrent terms of imprisonment so that they are treated as a single term for the purpose of calculating rehabilitation periods. *Subsection (8)* defines various terms, relating to the sentences that may be subject to rehabilitation according to section 5 of the ROA. These include references to the armed forces and youth equivalents.

761. Section 139 also amends section 6 of the ROA which makes provision for when an offender commits a further offence. All rehabilitation periods applicable remain for the duration of the longest rehabilitation period.

762. Section 139 inserts a new section 8AA into the ROA to deal with spent alternatives to prosecution (a Scottish disposal). The amendment mirrors the law in Scotland so that alternatives to prosecution will be treated in the same way by the law of England and Wales as they are in Scotland.

763. Paragraph 1 of Schedule 2 to the ROA is amended in relation to cautions and conditional cautions so that they become spent immediately on being administered (cautions) and up to a maximum of 3 months after being administered (conditional cautions).

Section 140: No rehabilitation for certain immigration or nationality purposes

764. Section 140 relates to immigration and nationality proceedings. It amends the UK Borders Act 2007 to exclude immigration or nationality decision making, including initial decisions and any subsequent proceedings, from the operation of the ROA.

Section 141: Transitional and consequential provision

765. Section 141 contains the transitional and consequential provisions relating to these amendments. These apply the changes to the ROA retrospectively so that existing convictions will become spent according to the new rehabilitation periods. Anyone treated as rehabilitated for the purpose of the Act before commencement of these provisions will continue to be treated as such. However, the exemption for immigration and nationality decisions will not apply to any proceedings begun but not completed, or applications made but not finally determined, before the commencement of the provisions.

Schedule 25: Rehabilitation of offenders: consequential provision

766. Schedule 25 is given effect by section 141(10). Part 1 of the Schedule makes minor and technical amendments to the ROA to ensure that the amendments apply to England and Wales only. It also amends the order making power in section 10 of the ROA to give the Secretary of State the power to make incidental, consequential, supplementary, transitional, transitory or savings provisions when making an order under that section.

767. Part 2 of the Schedule makes repeals consequential to the amendments.

Chapter 9: Offences

Section 142 and Schedule 26: Offences of threatening with article with blade or point or offensive weapon in public or in school premises

768. Section 142 creates offences relating to the aggravated use of an offensive weapon or an article with a blade or point, as defined in the offences relating to the possession of such articles under section 1 of the Prevention of Crime Act 1953 ("the 1953 Act") and section 139 of the 1988 Act respectively.

769. *Subsections (1) and (2)* of the section insert the new offences into those Acts to become new section 1A of the 1953 Act and section 139AA of the 1988 Act. The offences are committed where a person (A) has an offensive weapon or an article with a blade or point with him or her and intentionally uses the weapon or article to threaten another (B) creating an immediate risk of serious physical harm to B.

770. A's use of the weapon must be unlawful, allowing A to raise relevant defences to the use such as self-defence, defence of others or property, and the prevention of crime. If raised, the burden of rebutting those defences will rest on the prosecution. "Serious physical harm" is defined as harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.

771. Like the offences relating to possession of such articles, the offence must be committed in a public place or on school premises, as defined in relation to the relevant possession offences.

772. The offences under this section will be triable either way, and subject to a maximum penalty of 4 years' imprisonment on indictment. These offences carry a minimum custodial sentence for offenders aged 16 and over. In the case of an offender aged 16 or 17 on the date on which they are convicted, the court must impose a detention and

training order of at least 4 months' duration. For those offenders who are over 18, the court must impose a sentence of imprisonment (or detention in a young offenders institution where the offender is aged 18-20) of 6 months. In each instance the court may depart from the specified minimum sentence if there are particular circumstances relating to the offence or offender which would make it unjust to impose such a sentence. In the case of a 16 or 17 year old the court is required to have regard to its duties pursuant to section 44 of the Children and Young Persons Act 1933 when considering whether such circumstances arise. Section 44 imposes on the court a duty to have regard to the welfare of the child.

773. The section also provides expressly that if a person is found not guilty of the new aggravated offence but it is proved that the person committed the relevant possession offence the court can return an alternative verdict of guilty to the possession offence.

774. *Subsection (3)* of section 142 gives effect to Schedule 26 which makes minor and consequential amendments as a result of section 142. The amendment made by paragraph 16 to section 142 of the 1991 Act will allow a court, where a person pleads guilty to the new offences created by section 142, to reduce the sentence of imprisonment it would otherwise have passed; but it may not reduce it to below 80% of the minimum term referred to in the new section 1A(6) of the 1953 Act and the new section 139AA(8) of the 1988 Act. The amendments made by paragraphs 23 to 29 to the Armed Forces Act 2006 make equivalent provision in respect of sentencing by a service court to that made in section 142 and Schedule 26 in respect of sentencing by a civilian court. The amendment made by paragraph 30 to the Armed Forces Act 2006 includes in Schedule 2 to that Act an offence under section 42 of that Act as respects which the corresponding offence under the law of England and Wales is an offence under section 1A of the 1953 Act and an offence under section 42 of the 2006 Act as respects which the corresponding offence under the law of England and Wales is an offence under section 139AA of the 1988 Act. Schedule 2 to the Armed Forces Act 2006 lists those serious offences to which section 113 and 116 of the 2006 Act apply.

