

*These notes refer to the Courts Act 2003 (c.39)
which received Royal Assent on 20 November 2003*

COURTS ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Courts Act 2003 which received Royal Assent on 20 November 2003. They have been prepared by the Department for Constitutional Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

OVERVIEW

3. The Courts Act 2003 primarily implements those of the key courts-related recommendations contained in Sir Robin Auld's Review of the Criminal Courts in England and Wales (October 2001, hereafter "the Auld Review") which the Government accepted, in the White Paper "Justice for All" published on 17th July 2002. It also makes provision for a number of other changes relating to judicial matters and to civil and family court procedure.
4. The explanatory notes are divided into parts reflecting the structure of the Act. In relation to each Part, there is a "Summary". In relation to each group of sections, there is a "Background" section. Commentary on particular sections is then set out in number order, with the commentary on the various Schedules included with the section to which they relate.
5. The Act is divided into 9 Parts:

Part 1: Maintaining the court system

- Part 1: This places the Lord Chancellor under the general duty of maintaining an efficient and effective court system and gives him power to make appropriate arrangements for staff and accommodation. This Part also abolishes Magistrates' Courts Committees (MCCs), and establishes courts boards.

Part 2: Justices of the Peace

- Part 2: This makes provision for justices of the peace and other matters relating to magistrates' courts. It replaces commission areas and petty session areas with local justice areas and provides for fines officers (who will exercise new functions under Schedules 5 and 6 in connection with fine enforcement). This Part also makes provision about the effect of the Act of Settlement 1700 on the appointment of lay magistrates.

Part 3: Magistrates' Courts

- Part 3: This deals with jurisdiction and procedure in criminal, civil and family proceedings in magistrates' courts.

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Part 4: Court Security

- Part 4: This contains provisions to ensure that court security personnel have the same powers in all courts and details the powers of court security officers and the circumstances in which they may exercise them lawfully.

Part 5: Inspectors of court administration

- Part 5: This establishes a new HM Inspectorate of Court Administration and provides for the functions and rights of entry and inspection of the Chief Inspector and inspectors.

Part 6: Judges

- Part 6: This allows for alterations to the names of judicial titles and offices. This Part also allows District Judges (Magistrates' Courts) to sit as Crown Court judges and gives judges of the higher courts all the powers of justices of the peace, to give increased flexibility in judicial deployment.

Part 7: Procedure rules and practice directions

- Part 7: This provides for a Criminal Procedure Rule Committee and details its membership requirements, the rule-making process and its powers, provides for a Family Procedure Rule Committee and details its requirements, process and powers, and amends existing legislation relating to the Civil Procedure Rule Committee.

Part 8: Miscellaneous

- Part 8: This allows for costs awards against third parties in criminal cases and amends the procedures for appeals to the House of Lords and the Court of Appeal. This Part also confers new powers in connection with fine enforcement and revises the law on damages to allow the court to order periodical payments in personal injury cases, makes other minor changes in relation to court procedures, enforcement processes and office-holders and makes provision in relation to Northern Ireland.

Part 9: Final Provisions

- Part 9: This contains final technical provisions including provisions about implementation.

PART 1: MAINTAINING THE COURT SYSTEM

SUMMARY

6. Part 1 of the Act places a duty on the Lord Chancellor to provide an efficient and effective system to support the carrying on of the business of all the main courts in England and Wales, namely the Court of Appeal, the High Court, the Crown Court, the county courts and the magistrates' courts. This responsibility will be discharged, in practice, by a new executive agency, as part of the Department for Constitutional Affairs, replacing the Court Service and the 42 MCCs. This agency will have local community links through courts boards, established under this Part.

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BACKGROUND

7. At present there are separate arrangements for the management of the courts in England and Wales. The Court Service is responsible for the operation of the Supreme Court (comprising the Court of Appeal, the High Court of Justice – including the Probate Service - and the Crown Court), county courts and a number of tribunals. It is an executive agency (Next Steps Agency) of the Department for Constitutional Affairs and has no autonomous legal existence. Its responsibilities and powers are defined solely by internal documents (most importantly its framework document). A Chief Executive, who is accountable to the Lord Chancellor and through him to Parliament, heads the Court Service. The Permanent Secretary of the Department for Constitutional Affairs remains the Principal Accounting Officer.

8. The Crown Court and county courts are organised for administrative purposes into 6 circuits and 18 groups. A Circuit Administrator heads each circuit. Below circuit level, Group Managers are responsible for the Crown Court centres and county courts within their areas. Group boundaries are aligned to the 42 criminal justice system (CJS) areas. Court Service employees are civil servants. MCCs (established under Part 3 of the Justices of the Peace Act 1997 (JPA 1997)) are responsible for the efficient and effective administration of the magistrates' courts within their areas. They are bodies corporate whose members consist primarily of local lay magistrates and persons co-opted by the committee or appointed by the Lord Chancellor. The body responsible for the magistrates' courts in the greater London area is known as the Greater London Magistrates' Courts Authority (GLMCA). The 42 MCC areas are aligned with the CJS areas, as are the areas covered by other criminal justice agencies.

9. MCCs receive 80% of their funding directly from the Department for Constitutional Affairs; the remaining 20% comes from local authorities. Local authorities are required to provide accommodation, goods, services, salaries and other expenses necessary for the proper functioning of magistrates' courts and MCCs. The GLMCA owns its own estate and is its own paying authority i.e. it is not funded through local authorities. MCCs employ staff on such terms as they think fit.

10. The Auld Review recommended that a single centrally funded agency, as part of the Lord Chancellor's Department (now the Department for Constitutional Affairs), should replace the Court Service and the MCCs. In the White Paper *Justice for All* the Government accepted the recommendation for a single courts organisation and stated that an agency would have a strong local dimension and would "deliver decentralised management and local accountability within a national framework of standards and strategy direction".

11. The Act does not set out a blueprint for the new agency, which will be designed in line with the Principles of Public Service Reform (published in 'Principles into Practice' by the Prime Minister's Office of Public Services Reform, March 2002). Although a centrally funded organisation directly accountable to the Lord Chancellor, the new agency will have a strong local dimension. The Act provides for the establishment of courts boards, composed of people who understand the administration of the courts and others who can represent local interests in the area for which the board is responsible. They will include at least two lay magistrates and one judge.

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12. The purpose of the boards is to ensure that the administration of the courts is focussed on the needs of court users and the local community more generally.

COMMENTARY ON SECTIONS: PART 1

The general duty

Section 1: The general duty

13. This section places the Lord Chancellor under a statutory duty to secure an efficient and effective administrative system, and other services (such as security or enforcement services), to support Supreme Court, county court and magistrates' court business, referred to in the Act as the general duty. The Supreme Court is defined in the Supreme Court Act 1981 (SCA 1981), section 1(1), as the Court of Appeal, the High Court of Justice and the Crown Court. The day to day responsibility for the administration of the courts will be delegated to a new executive agency of the Department for Constitutional Affairs, headed by a Chief Executive.

14. Section 1 also provides that within 18 months of this section coming into force, and annually thereafter, the Lord Chancellor must prepare and lay before both Houses of Parliament a report on the way he has discharged his general duty in relation to the courts, staff and accommodation. This will include information on the operations of the Agency itself.

Court staff and accommodation

Section 2: Court officers, staff and services

15. Section 2 re-models section 27 of the Courts Act 1971 (CA 1971), but covers staff for magistrates' courts as well as the Supreme Court and the county courts. It allows the Lord Chancellor to employ civil servants as court staff, so that he can discharge his duty of administering the courts and providing support services. Persons appointed under this section would be eligible to join the principal civil service pension scheme and would be eligible for other superannuation benefits in the same way as other civil servants

16. This section also allows the Lord Chancellor to enter into contracts with self-employed people or independent contractors, as appropriate, for the purpose of discharging his general duty in relation to the courts. However, under section 2 (6), contracting out in respect of officers and staff carrying out administrative work will only take place after the making of an enabling order (that is, a statutory instrument), and subject to prior consultation with the Heads of Division (the Lord Chief Justice, Master of the Rolls, President of the Family Division and Vice-Chancellor). While this section does not permit the provision of persons to make judicial decisions or exercise a judicial discretion, it does extend to those assisting such persons. Taken together with section 27, this will allow the Lord Chancellor to enter into arrangements for the provision of assistants to justices' clerks.

