

# CRIMINAL JUSTICE AND COURTS ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Criminal Justice

##### Dangerous offenders

##### *Section 1: Maximum sentence for certain offences to be life imprisonment*

113. **Section 1** increases the maximum penalty on indictment for three terrorism-related offences to life imprisonment in *subsections (1), (2) and (3)*. These are the offences of making or possession of explosive under suspicious circumstances (section 4 of the Explosive Substances Act 1883); weapons training for terrorism (section 54 of the Terrorism Act 2000); and training for terrorism (section 6 of the Terrorism Act 2006). Those provisions extend to England and Wales, Scotland and Northern Ireland.
114. *Subsection (4)* of section 1 provides that a life sentence may only be imposed for one of these offences where the offence is committed on or after the date of the commencement of these provisions.

##### *Section 2: Specified offences*

115. **Section 2** provides for the offence of making or possession of explosive under suspicious circumstances to be added to Schedule 15 to the Criminal Justice Act 2003. It also adds offences of encouraging or assisting in the commission of an offence of murder to that Schedule. Schedule 15 sets out serious sexual and violent offences which are subject to the dangerous offenders sentencing scheme. Schedule 15 is relevant for the purposes of: eligibility for an extended determinate sentence (imposed under sections 226A and 226B of the Criminal Justice Act 2003 and corresponding provision in the Armed Forces Act 2006); and the duty to impose a life sentence (imposed under section 225 or 226 of the Criminal Justice Act 2003 and corresponding provision in the Armed Forces Act 2006) where the offence carries a maximum sentence of life imprisonment and the court considers that there is a significant risk to the public of serious harm from further such offences.
116. *Subsection (2)* adds the offence under section 4 of the Explosive Substances Act 1883 (making or possession of explosive under suspicious circumstances) to Part 1 of Schedule 15 to the Criminal Justice Act 2003: thereby making it a specified violent offence for the purposes of Chapter 5 of Part 12 of the Criminal Justice Act 2003 and eligible for the dangerous offenders sentencing scheme in sections 225, 226, 226A and 226B.
117. *Subsection (4)* adds the offence under Part 2 of the Serious Crime Act 2007 of encouraging or assisting the commission of the offence of murder and incitement to murder to Schedule 15. *Subsection (4)* also restates provision about an attempt to commit murder and conspiracy to commit murder.

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(c.2) which received Royal Assent on 12 February 2015*

118. In light of the express reference to Part 2 of the Serious Crime Act 2007 added by the amendment made by *subsection (4)*, *subsections (3) and (7)* restate the other provisions about inchoate offences in Schedule 15 to add an express reference to offences under Part 2 of that Act involving other offences listed in that Schedule.
119. *Subsection (5)* omits the offence under section 33 of the Sexual Offences Act 1956 (keeping a brothel) from Schedule 15 and *subsection (6)* adds the offence under section 33A of that Act (keeping a brothel used for prostitution) to Schedule 15.
120. *Subsection (8)* provides that where an offender is sentenced after commencement of these provisions, these provisions will apply, regardless of when the offence was committed.
121. However, *subsections (10) and (11)* provide for some different transitional arrangements for these provisions. A life sentence (under section 225 or 226 of the Criminal Justice Act 2003 and corresponding provision in the Armed Forces Act 2006) can only be imposed for an offence under section 4 of the Explosive Substances Act 1883 or an offence of encouraging or assisting the commission of the offence of murder if that offence is committed on or after the date of the commencement of these provisions.

***Section 3: Schedule 15B offences***

122. **Section 3** adds various terrorism and terrorism-related offences to Schedule 15B to the Criminal Justice Act 2003. Schedule 15B sets out particularly serious sexual and violent offences which are relevant for the purposes of: eligibility for the automatic life sentence for a second Schedule 15B offence imposed under section 224A and corresponding provision in the Armed Forces Act 2006; the availability of an extended determinate sentence under section 226A and corresponding provision in the Armed Forces Act 2006, as a conviction for a Schedule 15B offence satisfies the ‘previous conviction’ condition for the imposition of an extended determinate sentence; and the release arrangements for those serving an extended determinate sentence (imposed under sections 226A and 226B and corresponding provision in the Armed Forces Act 2006). This change has the effect that an offender given an extended determinate sentence for one of these offences will not be eligible for automatic release once the two-thirds point of the appropriate custodial term has been reached, but instead will be referred by the Secretary of State to the Parole Board at that point. (Section 4 of the Act will make early release from an extended determinate sentence discretionary in all cases).
123. *Subsections (2) to (5)* add the listed terrorism and terrorism-related offences to Schedule 15B to the Criminal Justice Act 2003.
124. *Subsections (6) to (8)* clarify the application of Schedule 15B to the Criminal Justice Act 2003 to foreign EU member State service offences. Paragraph 49B of Schedule 15B as inserted provides a new definition of a member State service offence, which will ensure that previous convictions from a foreign EU service court operating outside that EU Member State will count as relevant previous convictions for the purposes of eligibility for the life sentence in section 224A of the Criminal Justice Act 2003; and eligibility for imposition of an extended determinate sentence under section 226A of that Act.
125. *Subsection (9)* provides that an automatic life sentence can only be given on account of one of these offences where the ‘second strike’ offence is committed on or after the date of the commencement of these provisions.
126. *Subsection (10)* provides that a previous conviction for one of these offences will satisfy the ‘previous conviction’ condition for the imposition of an extended determinate sentence for offenders sentenced on or after the date of the commencement of these provisions, regardless of when that prior offence was committed.

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127. *Subsection (11)* provides that the changes to the release arrangements for offenders given an extended determinate sentence for one of these offences apply to offenders serving a sentence imposed on or after the date of the commencement of these provisions, whenever the offence in question was committed.
128. *Subsection (12)* makes provision about determining the date of an offence for the purposes of section 224A of the Criminal Justice Act 2003 and section 218A of the Armed Forces Act 2006. It provides that offences found to have been committed over a period of two or more days, or at an unknown point during a period of two or more days, are to be treated as though committed on the last of those days.

***Section 4: Parole Board release when serving extended sentences***

129. **Section 4** alters the release arrangements for extended determinate sentences, so that all offenders serving such sentences are subject to Parole Board release between the two-thirds and end points of the custodial term (instead of automatic release at the two-thirds point) rather than only offenders serving sentences imposed for more serious offences, as at present.
130. **Section 4** amends section 246A of the Criminal Justice Act 2003, which sets out the arrangements for the release of prisoners serving extended determinate sentences (imposed under sections 226A and 226B of the Criminal Justice Act 2003 and corresponding provision in the Armed Forces Act 2006).
131. *Subsections (2) and (3)* amend section 246A to provide that, in relation to offenders sentenced to an extended determinate sentence after the commencement of these provisions, the Secretary of State must refer all such prisoners to the Parole Board when the two-thirds point of the appropriate custodial term has been reached under section 246A(4).

***Section 5: Minor amendments***

132. This section makes provision in relation to the life sentence under section 224A of the Criminal Justice Act 2003 (and corresponding provision in the Armed Forces Act 2006), and the extended determinate sentence under section 226A of that Act.
133. *Subsection (1)* makes provision about determining the date of an offence for the purposes of section 224A of the Criminal Justice Act 2003. It provides that offences found to have been committed over a period of two or more days, or at an unknown point during a period of two or more days, are to be treated as though committed on the last of those days. *Subsection (3)* makes equivalent provision for corresponding provision in the Armed Forces Act 2006.
134. *Subsection (2)* extends the provision allowing courts to treat certificates from another court, in respect of a previous conviction, as evidence of the nature of the crime (for example, that an offence of robbery included the use of a firearm), so that it applies for the purpose of determining eligibility for an extended determinate sentence under section 226A of the Criminal Justice Act 2003 as well as a life sentence under section 224A of that Act.

**Other offenders of particular concern**

***Section 6: Sentence and Parole Board release for offenders of particular concern***

135. **Section 6** gives effect to Schedule 1 which sets out arrangements for the sentencing of, and release of, offenders convicted of the listed offences of particular concern. Offenders on whom the new sentence is imposed will be subject to Parole Board release between the halfway and end point of the custodial term instead of automatic release at the halfway point. Paragraph 2 of the Schedule inserts new section 236A of the Criminal Justice Act 2003, which provides for the new sentence; paragraph 6 of the Schedule

inserts new section 244A of that Act, which provides for the release arrangements for the new sentence.

### ***Schedule 1: Sentence and Parole Board release for offenders of particular concern***

136. **Schedule 1** introduces a new sentence for adult offenders who have been convicted of an offence listed in new Schedule 18A to the Criminal Justice Act 2003 and have been given a sentence of imprisonment (but not a life sentence or an extended determinate sentence under section 226A). The new sentence must consist of a custodial term and a one year period of licence, and offenders serving the new sentence will be subject to discretionary release by the Parole Board between the halfway and end point of the custodial term.
137. **Schedule 1** amends the Criminal Justice Act 2003, in particular to insert new sections 236A and 244A and new Schedule 18A.
138. **Paragraph 2** inserts new section 236A, which forms a new Chapter 5A of Part 12.
139. Subsection (1) of new section 236A sets out the circumstances in which an offender will fall to be sentenced under subsection (2). Where the court decides to impose a custodial sentence in respect of an offence listed in Schedule 18A (committed when the offender is 18 or older), and the court does not impose a life sentence or an extended determinate sentence (under section 226A of the Criminal Justice Act 2003), the court is obliged to impose a sentence of imprisonment which consists of the appropriate custodial term and a 1 year period to be spent on licence. Where the offender is aged 18-20, the sentence will be for detention in a young offender institution (see [paragraph 10](#)).
140. Subsection (3) of new section 236A defines ‘the appropriate custodial term’ as that which in the opinion of the court ensures the sentence imposed is appropriate. Subsection (4) prevents the offender from receiving a longer sentence than could have been given at the time the offence was committed.
141. Subsection (5) clarifies that this sentence may be imposed in respect of one offence, or in respect of one or more associated offences. Subsection (6) of new section 236A gives the Secretary of State a power to add or remove offences by order (subject to the affirmative procedure) to or from Schedule 18A, or to amend those offences; subsection (7) provides that an amendment made by such an order could apply to anyone sentenced on or after the date on which the amendment comes into force, regardless of when the offence was committed.

### **Offences of particular concern**

142. **Paragraph 4** inserts new Schedule 18A (“Sentence under section 236A: offences”) into the Criminal Justice Act 2003. Offences listed in Schedule 18A are subject to the sentence in section 236A and the release arrangements in new section 244A of the Criminal Justice Act 2003.

### **Terrorism**

143. Paragraphs 1 to 18 of new Schedule 18A list the terrorism and terrorism-related offences which fall under the new sentencing arrangements set out in new section 236A. In relation to the terrorism-related offences listed in paragraphs 1 to 6, these are only subject to the sentence in section 236A and the release arrangements in new section 244A if they are committed with a terrorist connection. A terrorist connection is defined in paragraph 24 of the Schedule; a court must have determined that there is such a connection under section 30 of the Counter-Terrorism Act 2008.

## **Sexual offences**

144. [Paragraphs 19 and 20](#) list the sexual offences which fall under the new sentencing arrangements set out in new section 236A and the release arrangements in new section 244A.

## **Attempts etc to commit preceding offences or murder**

145. [Paragraphs 21 and 22](#) provide for inchoate offences involving an offence listed in paragraphs 1 to 20 and inchoate offences in connection with murder where there is a terrorist connection to be included in the new sentencing arrangements set out in new section 236A and the release arrangements in new section 244A.

## **Abolished offences**

146. [Paragraph 23](#) ensures that historic offences which have been abolished but which are equivalent to the Schedule 18A offences fall under the new sentencing arrangements set out in new section 236A and the release arrangements in new section 244A.

## **Release on licence to be directed by the Parole Board**

147. [Paragraph 5](#) amends section 244(1) of the Criminal Justice Act 2003 to exempt the Secretary of State from the general duty to release a fixed-term prisoner on licence once they have served the requisite custodial period, in a case where the prisoner will be released in accordance with new section 244A of the Criminal Justice Act 2003.
148. [Paragraph 6](#) inserts new section 244A (“Release on licence of prisoners serving sentence under section 236A”) into the Criminal Justice Act 2003. Section 244A provides for the release arrangements which apply to any offender sentenced under new section 236A.
149. Under subsection (2) of section 244A such offenders must be referred to the Parole Board once they have served the requisite custodial period, which is defined in section 244A(6) as half of the appropriate custodial period imposed by the court (or where a prisoner is serving consecutive or concurrent sentences the requisite custodial period calculated in accordance with the aggregation of the sentences under sections 263(2) and 264(2)). Section 244A(6) defines ‘the appropriate custodial term’ as that determined by the court as such under section 236A. If an offender is referred to the Parole Board and is not released at that time, they are entitled to be referred to the Parole Board again at least every two years (see section 244A(2)(b)).
150. In accordance with subsections (3) and (4) of section 244A, if the Parole Board believes it is not necessary for the protection of the public for the offender to be detained they may direct the offender’s release and the Secretary of State must release a prisoner if the Parole Board so directs.
151. Subsection (5) of section 244A obliges the Secretary of State to release a prisoner at the end of the appropriate custodial term imposed by the court, unless the prisoner has already been released on licence and recalled under section 254 of the Criminal Justice Act 2003 within that time.
152. [Paragraph 7](#) amends section 246 of the Criminal Justice Act 2003 to provide that release on Home Detention Curfew is not available to these offenders.
153. [Part 2](#) of Schedule 1 inserts provision in the Armed Forces Act 2006 that is equivalent to the new sentencing arrangements in new section 236A of the Criminal Justice Act 2003.
154. [Part 3](#) of Schedule 1 makes transitional and transitory provision in relation to the new sentencing arrangements set out in section 236A of the Criminal Justice Act 2003 (and corresponding provision in the Armed Forces Act 2006). [Paragraph 9](#) provides that



the new sentencing arrangements apply to anyone sentenced on or after the date of the commencement of these provisions, even if that person was convicted prior to that date. *Paragraph 10* contains a transitory provision to convert references to imprisonment in the new provisions, as they apply to persons aged 18-20, into references to detention in young offender institutions. Such a sentence is still possible, 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).

155. *Part 4* of Schedule 1 makes provision consequential on the creation of the new sentencing arrangements set out in new section 236A of the Criminal Justice Act 2003, the release arrangements in new section 244A of that Act and the corresponding provisions in the Armed Forces Act 2006.

