

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

3. The Act is in 5 Parts and contains 16 Schedules.
4. **Part 1** and Schedules 1 to 8 make provision about criminal justice including provision about sentencing and the release and recall of offenders, the electronic monitoring of offenders released on licence, drug testing in prisons and about the giving of cautions. Part 1 also contains provision about certain offences and sentences.
5. **Part 2** and Schedules 9 and 10 make provision about the detention of young offenders, about giving cautions and conditional cautions to youths and about referral orders.
6. **Part 3** and Schedules 11 to 15 make provision about courts and tribunals including provision creating a new procedure for use in criminal proceedings in the magistrates' courts in certain circumstances, provision about the committal of young offenders to the Crown Court for sentence, provision about the recovery of the costs of the criminal courts from offenders, provision about fundamental dishonesty in personal injury claims and the offer of inducements to bring personal injury claims, provision about appeals and costs in civil proceedings, provision about juries and members of the Court Martial and provision about reporting restrictions applying to under-18s.
7. **Part 4** and Schedule 16 make provision about the refusal by the High Court and the Upper Tribunal of relief in judicial review proceedings, about funding and costs in relation to such proceedings and about the procedure for certain planning proceedings.
8. **Part 5** contains a power to make provision consequential on or supplementary or incidental to the other provisions of the Act and general provisions including about the commencement of the Act and its extent.

Part 1 – Criminal Justice

9. In the Legal Aid, Sentencing and Punishment of Offenders Act 2012 the Government implemented a number of sentencing reforms following the consultation paper entitled "Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders"¹.
10. Adding certain offences, including those of weapons training for terrorist purposes and causing gunpowder or other explosive substances to explode with intent, to the enhanced dangerous offenders sentencing scheme - The current enhanced dangerous offenders sentencing scheme, introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, was commenced in December 2012 and already covers some serious terrorism offences. The effect of these provisions is that offenders will qualify for an automatic life sentence where they have previously been convicted of an offence included in the scheme (and had a sentence of at least 10 years imposed on both

¹ <http://webarchive.nationalarchives.gov.uk/20120119200607/http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>

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

occasions)²; offenders with previous convictions for these offences will satisfy one of the conditions for getting an Extended Determinate Sentence. Where these offences do not already carry a life sentence, these provisions also increase the relevant maximum penalties to life.

11. Amending the release arrangements for offenders who receive an Extended Determinate Sentence so that, in all cases, they will not be entitled to automatic release at the two thirds point and will only get early release if the Parole Board directs release - At present offenders convicted of sexual and/or violent offences listed in Schedule 15 to the Criminal Justice Act 2003, who the courts believe are dangerous, can receive an Extended Determinate Sentence under which they must serve at least two-thirds of their custodial term before they are released into the community on licence. Currently, some of these offenders receive automatic release after two-thirds of their custodial term, whilst in more serious cases release is subject to the discretion of the Parole Board from that point to the end of the custodial term. Section 4 of this Act amends the law so that every offender who receives an Extended Determinate Sentence will only be released into the community on licence, before the end of their custodial term, if the Parole Board directs their release rather than being automatically released.
12. Creation of a new custodial sentence for certain terrorism-related and sexual offences (including rape or attempted rape of a child) whereby adult offenders sentenced for these offences will not be entitled to automatic release half way through their sentence and will only get early release if the Parole Board directs release – At present offenders convicted of these terrorism-related and/or sexual offences who receive a standard determinate sentence are automatically released half way through their prison sentence. These provisions amend the law so that offenders would apply to the Parole Board for early release at that point and, if no decision to release was taken (at that point or on any subsequent Parole Board consideration), they would remain in prison until the end of their custodial term. This change is intended to ensure that persons convicted of serious terrorism-related offences and sexual offenders are not released early without any consideration of their risk. The new sentence will be made up of a custodial term and a mandatory year of licence to be served subsequently, to ensure that those who end up serving their whole custodial terms are not released without supervision. Section 6 and Schedule 1 implement these changes.
13. **Introducing powers to enable offenders serving custodial sentences to be tracked on licence as a mandatory condition** – Currently offenders released on licence can be electronically monitored on a discretionary basis on release from prison under section 62 of the Criminal Justice and Court Services Act 2000. These provisions allow for the electronic monitoring of compliance with another licence condition or the electronic monitoring of the offender’s whereabouts as a licence condition in its own right. In practice, the available technology has only allowed for the electronic monitoring of a curfew condition. However, technological advances mean that it will be possible to effectively track offenders using GPS and other location tracking technology and the Government intends to enable the use of electronic monitoring more widely. On 9 May 2013 the Justice Secretary announced that the Government would be introducing GPS satellite tracking of offenders to monitor them more closely in the community.
14. [Section 7](#) and Schedule 2 enable the Secretary of State to extend the use of electronic monitoring to provide for offenders to be subject to electronic monitoring, including monitoring of the offender’s whereabouts, as a compulsory licence condition on release from prison.
15. Power for the Secretary of State to appoint “recall adjudicators” to review the detention of recalled determinate sentence prisoners – Offenders serving determinate sentences who are recalled to prison for breaching their licence conditions are entitled, under the Criminal Justice Act 2003, to have their cases referred to the Parole Board to review

² Unless the court is of the opinion that there are particular circumstances which relate to the offence, the previous offence or to the offender which would make it unjust to do so in all the circumstances (s.224A(2) of the Criminal Justice Act 2003).

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their detention. Section 8 and Schedule 3 remove the statutory requirements in the 2003 Act for the Secretary of State to refer determinate sentence recalled prisoners to the Parole Board and replaces references to the Board in that context with references to a “recall adjudicator”. The Secretary of State is able to appoint the Parole Board or any other person to be a recall adjudicator.

16. Like the Board, recall adjudicators will have the power to direct the release of recalled prisoners, to decide not to release or to refer the case for an oral hearing. Provision is also made for the Secretary of State to issue procedural rules for recall adjudicators, to make payments to adjudicators, and to appoint a chief recall adjudicator to oversee recall adjudicators and issue guidance.
17. Introducing a new statutory test for the re-release of recalled determinate sentence offenders to ensure that prolific and repeat offenders who are persistently non-compliant can be given a standard recall rather than repeated fixed term recalls - The Criminal Justice Act 2003 provides that prisoners released on licence can, if they breach their conditions, be recalled to prison either:
 - a) for a fixed period of 28 days at the end of which they are released automatically (a *fixed term recall*); or
 - b) for the remainder of their sentence, subject to discretionary release by a recall adjudicator or the Secretary of State (a *standard recall*).
18. The Act amends the Criminal Justice Act 2003 to provide that an offender is not suitable for a fixed term recall if it is considered that they would be highly likely to breach their licence again if released and for that reason fixed term recall seems inappropriate. The Act also provides a new statutory release test for recall adjudicators and the Secretary of State to apply when considering the release of recalled determinate sentence prisoners. This requires the recall adjudicators/ Secretary of State to have regard not only to whether the offender needs to continue to be detained for public protection reasons - which will remain the overriding test - but also to consider whether, if the person were to be released, they would be highly likely to breach their licence. This provision is intended to prevent offenders from repeatedly being recalled to prison on a fixed term recall and then being released only to breach and be recalled again. Sections 9 and 10 (which also give the Secretary of State a power to change the test) implement these changes. It further provides that for recalled determinate sentence prisoners serving more than one sentence, the requirement to conduct annual reviews need not take place until after they have reached the earliest release point on the other concurrent or consecutive sentences.
19. For prisoners serving indeterminate sentences, the Act amends the point at which a prisoner may require the Secretary of State to refer their case to the Parole Board where they are serving a combination of a life or Imprisonment for Public Protection (IPP) sentence together with a determinate sentence. Under previous legislation, an offender's case could only be referred to the Board once they have completed *half* of the determinate sentence, but this did not take account of new types of determinate sentence where the custodial part of the sentence may not end at the half-way point – Extended Determinate Sentences (EDS), in particular, where offenders must serve at least two-thirds of the custodial term. The Act therefore amends the provisions so that the point of referral to the Board is on completion of the *requisite custodial periods* on all the sentences being served. This takes into account all types of determinate sentences which may have different requisite custodial periods.
20. The Act also provides that, where an indeterminate sentence prisoner has been released on licence and recalled to prison, the Parole Board must apply the public protection release test when considering release, and a power for the Secretary of State to amend that test by order, but only in respect of its application to recalled IPP (not life) sentence prisoners. Section 11 implements these changes.

