*These notes refer to the Criminal Justice and Courts Act 2015 (c.2) which received Royal Assent on 12 February 2015*

# CRIMINAL JUSTICE AND COURTS ACT 2015

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

### Part 3 – Courts and Tribunals

### Trial by single justice on the papers

#### *Section 46: Instituting proceedings by written charge*

419. Section 46 amends section 29 of the Criminal Justice Act 2003. At present, section 29 provides for criminal proceedings to be commenced by way of "written charge and requisition". Section 46 amends section 29 so that criminal proceedings can also be initiated by way of written charge and single justice procedure notice. A single justice procedure notice is a document that requires the person to respond to it stating whether they plead guilty or not guilty to the charge, and if they plead guilty whether they are content for the case to be dealt with by the single justice procedure.

420. This new single justice procedure is contained in new section 16A to 16F of the Magistrates' Courts Act 1980, inserted by section 48. The single justice procedure provides that cases may be dealt with by a single magistrate, and there is no obligation to hold a trial in open court. The defendant would therefore not have to attend court. The procedure allows cases to be tried at the earliest opportunity by any available magistrates' court (regardless of the area in which they originated).

421. This procedure only applies to summary-only, non-imprisonable offences. Offences like failing to register a new vehicle keeper, driving without insurance, exceeding a 30mph speed limit and TV licence evasion make up the majority of the types of offences in scope of this procedure.

422. It will be for prosecutors to decide whether to initiate the single justice procedure. They will be expected to filter out cases involving offences which are technically in scope of the legislation but which might not be suitable for the new procedure. However whether a case is conducted under the new procedure will ultimately be a decision for the magistrate dealing with the case.

423. Initiation by way of written charge and single justice procedure notice must be by a "relevant prosecutor". These documents will be served on the defendant along with other documents referred to in new section 29(3B) of the 2003 Act (inserted by *subsection (5)* of section 46). A relevant prosecutor might also serve such documents as are described in new section 16A(4)(a) of the 1980 Act (inserted by subsection (3) of section 48). These additional documents will comprise material the prosecutor relies upon in evidence to prove the case against the defendant. "Relevant prosecutors" are those named in section 29 or those named by order of the Secretary of State (including those named in existing orders). *Subsections (9) and (10)* of section 46 make provision relating to the order-making power that is contained in section 29(5)(h) of the 2003 Act. *Subsection (9)* provides that an order specifying a person as a relevant prosecutor must also specify whether they are authorised to issue both written charge and requisitions and single justice procedure notices, or only written charge and single justice procedure

notices. *Subsection (10)* makes transitional provision to ensure that persons who had been previously specified under the power to specify "public prosecutors" will continue to have the power to issue requisitions, and will also have the power to issue single justice procedure notices.

### *Section 47: Instituting proceedings: further provision*

424. Section 47 amends section 30 of the Criminal Justice Act 2003 to ensure that Criminal Procedure Rules can make provision relating to the single justice procedure notice where they can already make provision relating to requisitions.

425. *Subsection (4)(b)* inserts a new section 30(5)(c) into the 2003 Act. This provides that references to "a summons" under section 1 of the Magistrates' Courts Act 1980 are to be read as including a reference to the single justice procedure notice so that legislation applying to "summons" under section 1 of the 1980 Act will apply as necessary to the single justice procedure notice.

### *Section 48: Trial by single justice on the papers*

426. Section 48 provides a single magistrate with the powers to deal with summary-only, non-imprisonable offences where the defendant is an adult and certain procedural requirements have been complied with. These procedural requirements are that the defendant has been served with a written charge and single justice procedure notice and any other documents that are prescribed by the Criminal Procedure Rules (see explanation of new section 29(3B) at paragraph 423 above), and that the defendant has not entered a plea of not guilty or specifically requested an oral hearing before a magistrates' court in response to the single justice procedure notice. Where these criteria are met, the case can be dealt with in the absence of the parties and with no obligation to sit in open court, providing greater flexibility as to the date and time when these cases can be heard.

427. *Subsection (2)* disapplies certain sections of the Magistrates' Courts Act 1980. These sections are superseded by the single justice procedure, but will apply to a case if the procedure ceases to apply.

428. *Subsection (3)* introduces new sections 16A to 16F into the 1980 Act. These new sections make provision for a single justice to exercise the jurisdiction of a magistrates' court in certain cases (new section 16A(11)), although they do not require this.

429. New section 16A sets out when and how a case may be tried under the single justice procedure.

430. Subsection (1) of new section 16A provides for the circumstances in which a single justice may try a written charge in accordance with this procedure. The conditions are that the offence charged is a summary-only offence that is not punishable by imprisonment and that the defendant is at least 18 years old on the date they are charged. The single magistrate must also be satisfied the relevant documents (see subsection (2)) have been served on the defendant at the same time and that the defendant has not indicated either that he or she wants to plead not guilty or that the defendant does not want to be tried under this procedure.

431. Subsections (3) to (12) describe how the new procedure will operate. They enable a single justice to constitute a magistrates' court, and to try the case solely on the papers.

432. Subsection (3) of new section 16A specifies that a decision under this procedure must be made in reliance only on the documents sent to the defendant, along with any documents containing information to which subsection (4) applies and any written submission provided by the defendant that aims to mitigate the sentence imposed. Subsection (4) ensures that a single justice can consider a defendant's driving record before sentencing. It enables a single justice to consider documents containing information described in a notice served on the defendant alongside the single justice procedure notice, as well

as documents served on the defendant at that time. Subsection (5) makes clear that the court does not have to consider a written submission if it is not served on the designated officer identified in the single justice procedure notice or where the submission is received late.

433. Subsection (6) of new section 16A provides that a single justice acting under this section does not have to sit in open court.

434. Subsection (7) of new section 16A allows the court to try the charge in the absence of the parties, and makes clear that even if a party appears then the court must proceed as if that party was absent.

435. Subsection (8) provides that, where a defendant has indicated a wish to plead guilty in response to the single justice procedure notice, the court can try the case as if the defendant had pleaded guilty. It converts a defendant's indication of a guilty plea into an actual guilty plea before the court.

436. Subsection (9) of new section 16A provides that a single justice cannot remand the defendant.

437. Subsection (10) of new section 16A makes provision for the situation where a single justice trying a case under this procedure adjourns the case, and consideration of the case under this procedure is resumed at a later time. This subsection provides that no notice of the resumption of the trial is required in these circumstances.

438. Subsection (12) allows a magistrates' court to try a written charge using the single justice procedure irrespective of whether its designated officer is specified in the single justice procedure notice. This enables a case to be tried by a court that has spare capacity, and not just by the court named in the documents sent to the defendant.

439. New section 16B makes provision for cases that are not to be tried under the single justice procedure set out in new section 16A.

440. A case cannot be tried under the single justice procedure where a single justice decides, before the defendant is convicted, that it would be inappropriate to do so (subsection (1) of new section 16B).

441. Similarly, where at any time before a trial the defendant or his or her legal representative gives notice to the relevant designated officer that the defendant does not wish the case to be tried under the single justice procedure, the case cannot be tried under the single justice procedure notice (subsection (2) of new section 16B).

442. In either of these situations, or where the criteria set out in new section 16A(1) are not satisfied, the magistrates' court dealing with the case is required to adjourn the trial if it has begun and issue a summons requiring the defendant to appear before a magistrates' court for trial of the written charge (subsection (3) of new section 16B). Such a summons may be issued by a single justice (new section 16B(4)).

443. Section 16C makes provision for the situation where a magistrates' court convicts a person using the single justice procedure, but then decides that it is not appropriate to try the written charge using the single justice procedure. Subsection (1) of this section provides that the single justice may not continue to try the charge.

444. Subsection (2) of new section 16C applies where a single justice proposes to order a driver disqualification under section 34 or 35 of the Road Traffic Offences Act 1988. In this situation, the defendant must be given the opportunity to make representations about the proposed disqualification. Where the defendant does wish to make such representations, the case can no longer be considered by a single justice.

445. In either of these situations, the single justice must adjourn the trial and issue a summons requiring the defendant to appear at a magistrates' court (subsection (3) of new section 16C).