Section 143 and Schedule 27: Causing serious injury by dangerous driving

775. This section inserts new section 1A in the Road Traffic Act 1998 ("RTA), and makes provision for a new criminal offence of causing serious injury by dangerous driving. The offence extends to England, Wales and Scotland.

776. The offence is committed when a person causes serious physical injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place.

777. Section 1A (2) defines "serious injury" both for the purposes of England and Wales and in Scotland. In England and Wales, "serious injury" means physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861. In Scotland, "serious injury" means "severe physical injury". The definitions reflect concepts which are familiar in the respective jurisdictions.

778. Section 1A(3) applies the existing definition of dangerous driving in the RTA to the new offence of causing serious injury by dangerous driving. Section 1A(4) provides that the offence of causing serious injury by dangerous driving only applies to driving after the offence comes into force.

779. *Subsections (5) and (6)* create an entry in Schedule 2 to the Road Traffic Offenders Act 1988 ("RTOA"), making provision for the section 1A offence to be triable either way and setting out the maximum penalties available on summary conviction (in England this is 6 months' imprisonment or a fine of £5,000, or both; in Scotland this is 12 months' imprisonment or a fine of £10,000, or both) and on indictment (5 years or a fine or both). It also sets out that the offence will be subject to mandatory disqualification and endorsement and sets the range of penalty points available for the offence.

780. *Subsection (7)* gives effect to Schedule 27, which makes minor and consequential amendments as a result of section 114. Paragraph 1 amends section 13A(1) of the "RTA" so that the new offence does not apply to motoring events authorised under regulations made by the Secretary of State under that section.

781. Paragraphs 2 to 4 amend sections 23 and 24 of the RTOA to provide for alternative verdicts. Where a person is found not guilty of culpable homicide in Scotland, or manslaughter in England and Wales, they may instead be convicted of the new offence. A person found not guilty of the new offence may in the alternative be convicted of dangerous driving (contrary to section 2 of the RTA) or careless, or inconsiderate, driving (contrary to section 3 of the RTA).

782. Paragraphs 5 and 6 amend sections 34(4) and 36(2)(b) of the RTOA to make provision in respect of disqualification. A person convicted of the new offence will be subject to a minimum disqualification of two years, unless the court considers there are special reasons either not to disqualify them, or to disqualify for a shorter period. A person convicted of the new offence will be disqualified until they pass an extended driving test (section 36 of the RTOA).

783. Paragraphs 7 and 8 amend section 45(6) and, prospectively, section 45A(4) of the RTOA so that an endorsement in relation to the new offence will remain effective until four years have elapsed following conviction. Paragraph 9 inserts the new offence into Schedule 1 to the RTOA for the purpose of applying sections 11 and 12(1) of that Act relating to evidence as to driver, user or owner of a vehicle in proceedings in England and Wales.

784. Paragraph 10 amends, prospectively, paragraph 3 of Schedule 3 to the Crime (International Co-operation) Act 2003 to insert the new offence. Where a defendant is normally resident outside the UK, notice of conviction and disqualification for the new offence will be given to the authorities of a state where they are normally resident.

785. Paragraph 11 amends Schedule 2 to the Armed Forces Act 2006 to insert the new offence into that Schedule for the purpose of sections 113 and 116 of that Act. Those sections govern the reporting of serious offences to the service police force and the Director of Service Prosecutions respectively.

Section 144: Offence of squatting in a residential building

786. This section creates a new offence of squatting in a residential building.

787. *Subsection (1)* sets out the elements of the offence. The offence is committed when a person is in a residential building as a trespasser having entered it as such, the person knows or ought to know that they are a trespasser, and the person is living in the building or intends to live there for any period.

788. *Subsection (1)(a)* is designed to ensure that only people who enter and remain in the residential building as trespasser will be captured by the offence. It will not cover anybody who entered the building with permission of the property owner, such as a legitimate tenant.

789. *Subsection (1)(b)* states that the offence will only be committed if the defendant knew or ought to have known he or she was a trespasser.

790. *Subsection (1)(c)* provides that the trespasser must be living or intending to live in the building for any period. The offence does not apply to people who are in the residential building momentarily or have no intention of living there.

791. *Subsection (2)* is designed to ensure that the offence is not committed by a person who remains in occupation after the end of a lease or licence.

792. 'Residential building' is defined in *subsection (3)*.

793. *Subsection (4)* makes it clear that a defendant who occupied a residential building with the permission (e.g. consent or licence) of a trespasser can, where appropriate, still be considered a trespasser as against the owner or lawful occupier and as such be captured by the offence.