21. Creating a new criminal offence of being unlawfully at large after recall from licence or after recall from home detention curfew – In the previous legal framework, there was no separate offence for absconding after being recalled whilst on licence. An offender could only be required to serve the remainder of their original sentence in these circumstances, though it is possible for them to be released earlier. However, it is an offence to escape from custody, to fail to surrender to custody whilst on bail or to fail to return from temporary release. The Government has addressed this by providing in the Act that offenders unlawfully at large, after recall while on licence, without reasonable excuse will also be guilty of an offence. The Act amends the Criminal Justice Act 2003 and the Crime (Sentences) Act 1997 by creating a new offence of remaining unlawfully at large following a recall to custody for determinate and indeterminate sentence prisoners respectively. Section 12 implements these changes.
22. **Increasing the maximum penalty for the offence of remaining unlawfully at large after temporary release** - Currently failure to return while released on temporary licence (ROTL), contrary to section 1 of the Prisoners (Return to Custody) Act 1995, is a summary-only offence with a punishment of up to 6 months imprisonment and/or a level 5 fine. The Government has increased the maximum sentence available for this offence to two years to harmonise sentencing powers for all offenders who are released and then either abscond following recall or fail to return from release on temporary licence. Section 13 implements this change.
23. **Drugs for which prisoners etc may be tested** – Under the existing mandatory drug testing (“MDT”) programme operated by the National Offender Management Service³ (“NOMS”) prisoners can only be tested for drugs that are controlled under the Misuse of Drugs Act 1971. NOMS is aware of a steep rise in the misuse of certain prescription drugs such as Gabapentin and Pregabalin by prisoners for whom they have not been prescribed. HM Inspectorate of Prisons for England and Wales explained in its Annual Report⁴ for 2011-12 that it had previously highlighted the diversion of prescription drugs in high security and vulnerable prison populations and now “this trend is spreading to mainstream populations and it has become a major concern.”⁵ In addition there are clear government commitments to reduce the availability and use of drugs in prisons which are set out in the Breaking the Cycle Green Paper⁶ and the cross government drug strategy⁷. Therefore, section 16 enables the Secretary of State to specify in prison rules and rules for other places of detention non-controlled drugs which can then be tested for under the existing MDT programme. The provisions of this section were originally presented to Parliament in the Prisons (Drug Testing) Bill, a private member’s Bill which was introduced in June 2013 and which the Government supported.
24. **Restricting the use of simple cautions** – The Justice Secretary, together with the Home Secretary and the Attorney General, on 3 April 2013 launched a review of simple cautions. The review examined the way in which simple cautions are currently used, and considered the need for any changes to policy or practice to ensure that there is transparency, accountability and public confidence in the use of simple cautions as a disposal. On 19 November 2013, the Minister for Policing, Criminal Justice and Victims announced by written ministerial statement that the Government intended to accept the recommendations of the review to restrict the use of simple cautions for indictable only offences and certain specified either way offences, as well as restricting the repeated use of cautions for persistent offenders. Sections 17 and 18 implement the changes announced.

3 NOMS is an executive agency of the Ministry of Justice. It commissions and provides offender services in the community and in custody in England and Wales. The role of NOMS is to reduce re-offending by delivering the punishment and orders of the courts and supporting rehabilitation by helping offenders to change their lives.

4 <http://www.justice.gov.uk/publications/corporate-reports/hmi-prisons>

5 See pages 6 and 36 of the 2011-12 Annual Report: <http://www.justice.gov.uk/publications/corporate-reports/hmi-prisons>

6 <http://webarchive.nationalarchives.gov.uk/20120119200607/http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf> (see pages 27 to 32)

7 www.gov.uk/government/publications/drug-strategy-2010--2

25. **Alternatives to prosecution: rehabilitation of offenders in Scotland** - Following on from the Children's Hearings (Scotland) Act 2011, the Scottish Government would like to legislate to specify occasions when the normal rules relating to the disclosure of spent alternatives to prosecution from a children's hearing should not apply. To achieve this, the Scottish Ministers need to exercise powers in Schedule 3 to the Rehabilitation of Offenders Act 1974 ("the 1974 Act") to specify the types of employment and proceedings that are excluded from the protection of the 1974 Act and therefore where a person may need to disclose a spent alternative to prosecution. These powers can be found in paragraph 6 of Schedule 3 to the 1974 Act and section 7(4) as applied by paragraph 8 of that Schedule.
26. The Scottish Ministers already have the power to make provisions in respect of exceptions and exclusions relating to spent convictions in reserved areas⁸ and now desire to be able to make similar provision in respect of exceptions and exclusions relating to spent alternatives to prosecution in reserved areas. However, because paragraph 6 and paragraph 8 of Schedule 3 were inserted into the 1974 Act by an Act of the Scottish Parliament, the powers cannot be exercised to make exclusions, modifications or exceptions in relation to reserved matters. Therefore, section 19 inserts a new paragraph into Schedule 3 to the 1974 Act which will state that Scottish Ministers can exercise the powers in relation to spent alternatives to prosecution in paragraph 6 and section 7(4) as applied by paragraph 8 without being subject to the restrictions in section 29 of the Scotland Act 1998. This will allow the Scottish Ministers to set out exclusions, modifications and exceptions in relation to alternatives to prosecution which are given by children's hearings in Scotland in the desired way.
27. Creating new criminal offences covering care workers who ill-treat or wilfully neglect someone they are caring for and care providers, when the ill-treatment or wilful neglect is committed by someone who is part of care arrangements made by them – Following the Public Inquiry into the events at Mid Staffordshire NHS Foundation Trust, the Prime Minister established a further independent review into the safety of patients led by Professor Don Berwick. This review identified a small but significant gap in existing legislation. There are existing offences of wilfully ill-treating or neglecting children in certain circumstances and of ill-treating or wilfully neglecting individuals who lack capacity under the provisions of the Mental Capacity Act 2005 or who are subject to the Mental Health Act 1983. However, there is no equivalent specific offence in relation to those with full capacity. Professor Berwick recommended the creation of a new criminal offence to fill that gap, which would apply to both individuals and organisations and be analogous to the offence set out in section 44 of the Mental Capacity Act 2005.
28. On 19 November 2013 the Government announced its intention to accept this recommendation as part of its full response to the Mid Staffordshire NHS Foundation Trust Public Inquiry. Since then, work has been ongoing to develop the detailed formulation of the offence, including a public consultation on proposals during March 2014⁹, which, among other things proposed that there should be two offences, one for individual care workers and one, formulated slightly differently, for care provider organisations. The Government published its response to the consultation¹⁰ on 11 June 2014, setting out the final articulation of the offences. Sections 20 to 25 and Schedule 4 implement the new offences as described in the consultation response.
29. Creating a new criminal offence for a police officer and certain other persons to exercise the powers and privileges of a constable in a way which is corrupt or otherwise improper - – Following the findings of the Stephen Lawrence Independent Review by Mark Ellison QC and the Government's response to it, the Home Secretary announced on 6 March 2014 the introduction of this new offence. Section 26 makes it an offence