Section 3: Provision of accommodation

17. Section 3 re-models section 28 of the CA 1971 and reflects the Lord Chancellor's additional responsibility for magistrates' courts. Subsection (1) gives the Lord Chancellor power to provide, equip, maintain and manage court accommodation. Subsection (2) allows the Lord Chancellor to enter into arrangements with others. Court land will, in practice, be

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held by the First Secretary of State (Deputy Prime Minister) (who already holds court land, other than for magistrates' courts), with whom the Lord Chancellor will enter into appropriate arrangements. The Lord Chancellor's powers will be exercised on his behalf by the new executive agency. Subsection (4) defines the term "court-house".

Courts boards

Section 4: Establishment of courts boards

18. Section 4 requires the Lord Chancellor to set up courts boards (the functions of which are set out in section 5). The section obliges the Lord Chancellor to define the geographical area for which they are responsible by order. It obliges him, in defining the areas, to have regard to the desirability of ensuring coterminosity with CJS areas, which are based on areas defined in the Police Act 1996. It provides that the names of each courts board area will be specified in the order. It allows the Lord Chancellor to make orders altering the areas, but it requires that the Lord Chancellor consult an affected courts board before an amending order is made. It provides for a Schedule that sets out the constitution and procedure of courts boards, including the categories of membership of the courts boards.

Schedule 1: Constitution and Procedure of courts boards

19. This Schedule provides for the constitution and procedure of courts boards. Members are to be appointed by the Lord Chancellor. Minimum membership will consist of at least one judge; at least two lay magistrates; at least two other members who appear to have knowledge or experience of the work of the courts in the area; and at least two members who appear to be representative of local people in the area. It provides for regulations to be made by the Lord Chancellor in relation to the appointment of members, in particular the appointments procedure; the selection of a chairman from among the board members; the term of office of board members and their resignation, suspension or removal; the procedure of boards, including quorum; and the validation of proceedings in the event of removal, a vacancy or defect in appointment.

20. This Schedule also enables the Lord Chancellor to make payments in respect of expenses and remuneration.

Section 5: Functions of Courts Boards

21. Section 5 requires each courts board to scrutinise, review and make recommendations about how the Lord Chancellor is fulfilling his general duty. It specifies that courts boards will, in particular, consider draft and final business plans for their area. It requires the Lord Chancellor to issue the courts boards with guidance about how they should carry out their functions, including the procedures to be followed in considering draft and final business plans. This guidance must be laid before both Houses of Parliament. The Lord Chancellor must give due consideration to their recommendations. If the Lord Chancellor rejects a courts board's recommendations on its final business plan he must give to them his reasons for doing so in writing. Subsection (4) makes clear that courts boards are not concerned with the Court of Appeal or High Court.

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Abolition of magistrates' courts committees

Section 6: Abolition of magistrates' courts committees etc.

22. Since the Lord Chancellor will take over responsibility for the magistrates' courts, there will no longer be a need for the MCCs, which perform this function at the moment. Section 6 provides for their abolition. It also abolishes the Greater London Magistrates' Courts Authority, which is the MCC for Greater London. Section 6 also gives effect to Schedule 2, which provides for the transfer of MCC staff and property.

Schedule 2: Abolition of magistrates' courts committees: transfers

23. Schedule 2 sets out the arrangements for the transfer of staff from MCCs and local authorities to the employment of the Lord Chancellor. It also enables the Lord Chancellor to make schemes transferring property, rights or liabilities from MCCs, local authorities and others to him or another Minister of the Crown.

24. Paragraph 11 applies the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) (TUPE) without restriction to MCCs and will effect the transfer of MCC employees into the employment of the Lord Chancellor. Paragraph 12 applies to local authority staff. Under paragraph 12(2)(b) local authority staff who spend "a substantial part" of their time on MCC duties during the course of a year, can be transferred to the Lord Chancellor's employment; however, the ultimate decision as to whether to transfer such an employee is for the Lord Chancellor. It is intended that in practice any transfer would be subject to consultation with the individuals affected. Paragraph 14 provides that any MCC or local authority staff who are regarded as 'aliens' will still be eligible to transfer into the employment of the Lord Chancellor. An 'alien' in this context can be defined as a person who is precluded from employment in the civil service by existing legislation i.e. nationals of non-EC or non-EFTA states.

PART 2: JUSTICES OF THE PEACE

SUMMARY

25. Part 2 of the Act contains a range of provisions relating to lay justices, District Judges (Magistrates' Courts), justices' clerks and administrative staff working in the magistrates' courts. The most significant change is to give lay magistrates a national jurisdiction. In order to achieve the main changes, this Part rewrites existing provisions in the JPA 1997 with various adjustments.

BACKGROUND

The commission of the peace and local justice areas

26. England and Wales are currently divided into commission areas and petty sessions areas (under sections 1-5 of JPA 1997). The **commission area** is the unit on which the appointment of lay magistrates and the jurisdiction of the magistrates' courts to hear summary cases is based. Lay magistrates are appointed to a particular commission area, on the basis of the place where they reside; and most summary offences must be tried in the commission area where the alleged offence took place. Commission areas are divided into one or more **petty sessions areas**. Petty sessions areas are the areas to which lay magistrates

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are assigned by the Lord Chancellor (although this currently happens outside the statute). These are the “benches”, the basic unit of local magistrates’ court organisation.

27. This Act abolishes commission areas and petty sessions areas and replaces them with local justice areas. Lay magistrates will be appointed for England and Wales. This, coupled with changes in Part 3 of the Act, will have the effect of giving lay magistrates a national jurisdiction. The Lord Chancellor will, however, be placed under a statutory duty to assign lay magistrates to a local justice area. This will preserve the bench system in statute. By virtue of paragraph 3 of Schedule 9, when the Act comes into effect, the local justice areas will be the same as petty sessions areas were immediately previously. Subsequently, the pattern of areas may be varied by order, following suitable consultation.

Places, dates and times of sittings

28. Section 153 of the Magistrates’ Courts Act 1980 (MCA 1980) declares that a magistrates’ court may sit on any day of the year, including a Sunday, Good Friday and Christmas Day.

29. It is for the magistrates’ court to decide when it shall sit, although in practice, magistrates’ courts do not normally sit on Sundays. There are restrictions on where magistrates’ courts can sit and the powers of magistrates can vary depending on whether they are sitting in a petty sessional courthouse (section 150(1) MCA 1980) or an occasional courthouse (section 147 MCA 1980). This Act permits the Lord Chancellor to determine when and where magistrates’ courts are to sit. This will introduce greater flexibility than the current arrangements and give magistrates full powers wherever they sit.

Justices’ clerks

30. Most cases in magistrates’ courts are heard by lay magistrates who are not qualified lawyers. They rely on the legal advice of justices’ clerks and their assistants, often known as “legal advisers”. Justices’ clerks and their assistants can also exercise the powers of a single justice of the peace in certain circumstances. Justices’ clerks are vital to the administration of justice in magistrates’ courts.

31. At present, under section 42 of the JPA 1997, justices’ clerks are appointed by an MCC to a particular petty sessions area, following the approval of the Lord Chancellor. MCCs are required by section 42(6) to consult local lay magistrates on the appointment or removal of justices’ clerks in certain circumstances. MCCs also have the power to designate assistants to justices’ clerks under section 44(3) of the JPA 1997.

32. When exercising any legal function, justices’ clerks are not subject to the directions of a justices’ chief executive (JCE) or any other person or body, by virtue of section 48 of the JPA 1997. Assistant clerks may only be subject to the directions of justices’ clerks.

33. This Act provides that in future the Lord Chancellor will have the power to employ appropriate court staff, including justices’ clerks and their assistants who must be specifically designated as such. The Act retains the statutory qualifications for justices’ clerks and assistants and confirms their independence when exercising any legal function. It also places a duty on the Lord Chancellor to assign justices’ clerks to one or more local justice areas.

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Fines Officers

34. The Act includes provisions to create the role of fines officer who may be appointed or provided under contract by the Lord Chancellor.

35. The Act creates the role of “a fines officer” to take enforcement action in certain circumstances, thus removing the need for all enforcement decisions to be taken by a court. A fines collection system (Schedule 5) has been set up which introduces financial incentives to offenders to pay their fines, as well as providing a range of new disincentives for fine default, including wider powers to make attachments of earnings orders (AOE) and deductions from benefits (DFB). The system is designed to encourage payment but will include new penalties for those who have the means and will not pay. The Act also introduces new sanctions for failing to provide information necessary to make AOE orders and DFB applications. For those who are unable to pay a fine, the Act introduces (in Schedule 6) a system for discharging fines by unpaid work.

36. The Act provides for the new system to be piloted and, if necessary, modified before a permanent scheme is introduced. The intention is to ensure that fines are seen as credible and effective punishments.

