

CRIMINAL JUSTICE ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 13 : Miscellaneous

Section: 306: Limit on period of detention without charge of suspected terrorists

656. *Section 306* relates to detention under Schedule 8 to the Terrorism Act 2000. This relates to persons arrested under section 41 of that Act as suspected terrorists.
657. *Section 306* gives the “judicial authority” as defined in paragraph 29 of Schedule 8 to the Terrorism Act, power to extend the period of detention for up to a total of fourteen days from the existing starting times set out in paragraphs 29(3) and 36(3) provided the conditions in paragraph 32 are met. These conditions are that there must be reasonable grounds for believing that the further detention of the person concerned is necessary to obtain relevant evidence, and the investigation in connection with which the person is detained is being conducted diligently and expeditiously. Paragraph 37 provides that the detainee must be released immediately if the grounds for his detention no longer apply.
658. The judicial authority is only able to extend the period in the warrant for more than seven days if the warrant already authorises detention for the maximum seven days currently permitted. For example, the section does not allow the police to ask for ten more days’ detention if the warrant only authorises detention for four days. At that stage the judicial authority would only be able to extend the warrant for three more days. The section only permits an extension of detention for longer than seven days if the warrant already permits detention for the current maximum of seven days. Nevertheless, the Section does not prevent an application for an extension of the warrant for longer than seven days being made before the seven day period has expired so long as the warrant already authorises detention for seven days. Accordingly, it is not possible for the fourteen days to be granted in one block no matter how compelling the reason.
659. The procedural requirements for making an application for extension to detention as stipulated in paragraphs 30(3) and 31 to 34 apply to extensions for up to 14 days just as they apply to other extensions of detention under paragraph 36.

Section 307: Enforcement of regulations implementing Community legislation on endangered species:

660. This section provides for the maximum prison sentences for offences arising from EC Regulations 338/97 and 1808/2001 on the protection of wild fauna and flora by regulating trade therein (the ‘Wildlife Trade Regulations’) to be increased. Subsection (1) provides definitions for the purposes of this Section. Subsection (2) disapplies the provisions of the European Communities Act 1972, which would otherwise limit the maximum penalties for offences arising from these Regulations, and tried on indictment, to two years, imprisonment and a fine. This ensures that for offences created in new secondary legislation implementing the Wildlife Trade Regulations (currently implemented by the [Control of Trade in Endangered Species \(Enforcement\) Regulations 1997](#); (SI 1997 No. 1372) and predominantly triable either way), the

possibility of a maximum penalty of up to five years imprisonment for offences tried on indictment can be introduced. *Subsection (3)* disapplies the provisions of the 1972 Act for new offences under the Wildlife Trade Regulations tried summarily in Scotland and Northern Ireland, so allowing the possibility of a maximum prison sentence of six months (currently a maximum sentence of only three months is permissible).

661. *Subsection (5)* modifies subsection (3), by providing that the provisions of the 1972 Act are also disapplied, until the sentencing provisions in Part 12 of the Act are commenced, in relation to: Wildlife Trade Regulations offences in England and Wales; and offences arising from Council Directive [92/43/EEC](#) on the conservation of natural habitats and wild fauna and flora (“Habitats Directive”) in England and Wales. The subsection supersedes and repeals sections 81(2) and (3) of the Countryside and Rights of Way Act 2000, which are repealed by the Act.
662. *Subsection (4)* confers a power of arrest without warrant for a constable in Scotland, for wildlife trade offences. Section 24 of the Police and Criminal Evidence Act 1984 and Article 26(1) of the Police and Criminal Evidence Order (NI) 1983, already provide that in other parts of the UK, offences which attract a maximum prison sentence of five years are automatically ‘arrestable’. This subsection ensures that the arrest powers available to police officers throughout the UK are broadly consistent for these offences. *Subsection (6)* ensures that if any of the “relevant Community instruments” are amended, repealed or re-enacted, that the provisions of the section will still apply to them.

Section 308: Non-appearance of defendant: plea of guilty

663. This section extends the cases in which a defendant in the magistrates’ court can plead guilty and be dealt with in his absence. At present this is not possible where the offence is punishable with imprisonment for a term exceeding 3 months, but it will be possible in the future by virtue of this section.