⁸ The power do so having been transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285426/20140226_WN_consultation_doc_-_For_publication.pdf

¹⁰ <https://www.gov.uk/government/consultations/ill-treatment-or-wilful-neglect-in-health-and-social-care>

for a police officer to exercise the powers and privileges of a constable in a way which is corrupt or otherwise improper. It supplements the existing common law offence of misconduct in public office. It covers police officers of the 43 territorial forces in England and Wales, the British Transport Police, the Ministry of Defence Police and the Civil Nuclear Constabulary, as well as officers of the National Crime Agency designated as constables. The offence is triable solely on indictment and carries a maximum sentence of 14 years' imprisonment.

30. **Amending the starting point for murder of a police or prison officer** – At present the starting point for sentencers to consider for murder of a police or prison officer in the course of duty is a minimum term of 30 years. The Home Secretary announced on 15 May 2013 that this would be changed to a starting point of a whole life order to recognise the unique and dangerous job that police and prison officers do on a daily basis. Schedule 21 to the Criminal Justice Act 2003 sets out the principles which a sentencing court must have regard to when assessing the seriousness of all cases of murder in order to determine the appropriate minimum term to be imposed in relation to mandatory life sentences. Section 27 therefore moves this category of case from paragraph 5 of Schedule 21 to the Criminal Justice Act 2003 to paragraph 4 to reflect the different starting point.
31. **Introducing a minimum custodial sentence for second (or further) conviction for possession of a knife or offensive weapon** - [Section 28](#) and Schedule 5 introduce a minimum custodial sentence for a second (or further) conviction for possession of a knife or offensive weapon. A previous conviction for threatening with a knife or offensive weapon also counts as a 'first strike'.
32. **Offences committed by disqualified drivers** - [Section 29](#) and Schedule 6 make the offence of causing death by driving while disqualified an indictable only offence and increase the maximum penalty for such conduct to 10 years' imprisonment. It also creates an offence of causing serious injury by driving while disqualified. This is an either way offence with a maximum penalty of 4 years' imprisonment.
33. **Extension of disqualification from driving where custodial sentence also imposed** – [Section 30](#) amends section 35A of the Road Traffic Offenders Act 1988 and section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 which require a court, when sentencing an offender to immediate custody and imposing a driving ban, to extend the driving ban to take account of the period the offender will spend in custody. These changes will correct an inconsistency in the provisions inserted by Coroners and Justice Act 2009, as they apply to England and Wales, and allow for the commencement of the provisions which are designed to avoid a driving ban expiring, or being significantly diminished, during the period the offender is in custody
34. Making changes to allow the mutual recognition of driving disqualifications between the UK and Republic of Ireland to be re-commenced under a bilateral treaty - Between 28 January 2010 and 1 December 2014 driving disqualifications imposed on UK and Republic of Ireland (RoI) residents were mutually recognised under the European Convention on Driving Disqualifications 1998 (the Convention). The Convention ensured that residents of the UK and RoI who were disqualified from driving in the state in which they were not resident had their disqualification recognised in their home state. The UK and the Republic of Ireland were the only signatories to the Convention, which was incorporated into UK law in the Crime (International Co-operation) Act 2003. Following the UK's opt-out of Article 10(4) of Protocol 36 to the Treaties, acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which had been adopted before the entry into force of the Treaty of Lisbon ceased to apply to the UK on 1st December 2014. The Convention is one of these acts so mutual recognition of driving disqualifications with the RoI ceased to apply from 1 December 2014, until another mechanism is in place.
35. The changes in section 31 and Schedule 7 will implement the proposed new bilateral treaty being negotiated. Once the treaty is ratified the new arrangements will be very

similar to those under the Convention. However, the changes will close the loophole in the Convention which allows those falsely claiming residence in the state in which the offence was committed to avoid having their disqualification recognised in their home state.

36. **Increasing the maximum penalty for the offence at section 1 of the Malicious Communications Act 1988** – Section 1 of the Malicious Communications Act 1988 makes it an offence if a person, with the intention of causing distress or anxiety, sends certain items to another person which convey an indecent or grossly offensive message or are themselves of an indecent or grossly offensive nature, or which convey a threat or information which is false and known or believed to be false by the sender. The offence is currently a summary-only offence punishable by a maximum term of imprisonment of 6 months or a fine not exceeding level 5 on the standard scale, or both. Section 32 of the Act will make the offence an either-way offence and increase the maximum penalty for committing it to 2 years imprisonment or a fine or both.
37. **Disclosing private sexual photographs and films with intent to cause distress** –The issue of revenge porn, which is commonly thought of as the malicious disclosure of private sexual photographs and films without the consent of the person featured, was the subject of a number of amendments tabled during Committee stage of the Bill in the House of Lords. Following investigation into the scale and nature of this problem and the best way in which it could be tackled, the Government brought forward amendments to create a new criminal offence. Sections 33 to 35 and Schedule 8 will create the new offence which will criminalise the malicious disclosure of photographs or films. The disclosure must take place without the consent of at least one of those featured in the picture disclosed and with the intention of causing that person distress. The offence will be an either way offence with a two year maximum custodial penalty.
38. **Meeting a child following sexual grooming etc** – The cross-party inquiry, led by children's charity Barnardo's, into the effectiveness of legislation for tackling child sexual exploitation and the trafficking of children within the UK recommended that the "grooming" offence at section 15 of the Sexual Offences Act 2003 be amended to reduce the number of occasions on which the defendant must initially meet or communicate with a child, so that a single meeting or communication will suffice.
39. In the inquiry's report the police expressed support for this reform. They said that offending involving physical contact between a victim and offender can occur quickly following just one communication or meeting. As amended, the offence could allow investigators to intervene earlier. It would also bring the offence in England and Wales in closer line with the equivalent offence in Scotland. Section 36 implements this change.
40. Extending the extreme pornography offence at section 63 of the Criminal Justice and Immigration Act 2008 to cover the possession of extreme images that depict rape and non-consensual sexual penetration - Rape Crisis South London (the "RASASC") wrote an open letter to the Prime Minister on 7 June 2013 highlighting what they believed to be a loophole in the extreme pornography offence at section 63 of the Criminal Justice and Immigration Act 2008. The extreme pornography offences form part of a framework of offences covering the distribution and possession of a broad range of indecent images, including indecent images depicting the abuse of children. See in particular the Obscene Publications Act 1959 and the offences of making an indecent photograph of a child at section 1 of the Protection of Children Act 1978, possessing an indecent photograph of a child at section 160 of the Criminal Justice Act 1988 and possessing a prohibited image of a child at section 62 of the Coroners and Justice Act 2009.
41. The section 63 extreme pornography offence currently covers pornographic images - images which can reasonably be assumed to have been "produced solely or principally for the purpose of sexual arousal" – which are grossly offensive, disgusting or otherwise obscene and which realistically depict necrophilia, bestiality or violence that is life-threatening or results, or is likely to result, in serious injury to the anus, breasts or

