These notes refer to the Criminal Justice and Immigration Act 2008 (c.4) which received Royal Assent on 8 May 2008

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Youth rehabilitation orders

Section 1 and Schedule 1: Youth rehabilitation orders

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

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

- an activity requirement;
- a supervision requirement;
- if the offender is aged 16 or 17, an unpaid work requirement;
- a programme requirement;
- an attendance centre requirement;
- a prohibited activity requirement;
- a curfew requirement;
- an exclusion requirement;
- a residence requirement;
- a local authority residence requirement;
- a mental health treatment requirement;
- a drug treatment requirement;
- a drug testing requirement;
- an intoxicating substance treatment requirement;
- an education requirement.

109. *Subsection (2)* provides that a YRO may also impose an electronic monitoring requirement as described in paragraph 26 of Schedule 1. An electronic monitoring requirement must be imposed where a YRO imposes a curfew or exclusion requirement

(*paragraph 2*of Schedule 1*)* unless in the particular circumstances of the case, the court is satisfied it would be inappropriate to do so or it is not practicable for the reasons set out in paragraph 26(3) or (6).

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

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

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

113. Paragraph 4 of Schedule 1 sets out additional conditions to those in subsection (4) of section 1 which must be met before a court can impose a YRO with fostering. The court has to be satisfied that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living and that the imposition of such a requirement would assist in the offender's rehabilitation. The court must also consult the local authority and (where practicable) the parents or guardians of the offender prior to imposing this requirement. A YRO with fostering must also impose a supervision requirement. The offender must be given the opportunity of legal representation (*paragraph 19*).

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

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

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

117. Paragraph 8(3) provides that the court may not include an activity requirement unless it has consulted a member of the youth offending team, or an officer of a local probation board or an officer of a provider of probation services and it is satisfied that it is feasible to secure compliance with the requirement. Paragraph 8(4) states that an

activity requirement, which requires co-operation with anybody other than the offender and the responsible officer (defined in section 6 below) may only be included with that other person's consent.

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

119. *Paragraph 10* of Schedule 1 provides for an unpaid work requirement and is modelled on section 199 of the 2003 Act. An unpaid work requirement may be for between 40 and 240 hours and could include, for example, graffiti cleaning, community artwork or work to repair or improve community facilities. Unpaid work is currently available, for 16 and 17 year olds, as part of the community punishment order.

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

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

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

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

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

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

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

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

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

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

130. Paragraph 21 of Schedule 1 deals with mental health treatment at a place other than that specified in the order. Paragraph 21(1) allows the medical practitioner or chartered psychologist to vary the arrangements in a mental health treatment. Paragraph 21(2) makes clear that the offender must have expressed a willingness to comply with the varied arrangements.

131. *Paragraph 22* of Schedule 1 provides for a drug treatment requirement and *paragraph 23* for a drug testing requirement. These are modelled upon those available to juveniles of all ages subject to an action plan order and supervision order in section 70 of and Schedule 6 to the 2000 Act. The offender may be required to undergo drug treatment by or under the direction of a specified person with the necessary qualifications or experience. The court must be satisfied that the offender is dependent on or has a propensity to misuse any drug and requires and may be susceptible to treatment. The treatment can be residential or non-residential, but the type of treatment cannot be specified. The offender must be willing to comply with the requirement.

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

133. *Paragraph 24* of Schedule 1 provides for an intoxicating substance treatment requirement. This is a new requirement and is designed to enable treatment for alcohol and other intoxicating substances. The offender may be required to undergo treatment by or under the direction of a specified person with the necessary qualifications or

experience. The court must be satisfied that the offender is dependent on or has a propensity to misuse intoxicating substances. The treatment can be residential or non-residential, but otherwise the nature of the treatment cannot be specified. Paragraph 24(5) defines intoxicating substance as alcohol or any other substance (other than a drug) which is capable of being used for the purpose of causing intoxication. The offender must be willing to comply with the requirement.

134. *Paragraph 25* of Schedule 1 provides for an education requirement. An education requirement is currently available as part of a supervision order and action plan order under section 63 (read with paragraph 7 of Schedule 6) and section 70(1)(e) respectively of the 2000 Act. The order may require the offender to comply with approved education arrangements i.e. made by the offender's parent or guardian and approved by the local authority. The court must be satisfied that suitable arrangements exist for the offender's appropriate full-time education needs and that such a requirement is necessary for the offender's future good conduct or prevention of further offending.

135. *Paragraph 26* of Schedule 1 provides for the electronic monitoring requirement. Electronic monitoring is currently available as a requirement of youth community orders under section 36B of the 2000 Act. *Paragraph 26(3)* provides that where it is proposed to include an electronic monitoring requirement as part of a YRO, this may only be done with the consent of any person (other than the offender) whose compliance would be required. For example this person might be the offender's parent or guardian. Paragraph 26(4) provides that this requirement must include provision for making a person responsible for monitoring and *paragraph 26(5)* provides that the person must be of a description specified in an order made by the Secretary of State (such an order is not subject to any parliamentary procedure).

136. Under *paragraph 27* the Secretary of State may by order amend the maximum number of hours which may be specified in an unpaid work or curfew requirement. The Secretary of State may also by order amend the time periods specified in relation to the curfew requirement, exclusion requirement, local authority residence requirement and fostering requirement. An order made under this paragraph is subject to the affirmative resolution procedure.

137. Part 3 of the Schedule makes further provision for the procedure for making YROs. Under *paragraph 28*prior to imposing a YRO, the court must obtain and consider information about the offender's family circumstances and the likely effect of such an order on those circumstances.

138. *Paragraph 29* of Schedule 1 requires a court to consider whether requirements are incompatible with each other. As far as practicable, the court must ensure that any requirement imposed is such as to avoid any conflict with the offender's religious beliefs and any interference with the times at which the offender works or attends school. The offender's responsible officer must also take steps to ensure that any instructions or directions given avoid any such conflict. Under *paragraph 29(4)* the Secretary of State has the power to add further restrictions by order (subject to the negative resolution procedure).

139. *Paragraph 30* of Schedule 1 provides for the operative date of YROs. Where a YRO is imposed on an offender who is already serving a detention and training order, the court may order that the YRO will commence either with the commencement of the period of supervision of the detention and training order, or on the expiry of the detention or training order or on the day after the order is made. In all other cases the YRO will commence the day after the day on which the order was made. A court may not make a YRO if the offender is already serving a similar order or a reparation order unless the existing order is revoked.

140. *Paragraph 31* of Schedule 1 makes provision for concurrent and consecutive orders. Where the court is dealing with an offender for two or more offences, it may impose more than one YRO but it may not impose YROs of different kinds (for example,

it may not impose a YRO with intensive supervision and surveillance and any other YRO). If the court imposes more than one YRO with intensive supervision and surveillance or with fostering, under paragraph 31(3) they must begin at the same time. Under paragraph 31(4) the court must direct whether similar requirements in different orders are to be served concurrently or consecutively. Where they are to be served consecutively, the aggregate of the periods imposed for requirements of a particular kind must not exceed the maximum period for a single such requirement (see paragraph 31(6)). Under paragraph 31(5) two or more fostering requirements cannot be served consecutively.

141. Part 4 of Schedule 1 makes further general provision for where the court makes a YRO. *Paragraph 32* provides that the order must specify a date not more than 3 years after it is made by which the requirements must have been complied with. The order may also specify different dates for two or more requirements within the order. In relation to a YRO with intensive supervision and surveillance, the specified date must not be earlier than 6 months after the order takes effect.

142. *Paragraph 34* of Schedule 1 makes provision for copies of orders to be provided by the court to the offender and to other relevant persons depending on the circumstances. The court has to provide copies of the order it makes to certain people who are relevant to the carrying out of the order: to the offender, if the offender is under 14, to his parent or guardian (or, if the offender is in local authority care or accommodation, that authority), and to the youth offending team member, an officer of a local probation board assigned to the court or an officer of a provider of probation services. Under paragraph 34(3) if the order is made by any Crown Court or a magistrates' court outside the area in which the offender will be carrying out the order, the court must send a copy of the order, and any other documents and information relating to the case that the sentencing court thinks the second court would find of assistance, to the magistrates court and provide a copy of the order to the local probation board in that area or a provider of probation services operating in that area.

143. *Paragraph 35* of Schedule 1 enables the Secretary of State by order (subject to the affirmative resolution procedure) to make provision allowing or requiring YROs to be reviewed by the courts. It is intended that the decision to extend reviews to YROs would be based on consultation with the courts. An order under this paragraph may repeal or amend any provision of this Part 1 of the Act or Chapter 1 of Part 12 of the 2003 Act dealing with the general provisions about sentencing.

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

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

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

146. *Paragraph 4(1)* of Schedule 2 requires the responsible officer to start court enforcement proceedings if the offender has failed to comply with the requirements of the order and has been given two previous warnings during a 12 month period. However, paragraph 4(2) states that the responsible officer may stay breach proceedings in exceptional

circumstances even where two previous warnings have already been given. *Paragraph 4(3)* states that the responsible officer may start court enforcement proceedings without having previously issued warnings to the offender if, for example, the breach is particularly serious.

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

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

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

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

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

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

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

154. Part 3 of Schedule 2 deals with the revocation of a YRO. Under *paragraph 11* either the offender or the responsible officer may apply to a youth court or other magistrates' court to have the order revoked, due to circumstances that have arisen since the order was made. An example might be if the offender has become very ill and is unable to complete the requirements. The court can revoke the order or revoke it and re-sentence the offender as if he has just been convicted. If the court re-sentences it must take into account the extent to which the offender complied with the original order and the offender can appeal.

155. *Paragraph 12* of Schedule 2 gives similar powers to the Crown Court in the case of orders it has made which do not contain a direction that further proceedings are to be in the magistrates' court.

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

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

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

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

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

161. Part 5 of Schedule 2 deals with the powers of courts in relation to a YRO where the offender is subsequently convicted for another offence. *Paragraph 18* sets out what a youth court or magistrates' court convicting for the subsequent offence can do in this situation. It may, if it appears to the court to be in the interests of justice, revoke the order and re-sentence the offender for the original offence as if he had just been convicted of it. If it re-sentences him, the court must take into account the extent to which the offender complied with the order. The offender has a right of appeal if the court re-sentences. If the youth court or magistrates' court convicting for the subsequent offence is dealing with the new offence but the YRO was made in the Crown Court, it can refer the offender to the Crown Court.

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

163. Part 6 of Schedule 2 contains supplementary provisions about the court's powers and duties under Parts 2-5 of that Schedule including bringing the offender before the court; powers to remand and adjourn; and the provision of copies

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

Section 3 and Schedule 3: transfer of youth rehabilitation orders to Northern Ireland.

165. Section 3 introduces Schedule 3, which sets out the procedure for transferring YROs to Northern Ireland.

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

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

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

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

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

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

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

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

174. *Paragraph 15* of Schedule 3 sets out the powers available to a court in England or Wales where an offender is required to appear before it by virtue of paragraph 13. The court

may issue a warrant for the offender's arrest and it may exercise any power which it could exercise under the YRO if the offender resided in England or Wales. *Paragraph 16*provides that the court in England and Wales cannot amend the YRO unless provision can be made for the offender to comply with the amended provisions in Northern Ireland and that arrangements for supervision can be made.

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

Section 4: Meaning of "the responsible officer"

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

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

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

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

178. Section 6 abolishes five existing community sentences for young offenders namely, curfew orders, attendance centre orders, exclusion orders, supervision orders and action plan orders, which will be replaced by the YRO. The section also introduces Schedule 4, which makes consequential amendments to other legislation. *Paragraph 80* of Schedule 4 amends section 174 of the 2003 Act imposing an additional requirement on the courts when passing a custodial sentence on an offender aged under 18. The court

is already required, when imposing a discretionary custodial sentence, to explain why it is of the opinion that the matter is so serious that neither a fine alone nor a community sentence can be justified for the offence. This additional requirement means that when passing a discretionary custodial sentence on an offender under the age of 18, the court must also include a statement that it is of the opinion that the imposition of a youth rehabilitation order with intensive supervision and surveillance or fostering cannot be justified, and why it is of that opinion.

Section 7: Youth rehabilitation orders: interpretation

179. This section defines various terms for the purposes of Part 1.

Section 8: Isles of Scilly

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

Part 2: Sentencing

Section 9: Purposes etc of sentencing: offenders under 18

181. This section complements section 142 of the 2003 Act which sets out the purposes of adult sentencing.

182. *Subsection (1)* inserts a new section 142A into the 2003 Act setting out the purposes of sentencing for offenders under the age of 18 years. The new section requires the court when dealing with an offender to have regard to:

- the principal aim of the youth justice system (which is to prevent offending or re-offending by persons aged under 18),
- the welfare of the offender in accordance with section 44 of the Children and Young Persons Act 1933, and
- the following purposes of sentencing:
  - the punishment of offenders,
  - the reform and rehabilitation of offenders,
  - the protection of the public, and
  - the making of reparation by offenders to persons affected by their offences.

183. New section 142A(4) sets out the circumstances in which that section does not apply, namely:

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

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

185. *Subsection (3)* amends section 44 of the Children and Young People Act 1933, which requires courts to have regard to the welfare of a child or young person brought before it,

so that the court also has regard to the other matters mentioned in the new section 142A of the 2003 Act.

186. *Subsection (4)* amends section 42(1) of the 1998 Act, (interpretation of Part 3 of the Act) to include a definition of offending as including re-offending.

Section 10: Effect of restriction on imposing community sentences

187. Section 10 amends section 148 of the 2003 Act, which makes provision as to when it is appropriate to impose a community sentence. It provides that nothing in section 148 requires the court to impose a community sentence even though the offence is serious enough to justify such a sentence. It similarly provides that there is no requirement to impose restrictions on liberty as part of such a sentence just because section 148 provides a power to do so.

Section 11: Restriction on power to make a community order

188. This section provides that the community order is available to the courts as a sentencing option only for offences where the court can impose imprisonment or for persistent offenders who have previously been fined three or more times, even though the current offence does not justify a community sentence.

189. *Subsection (1)* adds a new section 150A to the 2003 Act. A court may make a community order only where the offence is punishable with imprisonment or where section 151(2) of the Act as amended by the section confers such a power. Section 151(2) provides a power to make a community order where an offender has, since the age of 16, received three or more sentences comprising only a fine. Section 150A also provides that for these purposes an either-way offence is to be regarded as punishable with imprisonment if the sentencing court has the power to impose custody for the offence.

190. *Subsections (2) to (7)* amend section 151 of the 2003 Act. Read together with amendments to section 151 in Schedule 4 related to youth rehabilitation orders, the restriction on making community orders in cases where the current offence is not imprisonable is limited to persons over the age of 18.

191. Subsection (3) adds a new subsection (A1) to section 151 making it clear that section 151(2) operates in two cases: where the particular offence before the court is imprisonable, but not serious enough to warrant a community sentence; and where the offence is not imprisonable. In neither case would a community order be available without the operation of section 151 in future.

192. Subsection (4) amends section 151(1) so that it operates on imprisonable offences and subsection (5) adds a new subsection 151(1A) which makes corresponding provision for non-imprisonable offences.

Section 12: Pre-sentence reports

193. Section 12 inserts a new subsection (1A) and (1B) into section 158 of the 2003 Act, which defines what a pre-sentence report is. New subsection (1A) makes it clear that, subject to any rules made by the Secretary of State under section (1)(b) of section 158, the court may accept an oral pre-sentence report. However, where a pre-sentence report relates to an offender under 18 years of age and the court is required to obtain and consider a pre-sentence report before the court forms an opinion under section 156(3)(a) - as to whether a discretionary custodial sentence should be imposed - new subsection (1B) provides that such a pre-sentence report must be in writing.

Section 13: Sentences of imprisonment for public protection

194. Section 13 amends section 225 of the 2003 Act (life sentence or imprisonment for public protection for serious offences). Section 225 applies to those 18 or over. The amendments have the following effect.

- They give the court a power, rather than a duty, to impose a sentence of imprisonment for public protection.
- They provide that this power may only be exercised where either of two conditions is met: either the immediate offence would attract a notional minimum term of at least 2 years; or the offender has on a previous occasion been convicted of one of the offences listed in the new Schedule 15A to the 2003 Act (inserted by Schedule 5 to the Act).

195. In the notes on this section and sections 14 to 18, the term "immediate offence" is used to refer to the offence for which the person is being sentenced.

196. New subsection (3C) defines what is meant by notional minimum term. The court should follow the usual practice for setting tariffs for sentences of imprisonment for public protection (in accordance with section 82A(2) of the 2000 Act), except that it should not credit periods of time on remand (in custody or on bail) in arriving at the minimum term.

Section 14: Sentences of detention for public protection

197. Section 14 amends section 226 of the 2003 Act (detention for life or detention for public protection). Section 226 applies to those under 18. The amendments have the following effect.

- They give the court a power, rather than a duty, to impose a sentence of detention for public protection: currently it has an obligation to do so unless it considers an extended sentence adequate;
- They provide that this power may only be exercised where the immediate offence would attract a notional minimum term of at least 2 years.

198. Subsection (3A) defines what is meant by notional minimum term. The court should follow the usual practice for setting tariffs for sentences of detention for public protection (in accordance with section 82A(2) of the 2000 Act), except that it should not credit periods on remand (in custody or on bail) in arriving at the minimum term.

Section 15: Extended sentences for certain violent or sexual offences: persons 18 or over

199. Section 15 amends section 227 of the 2003 Act (extended sentence for certain violent or sexual offences: persons 18 or over)

200. *Subsection (2)* amends section 227(1) to allow extended sentences to be given for "serious" violent and sexual offences i.e. offences in Schedule 15 which carry a maximum penalty of 10 years or more. The power to give extended sentences for violent or sexual offences carrying a maximum penalty of less than 10 years is left intact.

201. *Subsections (3) and (4)* amend section 227(2) and insert new subsections (2A) and (2B). The amendments have the following effect.

- They give the court a power rather than a duty to impose an extended sentence;
- They provide that this power may only be exercised where either of two conditions is met: either the immediate offence would attract an "appropriate custodial term" of at least 4 years; or the offender has on a previous occasion been convicted of one of the offences listed in Schedule 15A.

202. *Subsection (4)* also inserts a new subsection (2C) which sets out the structure of the extended sentence: it consists of an "appropriate custodial term" followed by a further licence period. This simply reproduces the definition of extended sentence of imprisonment which is currently in section 227(2).

203. *Subsection (5)* is consequential and preserves the current position whereby (a) the custodial period of the extended sentence is set according to the seriousness of the offence; (b) if the seriousness of the offence would normally warrant a custodial period of less than 12 months, the court must impose a custodial period of 12 months. (The provision mentioned at (b) may continue to be relevant in cases where the court is imposing an extended sentence on the basis that the condition in section 227(2A)) is met (i.e., that the offender has on a previous occasion been convicted of one of the offences specified in Schedule 15A).

204. *Subsection (6)* gives the Secretary of State an order-making power to amend the custodial period of 4 years specified in new subsection (2B). This is because the intention is that the condition should be met only if the offence warrants that the offender spend a minimum period of 2 years in custody. This currently means that a custodial period of at least 4 years should be imposed, as release on licence from an extended sentence occurs at the halfway point (under section 247 of the 2003 Act, as amended by section 25 of this Act). The proportion of sentence served prior to release on licence may be changed, however, by secondary legislation. If this were to happen, the figure of 4 years would need to be changed accordingly, to retain the 2 year threshold.

Section 16: Extended sentences for certain violent or sexual offences: persons under 18

205. Section 16 amends sections 228 of the 2003 Act (extended sentence for certain violent or sexual offences: persons under 18)

206. *Subsection (2)* is a consequential amendment to reflect the fact that the courts will no longer have an obligation to impose public protection sentences.

207. *Subsections (3) and (4)* amend section 228. The amendments have the following effect*:*

- They give the court a power rather than a duty to impose an extended sentence
- They provide that this power may only be exercised where the immediate offence would attract an "appropriate custodial term" of at least 4 years.

208. *Subsection (4)* then inserts a new subsection (2B) which sets out the structure of the extended sentence: it consists of an "appropriate custodial term" followed by a further licence period. This simply reproduces the definition of extended sentence of detention which is currently in section 228(2).

209. *Subsection (5)* preserves the current position whereby the custodial period of the extended sentence must not exceed the maximum penalty for the offence. It also removes the current requirement for the custodial period of the extended sentence to be set at 12 months or more (as this is no longer required in the light of the other changes to section 228).

210. *Subsection (6)* gives the Secretary of State an order-making power to amend the custodial period of 4 years specified in new subsection (2A). This is because the intention is that an extended sentence should be imposed only if the offence warrants that the offender spend a minimum period of 2 years in custody. This currently means that a custodial period of at least 4 years should be imposed, as release on licence from an extended sentence occurs at the halfway point (under section 247 of the 2003 Act, as amended by section 25 of this Act). The proportion of sentence served prior to release on licence may be changed, however, by secondary legislation. If this were to happen, the figure of 4 years would need to be changed accordingly, to retain the 2 year threshold.

Section 17: The assessment of dangerousness

211. Section 17 amends section 229 of the 2003 Act (the assessment of dangerousness).

212. Section 229 currently draws a distinction between cases where the offender has not previously been convicted of an offence specified in Schedules 15 to 17 (or was aged under 18) and cases where the offender has previously been convicted of such an offence. In the first case, section 229(2) requires the court (in deciding whether there is a significant risk of serious harm) to take into account all information available to it about the offence for which the offender is being sentenced and allows the court to take into account any information about any pattern of behaviour of which that offence forms a part. In the second case, section 229(3) requires the court to assume that there is a significant risk of serious harm unless the court considers it would be unreasonable to do so.

213. The amendments made by *subsections (2) and (4)* are related. *Subsection (4)*removes section 229(3) so that the court is no longer required to make any assumption. *Subsection (2)*amends section 229(2) so that it applies to all offenders. These changes mean that there is no longer any distinction between the two types of cases mentioned above.

214. *Subsection (2)* also amends section 229(2) to provide expressly that the court may take into account all information available to it about any previous convictions of the offender and any pattern of behaviour of which they form a part. This is intended to provide clarification.

Section 18: Further amendments relating to sentences for public protection

215. Section 18 provides for further amendments relating to sentences for public protection.

216. *Subsection (1)* substitutes a new subsection (1) in section 231 of the 2003 Act (appeals where previous convictions set aside).

217. The new subsection (1) applies where an offender has received a sentence of imprisonment for public protection, or an extended sentence for certain violent or sexual offences, if the court relied upon the condition in section 225(3A) or 227(2A) having been satisfied. If a previous conviction of the type listed in Schedule 15A to the 2003 Act, which lists the offences relevant for the condition, is subsequently set aside on appeal, section 231 as amended by this section confers on the offender an extension of time for appealing against the public protection sentence.

218. *Subsection (2)* amends section 232 (certificates of conviction) of the 2003 Act.

219. The effect of the amendments to section 232 is that a court that has convicted an offender of a Schedule 15A offence in England and Wales may, once Schedule 15A has come into force, subsequently certify the fact and date of that conviction. This certificate will stand as evidence for the purposes of proving that the condition in section 225(3A) and 227(2A) is satisfied.