Section 309: Preparatory hearings for serious offences not involving fraud

664. This section amends section 29 of the Criminal Procedure and Investigations Act 1996 which sets out the circumstances in which a statutory preparatory hearing may be held in cases not involving fraud. At present, preparatory hearings may be held in non-fraud cases where it appears to the judge that the case is of such complexity or length that holding a preparatory hearing is likely to bring substantial benefits. This section adds "seriousness" to these criteria.

Section 310: Preparatory hearings to deal with severance and joinder of charges

665. This section amends sections 7(1), 9(3) and 9(11) of the Criminal Justice Act 1987 and sections 29(2) and 31(3) of the Criminal Procedure and Investigations Act 1996. It adds issues of severance and joinder to the purposes for which preparatory hearings may be held under these Acts and also provides that the judge may make rulings on severance and joinder in preparatory hearings. These rulings will be appealable under the 1987 Act or the 1996 Act by both the prosecution and the defence, subject to the leave of the judge or the Court of Appeal.

Section 311: Reporting restrictions for preparatory hearings

666. This section extends to Northern Ireland the reporting restrictions that apply to preparatory hearings held in long or complex fraud cases under the Criminal Justice Act 1987 and those held in long or complex non-fraud cases held under the Criminal Procedure and Investigations Act 1996. At present these restrictions extend only to Great Britain. *Subsections (3) and (7)* provide that the consent of the Attorney General for Northern Ireland is required before proceedings for these offences can be instituted in Northern Ireland.

Section 312: Award of costs

667. This section remedies a gap in existing legislation by means of an amendment to the Prosecution of Offences Act 1985. It provides that the Court of Appeal may award defence costs from central funds or award costs against the defendant following an appeal from a preparatory hearing in a non-fraud case under the Criminal Procedure and Investigations Act 1996. The amendment will bring appeals under the 1996 Act in line with equivalent appeals under the Criminal Justice Act 1987.

Section 313: Extension of investigations by Criminal Cases Review Commission in England and Wales

668. Section 23A of the Criminal Appeal Act 1968 empowers the Court of Appeal, where a defendant has been given leave to appeal against conviction, to direct the Criminal Cases Review Commission to investigate and report to the Court on any matter relevant to the determination of the case and likely to assist in resolving it. The Court of Appeal has no equivalent power to direct the Commission to investigate and report to it on any matter where the defendant is still applying for leave to appeal.
669. *Section 313* amends the Criminal Appeal Act 1968 to permit the Court of Appeal to direct the Commission to investigate and report on any matter where the defendant is applying for leave to appeal against conviction, as well as on an appeal against conviction.
670. *Section 313* also adds a new subsection (1A) to section 23A of the 1968 Act. The new subsection makes it clear that a direction to the Criminal Cases Review Commission to investigate may not be given by a single judge. The purpose of the stipulation is to require the full court to consider such directions before they are made, and thus ensure that they are used sparingly.

Section 314: Extension of investigations by Criminal Cases Review Commission in Northern Ireland

671. *Section 314* makes similar amendments to the Criminal Appeal (Northern Ireland) Act 1980 as *section 313* makes to the Criminal Appeal Act 1968.

Section 315: Appeals following reference by Criminal Cases Review Commission

672. *Section 315* adds a new section 14(4A) to the Criminal Appeal Act 1995. Under section 14(5) of the 1995 Act, an appellant whose case is referred to the Court of Appeal by the Criminal Cases Review Commission may introduce an unlimited number of additional grounds of appeal, including grounds which bear no relation to the Commission's reasons for referring the case. New section 14(4A) of the 1995 Act introduces a leave requirement before such an appellant can add grounds of appeal unrelated to the reasons the Commission had for making the reference. The change applies to both England and Wales and Northern Ireland.

Section 316: Power to substitute conviction of alternative offence on appeal in England and Wales.

673. Where a defendant is found guilty by a jury and appeals against conviction, the Court of Appeal has the power under section 3 of the Criminal Appeal Act 1968, instead of allowing or dismissing the appeal, to substitute a conviction of an alternative offence on the same facts. However, it has no power to do this where the defendant appeals against conviction after pleading guilty. *Section 316* inserts a new section 3A into the Criminal Appeal Act 1968 allowing the Court of Appeal to substitute a conviction of an alternative offence, where the facts admitted by the appellant by virtue of the guilty plea justify a conviction of that other offence.