Designated officers and magistrates’ courts

37. Currently each MCC must appoint a JCE with the approval of the Lord Chancellor, to manage the magistrates’ courts in its area. The primary function of JCEs is to make arrangements for the efficient and effective administration of the magistrates’ courts. JCEs must perform all of their statutory duties in accordance with directions given by the relevant MCC.

38. JCEs are responsible for a wide range of administrative matters. Section 90 of the Access to Justice Act 1999 (AJA 1999) amended a large number of earlier Acts so as to transfer to JCEs administrative functions previously assigned to justices’ clerks. As there will be no equivalent statutory post to the JCE in the new courts agency, this Act provides for former JCE functions to be carried out by an officer designated by the Lord Chancellor.

Application of receipts of magistrates’ courts etc.

39. Magistrates’ courts are responsible for collecting fines, fees and other financial orders on behalf of central Government and compensation orders on behalf of victims of crime. Section 60 of the JPA 1997 makes provision for the application of receipts by JCEs. This Act reproduces section 60 with changes to reflect the fact that the designated officer, rather than the JCE, will be responsible for collecting such sums.

COMMENTARY ON SECTIONS: PART 2

The commission of the peace and local justice areas

Section 7: The commission of the peace for England and Wales

40. This section replaces the provision contained in sections 1 and 3 of the JPA 1997, for the issue of commissions of the peace to each commission area, but with changes to reflect the fact that commission areas are abolished by this Act. The section refers to a single commission of the peace, which will cover England and Wales, in place of the current 42 separate commissions.

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41. The section restates the provision that the commission is to be issued under the Great Seal, and that it shall be addressed generally rather than to individual justices.

Section 8: Local justice areas

42. Section 8 places a duty on the Lord Chancellor to divide England and Wales into areas to be known as local justice areas and gives him the power to make orders altering such areas. Before making such an order the Lord Chancellor must consult magistrates assigned to an area affected by the changes, and any local councils and courts boards similarly affected. This section, in effect, makes the same provision as parts of sections 4, 33 and 34 of the JPA 1997 (which is repealed by section 6(4)), but changes the name 'petty sessions areas' to local justice areas. The name 'local justice area' is considered to be a more modern and more appropriate title for these areas. An initial order setting up local justice areas will simply be laid in Parliament and will not be subject to the negative resolution procedure, on the basis that by virtue of Schedule 9, it will simply be renaming petty sessions areas as local justice areas and will not change any boundaries. Subsequent orders altering areas will be subject to negative resolution.

43. Schedule 8 contains a number of consequential amendments. References to petty sessions and commission areas in existing legislation can have the effect of geographically linking particular cases to the area specified. Where possible this link is to be removed and instead where cases will be heard will be determined in accordance with directions issued by the Lord Chancellor, subject to the concurrence of the Lord Chief Justice. The directions, given under powers contained in section 30, are likely to reflect the policy that whilst in general cases will be heard in the local justice area in which the offence was committed, or where the defendant lives, other factors will also be liable to be taken into account. These considerations will include the availability of court resources and the whereabouts of victims or other interested parties, including defendants and witnesses.

Lay Justices

Section 9: Meaning of "lay justice"

44. The purpose of this section is to clarify, throughout the Act, the difference between references to justices of the peace and lay justices.

45. The title of justice of the peace still applies to lay justices; but technically it may refer equally to a lay justice and to a District Judge (Magistrates' Courts). For clarity throughout this Act the term "lay justice" has been used in those sections where a District Judge (Magistrates' Courts) is not meant to be included in the provision. Although existing legislation, and the Act, refers to lay justices, they are also popularly known as "lay magistrates", the expression used in these notes.

Section 10: Appointment of lay justices etc

46. This section makes similar provision to section 5(1) of the JPA 1997. However, it lays a new duty on the Lord Chancellor to assign every lay justice to a local justice area (for purposes which, it is envisaged, will include local organisation, training, selection for specialist work, pastoral care and discipline). There is no equivalent to this new power of assignment. The existence of the bench is implicit in current statute in the provisions governing elections for bench chairmen and deputy chairmen. Justices could be assigned to

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more than one area if appropriate, and the Lord Chancellor would be able to transfer justices to other areas.

47. This section clarifies that assignment to a local justice area is not to limit jurisdiction to that area. However, the section also provides that if a justice is to act outside his normal place of sitting he is to do so in accordance with arrangements. It is envisaged that these would be informal in nature. In practice it would be unrealistic that a justice would sit in an unaccustomed area save by prior arrangement between courts and with his agreement.

48. As lay magistrates will no longer have a jurisdiction limited to a commission area, there will no longer be the statutory residence qualifications for assignment (section 6 of the JPA 1997). It is envisaged, however, that Advisory Committees (who advise the Lord Chancellor on appointments of lay magistrates) will continue, under guidance from the Lord Chancellor, to recommend that lay magistrates be assigned to the local justice area in which they reside unless there is good reason to do otherwise (for example, should an applicant find it easier to sit where he or she works rather than where he or she lives).

49. A further effect of the repeal of the JPA 1997, and the provision made by this section, is to transfer the current responsibilities of the Chancellor of the Duchy of Lancaster, in respect of the appointment of lay magistrates within the Duchy, to the Lord Chancellor.

50. The section also provides that the Lord Chancellor may make rules prescribing training courses that justices would complete before exercising such jurisdictions as may be specified. This provision is designed to clarify the Lord Chancellor's power to prescribe training – this is felt to be advisable in the future context that MCCs will no longer have responsibility for training lay magistrates.

51. The section also brings the other jurisdictions of a lay magistrate into line with the family and youth jurisdictions, where there is an existing power for the Lord Chancellor to set out requirements for those jurisdictions in rules.

Section 11: Resignation and removal of lay justices

Section 12: The supplemental list

Section 13: Entry of names in the supplemental list

Section 14: Removal of names from the supplemental list

52. These sections replace sections 7 to 9, of the JPA 1997, together with the provision in section 5 relating to the removal of lay justices from office. They provide that a lay justice may resign, set out the grounds on which justices may be removed from office, and re-enact (with some changes) the provision that lay justices shall be entered onto a supplemental list on reaching the age of 70, and thereafter cease to exercise office as justices.

53. Section 11 provides for the removal of justices from office specifying that they may be removed on the grounds of misbehaviour, incapacity, neglect of duty and persistent failure to meet prescribed competences. (There are currently competences laid down for lay magistrates, against which they are appraised, and it is envisaged that these competences will be formalised by direction.) At present there is no statutory restriction on the grounds on which they may be removed.

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54. The function of the supplemental list under these sections is different from its functions under the JPA 1997: it has lost its disciplinary function, and is now intended to be simply a recognition of the service given by lay magistrates. For that reason it is no longer specified that the Lord Chancellor may place justices on the List on the ground of neglect of duty – this is now a ground for removal under section 11. The ability, however, for justices to be entered in the list after long service, even if they have not reached the age of 70, has been retained under section 13(4).

55. Additionally, these sections no longer provide statutory authority for supplemental list justices to perform certain acts (such as the signing of passport photographs), as the majority of the acts specified no longer require statutory authority. The sections also remove the provision that a retired lay magistrate may still act as a judge in the Crown Court (if authorised) until the age of 72.

56. Where a justice is in the middle of hearing a case, or still serving as bench chair, on reaching 70, his name need not go on the list until the end of the case or of his term as chair.

57. A further effect of the repeal of the JPA 1997, and the provision of this section, is to transfer the current responsibilities of the Chancellor of the Duchy of Lancaster, in respect of the supplemental list within the Duchy, to the Lord Chancellor.

Section 15: Lay Justices' Allowances

58. This section makes similar provision to section 10 of the JPA 1997, which allows the Lord Chancellor to determine and to pay allowances for lay magistrates, and to make regulations in respect of the administration of this section.

Section 16: Records of lay justices

59. This section makes similar provision to section 25 of the JPA 1997, that the Lord Chancellor appoint keepers of the rolls to keep records of local lay magistrates. The statute has been modified, however, to accord with the changes to geographical administrative boundaries brought about by this Act.

60. As this Act abolishes commission areas, a keeper of the rolls must be appointed for each local justice area rather than each commission area. The Lord Chancellor may (and it is envisaged that he will) appoint the same person to be keeper of the rolls for more than one local justice area.

61. The requirement that the appointee be a justice has been removed, as there are no longer any offices whose holders are ex-officio justices (traditionally appointees to these posts would have been ex-officio justices by virtue of holding high office).

62. A further effect of the repeal of the JPA 1997, and the provision of this section, is to transfer the current responsibilities of the Chancellor of the Duchy of Lancaster, in respect of keepers of the rolls within the Duchy, to the Lord Chancellor.