220. *Subsection (3)* omits section 234 of the 2003 Act (determination of day when offence committed) in consequence of the amendments to section 229.

Section 19: Indeterminate Sentences: determination of tariffs

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

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

223. The discretion not to halve the notional determinate term applies in two sorts of case. The first case ("Case A") is limited to the tariff determination for discretionary life sentences and applies where the circumstances of the offence or offences make the crime exceptionally serious (without being serious enough to justify a whole-life tariff, which requires a very extreme degree of exceptionality), and the court is of the opinion that to halve the notional determinate term would not adequately reflect the seriousness of the offence(s). The court may then reduce the tariff by any amount ranging from one-half to nil, as is appropriate to reflect the seriousness of the case. The increased discretion will only apply when a court is sentencing a person over 18 years old.

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

Section 20: Consecutive terms of imprisonment

225. Section 20 amends the 2003 Act in respect of consecutive custody plus and intermittent custody sentences and general restrictions on consecutive sentences for released prisoners.

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

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

228. *Subsection (4)* amends section 265 to clarify the position on imposing consecutive sentences on different occasions. Subsection (4)(a) amends section 265(1), the effect of which is that if an offender has been released on licence under Part II of the 1991 Act or Chapter 6 of Part 12 of the 2003 Act then a subsequent sentence may not be ordered to be served consecutively to the sentence from which he has already been released. Subsection (4)(b) inserts new subsections (1A) and (1B) into section 265: these ensure that persons sentenced under the 1991 Act are subject to section 265(1) as amended by subsection (4)(a) and provide that for the purposes of determining whether someone has already been released on licence, any temporary release on licence under section 183(1)(b)(i) in respect of an intermittent custody sentence is to be discounted.

Section 21: Credit for period of remand on bail: terms of imprisonment and detention

229. This section amends the 2003 Act to make provision for crediting periods of remand on bail on an electronically monitored curfew against a subsequent custodial sentence.

230. *Subsection (2)* confirms that the new provisions will not apply to a service court. *Subsection (3)* amends the heading preceding section 240 of the 2003 Act.

231. *Subsection (4)* inserts a new section 240A into the 2003 Act. The new section 240A will apply only to prisoners whose offence was committed on or after 4 April 2005 and who have been remanded on bail, subject to a qualifying electronically monitored curfew bail condition, on or after the commencement of section 240A (section 240A(1)). The qualifying conditions are defined in sections 240A(12). They provide that in order to qualify for the credit provisions a person must be subject to a curfew condition of 9 hours or more per day, and that that curfew must be subject to electronic monitoring.

232. Unless Rules under section 240A(6) provide otherwise, or the Court considers it would not be just in all the circumstances, the Court must direct that the "credit period" is to be counted as time served toward the sentence (section 240A(2)). The credit period is defined in section 240A(3). A person will receive credit at the rate of a half a day for every day spent subject to a qualifying electronically monitored curfew.

233. Section 240A(5) allows the court to direct that, where the prisoner has not been given the full available credit, a partial credit may be awarded. In exercising their discretion to make a direction, sentencers must take into account the extent to which the prisoner has complied with the qualifying curfew condition and electronic monitoring condition (section 240A(7)). The Court must state in open court the number of days for which the prisoner was subject to the relevant conditions, the number of days credit that is to be directed or whether no direction is to be made. Where none of the period is to be credited, or only part of it, the courts must explain the reasons for the decision (sections 240A(8),(9) and (10).

234. *Subsections (5) and (6)* insert amendments to the 2003 Act to provide for the effect of a direction given under section 240A on a person released on licence, and to ensure that section 240A is captured in the relevant interpretation provisions.

235. *Subsection (7)* provides that rules made under section 240A will be subject to the affirmative resolution procedure.

Section 22: Credit for period of remand on bail: other cases

236. *Subsections (1) to (7)* make provision for a new section 240A of the 2003 Act to apply in respect of prisoners serving mandatory and discretionary life sentences, detention and training orders, International Criminal Court sentences, prisoners eligible for early release under Home Detention Curfew and retrials.

Section 23 and Schedule 6: Credit for period of remand on bail: transitional provisions

237. Section 23 introduces Schedule 6. This Schedule provides for a credit toward a subsequent custodial sentence for periods of remand on bail subject to an electronically monitored curfew. The provisions are the same in substance as those set out in section 21 but apply to offenders committed to a custodial sentence whose offences were committed before 4 April 2005 and, therefore, are subject to the provisions relating to treatment of periods spent remanded under section 67 of the Criminal Justice Act 1967. The provisions therefore have the same effect on prisoners as those set out in section 21.

Section 24: Minimum conditions for early release under section 246(1) of the Criminal Justice Act 2003

238. This section amends the statutory formula set out in section 246(2) of the 2003 Act that determines the period of time a prisoner must spend in custody before becoming eligible for early release under the Home Detention Curfew scheme. The amendment will ensure

that prisoners will spend at least half of the custodial period in custody, subject to a minimum of 4 weeks before they can be released on Home Detention Curfew.

Section 25: Release on licence under Criminal Justice Act 2003 of prisoners serving extended sentences

239. Section 25 amends section 247 of the 2003 Act (release on licence of prisoner serving extended sentence).

240. The section omits subsection (2)(b) and subsections (3) to (6) from section 247 of the 2003 Act thereby removing the Parole Board's role in directing the release of the prisoner. Such prisoners become automatically entitled to release on licence once they have served one-half of the appropriate custodial term.

Section 26: Release of certain long-term prisoners under the Criminal Justice Act 1991

241. This section amends the early release provisions contained in Part 2 of the 1991 Act for certain long term prisoners. These provisions apply to prisoners sentenced for an offence committed before 4 April 2005.

242. *Subsection (2)* inserts new subsections (1A) to (1D) into section 33 of the 1991 Act. New section 33(1A) requires the Secretary of State to release long term prisoners (those serving sentences of 4 years and over) on licence at the halfway point in their sentence. New section 33(1B) excludes from (1A) those prisoners serving sentences for a sexual or violent offence listed in Schedule 15 to the 2003 Act. New sections (1C) and (1D) extend this provision to include offenders serving sentences for the relevant armed services offences. *Subsection (3)* makes a consequential amendment to section 33(2).

243. *Subsection (4*) provides that section 35, which concerns Parole Board recommendations to release long term prisoners after they have reached the halfway point of their sentences, does not apply to prisoners who are caught by the new duty to release at the halfway point in section 33(1A).

244. *Subsection (5)* provides that section 37, which concerns the duration and conditions of licences for prisoners released on licence under Part 2, does not apply to prisoners who are caught by the new duty to release at the halfway point in section 33(1A).

245. *Subsection (6)* inserts a new section 37ZA into Part 2 after section 37 of the 1991 Act. New section 37ZA makes provision for the duration and conditions of licences granted to long term prisoners released automatically on licence at the halfway point under section 33(1A). The licence will last until the end of the sentence, the conditions of the licence will be the standard conditions prescribed by the Secretary of State under section 250 of the 2003 Act and may also include other conditions in accordance with section 37ZA. When prescribing licence conditions, the Secretary of State must have regard to the following purposes of the supervision of offenders while on licence: protecting the public, preventing re-offending and securing the prisoner's successful re-integration into society. The offender must comply with the licence conditions imposed, and failure to do so may result in the offender being recalled to prison under section 254(1) of the 2003 Act, with section 37ZA(4) expressly providing that section 254(1) is the recall power applicable to offenders who have been released on licence in pursuance of the new duty in section 33(1A). This supplements the provision in paragraph 23(1) of Schedule 2 to the Criminal Justice Act 2003 (Commencement No.8 and Transitional and Saving Provisions) Order 2005 (SI 2006/950) applying the section 254(1) recall power to release on licence under Part 2 of the 1991 Act.

246. Paragraph 8 of Schedule 27 provides that this section does not apply to long term prisoners who have already reached the halfway point of their sentence before the date on which section 26 is commenced

Section 27: Application of section 35(1) of the Criminal Justice Act 1991 to prisoners liable to removal from the UK

247. *Subsection (1)* provides that section 46(1) and part of section 50(2) of the 1991 Act are to cease to have effect. The practical effect of that provision is that foreign national prisoners liable to removal from the United Kingdom and sentenced under the provisions of the 1991 Act to sentences of 4 years and over will no longer be ineligible, at the halfway point of sentence, to have their cases considered by the Parole Board for early release on licence under section 35(1) of the same Act. The provisions only apply to offenders whose offences were committed before 4 April 2005. Under the existing provisions of the 1991 Act such prisoners' applications for early release can only be determined by the Secretary of State. This provision is made to address the fact that existing provisions were the subject of a declaration of incompatibility as regards Article 14 (when read with Article 5) of the ECHR in the case of *R (Hindawi and Headley) v Secretary of State for the Home Department* [2006] UKHL 54.

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

Section 28: Release of fine defaulters and contemnors under Criminal Justice Act 1991

249. This section concerns the early release of fine defaulters and contemnors on compassionate grounds under the 1991 Act. *Subsections (2) and (4)* amend section 45 of the 1991 Act by inserting a new subsection (3A). This subsection modifies section 36 of the 1991 Act so that fine defaulters and contemnors released early on compassionate grounds are no longer released on licence but instead are released unconditionally. It also removes the obligation to consult with the Parole Board in the case of long term prisoners.

250. As a consequence of this amendment, *subsection (3)* omits a provision dealing with the further release of fine defaulters and contemnors (if they are recalled following release on compassionate grounds) and *subsection (5)* omits a provision dealing with the duration of licences where they are released on compassionate grounds.

Section 29: Release of prisoners after recall

251. This section retains the power in section 254 of the 2003 for the Secretary of State to recall determinate sentence prisoners while on licence. Such prisoners will continue to have the right to be informed of the reason for their recall and to make representations against the decision to recall. However, the requirement to refer a recalled prisoner's case to the Parole Board and, following such a reference, the power of the Board to recommend re-release is repealed.

252. *Subsection (2)* inserts four new sections into the 2003 Act, which provide a new re-release procedure for prisoners recalled under section 254.

Section 255A Further release after recall: introductory

253. Section 255A introduces the new procedures governing further release following a prisoner's recall, including automatic release at the end of a fixed period of 28 days (subsection (4)). Subsection (2) provides that recalled prisoners will be eligible for automatic release unless they are serving an extended sentence or a sentence for a sexual or violent offence specified in Schedule 15, they have been released early on the home detention curfew scheme or on compassionate grounds and recalled before the date on which they would otherwise have been released or they have previously been recalled and released under section 255B(1)(b) or (2) or section 255C(2). However, eligible prisoners will only be released automatically if they are also suitable for automatic release, which means that the Secretary of State must be satisfied that they will not

present a risk of serious harm to members of the public if they are released after 28 days (subsections (3) and (5)).

254. Subsection (6) summarises which of the new further release procedures will apply to which category of recalled prisoner:

a) prisoners who are suitable for automatic release are dealt with under section 255B;

b) prisoners who are eligible but not suitable for automatic release, and prisoners serving a sentence for a specified offence and certain other prisoners, are dealt with under section 255C; and

c) extended sentence prisoners are dealt with under section 255D.

255. Subsection (7) defines "extended sentence prisoner" for this purpose as a prisoner serving an extended sentence under the 2003 Act, the Crime and Disorder Act 1998 or the 2000 Act.

256. Subsection (8) defines a "specified offence prisoner" for this purpose with reference to section 224 of the 2003 Act, namely as a prisoner serving a sentence imposed for an offence specified in Schedule 15 to the 2003 Act. Subsection (9) and (10) extend this definition to the relevant armed services offences (The definition of specified offence prisoner does not include those serving extended sentences).

257. Subsection (12) sets out how consecutive and concurrent sentences should be treated for the purpose of determining whether the prisoner is ineligible for automatic release because he has, during the same term of imprisonment, already been released under section 255(1)(b) or (2) or 255C(2).

258. Subsection (13) defines "serious harm" for the purpose of assessing a prisoner's suitability for automatic release as a risk of death or causing serious physical or psychological personal injury.

259. Subsection (14) defines term of imprisonment to ensure that it includes determinate sentences of detention imposed on juveniles under section 91 of the 2000 Act or section 228 of the 2003 Act

Section 255B Automatic release

260. Subsection (1) requires the Secretary of State to inform a prisoner entitled to automatic re-release that he will be released after 28 days. It also requires him to release the prisoner automatically at the end of the 28 days unless he has already been released under the provisions of subsection (2).

261. Subsections (2) and (3) give the Secretary of State the discretionary power to release any recalled prisoner subject to automatic release at any time prior to the expiry of the 28 day recall period if the Secretary of State is satisfied that it is not necessary for the protection of the public for that prisoner to remain in prison.

262. Subsection (4) requires the Secretary of State to refer to the Parole Board the case of any prisoner subject to automatic release who exercises the right under section 254(2) to make representations against the decision of the Secretary of State to recall him. Subsection (5) provides that if the Parole Board then recommends immediate re-release, the Secretary of State must give effect to that recommendation.

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

255C Specified offence prisoners and those not suitable for automatic release

264. Subsection (1) provides that section 255C applies to recalled prisoners who are serving a sentence (other than an extended sentence) for a specified offence, to recalled prisoners who are ineligible for automatic release because of section 255A(2)(b) or (c) and to recalled prisoners who were eligible but were not considered suitable for automatic release.

265. Subsections (2) and (3) give the Secretary of State the discretionary power to release any recalled prisoner to whom this section applies at any time during the period of the recall if he is satisfied that it is not necessary for the protection of the public for that prisoner to remain in prison.

266. Subsection (4) requires the Secretary of State to refer to the Parole Board the case of any prisoner to whom this section applies who exercises the right under section 254(2) to make representations against the decision of the Secretary of State to recall him. In any event, the Secretary of State is required to refer to the Board at the end of 28 days the case of any prisoner to whom this section applies who has not been released by that time. Subsection (5) provides that if the Parole Board recommends the immediate release of a prisoner referred to it under subsection (4), the Secretary of State must give effect to that recommendation.

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

255D Extended sentence prisoners

268. This section applies to those prisoners recalled under section 254(1) who are serving an extended sentence imposed under the 1998 Act, the 2000 Act or the 2003 Act.

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

270. *Subsection (3)* of section 29 makes a minor consequential amendment to section 256 of the 2003 Act.

Section 30: Further review and release of prisoners after recall

271. *Subsections (1) to (4)* amend section 256 of the 2003 Act to remove the requirement for the Parole Board to fix the date of the next review of a prisoner recalled under section 254(1) and for whom the Board has declined to recommend immediate release or to fix a future re-release date under section 256(1)(a). Instead, the Parole Board may determine a reference by making no recommendation as to a prisoner's release. *Subsection (5)* makes a consequential amendment to the heading of section 256.

272. *Subsection (6)* inserts a new section 256A, dealing with further review, into the 2003 Act. This requires the Secretary of State to refer recalled prisoners to the Parole Board at least every 12 months after the prisoner's last review by the Board, with discretion to refer the case earlier. The Parole Board also has the power to recommend referral at any time before the expiry of 12 months from the prisoner's last Parole Board review.

273. When determining a referral by the Secretary of State, the Parole Board may recommend immediate release, fix a date for future release or make no recommendation as to release. The Secretary of State must give effect to any recommendation made by the Parole Board to release the prisoner.

Section 31: Recall of life prisoners: abolition of requirement for recommendation by Parole Board

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

Section 32: Release of prisoners recalled following release under Criminal Justice Act 1991

275. This section concerns the further release of prisoners released on licence under the 1991 Act and then recalled under section 254(1) of the 2003 Act.

276. *Subsection (1)* inserts section 50A into the 1991 Act, a new section applying to prisoners released under the 1991 Act and subsequently recalled to prison under section 254(1) of the 2003 Act. Section 50A(2) specifically precludes the Secretary of State from releasing a prisoner who falls within the criteria set out in subsection (1) under any of the following 1991 Act release provisions:

a) section 33 – the duties to release short term and long-term prisoners;

b) section 33A – the duty to release a prisoner released early under the Home Detention Curfew Scheme or on compassionate grounds then subsequently recalled;

c) section 34A – the power to release a short term prisoner early under the Home Detention Curfew Scheme;

d) section 35 – the duty to release long term prisoners serving less than 15 years and the power to release long term prisoners serving 15 years or more once they have served one-half of their sentence if so recommended by the Parole Board; and

e) section 43(4) – the duty to release short term young offenders at the halfway point of their sentence.

277. New section 50A also provides that the further release on licence of such prisoners will be governed by the 2003 Act rather than the 1991 Act. Whether such a prisoner is re-released under the 2003 Act or on compassionate grounds under section 36 of the 1991 Act, the licence will be governed by the relevant provisions of the 2003 Act. That means that it will remain in force until the end of the sentence, the conditions of the licence will be the standard conditions prescribed by the Secretary of State under section 250 of the 2003 Act, and may also include other conditions in accordance with section 250, and the offender will be subject to a duty to comply with the licence conditions (new section 50A(4) and (5)).

278. New section 50(A)(6) (7) and (8) modify sections 249 and 250 of the 2003 Act in their application to persons covered by the new section.

279. New section 50A(9) ensures that the rules relating to the treatment of consecutive and concurrent terms in the 1991 Act continue to apply to prisoners released under that Act and subsequently recalled under section 254(1) of the 2003 Act.

280. New section 50A(10) requires that those prisoners who were originally released under the provisions of the 1991 Act and are subsequently recalled under the section 254(1) of the 2003 Act will not be subject to any of the provisions of Part 2 of the 1991 Act concerning licence duration and conditions, except as expressly provided by section 50A(7)(b) and (9).

281. Paragraph 12 of Schedule 27 provides that new section 50A applies only to those prisoners who are recalled under section 254(1) of the 2003 Act on or after the date on

which section 32 is commenced regardless of when they were initially released under Part 2 of the 1991 Act.

282. *Subsection (2)* of section 32 modifies the application of the savings in the Commencement Order which implemented Chapter 6 of Part 12 of the 2003 Act so as to remove any inconsistency with the provision made by the new section 50A.

Section 33: Removal under Criminal Justice Act 1991

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

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

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

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

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

- a prisoner serving an extended sentence;
- a prisoner serving a sentence under the Prisoners (Return to Custody Act) 1995;
- a prisoner subject to registration under the Sexual Offenders Act 2003.
- a prisoner subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983.

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

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

Section 34: Removal under Criminal Justice Act 2003

290. This section makes broadly similar provision to that made by section 33, but in relation to the equivalent provisions of the 2003 Act. The amendments make similar extensions to the availability of removal from the UK under the early removal scheme as set out in Chapter 6 of Part 12 of that Act.

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

292. *Subsection (6)* removes a number of exclusions which bar certain categories of prisoner from removal under the early removal scheme. Those exclusions mirror the exclusions removed by section 33(6). *Subsection (5)* removes a time restriction which is found only in the 2003 Act early removal scheme provisions. The result will allow the removal under the scheme of -

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

- those who have not served at least 4 weeks of their sentence.

293. *Subsections (7), (8) and (9)* make consequential amendments arising from the inclusion of the new category of prisoners who are to be eligible for removal under the early removal scheme.

Section 35: Referral conditions

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

295. Under section 16 of the 2000 Act, a referral order cannot be given at present to an offender where the sentence: is fixed by law; is so serious that the court decides a custodial sentence is absolutely necessary; or the offence is relatively minor and the court proposes to give an absolute discharge.

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

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

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

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

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

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

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

300. *Subsection (3)* inserts a new subsection (2) into section 17 of the 2000 Act, the effect of which is modify the conditions that must be met before a discretionary referral order may be made. As with mandatory referral orders, the fact that the offender has

previously been bound over to keep the peace would no longer be a bar to making a discretionary order. In addition, it would now be possible to make a discretionary order where the offender had one previous conviction and where, in respect of that previous conviction, a referral order had not been made.

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

Section 36: Power to revoke a referral order

302. *Subsection (2)* inserts a new section 27A into Part 3 of the 2000 Act (which deals with the mandatory and discretionary referral of young offenders). Under this new section a power is provided for a youth offender panel to refer the offender back to the appropriate court where they consider it is in the interests of justice for the referral order to be revoked. This will allow a young offender's referral order to be revoked early where the offender makes good progress or where there are other good reasons to do so.

Section 37: Extension of period for which young offender contract has effect

303. This section inserts a new section 27B into Part 3 of the 2000 Act and inserts a new Part into Schedule 1 to that Act (further court proceedings). The new section provides a power for the youth offender panel to refer the offender back to the appropriate court where they consider it is in the interests of justice for the period of the referral order to be extended. The effect of the new section and new Part of that Schedule is that the court may extend the period of the order by up to 3 months subject to the over-arching maximum period for a referral order of 12 months.

Section 38: Imposition of unpaid work requirement for breach of community order

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

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

Section 39: Youth default orders

306. At present where a magistrates' court would, but for section 89 of the 2000 Act (which restricts courts from imprisoning persons aged under 21), have power to commit to prison a person under the age of 18 for a default consisting in failure to pay a sum adjudged to be paid by a conviction, for instance a fine, the court may take enforcement proceedings against the parent or guardian under section 81 of the Magistrates' Courts Act 1981. This section makes provision in *subsections (1) and (2)* for a magistrates' court to impose a youth default order if a person aged under 18 defaults on a fine imposed following a conviction, instead of taking proceedings against the parent or guardian. A youth default order may require the court to order the young person in default to undertake unpaid work (if the person is 16 or 17), attend an attendance centre or be subject to a curfew.

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

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

309. *Subsection (6)* provides that certain provisions relating to YROs have effect in relation to youth default orders with the modifications set out in Schedule 7.

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

Schedule 7: Youth default orders: Modification of provisions applying to youth rehabilitation orders

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

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

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

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

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

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

Section 40: Power to impose attendance centre requirement on fine defaulter

317. This section re-enacts, with appropriate modifications to make them applicable to the new sentencing framework, one of the fine default provisions in section 60 of the 2000 Act. That provision gives a court with the power to commit a fine defaulter aged under 25 to prison a power to send him or her to an attendance centre instead. Section 40 achieves the re-enactment by amending section 300 of the 2003 Act, which provides similar powers to impose unpaid work requirements or curfew requirements on fine defaulters as an alternative to committal to prison. Under section 300, an order imposing an unpaid work requirement or a curfew requirement is called a "default order".

Section 41: Disclosure of information for enforcing fines

318. Section 41 inserts new paragraphs 9A, 9B and 9C into Part 3 of Schedule 5 to the Courts Act 2003.

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

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

address, to be obtained. This enables the person in respect of whom the request is made to be identified.

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

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

Part 3: Appeals

Section 42: Power to dismiss certain appeals following references by the CCRC: England and Wales

321. Section 42 inserts a new section, section 16C, into the 1968 Act. There have been a number of cases in which the Court of Appeal has considered that it was obliged to quash a conviction solely because there has been a development in the common law, or in the interpretation of a statutory provision, since the date of the conviction. Where this would be the only ground for allowing an appeal, an extension of time in which to seek leave to appeal is usually refused if an application is made directly to the Court of Appeal. However, when cases are referred to the Court by the CCRC, this leave is not required and convictions in such cases have been required to be quashed, even though the Court might well have refused leave had leave been required.