Section 317: Power to substitute conviction of alternative offence on appeal in Northern Ireland

674. *Section 317* makes similar amendments to the Criminal Appeal (Northern Ireland) Act 1980 as *section 316* makes to the Criminal Appeal Act 1968.

Section 318: Power to substitute conviction of alternative offence on appeal from court-martial

675. *Section 318* makes similar amendments to the Court-Martial (Appeals) Act 1968 as *sections 316 and 317* make to the Criminal Appeal Act 1968 and the Criminal Appeal (Northern Ireland) Act 1980.

Section 319: Appeals against sentences in England and Wales

676. Section 10(2) of the Criminal Appeal Act 1968 gives certain defendants who have not been tried in the Crown Court, but are sentenced there, a right of appeal to the Court of Appeal against the Crown Court's sentence. By virtue of section 10(3) of the 1968 Act, however, no appeal lies under section 10(2) where the offender is sentenced to less than six months imprisonment, unless he receives certain specified kinds of sentence described in section 10(3)(b), 10(3)(c) or 10(3)(cc) of the 1968 Act (for example, an order banning him from holding or obtaining a driving licence).
677. *Section 319* simplifies section 10 of the 1968 Act by amending it to remove the six month limitation and various exceptions to that limitation. The overall effect of *section 319* is that anybody committed to the Crown Court for sentence in future, or dealt with by the Crown Court under the other circumstances set out in section 10(2) of the 1968 Act, will have a right of appeal to the Court of Appeal against the Crown Court's sentence.

Section 320: Offence of outraging public decency triable either way

678. This section makes the offence of outraging public decency triable summarily in a magistrates' court as well as on indictment. The maximum penalties on summary conviction for this offence are to be those provided for by section 32(1) of the Magistrates' Courts Act 1980. These are currently six months' imprisonment or a fine of £5000 or both.

Section 321: Jury service

679. This section introduces Schedule 33.

Section 322: Individual support orders

680. Section 1 of the Crime and Disorder Act 1998 permits the police, the British Transport police, local authorities and registered social landlords to apply for anti-social behaviour orders (ASBOs) in the Magistrates' court. Orders can be issued to persons over 10 years who have acted in an anti-social manner and where the order is necessary to protect the public from further anti-social acts. Section 1 defines an anti-social manner as that which causes or is likely to cause harassment, alarm and distress to one or more persons not of the same household. Anti-social behaviour includes harassment, noise nuisance, writing graffiti and verbal abuse. An ASBO prohibits the person under the order from doing anything described in the order. Section 292 inserts sections 1AA (Individual support orders) and 1AB (explanation, breach, amendment etc.) after section 1A of the Crime and Disorder Act 1998. These sections allow for a new order aimed at preventing further anti-social behaviour to be available where an anti-social behaviour order has already been granted against a person under 18.
681. *Subsection (1)* of section 1AA (Individual support orders) obliges the court to consider the question of making an ISO after an anti-social behaviour order is made against a

child or young person (that is a person aged 10-17). *Subsection (2)* states that the court must make an ISO if it is satisfied that the ISO conditions in *subsection (3)* are satisfied. *Subsection (2)(a)* ensures that requirements under the order cannot exceed a period of 6 months. *Subsection (2)(b)* allows the order to require the defendant to comply with directions given by a 'responsible officer' who can be one of the persons set out in *subsection (10)*.