446. New section 16D sets out further provisions relating to new sections 16B and 16C.

447. Subsection (1) applies where a single justice issues a summons in circumstances where the case cannot be decided by a single justice. It provides that where a summons has been issued requiring the defendant to appear before a magistrates' court, any reference to "summons" in sections 11 to 13 of the Magistrates' Courts Act 1980 should be read as including a summons so issued by a single justice.

448. Subsection (2) makes clear that, following the issue of a summons under section 16B or 16C, a single justice can, where necessary, issue a further summons.

449. Subsection (3) requires that, when a single justice issues a summons in these situations, the court that tries the written charge must be composed in the traditional way, that is, must be composed of at least two justices or a District Judge (Magistrates' Courts) sitting alone. Such a hearing would be in open court.

450. Subsection (4) applies where the defendant has been convicted under the single justice procedure, but then the case is adjourned because the single magistrate may no longer try the case. It provides that, for the purposes of section 142 of the Magistrates' Court Act 1980 (which enables a magistrates' court to vary or rescind an order it has made if it appears to the court to be in the interests of justice to do so), the court to which the case was transferred is the court that can exercise the power under section 142.

451. Section 16E introduces a new statutory declaration procedure. This provides that a defendant who did not know of the single justice procedure notice or proceedings is entitled to make a declaration to that effect and, if done in accordance with subsection (3), that declaration will have the effect of rendering the proceedings void.

452. Subsection (2) makes clear that this statutory declaration procedure will not apply to cases adjourned under section 16B(3)(a) or 16C(3)(a) and referred to a traditional magistrates' court. In such cases, the statutory declaration procedure set out in section 14 of the Magistrates' Court Act 1980 will apply.

453. Subsection (3) sets out the conditions that have to be satisfied in order that such a declaration will render the single justice proceedings void. The declaration has to be made within 21 days of the defendant finding out about the single justice procedure notice or the proceedings, and the defendant must also enter a response to the single justice procedure notice. This means that they have to enter a plea, and where they plead guilty they must indicate whether or not they wish to have the case dealt with by way of an oral hearing.

454. Subsection (4) provides that the making of a statutory declaration does not affect the validity of the written charge or the single justice procedure notice.

455. Subsection (5) allows a magistrates' court to accept a statutory declaration from the defendant after the 21 day deadline if it appears to the court that it was not reasonable to expect the defendant to serve the statutory declaration in that time. This may be done by a single justice (subsection (10)).

456. Subsections (6) and (7) are about securing that a statutory declaration that is served late and is accepted by a magistrates' court under subsection (5) attracts the same consequences as a statutory declaration that is served in time. Subsection (8) is about treating the single justice procedure notice as having required a response by the time the response was in fact served (or by the time the service of the response was treated as accepted), thus enabling the proceedings to re-start without further process. Subsection (9) prevents the re-started case being heard by the same justice who heard it before.

457. Section 16F(1) provides for the admissibility of evidence. It means that any documents served with, or containing information described in a notice served with, the single justice procedure notice can be taken as containing evidence of the facts stated. But

a single justice can consider the nature of that evidence when deciding whether it is appropriate to try a person using the single justice procedure (section 16F(2)).

### *Section 49: Trial by single justice on the papers: sentencing etc*

458. Section 49 amends the Magistrates' Courts Act 1980 to specify the range of sentencing powers available to a single justice acting under this procedure, and also provides for a single magistrate to have the power to make certain ancillary orders to enable them to effectively deal with all the cases in scope. These powers enable a single justice to deal with summary-only non-imprisonable offences in a similar way to a traditional bench of magistrates dealing with a prosecution instituted by a written charge and requisition. This includes the ability to: endorse a driving licence; disqualify a driver, and order compensation to be paid to a victim.

459. The new powers will also include the imposition of a fine (without regard to limit), for example to allow a single magistrate to impose the appropriate level of financial penalty for speeding, as guided by existing sentencing guidelines about taking into consideration an offender's financial means.

### *Section 50: Further amendments*

460. Section 50 introduces Schedule 11.

### *Schedule 11: Trial by single justice following a written charge: further amendments*

461. Schedule 11 sets out amendments required to other areas of legislation to reflect the availability of the new single justice procedure notice, and in particular the change to section 29 of the Criminal Justice Act 2003. In relevant places, it substitutes the term "public prosecutor" with "relevant prosecutor" and includes references to "single justice procedure notice" alongside references to "requisition".

462. Other amendments amend legislative provisions to ensure that they operate effectively under the new single justice procedure. In particular this includes amendments to the following:

(i) section 11 of the Magistrates' Courts Act 1980 (to ensure that the requirements for adjourning prior to a hearing to consider imposing a driving disqualification take account of the new single justice procedure);

(ii) section 123(2) of the Magistrates' Courts Act 1980 (to modify the provisions for dealing with defects in summons so that a less stringent test applies to cases dealt with under the single justice procedure);

(iii) section 7 of the Road Traffic Offenders Act 1988 (to set out the arrangements which will apply in single justice procedure cases when a defendant is required to surrender their licence to the court).

## Time limit for bringing certain criminal proceedings

### *Section 51: Offence of improper use of public electronic communications network*

463. Section 51 increases the time limit for bringing prosecutions for offences under section 127 of the Communications Act 2003 from six months from the date of the offence to three years from that date, provided that the prosecution is brought not more than six months after evidence which the prosecutor considers sufficient to justify proceedings comes to the prosecutor's knowledge.

## Committal to Crown Court

### *Section 52: Low-value shoplifting: mode of trial*

464. Section 52 clarifies the effect of section 22A of the Magistrates' Courts Act 1980, inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014, which made theft from a shop of property valued at £200 or less a summary offence.

465. The defendant's right to elect to be tried in the Crown Court was retained. This section makes it clear that a low-value shoplifting case in which the defendant elects to be tried in the Crown Court is to be treated in the same manner as an either-way offence in which the defendant has so elected. These changes take effect two months after the Act is passed.

### *Section 53: Committal of young offenders convicted of certain serious offences*

466. Section 3B of the Powers of Criminal Courts (Sentencing) Act 2000 allows a magistrates' court to commit a defendant under 18 to the Crown Court for sentence in certain circumstances. At present, it only applies where the defendant is charged with a serious offence listed in section 91(1) of the 2000 Act and the defendant indicates a guilty plea under section 24A or 24B of the Magistrates' Courts Act 1980. Section 53 extends section 3B so that it allows for committal for sentence in any case where a magistrates' court is of opinion that a defendant under 18 who has been convicted summarily of a serious offence listed in section 91(1) of the 2000 Act should be sentenced by the Crown Court.

467. *Subsections (3) and (4)* provide that the extended committal power is not retrospective, but applies to a case only where the offender first appeared in respect of the offence after the date of commencement.

## Costs of criminal courts

### *Section 54: Criminal courts charge*

468. Section 54 makes provision about the imposition on persons convicted of offences of a charge in respect of the costs of the criminal courts.

469. *Subsection (1)* inserts a new Part 2A into the Prosecution of Offences Act 1985 consisting of sections 21A-21F. New section 21A(1) requires a court to order someone who is convicted of an offence to pay a charge in respect of relevant court costs (defined in *subsection (5)*). The amount of the charge is to be prescribed by the Lord Chancellor (new section 21C). The charge must be imposed by a court listed in new section 21B at a time listed in that section.

470. *Subsection (4)* of section 21A requires the court to disregard the criminal courts charge when otherwise dealing with a person for an offence. This means that the court must not take into account the charge when, for example, sentencing or ordering the payment of prosecution costs. So, if the court is considering an offender's means for the purpose of deciding the amount of a fine that is to be imposed, the court is not permitted to take into account the fact that the offender will be obliged to pay the criminal courts charge.

471. Section 21B lists the courts that are required to order the criminal courts charge, and the times at which the charge must be ordered.

472. Subsection (1) of section 21B requires a magistrates' court to order an offender to pay the charge when dealing with a person for an offence, for breach of a community order, for breach of the community requirements of a suspended sentence order, or for breach of the supervision requirements imposed under section 256AA of the Criminal Justice Act 2003 (inserted by the Offender Rehabilitation Act 2014).

473. Subsection (2) of section 21B requires the Crown Court to order an offender to pay the charge when dealing with a person for an offence, for breach of a community order, for breach of the community requirements of a suspended sentence order or when dismissing an appeal by the person against conviction or sentence.