genitals, but does not explicitly include depictions of non-consensual penetration (save to the extent that the depicted penetration threatens a person's life or results, or is likely to result, in serious injury to the anus, breasts or genitals of the person penetrated).

42. **Section 37** will extend the extreme pornography offence to cover depictions of rape and other non-consensual sexual penetration.

Part 2 – Young Offenders

43. **Part 2** of the Act makes provision in relation to secure colleges, a new form of youth detention accommodation with a focus on education. It also makes a number of amendments to sentencing legislation in relation to offenders who are under 18 ('young offenders').
44. **Secure Colleges** - A consultation published in February 2013, *Transforming Youth Custody: Putting education at the heart of detention*¹¹, set out plans to increase the focus on high quality education in youth custody, reduce the cost of youth custody and contribute to reduced reoffending among young people leaving custody.
45. On 17 January 2014, the Government published its response¹² to the consultation, and its plans to create a pathfinder secure college, enhance education provision in young offender institutions and improve the resettlement of young people on release from custody.
46. The Government's response set out its intention to legislate to give the Secretary of State powers to provide secure colleges and to make contracts with other persons for them to provide secure colleges. It is intended that secure colleges will provide a broad curriculum with the aim of supporting young people to refrain from reoffending once released. Sections 38 – 39 and Schedules 9 and 10 implement the changes announced.
47. **Youth cautions and conditional cautions: involvement of appropriate adults** – To help safeguard the rights of children in the youth justice system the Government is amending the Crime and Disorder Act 1998 to ensure that 17 year olds, like 10 to 16 year olds, are given a youth caution or youth conditional caution in the presence of an appropriate adult.
48. A youth caution can be used as an alternative to prosecution in certain circumstances for any offence where the child admits the offence, there is sufficient evidence for a realistic prospect of conviction but it is not in the public interest to prosecute. A youth conditional caution is a youth caution with conditions attached to it which may, for example, include a requirement to pay a financial penalty or a requirement to attend at a specified place for a specified number of hours. Where there is no reasonable excuse for non-compliance with those conditions criminal proceedings may be brought. For 10-16 year olds an "appropriate adult" must be present when a youth caution or a youth conditional caution is given. An "appropriate adult", for example, may be a parent, guardian, local authority social worker, from a voluntary organisation or some other responsible adult aged 18 or over who is not a police officer or employed by the police.
49. The Government believes that all young people should benefit from the presence of an appropriate adult and so section 41 of the Act amends the Crime and Disorder Act 1998 to remove the age restriction.
50. **Duties of custody officer after charge: arrested juvenile** – The High Court ruling in *R (on the application of HC) v (1) Secretary of State for the Home Department and (2) Commissioner of Police for the Metropolis* (2013) EWHC 982 required that PACE Codes of Practice C and H be amended to provide 17-year olds with an appropriate adult and for the police to be required to inform a parent or legal guardian of their detention, as is the case with 12 to 16 year olds in police custody. The Government accepted

¹¹ <https://www.gov.uk/government/consultations/transforming-youth-custody-putting-education-at-the-heart-of-detention>

¹² <https://www.gov.uk/government/consultations/transforming-youth-custody-putting-education-at-the-heart-of-detention>

the High Court ruling and subsequently made the necessary changes in October 2013. However, recognising that there remain provisions in primary legislation which treat 17 year olds as adults, the Government launched an internal review to examine these in the light of the High Court ruling.

51. The review reported to the Home Secretary in October 2014. Its principal recommendation was to amend all provisions within the Police and Criminal Evidence Act 1984 (“PACE 1984”) which treat 17 year olds in the same way as adults as soon as a suitable legislative vehicle was found. An opportunity to make an amendment to change the definition of ‘arrested juvenile’ in Part 4 of PACE 1984 to include a person aged 17 became possible in the Criminal Justice and Courts Bill – see section 42.
52. **Referral orders** - A referral order is an order available for young offenders who plead guilty to an offence whereby the young offender is referred to a panel of two trained community volunteers and a member of the youth offending team. Compulsory conditions require it to be given in most circumstances where the young offender pleads guilty for a first offence. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed restrictions on the repeated use of the referral order with the aim of promoting its use for the delivery of restorative justice conferencing.
53. The offender must agree with the panel a contract of rehabilitative and restorative elements to be completed within the sentence. Where the victim and the offender consent, the panel can be used to deliver a restorative justice conference. A restorative justice conference offers victims the opportunity to be heard and to have a say in the resolution of offences, including agreeing restorative or reparative activity for the young offender.
54. The Government is concerned that where the court deals with a breach of a referral order contract, or a further offence, the original referral order is automatically revoked. The Government believes that, where the court considers it appropriate, the original referral order should be allowed to continue in order to enable the restorative justice process to be completed. Sections 43-45 give effect to this.

Part 3 - Courts and Tribunals

55. **Part 3** of the Act introduces provisions about the proceedings and powers of courts and tribunals, provisions introducing court charges for convicted adult offenders and provisions creating offences in relation to jurors.
56. **Trial by single justice on the papers** - The Act introduces a new single justice procedure whereby proceedings against adults charged with summary-only non-imprisonable offences can be considered by a single magistrate, on the papers. This will be without the attendance of either prosecutor or defendant. The defendant will be able to engage with the court in writing instead of attending a hearing; as neither prosecutors nor defence will be attending, the case will not need to be heard in a traditional courtroom.
57. The purpose of this new procedure is to deal more proportionately with straightforward, uncontested cases, involving offences such as failure to register a new vehicle keeper, driving without insurance, exceeding a 30mph speed limit, and TV licence evasion. In many of these cases the defendant is not present in court, either because they have chosen not to engage with the process or because the defendant has sent a written guilty plea. In such cases, the hearing takes place in an empty courtroom with only magistrates, prosecutors and court staff present. This procedure offers an alternative form of proceedings to help ensure that these cases are brought before the court at the earliest opportunity and dealt with more efficiently.
58. Cases which prosecutors identify as being suitable for this process will be commenced by a written charge and a new type of document called a ‘single justice procedure notice’. This notice will give a defendant a date to respond in writing to the allegation

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rather than a date to attend court; it will also be accompanied by the evidence or a description of the evidence which the prosecutor would be relying on to prove the case.