682. All three conditions set out in *subsection (3)* have to be satisfied for an ISO to be made. If the conditions are not met and an ISO is not made, *subsection (4)* requires the court to state in open court why it considers that the conditions are not met.
683. *Subsection (5)* sets out the nature of the requirements which a court can make in an ISO, namely any requirement that the court considers desirable in the interests of preventing a repetition of the anti-social behaviour which led to the ASBO.
684. *Subsection (6)* sets out certain things which an ISO may require the defendant to do or which a responsible officer may direct the defendant to do. *Subsection (7)* ensures that the person subject to the order cannot be required to attend any place (or different places) under the order on more than two occasions in any given week. *Subsection (8)* obliges the court, when imposing requirements, to avoid conflict with religious beliefs and avoid interference with other educational attendance requirements as far as this is practicable.
685. *Subsection (9)* allows the court to obtain whatever information it considers necessary in order to determine whether the individual support conditions set out in *subsection (3)* are fulfilled and in order to determine the requirements that should be included in an order. The court is empowered to obtain this information from a social worker of a local authority social services department or a member of youth offending team.
686. *Subsection (1)* of section 1AB (Individual Support Orders: explanation, breach, amendment etc) sets out the court's obligation to explain to the defendant in open court the effect of the order, the consequences of breach and the power to review the order on application.
687. *Subsection (2)* allows for the Secretary of State to prescribe cases where: the requirement to explain to the defendant in open court will not apply; where the explanation can be made in writing; or the explanation can be given in the absence of the defendant.
688. *Subsection (3)* sets the maximum fines available for non-compliance with an ISO. In the magistrates courts where these breaches would be heard there is a cap imposed by the section 135 of the Powers of Criminal Courts (Sentencing) Act 2000. For under 18 it is £1,000; for under 14 it is £250. *Subsection (4)* proscribes the use of referral orders for non-compliance with an ISO.
689. *Subsection (5)* requires an ISO to cease if the ASBO to which it is linked ceases. *Subsection (6)* allows the person who is subject to the order or the responsible officer to apply to the court for the order to be varied or discharged. *Subsection (7)* allows a court to vary or discharge an ISO if it is varying the ASBO to which the ISO is linked.

Section 323: Individual support orders: consequential amendments

690. *Section 323* makes changes consequential to the introduction of the ISO to sections 4, 18 and 38 of the Crime and Disorder Act 1998 and to section 143 of the Magistrates Courts Act 1980.
691. *Subsection (2)* amends section 4 of the Crime and Disorder Act 1998, which sets out the provision for appeals against orders. This subsection allows for section 4 to apply to ISOs and allows for any ISO amended or made by the Crown Court to be treated as if it were an order of the magistrates' court.

*These notes refer to the Criminal Justice Act 2003 (c.44)
which received Royal Assent on 20th November 2003*

- 692. *Subsection (3)* inserts definitions of individual support orders and responsible officers into the Crime and Disorder Act 1998.
- 693. *Subsection (4)* amends s18(4) of the Crime and Disorder Act to ensure that the correct responsible officer is identified for the ISO.
- 694. *Subsection (5)*, by inserting provision of responsible officers into the definition of local provision of youth services, ensures that there are obligations on the local authority to provide, and the bodies set out in 38(2) of the Crime and Disorder Act 1998 to co-operate in the provision of, responsible officers for ISOs.
- 695. *Subsection (6)* inserts ISOs into section 143(2) of the Magistrates' Courts Act 1980 and allows the Secretary of State to amend the level of fines for ISOs if there has been a substantial change in the value of money.