474. Subsection (3) of section 21B requires the Court of Appeal to order an offender to pay the charge when dismissing an appeal against conviction or sentence, or when dismissing an application for leave to bring an appeal.

475. Section 21C provides that the Lord Chancellor will have the power to set the amount of criminal courts charge in regulations (subject to the negative procedure). Subsection (2) requires the Lord Chancellor to set the charge at a level that does not exceed the relevant court costs (defined in new section 21A(5)) reasonably attributable to a case of the particular class. This means that in exercising the power, the Lord Chancellor will be required to identify classes of case and attribute reasonably the amount of relevant court costs in relation to that class and specify a charge for that class of case which reflects the relevant court costs reasonably attributable to that class of case. An offender will not be charged more than that amount.

476. Section 21D provides the Lord Chancellor with the power by regulations (subject to the negative procedure) to require offenders to pay interest on the criminal courts charge where it has not been paid (subsection (1)). Subsection (2) sets out that those regulations may, in particular, deal with the rate of interest and set out periods in which interest is not payable. The regulations may make provision by reference to a measure or document. So, for example, it would be possible for the Lord Chancellor to specify a measure like the consumer price index (as it exists from time to time) as the rate of interest.

477. Subsection (3) of section 21D restricts the rate of interest that the Lord Chancellor can charge to a value that is not higher than a rate that the Lord Chancellor considers would maintain the real terms value of the unpaid debt. Subsection (4) provides that the interest added to the criminal courts charge will be treated in the same way as if it were part of the charge itself. This means that the interest can be collected and enforced in the same way as the rest of the criminal courts charge.

478. Section 21E provides magistrates' courts with the power to cancel either all or part of the amount of the charge still owing. Subsection (2) provides that the court will not be able to cancel the charge unless it believes that the offender has taken all reasonable steps to repay the amount they owe, taking into account their personal financial circumstances. The court will also be able to cancel the charge where it believes that it is not practicable to collect or enforce it.

479. Subsection (3) of section 21E provides that a court may not remit the charge at a time when the person is in prison.

480. In addition, subsection (4) provides that the court may only remit the charge after certain periods of time have elapsed, the length of which is to be specified in regulations (subject to the negative procedure). The periods of time start at the point the most recent criminal courts charge was imposed for that offender, on the day on which the offender was last convicted of an offence and on the day on which the offender was last released from prison. "Prison" is defined in subsection (7) to include a place of detention (such as a young offender institution).

481. New section 21F provides that regulations made by the Lord Chancellor under Part 2A can include transitional, transitory or saving provision.

482. *Subsection (2)* of section 54 adds the criminal courts charge to the list of payments which are enforceable as a sum adjudged to be payable on conviction by a magistrates' court. This means that payment of the criminal courts charge would be enforced in the same way as other such sums, including compensation orders, the victim surcharge,

prosecution costs and fines. Subsection (2) also corrects a numbering error in Part 1 of Schedule 9 to the Administration of Justice Act 1970.

483. *Subsection (3)* gives effect to Schedule 12 which makes further provision about the criminal courts charge. *Subsection (4)* provides that the charge will only be ordered in relation to offences committed after section 54 comes into force.

### *Schedule 12: Further provisions about criminal courts charge*

484. Schedule 12 makes further provision about the criminal courts charge including consequential amendments relating to the provisions in section 54.

485. *Paragraph 1* provides that an order to pay a criminal courts charge is not treated as a sentence under the Rehabilitation of Offenders Act 1974. This means that the criminal courts charge results in no rehabilitation period in relation to that order under that Act.

486. Section 82(1A) of the Magistrates' Courts Act 1980 was inserted by the Anti-social Behaviour, Crime and Policing Act 2014 to ensure that the victim surcharge may not be discharged as extra days added to an immediate sentence of imprisonment. *Paragraph 3* substitutes a new subsection (1A) into section 82 of the Magistrates' Courts Act 1980, which provides for this approach to extend to the criminal courts charge.

487. *Paragraph 4*clarifies that those ordered by a magistrates' court to pay the criminal courts charge will have a right of appeal to the Crown Court under the Magistrates' Courts Act 1980 (which brings the criminal courts charge into line with the position on the victim surcharge for the purposes of appeals from a magistrates' court).

488. *Paragraph 5*amends the heading of Part 2 of the Prosecution of Offences Act 1985 (presently "Costs in Criminal Cases") to distinguish the costs in that Part from the costs dealt with in new Part 2A inserted into that Act by section 54 of this Act.

489. *Paragraph 6* clarifies that the criminal courts charge is to be treated as a fine imposed for an offence for the purpose of the Insolvency Act 1986, which means that bankruptcy does not release the bankrupt from liability in respect of the criminal courts charge.

490. *Paragraph 7* enables regulations to be made under section 24 of the Criminal Justice Act 1991 to allow payment of the criminal courts charge to be secured by deduction from social security benefits. The power already exists in relation to fines and compensation orders.

491. *Paragraph 9*makes clear that the criminal courts charge can be ordered when an offender is discharged absolutely or conditionally.

492. *Paragraph 10*adds the criminal courts charge to the disposals in consequence of which the Crown Court can order that an offender before it be searched and any money found applied towards sums payable by the offender.

493. *Paragraph 11* amends sections 13(3)(a) of the Proceeds of Crime Act 2002 to make clear that the imposition of a confiscation order under that Act should not be taken into account when imposing the criminal courts charge.

494. *Paragraph 13* amends section 151 of the Criminal Justice Act 2003 to provide that the criminal courts charge is not to be taken into account for the purpose of identifying whether someone is a persistent offender previously fined.

495. *Paragraphs 14, 15 and 16* provide that where there are rights of appeal against orders made when the court is dealing with an offender for breach of supervision requirements, a community order or suspended sentence order, those rights of appeal can be exercised in relation to the criminal courts charge ordered in respect of those breach proceedings.

### *Section 55: Duty to review criminal courts charge*

496. Section 55 requires the Lord Chancellor to carry out a review of the operation of the criminal courts charge after the end of an initial period. *Subsection (2)* specifies that the initial period is three years after the criminal courts charge provisions come into force. *Subsection (3)* requires the Lord Chancellor to repeal the criminal courts charge provisions should he consider it appropriate to do so having regard to the conclusions reached on the review. *Subsection (4)* enables the Lord Chancellor to make consequential and transitional provisions in regulations providing for the criminal courts charge provisions to be repealed. *Subsections (5)* and *(6)* require the regulations to be made by statutory instrument, subject to the affirmative procedure.

## Collection of fines etc

### *Section 56: Variation of collection orders etc*

497. Section 56 amends Schedule 5 to the Courts Act 2003 (collection of fines and other sums imposed on conviction). That Schedule concerns the powers of fines officers to collect and enforce sums treated as adjudged to be paid by a conviction of a magistrates' court. Such sums include sums payable under compensation orders and fines and will include the criminal courts charge. This section makes changes to the powers of fines officers to vary court orders about the payment of sums adjudged. These court orders are known as collection orders.

498. *Subsection (3)* amends paragraph 22 of Schedule 5 to provide that an offender may apply to a fines officer for the payment terms in a collection order to be varied at any time, including when he or she has defaulted on a collection order. Currently, the power to vary payment terms only exists while an offender is not in default. This subsection also amends paragraph 22 to provide that a fines officer can vary payment terms or reserve terms in a way which is less favourable to the offender. At present, the power of variation is limited to variations in the offender's favour. Less favourable changes will however be made only with an offender's consent.

499. "Payment terms" are terms requiring an offender to pay sums within a period or by instalment. "Reserve terms" are, like payment terms, terms requiring an offender to pay sums within a period or by instalment. Reserve terms only have effect if the offender is subject to an attachment of earnings order or application for benefit deductions and such an order or application has failed.

500. *Subsection (5)* makes the same changes to the power to vary reserve terms as made by subsection (3) for payment terms.

501. *Subsections (4)* and *(6)* amend Schedule 5 to provide that an application by an offender for variation of payment terms or reserve terms once the offender is in default does not prevent the fines officer taking the enforcement action in, respectively, Parts 7 and 9 of Schedule 5. Part 7 involves the fines officer on first default making an attachment of earnings order or application for benefit deductions unless impracticable or inappropriate. Under Part 9, the fines officer must either refer the case to a magistrates' court or issue a notice setting out the further enforcement steps to be taken.