794. The offence will be triable summarily only and will carry a maximum penalty of six months' imprisonment, a level 5 fine or both. The maximum penalty of imprisonment will become 51 weeks if section 281(5) of the 1991 Act is commenced.

795. *Subsection (7)* provides that the offence applies regardless of whether the trespasser entered the property before or after commencement of the section. The offence will therefore apply if having entered the building as a trespasser the person commits the following elements after commencement of the section: they are in the building as a trespasser; they know or ought to know that they are a trespasser, and they are living in the building or intend to live there.

796. *Subsection (8)* amends section 17 of the Police and Criminal Evidence Act 1984 to give uniformed police officers the power to enter and search premises for the purpose of arresting a person for the offence of squatting in a residential building.

797. *Subsection (9)* makes a consequential amendment to Schedule 10 to the Criminal Justice and Public Order Act 1994 by removing a reference to a previous amendment to section 17(3) of the Police and Criminal Evidence Act 1984.

Section 145: Scrap metal dealing: increase in penalties for existing offences

798. Section 145 raises the level of fines available for certain offences under the Scrap Metal Dealers Act 1964, which regulates those carrying on business as a scrap metal dealer. The effect of the section is to increase the level of fine available for those offences by two levels on the standard scale.

Section 146: Offence of buying scrap metal for cash etc

799. Section 146(2) inserts new section 3A into the Scrap Metal Dealers Act 1964 ("the Act") creating a criminal offence of buying scrap metal for cash etc.

800. The new section 3A prohibits scrap metal dealers paying for scrap metal other than by cheque or by electronic transfer. For the purpose of the offence, "paying" includes payments in kind using goods or services. Section 3A(2) gives the Secretary of State a power, by order (subject to the affirmative Parliamentary procedure), to permit other methods of payment. The offence does not apply if the payment was made in the carrying on of the dealer's business as a scrap metal dealer as part of the business of an itinerant collector and, at the time of the payment, an order by the local authority was in force in accordance with section 3(1) of the Act is in force. A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

801. *Subsections (3) to (12)* make consequential amendments to the record-keeping requirements under sections 2 and 3 of the Act. These amendments include a requirement for the dealer to record the method of payment and keep a copy of any cheque or any receipt identifying the transfer. The record-keeping provisions referred to do not apply to itinerant collectors who have an order from the relevant local authority under section 3(1) of the Act.

802. *Subsection (14)* amends section 6 of the Act to provide a constable with a right of entry, exercisable by warrant, to a scrap metal store where scrap metal paid for contrary to the prohibition on cash payments has been received or kept, or to a place to which admission is reasonably required to ascertain whether the prohibition on cash payments is being complied with.

Section 147: Review of offence of buying scrap metal for cash etc

803. Section 147 places a duty on the Secretary of State to review the offence of buying scrap metal for cash within five years of the offence coming into force. The purpose of this review is to assess whether the offence has achieved the objectives that it was intended to achieve and whether it is appropriate to retain the offence.

Section 148: Reasonable force for the purposes of self-defence etc

804. Section 148 amends section 76 of the 2008 Act, which provides a gloss on the common law of self-defence and the defences provided by section 3(1) of the Criminal Law Act 1967 and section 3(1) of the Criminal Law Act (Northern Ireland) 1967.

805. These amendments expand section 76 so that the law relating to self-defence and related defences is set out clearly in one place.

806. *Subsection (2)* expands the list of defences in section 76(2) of the 2008 Act to include the common law defence of defence of property.

807. *Subsection (3)* adds a new subsection (6A) to section 76 of the 2008 Act. This is designed to make clear the existing legal position that a person is not under a duty to retreat but the possibility that they could have retreated is an element in the consideration of whether the degree of force used by that person was reasonable in all the circumstances as that person believed them to be.

808. *Subsection (4)* amends subsection 76(8) of the 2008 Act to make it clear that the new subsection (6A) does not prevent other matters from being taken into consideration when the court is deciding whether the degree of force used by the defendant was reasonable in the circumstances.

809. *Subsection (5)* amends subsection (10)(a) of the 2008 Act which defines the meaning of "legitimate purpose" for the purpose of section 76 of the 2008 Act. The amendment provides that a legitimate purpose includes the defence of property under common law.

810. *Subsection (6)* ensures that the amendments to section 76 of the 2008 Act will apply whether the alleged offence took place before, or on or after, the date on which the amendments come into force. The amendments will not apply, however, in relation to a trial on indictment or any proceedings in respect of that trial where the arraignment took place before the date on which the amendments come into force, nor will they apply to a summary trial or any proceedings in respect of that trial which began before the commencement date. Similar transitional provision applies where the alleged offence is a service offence.

811. The amendments to section 76 of the 2008 Act and the transitional provision in *subsection (6)* will extend to England and Wales only though, in relation to service offences, the amendments and transitional provision also extend to Scotland and Northern Ireland. The remaining provisions of section 76 of the 2008 Act will continue to extend to England and Wales and Northern Ireland (and, in relation to service offences, Scotland).