## **Release and recall of prisoners**

### ***Section 7: Electronic monitoring following release on licence etc***

156. *Section 7* makes provision for a mandatory electronic monitoring condition to apply to offenders released from custody on licence. The electronic monitoring condition may be for monitoring of compliance with other licence conditions or monitoring of whereabouts as a stand alone licence condition, or both. Under the legislation prior to the changes in this Act, contained in section 62 of the Criminal Justice and Court Services Act 2000, these conditions may be imposed but only on a discretionary, case by case, basis. In addition, by virtue of section 31 of the Crime (Sentences) Act 1997, conditions may only be attached to an indeterminate sentence prisoner's licence on the recommendation of the Parole Board.
157. *Subsection (2)* amends section 62 of the Criminal Justice and Court Services Act 2000 and provides that any electronic monitoring condition must also state who is responsible for the monitoring and gives the Secretary of State an order-making power, subject to the negative procedure, to specify a description of a person responsible for electronic monitoring.
158. *Subsection (3)* inserts new sections 62A and 62B into the Criminal Justice and Court Services Act 2000. Section 62A(1) provides for an order-making power, subject to the negative procedure, to allow the Secretary of State to provide that offenders released from custody on licence must be subject to compulsory electronic monitoring. Section 62A(2) allows for the Secretary of State to require electronic monitoring in particular cases and to specify the duration of the compulsory condition, which may be for a period shorter than the licence period. The period may be different for different groups of offenders (as provided for by section 76 of the Criminal Justice and Court Services Act 2000). Section 62A(3) allows for the Secretary of State to specify which offenders will be subject to electronic monitoring by reference to whoever is monitoring the offender. It also allows the Secretary of State to make provision by reference to whether a person specified in the order is satisfied of a matter. For example, it might refer to cases in which the Secretary of State is satisfied that the offender has a physical or mental health problem which renders the offender unsuitable for the licence condition, or cases in which a person is satisfied that it is impossible to make arrangements for the offender to recharge the battery in the tag. The Secretary of State may prescribe which offenders must be subject to compulsory electronic monitoring; for example, groups of offenders by type of offence, such as all burglars, or by type of sentence, such as all those serving an Extended Determinate Sentence.
159. New section 62A(4) has the effect that, if an offender is serving one of the specified sentences, a compulsory electronic monitoring condition cannot be applied to that person. The sentences are certain custodial sentences available for young offenders. Under these sentences, electronic monitoring will still be available but on a discretionary basis.

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160. The use of data, including location data, gathered under an electronic monitoring condition (whether one imposed for the purpose of monitoring whereabouts or one imposed for the purpose of monitoring compliance) is subject to the requirements of the Data Protection Act 1998. Section 62B imposes a duty on the Secretary of State to issue a code of practice on the processing of such data (which will include retention, use and sharing of data).
161. *Subsection (4)* introduces Schedule 2 which contains a number of consequential provisions.
162. *Subsection (5)* applies the provisions to offenders released from custody on or after the day on which they are commenced.

***Schedule 2: Electronic monitoring and licences etc: consequential provision***

163. **Schedule 2** makes consequential amendments relating to the provisions in section 7. In particular, *paragraph 1* amends section 31 of the Crime (Sentences) Act 1997 to enable a compulsory electronic monitoring licence condition to be imposed on a life sentence prisoner without a recommendation or direction from the Parole Board.

***Section 8: Recall adjudicators***

164. **Section 8** provides a power for the Secretary of State to appoint “recall adjudicators” whose function is to review the detention of recalled determinate sentence prisoners. This function is currently performed by the Parole Board. This section removes the statutory requirements in the Criminal Justice Act 2003 (“2003 Act”) for the Secretary of State to refer determinate sentence recalled prisoners to the Parole Board and replaces references to the Board in that context with references to a “recall adjudicator”. The Secretary of State is able to appoint the Parole Board or any other person to be a recall adjudicator.
165. *Subsection (1)* inserts a new section in the 2003 Act after section 239. New section 239A provides for the Secretary of State to appoint and remunerate recall adjudicators to carry out all or some of the review functions for recalled determinate sentence prisoners. The Secretary of State’s power includes power to appoint people to carry out such functions only in a specified geographical area or only in relation to a specified type of case. Such functions have to be carried out in accordance with any guidance issued by the chief recall adjudicator as appointed by the Secretary of State. The Secretary of State is able to issue rules about proceedings of recall adjudicators. The rules will be made by statutory instrument subject to the negative procedure.
166. *Subsection (2)* confirms that the amendments of the 2003 Act in section 9 of the Act, which deal with the test for release after recall for determinate sentence prisoners, confer functions on recall adjudicators.
167. *Subsection (3)* introduces the new Schedule 3 which provides for further consequential changes to other enactments to reflect the appointment of recall adjudicators.
168. In particular, Schedule 3 amends:
  - *Mental Health Act 1983* – There is provision in section 50 of that Act under which Parole Board powers in respect of the release of prisoners may be disregarded in respect of prisoners subject to the Mental Health Act 1983. The same provision has been made in respect of recall adjudicators’ powers to direct the release of determinate sentence recalled prisoners. Similarly, section 74 of that Act makes references to the Parole Board and restricted patients subject to restriction directions. References to recall adjudicators have been added.
  - *Criminal Justice Act 2003* –

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- Section 250 (licence conditions) is amended to provide that, in respect of a prisoner serving an extended sentence, where the Parole Board directs the initial release the Board is responsible for setting and varying certain licence conditions (as now) but where a recall adjudicator directs release following recall, the adjudicator has those responsibilities in respect of the licence.
  - Section 260(2B) (early release from prison of extended sentence prisoners who are liable to be removed from the United Kingdom) provides that the Secretary of State's power of removal applies whether or not the Parole Board has given a direction to release. Equivalent provision has been made in relation to recall adjudicators.
  - A definition of "recall adjudicator" has been added to section 268 (interpretation of Chapter 6 of Part 12).
  - For prisoners whose release is subject to the modifications in Schedule 20B of the 2003 Act (transitional provision for certain cases, including those originally dealt with under the Criminal Justice Act 1967 and the Criminal Justice Act 1991), similar amendments have been made in respect of the setting and varying of licence conditions and the early release of prisoners liable to be removed from the UK.
- *Domestic Violence, Crime and Victims Act 2004* – Schedule 9 to this Act has been amended so that recall adjudicators are listed as one of the authorities falling within the remit of the Commissioner for Victims and Witnesses, in the same way as the Parole Board.
  - *Offender Management Act 2007* – Section 3(7)(a) (arrangements for the provision of probation services: risk of conflict of interest) has been amended to require the Secretary of State to have regard to the need to take reasonable steps to avoid a conflict of interest between the obligations of providers of probation services to provide assistance to recall adjudicators and their financial interests. Section 14 has also been amended to provide that the Secretary of State can disclose information to recall adjudicators for offender management purposes.
  - *Coroners and Justice Act 2009* – The work of the Parole Board is covered by section 131 (annual report of Sentencing Council for England and Wales: effect of factors not related to sentencing). This has been amended to include reference to the work of recall adjudicators.
  - *Equality Act 2010* – Schedule 19 lists the public authorities that are covered by the provisions of the Act, which includes the Parole Board. Recall adjudicators have been added to this list.

### ***Section 9: Test for release after recall: determinate sentences***

169. **Section 9** amends the provisions dealing with the recall and further release of prisoners in Chapter 6 of Part 12 of the Criminal Justice Act 2003. It adds to the public protection test, applicable prior to this Act, to include consideration of whether the offender is highly likely to breach their licence conditions if released. This test applies where the Secretary of State is determining whether a recalled prisoner is suitable for automatic release and, where they are subject to discretionary release, when the Secretary of State and recall adjudicators are considering re-release.
170. **Subsection (2)** inserts a new subsection (4A) into section 255A of the Criminal Justice Act 2003 to require the Secretary of State to consider the likelihood of further non-compliance with licence conditions when deciding on the appropriate type of recall for an offender, as well as whether they present a risk of serious harm to the public.



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171. *Subsection (3)* amends section 255B of that Act which deals with recalled offenders who are subject to automatic release after 28 days. *Subsection (3)(b)* inserts a new subsection (3A) in section 255B which provides that the Secretary of State must consider when exercising discretionary release powers whether it appears that the offender would be highly likely to breach a condition contained in their licence. This is in addition to the existing restriction based on risk of serious harm to the public.
172. Where a referral is made to a recall adjudicator to consider the offender's release before the end of the automatic release period, *subsection (3)(d)* inserts further subsections in section 255B – (4A), (4B) and (4C) – which set out the basis on which the adjudicator may consider release in these circumstances.
173. New subsection (4A) provides for the directions the recall adjudicator may make when determining the referral. New subsection (4B) reproduces the current public protection release test to be applied by the adjudicator when considering release. New subsection (4C) adds to that test by restricting the adjudicator's power to release where the adjudicator considers the offender would be highly likely to breach a condition contained in their licence if released.
174. *Subsection (3)(e)* replaces the current subsection (5) to make clear that the Secretary of State must give effect to any direction of the recall adjudicator to release.
175. *Subsection (4)* makes the same changes in respect of the discretion of the Secretary of State and recall adjudicators to release recalled offenders not subject to the automatic release provision in section 255B who are, instead, liable to be detained until the end of their sentence. It imposes a restriction on the exercise of the discretion where the prisoner would be highly likely to breach a condition contained in their licence if released by inserting new subsections (3A), (4A), (4B) and (4C) in section 255C of the Criminal Justice Act 2003 . These replicate the new subsections inserted in section 255B.
176. *Subsection (5)* repeals section 256 of the Criminal Justice Act 2003. Section 256 provides for how the Secretary of State and the Parole Board deal with referrals of recalled prisoners where the Board does not direct immediate release. This section is no longer needed as provision for how the Secretary of State and, now, recall adjudicators are to deal with such cases is now made in each of the relevant sections of that Act as amended by section 9.
177. *Subsection (6)* replaces subsection (1) of section 256A of the Criminal Justice Act 2003 with three new subsections, (1), (1A) and (1B), dealing with the further review of recalled prisoners. For a recalled prisoner who is serving one sentence of imprisonment the prisoner must have their case referred to a recall adjudicator annually. Where the prisoner is serving multiple sentences, however, and the recall period is running concurrently with the custodial part of another sentence (for example, where a further sentence has been imposed in addition to the recall for offences committed while on licence) then the case will not be referred to an adjudicator until the custodial part of the other sentence has been completed and the prisoner can be released on all sentences – rather than referred annually during that period.
178. *Subsection (6)(d)* replaces the provision for the Parole Board to fix a date for release on licence (section 256A(4)(b) of the Criminal Justice Act 2003) with provision for a recall adjudicator to direct that the prisoner be released on licence as soon as conditions in the direction are met. This is to allow conditional release of an offender on a given set of circumstances, for example when a particular accommodation is available.
179. *Subsection (6)(f)* inserts new subsections (4A) and (4B) in section 256A to provide that recall adjudicators must apply the risk of breach of a licence condition test as well as the public protection test when considering the release of recalled prisoners whose cases have been referred to an adjudicator on their review date under section 256A.

180. *Subsection (7)* removes a transitional provision for prisoners subject to earlier release provisions which becomes redundant on the repeal of section 256 of the Criminal Justice Act 2003.
181. *Subsection (8)* provides that the amendments made by this section apply to those recalled before the day on which these changes are brought into force, as well as those recalled after that date.

***Section 10: Power to change test for release after recall: determinate sentences***

182. **Section 10** inserts a new section – 256AZA – in Chapter 6 of Part 12 of the Criminal Justice Act 2003. This provides an order-making power subject to the affirmative procedure to change the test to be applied (provided for in section 9) when the Secretary of State decides whether automatic release recall is suitable (as prescribed in section 255A) and the tests applied by the Secretary of State and recall adjudicators for release following recall (as prescribed in sections 255B, 255C and 256A).

***Section 11: Initial release and release after recall: life sentences***

183. *Subsection (1)* amends section 28(7) of the Crime (Sentences) Act 1997 to refer to the ‘requisite custodial period’ which is defined in section 268(1A) of the Criminal Justice Act 2003 (as inserted by section 14). Section 28(7)(c) of the Crime (Sentences) Act 1997 makes provision in relation to the point at which a life prisoner may require the Secretary of State to refer their case to the Parole Board to consider their release, where such a prisoner is also serving a determinate sentence of imprisonment or detention. This amendment is a consequence of the creation of the new sentencing arrangements set out in new section 236A and the release arrangements in new section 244A of the Criminal Justice Act 2003 (as inserted by Schedule 1); and of the creation of the extended determinate sentence under section 226A and 226B of that Act, as inserted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
184. *Subsection (2)* amends section 32 of the Crime (Sentences) Act 1997 by inserting the public protection release test applied when considering initial release so that it also applies where the Board is considering the release of recalled life sentence prisoners. This includes prisoners serving sentences of Imprisonment for Public Protection (IPP) who have been recalled.
185. *Subsection (3)* inserts a new paragraph in section 128(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which allows the release test to be changed by an order subject to the affirmative procedure. This ensures that the power to change the release test applies equally to the test as it appears in new subsection (5A) of section 32 of the 1997 Act, in relation to the release of recalled IPP prisoners. The power to amend the release test in section 128 does not apply to the test in respect of those serving life sentences, which cannot be amended by order.
186. *Subsections (4) and (5)* provide that the amendments made by subsections (1) and (2) of this section apply to those sentenced or recalled before the day on which these changes are brought into force, as well as those sentenced or recalled after that date.

***Section 12: Offence of remaining unlawfully at large after recall***

187. **Section 12** creates a new offence of remaining unlawfully at large following a recall to custody.
188. *Subsection (1)* inserts a new section 32ZA into the Crime (Sentences) Act 1997 to provide for it to be a criminal offence for recalled indeterminate sentence prisoners to remain unlawfully at large. The offence is committed once the offender has been notified of the recall and fails to take all necessary steps to return to prison unless they have a reasonable excuse. Subsection (2) of section 32ZA provides that an offender is treated as being notified of recall if written notification has been delivered to an

appropriate address and the period specified in the notice has expired. Subsection (3) of section 32ZA defines an appropriate address as either an address at which the offender is permitted to stay or an address which is nominated under their licence. Subsection (4) of section 32ZA provides that an offender is also treated as being notified of their recall if their licence requires them to keep in contact with probation in accordance with instructions given by probation officers, they have failed to comply with an instruction and they have not complied with an instruction for at least 6 months.