59. If a defendant pleads guilty and indicates they would like to have the matter dealt with in their absence, or does not respond to the notice, then a single magistrate will consider the case on the basis of the evidence submitted in writing by the prosecutor, and any written mitigation from the defendant. The magistrate can dismiss the charge, or convict and sentence as appropriate.
60. If a defendant wishes to plead not guilty, or otherwise wants to have a hearing in a traditional courtroom, they can indicate their wishes and the current arrangements will apply. Sections 46 to 50 and Schedule 11 implement these changes.
61. **Time limits for prosecuting offences of making improper use of public electronic communications networks.** Section 51 increases the time limit for bringing prosecutions for offences under section 127 of the Communications Act 2003 to allow more time for investigation of such offences.
62. **Low-value shop lifting: mode of trial** – Section 22A of the Magistrates’ Courts Act 1980 made theft from a shop of property valued at £200 or less a summary offence. The defendant’s right to elect was nonetheless retained, and section 52 makes clear that when a defendant elects that is to be treated in the same manner as an either-way offence in which the defendant has elected.
63. **Committal for sentence of young offenders convicted of certain serious offences -** The present arrangements for magistrates’ courts to commit defendants under 18 to the Crown Court for sentence are different from those that apply to adult defendants, and rather more limited. The power to commit for sentence is available only –
 - where the young defendant is charged with one of the serious offences listed in section 91(1) of the Powers of Criminal Courts (Sentencing) Act 2000, and he or she indicates a plea of guilty at the outset and the magistrates’ court considers that a Crown Court sentence is required; or
 - where the court considers that the case satisfies the criteria for the imposition of an extended determinate sentence set out in section 226B of the Criminal Justice Act 2003.
64. A case that does not fall within either of these situations cannot be committed to the Crown Court for sentence and must be dealt with using the magistrates’ court’s own sentencing powers.
65. Section 53 amends section 3B of the Powers of Criminal Courts (Sentencing) Act 2000 so that the power of a magistrates’ court, including a Youth Court, to commit a child or young person to the Crown Court for sentence for a serious offence listed in section 91(1) of the 2000 Act ceases to be limited (as it is at present) to where an indication of a guilty plea was given at the outset. This amendment provides that the power is available in any case where a magistrates’ court summarily convicts an offender under 18 of one of these offences and is of opinion that a Crown Court sentence is required.
66. The creation of a criminal courts charge to be applied to convicted adult offenders to recover some of the costs of their criminal court case – Courts currently have a number of powers to require offenders to make payments – including compensation for victims, the victim surcharge (which funds victims’ services), prosecution costs and fines. Currently, there is no power to make offenders contribute to the cost of the court.
67. The Act will require courts to impose a charge on all adult offenders who have been convicted of a criminal offence, subject to any exemptions prescribed by the Lord Chancellor. The level of the charge will be set by the Lord Chancellor. In setting the charge the Lord Chancellor expects to have regard to factors likely to affect the cost of

proceedings, including the type of offence (summary, either way or indictable only), the court at which the case is heard (magistrates' or Crown) and the plea (guilty or not guilty). The bands of charge will be set to ensure the convicted defendants will not pay more than the costs reasonably attributable to a particular type of case. The charge will be collected after other financial impositions – compensation, victim surcharge, prosecution costs and fines – have been paid off. The offender has the opportunity to pay at a rate they can afford. Offenders will be able to apply to pay by instalments and to vary the rate of payment if their circumstances change. Sections 54 and 55 and Schedule 12 implement these changes.

68. Linked to this are provisions that enable fines officers to be able to vary fine repayments following default by the offender; and to vary the repayment terms to make them less favourable to the offender (for example, if their financial circumstance improve) with the offender's consent. This will enable HM Courts and Tribunals Service to take account of an offender's circumstances and adjust repayments accordingly. Section 56 implements this change.
69. **Fundamentally dishonesty in civil proceedings relating to personal injury** - Under the current law as determined by the Supreme Court in *Fairclough Homes v Summers*¹³, a civil court has power to strike out a statement of case in a personal injury claim as an abuse of process even after a trial at which the court has held that the defendant is liable in damages to the claimant in an ascertained sum. However, the Supreme Court held that the court should do so only in very exceptional circumstances. Section 57 changes the law to provide that in any personal injury claim where the court finds that the claimant is entitled to damages, but is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the claim, it must dismiss the claim entirely unless it is satisfied that the claimant would suffer substantial injustice as a result. This provision applies both where the claimant is dishonest in the “primary” claim (for example where the claimant grossly exaggerates his or her own claim) and where the claimant is dishonest in a “related” claim (for example where the claimant colludes in a fraudulent claim brought by another person in connection with the same incident or series of incidents in connection with which the primary claim is made). The provision extends to England and Wales only.
70. **Banning inducements to bring personal injury claims** - [Sections 58 to 61](#) make provision to prohibit legal services providers from offering benefits to potential clients as inducements to make personal injury claims. The Act defines what is to be considered an inducement; makes provision about the routing of offers of inducements through third parties; and requires regulators to monitor and enforce the ban on solicitors and other legal services providers.
71. **Appeals from the Court of Protection** – [Section 62](#) rectifies an omission in relation to appeals from decisions at lower levels in the Court of Protection which was not addressed when the range of judicial office holders able to sit as judges of the Court of Protection was expanded in the Crime and Courts Act 2013. The need for the amendment has been highlighted by the 2014 decision of the Supreme Court in what has become known as the ‘Cheshire West’ case¹⁴. That decision required a radical reassessment of cases in which it may now be considered that a person who lacks mental capacity to consent to care arrangements is deprived of liberty as a result of those arrangements, so that the authorisation of the court is required for such deprivation of liberty. A significant increase in the number of cases coming before the Court of Protection for declarations authorising deprivation of liberty is therefore predicted.
72. [Section 62](#) makes good the omission and aligns the provision for appeal routes with the wider range of judges of the Court of Protection, enabling appeals from deputy district judges and judges from other jurisdictions who are acting in the Court of Protection to go to a higher tier of judge within the Court of Protection. The judges whose decisions

13 [2012] UKSC 26

14 [2014] UKSC 19

may be appealed within the Court of Protection, and the higher judges to whom appeal against those decisions will lie within the Court of Protection, will as now be specified in rules of court, namely the Court of Protection Rules.