Section 324: Parenting orders and referral orders

- 696. *Section 324* introduces Schedule 34, which makes provision about the interaction of parenting orders, made under sections 8 to 10 Crime and Disorder Act 1998, and referral orders made under Part 3 of the Powers of Criminal Courts (Sentencing) Act 2000.
- 697. *Paragraph 1: Removal of restriction in Crime and Disorder Act 1998.* This together with the amendment made in paragraph 3 of the Schedule removes from section 8 of the Crime and Disorder Act 1998 the restriction currently on a court for the making of a Parenting Order alongside a Referral Order.
- 698. *Paragraph 2: Supplemental provisions relating to Parenting Orders.* This amends section 9 of the Crime and Disorder Act 1998 (which makes supplemental provision relating to Parenting Orders).
- 699. *Subparagraph (2)* substitutes a new subsection (1A) into section 9. The old subsection was one of the provisions ensuring that a parenting order and a referral order could not be made in respect of the same offence. The new subsection provides that the normal duty on the court to make a parenting order (or explain why it would not help to prevent the offender from committing another offence) where a person under the age of 16 is convicted of an offence does not apply where the court makes a referral order in respect of the offence.
- 700. *Subparagraph (3)* inserts a new subsection (2A) and (2B) into section 9. This provides that where the court does decide to make a Parenting Order with a Referral Order, the court must obtain and consider a report by a probation officer, a local authority social worker, or a member of a youth offending team. The report should indicate what the requirements of the Parenting Order might include, the reasons why it would be desirable, and also, if the offender is under age 16 years, information about the family's circumstances and the likely effect of the Order on those circumstances.
- 701. *Subparagraph (4)* inserts a new subsection (7A) which defines a Referral Order as an order imposed under section 16(2) or (3) of the Powers of Criminal Courts (Sentencing) Act 2000.
- 702. *Paragraph 3: Removal of Restriction in Powers of Criminal Courts (Sentencing) Act 2000.* This removes the restriction in section 19(5) of the Powers of Criminal Courts (Sentencing) Act 2000 preventing the court from imposing a parenting order and a referral order in respect of the same offence.
- 703. *Paragraph 4: Panel to refer case back to Youth Court where parent or guardian fails to comply.* This inserts a new subsection (2A) into section 22 of the Powers of Criminal Courts (Sentencing) Act 2000. A court making a referral order may require a parent or guardian to attend the meetings of the youth offender panel under section 20 of the Powers of Criminal Courts (Sentencing) Act 2000. Where the parent or guardian fails to comply with such an order, the new subsection provides the power to the panel to

refer the case back to the offender's youth court. This would then allow the court the opportunity to decide whether it should impose a Parenting Order.

704. *Paragraphs 5 and 6: Arrangements when a panel refers a parent or guardian to the youth court.* These insert new provisions into section 28 of and Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000. These provisions set out the arrangements when a youth offender panel refers a parent or guardian to the appropriate youth court using the power set out in the new section 22(2A). The panel must make a report to the court explaining why the parent is being referred to it and the court can require the parent to appear before it by means of the issue of a summons, or a warrant for arrest. Where the parent then appears before the youth court, the court may make a Parenting Order if both of two conditions are satisfied. The first is that the court is satisfied that the parent has failed without reasonable excuse to comply with an order made by the court under section 20 to attend the youth offender panel. The second is that the court believes that it is desirable in the interests of preventing further offences being committed by the offender. The provisions also set out that a Parenting Order means an order requiring the parent to comply for up to twelve months with requirements the court considers to be desirable in the interests of preventing further offences by the offender and to attend a counselling or guidance programme for up to three months. The counselling or guidance programme can include or consist of a residential course provided the court is satisfied that this is likely to be more effective than a non-residential course and that any interference with family life is proportionate. The provisions also state which of the provisions of the Crime and Disorder Act relating to parenting orders apply to a parenting order made in these circumstances and provide for a right of appeal to the Crown Court against the making of a parenting order in these circumstances.

Section 325: Arrangements for assessing etc. risks posed by certain offenders

705. This Section re-enacts with amendments section 67 of the Criminal Justice and Courts Services 2000. It places a duty on the "responsibility authority" (the chief officer of police, the local probation board for each area and the Prison Service) to establish and keep under review arrangements for assessing and managing the risks posed by "relevant sexual and violent offenders" or other offenders who may cause serious harm to the public (see *subsection (2)*). The arrangements which have been established at area level to undertake this duty take the form of "multi-agency public protection arrangements".
706. Under *subsection (3)*, the responsible authority and those bodies listed in *subsection (6)* must co-operate with each other, in order to enable the responsible authority to perform its duty. *Subsection (5)* states that a memorandum outlining this process must be produced. The Secretary of State is given the power in *subsection (7)* to amend the list of specified bodies which must co-operate with the responsible authority, so as to add or remove an entry.

Section 326: Review of arrangements

707. This section requires the responsible authority to keep the effectiveness of the arrangements it has established under review and to change them where necessary. This review must be conducted in consultation with two lay advisers to be appointed for each area by the Secretary of State. This Section also requires the responsible authority to publish an annual report detailing how it has discharged its functions.

Section 327: Section 325 – interpretation

708. This Section defines "relevant sexual or violent offender" for the purposes of section 325. It therefore clarifies to which offenders multi-agency protection arrangements should apply.