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Chairman and deputy chairmen and the bench

Section 17: Chairman and deputy chairmen: selection

Section 18: Rights to preside and size of bench

63. These sections make similar provision to sections 22 and 24 of the JPA 1997.

64. Section 17 provides for the lay magistrates of a local justice area to elect from their number a Chairman and one or more Deputy Chairmen, and confers a rule-making power as to how this will operate.

65. Section 18 sets out the circumstances in which a Chairman or Deputy Chairman may have a right to preside in court, or to chair a meeting of justices, and when he may not. The section also provides the Lord Chancellor with a rule-making power as to the size of a bench of lay justices.

Supplementary provisions about the bench

Section 19: Training, development and appraisal of lay justices

66. The purpose of this section is to give statutory backing to the role of Bench Training and Development Committees (BTDCs) in the training, appraisal and development of lay justices.

67. The section provides that rules made by the Lord Chancellor may make provision about the training, development and appraisal of lay justices, and related matters. However, the main use which is currently envisaged of this rule-making power is to formalise the position of BTDCs.

68. Subsection (3) sets out a new statutory obligation on the Lord Chancellor to provide training and training materials for lay magistrates, where he requires them to undergo training; lay magistrates will have a new statutory assurance in this regard.

Section 20: Rules

69. Section 20 provides that the Lord Chancellor must consult with the appropriate rule committees before making the rules relating to lay magistrates contained in Part 2 (i.e. pursuant to the powers under sections 10, 17, 18 and 19).

Section 21: Duty to consult lay justices on matters affecting them etc.

70. This section requires the Lord Chancellor to take all reasonable and practicable steps to ensure that lay justices are kept informed on matters that affect them in the performance of their duties in a local justice area, and that their views will be taken on such matters.

District Judges (Magistrates' Courts)

Section 22: Appointment etc.

71. This section makes similar provision to sections 10A(1), (3) and (4) of the JPA 1997 (as amended by the AJA 1999). These provide for the appointment by the Lord Chancellor of District Judges (Magistrates' Courts), qualification requirements, payment of allowances, and removal from office. This section also replaces provisions in section 69 of the JPA 1997, which provides for the swearing-in of District Judges (Magistrates' Courts) – consequential amendments will require them to be sworn in by a Circuit Judge or High Court Judge.

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Section 23: Senior District Judge (Chief Magistrate)

72. This section replaces section 10A(2) of the JPA 1997 (as amended by the AJA 1999) which deals with the appointment of a Senior District Judge and a Deputy Senior District Judge.

73. The section allows the Lord Chancellor to appoint one of the District Judges (Magistrates' Courts) to be the Senior District Judge, and if the Lord Chancellor decides to do this, he may appoint another District Judge (Magistrates' Courts) to be his or her deputy. The main function of the Senior District Judge is judicial administration.

74. This section differs from the current legislation in that the Lord Chancellor will have a discretion, rather than a duty, to appoint a Senior District Judge (Chief Magistrate) and Deputy. This is because the Government has accepted the Auld Review's recommendation that, the role of the Senior District Judge should be reviewed, both as to its functions and its necessity. However, it is envisaged that in the short term at least the Senior District Judge will continue to play an important role in the management of the District Judges (Magistrates' Courts).

Section 24: Deputy District Judges (Magistrates Courts)

75. Subsections (1), (3), (4) and (5) makes similar provision to section 10B of the JPA 1997 (as amended by the AJA 1999). This section provides for the appointment by the Lord Chancellor of Deputy District Judges (Magistrates' Courts), their qualification requirements, payment of allowances, removal from office, and their treatment as though full-time District Judges (Magistrates' Courts). Subsection (2) replaces provision in section 69 of the JPA 1997, which provides for the swearing-in of a Deputy District Judge (Magistrates' Courts) - consequential amendments will require them to be sworn in by a Circuit Judge or High Court Judge.

Section 25: District Judges (Magistrates' Courts) as justices of the peace

76. This section makes similar provision to section 10C(1) and (2) of the JPA 1997. Its purpose is to provide that the jurisdiction of a District Judge (Magistrates' Courts) includes the jurisdiction of a lay magistrate.

Section 26: District Judges (Magistrates' Courts) able to act alone

77. This section makes similar provision to section 10E of the JPA 1997, and makes clear that certain restrictions in the MCA 1980 do not apply to a District Judge (Magistrates' Courts) sitting alone.

Justices' clerks and assistant clerks

Section 27: Justices' clerks and assistant clerks

78. Section 27 provides for the Lord Chancellor to appoint and designate staff of the new courts agency to be justices' clerks and assistants to justices' clerks. A person cannot be designated as a justices' clerk unless he or she meets the requirements of this section, which replicates section 43 of the JPA 1997. Section 27 empowers the Lord Chancellor to make regulations setting out the requirements that a person must fulfil if he or she is to be designated as an assistant to a justices' clerk. Section 27 also allows the Lord Chancellor to enter into contracts for the provision of assistant clerks. The work of assistant clerks provided

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under such contracts would be limited to advising lay justices and would not extend to exercising the powers of a single justice, for which the assistant would require the specific authority of a justices' clerk. This reflects current practice in the magistrates' courts.

79. Section 27 places a duty on the Lord Chancellor to assign justices' clerks to one or more local justice areas. It also empowers the Lord Chancellor to change a clerk's assignment and move him or her to another area. However, before changing a clerk's assignment, the Lord Chancellor must first consult the lay magistrates, via their bench chairman, assigned to the same local justice area as the clerk.

Section 28: Functions

80. Section 28 re-models section 45 of the JPA 1997 on the functions and powers of justices' clerks and assistant clerks. Currently section 144 of the MCA 1980 allows the Lord Chancellor to make rules which, among other things, regulate and prescribe the procedure and practice to be followed by justices' clerks. The Lord Chancellor currently makes rules on the advice of, or after consultation with the Magistrates' Courts Rules Committee, but he will also now consult the Criminal Procedure Rule Committee and the Family Procedure Rule Committee before making rules about justices' clerks under this section.

Section 29: Independence

81. Section 29 makes the provision corresponding to section 48 of the JPA, which provides for the independence of justices' clerks when giving legal advice or performing the functions of a single justice. It provides that when exercising such functions, justices' clerks shall not be subject to the direction of the Lord Chancellor, (rather than JCEs, as under the JPA) or any other person or body. The section gives the same guarantee of independence to assistant clerks.

Places, dates and times of sittings

Section 30: Places, dates and times of sittings

82. Section 30 empowers the Lord Chancellor to direct where and when magistrates' courts are to sit. This would allow magistrates' courts' business to be conducted at any place in England and Wales. In making such directions he will be under a duty to have regard to the need to make court-houses accessible by persons resident in each local justice area. The places at which magistrates' courts sit and the days and times at which they sit would be determined in accordance with directions made by the Lord Chancellor. This would bring magistrates' courts into line with the Crown Court, High Court, Court of Appeal and county courts. The power to determine when magistrates' courts sit is likely to be used as an emergency measure only.

83. There is no longer to be a distinction between petty-sessional court-houses (section 150(1) MCA 1980), occasional court-houses (section 147 MCA 1980) and any other court-houses or places, which may be appointed as petty-sessional court-houses. Lay magistrates are to have full jurisdiction wherever they sit. The restriction on magistrates' courts and licensing justices sitting on licensed premises is removed by the Licensing Act 2003.

84. This section also allows the Lord Chancellor, with the concurrence of the Lord Chief Justice, to give directions as to the distribution and transfer of magistrates' courts business, excluding family proceedings. Such directions are necessary in light of the changes to the

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jurisdiction of lay justices and magistrates' courts and the provision allowing for the transfer of cases between magistrates' courts. Where a person is charged with an offence, the prosecuting authority will decide which court that person should appear before, in line with these directions. The directions may in particular say that the defendant should be taken to a court in a local justice area: where the offence is alleged to have been committed; where the person charged with the offence resides; where any witnesses reside; or where similar cases are dealt with.

Protection and indemnification of justices and justices' clerks

Section 31: Immunity for acts within jurisdiction

Section 32: Immunity for certain acts beyond jurisdiction

Section 33: Striking out proceedings where action prohibited

85. These sections make similar provision to sections 51, 52 and 53 of the JPA 1997. Section 31 provides immunity against action brought against justices of the peace in proceedings arising from the execution of their duty. It also gives immunity to justices' clerks and those appointed to assist a justices' clerk in proceedings which arise from their exercise, in accordance with rules made under section 28, of a function which could be exercised by a single justice of the peace. Section 32 excludes proceedings in which bad faith is proved and makes clear that the immunity does not apply where the justice, clerk or assistant himself is the subject of criminal proceedings. Section 33 provides that proceedings brought in circumstances where a justice or justices' clerk has immunity may be struck out.