## Civil proceedings relating to personal injury

### *Section 57: Personal injury claims: cases of fundamental dishonesty*

502. Section 57 provides that in any personal injury claim where the court finds that the claimant is entitled to damages, but on an application by the defendant for dismissal is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to either the claim itself (the primary claim) or a related claim, it must dismiss the primary claim entirely unless it is satisfied that the claimant would suffer substantial injustice as a result. A related claim is defined in *subsection (8)* as

one which is made by another person in connection with the same incident or series of incidents in connection with which the primary claim is made. *Subsection (3)* makes clear that the requirement to dismiss the claim includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest.

503. *Subsection (4)* requires the court to record in the order for dismissal the amount of damages that it would otherwise have awarded. This will be relevant in the event of an appeal and in determining what the claimant should pay the defendant in costs. It will also be relevant for the purposes of any criminal proceedings or proceedings for contempt of court which may be brought against the claimant in relation to the same behaviour.

504. *Subsection (5)* provides that when assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in the order under subsection (4) from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant. For example, if the amount of damages which the court records that it would have awarded but for the dismissal of the claim were £50,000, and the amount that the court would otherwise order the claimant to pay in respect of the defendant's costs was £100,000, the claimant could not be ordered to pay the defendant more than £50,000 in total.

505. *Subsections (6) and (7)* deal with the relationship between an order dismissing the claim and any subsequent proceedings against the claimant for contempt of court or criminal prosecution, and provide for the court hearing the latter proceedings to have regard to the order dismissing the claim when sentencing the claimant or otherwise disposing of the proceedings. It is intended that this will enable the court to ensure that any punishment imposed in those proceedings is proportionate.

506. In addition to defining a related claim, *subsection (8)* defines "personal injury" for the purposes of the section as including any disease and any other impairment of a person's physical or mental condition, and provides for the definition of "claim" and related terms to cover counter-claims.

507. *Subsection (9)* provides that the section does not apply to proceedings started by the issue of a claim form before the date on which the section comes into force.

### *Section 58: Rules against inducements to make personal injury claims*

508. Section 58 bans the offer of a benefit by a regulated person (as defined in section 60) to a potential claimant where the benefit offered is an inducement in respect of a personal injury claim and is not related to the provision of legal services in connection with the claim. *Subsection (2)* provides that the offer of a benefit is an inducement if that benefit is intended to encourage, or is likely to have the effect of encouraging, a person either to make a personal injury claim or to seek advice from a legal service provider with a view to making such a claim. *Subsection (4)* provides for offers of benefits routed via a third party to be treated as having been offered by the regulated person. Section 60 defines "benefit" as any benefit, whether or not in money or other property and whether temporary or permanent, and any opportunity to obtain a benefit (for example, the offer to be entered in a draw for a prize).

### *Section 59: Effect of rules against inducements*

509. Section 59 requires relevant regulators to have arrangements in place to monitor and enforce the ban on offering inducements to make personal injury claims. *Subsections (2) and (3)* permit regulators to make rules and to use existing powers to enable them to monitor and enforce the ban. *Subsection (4)* provides that a breach of the ban would not make a person guilty of an offence or give rise to a right of action for breach of statutory duty.

510. Under *subsection (6)*, rules are able to provide for the offer of a benefit to be treated as an inducement to make a claim unless the regulated person can show that the benefit was not offered as an inducement, either because it was offered for a reason other than encouraging the person to make a claim or to seek advice from the regulated person about making a claim, or because the benefit offered was related to the provision of legal services in connection with the claim. *Subsection (5)* defines the circumstances in which *subsection (6*) applies.

### *Section 60: Inducements: interpretation*

511. Section 60, *subsection (1)* lists both the regulators who are required to monitor and enforce the ban on offering inducements to potential claimants in respect of personal injury claims (including the General Council of the Bar, the Law Society and the Chartered Institute of Legal Executives) and those legal service providers to whom the ban would apply ("regulated persons", namely barristers, legal executives, solicitors and alternative business structures). The Lord Chancellor has the power by regulation to extend to other regulators and regulated persons both the prohibition and the duty to monitor and enforce it. *Subsection (2)* provides relevant definitions.

### *Section 61: Inducements: regulations*

512. Section 61 provides that regulations made under sections 58 and 60 would be made by statutory instrument. Regulations made under section 58 are subject to the affirmative procedure and regulations made under section 60 are subject to the negative procedure.

## Appeals in civil proceedings

### *Section 62: Appeals from the Court of Protection*

513. Section 53 of the Mental Capacity Act 2005 ("2005 Act") sets out the routes of appeal for cases in the Court of Protection. The general position is that appeals from any level of judge of that Court must lie to the Court of Appeal (see section 53(1)). However, section 53(2) provides that rules of court may make provision for appeals from certain levels of judge in the Court of Protection to lie to another judge within that Court.

514. The Crime and Courts Act 2013 added to the categories of judge in section 46 of the 2005 Act who are eligible for nomination to sit in the Court of Protection, but did not expand section 53(2) of the 2005 Act to enable appeals from any of the new categories of judge to lie within the Court of Protection. The result of this is that appeals from decisions of these additional categories of judge lie automatically to the Court of Appeal. This is disproportionate and likely to create additional work for that Court when the new categories of judge are deployed.

515. Section 62 enables rules of court to be made allowing appeals to be heard, where appropriate, within the Court of Protection rather than by the Court of Appeal. The rule-making power at section 53 of the 2005 Act is amended to permit appeals from decisions of any judge sitting in the Court of Protection, or of authorised officers, to lie to a specified description of judge in the Court of Protection. The power is exercisable in relation to further appeals from decisions on appeal by judges.

### *Section 63: Appeals from the High Court to the Supreme Court*

516. Section 63 amends sections 12 and 16 of the Administration of Justice Act 1969 in order to widen the scope for appeals from the High Court to be made directly to the Supreme Court.

517. *Subsection (2)* amends subsection (1) of section 12 and provides for an appeal to the Supreme Court where the alternative conditions in subsection (3A) of section 12 (inserted by *subsection (3)* of this section) are satisfied. Subsection (2) also removes the requirement for all parties to the proceedings to consent to a leapfrog appeal.

518. *Subsection (3)* inserts a new subsection (3A) into section 12 which provides that a certificate for appeal straight to the Supreme Court may be granted where the appeal raises a point of law of general public importance and one of three conditions (set out in paragraphs (a) to (c) of the new subsection) is met. The effect of this is to expand the circumstances under which an appeal is allowed to leapfrog, to include cases which raise issues of national importance, cases where the result is of particular significance, and cases where the benefits of not delaying consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal. Appeals will still have to be on a point of law of general public importance.

519. Currently under the 1969 Act leapfrogging to the Supreme Court from the High Court in Northern Ireland is possible in the same circumstances as from the High Court in England and Wales. *Subsection (4)*, however, inserts a new subsection (1A) into section 16 of the Administration of Justice Act 1969. The effect of this new subsection is that section 12 of the Administration of Justice Act 1969 will continue to apply in relation to Northern Ireland as if the changes made by subsections (2) and (3) were not made.

### *Section 64: Appeals from the Upper Tribunal to the Supreme Court*

### *Section 65: Appeals from the Employment Appeal Tribunal to the Supreme Court*

### *Section 66: Appeals from the Special Immigration Appeals Commission to the Supreme Court*

520. Section 64 inserts new sections 14A to 14C into the Tribunals, Courts and Enforcement Act 2007 with the effect of allowing leapfrog appeals to the Supreme Court to be initiated in the Upper Tribunal under the same conditions as appeals from the High Court.