Section 328: Criminal record certificates: amendments of Part 5 of Police Act 1997

709. *Section 328* introduces Schedule 35 which makes a number of amendments to Part 5 of the Police Act 1997 ('the 1997 Act') which governs the disclosure of criminal and other records by the Criminal Records Bureau (CRB) for employment vetting purposes. The CRB's higher level disclosure service was launched in March 2002. This is intended for employers and voluntary organisations seeking to appoint persons to work with children or vulnerable adults or involving other sensitive positions of trust.
710. *The CRB* experienced some initial difficulties in meeting its published performance standards; as a result, in September 2002, the Home Secretary appointed an Independent Review Team to take a fundamental look at the operations of the CRB. The Home Secretary announced the Government's response to the Review Team's recommendations on 27th February 2003 (Official Report, col: 32WS-36WS). The amendments to the 1997 Act implement a number of the Review Team's recommendations.
711. *Paragraphs 2, 3(2)(b) and 4(2)(b)* of Schedule 35 amend sections 112(1)(a), 113(1)(a) and 115(1)(a) of the 1997 Act respectively to enable regulations to be made prescribing the manner in which an application for a disclosure must be made. In the case of standard and enhanced disclosures, the intention is to require applications to be submitted to the CRB via a registered body (which is already the current practice) and, in due course, to require applications to be submitted electronically. Paragraphs 3(2)(c) and 4(2)(c) amend sections 113(1)(b) and 115(1)(b) respectively so that regulations may also be made prescribing the manner in which the fee for a standard or enhanced disclosure application is to be payable. Again, it is the intention to require the fee to be routed to the CRB via the registered body countersigning the application, although liability for payment will remain with the individual applicant.
712. *Paragraph 3(3) and 4(5)* insert a new subsection into sections 113 and 115 respectively. The purpose is to enable the CRB to issue a standard disclosure where an enhanced disclosure has been applied for but the application does not satisfy the requirements for such a disclosure, and vice versa. The CRB will first and foremost seek to educate and support registered bodies to ensure that they correctly apply the criteria for each type of disclosure; accordingly it is intended that this reserve power will only be used in exceptional circumstances.
713. *Paragraph 4(3) and (4)* repeal the existing subsections in section 115 which determine who qualifies for an enhanced disclosure. The intention is that, henceforth, the criteria will be specified in regulations so that there is the flexibility to alter them as circumstances require, for example, because of a change to the risk assessment in relation to a given occupational group. *Paragraph 5* makes a similar change to section 116 of the 1997 Act which relates to applications for enhanced disclosures for judicial appointments and Crown employment.
714. *Paragraphs 6 to 9* enable the CRB to set clear standards for registered bodies, particularly in respect of validating the identity of applicants for disclosures, and confers powers on the CRB to suspend or revoke registration where such standards are not complied with.
715. *Paragraph 6* amends section 120 of the 1997 Act which relates to registered persons. Section 120(2) of the 1997 Act requires the Secretary of State to register any person who satisfies the requirements for registration. These requirements are set down either in regulations (hitherto made under section 120(3), but in future made under new section 120ZA(2) as inserted by paragraph 6 of the Schedule) or in section 120(4) to (6) of the 1997 Act which relate to the legal status of the person applying for registration and whether that person can ask (on his own or another person's behalf) an exempted question under the provisions of the Rehabilitation of Offenders Act 1974. The revised section 120(2) sets down an additional requirement, namely that the applicant has not had his registration cancelled in the past two years.