73. This is intended to prevent the Court of Appeal from being unnecessarily burdened by a significant increase in cases and allows the Court of Protection the flexibility to deal with resources efficiently. This, in turn, is intended to reduce delays and the need for cases to be transferred to a different court, also providing greater consistency with how appeals are managed across other jurisdictions.
74. **Extending the scope for appeals to be made direct from the High Court or tribunals to the Supreme Court (“leapfrogging”)** - Leapfrogging refers to the process by which a case can jump directly to the Supreme Court from certain courts, bypassing the Court of Appeal. The Government’s view is that some cases which it is clear will not end in the Court of Appeal but will involve a further appeal to the Supreme Court should get there more quickly. As outlined in the consultation ‘*Judicial Review: Proposals for further reform*’ (published 6 September 2013)¹⁵, the Government wants to extend the scope for certain cases of major significance to leapfrog to the Supreme Court without being heard in the Court of Appeal.
75. The current powers and procedures are governed by sections 12 to 16 of the Administration of Justice Act 1969. At present, a case may be appealed directly from the High Court in England and Wales or Northern Ireland to the Supreme Court if the High Court grants a certificate, for which the conditions in section 12 must be met.
76. The Act amends the 1969 Act to widen the circumstances in which a case may be considered suitable to “leapfrog” from the High Court of England and Wales to the Supreme Court, missing out the Court of Appeal, and to remove the requirement for all parties to consent to “leapfrogging”. It also extends the possibility of such leapfrog appeals to decisions in certain tribunals which have High Court equivalent jurisdiction. These changes are not limited to appeals in judicial review cases, but apply (as does section 12 of the 1969 Act) to civil and administrative proceedings generally. These changes do not apply to criminal proceedings. Sections 63 to 66 implement these changes.
77. Creating a new duty for a court which makes a wasted costs order to consider whether to notify a legal representative’s regulatory body and/or the Director of Legal Aid Casework - The power for a court to make a wasted costs order is set out in section 51 of the Senior Courts Act 1981. Such an order makes a legal or other representative personally liable to pay any costs of litigation which were caused unnecessarily by their improper, unreasonable or negligent conduct, and which it is unreasonable to expect the litigant to meet. Section 67 amends section 51 of the Senior Courts Act 1981 to put a duty on the court, if it makes a wasted costs order, to consider whether to notify the legal representative’s regulator and/or the Director of Legal Aid Casework.
78. **Increasing the upper age limit for jury service to 75** - Anyone registered as an elector and aged 18-70 who has been ordinarily resident in the UK, the Channel Islands or the Isle of Man for any period of at least five years since the age of 13 is qualified to serve as a juror. The only disqualifications are for people who are liable to be detained under the Mental Health Act 1983, resident in hospital with a mental health disorder as defined by that Act, subject to guardianship or a community treatment order under that Act; people who lack capacity within the meaning of the Mental Capacity Act 1985 to serve as a juror; and people on bail or who have received certain criminal sentences.
79. In coming to the decision to increase the upper age limit, this Government took into account the responses to the previous Government’s consultation on changing the upper age limit. The current upper age limit, last set by way of the Criminal Justice Act 1988,

15 <https://consult.justice.gov.uk/digital-communications/judicial-review>

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does not reflect changes in life expectancy and “disability free life expectancy” over the past 25 years. Section 68 implements these changes.

80. The introduction of 4 offences (research by jurors, sharing research with other jurors, jurors engaging in other prohibited conduct and disclosing jury’s deliberations) and a power for a court to order temporary removal of electronic communications devices from jurors - During 2011 there were a number of cases involving the law of contempt which raised concerns that the current law did not reflect modern developments, particularly in relation to technology, the internet and media behaviour. These concerns had been raised by the Attorney General in a number of speeches and in Parliament. The Government consequently referred the matter to the Law Commission to examine the law of contempt.
81. The Law Commission launched their review of the law of contempt of court in 2012. Following a consultation on four areas of contempt, the Commission published a report¹⁶ in December 2013 which included recommendations on juror contempt (a second Law Commission report on court reporting was published in March 2014, but does not require legislation). Sections 69 - 77 and Schedules 13 and 14 implement recommendations from the December 2013 report by creating four offences of juror misconduct, and introducing related measures. They have effect in England and Wales. The provisions cover misconduct by jurors in the criminal, civil and coroners’ courts, and also misconduct by members of the Court Martial.
82. [Section 75](#) and Schedule 13 make provision in respect of juries at inquests. They amend Part 1 of the Coroners and Justice Act 2009.
83. [Section 76](#) and Schedule 14 make equivalent provision for the service justice system (for the armed forces). New service offences are created in respect of each new civilian juror offence (and will apply to all lay members of the Court Martial whether they are subject to service law, civilians subject to service discipline or otherwise), and for one of the offences (disclosing information about members’ deliberations) there is a further new civilian offence created. These provisions are intended to mirror the developments in the civilian justice system, with necessary adjustments for the service courts.
84. There is no jury in the Court Martial, the service justice system’s broad equivalent to the Crown Court. The finders of fact in the Court Martial are called lay members, and they may be either service personnel or civilians depending on the status of the defendant. These new service offences will apply to the lay members to ensure the defendant’s right to a fair trial is equally well protected in the service justice system.
85. Providing lifelong reporting restrictions for victims and witnesses under the age of 18 in criminal proceedings and extending the scope of youth reporting restrictions applying to under-18s to include online content - Reporting restrictions applying specifically to under-18s end automatically when the individual the subject of the reporting restriction order reaches the age of 18. This interpretation of the law has been confirmed in two High Court decisions¹⁷. Most recently in *JC and RT v the Central Criminal Court and others* the President of the Queen’s Bench Division commented that “it is truly remarkable” that legislation provides for discretionary *lifelong* reporting restrictions for adult witnesses but reporting restrictions for under-18s end at the age of 18. He went on to say that “victims and witnesses need individual and tailor-made protection within the criminal justice system” and that “it is for Parliament to fashion a solution: the problem requires to be addressed as a matter of real urgency.”
86. Section 78 therefore provides any criminal court in England and Wales (or any service court) with the discretion to order a *lifelong* reporting restriction in respect of a victim

¹⁶ http://lawcommission.justice.gov.uk/publications/contempt_of_court_juror_misconduct.htm

¹⁷ *T v DPP & North East Press* [2003] EWHC 2408 (Admin) – <http://www.bailii.org/ew/cases/EWHC/Admin/2003/2408.html> ; and *JC and RT v the Central Criminal Court and others* [2014] EWHC (1041) - <http://www.bailii.org/ew/cases/EWHC/QB/2014/1041.html> .

or witness who is under the age of 18 during the criminal proceedings. Sections 79 and 80 make adjustments to the scope of certain reporting restrictions already applying to under-18s so that they apply to on-line content as well as print and broadcast media.

87. **Representations to Parliament by the President of the Supreme Court** –Section 81 amends section 5 of the Constitutional Reform Act 2005 to allow the President of the United Kingdom Supreme Court to make written representations to Parliament about the Supreme Court and its jurisdiction in the same way as the Chief Justice¹⁸ of any part of the United Kingdom can make representations about the judiciary and the administration of justice. Section 82 amends section 39 of the Constitutional Reform Act 2005 to give the United Kingdom Supreme Court the flexibility to appoint judges to the Supplementary Panel within two years of their retirement, providing they are under the age of 75. This gives the UK Supreme Court greater scope and flexibility to appoint recently retired judges when they need to use judges from other courts.
88. Correcting an error in the Crime and Courts Act 2013 regarding the test applied to applications for permission to appeal from the Upper Tribunal in Scotland - The Crime and Courts Act 2013 enabled rules of court to introduce a second appeals test for applications for leave to appeal from the Upper Tribunal to the Court of Session following a court decision that declared the court rules introducing such a test ultra vires (that is, beyond power). Due to an error the words ‘or practice’ were omitted from the provision providing that an appeal cannot be granted unless it raises a point ‘of principle or practice’. Section 83(2) corrects that omission.