521. New section 14A establishes the conditions under which the Upper Tribunal may grant a certificate allowing an application for permission to appeal direct to the Supreme Court. It has the effect of replicating in the Upper Tribunal the conditions for the High Court granting a certificate as set out in the Administration of Justice Act 1969 (as amended by section 63). Subsections (1) to (5) stipulate that, following an application by one of the parties to the proceedings, the Upper Tribunal may grant a certificate if a sufficient case has been made out to justify appeal to the Supreme Court and the decision of the Upper Tribunal involves a point of law of general public importance which meets either the conditions set out in subsection (4)(a)(i) and (ii) or (b)(i) and (ii) or the conditions set out in subsection (5)(a) to (c). Subsection (6) requires the Upper Tribunal to specify which court would be the 'relevant appellate court' and subsection (3) establishes that the Upper Tribunal may only grant a certificate if the relevant appellate court is the Court of Appeal in England and Wales or the Court of Appeal in Northern Ireland. A certificate may not therefore be granted if the relevant appellate court is the Court of Session in Scotland.

522. New section 14B sets out the procedure under which, following a certificate being granted by the Upper Tribunal, a party may seek permission to appeal to the Supreme Court. It has the effect of replicating the provisions of section 13 of the Administration of Justice Act 1969 (which apply to the High Court) in relation to the Upper Tribunal. Subsection (2) lays down the time limits for such an application. Under subsection (4) if a certificate is granted then there is a right to appeal direct to the Supreme Court and no appeal may be made to the relevant appellate court. Subsection (6) re-connects the right to appeal to the relevant appellate court only if the time for applying to the Supreme Court for permission has expired and, if the permission application is made, the Supreme Court has refused that application.

523. New section 14C establishes certain exclusions from the granting of a certificate by the Upper Tribunal. It has the effect of replicating the provisions of section 15 of the

Administration of Justice Act 1969 (which apply to the High Court) in relation to the Upper Tribunal. Under subsections (1) and (2) no certificate may be granted if there would have been no right of appeal at all to the relevant appellate court or from the relevant appellate court to the Supreme Court. Subsection (3) provides that no certificate can be granted where no right of appeal to the relevant appellate court would exist without first obtaining permission to appeal, unless the Upper Tribunal considers that the case merits such permission being granted. In common with the position which applies in the High Court, the leapfrog provisions do not apply to appeals from decisions relating to contempt of court.

524. Sections 65 and 66 amend the Employment Tribunals Act 1996 and the Special Immigration Appeals Commission Act 1997 respectively. They follow the provisions applying to the Upper Tribunal in section 64 of the Act in relation to the Employment Appeals Tribunal and the Special Immigration Appeals Commission, with the effect of allowing leapfrog appeals to the Supreme Court to be initiated in these bodies.

## Costs in civil proceedings

### *Section 67: Wasted costs in certain civil courts*

525. Section 67 amends section 51 of the Senior Courts Act 1981 by inserting new subsections (7A) and (12A). *Subsection (2)* inserts new subsection (7A), which creates a duty for the court to consider whether to notify either the legal representative's regulator (under the Legal Services Act 2007) and/or the Director of Legal Aid Casework if it considers it appropriate to do so when making a wasted costs order.

526. *Subsection (3)* inserts new subsection (12A) into section 51 which defines an "approved regulator" and "the Director of Legal Aid Casework".

## Juries and members of the Court Martial

### *Section 68: Upper age limit for jury service to be 75*

527. Section 68 will increase the upper age limit for jury service from 70 to 75, enabling a person to serve as a juror up to their 76th birthday.

### *Section 69: Jurors and electronic communications devices*

528. Section 69 inserts new section 15A into the Juries Act 1974, and provides a discretionary power for a judge to order members of a jury to surrender their electronic communications devices for a period of time. Such an order would cover, for example, mobile phone or tablet devices that can be used to send messages or connect to the internet. The judge may only make an order if he or she considers that the order is necessary or expedient in the interests of justice, and that the terms of the order are a proportionate means of safeguarding those interests.

529. The order can specify a period for which the devices must be surrendered, but that period must be during one of the occasions set out in subsection (3) of new section 15A, such as when the members of the jury are in court, and the order may also be subject to exceptions (see subsection (4) of new section 15A).

530. Failure to surrender a device following such an order is a contempt of court (subsection (5)).

531. Paragraph 1 of Schedule 13 (introduced by section 75 of the Act) creates an identical power for senior coroners by amending Part 1 of the Coroners and Justice Act 2009.

### *Section 70: Jurors and electronic communications devices: powers of search etc*

532. Section 70 inserts a new section 54A into the Courts Act 2003. This new section provides the court with powers to enforce an order made under section 15A of the Juries

Act 1974. It provides a specific power allowing a court security officer to search a juror for a device that a judge has ordered be surrendered (subsection (2) of new section 54A). If the search reveals a device which should have been surrendered then the officer must ask the juror to surrender the device, and if the juror refuses to do so, the officer may seize it (subsection (4) of new section 54A).

533. Subsection (3) of new section 54A places limits on the court security officer's power to require a person to remove clothing for the purposes of the search.

534. *Subsection (3)* of section 70 amends section 55 of the Courts Act 2003. It inserts a new subsection (1A) which provides that a court security officer may retain the article that was surrendered or seized until the end of the period specified in the order made under the Juries Act 1974.

535. *Paragraph 1* of Schedule 13 (introduced by section 75) creates a similar power of search for coroners' officers inserting new section 9B into the Coroners and Justice Act 2009. Subsection (8) of that new section makes provision equivalent to that in section 56 of the Courts Act 2003. This ensures that the Lord Chancellor can make regulations (subject to the negative procedure) in relation to the retention and disposal of articles surrendered by, or seized from, juries at inquests in the same way as he can make regulations under the Courts Act 2003 in relation to articles surrendered by, or seized from, other juries.

536. *Paragraph 2*extends court security officers' powers of search so that they can be used in connection with orders under new section 9B of the Coroners and Justice Act 2009.

### *Section 71: Research by jurors*

537. Section 71 inserts a new section 20A into the Juries Act 1974, which creates the offence of juror research. This will make it an offence for a juror intentionally to seek information during the "trial period" (defined in subsection (5)) where he or she knows, or ought to reasonably know, that the information sought is or may be relevant to the case.

538. Subsections (3) to (5) of new section 20A set out more detail about the circumstances in which the offence will apply, including: non-exhaustive lists of circumstances in which a person may be considered to be seeking information (subsection (3)) and of types of information considered relevant to the case (subsection (4)).

539. Subsections (6) and (7) of new section 20A set out circumstances in which a person would not be guilty of the research by jurors offence. They include cases where the person needs the information for a reason not connected with the case (subsection (6)), where he or she seeks information from the judge (subsection (7)(b)) and where the activity is done as part of his or her proper role as a juror (subsection (7)).

540. Subsections (8) and (9) of new section 20A set out the penalty for an offence under this section (imprisonment for up to 2 years or a fine or both) and provide that proceedings for such an offence can only be instituted by or with the consent of the Attorney General.

541. *Paragraph 5* of Schedule 13 (introduced by section 75) replicates the offence for members of the jury during an inquest by inserting new paragraph 5A into Part 1 of Schedule 6 to the Coroners and Justice Act 2009.

### *Section 72: Sharing research with other jurors*

542. Section 72 inserts a new section 20B into the Juries Act 1974. This makes it an offence for a juror to pass on to another juror information obtained through research in contravention of new section 20A of the Juries Act 1974 where the information was not provided by the court.

543. Subsections (3) and (4) of new section 20B set out the penalty for an offence under this section (imprisonment for up to 2 years or a fine or both) and provide that the consent of the Attorney General is required to institute proceedings for such an offence.

544. *Paragraph 5* of Schedule 13 (introduced by section 75) replicates the offence for members of the jury during an inquest by inserting new paragraph 5B into Part 1 of Schedule 6 to the Coroners and Justice Act 2009.

### *Section 73: Jurors engaging in other prohibited conduct*

545. Section 73 inserts new section 20C into the Juries Act 1974, which makes it an offence for a member of a jury trying a case before a court intentionally to engage in "prohibited conduct" during the trial period. Prohibited conduct is defined as conduct from which it may be reasonably concluded that the person intends to try the issue otherwise than on the basis of the evidence presented in the proceedings on the issue.

546. It does not matter whether or not the person knows the conduct is prohibited conduct. Subsections (4) and (5) of new section 20C set out the circumstances in which an offence is not committed under this section.

547. Subsections (6) and (7) of new section 20C set out the penalty for an offence under this section (imprisonment for up to 2 years or a fine or both) and provide that proceedings for such an offence can only be instituted by or with the consent of the Attorney General.