322. Subsection (1) of new section 16C lists the provisions under which the CCRC may refer cases to the Court of Appeal, including old cases where the verdict was guilty but insane. Subsections (2) and (3) provide that where the only ground for allowing the appeal is that there has been a development in the law since the date of conviction, the Court may dismiss the appeal if they would have refused an extension of time within which to seek leave to appeal.

323. In asking itself whether it would have refused an application for an extension of time, the Court must assume that the appellant would have been entitled to make such an application. This is necessary to prevent the condition in subsection (3) being met simply because the applicant has previously appealed or applied for leave.

Section 43: Power to dismiss certain appeals following references by the CCRC: Northern Ireland

324. Section 43 makes similar provision to that in section 42 in respect of Northern Ireland.

Section 44: Determination of prosecution appeals: England and Wales

325. Section 44 alters the test in subsection (5) of section 61 of the 2003 Act for ordering a retrial (or that the trial should resume) where the Court of Appeal allow a prosecution appeal against a terminating ruling. At present where the prosecution successfully appeal against a judge's decision that has the effect that proceedings should stop (for example on a submission at the end of the prosecution evidence that the defendant has no case to answer), the defendant must be acquitted unless the Court consider it "necessary in the interests of justice" for the trial to continue or for a fresh trial to take place. The substituted subsection (5) has the effect that the trial must continue or a fresh trial must take place unless the Court considers that the defendant could not receive a fair trial.

Section 45: Determination of prosecution appeals: Northern Ireland

326. Section 45 makes similar provision to that in section 44 in respect of Northern Ireland.

Section 46: Review of sentence on a reference by Attorney General

327. Section 46 inserts new subsections (3A) and (3B) into section 36 of the 1988 Act. Under section 36 of the 1988 Act, the Attorney General has the power to refer cases concerning certain offences to the Court of Appeal on the grounds that the sentence imposed is unduly lenient. The Court of Appeal then has the discretion to quash the sentence and, replace it with one that it considers appropriate for the case. As a matter of sentencing practice, the Court of Appeal, when increasing a sentence which in its view is unduly lenient, sometimes operates a "double jeopardy" discount in favour of the offender to take account the fact that they are going through the sentencing process for a second time.

328. A person who is the subject of a life sentence or another indeterminate sentence has no certain prospect of a particular release date. Section 272 of the 2003 Act amended section 36 of the 1988 Act to prevent the Court of Appeal from applying such a "double jeopardy" discount in referred cases relating to minimum term orders under section 269(2) of the 2003 Act (mandatory life sentence cases). Section 46 extends this to cases relating to minimum term orders under section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (discretionary life sentence cases and other indeterminate sentences). The effect is that the practice of allowing a "double jeopardy" discount is abolished in cases referred under section 36 of the 1998 Act in respect of the following types of sentence: a sentence of imprisonment for life; a sentence of detention during Her Majesty's pleasure or for life under section 90 or 91 of the 2000 Act; a sentence of custody for life under section 93 or 94 of the 2000 Act; a sentence of imprisonment or detention for public protection under section 225 of the 2003 Act and a sentence of detention for public protection under section 226 of the 2003 Act.

Section 47 and Schedule 8: Further amendments relating to appeals in criminal cases

329. Section 47 introduces Schedule 8. *Paragraphs 2 to 5* of Schedule 8 amend sections 1, 11, 12 and 15 of the 1968 Act to impose a time limit of 28 days on the trial judge's power to grant a certificate of fitness for appeal in England and Wales. This provides consistency between the time within which this power may be exercised and the 28 day limits on the Crown Court's power to grant bail when a certificate is granted (see section 81 of the Supreme Court Act 1981) and on the giving of notice of an application for leave to appeal (see section 18 of the 1968 Act). *Paragraphs 15 to 17* of Schedule 8 make similar provision for Northern Ireland.

330. *Paragraph 6* of Schedule 8 amends section 4 of the 1968 Act. It empowers the Court of Appeal in England and Wales, when they quash a conviction, to re-sentence the appellant for any other offence for which he was sentenced by the court below on the same day as he was sentenced for the conviction which has been quashed. This has general application, but is particularly likely to be of use in cases in which a defendant has received an indeterminate sentence of imprisonment for public protection for an offence that was subsequently successfully appealed and was also convicted of another offence, the seriousness of which was reflected in the tariff for the indeterminate sentence rather than in a separate determinate sentence. Provided that the two sentences were originally passed on the same day, the new provision enables the Court of Appeal to re-sentence the defendant in respect of the other offence, even if it was on a separate indictment, whereas at present it can only do so if both offences were on the same indictment. For the purposes of section 4, sentences which are passed on different days will, in effect, be treated as passed on the same day if the court in passing any one of them states that it is treating them as substantially one sentence. *Paragraph 18* of Schedule 8 makes similar provision for Northern Ireland.

331. *Paragraphs 7 to 8* rationalise powers relating to interim hospital orders imposed by the Court of Appeal in England and Wales. Currently, where the Court impose such an order under section 6, 11, 14 or 16B of the 1968 Act, the powers to renew or terminate

the order, to deal with the offender on termination, and to deal with the offender if he absconds, all lie with the court below.

332. The amendments will mean that, in an appealed case, interim hospital orders imposed by the Court of Appeal will now usually be extended and terminated by the Court itself, and the Court itself will be able to deal with the offender on termination of the order. There is an exception for offenders who abscond during an interim hospital order: absconders will be brought before and dealt with by the court below. These provisions will apply whatever section of the 1968 Act the Court originally used to impose the order. *Paragraphs 19 and 20* of Schedule 8 make similar provision for Northern Ireland.

333. *Paragraph 9* allows a single judge sitting in the Court of Appeal in England and Wales to exercise the power to renew (but not terminate) an interim hospital order which was imposed by the Court (section 31 of the 1968 Act is amended, as is the case with the provisions regarding single judges later in the schedule). This removes the need for a panel of Court of Appeal judges to decide what may be a routine unopposed extension. *Paragraph 21* of Schedule 8 makes similar provision for Northern Ireland.

334. *Paragraph 10* extends the powers of the Court of Appeal in England and Wales to compel the production of documents and the attendance of witnesses (under section 23 of the 1968 Act). It deals with three separate matters. *Paragraphs 22 and 23* of Schedule 8 make similar provision for Northern Ireland.

335. First, it clarifies that the powers to order the production of documents and the attendance of witnesses, and to receive evidence, can be used for the purposes of determining applications for leave to appeal as well as the appeal itself.

336. Secondly, it ensures that the Court can call and compel to attend persons, such as jurors or lawyers, who may be able to give relevant evidence to the Court of Appeal because of their presence at trial or other involvement in the proceedings below. The Court already, in appropriate cases, receives evidence from such persons; this change merely ensures that the Court is able, when they think it necessary or expedient in the interests of justice, to compel the attendance of such persons and order their examination. Rules of legal professional privilege, and the common law prohibition on the Court inquiring into events in the jury room, will continue to apply. This change is not intended to allow the Court to compel a person to give evidence on appeal if he would have been immune from being compelled to give that evidence at trial because of his or her status as, for example, the accused, a co-defendant, a spouse or a civil partner.

337. Thirdly, it clarifies that where the Court orders the production of a document, it can require production to the Court itself or to the appellant or the respondent.

338. *Paragraph 11* of Schedule 8 allows a single judge to exercise the power to give leave to appeal in certain interlocutory appeals in England and Wales. This removes an omission whereby a single judge could grant leave in the majority of appeals but could not do so in appeals against decisions made at preparatory hearings under section 9 of the Criminal Justice Act 1987 or under section 35 of the Criminal Procedure and Investigations Act 1996. *Paragraph 25* of Schedule 8 makes similar provision for Northern Ireland.

339. *Paragraph 12* allows a single judge to make directions that cannot be appealed to a full Court of Appeal in England and Wales. The intention is that this power should normally be exercised by the Lord Justice who will preside at the appeal hearing proper. This is intended to allow the Court of Appeal to deal quickly and efficiently with procedural issues.

340. *Paragraph 13* provides that, when the prosecution successfully appeals from the Court of Appeal in England and Wales to the Supreme Court (currently, the House of Lords), an offender can be compelled to serve out any remainder of his sentence unless the Court of Appeal have actively made an order to the contrary effect. It addresses a problem relating to cases where the Court of Appeal have determined in the appellant's favour but which are to be appealed to the Supreme Court. The provisions ensure that in such a

case the Court can no longer simply release the applicant (with the effect, currently, that he is immune from further detention whatever the decision of the Supreme Court) but will be obliged to order either his continued detention, or that he not be released except on bail, or that he be released without bail. Only if the Court order release without bail will the appellant have no further liability to detention as a result of the decision of the Supreme Court. This provision will ensure that an applicant will be liable to continue serving any remainder of his sentence if the Supreme Court find against him, unless the Court of Appeal have made an explicit decision that it is in the interests of justice that the defendant should not be liable to further detention. *Paragraph 24* of Schedule 8 makes similar provision for Northern Ireland.

341. *Paragraph 26* of Schedule 8 makes consequential amendments to section 5 of the Administration of Justice Act 1960 in connection with the detention or release on bail of defendants pending appeal to the Supreme Court in England and Wales (currently, the House of Lords), as outlined in paragraph 13. These consequential amendments will affect those who appeal to the Supreme Court from a decision of the High Court in a criminal cause or matter.

342. *Paragraphs 27 and 28* of Schedule 8 amend section 49 of the Judicature (Northern Ireland) Act 1978 and section 155 of the 2000 Act to increase from 28 to 56 days the time within which the Crown Court can vary or rescind a sentence. This will allow more time for correction of errors and is therefore intended to reduce the number of cases requiring the attention of the Court of Appeal. An example of a case in which this provision might be used is where deduction from sentence for time served in custody on remand has been made on the basis of inaccurate or incomplete information. There will no longer be a separate time limit applying to sentences imposed following a joint trial on an indictment; the 56-day limit will apply in all cases, beginning on the day on which the sentence was imposed.

Part 4: Other Criminal Justice Provisions

Section 48: Alternatives to prosecution for offenders under 18

343. *Subsection 1* gives effect to Schedule 9 which makes provision for Youth Conditional Cautions. Similar provision for adult conditional cautions is made in Part 3 of the 2003 Act, as amended by sections 17 and 18 of the Police and Justice Act 2006. The Schedule also amends section 65 of the 1998 Act which relates to reprimands and final warnings.

344. *Subsection (2)* provides the Secretary of State with the power (subject to the affirmative resolution procedure) to amend the provisions in new sections 66A-66H of the Crime and Disorder Act 1998 in respect of youth conditional cautions for those aged 15 and under. This is necessary because the needs and specific requirements of those aged 10-15 are likely to be different from those aged 16 and 17. Subsequent to consultation on the younger age range, it may be necessary to amend the provisions on youth conditional cautions for this age group.

Schedule 9: Alternatives to prosecution for offenders under 18

345. *Paragraph 2* amends section 65 of the 1998 Act. That section provides for the giving of reprimands and final warnings to children and young offenders. *Paragraph 2(2)* amends section 65(1) of the 1998 Act which sets out the conditions that must be satisfied before a reprimand or warning may be given. Paragraph 2(2)(a) amends section 65(1)(b) – which requires a constable to be satisfied that, on the evidence, there would be a realistic prospect of the offender being convicted - so as to bring it into line with the equivalent test for adult conditional cautions, namely that there is sufficient evidence to charge the offender with the offence. No practical difference is intended between the existing and revised test. Paragraph 2(2)(b) amends the test in section 65(1)(d) so that no young person may be given a reprimand or warning where he or she has previously been given a youth conditional caution. Paragraph 2(3) amends section 65(3) so as

to require a constable, when considering whether to warn a young person (who has previously received a warning), to be satisfied that the offence is not so serious as to require either (as now) the person to be charged or a youth conditional caution to be given. Paragraph 2(4) amends section 65(6), which places a duty on the Secretary of State to issue guidance in respect of reprimands and warnings. As a result of the amendment, such guidance will need to set out the criteria for determining whether an offence is not so serious as to require the offender to be charged (as now), or given a youth conditional caution.

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

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

New section 66A of the 1998 Act: Youth conditional cautions

348. New section 66A of the 1998 Act defines a youth conditional caution and provides that it may be given to a young person aged 10 to 17 if the offender has not previously been convicted of an offence and five other requirements, listed in new section 66B, are met. The conditions which may be imposed are restricted to those aimed at the rehabilitation of the offender, ensuring that the offender makes reparation for the offence or punishing the offender.

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

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

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

New section 66C of the 1998 Act: Financial penalties

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

section 66C(1) must also specify the maximum amount of the financial penalty that may be specified for each offence or description of offence.

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

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

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

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

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

355. New section 66E provides that if the offender fails without reasonable excuse to comply with the conditions attached to the conditional caution he or she may be prosecuted for the offence. If proceedings are commenced the document referred to in new section 66B(6) is admissible in evidence, and the conditional caution ceases to have effect.

356. New section 66E(4) and (5) apply section 24A of the 2003 Act with the necessary modifications. Section 24A confers on a constable a power of arrest without warrant where an offender is suspected of having breached the conditions of a conditional caution without reasonable excuse; this is in order to enable a quicker, more effective means of facilitating prosecution for the original offence

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

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

New section 66G of the 1998 Act: Code of practice on youth conditional cautions

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

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

New section 66H of the 1998 Act: Interpretation

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

361. *Paragraph 4* of Schedule 9 amends section 114 of the 1998 Act to specify the appropriate parliamentary procedure for each of the new order-making powers conferred by new sections 66A, 66C, 66G and 66H.

Section 49 and Schedule 10: Protection for spent cautions under the Rehabilitation of Offenders Act 1974

362. Section 49 introduces Schedule 10 which amends the 1974 Act so as to provide protection of spent cautions.

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

364. The 1974 Act currently applies only to convictions. Schedule 10 amends the 1974 Act so as to apply its provisions, with appropriate modifications, to adult and youth conditional cautions, other cautions (for example, "simple" cautions issued by the police), reprimands and warnings given to children and young people, and cautions given in a jurisdiction outside England and Wales (see the definition of a caution in new section 8A(2) of the 1974 Act inserted by *paragraph 3* of Schedule 10).

365. *Paragraph 4* of Schedule 10 inserts new section 9A into the 1974 Act; this makes provision in respect of the unauthorised disclosure of spent cautions (mirroring the provisions in section 9 of the 1974 Act relating to the unauthorised disclosure of spent convictions). New section 9A makes it an offence for a relevant person (that is, someone who in the course of his official duties has access to caution information) to disclose caution information otherwise than in the cause of his or her duties or for any person to obtain caution information through fraud, dishonesty or bribery. New section 9A(5) enables the Secretary of State, by order (subject to the affirmative resolution procedure), to except specified classes of disclosure from the ambit of the offence. A similar order-making power is contained in section 9(5) of the 1974 Act, although the power has not been exercised.

366. *Paragraph 6*of Schedule 10 inserts a new Schedule 2 into the 1974 Act. Paragraph 1 of new Schedule 2 sets out the rehabilitation period for spent cautions. In the case of "simple" police cautions, reprimands and warnings, and cautions given in a jurisdiction outside England and Wales, the caution becomes spent at the time it is given. In the case of adult and youth conditional cautions the caution becomes spent after three months. This rehabilitation period for a conditional caution is extended where the offender is subsequently prosecuted and convicted for the offence in respect of which the conditional caution was given. In such cases the rehabilitation period for the caution is extended so that it is the same as the rehabilitation period for the offence.

367. Paragraph 3 of new Schedule 2 to the 1974 Act sets out the protection afforded to persons relating to their spent cautions and the ancillary circumstances in relation to such cautions (this term is defined in paragraph 2 of new Schedule 2 and includes the offence in respect of which the caution was given and any proceedings in relation to that offence). As a result of the protections afforded, no one may ask a question in civil proceedings that might lead to the disclosure of a spent caution and any person with

a spent caution applying for a job can truthfully answer "no" if asked if he or she has ever been cautioned. Failure to disclose a spent caution may not be taken as grounds for dismissing a person from employment. Under new paragraph 4 of Schedule 2 the Secretary of State may, by order (subject to the affirmative resolution procedure), specify exceptions to the protections afforded under paragraph 3. It is expected that such exceptions will be similar to those specified in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023), as amended, which, amongst other things, sets out kinds of employment, such as working with children and vulnerable adults, where spent cautions must still be disclosed.

368. Paragraph 5 of new Schedule 2 to the 1974 Act ensures that the protections afforded by paragraph 3 do not affect the operation of the caution itself (for example, if the conditions attached to a conditional cautions apply for a period longer than 3 months) or the operation of any enactment, for example section 65 of the Crime and Disorder Act 1998 which prevents the police from giving a child or young person more than 2 warnings and/or reprimands.

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

Section 50: Criminal conviction certificates and criminal record certificates

370. Section 50 makes amendments to Part 5 of the Police Act 1997 (the 1997 Act) consequential upon bringing cautions within the ambit of the 1974 Act. Part 5 of the 1997 Act provides the statutory framework for the disclosure of criminal records (under the aegis (in England and Wales) of the Criminal Records Bureau (CRB)) for employment and other purposes. *Subsection (2)* amends section 112 of the 1997 Act so that details of any unspent conditional caution would appear on a criminal conviction certificate (known as a CRB "Basic Disclosure"). *Subsection (3)* amends section 113A(6) of the 1997 Act so that details of spent cautions are included on criminal record certificates (CRB "Standard Disclosures") and enhanced criminal record certificates (CRB "Enhanced Disclosures").

Section 51: Bail conditions: electronic monitoring

371. Section 51 introduces Schedule 11. *Paragraph 1* of the Schedule introduces the amendments to the Bail Act 1976 that follow.

372. *Paragraph 2* of Schedule 11 extends section 3(6ZAA) of the 1976 Act to clarify the court's power to impose electronic monitoring of compliance with bail conditions on defendants aged 17 and over. It also adds a new subsection (6ZAB) to define electronic monitoring requirements.

373. *Paragraph 3* of Schedule 11 amends section 3AA of the 1976 Act, which sets out the conditions that must be satisfied before a court can order electronic monitoring of children and young persons, to make clear that it applies only to that age group, to reflect that electronic monitoring is now available across England and Wales and to remove some general provisions, which are transferred to a new section 3AC.

374. *Paragraph 4* of Schedule 11 inserts two new sections into the 1976 Act.

375. New section 3AB, which corresponds to the amended section 3AA, sets out the conditions that must be satisfied before a court can order electronic monitoring of those who are 17 or over. These are that:

- without the imposition of an electronic monitoring requirement, the defendant would not be granted bail;
- the court is satisfied that the necessary provision for electronic monitoring can be made for the defendant; and

- in the case of those aged 17 the local youth offending team has advised the court that electronic monitoring is suitable in the particular case.

376. New section 3AC is a general provision which deals with the arrangements for electronic monitoring and the associated powers of the Secretary of State. It gives the Secretary of State the power to make an order designating certain individuals as responsible officers for the supervision of electronic monitoring. It also requires the court to appoint a responsible officer in each case where it orders electronic monitoring. In addition, the Secretary of State may make rules regulating electronic monitoring and the functions of responsible officers.

377. *Paragraph 5* of Schedule 26 makes some consequential amendments to section 23AA of the Children & Young Persons Act 1969, which provides for the electronic monitoring of those remanded into local authority accommodation.

Section 52 and Schedule 12: Bail for summary offences and certain other offences to be tried summarily

378. Section 52 and Schedule 12 amend the 1976 Act to restrict the grounds on which a person charged with an imprisonable summary offence or a relevant low-level criminal damage offence may be refused bail.

379. Schedule 1 to the 1976 Act sets out the grounds on which a court may refuse bail in criminal proceedings (the "exceptions to the right to bail"): Part 1 of Schedule 1 currently applies where a defendant is accused or convicted of an imprisonable offence; Part 2 applies to non-imprisonable offences and has a more restricted list of exceptions than Part 1. Schedule 12 will disapply Part 1 for certain defendants, and instead insert and apply a new Part 1A. New Part 1A will include the four exceptions to the right to bail that are in Part 2 as well as four further exceptions, two of which derive from Part 1.

380. *Paragraph 2* of Schedule 12 amends section 3(6D)(a) of the 1976 Act so that the conditions of bail specified in that provision (which apply to persons for whom there is drug test evidence of a Class A drug and who are required to undergo a relevant assessment or participate in a follow-up) will still apply to defendants within new Part 1A.

381. *Paragraphs 3 to 5* of Schedule 12 insert a new section 9A into the 1976 Act and amend Part 1 of Schedule 1 to prescribe which defendants will fall within new Part 1A, which is inserted by *paragraph 6*. Part 1A will apply to a defendant charged with imprisonable offences that are -

a) summary offences, or

b) offences listed in Schedule 2 to the Magistrates' Courts Act 1980 (certain offences involving criminal damage), where the value involved is less than the relevant sum (currently £5000).

382. For offences listed in Schedule 2 to the Magistrates' Courts Act 1980 (criminal damage, related offences, and certain forms of aggravated vehicle-taking), a defendant over 18 will fall within new Part 1A if, under the procedure in section 22 of the Magistrates' Courts Act 1980 (for determining mode of trial), the court has decided it is clear that the value involved does not exceed £5000. New section 9A provides for a court to take the same decision in relation to defendants under 18, for the purposes of applying the 1976 Act.

383. Paragraph 1 of new Part 1A establishes which defendants fall within the new Part, and paragraphs 2 to 9 prescribe eight exceptions to the right to bail. Where an exception applies, the court need not grant bail to the defendant, but still has a discretion to do so which will be exercised having regard to all the circumstances of the case. The exceptions are as follows:

a) Paragraph 2 applies if, having been granted bail previously, the defendant has failed to surrender to custody and the court believes that, if released on bail, he would do so again.

b) Paragraph 3 applies if the defendant was on bail in criminal proceedings on the date of the offence and the court believes that, if released, he would commit an offence on bail.

c) Paragraph 4 applies if there are substantial grounds to believe that, if released on bail, the defendant would commit an offence by engaging in conduct that would be likely to cause physical or mental injury, or fear of such injury.

d) Paragraph 5 applies if the court is satisfied the defendant should be kept in custody for his own protection or, if a child or young person, for his own welfare.

e) Paragraph 6 applies if the defendant is in custody under the sentence of a court or officer under the Armed Forces Act 2006.

f) Paragraph 7 applies if, having been released on bail in proceedings for the same offence, the defendant was arrested under section 7 of the Bail Act (liability to arrest for absconding or breaking conditions of bail) and the court believes that, if released, he would:

- fail to surrender to custody;
- commit an offence while on bail,
- interfere with witnesses or
- otherwise obstruct the course of justice.

g) Paragraph 8 applies if it has not been practicable to obtain enough information to take decisions required by Part 1A due to lack of time since the proceedings began.

h) Paragraph 9 applies paragraphs 6A to 6C of Part 1 (exception applicable to drug users in certain areas) to defendants falling within Part 1A.

Section 53 and Schedule 13: Allocation of offences triable either way etc.

384. Section 53 introduces Schedule 13, which amends Schedule 3 to the 2003 Act.

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

386. The amendments made by Schedule 3 to the 2003 Act achieve this through, firstly, a revised procedure (called allocation) for deciding whether a case that is triable either way should be heard in the magistrates' court or in the Crown Court; secondly, abolition of committal and transfer proceedings and the substitution of a sending procedure like that already used to get indictable-only cases to the Crown Court; and, thirdly, abolition of the general power, contained in section 3 of the 2000 Act, to commit for sentence, except on a guilty plea "before venue" or where an indefinite or extended sentence is required. Under the scheme, the general power of committal for sentence is abolished for cases that magistrates decide to hear.