Section 34: Costs in legal proceedings

86. Section 34 makes similar provision to section 53A of the JPA 1997, with minor amendments. This section gives justices of the peace and their clerks statutory immunity against being ordered to pay the costs of legal actions arising out of the conduct of their judicial functions, unless it is proved that they acted in bad faith. The section empowers the court to order the Lord Chancellor to pay any costs that, but for the provision of the section, it would have ordered against the justice or clerk. The section also provides for the Lord Chancellor to make regulations covering when the court is to exercise the power to award costs and how those costs are to be determined.

Section 35: Indemnity

87. Section 35 makes similar provision to section 54 of the JPA 1997 with some amendments. This section reflects the fact that in future the Lord Chancellor, rather than a magistrates' courts committee, may indemnify justices of the peace, justices' clerks and their assistants against costs orders in any proceedings, not only proceedings taken against them. The section also removes the right of appeal to a person appointed by the Lord Chancellor against a decision by a MCC to refuse to indemnify a person under this section. This is because in future the Lord Chancellor will decide whether a person should be indemnified. A person unhappy with a decision by the Lord Chancellor to refuse to indemnify them would, however, have recourse to judicial review proceedings.

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Fines officers and designated officers

Section 36: Fines Officers

88. This section provides for the Lord Chancellor to designate fines officers who may be appointed or provided under contract by the Lord Chancellor and whose role will be to manage the collection and enforcement of fines. Fines officers will play a key role in the operation of the fine enforcement scheme in Schedule 5.

Section 37: Designated officers and magistrates' courts

89. Section 37 allows the Lord Chancellor to designate members of staff of the courts agency in order to perform certain statutory functions in relation to the business of the magistrates' courts. Many of these functions are currently assigned to JCEs and are administrative in nature. Schedule 8 makes appropriate consequential amendments to other Acts of Parliament.

Application of receipts of magistrates' courts etc.

Section 38: Application of receipts of designated officers

Section 39: Limits to requirements about application of receipts

Section 40: Regulations about payments, accounting and banking by designated officers

90. Sections 38 and 39 make similar provision to section 60 of the JPA 1997, amended to reflect the fact that the post of JCE will cease to exist. The sections instead make reference to sums received by a designated officer. Section 40 contains provisions similar to section 60A of the JPA and will allow the Lord Chancellor, with the concurrence of the Treasury, to make regulations about the payment, accounting for and banking of money paid to designated officers in the magistrates' courts.

Miscellaneous

Section 41: Disqualification of justices who are members of local authorities

91. This section makes similar provision to section 66 of the JPA 1997: which provides for the disqualification of lay magistrates who are members of local authorities from acting in cases involving the relevant local authority.

Section 42: Effect of Act of Settlement on existing justices of the peace

92. This section retrospectively validates the appointments of a number of foreign lay magistrates appointed before 31 January 2002 in unwitting breach of the nationality requirements of the Act of Settlement 1700, and allows them to resume their role as lay magistrates. Their actions as magistrates prior to this legislation are not invalidated. The section also ensures that the restrictions in the Act of Settlement do not apply to appointments made after this Act received the Royal Assent.

93. The Act of Settlement 1700 imposes restrictions as to who may be employed in the service of the Crown. Section 3 of this Act applied to lay magistrates, meaning that any non-UK, Eire or Commonwealth nationals sitting as lay magistrates were doing so in violation of this Act

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PART 3: MAGISTRATES' COURTS

SUMMARY

94. This Part makes a number of changes to the jurisdiction and procedures of magistrates' courts, designed to increase flexibility and efficiency in the disposal of the business of the courts.

BACKGROUND

Criminal jurisdiction and procedure

95. Sections 1 and 2 of the MCA 1980 are the basic jurisdictional provisions for criminal cases. The two essential propositions are that justices have jurisdiction to issue summonses and warrants in respect of offences committed in their commission area and offences committed by people who live in their commission area (section 1), and that they have jurisdiction to try offences committed in their commission area (section 2). These provisions are altered to reflect the fact that under the Act lay magistrates will have national jurisdiction. The result of this will be that any justice will have jurisdiction to issue a summons or warrant, and any magistrates' court will have jurisdiction to try offences, regardless of where the offence was committed.

Transfer of criminal proceedings

96. Section 3B of the MCA 1980 (inserted by the AJA 1999) enables either the prosecution or the defence to apply to have a summary case transferred to a magistrates' court in another commission area (although this has not yet been brought into operation). This Act goes further and allows the court, either on the application of one of the parties or at its own volition, to transfer a criminal case at any stage in the proceedings.

Civil jurisdiction and procedure

97. Section 52 of the MCA 1980 limits the jurisdiction of justices to deal with civil complaints to anything done (or neglected to be done) within the commission area for which the justice acts. This Act amends this provision to reflect lay magistrates being given a national jurisdiction.

Transfer of civil proceedings (other than family proceedings)

98. There are presently no provisions that allow the transfer of civil proceedings from one magistrates' court to another. This Act introduces such provisions to match the new arrangements for criminal cases. There are already detailed provisions allowing the transfer of family proceedings between magistrates' courts and also to the county courts and the High Court. This Act makes no changes to these provisions.

Rulings at pre-trial hearings

99. These provisions allow for binding rulings to be made at pre-trial hearings in criminal cases that are to be heard in the magistrates' courts. The power will be available following a not guilty plea up to the commencement of the trial and extends to issues of law and admissibility of evidence.

100. Currently, a number of different pre-trial hearings may take place in the Crown Court and magistrates' courts. In the Crown Court the Criminal Procedure and Investigations Act

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1996 (CPIA 1996), sections 39-43, provide for binding rulings on matters of law and admissibility of evidence.

101. The magistrates' courts have a number of their own pre-trial hearings under current arrangements. Where a guilty plea is anticipated, an Early First Hearing is scheduled. Early Administrative Hearings handle non-guilty pleas. In cases where the defendant is charged with an offence triable either way, magistrates hearing the case under 'initial procedure' will take a plea before determining venue. Following a not-guilty indication, magistrates may then determine mode of trial (section 17A MCA 1980). Where a case is to be tried summarily, a date for a pre-trial review is set, wherever it is deemed necessary. Pre-trial reviews are intended to assist the court in assessing the parties' readiness for trial. However, practices do differ across the country. Magistrates sitting at pre-trial hearings may make directions or recommendations as to appropriate preparation or conduct of the case. Such a direction may be noted on the court log, but would not bind any future magistrates hearing the case, although the next bench might take the direction into account in making any decision.

102. The proposed power is intended to assist in ensuring more efficient preparation of cases for trial in the magistrates' courts, as recommended by the Auld Review. It will bring the powers of lay magistrates and judges in pre-trial hearings heard in the magistrates' courts into line with those of the Crown Court. This is consistent with closer integration of the criminal courts.

Family proceedings courts and youth courts

103. Family proceedings and criminal cases with youth defendants are specialist jurisdictions, for which a magistrate must have a particular authorisation. The current authorisation system depends on local "panels", membership of which is based on commission areas, and which are elected in most areas of the country. The Act provides for a personal authorisation system to replace panel membership, and a rule-making power allowing the Lord Chancellor to propose consistent national rules as to how authorisation will work. This is consistent with the abolition of commission areas, and the extension of a national jurisdiction to magistrates.

COMMENTARY ON SECTIONS: PART 3

Criminal jurisdiction and procedure

Section 43: Summons or warrant for suspected offender

Section 44: Trial of summary offences

104. Sections 43 and 44 change the basic jurisdictional provisions on issuing process and dealing with charges, set out in sections 1 and 2 of the MCA 1980. Section 43 will allow any justice to issue a summons requiring a person to appear before a magistrates' court or a warrant to arrest a person and bring him before a magistrates' court. In the case of a summons, the summons will state which "court" the person is to appear before. The prosecutor will decide the court in accordance with the directions given by the Lord Chancellor with the concurrence of the Lord Chief Justice, issued under section 30. In the case of a warrant, the person may be brought to whichever court the person arresting the accused considers convenient. Under section 44 a magistrates' court will have jurisdiction to try any summary offence.

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105. In addition to giving lay magistrates national jurisdiction in respect of the great majority of criminal cases, the policy of flexibility in the deployment of magistrates is to be implemented by removing many of the statutory provisions limiting their jurisdiction to the particular petty sessions area with which the case has a connection. Nevertheless, it is expected that the Lord Chancellor's directions will frequently retain the local link in practice. There will also be situations, notably in cases which have already begun, in which the local link will continue to be a requirement.