548. *Paragraph 5* of Schedule 13 (introduced by section 75) replicates this offence for members of the jury during an inquest by inserting new paragraph 5C into Part 1 of Schedule 6 to the Coroners and Justice Act 2009.

### *Section 74: Disclosing jury's deliberations*

549. *Subsection (1)* introduces new sections 20D, 20E, 20F and 20G to the Juries Act 1974. These provisions deal with disclosure of jury deliberations, creating a criminal offence of disclosure of jury deliberations and exceptions to that offence.

550. New section 20D of the Juries Act 1974 creates the criminal offence. This covers the same conduct as section 8 of the Contempt of Court Act 1981, which is no longer to have effect in England and Wales (see *subsection (2)*). It is an offence for a person intentionally to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberation in proceedings before a court, or to solicit or obtain such information. The sentence for this offence is imprisonment for a term not exceeding 2 years or a fine (or both), and proceedings can only be instituted by or with the Attorney General's consent.

551. Exceptions to this offence are contained in new sections 20E to 20G of the Juries Act 1974. These exceptions ensure that the offence does not operate so as to preclude proper investigations into alleged juror offences or irregularities. They allow jurors to reveal information about jury deliberations in certain defined circumstances.

552. Paragraph 5 of Schedule 13 (introduced by section 75) makes provision equivalent to new sections 20D to 20G of the Juries Act 1974 for members of the jury during an inquest by inserting new Part 1A into Schedule 6 to the Coroners and Justice Act 2009.

### *Section 75: Juries at inquests and Schedule 13: Juries at inquests*

553. Schedule 13 makes provision about juries at inquests and their deliberations including provision for surrender of electronic devices by jurors and provision creating offences of juror misconduct.

### *Section 76: Members of the Court Martial*

554. Section 76 gives effect to Schedule 14 which amends Chapter 2 of Part 7 of the Armed Forces Act 2006, and inserts a new Schedule 2A into that Act. New Schedule 2A creates new service offences and one new civilian offence relating to lay members and other members of the Court Martial and their deliberations. These offences mirror the new civilian juror offences created in sections 71-74 of this Act, adapted for the purposes of the service justice system.

### *Schedule 14: Members of the Court Martial*

555. Sections 71-74 create 4 new offences which may be committed by civilian jurors. It is important for the protections afforded to defendants in the civilian justice system to be replicated as far as possible in the service justice system. This Schedule inserts a new Schedule 2A to the Armed Forces Act 2006 to create 4 equivalent service offences.

556. These new offences will apply wherever the Court Martial sits. Whilst the Attorney General's consent will be required for proceedings for the civilian offence, as is normally the case in the service justice system his consent will not be required to prosecute the new service offences.

557. *Paragraph 2* of Part 1 of this Schedule inserts a new section 163A into the Armed Forces Act 2006. New section 163A gives effect to a new Schedule 2A to be inserted into the Armed Forces Act 2006 and which makes provision about the new service offences.

#### New Schedule 2A to the Armed Forces Act 2006: Offences relating to members of the Court Martial

558. Paragraph 1 of new Schedule 2A to the Armed Forces Act 2006 defines "lay member" and "the trial period" for the purposes of that Schedule. The trial period is defined as beginning when the lay member is sworn to try the case and ends when proceedings terminate or the lay member is discharged. This is intended to limit the period of time during which the lay members can commit these offences. The offences under the Schedule may be committed by all lay members of the Court Martial (or, in the case of paragraph 5, a person) whether or not they are or were subject to service law or civilians subject to service discipline at the time of committing the offence.

Paragraph 2 of new Schedule 2A: Research by lay members

559. Paragraph 2 of new Schedule 2A creates the offence of research by lay members. This will make it an offence for a lay member intentionally to seek information where he or she knows, or ought reasonably to know, that the information sought is or may be relevant to the case.

560. Paragraphs 2(3) and (4) of new Schedule 2A set out more detail about the circumstances in which the offence will apply, including: the ways in which a person may seek information (sub-paragraph (3)) and types of information considered relevant to the case (sub-paragraph (4)).

561. Paragraph 2(5) and (6) of new Schedule 2A set out the circumstances in which a person would not be guilty of an offence. They include cases where the person needs the information for a reason not connected with the case (sub-paragraph (5)), and where he or she seeks information from the judge advocate or a member of the Military Court Service (sub-paragraph (6)).

562. Paragraph 2(7) of new Schedule 2A sets out the penalty for an offence under this paragraph.

Paragraph 3 of new Schedule 2A: Sharing research with other lay members

563. Paragraph 3 of new Schedule 2A creates a new offence for a lay member intentionally to provide information to another lay member during the trial period if (a) the member contravened paragraph 2 of new Schedule 2A in the process of obtaining the

information, and (b) the information has not been provided by the Court Martial in the course of the proceedings.

564. Paragraph 3(2) of new Schedule 2A defines information which has been provided to the Court Martial during the course of proceedings.

565. Paragraph 3(3) of new Schedule 2A sets out the penalty for an offence under this paragraph.

### Paragraph 4 of new Schedule 2A: Engaging in other prohibited conduct

566. Paragraph 4 of new Schedule 2A creates a new offence for a lay member intentionally to engage in "prohibited conduct" during the trial period. Paragraph 4(2) of new Schedule 2A defines prohibited conduct as conduct from which it may be reasonably concluded that the person intends to make a finding or decision otherwise than on the basis of the evidence presented in the proceedings. Paragraph 4(3) of new Schedule 2A provides that an offence is committed whether or not the person knows the conduct is prohibited conduct. Paragraphs 4(4) and (5) of new Schedule 2A set out the circumstances where an offence is not committed under this paragraph.

567. Paragraph 4(6) of new Schedule 2A sets out the penalty for an offence under this paragraph.

### Paragraph 5 of new Schedule 2A: Disclosing information about members' deliberations

568. Paragraph 5 of new Schedule 2A makes it an offence for a person intentionally (a) to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of the Court Martial in the course of their deliberations, or (b) to solicit or obtain such information, subject to the exceptions in paragraphs 6 to 8.

569. Paragraph 5(2) of new Schedule 2A sets out the penalty for an offence under this paragraph where the person who is guilty of the offence was a member of the Court Martial for the proceedings, or at the time the offence was committed was a person subject to service law or a civilian subject to service discipline.

570. Paragraph 5(3) of new Schedule 2A sets out the penalty for any other person guilty of an offence, e.g. a civilian who is not a member of the Court Martial. Proceedings for such an offence against an individual subject neither to service law nor to service discipline (and not described in paragraph 5(2)) can only be instituted by or with the Attorney General's consent as it is a civilian offence.

571. Paragraph 5(4) of new Schedule 2A provides that the Crown Court will have jurisdiction to try an offence under paragraph 5 committed in England and Wales by an individual subject neither to service law nor to service discipline (and not described in paragraph 5(2)), over whom the Court Martial would not have jurisdiction, notwithstanding that the members of the Court Martial may have been sitting in a Court Martial outside England and Wales.

### Paragraphs 6 to 8 of new Schedule 2A: exceptions to paragraph 5

572. Paragraphs 6 to 8 of new Schedule 2A provide a series of exceptions to the paragraph 5 offence. Paragraph 6 provides for the "initial exceptions" which largely cover excepted disclosures during the trial period. These permitted disclosures are allowed for the purposes of enabling the Court Martial to proceed and for the purpose of investigating a possible offence under paragraph 5. The disclosures may be made to a number of defined "relevant investigators", such as a police force. Paragraph 7 then provides for "further exceptions" which are focused on post-trial disclosures to, in the first instance, the Court Martial Appeal Court, the Court of Appeal or other persons named in sub-paragraph (2), where the person making the disclosure believes that an irregularity has occurred in relation to a lay member. Sub-paragraphs (3) to (10) then make detailed provision for further disclosure to specified persons for particular purposes which ensures that a proper investigation can be conducted into any alleged irregularity. Paragraph 8 provides for "exceptions for soliciting disclosures or obtaining

information" which are further exceptions relating to the permitted disclosures provided for in paragraphs 6 and 7 of new Schedule 2A.