189. Subsection (5) of section 32ZA provides that the offence of being unlawfully at large can be tried in either the magistrates' court or the Crown Court (an "either way" offence). The maximum penalty of 6 months which can be imposed by a magistrates' court will become 12 months when section 154(1) of the Criminal Justice Act 2003 is commenced (subsection (6) of section 32ZA). Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, when brought into force, will remove the limit on the fine that can be imposed in the magistrates' court for this offence; however until that point any fine imposed by the magistrates' court may not exceed the statutory maximum (subsection (7) of section 32ZA).
190. *Subsection (2)* inserts a new section 255ZA into the Criminal Justice Act 2003 to provide for it to be a criminal offence for recalled determinate sentence prisoners to remain unlawfully at large and provides the same provisions as outlined in paragraphs 187 and 188 above.
191. *Subsection (3)* provides that the offence of remaining unlawfully at large after recall will apply to all those who are already unlawfully at large after the revocation of their licences. Therefore, on commencement, offenders who are already unlawfully at large will be committing this offence if they have been notified of the recall, the time in the notification expires and the offender has not, without reasonable excuse, taken all necessary steps to return to prison.

### ***Section 13: Offence of remaining unlawfully at large after temporary release***

192. **Section 13** provides for an increase in the maximum sentence for the offence of remaining unlawfully at large after a period of temporary release on licence and makes it an offence which can be tried in either the magistrates' court or Crown Court (an "either way" offence).
193. The section amends section 1 of the Prisoners (Return to Custody) Act 1995. *Subsection (2)* provides that the maximum penalties that can be imposed by (a) the Crown Court and (b) the magistrates' court to 2 years and 12 months respectively.
194. *Subsection (3)* provides that until section 154(1) of the Criminal Justice Act 2003 is commenced the maximum penalty which can be imposed by a magistrates' court is 6 months.
195. It also provides that until section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is commenced the maximum fine which can be imposed by a magistrates' court is a fine not exceeding the statutory maximum (currently £5,000).
196. *Subsection (4)* provides that the increased maximum penalties will not apply to those whose period of temporary release on licence had expired, or whose order of recall was made, before commencement.

### ***Section 14: Definition of "requisite custodial period"***

197. **Section 14** inserts a definition of "requisite custodial period" into the interpretation provision in Chapter 6 of Part 12 of the Criminal Justice Act 2003. "Requisite custodial period" has different meanings for different sentences. For the purposes of a standard determinate sentence (covered by section 243A and 244), the 'requisite custodial period' ends at the half-way point; for the purposes of an extended determinate sentence (imposed under section 226A or 226B) it ends at the two-thirds point of the custodial

term, or the half-way point of the custodial term for extended sentences imposed under the previous regime (under section 227 or 228) (see sections 246A and 247); for the purposes of the new sentencing arrangements under new section 236A (inserted by Schedule 1 to this Act), it ends at the half-way point of the custodial term (see new section 244A). The definition of ‘requisite custodial period’ is relevant for the purposes of sections; 246 (power to release prisoners on licence before required to do so), 256A (as amended by section 9 of this Act) (further review), 260 (early removal of prisoners liable to removal from the United Kingdom) 261 (re-entry into United Kingdom of offender removed from prison early), paragraph 8 of Schedule 20A (modification of section 260) and section 28 of the Crime (Sentences) Act 1997 (as amended by section 11 of this Act) (initial release and release after recall: life sentences).

198. *Subsection (3)* makes amendments to section 247 of the Criminal Justice Act 2003 to introduce a definition of the ‘requisite custodial period’ in respect of an offender serving one sentence or two or more concurrent or consecutive sentences. The requisite custodial period for this type of extended sentence is one half of the custodial term imposed by the court where one sentence is being served and, for those serving multiple sentences, it is the period determined by sections 263(2) and 264(2) which deal with calculating relevant dates for concurrent and consecutive sentences.

### ***Section 15: Minor amendments and transitional cases***

199. **Section 15** makes minor consequential amendments and provision to deal with transitional cases stemming from the changes made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

## **Prisons**

### ***Section 16: Drugs for which prisoners etc may be tested***

200. **Section 16** amends the provisions in the Prison Act 1952 (“the 1952 Act”) which deal with testing prisoners for drugs. It expands the definition of drugs that a prisoner can be tested for to include a drug that is not controlled under the Misuse of Drugs Act 1971 (“the 1971 Act”) and which is specified by the Secretary of State in prison rules. Currently, under section 16A of the 1952 Act, if an authorisation is in force in a prison, a prison officer may, in accordance with prison rules require a prisoner to provide a sample of urine for the purpose of ascertaining whether the prisoner has any drug in his body. Section 16A(3) defines “drug” as meaning any controlled drug for the purposes of the 1971 Act. Section 2 of, and Schedule 2 to, the 1971 Act define “controlled drug” as any substance or product specified in Part 1, 2 or 3 of that Schedule or that is subject to temporary control.
201. *Subsection (2)* amends section 16A(3) of the 1952 Act by expanding the definition of drug to include a “specified drug” which is defined as any substance or product specified in prison rules for the purposes of section 16A.
202. *Subsection (3)* inserts a new subsection (3A) into section 47 of the 1952 Act. Section 47 gives the Secretary of State the power to make rules for the regulation and management of prisons and other places of detention. Subsection (3A) provides that rules made under section 47 may specify any substance or product (which is not a controlled drug for the purposes of the 1971 Act) in relation to which a person may be required to give a sample for the purposes of section 16A. The effect of subsection (3A) is that the Secretary of State can specify in prison rules and rules for other places of detention a drug that is not controlled under the 1971 Act and which should be subject to testing under section 16A of the 1952 Act.

## **Cautions**

### ***Section 17: Restrictions on use of cautions***

203. Currently, a simple caution provides a means for a constable to deal with a person aged 18 or over who has admitted committing a criminal offence in England and Wales and agrees to be given a caution. It does not involve any court or tribunal process or the imposition of any condition or sanction. The current provisions for adult simple cautions are set out in non-statutory guidance issued by the Secretary of State for Justice.
204. **Section 17** places restrictions on the circumstances in which cautions may be used. The restrictions are greater the more serious the offence. *Subsection (1)* provides that the section applies where the person is aged 18 or over, has committed an offence in England and Wales and admits to committing the offence.
205. *Subsection (2)* provides that a constable may not give a caution for an offence triable only on indictment unless there are exceptional circumstances and the Director of Public Prosecutions consents.
206. *Subsection (3)* provides that a constable may not give a caution for an offence that is triable either way and which is specified in an order (“specified either way offence”) made by the Secretary of State (subject to the negative procedure) unless there are exceptional circumstances.
207. *Subsection (4)* provides that a constable may not give a caution for a summary or a non specified either-way offence (those offences not already restricted by *subsections (2) and (3)*) if the person has, in the two years before the commission of the current offence, received a caution (including a youth caution and youth conditional caution under the Crime and Disorder Act 1998 as well as an adult conditional caution) or conviction for a similar offence unless there are exceptional circumstances. The Secretary of State has the power to amend by order (subject to the affirmative procedure), the period of two years between the current offence and previous similar offence (*subsection (7)*).
208. Whether there are exceptional circumstances and whether a previous offence is similar to the current offence are not to be determined by a police officer below a rank specified by the Secretary of State by order (*subsection (5)*). A determination must be made in accordance with guidance issued by the Secretary of State (*subsection (6)*).
209. *Subsection (10)* provides that the restrictions on giving a caution under this section apply to an offence irrespective of whether it was committed before or after this section comes into force.

### ***Section 18: Restrictions on use of cautions: supplementary***

210. **Section 18** sets out the different parliamentary procedures for the orders that the Secretary of State may make under section 17 and provides that an order must be made by statutory instrument.
211. *Subsection (5)* contains an amendment to section 37B(7) of the Police and Criminal Evidence Act 1984. That section is about the decision of the Director of Public Prosecutions as to whether a person should be charged or cautioned. Under section 38B(7), if the DPP decides that a person should be cautioned, but it proves not to be possible to give a caution, the person must be charged. The amendment contained in subsection (5) makes clear that section 17 is to be taken into account in determining whether a caution is possible or not.

### ***Section 19: Alternatives to prosecution: rehabilitation of offenders in Scotland***

212. **Section 19** amends the Rehabilitation of Offenders Act 1974 in order to address a legal competence problem that was identified by the Scottish Government in relation to the exercise of enabling powers in Schedule 3 to the 1974 Act. The amendment allows the



Scottish Ministers to make an order under paragraph 6 of Schedule 3 and section 7(4) (as applied by paragraph 8 of Schedule 3) of the 1974 Act setting out exclusions, modifications and exceptions to the general rules in the 1974 Act concerning spent alternatives to prosecution in relation to reserved matters. Scottish Ministers already have the power to do this in relation to convictions (the powers to do so having been transferred to Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003).

## **Offences involving ill-treatment or wilful neglect**

### ***Section 20: Ill-treatment or wilful neglect: care worker offence***

213. **Section 20** makes it an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully neglect that individual. The offence will apply in England and Wales.
214. **Subsection (2)** establishes the penalties to which an individual found guilty of the offence will be subject. On conviction on indictment, the penalty is imprisonment for a maximum of 5 years, or a fine, or both. On summary conviction (subject to subsection (9)), the penalty is imprisonment for a maximum of 12 months, or a fine, or both.
215. **Subsection (3)** defines “care worker” for the purposes of this section, as an individual who is paid specifically to provide health care for adults or children other than health care that is excluded (see **subsection (5)** and Schedule 4), or to provide adult social care. “Care worker” also includes an individual who is paid specifically to supervise or manage individuals providing such care, and a director or equivalent of an organisation providing such care. The intention is to ensure that the individual offence can apply to any individual perpetrator, not just those on the “front line” of care provision. However, it will only apply where the individual supervisor, director, etc has themselves directly committed ill-treatment or wilful neglect. They will not commit the individual offence by virtue of the acts or omissions of others they supervise or manage.
216. **Subsection (4)** defines “paid work” for the purposes of this section, as work for which an individual is paid, or is entitled to be paid, other than: a) payment in respect of reasonable expenses; b) payments to foster parents in respect of their work as a foster parent; c) a social security benefit; and d) a payment under arrangements under section 2 of the Employment and Training Act 1973 (to assist people to select, train for, obtain and retain employment)
217. The purpose of limiting the offence to those performing ‘paid work’, as defined, is to ensure that informal arrangements, such as unpaid family carers and friends, are not captured by the offence. The intention is also to exclude from the definition situations where an individual works as an unpaid volunteer, but receives, for example, reimbursement of travel costs to get to and from the place where they volunteer. Similarly, this exclusion would also cover an informal family carer who occasionally receives a contribution from the person they care for towards the personal costs they incur in providing that care. Such reimbursement is not to be treated as amounting to paid work. Payments received by foster parents specifically in respect of their work as foster parents, are also to be disregarded for the purposes of this section. The intention is also to exclude from the definition of paid work any social security benefit for which, for example, claimants are required to undertake unpaid work as a condition of receiving that benefit. So, for example, an individual working in an adult care home as part of the Department for Work and Pensions’ “Work Programme” will not be treated as being in paid work.
218. **Subsection (5)** defines “health care” for the purposes of this offence. The definition includes services provided as part of the protection or improvement of public health, for example smoking cessation support, and is also intended to capture services, such as cosmetic surgery, that are not necessarily directly related to a medical condition. This

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subsection also introduces Schedule 4, which defines “excluded health care” for the purposes of this section.

219. *Subsection (6)* defines “social care” for the purposes of this offence.
220. *Subsection (7)* specifies that where health care or adult social care is provided incidentally to a person’s main duties, this should be disregarded for the purposes of the offence. So, for example, a prison officer who, as a “good Samaritan” act, assists a prisoner in adjusting a hearing aid, could be perceived as providing practical assistance within the definition of social care. However, the intention is that such activity would not fall within the scope of the offence. In this example, the prison officer would have provided the assistance (albeit in the course of performing their duties) incidentally to their custodial duties, not by virtue of being a care worker. The same principles would apply to, for example, police officers and office workers in similar circumstances.
221. *Subsection (8)* defines the terms “adult” and “child” - an individual is to be considered to be an adult once they have attained the age of 18 years. It also defines the phrase “foster parent” for the purposes of *subsection (4)*.
222. *Subsection (9)* makes provision for the maximum permitted sentence which can be imposed under *subsection (2)(b)* to be contingent on whether section 154(1) of the Criminal Justice Act 2003 has come into force at the time an offence under this section is committed. Where an offence under this section has been committed prior to section 154(1) coming into force the maximum sentence on summary conviction will be 6 months. .
223. *Subsection (10)* makes provision for the maximum level of any fine imposed under *subsection (2)(b)* to be contingent on whether section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has come into force at the time an offence under this section is committed.

***Schedule 4: Ill-treatment or wilful neglect by care worker: excluded health care***

224. *Schedule 4* sets out a range of children’s services and settings in which health care is to be treated as excluded health care for the purposes of section 20 (ill-treatment or wilful neglect: care worker offence). The Government’s view is that there already exist sufficient safeguards in respect of children in these services and settings so that adequate protections are in place. For adults in these settings and services, the likelihood of them needing health care from someone who would meet the definition of “care worker” is very small, and the risk of them suffering ill-treatment or wilful neglect from such a care worker smaller still.
225. *Paragraph 1(1)* defines “excluded health care” for the purposes of the offence established in section 20. The scope of the exclusion covers health care provided in:
- all educational institutions listed in *paragraph 3*, including Academies, free schools, boarding schools, pupil referral units, and sixth form colleges;
  - other premises while they, or a part of them, are being used for an education or childcare purpose described in *paragraph 2*, including early years or later years provision, childminding or day care;
  - all children’s homes and residential family centres.
226. *Sub-paragraph (2)* provides that health care provided on part of the premises of an educational institution listed in *paragraph 3* is not to be treated as excluded health care if, at the time it is provided, that part of the premises is being used for purposes other than purposes connected with the operation of the premises or an education or childcare purpose. For example, health care provided in a school hall while the hall is being used for a school assembly would be excluded health care, while health care provided in the

hall while it is being used as a venue by a community group, such as a keep fit club or charity event, would not.