Section 45: Power to make rulings at pre-trial hearings

Schedule 3: Pre-trial hearings in magistrates' courts

106. This section provides the power for judges and lay magistrates to make binding rulings and directions at pre-trial hearings in criminal cases that are to be tried in the magistrates' courts, where it is in the interests of justice to do so. It will only be possible to make binding rulings in the magistrates' courts, once a not-guilty plea has been entered. This means that the primary disclosure provisions set out in Part 1 of the CPIA 1996 will apply.

107. Schedule 3 inserts a new section 8A, "Power to make rulings at pre-trial hearing" and section 8B, "Effect of rulings at pre-trial hearing" into the MCA 1980. The new sections largely follow sections 40 and 41 of Part 4 of the CPIA 1996, which sets out the Crown Court's power to make binding rulings in pre-trial hearings.

108. Before making a binding ruling, a magistrates' court must give the parties an opportunity to be heard and, when the accused is unrepresented but wishes to be represented, must consider whether to grant legal representation at public expense. A pre-trial ruling made by a magistrates' court will remain binding until the case is disposed of or is sent to the Crown Court.

109. There is no specific right of appeal against a pre-trial ruling. An accused may appeal to the Crown Court against a ruling (if convicted) once the case is concluded, in the normal manner. The magistrates' court may also discharge or vary a pre-trial ruling on application by a party to the case (where there has been a material change of circumstances) or, where it is in the interests of justice, of its own motion.

110. Provision is made for restrictions on reporting of pre-trial hearings in order to avoid prejudicing the right to a fair trial, should the case (or linked proceedings) ultimately be tried in the Crown Court. The publishing of anything other than basic factual matters is prohibited in England and Wales, unless the court orders that reporting restrictions should not apply, until such time as the case against the accused is disposed of. The definition includes electronic methods of communication and, where an offence is committed by a body corporate, liability to prosecution for contravention of reporting restrictions may also extend to the company's officers.

Section 46: Power to transfer criminal cases

111. Section 46 gives magistrates' courts the power to transfer criminal cases to other magistrates' courts at any stage in the proceedings, whether on the application of a party or of their own motion. The parties would have a right to be heard in the latter case. There is to be no appeal from a decision on transfer. In deciding whether to transfer a case, the court or

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justices' clerk will be required to take account of the directions made by the Lord Chancellor under section 30.

Civil jurisdiction and procedure

Section 47: Jurisdiction to issue summons and deal with complaints

112. Section 47 amends sections 51 and 52 of the MCA 1980. This changes the civil jurisdiction of magistrates' courts so that a complaint can be made to any justice of the peace. As with criminal proceedings, the justice may issue a summons directed to the person named in it to appear before a magistrates' court named in the summons.

Section 48: Power to transfer civil proceedings (other than family proceedings)

113. Section 48 inserts new section 57A into the MCA 1980. This will give magistrates' courts the power to transfer civil cases to other magistrates' courts at any stage of proceedings. This mirrors the power in section 46 for criminal cases. A similar provision is not considered necessary for family proceedings as the power to transfer such cases already exists, for example under the Children (Allocation of Proceedings) Order 1991 and the Family Proceedings Courts (Children Act 1989) Rules 1991.

Family proceedings courts and youth courts

Section 49: Family proceedings courts

114. This section sets out the framework whereby lay magistrates and District Judges (Magistrates' Courts) are to be authorised to hear family proceedings. Section 66 also gives the higher judiciary the ability to exercise the justices' jurisdiction, although there is no current expectation that there will be widespread use of these powers in family proceedings.

115. Currently, in areas apart from Greater London, lay magistrates are voted on to a specialist "panel" by other members of the bench.

116. Under this section, the "panel" system would be abolished. The Lord Chancellor will have to authorise a justice of the peace before he or she can sit as a member of a family proceedings court. These personal authorisations will be valid throughout England and Wales. The Lord Chancellor will have power to make rules regarding (a) the allocation and removal of authorisations for justices to sit as members of family proceedings courts (b) the appointment of chairmen of family proceedings court and (c) the composition of such family proceedings courts.

117. It is envisaged that new rules, which provide for a more transparent selection procedure, will be published for comment. Because of the sensitive nature of family cases, and the specific knowledge and understanding that is required, these rules would help to ensure that only trained and suitable magistrates sit in family proceedings. District Judges (Magistrates' Courts) are in practice required to be "ticketed" for this work.

Section 50: Youth courts

118. This section sets out the framework whereby lay magistrates and District Judges (Magistrates' Court) are to be authorised to hear youth cases. The Act also enables the higher judiciary including circuit judges and recorders to hear these cases, without particular authorisation, in consequence of the extension of their jurisdiction to include that of a District Judge (Magistrates' Courts) by section 66.

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119. Currently, in areas other than Greater London, lay magistrates are voted on to a specialist “panel” by other members of the bench.

120. Under this section, the “panel” system would be abolished. The Lord Chancellor will have to authorise a lay justice or District Judge (Magistrates’ Courts) before he or she can sit as a member of a youth court. These personal authorisations will be valid throughout England and Wales. The Lord Chancellor will have power to make rules regarding (a) the allocation and removal of authorisations for justices and District Judges (Magistrates’ Courts) to sit as members of youth courts (b) the appointment of chairmen of youth courts and (c) the composition of such youth courts.

121. It is envisaged that new rules, which provide for a more transparent selection procedure, will be published for comment. Because of the often sensitive nature of youth cases, and the specific knowledge and understanding that is required, these rules would help to ensure that only trained and suitable magistrates (or District Judges (Magistrates’ Courts)) sit on youth courts.

122. District Judges (Magistrates’ Courts) are in practice required to be “ticketed” for this work; that requirement is being made explicit in statute to reflect the increasing acceptance that the youth court is a specialist jurisdiction.

PART 4: COURT SECURITY

SUMMARY

123. Part 4 of the Act contains the legislative proposals regarded as necessary to improve the provision of security in court buildings. It contains provisions to ensure that designated “court security officers” will have the same powers in all courts. It specifies certain powers of search, exclusion, removal and restraint that security personnel will be able to exercise in the execution of their duty. These powers are to be exercised subject to the limitations prescribed in Part 4. Court security officers will also have a power to temporarily retain articles they reasonably believe ought to be surrendered because possession of the article may jeopardise the maintenance of order in the court building, or risk the safety of a person in that building or because the article may be evidence of or in relation to an offence. This power is supplemented by a power to seize an article where a person refuses the officer’s request for surrender of the article. These powers are based upon, but go slightly further than, the current powers of court security officers in the magistrates’ courts: currently officers may only request the surrender of an article in limited circumstances and cannot seize articles. To minimise the interference with a person’s property there are limits on how long an article may be retained and there will be provision to ensure that a person from whom an article is taken is adequately informed, in particular, that if the article is to be treated as unclaimed then it will be disposed of.

BACKGROUND

124. The Act introduces a new court security regime for any place where court business may be conducted by the Supreme Court, county courts and magistrates’ courts and to which the public have access. The impetus for this Part of the Act arises primarily from the Auld Review, which noted the gradual withdrawal of a police presence in the courts and the disparity of security provision and security powers between the magistrates’ courts and the

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Crown Court. Against the backdrop of intimidation of witnesses and violence or threat of violence against the judiciary and court staff, the Review found that “the overall picture is disturbing”.

125. Currently court security is provided in the magistrates’ courts, the Crown Court, some county courts, the High Court, the Court of Appeal and some tribunals, although the administration of court security is regulated differently.

126. Only in the magistrates’ courts is there statutory provision for court security where there is a mix of in-house officers employed by the MCCs, and contract officers who are procured through service contracts with private agencies. The Criminal Justice Act 1991, Part 4 (CJA 1991) sets out the statutory provision dealing with court security in the magistrates’ courts in relation to the provision of these officers, their functions and powers (sections 76 – 78).

127. There are currently no legislative provisions for security in the remaining courts. One of the key policy intentions behind the legislation is to ensure that guards employed in all courts enjoy the same powers and responsibilities.

128. In developing the proposals to which the sections now contained in Part 4 give effect the Department took into account the various debates in Parliament on the Police Reform Act 2002. Particular comments and concerns were raised about empowering civilian forces with ‘police’ powers of fine and detention and the provisions of existing legislation and common law (particularly regarding the power of arrest). Part 4 is designed to provide clear, additional powers to combat the level of disorder faced in court buildings, and thereby help increase public safety while on court premises and public confidence in the justice system. But no new or statutory powers of arrest are conferred on court security officers.