Paragraph 9 of new Schedule 2A: Saving for contempt of court

573. Paragraph 9 of new Schedule 2A provides that paragraphs 2, 3 and 4 do not affect what constitutes contempt of court at common law nor what may be certified under section 311 of the Armed Forces Act 2006 (jurisdiction of the Court Martial) (the service court's power to refer a potential contempt to a civilian court which has the power to commit for contempt).

### Part 2 of Schedule 13: Further amendments

574. *Paragraph 5* of Part 2 of this Schedule amends section 50(2) of the Armed Forces Act 2006 (jurisdiction of the Court Martial) to add the new offences, other than an offence under paragraph 5 of new Schedule 2A committed by a person who was not a member of the Court Martial or subject to service law or service discipline to the definition of "service offences" in that subsection.

575. *Paragraph 6*of Part 2 of Schedule 13 amends section 51(3) of the Armed Forces Act 2006 to exclude the new offences from the jurisdiction of the Service Civilian Court.

576. *Paragraph 8* of Part 2 of this Schedule inserts two of the new service offences into Schedule 2 to the Armed Forces Act 2006. The offences in question are the offence under paragraph 4 of new Schedule 2A and the offence under paragraph 5 of that new Schedule, so far as committed by a person who was a member of the Court Martial or subject to service law or service discipline. The effect is that those offences will need to be referred to a service police force or the Director of Service Prosecutions under sections 113 and 116 of the Armed Forces Act 2006 for investigation.

### *Section 77: Supplementary provision*

577. *Subsection (1)* amends Schedule 1 to the Juries Act 1974 (persons disqualified for jury service) to provide that a person who at any time in the last 10 years has been convicted of any of the new offences inserted into the Juries Act 1974 or Schedule 6 to the Coroners and Justice Act 2009 or Schedule 2A to the Armed Forces Act 2006 by the provisions of this Act will be disqualified from undertaking jury service.

578. *Subsection (2)* makes clear that the creation of the new offences to be inserted in the Juries Act 1974 does not affect what constitutes contempt of court at common law. The common law of contempt of court is therefore unaffected by these new provisions. *Paragraph 7* of Schedule 13 makes equivalent provision in connection with the new offences inserted in the Coroners and Justice Act 2009.

## Reporting restrictions

### *Section 78: Lifetime reporting restrictions in criminal proceedings for witnesses and victims under 18*

579. Section 78 makes provision in respect of lifelong reporting restrictions ('a reporting direction') for victims and witnesses under the age of 18 involved in criminal proceedings or proceedings before a service court.

580. *Subsection (2)* inserts a new section 45A into the Youth Justice and Criminal Evidence Act 1999. Section 45A applies in any criminal proceedings in any court in England and Wales and any proceedings in any service court in the United Kingdom or elsewhere. It confers a power to make a reporting direction that is exercisable in respect of a witness or victim who was under 18 when those proceedings commenced. A reporting direction is a direction that no matter relating to a person may be included in a publication if it is likely to lead to members of the public to identify that person as being concerned in the

proceedings. "Publication" is defined in section 63 of the Youth Justice and Criminal Evidence Act 1999 and includes on-line publication.

581. Under new section 45A, the court is able to make a reporting direction lasting for the lifetime of a victim or witness. It is able to do so if satisfied that the quality of the evidence given, or the level of co-operation given to any party to the proceedings in connection with the preparation of that party's case, is likely to be diminished by reason of fear or distress at being identified as a person concerned in the proceedings.

582. In determining whether to make a reporting direction the court has to have regard to the welfare of the person, whether it would be in the interests of justice to make the reporting direction and the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.

583. Either at the same time as a reporting direction is made or subsequently, the court is able to make an excepting direction to dispense, to any extent specified, with the restrictions imposed. However, an excepting direction can only be made if the court is satisfied that it is necessary in the interest of justice to do so or if it is satisfied that the effect of the reporting direction is to impose a substantial and unreasonable restriction on the reporting of proceedings and it is in the public interest to remove or relax that restriction.

584. *Subsection (3)(a)* amends section 49 of the Youth Justice and Criminal Evidence Act 1999 to provide that breach of a direction under new section 45A would be a criminal offence under section 49. On summary conviction a person guilty of an offence under section 49 is currently liable to a fine not exceeding level 5 on the standard scale.

585. *Subsection (4)* amends section 50 of the Youth Justice and Criminal Evidence Act 1999 to provide that it is a defence to prove that written consent to the publication had been given by the witness or victim concerned. That defence does not apply to the extent that the person was aged under 18 at the time consent was given or the peace or comfort of the person giving consent had been interfered with.

586. *Subsection (3)(b)* inserts a new subsection (7) into section 49 of the Youth Justice and Criminal Evidence Act 1999 to introduce new Schedule 2A to that Act, which deals with the position of persons providing information society services in respect of contravening a direction under new section 45A. New Schedule 2A is inserted by Schedule 15 (introduced by section 80).

### *Section 79: Reporting restrictions in proceedings other than criminal proceedings*

587. Section 79 amends section 39 of the Children and Young Persons Act 1933. The effect of *subsection (2)(a)* is to limit the application of section 39 to any proceedings other than criminal proceedings. This re-states the effect of paragraph 2 of Schedule 2 to the Youth Justice and Criminal Evidence Act 1999 which is repealed by *subsection (11)*. Upon commencement of this provision the Government also intends to commence section 45 of, and relevant provisions in Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999. Section 45 of the Youth Justice and Criminal Evidence Act 1999 will apply in criminal proceedings other than those in the Youth Court and on appeal from the Youth Court.

588. Section 39 of the Children and Young Persons Act 1933 is also amended to provide that a court may direct that particulars calculated to lead to the identification of a child or young person may not be included in a "publication". Currently, section 39 applies only in respect of newspapers and sound and television broadcasts. *Subsection (7)* inserts a new subsection (3) into section 39 to provide a definition of a publication, which includes publication by on-line means. The definition is in substantially the same terms as that applicable to new section 45A of the Youth Justice and Criminal Evidence Act 1999, inserted by section 78 (see the definition in section 63 of that Act).

589. *Subsection (9)* inserts a new section 39A into the Children and Young Persons Act 1933 to introduce new Schedule 1A to that Act, which deals with the position of persons

providing information society services in respect of contravening a direction under section 39. New Schedule 1A is inserted by Schedule 15 (introduced by section 80).

590. *Subsection (10)* amends section 57(3) of the Children and Young Persons Act 1963 to preserve the effect of section 39 of the Children and Young Persons Act 1933 as regards Scotland. This subsection provides that references to "publication" in section 39 have effect in Scotland as if they were references to a newspaper. Note that section 57(4) of the 1963 Act continues to provide that section 39 of the 1933 Act also applies to sound and television broadcasts.

591. *Subsection (12)* ensures that subsection (2)(a) (limiting the application of section 39 to proceedings other than criminal proceedings) does not affect the operation of section 39 in relation to criminal proceedings instituted before the day on which subsection (2)(a) comes into force.

592. *Subsection (13)* defines when proceedings and proceedings on appeal are "instituted" by reference to the Prosecution of Offences Act 1985 and the Criminal Appeal Act 1995.

### *Section 80 and Schedule 15: Reporting restrictions: providers of information society services*

593. Schedule 15 addresses the position of providers of information society services in respect of the offences under section 39 of the Children and Young Persons Act 1933, as amended by section 79, and under section 49 of the Youth Justice and Criminal Evidence Act 1999, as amended by section 78.

594. *Paragraph 1* of the Schedule inserts new Schedule 1A into the Children and Young Persons Act 1933.

595. Paragraph 1 of the new Schedule 1A extends liability to a service provider established in England and Wales (a "domestic service provider") in respect of matter published in an EEA state other than the UK.

596. Sub-paragraph (2) of paragraph 1 makes it clear that section 39 of the Children and Young Persons Act 1933 applies to a "domestic service provider" who includes a matter in a publication in the course of providing information society services in a European Economic Area state that is not the United Kingdom.

597. Sub-paragraph (3) of paragraph 1 provides for proceedings in respect of offences under section 39 of the Children and Young Persons Act 1933 to be dealt with in any place in England and Wales as if it had been committed in that place.

598. Paragraph 2 restricts when proceedings may be instituted against non-UK service providers in the European Economic Area.