227. *Sub-paragraph (3)* provides that health care provided at the premises of a hospital where education is provided is not to be treated as excluded health care.
228. *Paragraph 2* specifies the activities that are to be treated as an education or childcare purpose in respect of *paragraph 1(1)(d) and 1(2)(b)*. For example, where a church hall is used to provide early years care as described in sub-paragraph (d) during the week, but also for parties, wedding receptions, community group meetings etc, in the evenings or at the weekend, only health care provided at the church hall while it is being used for the provision of early years care will be excluded health care. Health care provided at any other time, or on a part of the premises used for something other than the education or childcare purpose, will be subject to the care worker offence.
229. *Paragraph 3* defines the meaning of “educational institutions” in this Schedule. They include
- nursery, primary, and secondary schools, both maintained and independent;
  - Academies and free schools;
  - pupil referral units;
  - sixth form colleges and special post-16 education institutions.
230. *Paragraph 4* defines various words and phrases for the purposes of this Schedule.

### ***Section 21: Ill-treatment or wilful neglect: care provider offence***

231. *Subsection (1)* provides for a care provider to commit an offence if:
- an individual employed or otherwise engaged by the care provider ill-treats or wilfully neglects someone to whom they are providing health care or adult social care and to whom the care provider owes a relevant duty of care; and
  - the way in which the care provider manages or organises its activities amounts to a gross breach of that duty of care; and
  - if that breach had not occurred, the ill-treatment or wilful neglect would not have happened, or would have been less likely to happen.
232. The overall approach to this offence is modelled, insofar as is practicable, on that of the offence of corporate manslaughter/homicide established in the Corporate Manslaughter and Corporate Homicide Act 2007 (“CMCHA 2007”). The intention is to resolve the difficulties associated with proving to the required level for a criminal offence the element of wilfulness on the part of an organisation. The CMCHA 2007 removed the necessity of identifying a single individual within the organisation’s senior management structure of sufficient seniority to be acting as the “directing mind” of the organisation, and then proving that this individual behaved wilfully, such that the organisation as a whole can be considered to be guilty of the offence. Instead, the CMCHA 2007 focussed on the way an organisation managed or organised its activities, and on the duty of care that the organisation owed towards the victim. This section takes the same approach in respect of whether an organisation has conducted its affairs in a way that amounts to a gross breach of a duty of care owed towards someone who has been a victim of ill-treatment or wilful neglect by the care provider’s employee or another individual engaged by it.
233. *Subsection (2)* defines “care provider” for the purposes of this section as a body corporate or unincorporated association which provides or arranges for the provision of health care (other than excluded health care) or adult social care, or an individual who provides such care and employs or otherwise makes arrangements with other persons

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to assist in providing that care. The intention is to ensure that the definition covers not just provider organisations such as hospitals (whether NHS or privately run) and companies, but also partnerships such as GP practices, and sole traders such as single-handed GP practices.

234. *Subsection (3)* sets out the circumstances in which an individual is to be considered as part of a care provider's arrangements for the purposes of *subsection (1)*, specifying that the individual will be providing, or supervising or managing others providing, health care or social care as part of such care provided or arranged for by the care provider.
235. *Subsection (4)* defines "relevant duty of care" for the purposes of this section, as a duty owed under the law of negligence, or a duty that would be so owed were it not for legislative provisions which impose alternative liability in place of liability owed under the law of negligence. However, the duty will apply for the purposes of this offence only to the extent that it arises in connection with providing or arranging for the provision of health care or social care.
236. *Subsection (5)* makes it clear that the application of the offence, which requires a gross breach of a duty of care by the care provider to be shown, is not affected by common law rules precluding liability in the law of negligence where people are jointly engaged in a criminal enterprise or because a person has accepted a risk of harm. The intention is to avoid the possibility that, if it could be shown that the grounds for the care provider offence could otherwise be made out, a care provider could escape prosecution by relying on some illegality on the part of the victim, or an argument that the victim had somehow consented to the risk of harm when consenting to the care or treatment. For example, this provision ensures that a care home provider could not rely on an argument that a resident, in not objecting to being cared for by a particular care worker who had a history of poor behaviour, was somehow consenting to the risk if that care worker subsequently ill-treated or wilfully neglected them.
237. *Subsection (6)* clarifies the meaning of a "gross" breach of a duty of care by a care provider, as being where the care provider's conduct falls far below what could reasonably be expected in the circumstances.
238. *Subsection (7)* makes provision similar to that in section 20(7). For the purposes of this section, where the provision, or making of arrangements for the provision, of health or social care is incidental to the carrying out of other activities, it is to be disregarded for the purposes of the care provider offence. For example, a prison that makes arrangements for one of its prison officers to accompany a prisoner, who has suddenly fallen ill, to hospital would not be treated as a care provider, because the arrangements made are merely incidental to the organisation's primary custodial activities.
239. *Subsection (8)* excludes from the meaning of providing or making arrangements for the provision of health care, cases where a care provider organisation is merely making direct payments to an individual, under specified legislation, for that individual to use to purchase their own health care or social care services.
240. *Subsection (9)* defines certain words and phrases used in this section.

**Section 22: Care provider offence: excluded care providers**

241. **Section 22** makes provision for certain types of organisation to be excluded from the meaning of "care provider" for the purposes of section 21.
242. *Subsection (1)* provides for local authorities in England to be excluded care providers when performing certain functions, including when providing health care as part of an integrated package of services in the exercise of its functions in respect of children's social care and when exercising its social services functions in relation to children.

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243. *Subsection (2) and (3)* provides for organisations which have entered into arrangements with a local authority in England to exercise functions similar to those covered by *subsection (1)* to be excluded to the extent that they are carrying out those functions.
244. *Subsection (4) and (5)* makes provision for local authorities in Wales, and organisations that have entered into arrangements with a local authority in Wales to exercise functions on its behalf, to be excluded care providers to the same extent as those in England.
245. *Subsection (6)* makes provision for registered adoptions societies or registered adoption support agencies to be excluded care providers when providing adoption support services.
246. *Subsections (7) and (8)* define “local authority” and “child”, “registered adoption society” and “registered adoption support agency” respectively for the purposes of this section.

**Section 23: Care provider offence: penalties**

247. **Section 23** makes provision for the penalties that can be imposed by the courts in respect of a care provider that has been convicted of the offence established in section 21. The offence will be triable either way, that is in either a magistrate’s court or the Crown Court.
248. *Subsection (1)* provides for the court to impose a fine, irrespective of which court the case has been tried in.
249. *Subsection (2)* provides for a court to make remedial orders and/or publicity orders, either instead of or as well as imposing a fine. This approach again mirrors that adopted by the CMCHA 2007. There is a precedent for providing for such orders in relation to health and social care in section 93 of the Care Act 2014, which makes provision for both remedial orders and publicity orders as penalties available to the court where an organisation has been convicted of the offence of providing false or misleading information.
250. *Subsection (3)* defines a “remedial order” as an order requiring the care provider to take specific steps to remedy any or all of the following:
- a. the breach of the care provider’s relevant duty of care;
  - b. any matter the court considers to have resulted from the breach and to be connected with the ill-treatment or wilful neglect;
  - c. any deficiencies in the care provider’s management or organisational policies, its systems or its practices of which the breach appears to be an indication.
251. The intention is to make provision to oblige a care provider, against which such an order has been made, to take action to put right the specified management or organisational failures so that the offence cannot be repeated.
252. *Subsection (4)* defines a “publicity order” as an order requiring the care provider to take specific steps to publicise the following:
- a. the fact that the care provider has been convicted of the offence;
  - b. the particulars of the offence, i.e. what the care provider did, or failed to do, that resulted in the conviction;
  - c. the amount of any fine imposed on the care provider by the court;
  - d. the terms of any remedial order made by the court against the care provider.
253. The intention here is to make provision to oblige a care provider to make public the fact that it has been convicted of the offence, and the penalties imposed on it as a result.



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A publicity order is intended to make it impossible for a care provider to avoid being open and honest about a conviction for this offence.

254. *Subsection (5)* makes further provision about remedial orders, specifying that they can only be made if the prosecuting authorities make a specific application to the court, which must include the terms of the proposed order. In addition, when deciding on the terms of the order, the court must take into account any representations made or evidence submitted to it as to what those terms should be. Finally, any remedial order must include a time period within which the actions specified in the order must be completed. These requirements mean that a remedial order will always be tailored to the particular circumstances of the case, and will ensure that necessary actions to put right the failures identified are completed timeously.
255. *Subsection (6)* provides that a publicity order must include a time period within which the actions specified in the order must be completed. This is to ensure that the care provider complies with the provisions of the publicity order within a reasonable period.
256. *Subsection (7)* provides that failure to comply with the terms of either a remedial order or publicity order is itself an offence, punishable by the imposition of a fine. The objective is to ensure that the care provider complies with any remedial order or publicity order, or risk further legal action against it.
257. *Subsection (8)* provides for the maximum amount of a fine that can be imposed under *subsections (1)* and *(7)* to be contingent on whether section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has come into force at the time of the offence. If not, the references in those subsections to the sanction of a fine on summary conviction are to be taken as references to a fine not exceeding the statutory maximum.

***Section 24: Care provider offence: application to unincorporated associations***

258. **Section 24** makes provision to ensure that the offence of ill-treatment or wilful neglect caused by a care provider can be properly applied to unincorporated associations, such as general practice or dentistry partnerships.
259. *Subsection (1)* provides that for the purposes of sections 21 and 23 an unincorporated association is to be taken as owing whatever duties of care it would owe if it were a body corporate.
260. *Subsection (2)* further provides that any prosecution under sections 21 or 23 brought against an unincorporated association must be brought in the name of the association, not in the name of any of its individual members.
261. *Subsection (3)* specifies that in any such prosecution the rules of court concerning the service of documents should be applied in respect of the unincorporated association as if it were a body corporate.
262. *Subsection (4)* provides that in proceedings under sections 21 or 23 against an unincorporated association, the legislative provisions listed in paragraphs (a) and (b) are to be applied as they would be applied to a body corporate.
263. *Subsection (5)* requires that any fine imposed on an unincorporated association convicted under sections 21 or 23 must be paid from the funds of the association, i.e. not by any individual member of it.

***Section 25: Care provider: liability for ancillary and other offences***

264. *Subsection (1)* expressly excludes secondary liability for the new ill-treatment or wilful neglect: care provider offence. It means that an individual cannot be convicted of aiding, abetting, counselling or procuring the commission of the care provider offence, or of encouraging or assisting in the commission of that offence. The intention here is to ensure that the care provider offence focuses on the behaviours and actions (or failures

to act) by the care provider organisation as a whole, rather than creating a route for the focus to be diverted towards a single individual within the care provider's management hierarchy. This does not though affect an individual's direct liability for the ill-treatment or wilful neglect: care worker offence.

265. *Subsections (2) to (5)* clarify that a conviction for the care provider offence would not preclude a care provider being convicted under legislation creating an offence relating to health care or social care, or a health and safety offence, on the same facts if this were in the interests of justice. It would therefore also be possible to convict an individual on a secondary basis for such an offence under such legislation under provisions such as sections 91 and 92 of the Health and Social Care Act 2008, or section 37 of the Health and Safety at Work etc. Act 1974. This does not impose any new liabilities on individuals but ensures that existing liabilities are not reduced as an unintended consequence of the new care provider offence.

## **Offences involving police or prison officers**

### ***Section 26: Corrupt or other improper exercise of police powers and privileges***

266. *Section 26* makes it an offence for a police officer and certain other persons to exercise improperly the powers and privileges of a constable. It supplements the existing common law offence of misconduct in public office.
267. *Subsection (1)* provides that a police constable (defined in *subsection (3)*) commits an offence if he or she exercises the powers and privileges of a constable improperly and the officer knows or ought to know that it is improper.
268. *Subsection (2)* provides that a person guilty of the offence is liable on conviction on indictment to a sentence imprisonment of 14 years or a fine, or both.
269. *Subsection (3)* sets out the categories of officer who are a police constable for the purpose of *subsection (1)*. These include a constable of a police force in England and Wales and certain other forces (for example, the British Transport Police Force), a special constable of a police force or the British Transport Police Force, and National Crime Agency officers designated with the powers and privileges of a constable.
270. *Subsection (4)* provides that a police constable exercises the powers and privileges of a constable improperly if the exercise of a power or privilege is for the purpose of achieving a benefit to the officer, or a benefit or detriment for another person, and that a reasonable person would not expect the power or privilege to be exercised for the purpose of achieving that benefit or detriment. *Subsection (9)* defines "benefit" or "detriment" as meaning any benefit or detriment, whether or not in money and whether or not permanent.
271. *Subsections (5) to (7)* define further what is meant by the improper exercise of a power or privilege for the purpose of the offence. They refer to cases in which there is a failure to exercise a power or privilege, or there is a threat to exercise a power or privilege or to fail to do so, in each case for the purpose of achieving a benefit or detriment (defined in *subsection (9)*) and in any of these cases a reasonable person would not expect the power or privilege to be exercised for the purpose of achieving that benefit or detriment.
272. *Subsection (8)* provides that the offence relates to acts or omissions anywhere in the United Kingdom or in UK waters (defined in *subsection (9)* as meaning the sea and other waters within the seaward limits of the United Kingdom's territorial sea). *Subsection (10)* provides that references for the purpose of this offence to exercising or not exercising the powers and privileges of a constable include performing or not performing the duties of a constable. *Subsection (11)* provides that this offence does not affect what constitutes the common law offence of misconduct in public office in England and Wales or Northern Ireland.

***Section 27: Term of imprisonment for murder of police or prison officer***

273. **Section 27** amends Schedule 21 to the Criminal Justice Act 2003, which sets out the principles to which section 269 of that Act requires the court to have regard when assessing the seriousness of all cases of murder, in order to determine the appropriate minimum term to be imposed in relation to mandatory life sentences. Paragraph 4 of Schedule 21 deals with the exceptionally serious cases in which the court should normally start by considering a whole life term, and provides a number of examples of cases that should normally fall into this category. This section puts the murder of a police or prison officer in the course of his or her duty into this category; previously it was dealt with in paragraph 5 of Schedule 21 as the type of case where the normal starting point would be a minimum term of 30 years.
274. **Subsection (4)** applies the amendment to those cases where the offence was committed on or after the date of commencement.

**Repeat offences involving offensive weapons**

***Section 28: Minimum sentence for repeat offences involving offensive weapons***

275. **Section 28** puts in place a minimum custodial sentence for a second (or further) conviction in England and Wales for possession of a knife or offensive weapon. A previous conviction for threatening with a knife or offensive weapon also counts as a ‘first strike’. The minimum custodial term set out by this section is 6 months imprisonment for those aged 18 or over when convicted of the second offence, and a four month Detention and Training Order for those aged 16 or over but under 18 when convicted of the second offence, unless there are particular circumstances which would make it unjust to impose such a sentence.