387. Most of the provisions of Schedule 3 to the 2003 Act are not yet in force.

388. The principal amendment in Schedule 13, which is made by *paragraph 7*, is to preserve the general power of a magistrates' court to commit to the Crown Court for sentence an offender whom it has convicted after a summary trial, if it considers that a Crown Court sentence should be available. Paragraph 22 of Schedule 3 to the 2003 Act provided for

this general power under section 3 of the 2000 Act to be replaced with a more limited power. As set out above, this limited the power to commit for sentence to cases where a defendant enters a guilty plea "before venue" (that is, before the court has made an allocation decision) to a serious either way offence which is beyond the magistrates' powers of punishment. Paragraph 22 has not been brought into force and *paragraph 7* of Schedule 13 to the Act removes it from Schedule 3 (so that the general power in section 3 of the 2000 Act will be preserved).

389. Although the general power to commit for sentence is preserved, *paragraph 8* of Schedule 13 amends Schedule 3 to the 2003 Act to make amendments of section 3 of the 2000 Act. The most important of these is the repeal of subsection (2)(b). This subsection refers to the longer than commensurate sentence for violent and sexual offences in section 80 of the 2000 Act. As that section has now been repealed (subject to savings) and replaced by the dangerousness provisions in Chapter 5 of Part 12 of the 2003 Act, it is appropriate to repeal section 3(2)(b).

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

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

Section 54: Trial or sentencing in absence of accused in magistrates' courts

392. Section 54 amends section 11 of the Magistrates' Courts Act 1980, which makes provision for the circumstances in which a magistrates' court may proceed in the absence of the defendant.

393. *Subsection (2)* amends subsection (1) of section 11 of the Magistrates' Courts Act 1980. The present subsection (1) provides that, where at the time and place appointed for trial or adjourned trial the prosecutor appears but the accused does not, the court has a discretion to proceed in the accused's absence. New subsection (1)(b) provides that in those circumstances, where the accused is 18 or over, the court must proceed with a trial in the absence of the accused unless it would be contrary to the interests of justice. Where the accused is under 18, the court's discretion to proceed in absence is unchanged (new subsection (1)(a)).

394. *Subsection (3)* inserts a new subsection (2A) into section 11 of the Magistrates' Courts Act 1980. This provides that the court may not proceed if it considers that there is an acceptable reason for the accused's absence.

395. *Subsection (4)* amends subsections (3) and (4) of section 11 the Magistrates' Courts Act 1980 to reflect the fact that they now only apply to proceedings specified in subsection (5) of that section.

396. *Subsection (5)* inserts into section 11 of the Magistrates' Courts Act 1980 a new subsection (3A) which provides that, where a court does impose a custodial sentence in the offender's absence, the person must be brought before the court before being taken to prison to start serving the sentence.

397. *Subsection (6)* inserts three new subsections into section 11 of the Magistrates' Courts Act 1980: (5), (6) and (7).

- New subsection (5) provides that the two limits on magistrates' courts' powers that are specified in subsections (3) and (4) apply where proceedings have been issued either by written charge and requisition or by way of an information followed by issue of a summons (i.e. in cases other than where the defendant was bailed to appear before the court on a certain date). In those cases, the court cannot pass a custodial sentence in the defendant's absence, and cannot impose any disqualification unless they have already adjourned. Where a defendant was bailed to return to the court, those restrictions do not apply.
- New subsection (6) makes clear that the court is not required to enquire into the reason for an accused's absence before deciding whether to proceed in his absence, although it is intended that the court should take account of facts known to it (eg about the effect of severe weather on public transport) in deciding whether an acceptable reason for the accused's absence exists.
- New subsection (7) requires the court to state in open court its reasons for not proceeding in absence where the accused is 18 or over.

Section 55: Extension of powers of non-legal staff

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

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

400. *Subsection (3)* amends subsection (5) of section 7A to make consequential changes to the definition of "bail in criminal proceedings" and to define preventative civil orders. These include restraining orders, parenting orders and other civil orders which follow criminal proceedings (such as ASBOs, drinking banning orders and football banning orders). The new subsection (5A) reproduces the existing definition of "trial" for the purposes of the section.

401. *Subsection (5)* inserts new subsections (8), (9) and (10) into section 7A. Subsections (8) and (9) provide that from 1 May 2011 Associate Prosecutors (formerly known as Designated Caseworkers) will cease to be exempt from the regulatory framework for persons who engage in legal activities provided for in the Legal Services Act 2007. Subsection (10) is included in case consequential amendments are required to the Legal Services Act 2007 to ensure that Associate Prosecutors can properly be catered for within the regulatory framework provided for by that Act. An order-making power (subject to the affirmative procedure) would enable appropriate modifications to be made to the 2007 Act, and if necessary other enactments (including section 7A), to this end.

402. Subsection (5) also inserts new subsections (11) and (12) into section 7A. Associate Prosecutors' trial remit is limited through subsection (2) to non-imprisonable summary

offences. The inclusion of subsections (11) and (12) provides a power that would allow the restriction on conducting proceedings in respect of imprisonable summary offences to be lifted by order (subject to affirmative procedure).

403. *Subsection (6)* amends section 15 of the Prosecution of Offences Act 1985 so as to enable designated members of staff to undertake binding over proceedings in the magistrates' court.

Criminal Legal Aid

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

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

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

Section 56: Provisional grant of right of representation

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

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

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

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

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

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

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

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

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

Section 57: Disclosure of information to enable assessment of financial eligibility

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

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

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

Section 58: Pilot schemes

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

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

421. *Subsection (3)* inserts a new section 18A. This provides that any instruments under sections 12 to 15, 17, 17A or 22(5) or paragraphs 1A to 5 of Schedule 3 may be made so as to have effect only for a specified period of up to twelve months, unless the Lord Chancellor extends this period where necessary to ensure the effective operation of a scheme or to coordinate it with another relevant pilot scheme, for up to eighteen months. The Lord Chancellor may further extend this period in order to cover any gap between the end of the pilot and full implementation. Any pilot scheme may apply in relation to one or more areas, type of court, type of offence or class of person.

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

Section 59: SFO's pre-investigation powers in relation to bribery and corruption: foreign officers etc.

423. Section 59 inserts a new section 2A into the Criminal Justice Act 1987. Section 2 of the Criminal Justice Act 1987 grants the Director of the Serious Fraud Office (SFO) powers to require a person to answer questions, provide information or produce documents for the purposes of an investigation.

424. The new subsection 2A(1) extends these powers to allow their use where the Director believes certain offences may have taken place and is considering whether to start an investigation.

425. The new subsection 2A(2) ensures that the investigatory powers under section 2(2) and 2(3) Criminal Justice Act 1987 can only be exercised against an individual during the pre-investigative stage where the Director of the SFO considers it expedient to do so.

426. The new subsection 2A(3) provides adaptations to secure that section 2 works properly during the pre-investigation stage.

427. The new subsection 2A(4) extends the offence under s.2(16) so that (among other things) it covers the destruction of documents which a person knows or suspects are relevant to the making of a determination whether to start a formal investigation.

428. New subsection 2A(5) limits the circumstances under which the pre-investigative powers can be used to where the suspected conduct would constitute a corruption offence under section 108 of the Anti-terrorism, Crime and Security Act 2001 (bribery and corruption: foreign officers etc). New subsection 2A(6) defines corruption offence.

429. *Subsection (3)* ensures that the investigative powers set out in the new section 2A apply in Northern Ireland and Scotland, in addition to England and Wales.

Section 60: Contents of an accused's defence statement

430. Section 60 amends the defence disclosure regime in Part I of the Criminal Procedure and Investigations Act 1996 so that an accused's defence statement will, in addition to the existing requirements, also have to set out particulars of any matters of fact on which he intends to rely in his defence.

431. *Subsection (1)* amends section 6A of the 1996 Act to add this new requirement to the list of matters to be included in a defence statement. *Subsection (2)* amends section 11(2)(f)(ii) of the 1996 Act so that the sanctions for failure to comply with the defence statement requirements (comment by the court or another party and the drawing of inferences by the court or jury) will apply.

Section 61: Compensation for miscarriages of justice

432. Section 61 amends the current provision for compensating victims of miscarriages of justice in section 133 of the 1988 Act.

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

434. Currently there is no time limit for making an application to the Secretary of State for compensation in respect of a miscarriage of justice. This means that applications can be received in respect of convictions that were quashed many years ago.

435. *Subsection (3)* amends section 133(2) of the 1988 Act to impose a time limit of two years within which an application under that section must be made. The two-year period begins with the date on which the conviction of the applicant was reversed or the date on which he was granted a pardon.

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

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

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

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

- There is no limit on the amount of compensation payable in respect of a miscarriage of justice. In determining the amount to be paid, the assessor uses principles analogous to those governing the assessment of damages for civil wrongs. Assessments are, as far as possible, intended to put the applicant back to the financial position he or she would have been in but for the miscarriage of justice.
- Section 133(4A) of the 1988 Act requires the assessor, when assessing the element of an award attributable to suffering, harm to reputation or similar damage (i.e. non-pecuniary loss), to take account of: (a) the seriousness of the offence and the severity of the punishment suffered by the applicant as a result of the conviction; (b) the conduct of the investigation and prosecution of the offence; and (c) other convictions of the applicant and any punishment resulting from them.
- The Note for Guidance sent to successful applicants states that the assessor may also make a deduction from the non-pecuniary loss element of an award to take account of conduct of the applicant which could be construed as contributing to the miscarriage of justice.
- As contributory conduct and other convictions and punishments were not taken into account in assessing the pecuniary element of an award, significant levels of awards could be made to applicants who have other serious convictions or who had contributed to the occurrence of the miscarriage of justice.

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

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

442. Section 133A(4) allows the assessor to make only a nominal award if he considers there to be exceptional circumstances which justify doing so. This might be the result, for example, in cases in which the applicant's own conduct contributed very significantly to the conviction, and/or the applicant has either a lengthy criminal record or has been convicted of particularly serious offences (whether before or after the miscarriage of justice in respect of which the claim is being made).

443. Section 133A(5) introduces overall limits on the amount of compensation payable in respect of a particular miscarriage of justice. The limit is £1,000,000 where the new section 133B applies (in summary, this is where the applicant has been in detention for more than 10 years as a result of the conviction) and £500,000 in all other cases. No compensation will be payable for pecuniary or non-pecuniary loss in excess of the relevant limit.

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

445. Section 133A(7) and (8) enables the overall compensation limit (as set by section 133A(5)) and the earnings compensation limit (as set by section 133A(6)) to be amended by the Secretary of State by order (subject to the affirmative procedure).

446. Section 133B defines when the higher overall compensation limit applies. The higher limit applies where the applicant has been in "qualifying detention" for at least 10 years at the time the conviction is reversed or the pardon is given. Qualifying detention includes, for example: time spent in prison or in a young offenders institution as a result of the sentence passed for the conviction which was subsequently quashed; time spent detained in a hospital under mental health legislation as a result of the conviction (ignoring, for these purposes, other conditions for such detention such as those relating to the person's health); and time spent on remand for the offence or for another offence where the charge was founded on the same facts or evidence.

447. However, a period will not count toward the 10-year threshold if during that period the applicant was in both "qualifying detention" and "excluded concurrent detention". Excluded concurrent detention is defined in the section, and includes, for example, periods in which the applicant was serving a concurrent sentence for a second conviction which has not been quashed (and has not resulted in a pardon). Note that in circumstances where the second conviction has been quashed but the person has been convicted at retrial and again sentenced to detention, the sentence imposed at retrial runs from the time when a like sentence passed at the original trial would have begun (see the 1968 Act, Schedule 2). Therefore, pre-retrial detention can be "excluded concurrent detention" if the retrial results in a conviction and sentence of detention.

448. *Subsection (8)* amends section 172 of the 1988 Act to extend the new sections 133A and 133B to Northern Ireland as well as England and Wales.

449. *Paragraph 22* of Schedule 27 sets out some transitional provisions dealing with the application of the new measures in section 61. Paragraph 22(1) provides that the two-year time limit introduced by section 61(3) will only apply to applications for

compensation made in relation to convictions reversed or pardons given on or after the date on which section 61 comes into force (the commencement date).

450. As a result of paragraph 22(2), the provisions for the assessment of compensation in the new sections 133A and 133B will apply in relation to applications made on or after the commencement date, and also to applications made before the commencement date but in respect of which the Secretary of State has not, before that date, determined whether there is a right to compensation.

451. Paragraph 22(3) and (4) provide that the changes to the definition of "reversed" introduced by section 61(5) apply to any conviction quashed on an appeal out of time (whether before or after the commencement date) if an application for compensation in relation to that conviction has not been made before the commencement date.

452. Paragraph 22(5) and (6) apply a time limit to applications for compensation in relation to convictions reversed and pardons given before the commencement date. Such applications must be made within the two years beginning with the commencement date. Applications made outside this time limit can be treated as made within the time limit if the Secretary of State considers that there are exceptional circumstances which justify doing so.

Section 62: Annual report on the Criminal Justice (Terrorism and Conspiracy) Act 1998

453. Section 62 repeals section 8 of the Criminal Justice (Terrorism and Conspiracy) Act 1998, which requires a report on the working of that Act to be laid before both Houses of Parliament at least annually.

Part 5: Criminal Law

Section 63: Possession of extreme pornographic images

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

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

456. *Subsection (5)* expands on subsection (4). It provides that where an image is integral to a narrative (for example a mainstream or documentary film) which taken as a whole could not reasonably be assumed to be pornographic, the image itself may be taken not to be pornographic even though if considered in isolation the contrary conclusion would have been reached.

457. *Subsection (6)* defines an "extreme image" for the purposes of the offence. An extreme image is one which is grossly offensive, disgusting or otherwise of an obscene character and which depicts one of a list of acts set out in subsection (7). These are explicit and realistic portrayals of:

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

- acts which result in, or are likely to result in, serious injury to a person's anus, breasts or genitals; this could include the insertion of sharp objects or the mutilation of breasts or genitals;
- acts which involve sexual interference with a human corpse; or
- a person performing an act of intercourse or oral sex with an animal.

458. The people and the animals portrayed must appear to a reasonable person to be real.

459. *Subsection (8)* sets out the definition of an image. It states that for the purposes of this offence, "an image" means either still images, such as photographs, or moving images, such as those in a film. The term "image" also incorporates any type of data, including that stored electronically (as on a computer disk), which is capable of conversion into an image. This covers material available on computers, mobile phones or any other electronic device. The scope of the definition of image is also affected by the requirement referred to above that persons and animals portrayed in an image must appear to be real. That requirement has the effect of excluding animated characters, sketches, paintings and the like.

460. *Subsection (9)* states that references to parts of the body include body parts that have been surgically constructed.

461. *Subsection (10)* requires proceedings to be instituted by or with the consent of the Director of Public Prosecutions.

Section 64: Exclusion of classified films etc.

462. This section provides an exclusion from the scope of the offence under section 63 for classified films.

463. An "excluded image" is defined in *subsection (2)* as an image which forms part of a series of images contained in a recording of the whole or part of a classified work. A "recording" is defined in *subsection (7)* as any disc, tape or other device capable of storing data electronically and from which images may be produced. This therefore includes images held on a computer.

464. The effect of the exclusion is that a person who has a video recording of a film which has been classified by the British Board of Film Classification and which contains images that, notwithstanding their context, might be caught by the offence in section 63, could not be liable for prosecution. The fact that the images are held as part of a BBFC classified film takes them outside the scope of the offence.

465. However, the effect of *subsection (3)* is that the exclusion from the scope of the offence does not apply in respect of images contained within extracts from classified films which must reasonably be assumed to have been extracted solely or principally for the purpose of sexual arousal. Essentially the exemption for an image forming part of a classified work is lost where the image is extracted from that work for pornographic purposes. Subsection (7) defines "extract" to include a single image.

466. *Subsection (4)* provides that when an extracted image is one of a series of images, in establishing whether or not it is of such a nature that it must reasonably be assumed to have been extracted for the purpose of sexual arousal, regard is to be had to the image itself, and to the context it which it appears in the series of images. This is the same test as set out in subsection (4) of section 63. Subsection (5) of section 63 also applies in determining this question.

467. The effect of *subsection (5)* is that in determining whether a recording is a recording of a whole or part of a classified work, alterations due to technical reasons, such as a failure in the recording system, or due to inadvertence, such as setting the wrong time

for a recording, or the inclusion of extraneous material such as advertisements, are to be disregarded.

468. *Subsection (6)* makes it clear that nothing in section 64 affects any duty of a designated authority to take into account the offence in section 63 when considering whether to issue a classification certificate in respect of a video work.

469. *Subsection (7)* sets out the definitions used in this section. *Subsection (8)* states that section 22(3) of the Video Recordings Act 1984 applies. The effect of section 22(3) is that where an alteration is made to a video work in respect of which a classification certificate has been issued the classification certificate does not apply to the altered work.

Section 65: Defences: general

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

- that the person had a legitimate reason for being in possession of the image; this will cover those who can demonstrate that their legitimate business means that they have a reason for possessing the image;
- that the person had not seen the image and therefore neither knew, nor had cause to suspect, that the images held were extreme pornographic images; this will cover those who are in possession of offending images but are unaware of the nature of the images; and
- that the person had not asked for the image - it having been sent without request - and that he had not kept it for an unreasonable period of time; this will cover those who are sent unsolicited material and who act quickly to delete it or otherwise get rid of it.

Section 66: Defence: participation in consensual acts

471. An additional defence for those who participate in the creation of extreme pornographic images is provided for in this section. *Subsection (1)(b)* limits this defence, however, by excluding the images listed in section 63(7)(d) - those showing images of bestiality. Also excluded are necrophilia images which depict a real corpse.

472. *Subsection (2)* sets out the matters that a defendant must prove, on the balance of probabilities, in order to benefit from the defence. He must prove that he directly participated in the act or acts portrayed in the image and that the act(s) did not involve the infliction of non-consensual harm on any person. Where the image depicts necrophilia the defendant must also prove that the human corpse portrayed was not in fact a corpse.

473. *Subsection (3)* defines non-consensual harm as harm which is of such a nature that, in law, a person cannot consent to it being inflicted on him or herself, or harm to which a person can consent but did not in fact consent.

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

474. The penalties that will apply to persons found guilty of an offence under section 63 are set out in this section.

475. On conviction on indictment, the maximum sentence is imprisonment for three years for possession of images covered by section 63(7)(a) or (b) (life threatening acts, or serious injury), and imprisonment for two years for possession of images covered by section 63(7)(c) or (d) (necrophilia or bestiality).

476. The combined effect of section 67 and the transitional provision in *paragraph 23* of Schedule 27 is that initially the maximum sentence on summary conviction of the offence in England and Wales will be 6 months' imprisonment. On the commencement of section 154(1) of the 2003 Act, the maximum sentence on summary conviction in England and Wales will rise to 12 months. The maximum custodial penalty in Northern Ireland is six months

Section 68 and Schedule 14: Special rules relating to providers of information society services

477. Section 68 and Schedule 14 are intended to ensure that the provisions outlined above which make illegal the possession of extreme pornographic material are consistent with the UK's obligations under the EU E-Commerce Directive.

478. Schedule 14 ensures that providers of information society services who are established in England, Wales and Northern Ireland are covered by the new offence even when they are operating in other European Economic Area states. *Paragraphs 3 to 5* of the Schedule provide exemptions for internet service providers from the offence of possession of extreme pornographic material in limited circumstances, such as where they are acting as mere conduits for such material or are storing it as caches or hosts.

Section 69: Indecent photographs of children: England and Wales

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

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

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

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

Section 70: Indecent photographs of children: Northern Ireland

483. This section amends the Protection of Children (Northern Ireland) Order 1978. The effect is to make the same changes to corresponding Northern Ireland legislation as section 69 does to the legislation in England and Wales.

Section 71: Maximum penalty for publication etc. of obscene articles

484. This section raises the maximum penalty on indictment for offences under the Obscene Publications Act 1959 from three years' imprisonment to five years' imprisonment. The

new sentence will not apply to offences committed before the commencement of this section (see paragraph 24 of Schedule 27).

Section 72: Offences committed outside the United Kingdom

485. *Subsection (1)*substitutes a new section 72 into the Sexual Offences Act 2003 (which allows for the prosecution of British citizens or UK residents for sexual offences against children committed abroad).

486. New section 72(1) makes it an offence for a UK national to commit an act outside the UK which would constitute a relevant sexual offence if done in England and Wales or Northern Ireland. This has the effect of removing the requirement that the act committed must have been illegal in the country where it took place, in respect of the prosecution of UK nationals. However, this requirement remains for the prosecution of UK residents under new section 72(2) and those who become UK residents or nationals under new section 72(3) and (4). Where a person becomes a UK national or resident after having committed a relevant sex offence, in a country outside the UK, such a person must also be a national or resident at the time the proceedings are brought.

487. New section 72(9) provides definitions of "country", "UK national" and "UK resident".

488. New sections 72(5) to (8) replicate provisions in the current section 72. They provide rules relating to how the prosecution can prove that the offence was an offence in the country in which it was committed.

489. *Subsections (2), (3) and (4)* amend Schedule 2 to the Sexual Offences Act 2003. The effect of these amendments is that the new section 72 will apply to sexual offences committed against children under 18, rather than under 16, or in the case of Northern Ireland under 17.

Section 73 and Schedule 15: Grooming and adoption

490. Section 73 introduces Schedule 15. *Paragraph 1* of Schedule 15 amends section 15 (1) of the Sexual Offences Act 2003. It widens the offence of grooming so that an offence will be committed by an adult where a child under 16 travels to meet the adult or the adult arranges to meet the child, following two earlier communications, if the adult intends to commit a sexual offence against the child during or after the meeting.

491. *Paragraph 3* of Schedule 15 amends section 27(1)(b) of the Sexual Offences Act 2003 to include reference to the relevant section of the Adoption Act 1976, which governs the effect of adoptions made before 30 December 2005. The result is that the provision applies to adoptions made before 30 December 2005, as well as to adoptions made on or after that date (which are governed by the Adoption and Children Act 2002). *Paragraph 4* amends similarly the corresponding defence in section 29(1)(b) of the Sexual Offences Act 2003 so that the defence for sexual relationships which predate family relationships is not available where there is a prescribed category of relation irrespective of whether a person has been adopted and irrespective of the date of adoption.

492. *Paragraphs 5 and 6* amend sections 64 and 65 of the Sexual Offences Act 2003 so that the offences of sex with an adult relative are committed where an adoptive parent has consensual sex with their adopted child when he or she is aged 18 or over. The adopted person does not commit the offence unless he or she is aged 18 or over.

493. *Paragraph 7* amends section 47(1) of the Adoption Act 1976 so that section 39 of that Act (status conferred by adoption) does not have effect for the purposes of sections 64 and 65 of the Sexual Offences Act 2003. The result is that it is clear that pre-30 December 2005 adoptions are treated in the same way for the purposes of those sections of the Sexual Offences Act 2003 as subsequent adoptions.