Part 4 – Judicial Review

89. Judicial review is a process by which individuals, businesses and other affected parties can challenge the lawfulness of decisions, actions or inactions of the Executive, including those of Government Ministers, local authorities, other public bodies and those exercising public functions. On 6 September 2013, the Justice Secretary launched a consultation entitled ‘*Judicial Review: Proposals for further reform*’¹⁹. The consultation examined proposals in six areas aimed at reducing the burden of judicial review. It closed on 1 November 2013.
90. This consultation followed an earlier consultation, ‘*Judicial Review: proposals for reform*’, which ran from December 2012 to January 2013 and set out some of the background and the Government’s concerns about the use of judicial review; the mechanism for challenging the decisions, acts or omissions of public bodies to ensure that they are lawful. A number of procedural changes were made following that consultation and the Government’s response is available at <https://consult.justice.gov.uk/digital-communications/judicial-review-reform>.
91. The consultation in the autumn of 2013 put forward proposals for further reform on a number of key areas, including:
- how the courts deal with judicial reviews based on minor defects that would have made no difference to the final outcome;
 - a number of proposals to rebalance the system of financial measures so that those involved have a proportionate interest in the costs of the case. These included a proposal to limit payment to legal aid providers for their work on an application for permission to cases where permission is granted by the court;
 - measures aimed at speeding up appeals to the Supreme Court in important cases, provision for which is included in Part 3 of the Act; and

¹⁸ Chief Justice” is defined in section 5(5) of the Constitutional Reform Act 2005 (a) in relation to England and Wales or Northern Ireland, as the Lord Chief Justice of that part of the United Kingdom; (b) in relation to Scotland, as the Lord President of the Court of Session.

¹⁹ <https://consult.justice.gov.uk/digital-communications/judicial-review>

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- a new specialist “planning chamber” for challenges relating to major developments to be taken only by expert judges using streamlined processes. This builds on the “planning fast-track” process implemented in the High Court in July 2013.
- 92. The Government published its response to the consultation on 5 February 2014 setting out its intention to bring forward a package of reforms to judicial review. The response can be viewed at <https://consult.justice.gov.uk/digital-communications/judicial-review>. The reforms requiring primary legislation are provided for in this Act and are explained below.
- 93. Requiring the court to consider the likelihood of whether there would have been a substantially different outcome for the applicant - In judicial review cases the court has discretion over whether to provide a remedy (“relief”), such as a declaration clarifying the rights and obligations of the parties or ordering a decision to be retaken. Whether or not to grant relief is up to the court, and the courts have – regardless of this Act - refused to provide relief where there would have inevitably been no difference to the outcome even if the reason for bringing the judicial review had not occurred.
- 94. **Section 84** modifies the existing approach (which was developed by the courts in case law) so that relief is not to be granted and permission to seek that relief is not to be granted where the court considers the conduct complained about would be highly likely not to have resulted in a substantially different outcome for the applicant, unless the court considers that it is appropriate to grant relief or permission for reasons of exceptional public interest. If the court relies on this exception, it must certify that it has done so.
- 95. Information about financial resources in the High Court, Court of Appeal and Upper Tribunal in judicial review cases in England and Wales – Under section 51 of the Senior Courts Act 1981 and section 29 of the Tribunals, Courts and Enforcement Act 2007, the High Court, the Court of Appeal and the Upper Tribunal respectively have wide powers in respect of awarding costs. This extends to the power to award costs against any person who is not a party to a case. This might include a person who, although not a formal party to a claim, provides financial backing to the claimant and is seeking to drive the litigation for their own purposes. Similarly, where a “shell company” is created to bring the judicial review, whilst the directors of the company are not parties, they may be both funding and driving the litigation so it may be appropriate to make a costs award against them. However, there is no general requirement for an applicant to reveal the source of the funding he or she is receiving for the judicial review proceeding which may mean that it is difficult for the court to identify against whom costs orders should be made.
- 96. **Section 85** stipulates that where an applicant applies to the High Court or the Upper Tribunal for permission to proceed with a judicial review under the law of England and Wales, the High Court or Upper Tribunal cannot grant permission unless the applicant provides specified information about the financing of the judicial review. Section 86 provides that when making costs orders under section 51 of the Senior Courts Act 1981 and section 29 of the Tribunals, Courts and Enforcement Act 2007 the High Court, the Court of Appeal and Upper Tribunal should have regard to the information provided by the applicant and should consider making costs orders against those who are not a party to the judicial review.
- 97. Establishing two presumptions that interveners in judicial review cases in courts will pay their own costs and in certain circumstances any costs incurred by any other party because of their intervention – Under the Civil Procedure Rules any person who is interested in the issues being considered in a judicial review case can seek permission from the court to intervene in the case usually by filing evidence or making representations. At the end of the judicial review case the court will consider who should bear the costs that arise from any intervention. The courts have powers under section 51

of the Senior Courts Act 1981 to make an award of costs against a person who is not a party to a claim such as an intervener. Section 87 establishes two presumptions: first that those who intervene in a judicial review case will have to pay their own costs and secondly that, on the application of a party, if one of more of four specified conditions has been met, the intervener must pay any costs which their intervention, has caused that party to incur. Neither presumption would apply where the court considered there to be exceptional circumstances which would make it inappropriate.

98. **Restricting the situations where a costs capping order can be made** - A costs capping order limits the costs which a party may recover from another party at the conclusion of the case. In judicial review cases, a particular sort of costs capping order, known as a protective costs order, has been developed, in which costs are typically capped on an “asymmetric” basis, with the amount recoverable by a successful defendant from the applicant being capped at a lower level than the amount recoverable by a successful applicant from the defendant (which may not be capped at all). If such an order has been made and the applicant is unsuccessful in the proceedings to which the order applies, the applicant will only be liable to pay the successful defendant’s costs up to the amount specified in the order, and the defendant will have to cover any balance of its legal costs itself. When making an order capping the applicant’s costs liability, the court may also include a “cross-cap”, limiting (generally at an amount rather higher than the cap on the applicant’s liability) the amount of costs the defendant would be liable to pay the claimant if the claim succeeds. This means that an unsuccessful defendant is only liable to pay the successful applicant’s costs up to the amount in the order and the applicant would cover any remaining costs he or she had incurred.
99. Protective costs orders were developed by the courts, and the principles governing when and on what terms they will be made were re-stated by the Court of Appeal in the case of *R (Corner House Research) v Secretary of State for Trade and Industry [2005] EWCA Civ 192*²⁰. The *Corner House* principles provided for protective costs orders to be for exceptional circumstances in cases concerning issues of public importance. However, over time their use has widened. Sections 88-90 make provision for a codified regime, replacing the regime in case law, to govern the circumstances in which protective costs orders may be made in judicial review proceedings (the position in relation to costs capping in other civil proceedings remaining unchanged). Section 88 provides that costs capping orders in judicial review proceedings can only be made in certain circumstances. Section 89 provides that a court must have regard to the matters set out there when considering whether to make a cost capping order and what the terms of such an order should be. Section 90 enables environmental cases to be excluded from the codified regime provided for in these sections as such cases are governed by a separate regime arising from the Aarhus Convention²¹ and the Public Participation Directive.²²
100. **Planning Proceedings** - Planning legislation provides that certain planning-related decisions, orders and actions may only be challenged by way of statutory review in the High Court. The amendments made by section 91 and Schedule 16 require the permission of the High Court to be obtained before a challenge may be brought under specified provisions of planning legislation. The amendments made by section 91 and Schedule 16 also permit challenges to awards of costs in relation to planning and listed building decisions to be brought in the same way as a challenge to the substantive decision itself - namely under section 288 of the Town and Country Planning Act 1990 or section 63 of the Planning (Listed Building and Conservation Areas) Act 1990. Section 92 amends provisions concerning certain planning-related challenges to

²⁰ <http://www.bailii.org/ew/cases/EWCA/Civ/2005/192.html>

²¹ UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

²² Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC: http://eur-lex.europa.eu/resource.html?uri=cellar:4a80a6c9-cdb3-4e27-a721-d5df1a0535bc.0004.02/DOC_1&format=PDF

provide that the six-week period within which a challenge must be brought does not start to run until the day after the decision or other action which is the subject of the challenge.