***Schedule 5: Minimum sentence for repeat offences involving offensive weapons: consequential amendments***

276. **Schedule 5** contains necessary minor and consequential amendments as a result of section 28. **Paragraph 1** of the Schedule amends section 37(1A) of the Mental Health Act 1983 to enable the court to impose a hospital order instead of a minimum sentence. **Paragraph 2** amends section 36(2)(b) of the Criminal Justice Act 1988 to enable the Attorney General to make a reference where the court has failed to impose the minimum sentence (an application to have an unduly lenient sentence revisited). **Paragraph 12** of the Schedule amends section 144 of the Criminal Justice Act 2003 to allow a court, where a person pleads guilty to a relevant offence in circumstances in which the new minimum sentence would apply, to reduce the sentence of imprisonment it would otherwise have passed; but it may not reduce it to below 80% of the appropriate custodial sentence in the case of those aged 18 or over when convicted. Other consequential amendments are made to the Powers of the Criminal Courts (Sentencing) Act 2000, the Criminal Justice Act 2003 and the Coroners and Justice Act 2009.

**Driving offences**

***Section 29: Offences committed by disqualified drivers***

277. **Section 29** makes the offence of causing death by driving while disqualified an indictable only offence and increases the maximum penalty for such conduct to 10 years’ imprisonment. It also creates an offence of causing serious injury by driving while disqualified - an either way offence with a maximum penalty of 4 years’ imprisonment.
278. **Subsection (1)** adds new sections 3ZC and 3ZD to the Road Traffic Act 1988. Section 3ZC creates a separate offence of causing death by driving while disqualified (previously an offence under section 3ZB). Section 3ZD creates a new offence of causing serious injury by driving while disqualified.

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279. In both new sections, the requirement that death or serious injury must be caused by driving means that for a person to be convicted of these offences there must be something open to proper criticism in the way in which he or she was driving which contributed more than minimally to the death or serious injury (as per *R v Hughes* [2013] UKSC 5).
280. *Subsection (2)* amends Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 which specifies how offences in the Road Traffic Act 1988 will be tried, what the maximum penalties will be upon conviction and whether the offence requires disqualification and endorsements on the licence.
281. A person charged with an offence under section 3ZC will be tried on indictment in the Crown Court and, if convicted, will be liable to a maximum custodial sentence of 10 years' imprisonment or an unlimited fine or both.
282. A person charged with an offence under section 3ZD may either be tried summarily in the magistrates' court or on indictment in the Crown Court.
283. If tried summarily in England and Wales, the maximum penalty on conviction is 6 months' imprisonment or a fine not exceeding the statutory maximum or both (see *subsection (3)*). But the maximum custodial sentence will rise to 12 months when section 154(1) of the Criminal Justice Act 2003 is commenced and the maximum fine that may be imposed will become unlimited when section 85 of the Legal Aid, Sentencing and Offenders Act 2012 is commenced.
284. If tried summarily in Scotland, the maximum penalty is 12 months or the statutory maximum or both.
285. If tried on indictment, the maximum penalty is 4 years' imprisonment or an unlimited fine or both.
286. A conviction for an offence under section 3ZC or 3ZD will also lead to a mandatory period of disqualification and an obligatory endorsement of between 3 and 11 points on the licence.
287. *Subsection (4)* introduces Schedule 6 which contains further amendments relating to the offences under section 3ZC and 3ZD.
288. *Subsection (5)* provides that the new provisions in section 3ZC and 3ZD will only apply to offences which are committed on or after the date of commencement.

***Schedule 6: Offences committed by disqualified drivers: further amendments***

289. **Schedule 6** contains amendments relating to the offences of causing death or serious injury by disqualified driving under sections 3ZC and 3ZD of the Road Traffic Act 1988 (RTA 1988) respectively.
290. **Paragraph 1** alters the current offence of causing death by driving when unlicensed, disqualified or uninsured under section 3ZB of the RTA 1988 by omitting references to disqualified drivers. Disqualified drivers who cause death or serious injury will now commit the new offences in sections 3ZC and 3ZD of the RTA 1988.
291. **Paragraph 2** introduces amendments to the Road Traffic Offenders Act 1988 (RTOA 1988), which are explained in more detail below.
292. **Paragraph 3(1)** introduces amendments to section 24 of the RTOA 1988 which deals with alternative verdicts.
293. **Paragraph 3(2)** amends section 24(A2) to provide that where a person is found not guilty of a manslaughter charge in connection with driving and the allegations amount to or include an allegation of either of the offences under section 3ZC or 3ZD of the RTA

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1988 then the defendant may be convicted of either of those offences as an alternative to manslaughter.

294. *Paragraph 3(3)* provides that where defendants are prosecuted for offences under sections 3ZC or 3ZD of the RTA 1988 and the charges against them cannot be proved, they will still be liable to conviction for the offence of driving while disqualified under section 103(1)(b) of the RTA 1988.
295. *Paragraphs 4 and 5* ensure that the disqualification and retest provisions in sections 34 and 36 of the RTOA 1988 will apply to offenders convicted of offences under sections 3ZC and 3ZD of the RTA 1988. This means that offenders convicted of causing death or serious injury by disqualified driving will be banned from driving for at least two years and required to pass an appropriate driving test before their qualifications can be reinstated.
296. *Paragraphs 6 and 7* add sections 3ZC and 3ZD of the RTA 1988 to the list of offences in section 45 and 45A of the RTOA 1988 to which a four-year endorsement period applies.
297. *Paragraph 8* adds sections 3ZC and 3ZD of the RTA 1988 to the list of offences in Schedule 1 of the RTOA 1988. That Schedule is concerned with procedural points linked to the prosecution of offenders, including the need for the prosecution to provide evidence as to who was driving the vehicle at the time the offence was committed. *Paragraph 9* makes consequential amendments which are necessary in the light of the amendment to the offence in section 3ZB of the RTA 1988.
298. *Paragraph 10* adds the offences in sections 3ZC and 3ZD of the RTA 1988 to paragraph 3 of Schedule 3 to the Crime (International Co-operation) Act 2003. Where a non-UK national is convicted of one of the offences in this Schedule, the UK must inform the authorities in the state in which the offender is normally resident.
299. *Paragraph 11* adds section 3ZC of the RTA 1988 to Part 1 of Schedule 15 to the Criminal Justice Act 2003, thereby making it a specified violent offence for the purposes of Chapter 5 of Part 12 of the Criminal Justice Act 2003. Schedule 15 is a list of specified violent and sexual offences which are subject to the dangerous offenders sentencing scheme. Schedule 15 is relevant for the purposes of: eligibility for an extended determinate sentence (imposed under section 226A or 226B of the Criminal Justice Act 2003); and the duty to impose a life sentence (imposed under section 225 or 226 of the Criminal Justice Act 2003 and corresponding provision in the Armed Forces Act 2006) where the offence carries a maximum sentence of life imprisonment and the court considers that there is a significant risk to the public of serious harm from further such offences.
300. *Paragraph 12* adds section 3ZC of the RTA 1988 to the list of offences in Schedule 1 to the Coroners and Justice Act 2009. That Schedule lists offences classed as 'homicide offences' for the purposes of the Act. A coroner must suspend an investigation when a prosecuting authority requests them to do so on the ground that a person may be charged with a 'homicide offence' involving the death of the deceased.

***Section 30: Extension of disqualification from driving where custodial sentence also imposed***

301. *Section 30* amends section 35A of the Road Traffic Offenders Act 1988 and section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 which require a court, when sentencing an offender to immediate custody and imposing a driving ban, to extend the driving ban to take account of the period the offender will spend in custody. The provisions about that extension of the driving ban were inserted by Schedule 16 to the Coroners and Justice Act 2009 and were designed to avoid a driving ban expiring, or being significantly diminished, during the period in which the offender is in custody.
302. *Section 30* omits the requirement for the court, when setting the extension period to be added onto a driving ban, to take account of the sentence imposed by the court reduced



by deducted time spent on remand. For the purpose of setting the length of the extension period and therefore the length of the driving ban as a whole, the court only has to have regard to the type and length of sentence it has imposed and not the sentence as adjusted once time spent on remand is deducted.

### ***Section 31: Mutual recognition of driving disqualification in UK and Republic of Ireland***

303. **Section 31** gives effect to a proposed new bilateral agreement between the UK and the Republic of Ireland (“RoI”) which will permit mutual recognition of driving disqualifications between the two states. Section 31 amends Chapter 1 of Part 3 of the Crime (International Co-operation) Act 2003 (“CICA 2003”). That Chapter was enacted to implement the European Convention on Driving Disqualifications 1998 (“the Convention”). The RoI and the UK are the only signatories to the Convention and so it has been commenced only in relation to mutual recognition of driving disqualifications between the UK and the RoI.
304. **Subsection (2)** of this section amends the heading of Chapter 1 of Part 3 of the CICA 2003 to read “Mutual recognition of driving disqualification in the UK and Republic of Ireland”.
305. **Subsection (3)** amends the duty on the UK in section 54 of the CICA 2003 to give notice of a driving disqualification to the authorities in the RoI where a disqualification has been imposed on an offender in the UK. New section 54(1)(aa) of that Act provides that the obligation arises only if the offender is resident in the RoI, or if the offender is not normally resident in the RoI but holds an RoI driving licence. The disqualification would only be notified to the RoI where it related to a qualifying UK road traffic offence as set out in Schedule 3 to the CICA 2003 (Great Britain offences) or in new Schedule 3A to that Act (Northern Ireland offences) (inserted by Schedule 7).
306. **Subsection (4)** amends section 56(1) of the CICA 2003 to require the UK to recognise a driving disqualification if an offender is disqualified in the RoI following conviction for a qualifying road traffic offence as set out in the new Schedule 3B to that Act (inserted by Schedule 7). The obligation to recognise the disqualification would only arise where the offender is normally resident in the UK, or is not normally resident in the UK but holds a Great Britain or Northern Ireland licence.
307. **Subsection (5)** inserts a new section after section 71 of the CICA 2003 to define the term “the specified agreement on driving disqualifications”. This agreement can only be an agreement between the UK and the RoI to mutually recognise driving disqualifications imposed in either state.

### ***Schedule 7: Mutual recognition of driving disqualification in UK and Republic of Ireland***

308. **Schedule 7** makes a number of changes to the terminology used in the CICA 2003 to reflect the move from the Convention to the proposed bilateral agreement between the UK and the RoI.
309. **Paragraph 2** of this Schedule amends the provisions in section 54 of the CICA 2003 relating to the minimum period a disqualification must be imposed for in relation to an offence in Part 2 of Schedules 3 and new Schedule 3A to that Act before the UK is required to notify the RoI. The minimum period is generally 6 months, unless a period of less than 6 months where this has been set out in regulations by the Secretary of State or the Department of the Environment in Northern Ireland (“the Department”).
310. Sub-paragraph (4) provides that where an extension period is imposed under any of the legislative provisions listed, this will not be counted when calculating whether the period of disqualification is less than the minimum period.

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311. Sub-paragraph (5) gives the Secretary of State and the Department the power to amend the list of offences set out in Schedule 3 and the new Schedule 3A of the CICA 2003 respectively by regulations (subject to the affirmative procedure – see [paragraph 14](#)).
312. [Paragraph 5\(2\)](#) amends section 56(2) of the CICA 2003 to set out when the driving disqualification condition is met. The condition is met either when the offender is disqualified for an offence set out in Part 1 of the new Schedule 3B to the CICA 2003 or when the offender is disqualified from driving for an offence described in Part 2 of that Schedule for not less than the minimum period.
313. [Paragraph 5\(4\)](#) provides that the “minimum period” is the period of less than 6 months specified by the Secretary of State in regulations or where no such period has been specified, 6 months.
314. [Paragraph 5\(6\)](#) amends section 56(6) of the CICA 2003, which provides that section 57 does not apply if the relevant proceedings were brought later than the time at which summary proceedings could have been brought for any corresponding offence under the law of the part of the UK in which the offender is normally resident. It replaces the reference to the part of the UK in which the offender is normally resident with a reference to “the relevant part of the UK”. [Paragraph 5\(7\)](#) inserts a new subsection (6A) in section 56 which defines the relevant part of the UK in relation to both offenders who were normally resident in the UK when convicted and offenders who were not, but who hold a Great Britain or Northern Ireland licence.
315. [Paragraph 5\(9\)](#) amends the power in section 56(8) of the CICA 2003 allowing the Secretary of State or the Department to make regulations about when offences under the law of a part of the UK correspond to an offence under the law in RoI for the purposes of section 56(6).
316. [Paragraph 5\(10\)](#) confers power on the Secretary of State to amend the list of offences set out in the new Schedule 3B to the CICA 2003 by regulations (subject to the affirmative procedure – see [paragraph 14](#)).
317. [Paragraphs 11 and 12](#) amend sections 68 and 69 respectively to reflect the extension of section 57 to those who hold a licence in Great Britain or Northern Ireland but are not normally resident there.
318. [Paragraph 14](#) provides for the affirmative procedure to apply when the Secretary of State makes regulations to amend the offences listed in Schedule 3 or new Schedule 3B to CICA or to specify an agreement under section 71A of the CICA 2003.
319. [Paragraph 15](#) provides that regulations made by the Department to amend the offences listed in new Schedule 3A to the CICA 2003 are subject to the approval of the Northern Ireland Assembly.
320. [Paragraph 18](#) sets out the definition of “normally resident” by reference to article 12 of Directive 2006/126/EC of the European Parliament and of the Council of 20<sup>th</sup> December 2006 on driving licences.
321. [Paragraphs 19 and 20](#) amend Schedule 3 and insert new Schedule 3A to the CICA 2003 to set out the offences for which driving disqualifications are recognised for the purposes of section 54. Schedule 3 contains offences under the law of England and Wales and Scotland and new Schedule 3A contains offences under the law of Northern Ireland. New Schedule 3A lists two offences that do not currently appear in Schedule 3: causing death or grievous bodily injury by careless or inconsiderate driving (Article 11A of the Road Traffic (Northern Ireland) Order 1995) and causing death or grievous bodily injury by driving: unlicensed, disqualified or uninsured drivers (Article 12B of that Order).