Section 74 and Schedule 16: Hatred on the grounds of sexual orientation

494. Section 74 gives effect to Schedule 16, which amends Part 3A of the Public Order Act 1986 (hatred against persons on religious grounds) to create offences involving stirring up hatred on the grounds of sexual orientation.

495. New section 29AB of the 1986 Act defines "hatred on the grounds of sexual orientation". The definition covers hatred against a group of persons defined by reference to their sexual orientation, be they heterosexual, homosexual or bi-sexual.

496. *Paragraphs 6 to 11* of Schedule 16 amend, in turn, sections 29B to 29G of the 1986 Act so as to extend the various religious hatred offences in those sections to cover hatred on the grounds of sexual orientation. These offences involve the use of words or behaviour or display of written material (section 29B), publishing or distributing written material (section 29C), the public performance of a play (section 29D), distributing, showing or playing a recording (section 29E), broadcasting or including a programme in a programme service (section 29F), and possession of inflammatory material (section 29G).

497. In relation to each extended offence the relevant act (namely words, behaviour, written material or recordings or programme) must be threatening, and intended to stir up hatred on the grounds of sexual orientation. In the case of the offence under section 29B, there is a specific defence where the words or behaviour are used or displayed inside a private dwelling and the accused had no reason to believe that they can be heard or seen by a person outside that or any other private dwelling.

498. The offences differ from the offences of stirring up racial hatred, in Part 3 of the 1986 Act, in two respects. First, the offences apply only to "threatening" words or behaviour, rather than "threatening, abusive or insulting" words or behaviour. Second, the offences apply only to words or behaviour if the accused "intends" to stir up hatred on grounds of sexual orientation, rather than if hatred is either intentional or "likely" to be stirred up.

499. *Paragraphs 6(3) and 12 to 13*, *15 and 16* of Schedule 16 rectify technical defects in Part 3A of the 1986 Act as inserted into that Act by the Racial and Religious Hatred Act 2006.

500. *Paragraph 6(3)* of Schedule 16 omits section 29B(3) of the 1986 Act (which has not been commenced). This provides that a constable may arrest without warrant anyone he reasonably suspects is committing an offence under section 29B. This provision is unnecessary given the general power of arrest now in section 24 of the Police and Criminal Evidence Act 1984, as amended by the Serious Organised Crime and Police Act 2005.

501. The Racial and Religious Hatred Act extends to England and Wales. However, sections 29H(2) and 29I(2)(b) and (4) of the 1986 Act make provision in relation to Scotland only. As such, these sections are redundant and have not been commenced (see Racial and Religious Hatred Act 2006 (Commencement No 1) Order 2007 (SI 2007/2490)). *Paragraphs 12 and 13* of Schedule 16 repeal these redundant provisions and remove unnecessary references to England and Wales in sections 29H and 29I. *Paragraph 14* of Schedule 16 relates to freedom of expression and is inserted for the avoidance of doubt. It does not change the threshold of conduct required in order for the offence to be made out. *Paragraph 16(2)* of Schedule 16 removes unnecessary references to England and Wales in section 29L.

502. Section 29K of the 1986 Act makes it clear that the Act does not apply to fair and accurate reports of anything done in the United Kingdom or Scottish Parliaments or the fair and accurate contemporaneous reports of judicial proceedings. Paragraph 15 of Schedule 16 inserts a reference to the National Assembly for Wales.

503. *Paragraph 16(3) and (4)* of Schedule 16 amends section 29L(3)(b) of the 1986 Act, which sets out the maximum penalty for an offence under Part 3A on summary

conviction, to take account of Custody Plus, as provided for in the 2003 Act (but not yet commenced). The maximum sentence on summary conviction is increased from 6 to 12 months and a transitional provision inserted for the period before section 154(1) of the 2003 Act comes into force, such that during that period the reference to 12 months' imprisonment is read as a reference to a period of 6 months' imprisonment.

Section 75 and Schedule 17: Offences relating to the physical protection of nuclear material and nuclear facilities

504. The provisions of section 75 and Schedule 17 are needed in order to facilitate UK ratification of amendments made in 2005 to the CPPNM. The original CPPNM was concluded under the auspices of the International Atomic Energy Agency in 1980. It entered into force in 1987, and there are currently 130 Parties. The UK is a Party, having signed the Convention in 1980 and ratified it in 1991.

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

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

and

"a theft or robbery of nuclear material

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

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

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

509. Section 75 and Schedule 17 amend the 1983 Act to create the necessary new offences and to make related amendments to that Act. They also make related amendments to the penalties for various offences under the Customs and Excise Management Act 1979.

Schedule 17: Offences relating to nuclear material and nuclear facilities

510. Part 1 of Schedule 17 adds the necessary new offences by amendment to the 1983 Act. It also deals with penalties for the new offences and the existing ones and makes various other related changes.

511. The offences in Article 7 of the CPPNM as amended relate only to nuclear material used for peaceful purposes (and not used or retained for military purposes) and to nuclear facilities used for peaceful purposes (and not containing any nuclear material used or retained for military purposes). Section 6(1) of the 1983 Act defines *"nuclear material"* by reference to the CPPNM. *Paragraph 6(4)* of Schedule 17 adds a definition of *"nuclear facility"* to that section. The term is also defined consistently with the CPPNM.

512. *Paragraph 2* inserts a new subsection (1A) into section 1 of the 1983 Act. It gives extraterritorial extent to various existing offences (such as murder, grievous bodily harm or criminal damage) where the act constituting the offence was an act directed at, or interfering with the operation of, a nuclear facility and causes death, injury or damage as a result of the emission of radiation or the release of radioactive material. The penalty for the extraterritorial offences is, on conviction on indictment, a maximum of life imprisonment. The penalty is provided for by new section 1A(1) and (4), inserted by *paragraph 3* of Schedule 17.

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

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

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

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

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

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

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

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

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

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

521. *Paragraph 4* of Schedule 17 replaces section 2 of the 1983 Act. In doing so, it makes the necessary changes to the 1983 Act to ensure that certain new offences required by the amended CPPNM are implemented. References to "*relevant injury or damage*" are defined in new section 2(9).

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

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

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

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

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

527. *Paragraph 5* inserts a new section 3A into the 1983 Act. The purpose of section 3A is to implement Article 2(4)(b) of the CPPNM. The new section provides that nothing in the 1983 Act applies in relation to acts done by the armed forces of any country or territory in the course of an armed conflict or in the discharge of their functions. The section also provides for the Secretary of State to be able to issue a certificate, to be taken as conclusive evidence in any proceedings, determining whether or not an act done by armed forces was an act to which the 1983 Act does not apply by virtue of new section 3A.

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

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

530. Part 2 of Schedule 17 makes amendments to penalty provisions of the Customs and Excise Management Act 1979 which impose the penalties for various offences. The purpose is to increase the penalty for existing UK offences relating to the unlawful import, export and shipment of nuclear material. This is because the CPPNM requires the penalty for such an offence to be one which takes account of the grave nature of the conduct.

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

Section 76: Reasonable force for the purposes of self-defence etc.

532. Section 76 provides a gloss on the common law of self-defence and the defences provided by section 3(1) of the Criminal Law Act 1967 and section 3(1) of the Criminal Law Act (Northern Ireland) 1967, which relate to the use of force in the prevention of crime or making an arrest. It is intended to improve understanding of the practical application of these areas of the law. It uses elements of case law to illustrate how the defence operates. It does not change the current test that allows the use of reasonable force.

533. In line with the case law, notably from the leading case of *Palmer v R* [1971] A.C. 814, the defence will be available to a person if he honestly believed it was necessary to use force and if the degree of force used was not disproportionate in the circumstances as he viewed them. The section reaffirms that a person who uses force is to be judged on the basis of the circumstances as he perceived them, that in the heat of the moment he will not be expected to have judged exactly what action was called for, and that a degree of latitude may be given to a person who only did what he honestly and instinctively

thought was necessary. A defendant is entitled to have his actions judged on the basis of his view of the facts as he honestly believed them to be, even if that belief was mistaken.

534. Section 76 retains a single test for self-defence and the prevention of crime (or the making of an arrest) which can be applied in each of these contexts.

Section 77: Power to alter penalty unlawfully obtaining etc. personal data

535. This section confers a power on the Secretary of State to make an order altering the maximum penalty for an offence under section 55 of the Data Protection Act 1998.

536. Section 55(1) and (3) of that Act provide that a person is guilty of an offence if they knowingly or recklessly, without the consent of the data controller, obtain or disclose personal data or procure the disclosure of personal data to another person. Section 55(4) and (5) provide that a person is guilty of an offence if they sell or offer to sell personal data obtained in breach of section 55(1).

537. *Subsection (1)* of section 77 allows the Secretary of State to make an order providing for a person guilty of an offence under section 55 to be liable on summary conviction to imprisonment for a term not exceeding the specified period, or to a fine not exceeding the statutory maximum, or to both or on conviction on indictment to imprisonment for a term not exceeding the specified period or to a fine or to both.

538. *Subsection (2)* provides that the "specified period" must not exceed on summary conviction a maximum term of twelve months imprisonment (or in Northern Ireland, 6 months) and on conviction on indictment a maximum of two years imprisonment.

539. *Subsection (3)* provides that the Secretary of State must ensure that in the case of summary conviction in England and Wales any specified period which exceeds six months is to be read as a reference to six months in relation to offences committed before section 282(1) of the 2003 Act is commenced. Those provisions increase the maximum term for imprisonment which may be imposed on summary conviction in England and Wales to twelve months.

540. *Subsection (4)* stipulates that before an order can be made under this section the Secretary of State must consult with interested parties, including the Information Commissioner and media organisations.

Section 78: New defence for purposes of journalism and other special purposes

541. This section inserts a new defence into section 55(2) of the Data Protection Act 1998. The defence applies when a person acts for journalistic, literary or artistic purposes (referred to as the "special purposes"), with a view to the publication of journalistic, literary or artistic material and in the reasonable belief that their actions were justified as being in the public interest.

Section 79: Abolition of common law offences of blasphemy and blasphemous libel

542. Section 79 abolishes the common law offences of blasphemy and blasphemous libel in England and Wales

Part 6: International co-operation in relation to criminal matters

Section 80: Requests to other member States: England and Wales

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

section. This step is only available where the defaulter is normally resident, or has property or income, in another Member State.

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

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

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

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

Section 81: Procedure on issue of certificate: England and Wales

548. This section requires that a certificate issued under section 80 is given to the Lord Chancellor, together with a certified copy of the decision imposing the penalty.

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

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

551. *Subsection (5)* corresponds to section 81(4) regarding corporate bodies.

Section 82: Requests to other member States: Northern Ireland

552. This section is concerned with requests to other Member States for enforcement of financial penalties imposed in Northern Ireland. It corresponds to section 80 except that Schedule 5 of the Courts Act 2003 does not apply to Northern Ireland.

Section 83: Procedure on issue of certificate: Northern Ireland

553. This section makes provision for Northern Ireland corresponding to section 81. It requires the Lord Chancellor to forward a certificate for enforcement of a financial penalty issued under section 82 to the central authority or the competent authority of the Member State in which it appears that the offender is normally resident, or has property or income.

Section 84: Requests from other member States: England and Wales

554. This section is concerned with financial penalties received for enforcement in England and Wales from other Member States. This applies where the Lord Chancellor receives a certificate requesting enforcement of a financial penalty under the Council Framework Decision, together with a copy of the original decision imposing the financial penalty, and the penalty is suitable for enforcement in England and Wales.

555. If the certificate states that the offender is normally resident in England and Wales, *subsection (2)* requires that the Lord Chancellor gives the documents specified in subsection (1)(a) to the designated officer for the local justice area where it appears the offender is resident. Otherwise, where the certificate states that the offender has property or income in England and Wales, *subsection (3)* requires that the Lord Chancellor gives the documents to the designated officer for such local justice area as appears appropriate. The Lord Chancellor is also required to indicate in an accompanying notice whether any of the grounds for refusing to enforce the financial penalty (as set out in Part 1 to Schedule 19) may apply in the particular case, together with the reasons for that opinion.

556. *Subsection (5)* provides that subsection (2) applies to corporate bodies as if the reference to the local justice area in which the offender is resident were to the area in which the corporate body has its registered office.

557. *Subsection (6)* provides that this section applies to financial penalties which have been sent by another Member State to the central authority for Scotland and then forwarded to the Lord Chancellor to act on.

Section 85: Procedure on receipt of certificate by designated officer

558. The designated officer and the magistrates' court must comply with certain requirements when the Lord Chancellor acts under section 84 to forward the specified documents to the designated officer.

559. *Subsection (2)* requires that the designated officer refers the matter to the magistrates' court. *Subsection (3)* then requires that the court satisfies itself whether any grounds for refusal to enforce the financial penalty apply, as specified in Part 1 of Schedule 19. The designated officer is required by *subsection (4)* to inform the Lord Chancellor of the court's decision.

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

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

Section 86: Modification of Magistrates' Courts Act 1980

562. This section modifies the effect of section 90(1) of the Magistrates' Courts Act 1980, which provides for the transfer of a fine where it appears to a court or fines officer in England and Wales that the person concerned resides in another jurisdiction in the UK. This is modified in its application to financial penalties enforced under section 85(7) to allow the transfer of a sum where it appears that the person is residing or has property or a source of income in Northern Ireland.

Section 87: Requests from other member States: Northern Ireland

563. This section makes provision for Northern Ireland corresponding to section 84. It places certain requirements on the Lord Chancellor to forward to the appropriate clerk of petty sessions a certificate for enforcement of a financial penalty received from another Member State where the penalty is suitable for enforcement in Northern Ireland.

Section 88: Procedure on receipt of certificate by clerk of petty sessions

564. This section makes provision for Northern Ireland corresponding to section 85. It places certain requirements on the clerk of petty sessions and the magistrates' court acting for the petty sessions district when the Lord Chancellor acts under section 87 to forward a certificate for enforcement of a financial penalty.

Section 89: Modification of Magistrates' Courts (Northern Ireland) Order 1981

565. This section modifies the effect of Article 92 of the Magistrates' Courts (Northern Ireland) Order 1981 so that, where the Magistrates' Court is required by virtue of section 88 to enforce a financial penalty exceeding £20,000, the court can commit a defaulter to prison for a period not exceeding the maximum period available to a Crown Court in these circumstances. It also modifies the effect of Article 95 of the 1981 Order in a manner corresponding to section 86 to provide for the transfer of a financial penalty where it appears that the person concerned is residing or has property or a source of income in a local justice area in England and Wales.

Section 90: Transfer of certificates to central authority for Scotland

566. This section applies where the Lord Chancellor is not under a duty under section 84 or 87 to arrange for enforcement of a financial penalty in England, Wales or Northern Ireland. It requires the Lord Chancellor to transfer the certificate to Scotland if it states that the person is normally resident or has property or a source of income in Scotland.

Section 91 and Schedules 18 and 19: Recognition of financial penalties: general

567. Schedule 18 specifies when a financial penalty is suitable for enforcement in England and Wales or Northern Ireland. This is determined primarily by whether the certificate received by the Lord Chancellor states that the person concerned is normally resident in England and Wales or Northern Ireland. The Schedule also specifies when a certificate is suitable for enforcement in England and Wales or Northern Ireland where, although the person is not normally resident anywhere in the UK, he or she has property or a source of income in the UK.

568. The possible grounds for refusal against enforcement of a financial penalty are as set out in Schedule 19. These reflect the grounds for refusal adopted in Article 7 of the Council Framework Decision and address the following matters:

- Double jeopardy where an offender has already been dealt with for the same conduct in the executing State or in a State other than the State issuing or executing the financial penalty;
- The absence of dual criminality, unless the conduct concerned is specified in the list contained in Part 2 of Schedule 19. This is a list of conduct, reproduced from Article 5(1) of the Framework Decision, where it has been agreed that co-operation should not be subject to a dual criminality requirement. The list is similar to that used in the Framework Decision on the European Arrest Warrant (2002/584/JHA) and other mutual recognition instruments;
- Territoriality, if the conduct took place outside the territory of the State which issued the certificate;
- The age of criminal responsibility under the law of the executing State;
- Where the offender was not present and did not have an adequate opportunity to defend himself or herself; or
- Where the financial penalty falls below 70 Euros (some £50) (the threshold specified in the Framework Decision).

569. Under *subsections (3) and (4)*, the Lord Chancellor may, by order (subject to the affirmative resolution procedure where primary legislation is amended or repealed, otherwise the negative resolution procedure applies), make further provision for the purpose of giving effect to the Council Framework Decision.

Section 92: Interpretation of sections 80 to 91 etc.

570. This section defines the terms "central authority", "central authority for Scotland", "competent authority", "Framework Decision on financial penalties", "decision" and "financial penalty" for the purposes of the sections concerned.

Section 93: Delivery of prisoner to a place abroad for purposes of transfer out of the United Kingdom

571. This section amends section 2(1) of the Repatriation of Prisoners Act 1984 to enable a sentenced person being repatriated out of the United Kingdom to be delivered to a point of arrival in the receiving State for the purpose of the continued enforcement of his or her sentence in the receiving State. This section extends the scope of section 2 as it currently restricts the delivery of a prisoner detained in the United Kingdom to a point of departure from the United Kingdom.

Section 94: Issue of warrant transferring responsibility for detention and release of offender present outside the country of territory in which he is required to be detained

572. This section inserts new sections 4A, 4B, and 4C into the Repatriation of Prisoners Act 1984.

New Section 4A of the Repatriation of Prisoners Act 1984: Issue of warrant transferring responsibility for detention and release of offender

573. This new section provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The purpose of this warrant is to prevent a prisoner from escaping the fulfilment of his sentence by removing himself to another country, and powers and processes in respect of the section 4A warrant mirror those already in place under the Repatriation of Prisoners Act 1984 in respect of a warrant for the physical transfer of a sentenced person.

New Section 4B of the Repatriation of Prisoners Act 1984: Transfer of responsibility from the United Kingdom

574. This new section provides that the effect of a warrant under section 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The powers and processes in respect of the transfer of responsibility from the United Kingdom mirror those already in place under the Repatriation of Prisoners Act in respect of a physical transfer of a sentenced person out of the United Kingdom.

New Section 4C of the Repatriation of Prisoners Act 1984: Transfer of responsibility to the United Kingdom

575. This new section provides that the effect of a warrant under section 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant. The powers and processes in respect of the transfer of responsibility to the United Kingdom for the continued enforcement of the sentence

mirror those already in place under the Repatriation of Prisoners Act in respect of a physical transfer of a sentenced person into the United Kingdom.

Section 95: Powers to arrest and detain persons believed to fall within section 4A(3) of the Repatriation of Prisoners Act 1984

576. This section inserts new sections 4D, 4E, and 4F into the Repatriation of Prisoners Act 1984. It creates a procedure for the arrest and detention of a person believed to be unlawfully at large from a foreign jurisdiction and who is present in the United Kingdom. The purpose of this section is to ensure that a person can be arrested and detained in custody while the relevant Minister determines whether or not to issue a warrant transferring responsibility for the continued enforcement of the prisoner's sentence from the country in which it was imposed to the United Kingdom.

New Section 4D of the Repatriation of Prisoners Act 1984: Power to arrest and detain persons suspected of falling within section 4A(3)

577. This section provides for the court to issue a warrant for a person's arrest on receipt of a certificate issued by the relevant Minister certifying that the person named is believed to be a person falling within new section 4A(3) i.e. a person unlawfully at large from a foreign prison sentence who is present in the UK, and that relevant documentation has been requested from the sentencing State concerned.

578. The court may issue the arrest warrant if the judge is satisfied that there are reasonable grounds for believing that the person falls within new section 4A(3). Under new section 4D(4), the arrest warrant may be executed anywhere within the United Kingdom, and the arrested person will be given a copy of the arrest warrant and be brought before the court as soon as practicable (new section 4D(5)).

579. The court may then remand the person in custody for a period of 7 days (new section 4D(6)) to enable the relevant Minister to obtain the appropriate papers from the sentencing jurisdiction, establish whether the person is in the UK having fled a foreign sentence and make an application under section 4E for a person's further detention (new section 4D(7)). The person must be released no later than at the end of the 7 day period (new section 4D(8)), unless the court has ordered a further period of 14 days' detention under section 4E (new section 4D(9)) or the relevant Minister has issued a warrant under section 4A transferring responsibility for the continued enforcement o the person's sentence. The court may remand the person in custody for 7 days whether or not a warrant for the person's arrest was previously issued under this section (new section 4D(10)).

580. If the appropriate papers are received, at whatever stage that happens, the relevant Minister may make an application for a further period of detention under section 4E

New Section 4E of the Repatriation of Prisoners Act 1984: Arrest and detention of persons believed to fall within section 4A(3)

581. New sections 4E(1) to (3) provide for the court to issue a warrant for a person's arrest on receipt of a certificate issued by the relevant Minister certifying that he considers the person named to be a person falling within section 4A(3), i.e. a person unlawfully at large from a foreign prison sentence who is present in the UK, and that the relevant documentation has been received from the sentencing State concerned. For the purpose of this section it is irrelevant whether or not the person has previously been arrested under section 4D.

582. The court may issue the arrest warrant if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4(3). Under new section 4E(4), the arrest warrant may be executed anywhere within the United Kingdom, and the arrested person will be given a copy of the arrest warrant and be brought before the court as soon as is practicable (new section 4E(5)).

583. Under new section 4E(6) the court may, on the application of the relevant Minister, remand the person in custody for a period of 14 days to enable the relevant Minister to determine whether to issue a warrant under section 4A transferring responsibility for the continued enforcement of the person's sentence and, if so, to issue the warrant.

584. The person must be released no later than at the end of the 14 day period (new section 4E(8)), unless the relevant Minister has issued a warrant under section 4A transferring responsibility for the continued enforcement of the person's sentence (new section 4E(9)). The court may remand the person in custody for 14 days whether or not a warrant for the person's arrest was previously issued under this section (new section 4E(10)).

585. It is intended that a person detained under the new procedure in section 4D and 4E would not be detained for more than 21 days while the relevant Minister consults the sentencing State and determines whether or not to issue a warrant to transfer responsibility for the continued enforcement of the prisoner's sentence. However, the amendments do not preclude a further arrest and order for detention under section 4E where a prisoner has previously been arrested and released under section 4D. For example, a person may be released because the documentation from the foreign State is not received before the expiry of the 7 day detention period in section 4D, but that would not preclude an application for the person's re-arrest and detention for a 14 day period under section 4E once the documentation has been received.

586. All time spent in custody under section 4D or 4E will be counted as time served and will be deducted from the remaining sentence if a section 4A warrant transferring responsibility for the sentence is issued.

New Section 4F of the Repatriation of Prisoners Act 1984: Sections 4D and E: supplementary provisions

587. New section 4F makes supplementary provisions in respect of 4D and 4E.

588. For the purposes of arrest warrants issued under section 4D and 4E, the "designated person" who may execute the warrants is defined as a person designated by the relevant Minister (new section 4F(2)).

589. New section 4F(3) defines the "appropriate judge" in each jurisdiction of the UK for the purposes of the exercise of the powers vested in the courts in section 4D and 4E.