129. Court security officers will, like all citizens, have power to make an arrest under section 24 of the Police and Criminal Evidence Act 1984 and the common law. Section 24 provides that “any person” may arrest without a warrant anyone who is committing or who he has reasonable grounds to suspect is committing an arrestable offence. Section 3 of the Criminal Law Act 1967 confers a power on a person to use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders.

COMMENTARY ON SECTIONS: PART 4

Section 51: Court security officers

130. This section establishes that every court security officer must be so designated by the Lord Chancellor. It is envisaged that there will be a period of training. Subsection (2) enables the Lord Chancellor to make provision for training by regulations and to specify the conditions which must be met before a person can be designated as a court security officer by him. Subsection (3) makes it clear that court security officers must be identifiable as such.

Section 52: Powers of search

131. This section gives a court security officer power to search a person who is entering, or who is already in, a court building and also any article in such a person’s possession. This power is similar to the existing powers enjoyed by court security officers in the magistrates’ courts under section 77 of the CJA 1991 and court security officers under section 80(1)(c) of

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the Justice (Northern Ireland) Act 2002 (J (NI) A 2002), although the power goes slightly further (see para 132)

132. Court security officers may require only removal of a coat, jacket, headgear, gloves or footwear. This is slightly wider than the articles that can be requested to be removed under section 77(2) of the CJA 1991 or section 80(2) of the J(NI)A 2002 which authorise removal of coat, jacket, gloves or hat and enables proportionate searching to take place which does not fall foul of human rights legislation. A search may only take place in a “court building”. This will include places such as Probate sub-registries and offices where members of the public are interviewed in connection with probate matters.

Section 53: Powers to exclude, remove or restrain persons

133. This section gives court security officers powers to restrain persons or exclude, or remove them from a court building. Officers may exclude or remove where a person has refused to submit to a search, or has refused the officer’s request for surrender of an article where the officer reasonably believes that the article ought to be surrendered on the grounds that it may jeopardise the maintenance of order in the court building, may risk the safety of a person in that building, or because the article may be evidence of or in relation to an offence. They also have the power to restrain, exclude or remove a person if it is reasonably necessary to do so to maintain order, secure the safety of people in the court building and to enable court business to be conducted without disruption. Subsection (4) provides that a court security officer may also remove any person from a courtroom at the request of a judge or a justice of the peace.

134. Subsection (5) provides that the powers to exclude, remove and restrain persons include the power to use reasonable force.

Section 54: Surrender and seizure of articles

135. This section requires a court security officer to request the surrender of any article that the officer reasonably believes ought to be surrendered. Specific grounds for surrender and seizure are laid out in subsection (3)(a) to (c); because possession of the article may jeopardise the maintenance of order in the court building, or may risk the safety of a person in that building or because the article may be evidence of or in relation to an offence. This extends the current powers of court security officers in the magistrates’ courts, who may only request the surrender of any article which the officer reasonably believes may jeopardise the maintenance of order in the court house under CJA 1991, section 77(1)(b). A further extension is the power conferred on a court security officer to seize an article where the officer has requested its surrender but the request has been refused.

Section 55: Powers to retain articles surrendered or seized

136. This section introduces another new statutory power for court security officers, namely to retain an article surrendered or seized until the person from whom it was taken is leaving the court building. However, where the officer reasonably believes that the article may be evidence of or in relation to an offence, he may retain it until the person from whom it was taken is leaving the court building, or, for a limited period of up to 24 hours from the time the article was surrendered or seized, to enable the officer to draw it to the attention of a police constable (subsection (2)(b)).

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Section 56: Regulations about retention of articles

137. In conjunction with court security officers' powers to retain an article surrendered or seized under section 55 it is important that any items so retained are suitably recorded. The person from whom the article is taken must also be provided with adequate information about the terms of retention and given notice that when an article becomes unclaimed it will be disposed of. This section provides the Lord Chancellor with a power to make regulations which include provision of written information about the powers of retention; the keeping of records; the period of retention; and the disposal of articles after this period. This section defines an unclaimed article as one that has been retained and which a person is entitled to have returned to him but which he has not requested and which has not been returned.

Section 57: Assaulting and obstructing court security officers

138. This section provides that assaulting a court security officer in the execution of his duty is an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale or imprisonment for up to six months. It also provides that resisting or wilfully obstructing a court security officer in the execution of his duty is an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

PART 5: INSPECTORS OF COURT ADMINISTRATION

SUMMARY

139. This Part contains provisions for the establishment of a new inspectorate to be known as Her Majesty's Inspectorate of Court Administration. It will replace and build upon the work of Her Majesty's Magistrates' Courts Service Inspectorate. The new inspectorate will have the power to inspect the system that supports the carrying on of the business of all magistrates' courts, county courts and the Crown Court. The same inspectorate will continue to report on the performance by the Children and Family Court Advisory and Support Service (CAFCASS) and its officers of their functions.

BACKGROUND

140. The Auld Review said that HM Magistrates' Courts Service Inspectorate had done much to improve the performance of MCCs in the administration and management of magistrates' courts, but noted that there was, however, no such equivalent body for the Court Service. The Review recommended that "if a unified Criminal Court and single supporting administration were to be established, then an independent Inspectorate should be set up to inspect the new unified organisation. This new Inspectorate should also report to the Lord Chancellor".

COMMENTARY ON SECTIONS: PART 5

Section 58: Inspectors of court administration etc

141. This section establishes a new independent inspectorate for court administration that will collectively be known as Her Majesty's Inspectorate of Court Administration. Inspectors will be appointed by the Lord Chancellor and one of these will be appointed by the Lord Chancellor as Her Majesty's Chief Inspector of Court Administration. The Lord Chancellor will meet the costs, including payments in respect of remuneration and allowances of the

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Inspectorate. Until the passing of this Act there were inspection arrangements for the administration of magistrates' courts and CAFCASS, but not in relation to any other courts (JPA 1997, sections 62-63).

Section 59: Functions of inspectors

142. This section defines the functions of the inspectors. Inspectors will have the duty to inspect and report on the system and services which support the Crown Court, county courts and magistrates' courts. They will continue to report on the performance of the Children and Family Court Advisory and Support Service (CAFCASS) functions. Inspectors will also be required to discharge such other functions in connection with those courts and the functions of CAFCASS as may be specified by the Lord Chancellor after consultation with the Chief Inspector. The Lord Chancellor will be able to amend, by order, the list of courts listed in this section.

Section 60: Functions of Chief Inspector

143. This section defines the functions of the Chief Inspector.

144. The Chief Inspector will be required to submit an annual report to the Lord Chancellor on the work of the Inspectorate for that year, which must be laid before Parliament. The Lord Chancellor will have the power to give directions as to the information to be given in the report, the form in which it is to be given and the time by which the report is to be made. The Chief Inspector must also report to the Lord Chancellor on any matter in connection with the courts mentioned at section 59 and the functions of CAFCASS. The Chief Inspector will have discretion to designate an inspector to undertake his duties during any period when he is absent or unable to act.

Section 61: Rights of entry and inspection

145. Section 61 provides that the Inspectors will have a right of entry to any workplace premises occupied by those providing support systems or services to the relevant courts or CAFCASS. They will have the power to inspect and take copies of any relevant records, and access to any relevant computer held records. Inspectors will not however have access to hearings held in private or to private deliberations, and must exercise their rights to enter premises and to inspect and have access to records at reasonable times only.

PART 6: JUDGES

SUMMARY

146. Part 6 makes provisions about certain judicial titles and includes measures to provide greater flexibility in the deployment of judicial resources.

BACKGROUND

Head and deputy head of civil justice,

147. The Act establishes the positions of Head and Deputy Head of Civil Justice as statutory titles.

148. The creation of the post of Head of Civil Justice was recommended in Lord Woolf's report on 'Access to Justice' (1996). The above posts are created in the Act on the basis that

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the Lord Chancellor must appoint a Head of Civil Justice, but that the power to appoint a Deputy Head is a permissive one.

Judicial titles

149. These sections deal with the modernisation of judicial titles in order to change a presumption of male gender for Court of Appeal judges and also allow for future changes by order of the Lord Chancellor after consultation, for example, to change other presumptions of male gender or to aid court users' understanding of the functions carried out by the post holders.

Judicial deployment

150. As part of the policy of greater flexibility in judicial deployment, it is proposed that High Court judges (and deputies), Circuit judges (and deputies) and Recorders should have the same powers as magistrates in criminal and family cases.

151. District Judges (Magistrates' Courts) are to be capable of exercising some powers of a Crown Court judge. Schedule 4 sets out a number of interlocutory proceedings and rulings that it is intended could be performed by District Judges before a case is ready to go before a Crown Court judge.