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322. *Paragraph 21* inserts a new Schedule 3B to the CICA 2003 which sets out the offences under the law of the RoI for which driving disqualifications are recognised for the purposes of section 56.
323. *Paragraph 22* removes an amendment which was made in paragraph 93 of Schedule 21 to the Coroners and Justice Act 2009, which is superseded by the amendment made by paragraph 2(4) of the new Schedule.
324. *Paragraph 23* defines a transitional period which runs from 1 December 2014 until the date when the amendments made in this Act are in force and the new bilateral agreement enters into force.
325. *Paragraph 24* prevents the Secretary of State and the Department from having to comply with sections 55, 57 and 70(3) of the CICA 2003 during the transitional period, i.e. when there is no international agreement on mutual recognition of driving disqualifications between the UK and the ROI.
326. *Paragraph 25* of this Schedule provides that paragraphs 23 and 24 are to be treated as having come into force on 1 December 2014, i.e. at the beginning of the transitional period.
327. *Paragraph 26* states that once the transitional period ends, the Secretary of State and the Department would only be required to comply with sections 55, 57 and 70(3) in relation to offences committed after the end of the transitional period.
328. *Paragraph 27* states that none of the amendments to the CICA 2003 in this Act would affect the application of that Act to a case where a notice has already been given to an offender under section 57 of that Act before 1 December 2014.

***Section 32: Sending letters etc with intent to cause distress or anxiety***

329. This section amends section 1 of the Malicious Communications Act 1988 (“the 1988 Act”) which makes it an offence to send certain articles with intent to cause distress or anxiety. *Subsection (1)* substitutes new subsection (4) of the 1988 Act which will allow prosecutions for this offence to be dealt with either in the magistrates’ court, or in the Crown Court.
330. New subsection (4)(a) provides that the new maximum penalty for the offence when tried on indictment is two years’ imprisonment, or a fine, or both. New subsection (4) (b) provides that the penalty on summary conviction is a term of imprisonment not exceeding 12 months or a fine or both. However new subsections (5) and (6) (also inserted by *subsection (1)*) contain transitional provisions which provide, respectively for that reference to 12 months to be read as a reference to 6 months until section 154(1) of the Criminal Justice Act 2003 comes into force and for the reference to a fine to be read as a fine not exceeding the statutory maximum until section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force.
331. *Subsection (2)* makes it clear that the changes to section 1 of the 1988 Act only apply to offences committed on or after the day on which section 32 comes into force

**Offences involving intent to cause distress etc**

***Section 33: Disclosing private sexual photographs and films with intent to cause distress***

332. *Section 33* creates a new offence of disclosing private sexual photographs and films with intent to cause distress.
333. *Subsection (1)* provides that this offence is committed if the disclosure was made without the consent of an individual (“the victim”) who appears in the photograph or film, and with the intention of causing that victim distress. *Subsection (8)* makes it clear

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that the defendant is not to be taken to have the required intention merely because the distress naturally followed from the disclosure.

334. Subsection (1) is subject to *subsection (2)* which provides that the offence is not committed if the photograph or film was only disclosed to the victim.
335. *Subsections (3), (4) and (5)* set out the defences which apply to the offence. The burden of proving, under *subsection (3)*, a reasonable belief that the disclosure was necessary to prevent, detect or investigate crime is on the defendant.
336. However where the defendant provides sufficient evidence to raise an issue in respect to the matters set out in *subsections (4) and (5)* it will be for the prosecution to disprove those matters beyond all reasonable doubt in order to secure a conviction.
337. The defence in *subsection (4)* applies to those directly engaged in journalism and to their sources because the defence applies both to disclosure in the course of publication of journalistic material and to disclosure with a view to such publication. In either case the defendant needs to show that he or she reasonably believed that there was, in all the circumstances, a public interest in the publication in question. *Subsection (7)(b)* defines “publication” as disclosure to the public at large or to a section of the public.
338. The defence in *subsection (5)* applies where the defendant could show that he or she reasonably believed that the photograph or film in question had previously been disclosed for reward; for example the defendant might have a reasonable belief that the photograph or film had previously been published on a commercial basis because he or she had seen it in a magazine. The previous disclosure for reward could have been made either by the victim of the offence or by another person. In addition the defendant needs to show that he or she had no reason to believe that this previous disclosure for reward was made without the consent of the victim of the offence. For example, the defence would fail if the prosecution proved that the victim had told the defendant that they did not consent to the previous disclosure for reward.
339. *Subsection (7)(a)* clarifies that, for the purposes of the offence, “consent” to the disclosure of the photograph or film (whether on the occasion to which the offence relates or on a previous occasion for commercial reward) could be general consent covering the disclosure of the material or specific consent to the particular disclosure in question.
340. *Subsection (9)* provides that the offence of disclosing a private sexual photograph or film with intent to cause distress is triable either way and can therefore be tried in either a magistrates’ court or the Crown Court. On conviction of indictment the maximum term of imprisonment is 2 years. The maximum term of imprisonment on summary conviction is 6 months until section 154(1) of the Criminal Justice Act 2003 comes into force, at which point it will be 12 months (*subsection (11)*). Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will remove the limit on fines that can be imposed in the magistrates’ court. However, until it comes into force, any fine imposed on summary conviction of the new offence must not exceed the statutory maximum (*subsection (12)*).

***Schedule 8: Disclosing private sexual photographs or films: providers of information society services***

341. **Schedule 8** addresses the position of providers of information society services in respect of the new offence under section 33.
342. *Paragraph 1* of the new Schedule extends liability to a service provider established in England and Wales (an “E&W service provider”) in respect of a photograph or film which is disclosed in a European Economic Area state other than the UK.

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343. Sub-paragraph (2) of paragraph 1 makes clear that section 33 applies to an E&W service provider who discloses a photograph or film in the course of providing information society services in a European Economic Area state that is not the UK.
344. Sub-paragraph (3) of paragraph 1 provides for proceedings in respect of an offence under section 33 to be dealt with in any place in England and Wales as if it had been committed in that place.
345. *Paragraph 2* of the new Schedule restricts when proceedings may be instituted against a service provider established in a European Economic Area state other than the United Kingdom (a “non-UK service provider”).
346. 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.
347. *Paragraph 3* of the new Schedule sets out exceptions for mere conduits.
348. 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 33. 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.
349. 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.
350. *Paragraph 4* of the new Schedule sets out exceptions for caching.
351. 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.
352. 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 33 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.
353. *Paragraph 5* of the new Schedule sets out an exception for hosting.
354. 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 33 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 a private sexual photograph or film, that it was provided without the consent of an individual who



appears in the photograph or film, or that the disclosure of the photograph or film was with the intention of causing distress to that individual. The service provider must, on obtaining such knowledge, expeditiously remove the information or disable access to it.

355. *Paragraph 6* of the new Schedule defines “disclose”, “photograph or film”, “recipient”, “information society services”, “service provider”, and when a service provider is established in England and Wales or a European Economic Area state.

### **Section 34: Meaning of “disclose” and “photograph or film”**

356. **Section 34** defines the terms “disclose” and “photograph or film” for the purposes of the offence in section 33.
357. By virtue of *subsections (2) and (3)* a disclosure takes place where a defendant, by any means, gives or shows the photograph or film to another person or makes it available to another person irrespective of whether the material in question had previously been disclosed to that person and whether or not the disclosure was for reward. Disclosure therefore includes electronic disclosure of a photograph or film, for example by posting it on a website or e-mailing to someone. It also includes the disclosure of a physical document, for example by giving a printed photograph to another person or displaying it in a place where other people would see it.
358. *Subsection (4)* defines “photograph or film”. *Subsection (4)(a)* makes clear that the offence applies only to material which appears to be, or to contain, a photographed or filmed image. A photographed or filmed image is a still or moving image (or part of an image) originally captured by photography or by the making of a film recording (*subsections (6) and (7)*). For example, an image, even if derived from a photograph, which has been digitally altered to look entirely like a drawing would not satisfy the test. But if a drawing had a photographed image or part of a photographed image transposed onto it, it would do so.
359. Where an image appears wholly or partly photographic, it will only fall within the terms of the offence if it is in fact derived wholly or partly from one or more photographed or filmed images (as to which see *subsection (4)(b)* and *subsections (6) and (7)*, discussed above). The offence therefore does not apply if the disclosed material looks like a photograph but does not in fact contain any photographic element (for example because it had been generated entirely by computer).
360. By virtue of *subsection (5)* an image is still considered to be a photograph or film for the purpose of the offence if it satisfied the requirement in *subsection (4)(b)*, even if the original photograph or film recording has been altered in any way (for instance by being digitally enhanced). However, this is subject to *subsections (4) and (5)* of section 35.
361. *Subsection (8)* makes clear that references to a photograph or film include a negative version of a still or moving image that is a photograph or film and stored data that can be converted into such a still or moving image – for instance data stored on a hard drive or disc.

### **Section 35: Meaning of “private” and “sexual”**

362. **Section 35** explains the meaning of “private” and “sexual” for the purposes of the offence created by section 33.
363. The effect of *subsection (2)* is to exclude from the ambit of the offence a photograph or film that shows something that is of a kind ordinarily seen in public. This means that a photograph or film of something sexual (such as people kissing) would not fall within the ambit of the offence if what was shown was the kind of thing that might ordinarily take place in public.

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364. The effect of *subsection (3)(a)* is to provide that a disclosure of a photograph or film which shows all or part of an individual's exposed genitals or pubic area would be considered sexual for the purposes of the offence in section 33.
365. Where a photograph or film does not show such an image it would still, by virtue of *subsection (3)(b)*, be considered sexual if a reasonable person would regard it as such because what is shown is by its nature sexual.
366. Where what is shown is not by its nature sexual, *subsection (3)(c)* provides that a photograph or film is nevertheless to be considered sexual where a reasonable person would regard the content of the photograph or film when taken as a whole as sexual. For example, a photograph of someone wearing their underwear is not necessarily sexual, but a reasonable person might consider it to be so if the content of the picture, including for example what else was (or was not) shown or the manner in which the person was posing, would lead a reasonable person to consider it as such.
367. *Subsections (4) and (5)* set out the circumstances in which a photograph or film which contains content which is private or sexual is not to be considered private and sexual for the purposes of the offence created by section 33.
368. Those provisions apply (*subsection (4)*) where a photograph or film has been altered in any way (for example by manipulating a part of the image using a computer programme) or where the photograph or film combines a photographed or filmed image with either another such image (for example where two photographs have been spliced together) or another kind of image (for example where a photograph of individuals has been superimposed on a wholly computer generated picture).
369. An image of that kind is not private and sexual if:
- no part of the photograph or film in question originated from a photographed or filmed image that was itself private and sexual;
  - the photograph or film is only private or sexual because the photographed or filmed element has been altered or combined with other material (for example, where a non-sexual photograph or film recording has been altered to make it private and sexual, or where it has been placed next to another image in a way which made the image as a whole appear to be private and sexual);
  - the victim of the offence only appeared as part of, or with, whatever made the photograph or film private and sexual because the photograph or film in question has been created in one of the ways set out in paragraph 368 above (for example, where a non-sexual photograph of a person has been merged with a sexual photograph that did not originally feature that person).

## **Offences involving sexual grooming or pornographic images**

### ***Section 36: Meeting a child following sexual grooming etc***

370. **Section 36** amends the “grooming” offence under section 15 of the Sexual Offences Act 2003. The offence currently applies to a person who communicates with a child on at least two occasions, and who subsequently meets or arranges to meet that child in order to commit a sexual offence. This section reduces the number of occasions on which the defendant must initially meet or communicate with the child, so that a single meeting or communication will suffice.

### ***Section 37: Possession of pornographic images of rape and assault by penetration***

371. This section amends the extreme pornography offence at section 63 of the Criminal Justice and Immigration Act 2008 (“the 2008 Act”) to cover the possession of extreme pornographic images that depict non-consensual sexual penetration. These amendments

will form part of the law of England and Wales and Northern Ireland (like section 63 of the 2008 Act) but change the law only for England and Wales.

372. The section inserts a new subsection (7A) into section 63 of the 2008 Act which contains two additional categories of prohibited material: an image which portrays, in an explicit and realistic way - a) an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another with the other person's penis, and (b) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another with a part of the other person's body or anything else. The new category of prohibited material will include any image of that nature, irrespective of whether the act is real or simulated (or staged) or whether a person has come into possession of that image from an electronic source or otherwise.
373. *Subsection (3)* applies a defence to possession of an image that portrays an act within subsection (7A), alongside existing defences to the section 63 offence, to a person who is a participant in the image, as well as the possessor, where he or she can prove that, despite any appearance to the contrary, consent was given (freely and by someone who had capacity).
374. *Subsection (4)* provides that a person found guilty of an offence of possessing images coming within the ambit of new subsection (7A) will be liable to a maximum sentence of imprisonment of three years, or a fine, or both.
375. *Subsection (5)* amends Schedule 14 to the 2008 Act to incorporate the extended definition of an extreme pornographic image in England and Wales. Schedule 14's purpose is to ensure compliance with the UK's obligations under the EU E-Commerce Directive.<sup>1</sup> Paragraph 1 of the Schedule extends liability for the section 63 offence to internet service providers established in England and Wales or Northern Ireland who possess an extreme pornographic image in an EEA state other than the UK. This is subject to the exemptions in paragraphs 3 to 5 of the Schedule for where they are acting as mere conduits for the material or are caching or hosting it. For internet service providers established in England and Wales who possess an image in an EEA state other than the UK the extended definition of an extreme pornographic image will apply in determining whether they have committed an offence.

## **Part 2 – Young Offenders**

### **Detention of Young Offenders**

#### ***Section 38: Secure colleges and other places for detention of young offenders etc***

376. *Subsection (1)* substitutes section 43 of the Prison Act 1952 (young offender institutions etc). Currently section 43 gives the Secretary of State a power to provide young offender institutions, remand centres and secure training centres. New section 43 gives the Secretary of State a power to provide young offender institutions, secure training centres and, additionally, secure colleges (a new form of youth detention accommodation) (see new section 43(1)(c)). Section 95 of the Act (commencement) is relevant to the power in section 43(1)(c) - see the note below at paragraph 694.
377. **Section 43** currently also provides that certain provisions of the Prison Act 1952 do not apply in relation to young offender institutions and secure training centres, and provides that certain provisions of that Act do apply in relation to those institutions (with or without modifications). Subsections (3) to (8) of section 43 largely replicate existing provision about the application of other provisions of the Prison Act 1952 in relation to young offender institutions and secure training centres, but this provision is expressed

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**1** Directive on electronic commerce –  
<http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=x2sqTHRbRPFfKp3XwTmXgDgNhRGvC48MVt14LbBjN13fwZf9phyt!1849227980?uri=CELEX:32000L0031>

in clearer language. These subsections also make provision about the application of provisions of that Act in relation to secure colleges.