590. New section 4F(4) clarifies the flexibility of the designation power and new section 4F(5) provides that a designated person will have the powers and authority etc of a constable in any part of the United Kingdom.

Section 96: Amendments relating to Scotland

591. This section extends section 44 of the Police and Justice Act 2006 to Scotland. Section 44(2) and (3) of the Police and Justice Act 2006 amended the circumstances under which a prisoner is required to give consent to transfer under section 1(1)(c) of the Repatriation of Prisoners Act 1984. As amended, a prisoner's consent is only necessary where that consent is specifically required under the particular international agreement governing an individual prisoner's transfer.

Section 97: Power to transfer functions under Crime (International Co-operation) Act 2003 in relation to direct taxation

592. This section amends section 27(1) of the Crime (International Co-operation) Act 2003 and repeals paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 so that the Treasury may, by order (subject to the negative resolution procedure), provide for functions conferred on the Secretary of State under sections 10, 11 and 13 to 26 of the Crime (International Co-operation) Act 2003 (that is functions in relation to requests from overseas authorities to obtain evidence in the UK, and to

the processing of domestic and overseas evidence freezing orders) to be exercisable instead by Her Majesty's Commissioners for Revenue and Customs in relation to direct tax matters.

Part 7: Violent offender orders

Section 98: Violent offender orders

593. This section provides for a new civil order, a violent offender order (VOO), which is designed to protect the public from the current risk of serious violent harm posed by a qualifying offender (as defined in section 99).

594. *Subsection (1)(a)* establishes that VOOs may contain such prohibitions, restrictions or conditions authorised by section 102 that the court making the order considers necessary to protect the public from the risk of serious violent harm caused by the offender. *Subsection (1)(b)* provides that the minimum period of the order is two years and that the maximum period is 5 years (unless the order is renewed or discharged using the powers under section 103).

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

Section 99: Qualifying offenders

596. This section specifies the criteria which must be met before a person can be eligible for a violent offender order. A person can be a qualifying offender if he is 18 or over and comes within subsection (2) or (4).

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

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

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

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

Section 100: Applications for violent offender orders

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

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

603. *Subsection (2)* sets out these conditions as being that the person is a qualifying offender (as defined in section 99), and has since the "appropriate date" (as defined in *subsection (5)*) demonstrated behaviour giving reasonable cause to believe that a VOO is necessary.

604. *Subsection (3)* provides that an application for a VOO may be made to any magistrates' court whose commission area includes any part of the applicant's police area or any place where it is alleged that the person acted in such a way as to demonstrate the behaviour referred to in subsection (2).

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

Section 101: Making of violent offender orders

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

607. Under *subsection (2)* a court can only make a VOO where it is satisfied that the person has been heard if he wishes to be and that the conditions in subsection (3) are met.

608. *Subsection (3)* specifies that before a VOO can be made the court must be satisfied that the person is a "qualifying offender" as defined in section 99 and that the person has, since the appropriate date, acted in such a way as to make it necessary to make a violent offender order for the purpose of protecting the public from the current risk of serious harm caused by the person.

609. *Subsection (4)* specifies that before a VOO can be awarded the court must also have regard to whether the person would, at any time when such an order would be in force, be subject to any other legislative measures that would operate to protect the public from the risk of such harm.

610. *Subsection (5)* ensures that a VOO cannot come into force at any time when the offender is subject to a custodial sentence, is on licence or is subject to a hospital order or a supervision order made in respect of any offence.

611. *Subsection (6)* enables an order to be applied for or made at such a time as described in subsection (4).

Section 102: Provisions that orders may contain

612. This section provides an exhaustive list of the conditions, prohibitions and restrictions that the court may impose as part of a VOO. These are set out in *subsection (1)* and can prevent an individual from going to a specified place or event or from having contact with a specified individual.

613. *Subsection (2)* enables conditions to be imposed in relation to conduct in Scotland and Northern Ireland as well as in England or Wales.

614. *Subsection (3)* contains an order-making power (subject to the affirmative resolution procedure) to enable the list of conditions to be amended.

Section 103: Variation, renewal or discharge of violent offender orders

615. This section provides for the offender subject to an order or the various chief officers of police listed in *subsection (2)* to apply for an order to be varied, renewed or discharged (subject to the five year maximum limit).

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

617. *Subsection (7)* provides that the order may not be discharged before the end of the period of two years beginning with the date on which it comes into force unless consent to its discharge is given by the offender and one of the chief officers of police listed in subsection (7).

Section 104: Interim violent offender orders

618. This section enables the court to make an interim order when an application for a VOO is made (or has been made) under section 100.

619. The purpose of an interim VOO is to enable prohibitions to be placed on the offender's behaviour pending the application for the full order being determined. *Subsection (3)* ensures that an interim order can only be made when the court is satisfied that the individual is a qualifying offender; that if the court were determining the main application it would be likely to make a VOO in respect of that person; and that it is considered desirable to act before the determination of the main application to secure immediate public protection from the risk of serious violent harm caused by the individual.

620. *Subsection (4)* provides that an interim VOO may only contain conditions from the exhaustive list set out in section 102.

621. *Subsection (6)* specifies that interim VOOs can be imposed for a fixed period as defined in each order and cannot be renewed after this time. Interim VOOs cease to have effect at the end of this fixed period or (if before) when a decision is taken on the main application.

Section 105: Notice of applications

622. This section applies to any application in relation to a VOO or interim VOO and ensures that the court may not begin hearing an application unless it is satisfied that the person has been given reasonable notice of the application and the time and date of the hearing.

Section 106: Appeals

623. This section provides for appeals to the Crown Court against the making of a VOO or an interim order, or against a decision to make or refuse an order varying or discharging a VOO or an interim order.

624. *Subsection (3)* provides that on an appeal the Crown Court may make such orders as may be necessary and may also make such incidental or consequential orders as appear to it to be just. *Subsection (4)* provides that an order of the Crown Court made on an appeal shall be treated for the purposes of the provisions relating to variation and discharge of orders (section 103) as an order of the magistrates' court from which the appeal was brought.

Section 107: Offenders subject to notification requirements

625. This section provides that all offenders subject to full or interim VOOs will also be subject to notification requirements.

Section 108: Notification requirements: initial notification

626. This section sets out the information the offender needs to supply to the police when he or she first makes a notification and the timescales within which he or she is required to provide that information.

627. *Subsection (1)* requires the offender to notify the required information to the police within 3 days of the full or interim VOO coming into force. *Subsection (4)* provides that when determining the period of 3 days, any time in which the offender is remanded in or committed to custody or kept in service detention, serving a sentence of imprisonment or a term of service detention, detained in a hospital or outside the United Kingdom should be disregarded.

628. The details in *subsection (2*) include the offender's home address. The term "home address" is defined in*subsection (5)*. This provides that where an offender is homeless or has no fixed abode his "home address" means an address or location where he can be regularly found. This might, for example, be a shelter, a friend's house, a caravan or a park bench. Under subsection (2)(h) and (3), further additions can be made to the list of required information as prescribed by the Secretary of State in regulations (subject to the affirmative resolution procedure).

Section 109: Notification requirements: changes

629. This section sets out the requirements on a relevant offender to notify the police when there are changes to his notified details. This includes changes to any new requirements as provided for in section 108(2)(h) and (3). As a result of *subsection (2)(c)* an offender must notify the police, within 3 days, of the address of any premises in the UK at which he has stayed for a "qualifying period" and, which he has not already notified to the police. This place might be a friend or relative's house or a hotel where he has stayed. A "qualifying period" is defined at *subsection (9)* and is a period of 7 days, or two or more periods, in any twelve months, which taken together amount to 7 days.

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

Section 110: Notification requirements: periodic notification

631. This section provides (in*subsection (1))* that an offender must re-notify the police of the details set out in section 108(2) within a defined period of each notification date, unless during this period he re-notifies, because of a change of circumstances, under section 109.

632. This means that where a person becomes subject to the notification requirements and there is no "notifiable event" under section 109, he will have to re-notify within a year of his initial notification and annually thereafter. The only exception to this is if the last home address notified by the offender was such as mentioned in section 108(5)(b) i.e. when an individual does not have a sole or main residence in the United Kingdom. In this instance, the individual may be subject to a different frequency of notification requirements as prescribed by regulations made by the Secretary of State (subject to the affirmative resolution procedure). Where a person does notify his having stayed away from home for 7 days, for example, he will have to re-notify the police of the information set out in section 108(2) within a year of giving the notification of having stayed away from home. If within that year he notifies another period spent away from home, or a change of name or address, the need to re-notify the details set out in section 108(2) will be put back to a year after that latter notification.

633. *Subsection (7)* provides that nothing in this section applies to an offender who is subject to an interim VOO.

Section 111: Notification requirements: travel outside United Kingdom

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

Section 112: Method of notification and related matters

635. This section describes how and where an offender is required to notify information to the police under the sections relating to initial notification, change of details and periodic notification. Under *subsection (1)* the offender must notify the police of the relevant information by attending any police station in the offender's local police area and giving an oral notification to any police officer or other authorised person at that station. The term "local police area" is defined in *subsection (5)*.

Section 113: Offences

636. *Subsection (1)* establishes that failure, without reasonable excuse, to comply with any prohibition, restriction or condition of a full or interim VOO is a criminal offence. Under *subsection (2)*, a failure to comply with a notification requirement, without reasonable excuse, in also an offence. Offences apply throughout the UK even though VOOs can be imposed only by courts in England and Wales.

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

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

Section 114: Supply of information to the Secretary of State etc.

639. Sections 114 and 115 provide a power for the police to verify that an offender has notified the correct details in compliance with sections 108 to 111, and that he or she is not omitting any details (such as another name or address he or she uses). This will be done by comparing the details provided at notification against information the offenders will have provided to certain bodies performing Government functions.

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

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

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

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

Section 115: Supply of information by Secretary of State etc.

644. This section provides that the report compiled under subsection (3)(b) of section 114 may be provided to the police. The police may retain the information and use it in the prevention, detection, investigation or prosecution of offences but for no other purpose. This would include an offence under section 113 of failing to comply with the notification requirements or by providing false information at notification (see *subsection (3)*of that section). In addition, the information may be used to prevent, detect, investigate or prosecute other offences: for example, information that identified the possible whereabouts of an offender who was wanted for robbery could be used by the police in investigating that offence.

Section 116: Information about release or transfer

645. This section allows the Secretary of State to make regulations (subject to the negative resolution procedure) requiring those who are responsible for an offender while he is being detained in any of the ways mentioned in *subsection (1)* to notify other relevant authorities of the fact that they have become so responsible, of his release or transfer to another institution. The regulations may specify the person responsible for the offender (for example, the Chief Executive of a hospital) and the person who must be notified. An example might be the governor of a prison being required to inform the local chief officer of police when a relevant offender is about to be released from his prison.

Section 117: Interpretation of Part 7

646. This section sets out definitions for the purposes of Part 7.

Part 8: Anti-social behaviour

Section 118 and Schedule 20: Closure orders: premises associated with persistent disorder or nuisance

647. This section and Schedule 20 insert a new Part 1A into the Anti-social Behaviour Act 2003, which makes provision for closure orders in respect of premises associated with persistent disorder or nuisance. The provisions are very similar to those in Part 1 of that Act, which relate to closure orders in respect of premises where Class A drugs are used unlawfully.

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

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

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

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

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

652. New section 11A(5) sets out the required contents of a Part 1A closure notice. It must give notice that an application will be made to court for a Part 1A closure order and must include details of the time and place of the court hearing and a statement that access to the premises during the period of the notice is prohibited to anyone other than someone who is usually resident in, or is the owner of, the premises. It must explain the effects of a Part 1A closure order, state that non-compliance with the notice amounts to an offence and also contain information about local advice providers of legal and housing matters.

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

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

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

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

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

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

658. New section 11B(7) allows the court to adjourn the hearing for up to 14 days to allow the occupier or the other persons mentioned to show why a Part 1A closure order should not be made, for example because the problems have ceased or the occupiers have been

evicted. New section 11B(8) provides that the Part 1A closure notice continues to have effect until the end of any such adjournment. A Part 1A closure order may be made in relation to the whole or part of the premises affected by the notice (New section 11B(9)).

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

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

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

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

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

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

- have reasonable grounds for believing that the extension of the order is necessary for the purpose of preventing the occurrence of significant and persistent disorder or persistent serious nuisance to the public; and
- be satisfied that the police or local authority (whichever is not making the application) has been consulted about the intention to make the application.

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

663. New section 11E(7) allows a constable or a local authority (depending which applied for the Part 1A closure order), a person on whom the relevant Part 1A closure notice was served or anyone else with an interest in the closed premises to make a complaint to the justice of the peace for a Part 1A closure order to be discharged. On the making of such a complaint, the justice of the peace may issue a summons to a constable or to the local authority as appropriate (new section 11E(8)). New section 11E(10) sets out the persons on whom a notice (stating the date, place and time at which the complaint will be heard) must be served. New section 11E(9) states that the court may not discharge a Part 1A closure order unless it is satisfied that the order is no longer necessary to prevent the occurrence of significant and persistent disorder or persistent serious nuisance.

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

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

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

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

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

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

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

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

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

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

- the person is not associated with the use of the premises which gave rise to the significant and persistent disorder or persistent serious nuisance;
- if he is the owner or occupier, that he took reasonable steps to prevent that use;
- it is appropriate in all the circumstances to compensate the person for that loss.

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

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

670. This new section allows the Secretary of State to issue guidance relating to the discharge of functions in relation to Part 1A.

671. Practitioners considering applying for a Part 1A premises closure order will be required to consider any such guidance.

Section 119: Offence of causing nuisance or disturbance on NHS premises

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

673. *Subsection (1)* sets out the required elements of the offence. In order to commit the offence, a person must, without reasonable excuse, cause a nuisance or disturbance to an NHS staff member whilst on NHS premises.

674. A nuisance or disturbance can include any form of non-physical behaviour which breaches the peace, such as verbal aggression or intimidating gestures towards NHS staff. A person will not commit the offence if he or she has a reasonable excuse for causing the nuisance or disturbance or refusing to leave the premises. Behaviour consequential to the receipt of upsetting news or bereavement may, for example, constitute a reasonable excuse. A nuisance or disturbance must be caused to an NHS staff member, rather than any other person. At the time the nuisance or disturbance is caused, the NHS staff member must either be working at the premises or be there for some other purpose relating to his work, such as travelling to work, walking between buildings or taking a break. The nuisance or disturbance must be caused on NHS premises.

675. If the conditions in subsection (1)(a) are satisfied, the person may be asked to leave the premises by a police constable or NHS staff member. If the person refuses to leave without reasonable excuse, then the person may commit the offence. A reasonable excuse for not leaving the premises may, for example, include a situation where a dependent is on the premises concerned and the person causing a nuisance or disturbance has a responsibility to remain on the premises with this dependent.

676. Subsection (1)(c) provides that a person who is on the premises for the purpose of obtaining medical advice, treatment or care will not be able to commit the offence. Patients and those attending for consultations, to collect medication or test results or convalescing after treatment will not be able to commit the offence.

677. *Subsection (3)* sets out the circumstances in which a person will not be regarded as legitimately on the premises for medical purposes. It provides that a person that has received medical advice, treatment or care, or who is seeking medical advice, treatment or care which he or she has been refused less than 8 hours before is not on the premises for the purpose of obtaining medical advice, treatment or care and is capable of committing the offence.

678. *Subsection (4)* outlines the scope of the offence by defining the terms “NHS premises”, “NHS staff member” and other related terms. NHS premises refers to both English and Welsh NHS premises. “English NHS premises” refers to any hospital owned or managed by an English NHS Trust, Primary Care Trust or NHS Foundation Trust and includes buildings, other structures and vehicles located on hospital grounds. “Welsh NHS premises” refers to any hospital owned or managed by a Welsh NHS Trust or Local Health Board and includes buildings, other structures and vehicles located on hospital grounds. “Vehicles” may include, for example, ambulances or air ambulances but do not fall within the definition of “NHS premises” when they are outside hospital grounds. The definition of an NHS staff member includes staff who are not directly employed by, but work for, the relevant English or Welsh NHS body. These could include agency workers, contractors, students or volunteers.

Section 120: Power to remove person causing nuisance or disturbance

679. This section provides that a police constable may remove a person reasonably suspected of committing, or having committed, the offence in section 119 from the NHS premises concerned.

680. Where NHS bodies wish to have the option to exercise the power of removal without recourse to police constables, they will need to authorise at least one member of their staff (to be known as the "authorised officer") to exercise the powers of removal.

681. A person authorised by an English NHS Trust, Primary Care Trust or NHS Foundation Trust to exercise the power of removal may remove a person reasonably suspected of committing, or having committed, the offence in section 119 from the English NHS premises concerned and may either carry out the removal himself or herself or authorise another person working for one of these English NHS bodies to do so. A person authorised by a Welsh NHS Trust or Local Health Board to exercise the power of removal may remove a person reasonably suspected of committing, or having committed, the offence in section 119 from the Welsh premises concerned and may either carry out the removal himself or herself or authorise another person working for one of these Welsh NHS bodies to do so.

682. *Subsection (3)* provides that any person exercising the power of removal under this section may use reasonable force if necessary.

683. *Subsection (4)* sets out restrictions on the exercise of the power of removal. A person cannot be removed if the authorised officer has reason to believe that the person to be removed requires medical advice, treatment or care or that removal would endanger the person's physical or mental health. In practice, this means that if an authorised officer has any reason to believe that the person to be removed falls within one of these categories, he will need to seek advice from an appropriate medical practitioner to determine whether, in fact, the person to be removed does fall within one of these categories and whether removal can take place. This imposes a safeguard on the exercise of the power of removal to prevent the removal by the authorised officer or authorised NHS staff member of anyone who may need medical help or may be vulnerable.

Section 121: Guidance about the power to remove etc

684. *Subsection (1)* gives the appropriate national authority a power to produce guidance to relevant NHS bodies and authorised officers about the power of removal and *subsection (2)* lists issues that may be covered in the guidance. The Secretary of State will produce guidance for English NHS bodies and their authorised officers in relation to English NHS premises, and Welsh Ministers will produce guidance for Welsh NHS bodies and their authorised officers in relation to Welsh NHS premises.

685. The guidance is expected to outline procedures for authorising NHS staff members to safely authorise and exercise the power of removal. This may include, for example, the grade and role of staff considered suitable. The guidance is likely to include reference to the type of training that these staff would be expected to have received before their authorisation; matters to be taken into account by an authorised officer in deciding whether a person has committed or is committing an offence under section 119 and whether that person can and should be removed; reference to the need for an authorised officer to consult an appropriate medical practitioner to determine whether a person requires medical advice, treatment or care or whether removal would harm his physical or mental health; reference to the degree of force that may be appropriate for authorised officers or authorised NHS staff members to use when removing an offender; and an outline of administrative procedures to be followed, for example, for informing persons using the premises of the offence and power of removal and keeping records of incidents in which the power of removal has been used.

686. *Subsection (3)* requires the Secretary of State and Welsh Ministers respectively, to consult such persons as each considers appropriate before publishing any guidance under this section.

687. *Subsection (4)* provides that English and Welsh NHS bodies and authorised officers themselves must have regard to the relevant guidance published by the appropriate

national authority when exercising their functions under, or in connection with, these sections.

Section 122 and Schedule 21: Nuisance or disturbance on HSS premises

688. Schedule 21 makes provision for Northern Ireland corresponding to that made for England by sections 119 to 121. Rather than a reference to causing a nuisance or disturbance to an NHS staff member on NHS premises, the provisions for Northern Ireland refer to staff working for Health and Social Services trusts at hospitals vested in, or managed by, such trusts.

Section 123: Review of anti-social behaviour orders etc.

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

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

New Section 1J of the 1998 Act

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

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

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

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

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

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

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

New Section 1K of the 1998 Act

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

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

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

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

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

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

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

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

706. *Paragraph 23* of Schedule 27 to the Act (transitional etc. provisions) sets the timing criteria for ASBOs to be subject to the new review requirement. In addition to all the requirements set out above, to qualify for a review, an ASBO must:

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

Section 124: Individual support orders

707. Individual support orders (ISOs) are civil orders that can be attached to stand-alone ASBOs for 10-17 year olds.

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

709. *Subsection (1)*of section 124 inserts new subsections into section 1AA of the 1998 Act, which deals with ISOs. The new subsections will allow ISOs to be made more than once, and to be made subsequent to the making of the original ASBO, provided that the Court is satisfied that the other conditions for doing so have been met: that it is on application from the original applicant agency; that the subject is still under 18; that his ASBO is still in force; and that it will help prevent further anti-social behaviour on his part.

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

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

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

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

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

715. *Paragraph 23* of Schedule 27 to the Act sets the timing criteria for ISOs, so that they may be applied for only when the ASBO:

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

Section 125: Parenting contracts and parenting orders: local authorities

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

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

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

Part 9: Policing

Section 126 and Schedule 22: Police misconduct and performance procedures

719. This section gives effect to Schedule 22, Part 1 of which amends the Police Act 1996 to make changes in relation to the procedures for dealing with police conduct, efficiency and effectiveness. Part 2 of Schedule 22 makes equivalent changes to the Ministry of Defence Police Act 1987 for the purposes of the Ministry of Defence Police, and Part 3 makes equivalent changes to the Railways and Transport Safety Act 2003 for the purposes of the British Transport Police.

720. *Paragraph 2* of Schedule 22 amends section 36 of the 1996 Act. That section places a duty on the Secretary of State to exercise his or her powers under specified provisions of the 1996 Act in such a manner as to promote the efficiency and effectiveness of the police. The amendment adds a reference to section 84 (as substituted by paragraph 7 of Schedule 22) to the list of specified provisions: that section makes provision for the representation of police officers at disciplinary and other hearings.

721. *Paragraph 3*of Schedule 22 amends section 50 of the 1996 Act. That section confers a power on the Secretary of State to make regulations as to the government,

administration and conditions of service of police forces. Section 50(3) requires that such regulations must make provision for taking disciplinary proceedings against police officers and specifies the possible sanctions. Paragraph 3(2) substitutes a new section 50(3) which again requires regulations to be made setting out the procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of members of police forces, but does not mandate the possible sanctions, other than that of dismissal.

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

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

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

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

726. *Paragraph 7* substitutes a new section 84 in the 1996 Act which provides that the Secretary of State is to make regulations in connection with the representation of police officers and the relevant authority (including the Independent Police Complaints Commission) in misconduct and performance proceedings and enabling panels hearing such proceedings to receive advice.

727. The regulations are to specify when a police officer has a right to legal or other representation, and when he or she is to be notified of that right. The regulations must also provide that proceedings at which the officer can be dismissed cannot take place unless he has been notified of his or her right to such representation. On the first occasion when any regulations or set of regulations exercising this power are made after the coming into force of this Act, they will be subject to the affirmative resolution procedure. The negative resolution procedure applies to subsequent regulations.

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

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

730. New section 85(4A) and (5A) allow the rules to make different provision for different cases and specify that, on the first occasion when the rules are made, they must be made

using the affirmative resolution procedure. Thereafter, they must be made using the negative resolution procedure.

731. *Paragraph 9* amends section 87 of the 1996 Act which sets out a power of the Secretary of State to issue guidance concerning the police officer disciplinary and performance procedures. The amendments extend the power of the Secretary of State to issue guidance to special constables and members of police staff as they will have functions within the new disciplinary and performance procedures.