599. Sub-paragraph (1) of paragraph 2 applies paragraph 2 to a service provider established in a European Economic Area state other than the United Kingdom (a "non-UK service provider").

600. Sub-paragraphs (2) to (4) of paragraph 2 set out the derogation conditions that must be satisfied for proceedings against a non-UK service provider to be instituted. These are where proceedings are necessary for the purposes of the pursuit of public policy, an information society service prejudices or presents a serious or grave risk of prejudice to the pursuit of public policy and is proportionate to the pursuit of public policy.

601. Paragraph 3 sets out exceptions for mere conduits.

602. Sub-paragraphs (1) to (3) of paragraph 3 set out when a service provider is not capable of being guilty of an offence under section 39 of the Children and Young Persons Act 1933. The circumstances are where the information society service provided consists of the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service. In such circumstances

the service provider is not capable of being guilty of an offence if it does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.

603. Sub-paragraph (4) of paragraph 3 sets out that if a service provider stores the information for longer than is reasonably necessary for the transmission it is capable of being guilty of an offence.

604. Paragraph 4 sets out exceptions for caching.

605. Sub-paragraph (1) of paragraph 4 sets out that paragraph 4 applies where an information society service consists of the transmission in a communication network of information provided by a recipient of the service.

606. Sub-paragraph (2) to (4) of paragraph 4 sets out the circumstances in which a service provider is not capable of being guilty of an offence under section 39 of the Children and Young Persons Act 1933 in respect of the automatic, intermediate and temporary storing of information. The circumstances are where: the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; and the service provider does not modify the information, complies with any conditions attached to having access to the information and expeditiously removes the information or disables access to it. The service provider should expeditiously remove the information where it obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the information has been disabled or a court or administrative authority has ordered its removal or disablement.

607. Paragraph 5 sets out an exception for hosting.

608. Sub-paragraphs (1) to (4) of paragraph 5 set out the circumstances in which a service provider is not guilty of an offence under section 39 of the Children and Young Persons Act 1933 where in the course of providing an information society service it stores information provided by a recipient of the service. These circumstances apply where the recipient of the service is not acting under the authority or control of the service provider. The service provider must have no actual knowledge when the information was provided that it consisted of or included matter whose inclusion in a publication is prohibited by a direction under section 39 of the Children and Young Persons Act 1933. The service provider must, on obtaining knowledge that the matter is so prohibited, expeditiously remove the information or disable access to it.

609. For the purposes of Schedule 1A, paragraph 6 defines “publication”, “information society services”, “recipient”, “service provider”, and when a service provider is established in England and Wales or a European Economic Area state.

610. *Paragraph 2*of Schedule 15 inserts new Schedule 2A into the Youth Justice and Criminal Evidence Act 1999.

611. Paragraph 1 of new Schedule 2A extends liability to a service provider established in England and Wales, Scotland or Northern Ireland (a “domestic service provider”) in respect of matter published in an EEA state other than the UK.

612. Sub-paragraph (2) of paragraph 1 applies section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication falling within section 49(1A)(a) of that Act, to a “domestic service provider” who includes a matter in a publication in the course of providing information society services in a European Economic Area state.

613. Sub-paragraph (3) of paragraph 1 provides for proceedings in respect of offences under section 49 of the Youth Justice and Criminal Evidence Act 1999 to be dealt with in any place in England and Wales, Scotland and Northern Ireland as if it had been committed in that place.

614. Sub-paragraphs (4) and (5) of paragraph 1 set out that section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication falling within section 49(1A)(b) of that Act, applies to a domestic service provider established in England and Wales who in the course of providing information society services includes a matter in a publication in a European Economic Area state other than the UK. Proceedings in respect of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999 will be dealt with in any place in England and Wales as if it had been committed in that place.

615. Paragraph 2 restricts when proceedings may be instituted against non-UK service providers in the European Economic Area.

616. Sub-paragraph (1) of paragraph 2 applies paragraph 2 to a service provider established in a European Economic Area state other than the United Kingdom (a "non-UK service provider").

617. Sub-paragraphs (2) to (4) of paragraph 2 set out the derogation conditions that must be satisfied for proceedings against a non-UK service provider to be instituted in respect of a publication that includes matter in contravention of a direction under section 45A(2) of the Youth Justice and Criminal Evidence Act 1999. These are where proceedings are necessary for the purposes of the pursuit of public policy, an information society service prejudices or presents a serious or grave risk of prejudice to the pursuit of public policy and is proportionate to the pursuit of public policy.

618. Paragraph 3 sets out exceptions for mere conduits.

619. Sub-paragraphs (1) to (3) of paragraph 3 set out when a service provider is not capable of being guilty of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999 in respect of a publication that includes matter in contravention of a direction under section 45A(2) of that Act. The circumstances are where the information society service provided consists of the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service. In such circumstances the service provider is not capable of being guilty of an offence if it does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.

620. Sub-paragraph (4) of paragraph 3 sets out that if a service provider stores the information for longer than is reasonably necessary for the transmission it is capable of being guilty of an offence.

621. Paragraph 4 sets out exceptions for caching.

622. Sub-paragraph (1) of paragraph 4 sets out that paragraph 4 applies where an information society service is the transmission in a communication network of information provided by a recipient of the service.

623. Sub-paragraphs (2) to (4) of paragraph 4 set out the circumstances in which a service provider is not capable of being guilty of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication that includes matter in contravention of a direction under section 45A(2) of that Act, in respect of the automatic, intermediate and temporary storing of information. The circumstances are where: the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; and the service provider does not modify the information, complies with any conditions attached to having access to the information and expeditiously removes the information or disables access to it. The service provider should expeditiously remove the information where it obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the information has been disabled or a court or administrative authority has ordered its removal or disablement.

624. Paragraph 5 sets out an exception for hosting.

625. Sub-paragraphs (1) to (4) of paragraph 5 set out the circumstances in which a service provider is not guilty of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a matter in contravention of section 45A(2) of that Act, where in the course of providing an information society service it stores information provided by a recipient of the service. These circumstances apply where the recipient of the service is not acting under the authority or control of the service provider. The service provider must have no actual knowledge when the information was provided that it consisted of or included matter whose inclusion in a publication is prohibited by a direction under section 45A(2) of the Youth Justice and Criminal Evidence Act 1999. The service provider must, on obtaining knowledge that the matter is so prohibited, expeditiously remove the information or disable access to it.

626. For the purposes of new Schedule 2A, paragraph 6 defines "information society services", "recipient", "service provider", and when a service provider is established in England and Wales, Scotland or Northern Ireland or a European Economic Area state. "Publication" is defined in section 63(1) of the Youth Justice and Criminal Evidence Act 1999 (for the purposes of Part 2 of that Act).

## Other matters

### *Section 81: Representations to Parliament by the President of the Supreme Court*

627. Section 81 introduces in section 5 of the Constitutional Reform Act 2005 the ability for the President of the UK Supreme Court to have the power to make written representations to Parliament in relation to the Supreme Court and the jurisdiction it exercises.

### *Section 82: The supplementary panel of the Supreme Court*

628. Section 82 enables senior judges from England and Wales, Scotland and Northern Ireland who are under 75 to be added to the supplementary panel of the Supreme Court within two years of their retirement.

### *Section 83: Minor amendments*

629. *Subsection (1)* makes a minor amendment to section 132 of the Powers of Criminal Courts (Sentencing) Act 2000 by replacing "House of Lords" with "the Supreme Court".

630. *Subsection (2)* amends section 13 of the Tribunals, Courts and Enforcement Act 2007 to allow rules of court in Scotland to alter the test that is applied to applications for permission to appeal from the Upper Tribunal to the Court of Session. Section 23 of the Crime and Courts Act 2013 gave the Court of Session the power to introduce the requirement that an application for permission to appeal should demonstrate that an appeal would raise an important point of principle, or some other compelling reason for the court to hear it. *Subsection (2)* provides that the rules may also provide that the court should hear an appeal if an application demonstrates that the appeal would raise an important point of practice. *Subsection (2)* enables rules to bring the test applied to applications for permission to appeal from the Upper Tribunal in Scotland into line with the test applied to such applications in England and Wales and Northern Ireland.