378. The provisions give the Secretary of State the power, in relation to secure colleges, to (among other things) purchase land, remove prisoners for judicial and other reasons and to make regulations for the measuring, photographing and drug/alcohol testing of prisoners.
379. *Subsection (2)* provides that rules modifying provisions of the Prison Act 1952 as they apply in relation to young offender institutions, secure training centres and secure colleges are subject to the negative procedure.

### ***Schedule 9: Secure colleges etc: further amendments***

380. *Schedule 9* contains further amendments of legislation relating to secure colleges and other places for the detention of young offenders.

### ***Section 39: Contracting out secure colleges***

381. *Section 39* introduces *Schedule 10*, which makes provision about contracting out the provision and running of secure colleges, about certification of secure college custody officers and about contracting out functions at directly managed secure colleges.

### ***Schedule 10: Contracting out secure colleges***

#### **Part 1 Contracting out provision and running of secure colleges**

382. *Paragraph 1* gives the Secretary of State a power to enter into a contract with another person for the other person to provide a secure college (or part of one) or run a secure college (or part of one), or both. Express provision is made allowing such a contract to provide for the running of the college to be sub-contracted.
383. *Paragraph 2* limits the power in paragraph 1 by providing that a contracted-out secure college must be run in accordance with *Schedule 10* to the Act, the Prison Act 1952 as it applies to contracted-out secure colleges, and secure college rules (that is, rules made under section 47 of the Prison Act, as amended by *Schedule 9* to this Act).
384. *Paragraph 3* exempts land leased by the Secretary of State for the purposes of a secure college from the operation of certain specified landlord and tenant and property legislation.
385. *Paragraph 4* imposes requirements as to the appointment of the principal of a contracted-out secure college and makes provision about the principal's functions.
386. *Paragraph 5* provides that a contracted-out secure college is to have a monitor, whose reviewing, investigatory and reporting functions are set out in sub-paragraph (3). The contractor (and any sub-contractors) are under a duty to take all reasonable steps to facilitate the carrying out of the monitor's functions.
387. *Paragraph 6* provides that the constabulary powers of prison officers do not apply in relation to officers of a contracted-out secure college. *Paragraph 7* sets out who may be an officer of a contracted-out secure college who performs custodial duties. The officers' duties and powers are set out in *paragraphs 8 to 11*. In particular, an officer has duties to prevent escape, to prevent the commission of unlawful acts, to ensure good order and discipline and to attend to the well-being of a person detained in a secure college. An officer has powers of search, and may use reasonable force where necessary in carrying out functions under paragraphs 8 and 9 if authorised to do so by secure college rules.
388. *Paragraph 12* makes provision in relation to intervention by the Secretary of State. The Secretary of State may, where it appears to him that the principal of a contracted-out

secure college has lost effective control of the college, and the intervention is necessary to preserve a person's safety or prevent serious damage to property, replace the principal with a Crown servant whom the Secretary of State has appointed. During the period of intervention that person is to carry out the functions of the principal and the monitor. *Paragraph 12(4) and (6)* make provision about notification at the end of a period of intervention.

389. *Paragraph 13* creates an offence of resisting or obstructing a secure college custody officer. *Paragraph 14* creates an offence of assaulting a secure college custody officer.
390. *Paragraph 15* creates an offence of wrongful disclosure, by a person who is or has been employed at a contracted-out secure college, of information relating to persons in youth detention accommodation.

## **Part 2 Certification of secure college custody officers**

391. *Part 2* makes provision in relation to the eligibility of a person to be certified by the Secretary of State as a secure college custody officer, and the procedure for becoming so certified.
392. In particular, *paragraph 17* sets out the criteria of which the Secretary of State must be satisfied before he certifies a person as a secure college custody officer. *Paragraphs 18 and 19* make provision in relation to the suspension and revocation respectively of certificates.

## **Part 3 Contracting out functions at directly managed secure colleges**

393. *Paragraph 20* gives the Secretary of State a power to enter into a contract with another person for secure college custody officers provided by that person to carry out functions at a directly managed secure college. *Paragraph 21* applies paragraphs 6(1) and 8 to 11 in relation to such officers.
394. *Paragraphs 23 and 24* create offences of obstruction and assault of such officers, and are substantively the same as the offences in paragraphs 13 and 14.
395. *Paragraph 25* creates an offence of wrongful disclosure by such an officer, and is substantively the same as the offence in paragraph 15.

### **Part 4 and 5 Definitions and further amendments**

396. *Part 4* contains definitions for Schedule 10. *Part 5* contains further amendments to legislation relating to secure colleges. *Paragraph 28*, in particular, provides that a statutory instrument containing rules under section 47 of the Prison Act 1952 that authorise a secure college custody officer performing custodial duties at a secure college to use reasonable force is subject to the affirmative procedure.

## **Section 40: Powers of Youth Justice Board in relation to provision of accommodation**

397. *Section 40* amends section 41(5) of the Crime and Disorder Act 1998 (which sets out powers of the Youth Justice Board for England and Wales ('the YJB')), to provide that the YJB may enter into agreements for the provision of accommodation in relation to young offenders subject to a sentence of detention for public protection (under section 226 of the Criminal Justice Act 2003), an extended determinate sentence of detention (under section 226B of that Act), an extended sentence of detention for public protection (under section 228 of that Act), and the Armed Forces Act 2006 equivalents.



## **Other matters**

### ***Section 41: Youth cautions and conditional cautions: involvement of appropriate adults***

398. **Section 41** amends the Crime and Disorder Act 1998 so that any youth caution or youth conditional caution given to a young person aged 17 must be given in the presence of an appropriate adult. That is already a requirement where a youth caution or youth conditional caution is given to a child or young person aged under 17.

### ***Section 42: Duties of custody officer after charge: arrested juveniles***

399. **Section 42** changes the definition of “arrested juvenile” in section 37(15) of the Police and Criminal Evidence Act 1984 (“PACE”) to include a person aged 17 (currently the definition covers 10 to 16 year olds).
400. **Section 42** affects Part 4 of PACE. The effect of this change is that where a 17 year old who is arrested and charged is not released (either on bail or without bail) then, as with 10 to 16 year olds, the police will be required to transfer them to local authority accommodation, as is required under section 38(6) of PACE, unless a custody officer certifies that to do so is impractical. Currently 17 year olds who are denied bail would be kept in police custody before appearing in court.
401. For those 17 year olds where transfer to local authority accommodation is not practicable, the requirement under section 38(6)(a) to complete a certificate by way of explanation of their continued detention overnight at the police station would apply.
402. The section also affects section 39(4) of PACE, so that a custody officer's responsibility to arrested 17 year olds (as with 10 to 16 year olds) would cease when they were moved to local authority accommodation. This responsibility encompasses the duty to ensure that the person is treated in accordance with the requirements of PACE and the PACE codes of practice and that all details in relation to them are recorded in a custody record.

### ***Section 43: Referral orders: alternatives to revocation for breach of youth offender contract***

403. **Section 43** amends Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 (PCC(S)A 2000) to provide for alternatives to revocation of a referral order where the court finds that the terms of the youth offender contract under section 23 of the PCC(S)A 2000 have not been complied with.
404. **Subsection (1)** inserts a new paragraph 6A into Schedule 1 to the PCC(S)A 2000 to allow a court, where a breach of a referral order contract has been found, to impose a fine up to a maximum of £2,500 on an offender or extend the youth offender contract up to a maximum overall length of 12 months. The power for the court to extend the youth offender contract is not available when the referral order has already expired (new paragraph 6A(4)). The offender must be present in order for the court to impose a penalty under this paragraph (new paragraph 6A(5)).
405. New paragraph 6A(6) provides for the enforcement of any fine given by the court under new paragraph 6A(2)(a).
406. New paragraph 6A(7) confers on the Secretary of State a power by order to amend the maximum fine that may be imposed under that specified in sub-paragraph (2)(a).
407. The powers of the court to impose a fine or extend the period for which the youth offender contract takes effect in circumstances where the terms of the contract have been breached will apply where:
- the offender is referred back to court for failure to attend any part of a panel meeting (under section 22(2)(b) of PCC(S)A 2000);

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

- the offender has been referred back to the court for failure to attend the progress meeting (under section 26(5) of PCC(S)A 2000);
  - the panel determine at the final meeting that the offender's compliance with the terms of the contract has not been such as to justify the conclusion that the offender has satisfactorily completed the contract (under section 27(4) of PCC(S)A 2000).
408. *Subsection (2)* amends paragraph 7 of Schedule 1 to the PCC(S)A 2000 to provide that where a court does not uphold the panel's decision to refer the offender back to the court, an offender will continue to be subject to any referral order (or orders) in all respects as if he had not been referred back to the court, subject to any subsequent order made pursuant to the new paragraph 6A(2)(b) to extend the length of the period of the contract.
409. *Subsection (3)* amends the heading of the relevant part of Schedule 1 to the PCC(S)A 2000 to make it clear that paragraph 7 sets out what procedures apply where a court does not revoke a referral order.
410. *Subsection (4)* amends section 160(3) of the PCC(S)A 2000 to provide that any orders made under new paragraph 6A(7) of Schedule 1 to that Act amend the maximum amount of fine are subject to the affirmative procedure.
411. *Subsection (5)* provides that the amendments made by section 43 apply only in relation to a person who fails to comply with a youth offender contract after this section has come into force.

***Section 44: Referral orders: extension on further conviction***

412. **Section 44** amends provisions in Part 2 of Schedule 1 to the PCC(S)A 2000 which provide for extension of a referral order where the offender has committed further offences.
413. *Subsection (1)* replaces paragraphs 10 to 12 with a new paragraph 10 that provides for a court to extend any existing referral order on further conviction up to a maximum overall period of 12 months, where the child or young person has been convicted of additional offences. *Subsections (2)* and *(3)* make further minor amendments to the Schedule consequent on subsection *(1)*.
414. *Subsection (4)* provides that the amendments made by this section will apply where the court sentences for offences committed before and after these provisions are commenced.

***Section 45: Referral orders: revocation on further conviction***

415. **Section 45** amends provisions in paragraph 14 of Schedule 1 to the PCC(S)A 2000 which sets out circumstances in which the court must revoke an existing referral order or orders in circumstances where the offender is convicted of further offences.
416. *Subsection (2)* substitutes a new paragraph 14(2) to replace the current duty on the court to revoke one or more extant referral orders (and any related orders) with a power to revoke an order if it appears to be in the interests of justice to do so. It also amends paragraph 14(1) to include a conditional discharge as an order exempt from the current duty on the court (and the proposed discretionary power of the court) to revoke any existing orders in the event that the offender is convicted of further offences.
417. *Subsection (3)* amends section 18 of the PCC(S)A 2000 so that where a court makes a referral order in respect of an offender who is already subject to a referral order the court may direct that the new youth offender contract should not take effect until the earlier order has been revoked or completed.

418. *Subsection (4)* provides that these amendments will apply on commencement to a person dealt with for an offence committed either before or after that date for which section 45 comes into force.

### **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.

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

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.

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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.



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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

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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.

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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 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

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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 76<sup>th</sup> 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



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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

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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

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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



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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”).

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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

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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.

## **Part 4 – Judicial Review**

### **Judicial review in the High Court and Upper Tribunal**

#### ***Section 84: Likelihood of substantially different outcome for applicant***

631. **Section 84** amends section 31 of the Senior Courts Act 1981 (“the 1981 Act”), which sets out the remedies available on judicial review and the requirement to get permission to proceed to judicial review. The amendments require the High Court to refuse a remedy or permission on an application for judicial review if it considers it highly likely that the defendant’s conduct in the matter in question would not have affected the outcome for the applicant. Section 84 also amends sections 15 and 16 of the Tribunals, Courts and Enforcement Act 2007 to make similar provision for the Upper Tribunal when it is operating in England and Wales. Section 15 makes provision for the Upper Tribunal’s “judicial review” jurisdiction.
632. **Subsection (1)** inserts new subsections (2A), (2B) and (2C) into section 31 of the 1981 Act. New subsection (2A) provides that, subject to new subsections (2B) and (2C), the High Court (a) must refuse to grant a remedy, and (b) may not award damages on an application for judicial review, where it considers it highly likely that the outcome for the applicant would have been substantially the same had the conduct complained of not occurred. For example, a public authority might fail to notify a person of the existence of a consultation where they should have, and that person does not provide a response



where they otherwise might have. If that person's likely arguments had been raised by others, and the public authority had taken a decision properly in the light of those arguments, then the court might conclude that the failure was highly unlikely to have affected the outcome. If it did, unless new subsection (2B) applied, new subsection (2A) would mean the court could not grant a remedy, and so the original decision would stand (in the absence of other challenges or factors).

633. New subsection (2B) provides that the court may grant a remedy or an award of damages on an application for judicial review, despite new subsection (2A), where the court considers it appropriate to do so for reasons of exceptional public interest. Where the court applies new subsection (2B) and grants a remedy or an award of damages, new subsection (2C) requires the judge to certify that the condition in new subsection (2B) is satisfied.
634. *Subsection (2)* inserts new subsections (3C), (3D), (3E) and (3F) into section 31 of the 1981 Act. These new subsections will apply to a consideration of whether to grant permission to make an application for judicial review.
635. New subsection (3C) provides that the High Court may of its own motion (without a party requesting it to) or must, on the application of the defendant, consider whether the conduct complained of would have made a substantial difference to the outcome for the applicant when considering whether to grant permission to make an application for judicial review. If it considers it highly unlikely that there would have been any substantial difference to the outcome, new subsection (3D) requires the High Court to refuse permission save where new subsection (3E) applies.
636. New subsection (3E) provides that the court may grant permission on an application for permission, despite new subsection (3D), where the court considers it appropriate to do so for reasons of exceptional public interest. Where the court applies new subsection (3E) and grants permission, new subsection (3F) requires the judge to certify that the condition in new subsection (3E) is satisfied.
637. *Subsection (3)* inserts new subsection (8) into section 31 of the 1981 Act which provides the meaning of the words "the conduct complained of" which are used in new subsections (2A) and (3C). Broadly, the conduct complained of will be the ground(s) for the judicial review. In the example above (concerning the consultation), the conduct complained of would be the failure to notify the individual.
638. *Subsections (4), (5) and (6)* make parallel provision to subsections (1), (2) and (3) for judicial reviews arising under the law of England and Wales in the Upper Tribunal by amending sections 15 and 16 of the Tribunals, Courts and Enforcement Act 2007.