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

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

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

Section 127 and Schedule 23: Investigation of complaints of police misconduct etc.

735. This section gives effect to Schedule 23 which amends Schedule 3 to the Police Reform Act 2002. Schedule 3 makes provision about the handling and investigation of: (a) complaints about the conduct of a person serving with the police ("a complaint"), (b) matters which are not the subject of a complaint but where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings ("a conduct matter"), and (c) cases which are not the subject of a complaint and which are not a conduct matter but where a person who was, broadly, in the care of the police has died or sustained a serious injury ("a DSI matter"). The full definitions of these terms appear in section 12 of the Police Reform Act 2002.

736. *Paragraph 2* of Schedule 23 explicitly provides the Secretary of State with the power to specify who, apart from a person's legal representative, can make representations to the Independent Police Complaints Commission on behalf of a person to whose conduct an investigation relates.

737. *Paragraph 4* of Schedule 23 amends paragraph 6(4) of Schedule 3 to remove references to "requirement to resign or retire", "reduction in rank or other demotion" or "the imposition of a fine" as these disciplinary sanctions will no longer exist in the new disciplinary arrangements for members of a police force and special constables ("police officers").

738. *Paragraph 5* inserts new paragraphs 19A to 19E into Schedule 3, which will apply to investigations relating to police officers. The new paragraph 19B places a duty on the person investigating a complaint, where there is an indication that a police officer may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings, or a recordable conduct matter, to assess whether the conduct concerned if proved would amount to misconduct or gross misconduct and what form any disciplinary proceedings in respect of the conduct would be likely to take.

739. The assessment must be made after consultation with the appropriate authority. The appropriate authority is, in the case of a senior officer, the police authority for the area of the police force of which he is a member and, in the case of a person who is not a senior officer, the chief officer under whose direction or control the person is (see section 29 of the Police Reform Act 2002). On completing the assessment, the person investigating must notify the person whose conduct is the subject of the investigation, giving the information required by new paragraph 19B(7) and such other information

to be prescribed in regulations (subject to the negative resolution procedure). The notification is not to be given if it might prejudice the investigation in question or any other investigation (including a criminal one). New paragraph 19B also provides for revised assessments to be made when the investigator considers it appropriate due to, for example, fresh evidence being available.

740. New paragraph 19C provides that in the same cases to which the obligation to carry out an assessment under paragraph 19B applies, if the person subject to the investigation provides the investigator with a statement or document relating to the complaint or matter under investigation (including one suggesting new lines of enquiry or witnesses), then the investigator will be under a duty to consider it. The time limits for providing documents and statements are to be prescribed and notified to the person concerned in the notice given under new paragraph 19B. There is also a duty for the investigator to consider relevant documents provided by other persons (in addition to the person subject to the investigation) who are to be prescribed (subject to the negative resolution procedure).

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

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

743. *Paragraph 6* of Schedule 23 amends paragraph 20A(7) of Schedule 3 which sets out the special conditions that must be satisfied before a police officer disciplinary matter can be dealt with using the accelerated disciplinary procedure. These amendments remove the requirement that there may have been an imprisonable offence but require that there is sufficient evidence to establish gross misconduct.

744. *Paragraphs 7 and 9* omit paragraphs 20B(5) and 20E(5) of Schedule 3 so that where the appropriate authority certifies a case as one where the special conditions are satisfied and therefore the accelerated disciplinary procedures apply, there will no longer be an automatic requirement to send a copy of the file to the DPP. *Paragraph 10* omits paragraph 20G as a consequential amendment.

745. *Paragraph 11* amends paragraph 21A of Schedule 3 to provide that where an investigation into a DSI matter identifies that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, and the investigation is therefore reclassified as a conduct matter, then the original investigator for the DSI matter can continue as the investigator of the conduct matter (subject to the IPCC determining under paragraph 15(5) of Schedule 3 that the investigation should take a different form).

746. *Paragraph 12(4)* inserts new sub-paragraphs (7) to (10) in paragraph 22 of Schedule 3. The new sub-paragraph (7) provides that the Secretary of State may by regulations (subject to the negative resolution procedure) make provision to require the report on an investigation within paragraph 19B(1)(a) or (b) (where conduct has been identified that may lead to disciplinary proceedings) to include such matters as required by the regulations and for the investigation report to be accompanied by such documents or other items as may be specified.

747. The new sub-paragraphs (8) to (10) place a duty on the person who submits the investigation report to supply the appropriate authority with copies of such other documents or items to enable that authority to comply with his or its obligations under the misconduct procedures in regulations or to ensure that a police officer receives a

fair hearing. This provision is to be used in the event that an investigation report does not attach documents the appropriate authority consider sufficient for him or it for these purposes.

748. *Paragraph 13(2) and (3)* amends paragraph 23 of Schedule 3 so that the IPCC must refer to the DPP a report on an investigation submitted to it following a investigation conducted under paragraph 18 (investigations managed by the IPCC) or 19 (investigations by the IPCC itself) of Schedule 3, if the report indicates to the IPCC that a criminal offence may have been committed and either (a) the IPCC considers the case should be so referred or (b) matters in the report fall within a prescribed category. The regulations setting out categories of cases which must be referred are subject to the negative resolution procedure.

749. Paragraph 13(5) substitutes new sub-paragraphs (6) and (7) into paragraph 23 of Schedule 3, which provide that the IPCC must, on receipt of an investigator's report, require the appropriate authority to determine whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or neither and what action it must or will take (both disciplinary action and other action). The appropriate authority must then submit a memorandum to the IPCC setting out its determinations. These amendments take account of the fact that the proposed new Police (Conduct) Regulations will set out the disciplinary action the appropriate authority must or may take as a result of its determination on whether there is a case to answer.

750. *Paragraph 14* amends paragraph 24 of Schedule 3 so that the appropriate authority must refer to the DPP a report on an investigation submitted to it following an investigation conducted under paragraph 16 (investigations conducted by appropriate authority on its own behalf) or 17 (investigations conducted by appropriate authority but supervised by the IPCC) of Schedule 3, if the report indicates to the authority that a criminal offence may have been committed and either (a) the appropriate authority considers the case should be so referred or (b) matters in the report fall within a prescribed category.

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

752. The new sub-paragraph (6) substituted in paragraph 24 also requires the appropriate authority, on receipt of an investigator's report (on a case investigated under paragraph 16 or 17 of Schedule 3), to determine whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or neither and what action it must or will take (both disciplinary action and other action). These amendments take account of the fact that the proposed new Police (Conduct) Regulations will set out the action the appropriate authority must or may take as a result of its determination on whether there is a case to answer.

753. *Paragraph 16* amends paragraph 24B of Schedule 3 to clarify that where, following completion of an investigation into a DSI matter, that matter is recorded as a conduct matter, the person who investigated the DSI matter may continue as the investigator of the conduct matter (subject to the IPCC determining under paragraph 15(5) that the investigation should take a different form under paragraph).

754. *Paragraph 17(2)* amends paragraph 25 of Schedule 3 to give complainants additional rights of appeal following an investigation by the appropriate authority (either on its own behalf or under supervision by the IPCC). The new provisions will allow complainants to appeal to the IPCC against the determination of the appropriate authority as to whether a person who was the subject of the investigation has a case to

answer in respect of misconduct or gross misconduct or neither (and in relation to being given inadequate information about this determination); and also against a decision of an appropriate authority not to send the investigation report to the DPP.

755. Paragraph 17(3) amends paragraph 25(3) to extend the matters the IPCC can require the appropriate authority to cover in its memorandum to the IPCC following an appeal. The memorandum can now include the appropriate authority's determination on case to answer, the action it must or has decided to take (whether under the Police (Conduct) Regulations or otherwise), and where the appropriate authority has determined that the report of the investigation should not be sent to the DPP, the reasons for that determination.

756. The amendment made by *paragraph 17(4)(a)* to paragraph 25(5) of Schedule 3 clarifies the operation of that sub-paragraph, which caters for both cases where it is clear from the appeal what ground of appeal is being pursued and where the ground of appeal is not clear. The amendment at *paragraph 17(4)(b)* extends the list of matters that the IPCC is required to determine (if appropriate) on an appeal, to reflect the new grounds of appeal.

757. *Paragraph 17(6)* inserts a new sub-paragraph (9A) into paragraph 25 which provides that where the appropriate authority has determined that the conditions for referring a case to the DPP are not met and the complainant has appealed against this determination, the IPCC will be required to determine whether it considers the conditions are satisfied. Where the IPCC determines that the conditions are satisfied it must direct the appropriate authority to refer the case to the DPP.

758. *Paragraph 18* amends paragraph 27 of Schedule 3 to allow the IPCC to make a recommendation to the appropriate authority in respect of whether a person has a case to answer in respect of misconduct or gross misconduct or has no case to answer; and to provide that where a recommendation is made by the IPCC that disciplinary proceedings are brought, the form of those proceedings must be specified.

759. *Paragraph 19*defines a number of the terms to be inserted into Schedule 3 and provides for the definition of "the Standards of Professional Behaviour" expected of a police officer to be set out in regulations.

Section 128: Financial assistance under section 57 of Police Act 1996.

760. Section 57(1) of the Police Act 1996 gives the Secretary of State power to maintain or contribute to organisations, services and facilities that promote the efficiency and effectiveness of the police. *Subsection (1)* inserts new subsections (1A) to (1D) into section 57.

761. The new subsection (1A) makes it clear that the Secretary of State can provide financial assistance in exercising his power under section 57(1). The new subsection (1B) provides that financial assistance may in particular be given by way of grant, investment in a body corporate, loan or guarantee and that the Secretary of State can set the terms and conditions on which the assistance is given. These new subsections clarify but do not extend the Secretary of State's existing powers under section 57(1).

762. New subsection (1B) also requires the consent of the Treasury to financial assistance (except for grants) made under the section 57(1) power. This is to ensure that the terms and conditions attached to any loans, investment or guarantees are in line with Government Accounting Rules and follow best practice.

763. New subsection (1C) states that the terms and conditions the Secretary of State can impose for the giving of financial assistance include those relating to repayment with or without interest.

764. New subsection (1D) requires that where financial assistance under section 57 is given on terms and conditions requiring that the body make payments to the Secretary of State

(e.g. repayments of capital or interest relating to a loan), those payments will be paid into the Consolidated Fund.

765. *Subsection (2)* provides that any outstanding loan already made by the Secretary of State to a body under section 57(1) for the purposes of promoting the efficiency and effectiveness of the police (such as a loan to the Forensic Science Service) will, from the date of Royal Assent, be treated as a loan made in accordance with section 57 of the 1996 Act as amended by section 128. In practice, this will mean that Treasury will be treated as having given its consent to existing loans and the loans will be treated as being in compliance with Government Accounting Rules.

Section 129: Inspection of police authorities

766. This section extends Her Majesty's Inspectorate of Constabulary's (HMIC's) powers of inspection in police authorities. It provides for HMIC to carry out general inspections of the performance of all the functions of police authorities, rather than limit these powers to the inspection of a police authority's compliance with best value in Part 1 of the Local Government Act 1999.

767. The intention is that this section mirrors the provision made by section 152 of the Local Government and Public Involvement in Health Act 2007. That section broadens the Audit Commission's powers to enable the general inspection of the performance of best value authorities rather than again limit their powers to compliance with best value. With both organisations having powers of inspection in police authorities that are on an equal footing, the intention is to develop a joint police authority inspection programme combining the expertise and resources of the Audit Commission and HMIC.

Part 10: Special immigration status

Section 130: Designation

768. This section allows the Secretary of State to designate a "foreign criminal" who is liable to deportation but who cannot be removed from the United Kingdom because of section 6 of the Human Rights Act 1998 and a family member of such a person (*subsections (1) to (3)*). Under *subsections (4) and (5)* a person who has a right of abode in the United Kingdom may not be designated and the Secretary of State may not designate a person where the effect of designation would breach the United Kingdom's obligations under the Refugee Convention, or the person's rights under Community treaties.

Section 131: "Foreign criminal"

769. This section defines the term "foreign criminal" as it is used in section 130.

770. *Subsection (1)* provides that a "foreign criminal" is a person who is not a British citizen, and who satisfies one or more of the conditions set out in *subsections (2) to (4)*.

771. The condition in *subsection (2)* (Condition 1) is that section 72(2)(a) and (b) or (3)(a) to (c) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) applies to the person. This applies where a person has been convicted of an offence, either in the United Kingdom or abroad, and has been sentenced to a period of imprisonment of at least two years. If the conviction was outside the United Kingdom, there is a further requirement that the person could have been sentenced to a period of imprisonment of at least two years had his conviction been in the United Kingdom for a similar offence.

772. The condition in s*ubsection (3)* (Condition 2) is satisfied where section 72(4)(a) or (b) of the 2002 Act applies to a person and the person has been sentenced to a term of imprisonment of any length. Section 72(4)(a) applies where a person is convicted of an offence specified by order of the Secretary of State, and section 72(4)(b) where a person is convicted outside the United Kingdom of an offence and the Secretary of

State certifies that in his opinion the offence is similar to an offence specified by order under section 72(4)(a).

773. *Subsection (4)* specifies that Condition 3 applies where Article 1F of the Refugee Convention applies to a person. Where Article 1F applies, the person concerned cannot be a refugee.

774. *Subsections (5) and (6)* make clear that provision for the rebuttal and non-application of the presumption that a person constitutes a danger to the community is irrelevant to the question of whether a person is a foreign criminal.

Section 132: Effect of designation

775. Section 132 sets out the effect of designation.

776. *Subsection (1)* specifies that a designated person does not have leave to enter or remain in the United Kingdom.

777. *Subsection (2)* ensures that, for the purposes of a provision of the Immigration Acts and any other enactment concerning or referring to immigration or nationality, a designated person is a person subject to immigration control, is not to be treated as an asylum-seeker or former asylum-seeker regardless of his status, and is not in the United Kingdom in breach of the immigration laws. *Subsection (3)*provides that time spent as a designated person may not be relied on by a person for the purpose of an enactment about nationality.

778. *Subsection (4)* specifies that a designated person shall not be deemed to have been given leave in accordance with paragraph 6 of Schedule 2 to the Immigration Act 1971 and may not be granted temporary admission to the United Kingdom under paragraph 21 of that Schedule. A person is deemed to have leave under paragraph 6 in certain circumstances which include, for example, where notice giving or refusing leave is not given before the end of twenty four hours after the examination of the person by an immigration officer under paragraph 2 of Schedule 2 to the Act. This provision has been disapplied as a designated person does not have leave to enter or remain in the United Kingdom (subsection (1)).

779. *Subsection (5)* notes that sections 134 and 135 make provision about support for designated persons and their dependants.

Section 133: Conditions

780. This section allows the Secretary of State or an immigration officer to impose conditions on a designated person, it specifies the nature of the conditions, and makes failure to comply with a condition an offence.

781. *Subsection (1)* allows the Secretary of State or an immigration officer to impose conditions on a designated person. These may relate to residence, employment or occupation, or reporting to the police, the Secretary of State or an immigration officer, as set out in *subsection (2)*.

782. *Subsection (3)* provides that the powers for electronic monitoring shall apply in relation to the conditions imposed under *subsection (1)* in the same way as they do when someone is granted temporary admission under paragraph 21 of Schedule 2 to the Immigration Act 1971. This means that where a residence restriction is imposed on an adult, or where a reporting restriction could be imposed, he may be required to cooperate with electronic monitoring.

783. *Subsection (4)* permits the Secretary of State to make payments to a person in respect of travelling expenses which the person has incurred or will incur in complying with a reporting condition.

784. *Subsection (5)* creates an offence of failing to comply with a condition under this section without reasonable excuse. The maximum penalties for this offence are set out in *Subsection (6)*. Further, under *subsection (7)* the ancillary provisions in the Immigration Act 1971 which apply in relation to an offence under any provision of section 24(1) (e.g. the power of arrest) will also apply in relation to an offence committed under subsection (5).

785. *Subsection (8)* specifies that the reference in *subsection (6)(b)* to 51 weeks, being the maximum period of imprisonment for an offence under subsection (5), shall be treated as a reference to six months in the application of the section to Scotland and Northern Ireland.

Section 134: Support

786. This section sets out provisions for the support of individuals designated under section 130 and their dependants.

787. *Subsections (1) and (2)* specify that Part VI of the Immigration and Asylum Act 1999 (the 1999 Act), which makes provision for support for asylum-seekers, will apply – subject to certain modifications - to designated persons and their dependants as it applies to asylum-seekers and their dependants. This allows the Secretary of State to provide, or arrange the provision of, support for designated persons and their dependants who appear to be destitute (or to be likely to become destitute within a prescribed period).

788. *Subsection (3)* specifies the ways in which this support may be provided under section 95 of the 1999 Act. The Secretary of State may provide accommodation, essential living needs, and in other ways where necessary to reflect exceptional circumstances of a particular case.

789. *Subsection (4)* provides that, unless the Secretary of State thinks it appropriate because of exceptional circumstances, the support provided under section 95 of the 1999 Act must not be wholly or mainly in cash.

790. *Subsection (5)* provides that section 4 of the 1999 Act shall not apply to designated persons.

791. *Subsection (6)* disapplies certain alternative statutory provisions relating to the provision of assistance under the homelessness provisions which would otherwise apply to a person who has been designated.

Section 135: Support: supplemental

792. This section lays out supplementary provisions relating to the support that may be provided under section 134, and it ensures the correct operation of Part VI of the 1999 Act in relation to designated persons.

793. *Subsection (1)* ensures that any references to Part VI of the 1999 Act or to a provision of that Part in other enactments includes a reference to that Part or provision as applied by section 134. Section 96 of the 1999 Act lays out the ways in which support may be provided to asylum seekers, but section 134(3) makes equivalent provision for designated persons. References to section 96 or a provision thereof will be treated as including a reference to section 134(3) or the corresponding provision. All references to asylum seekers will be treated as including a reference to designated persons.

794. *Subsection (2)* provides that any provision of Part VI of the 1999 Act requiring or permitting the Secretary of State to have regard to the temporary nature of support for asylum-seekers shall require him instead to have regard to the nature and circumstances of support for designated persons.

795. *Subsection (3)* provides that the rules governing the procedure for bringing and hearing appeals made under section 104 of the 1999 Act apply.

796. *Subsection (4)* provides that any instrument made under Part VI of the 1999 Act may make provision in respect of that Part as it applies by virtue of section 134, otherwise than by virtue of that section, or both, and may make different provision for that Part as it applies by virtue of section 134 and otherwise than by virtue of section 134.

797. *Subsection (5)* modifies the provisions which apply to the notice to be given to a designated person required to quit accommodation provided under Part VI of the 1999 Act.

798. *Subsection (6)* allows the Secretary of State, by order (subject to the affirmative resolution procedure), to repeal, modify or disapply (to any extent) the provision that support by virtue of section 134(3) may not be provided wholly or mainly by way of cash unless the Secretary of State thinks it appropriate because of exceptional circumstances.

799. *Subsection (7)* provides that an order under section 10 of the Human Rights Act 1998 (by which a Minister of the Crown may by order make amendments to legislation which has been declared to be incompatible with a Convention right) which amends a provision mentioned in section 134(6) may amend or repeal that subsection.

Section 136: End of designation

800. This section explains when designation comes to an end and the impact this has on support.

801. *Subsection (1)* lists the events which cause designation to lapse. These include where a person: (a) is granted leave to enter or remain in the United Kingdom, (b) is notified by the Secretary of State or an immigration officer of a right of residence in the United Kingdom by virtue of the Community treaties, (c) leaves the United Kingdom or (d) is made the subject of a deportation order under section 5 of the Immigration Act 1971.

802. *Subsection (2)* makes clear that support may not be provided by virtue of section 134 after designation lapses, subject to the exceptions set out in subsections (3) and (4). *Subsection (3)* (Exception 1) allows that if designation lapses under subsection (1)(a) or (b), support may be provided in respect of a period which begins when the designation lapses and ends on a date determined in accordance with an order of the Secretary of State (subject to the negative resolution procedure). *Subsection (4)* (Exception 2) specifies that if designation lapses under subsection (1)(d), support may be provided in respect of any period during which an appeal against the deportation order may be brought, any period during which an appeal against the deportation order is pending, and after an appeal ceases to be pending, such period as the Secretary of State may specify by order (subject to the negative resolution procedure).

Section 137: Interpretation: general

803. This section defines other terms as they are used in this Part of the Act, in particular, "family" and "right of abode in the United Kingdom". It also provides that a reference in an enactment to the Immigration Acts includes a reference to sections 130 to 136.

Section 138: Amendment to section 127 of Criminal Justice and Public Order Act 1994

804. Section 138 reintroduces a statutory prohibition on inducing prison officers in England and Wales and Scotland to take industrial action or commit a breach of discipline. *Subsection (3)* broadens the definition of industrial action to include "any action likely to put at risk the safety of any person". This provision came into force on Royal Assent for England, Wales and Northern Ireland as well as for private sector prisons across the UK. *Subsection (4)*which extends the prohibition to public sector prison officers in Scotland comes into force by order.

Section 139: Power to suspend the operation of section 127 of Criminal Justice and Public Order Act 1994

805. Section 139 provides a power for the Secretary of State to suspend or later revive operation of the statutory prohibition on inducing prison officers to take industrial action or commit breaches of discipline by order subject to the affirmative procedure. This section came into force on Royal Assent..

Section 140: Disclosure of information about convictions etc of child sex offenders to members of the public

806. *Subsection (1)* inserts new sections 327A and 327B into the 2003 Act.

807. New subsection 327A(1) places a duty on MAPPA authorities (which includes the police, prison and probation services) to consider, in every case, disclosure to members of the public of information in its possession relating to the convictions of any child sex offender being managed by it.

808. New subsections 327A(2) and (3) create a presumption that information will be disclosed where the responsible MAPPA authority has reasonable cause to believe that a child sex offender poses a risk of serious harm to any particular child or children or to children of any particular description, and the disclosure of information to a particular member of the public is necessary for the purpose of protecting the particular child or children, or the children of that description, from serious harm caused by that offender.

809. New subsection 327A(4) makes clear that the presumption to disclose is not dependent on a request from the public.

810. New subsection 327A(5) allows responsible authorities the discretion, when making a disclosure under this section to disclose such information about the offender's convictions as it considers appropriate. It also allows the responsible authority to impose conditions preventing the recipient of the information from disclosing it to others.

811. New subsection 327A(6) obliges responsible authorities to ensure that, having made a decision that information should be disclosed, it should disclose this information as soon as is reasonably practicable.

812. New subsection 327A(7) and (8) require that any decision to disclose information or not, and the reasons for such a decision, must be recorded by the responsible MAPPA authority. Any conditions attached to the disclosure should also be recorded.

813. New subsection 327A(9) makes it clear that a disclosure should not be made under this section which contravenes the Data Protection Act 1998.

814. New subsection 327A(10) confirms that the authorities' powers to disclose are not affected by this section. They will still need to ensure that they have the necessary vires under their common law or prerogative powers to disclose.