716. *Paragraph 7* inserts new section 120ZA into the 1997 Act. This new section replaces and extends the existing power to make regulations about registration. In particular, the new power enables regulations to make provision for the registration of any registered body to be subject to conditions. It is envisaged that such conditions would require a registered body to take specified steps to verify the identity of any applicant for disclosure, to ensure that disclosure applications are properly completed and to ensure that adequate security measures are in place to control the use of, access to and security of disclosures. Registered bodies will also be required to pay disclosure application fees monthly in arrears rather than submitting a separate fee with each individual application. A condition might also be imposed requiring applications for disclosure to be submitted to the CRB by electronic means. It would be open to a registered body to delegate the identity validation function to one or more agents (e.g. a Local Education Authority may delegate the function to headteachers of maintained schools), but would retain overall responsibility for ensuring that identity checks were properly carried out.
717. *Paragraph 8* makes a consequential amendment to the heading of section 120A of the 1997 Act (refusal and cancellation of registration).
718. *Paragraph 9* inserts new sections 120AA and 120AB into the 1997 Act. New section 120AA sets out further grounds on which a registration may be refused, suspended or cancelled, while new section 120AB sets out the procedure to apply in the event of a suspension or cancellation. Under new section 120AA(1) registration may be refused where an applicant is likely to countersign fewer than a prescribed minimum number of disclosure applications per year. A registration may be suspended or cancelled where a registered body is no longer likely to wish to countersign disclosure applications (this ground for cancellation may currently be found in regulations); has not countersigned the prescribed minimum number of applications in the past 12 months; or has failed to comply with any condition attached to registration. Before a decision to suspend or cancel a registration takes effect, a registered body must be given an opportunity to submit representations. If, following consideration of the representations, the decision is confirmed the registered body has a 6 week period of grace before the suspension or cancellation takes effect to allow time for alternative arrangements for counter-signing disclosure applications to be put in place. Regulations may be made to extend (or reduce) the 6 week period of grace.
719. *Paragraph 10* inserts new section 122A into the 1997 Act. This enables the Secretary of State to delegate his functions under Part 5 of the 1997. Act to another person (e.g. to a Public Private Partnership provider or Managed Service provider). The Home Secretary is precluded from delegating his powers to make regulations or to publish or revise a code of practice.
720. *Paragraph 11* inserts a new section 124A into the 1997 Act. This new section makes it an offence for any person to whom the Secretary of State has delegated functions under new section 122A (e.g. a PPP provider or his employees) to disclose any personal information obtained in connection with those functions. There are certain exceptions, including where the disclosure is made in the course of the person's duties.

Section 329: Civil proceedings for trespass to the person brought by an offender

721. *Section 329* makes new provision about cases where a person who has been convicted of an imprisonable criminal offence takes civil action for damages for trespass to the person against the victim of the offence or against a third party who has intervened, for example to protect the victim or to protect or recover property.
722. *Subsection (1)* set out the circumstances in which the section will apply. These are where the person bringing the civil action (the claimant) claims that the defendant did an act amounting to trespass to his or her person; and where the claimant has been convicted in the United Kingdom of an imprisonable offence committed on the same occasion as that on which the defendant's act is alleged to have been done.

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723. *Subsection (2)* provides that in these circumstances proceedings may only be brought with the permission of the court.
724. *Subsection (3)* sets out the only circumstances in which the court may give permission for the proceedings to be brought. These are if there is evidence that the condition set out in subsection (5) is not met, or if there is evidence that in all the circumstances the defendant's act was grossly disproportionate.
725. *Subsection (4)* provides that if the court does give permission and the proceedings are brought, the defendant will not be liable if he can prove that the condition set out in subsection (5) is met, and that in all the circumstances his act was not grossly disproportionate.
726. *Subsection (5)* sets out the condition referred to in subsections (3) and (4). This is that the defendant only did the act amounting to trespass to the claimant's person because he believed that (a) the claimant was either about to commit an offence, in the course of committing an offence, or had committed an offence immediately beforehand; and (b) the act was necessary to defend himself or another person; protect or recover property; prevent the commission or continuation of an offence; apprehend or secure the conviction of the claimant after he had committed the offence; or that the act was necessary to assist in achieving any of those things.
727. *Subsection (6)* ensures that the defence available to the defendant under subsection (4) does not prejudice his ability to rely on any other defence.
728. *Subsection (7)* ensures that the provisions of the section apply where members of the armed forces are found guilty of equivalent offences under the terms of the services Acts.
729. *Subsection (8)* defines various terms used in the section. Paragraph (a) provides that "trespass to the person" comprises assault, battery, or false imprisonment; paragraph (b) provides that references to the defendant's belief are to his honest belief, whether or not it was also reasonable; paragraph (c) provides that "court" in proceedings under this Section means the High Court or a county court; and paragraph (d) defines "imprisonable offence" as an offence which in the case of a person aged 18 or over is punishable by imprisonment.