### ***Section 85: Provision of information about financial resources***

639. **Section 85** provides that where an applicant applies to the High Court under the law of England and Wales for permission to proceed with a judicial review, permission cannot be granted unless the applicant provides information about the financing of the judicial review.
640. *Subsection (1)* amends section 31(3) of the 1981 Act to prevent the High Court from granting permission for an applicant to proceed to judicial review unless the applicant has provided the court with information specified in rules of court on how the judicial review is financed.
641. *Subsection (2)* inserts new subsections (3A) and (3B) into section 31 of the 1981 Act which make provision about the information that rules of court may require the applicant to provide. Subsection (3A)(a) provides that information that may be required includes the source, nature and extent of any financial support that has been or is likely to be provided to the applicant for use in the judicial review proceedings. Subsection (3B) stipulates that these rules of court may only require the applicant to provide information which identifies a person who has provided financial support, or who is

likely to provide it, if that financial support exceeds a level to be set in the rules. Subsection (3A)(b) further provides that if the applicant is a corporate body that cannot demonstrate that it has the financial resources needed to meet its costs liabilities, then rules may require information to be provided about the body's membership and members' ability to provide financial support for the judicial review. The restriction in subsection (3B) does not apply to this information about a corporate body's membership and its members' ability to provide financial support.

642. *Subsections (3) and (4)* amend and insert new subsections into section 16 of the 2007 Act which makes parallel provision about the provision of information about the financing of judicial reviews in the Upper Tribunal.

### ***Section 86: Use of information about financial resources***

643. **Section 86** applies to the High Court, the Upper Tribunal and the Court of Appeal in deciding liability for costs in judicial review proceedings under the law of England and Wales. The High Court and the Court of Appeal have a broad discretion under section 51 of the 1981 Act which enables them to determine by whom and to what extent costs are to be paid. The Upper Tribunal has similar discretion under section 29 of the 2007 Act.
644. *Subsection (2)* provides that when making costs orders the courts must have regard to information about the financing of proceedings provided pursuant to section 31 of the 1981 Act or section 16 of the 2007 Act, as amended by section 85, and any additional information about financing provided in accordance with rules of court or the Tribunal Procedure Rules.
645. *Subsection (3)* stipulates that when a court or tribunal is considering an order for costs it must consider whether to order costs to be paid by a person who, although not a party to the judicial review, is identified in the information provided under section 31 of the 1981 Act or section 16 of the 2007 Act as having financially assisted the proceedings.
646. *Subsection (4)* defines the types of proceedings which are 'judicial review proceedings' for the purpose of this section, which include judicial reviews being appealed.

### ***Section 87: Interveners and costs***

647. **Section 87** establishes two presumptions regarding the costs liability of those who voluntarily apply for and are granted permission to intervene in a judicial review. First that they will pay their own costs unless there are exceptional circumstances that make it inappropriate for them to do so. Secondly, that, on the application of a party, where one or more of four specified conditions is met, the court must order the intervener to pay the reasonable costs incurred by that party as a result of the intervention, unless there are exceptional circumstances which make this inappropriate. This applies to judicial review proceedings in the High Court and the Court of Appeal.
648. *Subsection (1)* states that this section applies in judicial review proceedings where a person who is not a "relevant party" to the judicial review (an 'intervener') has been granted permission by the court to either provide evidence or make submissions on the case. The effect is that the section only applies where an intervener applies to the court, since a person or body invited by the court to intervene is not granted permission, and is accordingly not in the same position.
649. *Subsection (3) and (4)* stipulate that a court cannot order a relevant party to the judicial review to pay any costs the intervener incurs unless the court considers there are exceptional circumstances.
650. *Subsection (5)* stipulates that, on application by a "relevant party" (see subsections (10) and (11)) where the court is satisfied that one or more of the four conditions in subsection (6) has been met during a stage of the proceedings that the court deals with, it must order an intervener to pay any additional costs incurred by that "relevant party" as a result of the intervention during that stage of the proceedings.

651. *Subsection (6)* sets out what the four conditions are:
- a) the intervener has acted, in substance, as the sole or principal party - for example, where the intervener drives the judicial review taking on the proper role of one of the parties;
  - b) the intervener's evidence and representations to the court, taken as a whole, have not been of significant assistance to the court - for example, where some of the points the intervener makes are helpful but on the whole the evidence and representations are not helpful;
  - c) a significant part of the intervener's evidence and representations relates to matters that it is not necessary for the court to consider in order to determine the issues in the case - for example, where the intervener uses a significant portion of the time in court to make arguments not related to the issues in the case; and
  - d) the intervener has behaved unreasonably - for example, where the intervener makes overlong, unnecessary submissions which extend the time taken for the hearing.
652. *Subsection (7)* stipulates that a court does not have to make an order under subsection (5) if it considers there are exceptional circumstances which would make this inappropriate.
653. *Subsection (8)* explains that in deciding whether there are exceptional circumstances where an intervener should have their costs paid, or should not pay costs (as set out in subsections (4) and (7)), the court must have regard to criteria set out in rules of court.
654. *Subsection (9)* defines the types of proceedings which are 'judicial review proceedings' for the purpose of this section. This includes an application for leave to appeal to the Court of Appeal and proceedings on appeal in the Court of Appeal.
655. *Subsection (10)* defines a relevant party as the applicant or defendant or, on an appeal from a judicial review decision, the appellant or respondent, or any other person directly affected by the judicial review who has been served with the application for judicial review or leave to apply for judicial review.
656. *Subsection (11)* provides that if a person who is an intervener in judicial review proceedings subsequently becomes a "relevant party", then they are treated for the purposes of subsections (3) and (5) as if they had at all times been a "relevant party" rather than an intervener. This means that, if an intervener becomes a "relevant party", the presumptions in the clause about the costs liability of interveners will not apply to them.

### ***Section 88: Capping of costs***

657. **Section 88**, along with sections 89 and 90, removes the ability of the High Court and the Court of Appeal to make costs capping orders in a judicial review case unless specified criteria are met. A costs capping order is an order that removes or limits the liability of a party to the proceedings (whether only for the applicant or both the applicant and the defendant) to pay another party's costs incurred in bringing or defending a judicial review. This type of order, as developed in case law, is commonly referred to as a "Protective Costs Order".
658. *Subsection (1)* provides that a costs capping order may only be made in accordance with this section and sections 89 and 90.
659. *Subsection (2)* defines a costs capping order as an order which limits the costs liability of any party to a judicial review.
660. *Subsections (3) and (4)* provide that a costs capping order may only be made when leave to bring a judicial review has been granted and the applicant for judicial review has made an application for such an order in accordance with rules of court.

661. *Subsection (5)* specifies that rules of court may require an applicant for a costs capping order to provide information to the court set out in the rules of court. It makes it clear that this can include information about the source, nature and extent of any financial support that has been or is likely to be provided to the applicant for use in the judicial review proceedings and, if the applicant is a corporate body that cannot demonstrate that it has the financial resources needed to meet its costs liabilities, information about the body's membership and its members' ability to provide financial support for the judicial review.
662. *Subsection (6)* allows a court to make a costs capping order only if it is satisfied that the judicial review proceedings are "public interest proceedings" (defined in subsection (7)) and that, if a costs capping order is not made, the applicant for judicial review would no longer continue with the case and that it would be reasonable not to continue with the case.
663. *Subsection (7)* defines "public interest proceedings". Proceedings are public interest proceedings if – and only if – an issue being argued in the case is of general public importance, it is in the public interest for that issue to be resolved and these judicial review proceedings are an appropriate means of resolving the issue. *Subsection (8)* makes provision about matters which the court must consider in deciding whether the proceedings are public interest proceedings. It sets out a non-exhaustive list of such matters, including the number of people who are likely to be directly affected if the judicial review succeeds, the likely effect on those people and whether the issues being argued involve consideration of a point of law of general public importance.
664. *Subsections (9), (10) and (11)* allow the Lord Chancellor to amend subsection (8) by adding, removing or amending a matter that a court must consider when deciding whether proceedings are public interest proceedings. Amendment must be made by statutory instrument (subject to the affirmative procedure).
665. *Subsection (12)* defines what is meant by the terms 'costs capping order' and 'judicial review proceedings': in particular, it makes it clear that proceedings on appeal are covered. Furthermore, it specifies that references to the court in this section are only references to the High Court or the Court of Appeal.
666. *Subsection (13)* explains that for the purposes of this section and section 89 the term 'applicant for judicial review' means the person who is or was the applicant who brought the application for judicial review and references to relief being granted include where the decision to grant relief has been upheld on any appeal brought against that decision.

### ***Section 89: Capping of costs: orders and their terms***

667. **Section 89** sets out the way in which the High Court and the Court of Appeal should approach the decision whether to make a costs capping order and decisions about the terms of the order.
668. *Subsection (1)* requires the court to consider certain matters when considering whether to make such an order and (if it does decide to make an order) the terms of the order. These include the financial resources of the parties, including any third party who has provided or may provide financial support; the extent to which the applicant - or any other person who has provided or may provide funding - will benefit from the costs capping order if the applicant succeeds in the judicial review; whether the applicant's legal representatives are acting free of charge; and whether the applicant is an appropriate person to bring the judicial review on behalf of the wider public.
669. *Subsection (2)* requires that where the court makes a costs capping order limiting the applicant's liability for the defendant's costs in the event of the application for judicial review not being successful, the court must also make an order limiting the defendant's liability for the applicant's costs in the event of the judicial review succeeding.

670. *Subsections (3), (4) and (5)* allow the Lord Chancellor to amend subsection (1) by adding, amending or removing matters that the court must have regard to when considering whether to make a costs capping order and the terms of the order (subject to the affirmative procedure).
671. *Subsection (6)* defines the terms ‘free of charge’ and ‘legal representative’.

### ***Section 90: Capping of costs: environmental cases***

672. **Section 90** enables provision to be made excluding from the codified regime established under sections 88 and 89 judicial reviews about issues which, in the Lord Chancellor’s opinion, relate entirely or partly to the environment. Different considerations may apply in those cases (and a separate costs protection regime, which is set out in the Civil Procedure Rules, already applies).
673. *Subsections (1), (2) and (3)* allow the Lord Chancellor to set out in regulations (subject to the negative procedure) the types of judicial review that are excluded from the costs capping regime set out in these sections. This section does not require all cases which may be argued to relate to the environment to be excluded.

## **Planning proceedings**

### ***Section 91: Procedure for certain planning challenges***

674. **Section 91** introduces Schedule 16, which contains amendments to provide that challenges to a range of planning-related decisions and actions may only be brought with leave of the High Court. The amendments require applications for leave to be made before the end of the six-week period specified in relation to the decision or action in question.
675. The amendments made by Schedule 16 also provide that costs awards connected with planning and listed building decisions and actions may be challenged in the same way as the substantive action itself – by way of statutory review.

### ***Schedule 16: Procedure for certain planning challenges***

676. **Paragraph 2** amends section 284 of the Town and Country Planning Act 1990. It inserts new paragraph (g) in section 284(1) to prevent the validity of a relevant costs order from being questioned in legal proceedings other than those brought in accordance with Part 12 of that Act. It also inserts a new subsection (3A), which defines “relevant costs order”.
677. **Paragraph 3** amends section 287 of the Town and Country Planning Act 1990 to provide that proceedings for questioning the validity of the planning documents to which that section applies may only be brought with leave of the High Court.
678. **Paragraph 4** amends section 288 of the Town and Country Planning Act 1990 to provide that proceedings for questioning the validity of a range of planning-related orders and actions may only be brought with leave of the High Court. The new subsection (1A) for section 288 also enables a relevant costs order made in connection with an order or action to which section 288 applies to be challenged under section 288.
679. **Paragraph 5** amends section 62 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to prevent the validity of a relevant costs order from being questioned in legal proceedings other than proceedings brought in accordance with section 63 of that Act. “Relevant costs order” is defined in a new subsection (2A) for section 62.
680. **Paragraph 6** amends section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to provide that proceedings for questioning the validity of certain orders and decisions made under that Act may only be brought with leave of the High



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Court. It also inserts a new subsection (1A) to enable a relevant costs order made in connection with such an order or decision to be challenged under section 63.

681. [Paragraph 7](#) amends section 22 of the Planning (Hazardous Substances) Act 1990 to provide that proceedings for questioning the validity of certain decisions of the Secretary of State under that Act may only be brought with leave of the High Court.
682. [Paragraph 8](#) amends section 113 of the Planning and Compulsory Purchase Act 2004 to provide that proceedings for questioning the validity of specified strategies, plans and other documents may only be brought with leave of the High Court.

***Section 92: Periods of time for certain legal challenges***

683. [Section 92](#) amends provisions allowing for legal challenges to planning-related decisions and other actions brought under:
- section 61N (neighbourhood development orders) and section 106C (development consent obligations) of the Town and Country Planning Act 1990; and
  - section 13 (national policy statements) and section 118 (orders granting development consent) of the Planning Act 2008 (national policy statements).
684. The above provisions currently stipulate that a challenge must be made during a period of six weeks beginning with the day on which a particular event occurs in relation to the decision or action being challenged (for example, the day on which the decision being challenged is published). Section 92 provides that the six-week period does not start to run until the day after that on which the event in question occurred.

**Part 5 – Final Provisions**

***Section 93: Power to make consequential and supplementary provision etc***

685. This section gives the Lord Chancellor or Secretary of State a power to make regulations containing consequential, supplementary, incidental, transitional, transitory or saving provision in relation to any provision of the Act. Where such regulations amend primary legislation they will be subject to the affirmative procedure.

***Section 94: Financial provision***

686. [Section 94](#) provides that money is to be paid out of money provided by Parliament for any expenditure incurred by a Minister of the Crown under or by virtue of the provisions of the Act and any increases in sums payable under other Acts as a result of this Act.

***Section 95: Commencement***

687. [Section 95](#) provides for commencement of the Act (see paragraph 691 for further details).

***Section 96: Extent***

688. [Section 96](#) sets out the territorial extent of the Act (see paragraphs 101 to 112 for further details).

***Section 97: Channel Islands, Isle of Man and British overseas territories***

689. [Section 97](#) sets out the powers available to extend provisions of Acts which the Act is amending substantively to the Channel Islands, Isle of Man and/or British Overseas Territories.

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***Section 98: Short title***

690. **Section 98** sets out the short title for the Act providing that the Act may be cited as the Criminal Justice and Courts Act 2015.