815. The new section 327B provides a definition of the terms used in new section 327A, notably that a child is a person under 18, a child sex offender includes a person convicted or cautioned of an offence listed in the new Schedule 34A, or an equivalent offence abroad, whether spent or not, and that "serious harm" includes serious physical or psychological harm caused by committing any offence listed in the new Schedule 34A

Section 141: Sexual offences prevention orders: relevant sexual offences

816. The section amends the criteria necessary for a sexual offences prevention order to be made.

817. *Subsection (1)* amends section 106 of the Sexual Offences Act 2003 with the effect that it will not be necessary to meet the conditions listed as to the age of the victim, age of the offender and/or sentence length in Schedule 3 to that Act for a sexual offences

prevention order to be made. The thresholds relating to sentence length/type and the age of the offender or victim set out in Schedule 3, will continue to apply for the purposes of determining whether an offender is subject to the notification requirements ("the sex offender's register").

Section 142: Notification requirements: prescribed information

818. This section amends the Sexual Offences Act 2003 in order to allow the Secretary of State to amend, through secondary legislation (subject to the affirmative resolution procedure), the notification requirements placed on those convicted or cautioned of relevant sexual offences or otherwise subject to the sex offender notification requirements.

819. *Subsection (1)* allows the Secretary of State to add to the information that sex offenders subject to the notification requirements must notify to the police.

820. *Subsections (2) to (5)* have the effect that, if the Secretary of State does add to the information required to be notified by a sex offender and there is a change in those details, the offender must notify the authorities within three days of the change. As occurs with the current information which must be notified, *subsection (4)* allows the sex offender to notify the police of an expected change in the prescribed details before the change occurs. *Subsections (6) to (9)* allow the Secretary of State to provide in regulations that an offender who does not have a sole or main residence in the United Kingdom must notify their details to police more frequently.

Section 143: Persistent sales of tobacco to persons under 18

821. Section 143 inserts a new section 12A into the Children and Young Persons Act 1933.

822. Section 12A enables a magistrates' court to impose restricted premises orders preventing the sale, either in person or by automatic machine, of tobacco products or cigarette papers on certain premises for up to one year.

823. Under new section 12A(7) a magistrates' court may make a restricted premises order only if, in addition to the offence on the premises for which the offender has been convicted, the offender has also committed at least two other tobacco offences on the premises within a two year period (whether or not convicted of those other offences). A restricted premises order can only be made if the person applying for the order has given notice to everyone appearing to be affected by it.

824. Under new section 12A(9) and (10), restricted premises orders may be varied or discharged if a person affected by an application was not given notice and that person has not had a later opportunity to make representations to the court.

825. Section 143 also inserts a new section 12B into the Children and Young Persons Act 1933. New section 12B enables a magistrates' court to impose restricted sale orders. By virtue of new section 12B(3) a restricted sale order is an order which prohibits a person from making any sale of tobacco or cigarette papers (whether in person or by automatic machine) to any person. It also prohibits the person from having management functions in relation to such sales.

826. Under new section 12B(5) a magistrates' court may make a restricted sale order only if, in addition to the offence for which the offender has been convicted, the offender has also committed at least two other tobacco offences within a two year period (whether or not convicted of those other offences).

827. In addition section 143 inserts a new section 12C into the Children and Young Persons Act 1933. New section 12C contains an enforcement sanction and a defence. Under new section 12C(3), it is a defence for a person charged with breaching a restricted sale order to show that he took all reasonable precautions to avoid committing the breach. Under new section 12C(4), a person found guilty of breaching restricted premises orders or

restricted sale orders is liable to a fine of up to £20,000. New section 12C(5) provides that restricted premises orders are local land charges and will therefore be registered against the property.

Section 144: Power to require data controllers to pay monetary penalty

828. Section 144 inserts new sections 55A to 55E into the Data Protection Act 1998. These new sections create a framework for the Information Commissioner to serve a monetary penalty notice on a data controller.

829. New section 55A(1) gives the Information Commissioner a discretion to serve a monetary penalty notice on a data controller if the Commissioner is satisfied there has been both a serious contravention by the data controller of the data protection principles and that the contravention was of a kind likely to cause substantial damage or substantial distress. The Commissioner must also be satisfied that the contravention was deliberate or that the data controller knew or ought to have known that there was a risk that the contravention would occur (and that it would be of a kind likely to cause substantial harm or substantial distress) but failed to take reasonable steps to prevent it occurring (new section 5A(2) and (3)). New section 55A(5) and (9) make provision for the Secretary of State to make regulations prescribing the maximum amount of the penalty.

830. New section 55B makes provision for the procedural rights of data controllers served with a monetary penalty notice. This includes a duty on the Information Commissioner to serve a data controller with a notice of intent that he proposes to issue a monetary penalty notice. This will allow a data controller to make representations before any monetary penalty notice is imposed. It also provides a right of appeal to the Information Tribunal against a monetary penalty notice issued or the amount specified in a monetary penalty notice. By new section 55B(3) and (6), the Secretary of State may make regulations prescribing what must be contained in notices of intent.

831. New section 55C requires the Information Commissioner to prepare and issue guidance on how he proposes to exercise his functions in respect of notices of intent and monetary penalty notices. The guidance, and all alterations and replacements, must be approved by the Secretary of State, and laid before Parliament.

832. New section 55D makes provision for the enforcement of monetary penalty notices.

833. New section 55E confers a power on the Secretary of State to make an order to make further provision in connection with monetary penalty notices and notices of intent.

Section 145 and Schedule 25 : Amendments to armed forces legislation

834. Section 145 gives effect to Schedule 25, which makes changes to armed forces legislation similar to certain provisions of the Act, subject to modification where required.

835. Part 1 of the Schedule (*Paragraphs 1 to 9*) makes a number of amendments to the Courts-Martial (Appeals) Act 1968. Paragraph 2 provides for powers to dismiss certain appeals following references by the CCRC, equivalent to the provisions of section 42. Paragraphs 3 to 9 deal with the effect of interim hospital orders, the production of evidence, appeals against procedural directions and the detention of an accused pending appeal to the Supreme Court. They make provision equivalent to those provisions made by Part 1 of Schedule 8 to the Act in relation to appeals in criminal cases.

836. Part 2 of the Schedule (*Paragraphs 10 to 31*) makes a number of amendments to the Armed Forces Act 2006. These include amendments relating to the sentencing of dangerous offenders, restrictions on imposing community punishments equivalent to the provisions of section 11, review of sentences referred by the Attorney-General equivalent to those in section 46, changes in relation to the award of compensation for miscarriages of justice equivalent to those in section 61, imposition of unpaid work

requirement for breach of community order or overseas community order equivalent to those of section 38 and minor amendments regarding suspended prison sentences on further conviction or breach of requirement to reflect section 20 .

837. Part 3 of the Schedule (*Paragraph 34*) makes transitional provisions for applications for compensation for miscarriage of justice including provision for exceptional circumstances.

Section 146: Convention against human trafficking

838. Section 146 inserts a new section 33(6A) into the UK Borders Act 2007. Section 32 to 39 of that Act provide for the automatic deportation of certain foreign criminals, subject to the exceptions in section 33. New section 33(6A) provides that the Secretary of State does not have to deport a person automatically where he thinks this would be contrary to the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings. This is to ensure that the UK can comply with the Convention once it has been ratified.

Part 12: General

Section 147: Orders, rules and regulations

839. This section makes provision in connection with the various powers under the Act to make orders or regulations. The affirmative resolution procedure applies to instruments made under the powers listed in *subsection (5)*. The effect of *subsection (3)* is that all other powers are subject to the negative resolution procedure, except for powers listed in subsections (4)(a) to (c) (namely the powers to make commencement orders under section 153, to make an order under paragraph 26(5) of Schedule 1 (power to specify the description of a person responsible for monitoring an electronic monitoring requirement attached to a YRO), and to make an Order in Council under paragraph 9 of Part 2 of Schedule 17 (power to extend certain provisions of the Customs and Excise Management Act 1979 to the Channel Islands or any British overseas territory)) where no parliamentary procedure applies. *Subsection (2)*provides that any power under the Act to make orders or regulations includes a power to make provision generally or only for specified cases or circumstance and to make different provision for different cases, circumstances or areas. This subsection also enables orders and regulations to make incidental, supplemental, consequential, transitional, transitory or saving provisions.

Section 148 and Schedules 26 and 27: Consequential etc. amendments and transitional and saving provision

840. This section enables the Secretary of State by order to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of the Act. It is a power to make consequential provisions for those purposes at any time, including amendments to primary and secondary legislation. The affirmative resolution procedure will apply to any order which amends or repeals primary legislation. The section also introduces Schedule 26 (minor and consequential amendments) and Schedule 27 (transitory, transitional and saving provisions).

Schedule 26: Minor and consequential amendments

841. *Paragraph 1* amends section 81(3) of the Magistrates' Courts Act 1980 to ensure that the court cannot impose a youth default order unless the court has inquired into the defaulter's means in his presence on at least one occasion since the conviction.

842. *Paragraph 2(4)* amends Schedule 31 to the 2003 Act, which operates in conjunction with section 300 of that Act, as amended by section 24. Section 300, as amended, gives a court which has the power to commit an offender to prison for fine default the alternative of imposing a default order with an unpaid work requirement, a curfew requirement or an attendance centre requirement. Schedule 31 modifies the provisions governing

the length of the unpaid work and curfew requirements of community orders set out in sections 199 and 204 of the 2003 Act, respectively. It sets out in tabular form the maximum periods of unpaid work or curfew which may be imposed corresponding to the amount of the sum in default.

843. Paragraph 2(4) amends Schedule 31 to make similar provision for default orders with attendance centre requirements. The attendance centre requirement of a community order is governed by section 214 of the 2003 Act. That provision is modified so that the minimum number of hours at an attendance centre to which an offender may be made subject under a default order remains at 12, but a table sets the maximum number of hours corresponding to the sum in default.

844. *Paragraph 3* updates the definition of a young offender institution. At present it is defined in section 43(1)(aa) of the Prison Act 1952 as places for the detention of offenders sentenced to detention in a young offender institution or to custody for life. This is outdated as offenders under the age of 18 may no longer receive these sentences. Paragraph 3 amends the definition to make it clear that uoung offender institutions are also places for the detention of other offenders ie including those under 18 years of age.

845. *Paragraph 4* updates the provisions in the Criminal Justice Act 1961 relating to harbouring an offender who is unlawfully at large, to take account of the wording in the Powers of Criminal Courts (Sentencing) Act 2000 relating to the power to place young people sentenced to a detention and training order.

846. *Paragraph 5* makes some consequential amendments to section 23AA of the Children and Young Persons Act 1969, which provides for the electronic monitoring of those remanded into local authority accommodation.

847. *Paragraph 6* makes a very minor change in section 13A(3) of the Criminal Appeal (Northern Ireland) Act 1980. Section 13(A)(1) refers to two findings; that the person is unfit to be tried; and that he did the act etc charged against him: and permits an appeal "against either or both of those findings". Section 13(A)(3) presently empowers the Court of Appeal to allow an appeal "if it thinks that the finding is unsafe". However since there are potentially 2 findings that may be appealed it is more appropriate to refer to "a finding", rather than "the finding."

848. *Paragraph 7* ensures that section 19XA(1) of the Wildlife and Countryside Act 1981 (constables' powers in connection with samples) correctly refers to constables' powers of entry in section 19 of that Act.

849. *Paragraph 8* amends section 37(1A) of the Mental Health Act 1983 (powers of court to order hospital admission or guardianship) to reflect the amendments which restore judicial discretion to the sentencing of offenders to public protection sentences. For the purposes of section 37, the only clarification still needed is that, where a court has to sentence an offender to life, that does not prevent it from ordering the offender's admission to a hospital.

850. *Paragraphs 9 to 18* make consequential amendments to the Repatriation of Prisoners Act 1984 to enable the new provisions to work within the existing framework of the Act. *Paragraphs 27, 30, 51, 52 and 73*make consequential amendments to other legislation to ensure references to transferred prisoners include prisoners for whom responsibility for the sentence is transferred by virtue of a warrant under section 4A, where appropriate.

851. *Paragraph 19* amends the position for prisoners repatriated to the United Kingdom under the Repatriation of Prisoners Act 1984 insofar as they are to be treated in the same way as domestic prisoners in terms of their release from custody and can therefore benefit from the new release, recall and re-release provisions contained in the Act.

852. *Paragraph 20* makes a consequential amendment to section 37B of PACE so that, where a young offender is referred by the police to a prosecutor for a decision on charging, the

prosecutor may decide whether or not that person should be given a youth conditional caution.

853. *Paragraph 21* ensures that on devolution of criminal justice functions in Northern Ireland superintendence of the work of the Serious Fraud Office in Northern Ireland is transferred from the new locally-appointed Attorney General for Northern Ireland to the Westminster-based Advocate General for Northern Ireland.

854. The Justice (Northern Ireland) Act 2002, in preparation for the devolution of criminal justice matters in Northern Ireland, provided for the appointment of an Advocate General for Northern Ireland and the removal of the Attorney General's responsibilities for prosecutorial matters either by delegating them to the DPP for Northern Ireland or by transferring them to the Advocate General. The 2002 Act failed to make a consequential amendment to the provisions of the Criminal Justice Act 1987 in so far as they relate to the powers of the Attorney General in respect of the Serious Fraud Office.

855. *Paragraphs 22 and 23* amend section 36 of the 1988 Act (reviews of sentencing). Section 36 allows the Attorney General, with the leave of the Court of Appeal, to refer a case to them for a sentencing review where, in the Attorney General's view, the court failed to impose a sentence required by law. In consequence of the restoring of judicial discretion as regards the making of public protection sentences, section 36 should now only refer to section 225(2) or 226(2) of the 2003 Act (requirement on court to impose sentence of imprisonment for life or detention for life).

856. *Paragraph 24* corrects an amendment made in error to section 160(1) of the 1988 Act by the Sexual Offences Act 2003.

857. *Paragraph 25* makes a consequential amendment to the Criminal Justice (Evidence, Etc.)(Northern Ireland) Order 1988 to take account of the revised definition of a photograph in section 70.

858. *Paragraph 26*adds the offences in Part 3A of the Public Order Act 1986 (hatred against persons on religious grounds or grounds of sexual orientation), as amended by Schedule 16, to the list of trigger offences for football banning orders contained in Schedule 1 to the Football Spectators Act 1989.

859. *Paragraph 28* amends section 167 of the Broadcasting Act 1990, which confers a power on a justice of the peace, where a relevant offence is suspected, to issue an order requiring the production of a recording of a programme for the purposes of making a copy. By virtue of section 167(4) of the Broadcasting Act, the power does not apply where a warrant could be granted under section 24 of the Public Order Act 1986 (racial hatred – powers of entry and search). *Paragraph 28(2)* amends section 167(4) of the Broadcasting Act to include a reference to section 29H of the 1986 Act, which contains the equivalent powers to those in section 24 in respect of Part 3A of the Public Order Act 1986 (hatred against persons on religious grounds or grounds of sexual orientation). *Paragraph 28(3)* extends the definition of a "relevant offence", which currently includes that in section 22 of the 1986 Act (broadcasting or including a programme in a programme service threatening, abusive or insulting visual images or sounds), to include the parallel offence in section 29F of the Public Order Act 1986.

860. *Paragraph 29(3)* amends section 44 of the 1991 Act to provide that the definition of "liable to removal from the United Kingdom" applies to extended sentence prisoners. This is required as a result of section 33(6), which removes exclusions to the early removal scheme and which means that extended sentence prisoners may now be eligible for early removal under the scheme.

861. *Paragraph 29(4)* amends section 46 of the 1991 Act to provide that the definition of "liable to removal from the United Kingdom" applies to sections 46A, 46ZA and 46B, which set out the early removal scheme.

862. *Paragraph 32*ensures that those prisoners who transfer from England and Wales to another UK jurisdiction on a restricted transfer under the provisions of the Crime (Sentences) Act 1997 will be subject to the new release and recall arrangements.

863. *Paragraph 34* amends section 38 of the 1998 Act to extend the youth justice services provided by youth offending teams to include the provision of assistance to relevant prosecutors for the purpose of determining whether a youth conditional caution should be given to an offender, and the supervision and rehabilitation of offenders who have been given a youth conditional caution.

864. *Paragraphs 35 to 39* make amendments to the Youth Justice and Criminal Evidence Act 1999 to re-include certain offences within the lists of sexual offences for which particular procedural protections provided for by that Act are available for complainants and other witnesses giving evidence in criminal trials.

865. *Paragraphs 36 and 37* amend sections 35 and 62 respectively of the Youth Justice and Criminal Evidence Act 1999 to ensure that the procedural protections whose application hinges on those provisions apply to all relevant witnesses and complainants in trials not only for offences committed under the Sexual Offences Act 2003 but also for offences committed under earlier sexual offences legislation, most of which has now been repealed.

866. *Paragraph 38* provides that, on commencement, these amendments will be deemed to have had effect from 1 May 2004, when the Sexual Offences Act 2003 came into force. *Paragraph 39* ensures that the retrospective correction will also apply to proceedings in military service courts.

867. *Paragraph 41* amends section 12 of the 2000 Act (absolute and conditional discharge) to reflect the amendments which restore judicial discretion in the sentencing of offenders to public protection sentences. The amendment provides that, if the offence for which the offender is charged falls under sections 225(2) or 226(2) of the 2003 Act (requirement to impose sentence of imprisonment for life or detention for life), the court does not have power under the 2000 Act to impose an absolute or conditional discharge.

868. *Paragraphs 44* updates section 92 of the 2000 Act to reflect the current arrangements for placing young people sentenced to be detained under section 90 or 91 of that Act.

869. *Paragraphs 46 to 48* amend sections 130 (compensation orders), 146 (driving disqualification for any offence) and 164 (further interpretative provisions) of the 2000 Act to reflect amendments restoring judicial discretion in the sentencing of offenders to public protection sentences. The amendments provide that compensation orders and driving disqualification may be ordered instead of, as well as additional to, any public protection sentence.

870. *Paragraph 50* amends section 1 of the Criminal Justice and Court Services Act 2000 to remove the reference to authorised persons so that assistance can be given to prosecutors (as well as authorised persons) in determining whether youth conditional cautions should be given and which conditions to attach to youth conditional cautions.

871. *Paragraph 56* amends the definition of "cautioned" in section 133(1) of the Sexual Offences Act 2003 to remove reference to a caution having been given by a police officer. This will ensure that conditional cautions, which may be given by persons other than a police officer, are covered by the definition of cautions for the purposes of that Act.

872. *Paragraphs 60 and 62* amend the 2003 Act to alter the provision made about the payment of financial penalties imposed under the adult conditional caution scheme. This is in line with the provision made by Schedule 9 for youth conditional cautions. Further provision about the payment of financial penalties will be included in the Code of Practice.

873. *Paragraph 61* amends the 2003 Act so as to clarify that a relevant prosecutor may, with consent, add or omit a condition following breach of the original condition under the conditional cautions scheme.

874. *Paragraph 63* amends sections 88, 89 and 91 of the 2003 Act. Part 10 of the 2003 Act reformed the law relating to double jeopardy. Sections 87 to 91 of the 2003 Act set out the arrangements for the arrest, custody and bail of acquitted persons under the new provisions. Sections 88, 89 and 91 provide that certain matters must be dealt with by the Crown Court or, as the case may be, the Court of Appeal. A potential difficulty has come to light in that, unlike the High Court and the magistrates' court, the Crown Court and the Court of Appeal do not sit in urgent cases on Saturdays. In order to meet the time limits contained in the 2003 Act, a suspect would in exceptional circumstances have to be brought before these courts on a Saturday. Although double jeopardy cases are very rare, the amendment will prevent the situation from arising even theoretically.

875. *Paragraphs 64 to 69* amend sections 142 (purposes of sentencing), 150 (circumstances in which community sentence not available), 152 (general restrictions on imposing custodial sentences), 163 (general power of Crown Court to fine) and 305 (interpretation of Part 12) of the 2003 Act. The amendments are needed in consequence of the changes made by sections 13 to 18 (which give judges more discretion in the sentencing of dangerous offenders).

876. *Paragraph 79* makes consequential amendments to the definition of "Convention Offences" in Schedule 1 to the Terrorism Act 2006. This ensures that the Schedule to that Act accurately reflects the new list of offences set out in the amended Nuclear Material (Offences) Act 1983 and Customs and Excise Management Act 1979.

877. *Paragraph 80* ensures that where enforcement powers for wildlife inspectors contained in the Wildlife and Countryside Act 1981 are extended to other wildlife legislation, including penalties for offences in relation to those powers, the offences themselves are also extended.

878. *Paragraph 81* corrects two minor errors in the Police and Justice Act 2006.

879. *Paragraph 82* amends Schedule 2 to the Armed Forces Act 2006 to include in the list of offences contained therein the offences under sections 29B to 29G of the 1986 Act (incitement to hatred against persons on religious grounds or hatred on the grounds of sexual orientation), in addition to the parallel offences in sections 18 to 23 of that Act (incitement to racial hatred) which are already listed. Section 113 of the Armed Forces Act 2006 requires a commanding officer to notify a service police force when he becomes aware that a serious offence has or may have been committed by a person under his command. Section 116 requires a service policeman who considers there is sufficient evidence to charge a person with a serious offence, or an offence prescribed by regulations made by the Secretary of State under section 128, to refer the case to the Director of Service Prosecutions. Schedule 2 lists those serious offences to which section 113 and section 116 apply. They include serious disciplinary offences, such as mutiny and desertion, and serious criminal offences, such as murder, manslaughter and certain sexual offences.

880. *Paragraph 83* amends section 1 of the Offender Management Act 2007 to remove the reference to authorised persons so that assistance can be given to anyone able to issue a conditional caution and to assist them with which conditions to attach to conditional cautions.

Section 149 and Schedule 28: Repeals and revocations

881. This section introduces Schedule 28 (repeals and revocations).

Section 150: Financial provisions

882. This section authorises out of money provided by Parliament any expenditure incurred by a Minister of the Crown under the Act. It also authorises any additional expenditure incurred under any other Acts, where that additional expenditure results from the Act.

Section 151: Effect of amendments to criminal justice provisions applied for the purpose of service law.

883. This section clarifies that unless the contrary intention appears any amendment made by the Act, other than under Part 1, to criminal justice legislation which has been applied for the purposes of service law also amends the provisions as applied.

Section 152: Extent

884. This section sets out the extent of the provisions of the Act. This is detailed in paragraphs 100 to 106 above. *Subsection (10)* clarifies that section 76 (reasonable force for purposes of self-defence etc.) will operate outside the United Kingdom in relation to offences triable in service courts or which may be dealt with summarily by commanding officers in the armed forces, as the common law rules relating to self defence apply in relation to the armed forces wherever they are.

Section 153: Commencement

885. This section provides for commencement. The provisions mentioned in paragraph 887 and 888 below will come into force either on Royal Assent or 2 months after Royal Assent. The other provisions of the Act are, with two exceptions, to be brought into force by means of orders made by the Secretary of State or the Lord Chancellor. The exceptions are those parts of sections 119 to 121 in relation to nuisance and disturbance on Welsh NHS premises which will be brought into force by order made by Welsh Ministers and section 122 and Schedule 21 (nuisance or disturbance on HSS premises) which will be brought into force by order made by statutory rule by the Northern Ireland Department of Health, Social Services and Public Safety.

Section 154: Short title

886. This section sets out the short title of the Act.