Territorial extent and application

101. [Section 96](#) sets out the territorial extent of the Act.
102. The majority of the Act's provisions extend to England and Wales only, but certain provisions also extend to Scotland or Northern Ireland or both. Amendments of Acts have the same extent as the provisions they amend, except for certain amendments of the Children and Young Persons Act 1933 in section 79(9) and paragraph 1 of Schedule 15 of the Act which extend to England and Wales only (see section 96(4)). Amendments of the Armed Forces Act 2006 or of any provision applied by the Armed Forces Act 2006 extend to England and Wales, Scotland and Northern Ireland (see section 96(2 and (3))).
103. The Act addresses non-devolved and devolved matters.

Provisions in the Act that extend to Northern Ireland

104. The following provisions change the law as it operates in Northern Ireland and relate to excepted or reserved matters:
 - the increase in the maximum penalty for the possession of explosive substances, weapons training for terrorist purposes and training for terrorism to life imprisonment (section 1);
 - the provision relating to the offence of making improper use of a public electronic communications network (section 51);
 - the provision allowing appeals to move directly from the Upper Tribunal and the Special Immigration Appeals Commission to the Supreme Court (sections 64 and 66);
 - the amendment of the Constitutional Reform Act 2005 allowing the President of the Supreme Court to make representations to Parliament (section 81);
 - the amendment of that Act relating to the circumstances in which a judge of the Supreme Court or a senior territorial judge can become a member of the supplementary panel (section 82);
 - the amendments of the Armed Forces Act 2006 and of any other provision as it is applied by that Act (for example, provisions of the Criminal Justice Act 2003) and any amendment which applies in relation to a service court (see the amendment of section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 made by section 15 and the provisions in section 76 and paragraph 2 of Schedule 15 in so far as they apply to such courts).
105. The following provisions change the law as it operates in Northern Ireland but are consequential on other provisions in the Act which change the law in England and Wales:
 - the amendments of Schedule 1 to the Crime (Sentences) Act 1997 relating to the transfer of prisoners within the British Isles (paragraph 12 of Schedule 1) arising from the new sentence and release provisions for certain offenders of particular concern;
 - the amendment of section 39 of the Criminal Law Act 1977 relating to the service of summons etc in Scotland and Northern Ireland (paragraph 1 of Schedule 11) which is consequential on the provisions enabling trial by a single justice on the papers.

106. **Section 26** of the Act (corrupt or other improper exercise of police powers and privileges) extends to Northern Ireland and relates to both transferred and reserved matters. The provision will only have effect in Northern Ireland in relation to reserved matters (in respect of officers of the Ministry of Defence Police) until the conferral of police powers on National Crime Agency Officers in Northern Ireland takes place, following the Northern Ireland Assembly giving its consent to that on 3 February 2015 (see section 10(1)(a) of, and paragraph 11(1)(c) of Schedule 5 to, the Crime and Courts Act 2013 and the power to extend paragraph 11(1)(c) to Northern Ireland in Schedule 24 to that Act). Section 26 was enacted with the agreement of the Northern Ireland Executive.
107. There are other provisions which make amendments to provisions extending to Northern Ireland but where the amendment preserves, or does not materially affect, the law as it operates there.

Provisions in the Act that extend to Scotland

108. The following provisions change the law in Scotland as it relates to reserved matters:
- the increase in the maximum penalty for the possession of explosive under suspicious circumstances, weapons training for terrorist purposes and training for terrorism to life imprisonment (section 1);
 - the provisions relating to offences committed by disqualified drivers (section 29 and paragraphs 1 to 10 of Schedule 6);
 - the provision relating to the mutual recognition of driving disqualification in the UK and the Republic of Ireland (section 31 and Schedule 7);
 - the provision relating to the offence of making improper use of a public electronic communications network (section 51);
 - the amendment of the Constitutional Reform Act 2005 allowing the President of the Supreme Court to make representations to Parliament (section 81);
 - the amendment of that Act relating to the circumstances in which a judge of the Supreme Court or a senior territorial judge can become a member of the supplementary panel (section 82);
 - the provision amending the test for applications for leave to appeal from the Upper Tribunal to the Court of Session (section 83(2));
 - the amendments of the Armed Forces Act 2006 and of any other provision as it is applied by that Act (for example, provisions of the Criminal Justice Act 2003) and any amendment which applies in relation to a service court (see the amendment of section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 made by section 15 and the provisions in section 78 and paragraph 2 of Schedule 15 in so far as they apply to such courts).
109. The following provisions change the law as it operates in Scotland but are consequential on other provisions in the Act which change the law in England and Wales:
- the amendments of Schedule 1 to the Crime (Sentences) Act 1997 relating to the transfer of prisoners within the British Islands (paragraph 12 of Schedule 1) arising from the new sentence and release provisions for certain offenders of particular concern;
 - the amendment of section 39 of the Criminal Law Act 1977 relating to the service of summons etc in Scotland and Northern Ireland (paragraph 1 of Schedule 11) which is consequential on the provisions enabling trial by a single justice on the papers;

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- the amendments of section 1 of the Rehabilitation of Offenders Act 1974 (paragraph 1 of Schedule 12) and section 24 of the Criminal Justice Act 1991 (paragraph 7 of Schedule 12) which are consequential on the costs of criminal courts provisions (section 54).
110. [Section 19](#) of the Act makes changes to the powers of Scottish Ministers under Schedule 3 to the Rehabilitation of Offenders Act 1974. Section 26 creates a new offence of police corruption which relates to both devolved and reserved matters. The Scottish Parliament passed a legislative consent motion in relation to both of these matters on 28 October 2014.
111. There are other provisions which make amendments to provisions extending to Scotland but where the amendment preserves, or does not materially affect, the law as it operates there.

Provisions in the Act that apply in Wales

112. Paragraphs 17 to 20 and 32 of Schedule 9 and paragraphs 35 and 36 of Schedule 10 make amendments which would be within the competence of the Welsh Assembly Government but which are consequential on other provision of the Act which are outside that competence. The remaining provisions in the Act that apply in Wales relate, in the view of the Government, to non-devolved matters and do not affect the powers and responsibilities of Welsh Ministers.