COMMENTARY ON SECTIONS: PART 6

Offices, titles, styles etc.

Section 62: Head and Deputy Head of Civil Justice

152. This section requires the Lord Chancellor to appoint a Head of Civil Justice, and gives power to appoint a deputy. It has been recognised that there is an ongoing need for a Head of Civil Justice to provide consistency and an overview. Although, it is accepted that the level of work may decrease as the Woolf reforms (the reforms to the civil justice system contained in the Access to Justice Report) continue to settle down. Therefore, the need for support from a deputy may decline.

153. It is intended that the Lord Chancellor should have a choice when appointing the Head of Civil Justice and for that reason those eligible for appointment should be the Master of the Rolls, the Vice-Chancellor and any ordinary judge of the Court of Appeal.

154. The Head of Civil Justice and the Deputy Head of Civil Justice, where there is one, will be ex officio members of the Civil Procedure Rule Committee (Civil PRC) as provided for in section 83. No other specific functions, duties or powers to be attached to these posts are to be provided in statute.

155. If the Master of the Rolls was neither the Head or Deputy Head of Civil Justice, he would still be an ex officio member of the Rule Committee.

Section 63: Ordinary judges of the Court of Appeal

156. This section deals with a specific problem: section 2(3) of the SCA 1981 currently requires an ordinary judge of the Court of Appeal to be styled a "Lord" Justice of Appeal whatever his or her gender. This section removes this anomaly.

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Section 64: Power to alter judicial titles

157. Although section 63 amends one title, Lord Justice of Appeal, section 64 provides the Lord Chancellor with a power to amend the other titles listed (which encompasses all of the judicial titles in the Supreme Court and county courts) in the future to avoid similar problems arising. Some titles may need modernisation, to make them more easily understandable to court users. The acceptance commanded by titles containing a presumption of male gender might also change. Such orders may only be made after consultation with the Lord Chief Justice, Master of the Rolls, President of the Family Division and Vice-Chancellor.

Flexibility in deployment of judicial resources

Section 65: District Judges (Magistrates' Courts) as Crown Court judges etc.

158. Unification of the administration of the criminal courts should provide scope for rationalising the work of the magistrates' and Crown Courts, enabling both to do some of the work currently reserved to each. For example, District Judges could deal with and make orders in relation both to allocation and to other interlocutory issues in cases reserved to the Crown Court. This will be further eased by the revised allocation of cases provided by the Criminal Justice Act 2003. Revised allocation of cases ensures that cases are dealt with by the court at the appropriate level with regard to the complexity, value and proportionality of the case.

Schedule 4: Further functions conferred on District Judges (Magistrates' Courts)

159. Section 65 has the effect of making District Judges (Magistrates' Courts) judges of the Crown Court. Schedule 4 contains amendments of Acts to confer specific functions on District Judges (Magistrates' Courts).

Section 66: Judges having powers of District Judges (Magistrates' Courts)

160. Under this section a Crown Court judge will be able to make orders and to sentence in relation to cases normally reserved to magistrates' courts when disposing of related cases in the Crown Court.

161. As part of implementing the policy of greater flexibility in judicial deployment, this section provides that High Court judges, Circuit judges and Recorders should be able to sit as magistrates when exercising their criminal and family jurisdiction. The same is to apply to deputy High Court judges and deputy Circuit judges. It is not expected that extensive use would be made of the provision, but it would be possible for a Circuit judge in the Crown Court to deal with a summary offence without the case having to go back to a magistrates' court. At present, certain summary offences can be included in an indictment. If the person is convicted on the indictment, the Crown Court may sentence him if he pleads guilty to the summary offence, but if he pleads not guilty the powers of the Crown Court cease. It is intended in such cases that the judge of the Crown Court should be able to deal with the summary offences then and there as a magistrate. He would follow magistrates' courts' procedure.

Section 67: Removal of restriction on Circuit judges sitting on certain appeals

162. This section provides for the repeal of section 56A of the SCA 1981 (as inserted by section 52(8) of the Criminal Justice and Public Order Act 1994). Repeal will enable the selected Circuit judges who sit in the Criminal Division of the Court of Appeal to hear or

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determine any appeal against either a conviction before a judge of the High Court or a sentence passed by a judge of the High Court.

PART 7: PROCEDURE RULES AND PRACTICE DIRECTIONS

SUMMARY

163. Part 7 of the Act contains provisions about rules, Rules Committees and Practice Directions.

BACKGROUND

The criminal courts

164. The Government recognised in the White Paper, *Justice for All*, that the benefits the Auld Review identified from a fully unified criminal court could be realised through closer alignment of the criminal courts. This could be achieved without a complete re-ordering of the courts system or the introduction of an “intermediate tier”.

165. The White Paper announced that the Government would legislate to bring the magistrates’ courts and the Crown Court closer together and that these courts, when exercising their criminal jurisdiction, would be known as “the criminal courts”. This part of the Act addresses this change.

Practice directions

166. The Heads of Division (the Lord Chief Justice, Master of the Rolls, President of the Family Division and Vice-Chancellor) have power under the High Court’s inherent jurisdiction to make directions as to practice and procedure. Section 74A of the County Courts Act (CCA 1984) gives the Lord Chancellor overall control over practice directions to be followed in county courts. He, and any person authorised by him, may make directions as to the practice and procedure of county courts. But there is no statutory provision about practice directions for magistrates’ courts. This Act will allow the Lord Chief Justice, with the concurrence of the Lord Chancellor, to make directions as to the practice and procedure of the criminal courts. It will also provide statutory authority for the President of the Family Division, with the concurrence of the Lord Chancellor, to be able to issue practice directions in her own name which are binding on the magistrates’ courts and county courts when hearing family proceedings.

Criminal Procedure Rule Committee

167. The creation of the Criminal Procedure Rule Committee (Crim PRC) will establish one forum for the development of rules, to determine the practices and procedures to be used in all criminal courts in England and Wales. The Committee will be responsible for introducing consistency in procedures. Having consulted beforehand, the Committee will meet to discuss proposals and consider drafted rules.

168. There are currently two Committees with different purposes and differing powers – the Magistrates’ Courts’ Rule Committee (under s144 of the MCA 1980) and the Crown Court Rule Committee (under ss84 and 86 of the SCA 1981). They each deal with rules concerning criminal and civil business. Neither Committee has over-arching responsibility

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for ensuring consistency across the courts. They rarely meet, usually working via correspondence.

169. The CrimPRC will take on responsibilities currently exercised by the Magistrates' Courts' Rule Committee and the Crown Court Rule Committee, insofar as they relate to rules of criminal practice and procedure.

Family Procedure Rules and Directions

170. The Auld Review did not address directly the potential implications for the family jurisdiction of any reorganisation of the criminal courts. However, it is inevitable that any alterations to the criminal jurisdiction will impact on the family jurisdiction as the administration, judiciary, court staff and estate are closely inter-related. Relevant proposals were included in the White Paper.

171. These sections closely mirror the changes that are being proposed in relation to both criminal and civil rules of court. The aim of the sections is to ensure that there is clarity and consistency of approach, and common standards, across the whole of the family jurisdiction.

Civil Procedure Rule Committee

172. The Act will provide for changes to be made to the composition of the Civil PRC; and for the Lord Chancellor to alter the rules made by the Committee.

173. The changes to the composition of the Civil PRC are to reflect the new statutory basis for the posts of Head and Deputy Head of Civil Justice. This will allow greater flexibility in the senior judicial membership of the Committee, and to ensure that the Committee has members with experience of the trial process at each level of the civil justice system.

174. The Lord Chancellor is to have the power to alter the rules made by the Committee after consultation with the Committee. The power to alter rules is not a new power, but is a power that is being restored. Prior to the creation of the Civil PRC the Supreme Court Rule Committee made rules for the Supreme Court and these required the agreement of the Lord Chancellor. The Lord Chancellor had the power to allow, disallow or alter rules made by the County Courts Rule Committee. This power dates back to at least section 164 of the County Courts Act 1888. Altered rules will be subject to the affirmative resolution procedure in Parliament.

COMMENTARY ON SECTIONS: PART 7

Criminal Procedure Rules and practice directions

Section 68: Meaning of "criminal court"

175. This section gives the collective title of "criminal court" to the Criminal Division of the Court of Appeal and, when dealing with any criminal cause or matter, the Crown Court and magistrates' courts. The term is used in this Part when referring to the new Criminal Procedure Rule Committee (Crim PRC) (section 70) and the new power to make practice directions (section 74).

Section 69: Criminal Procedure Rules

176. This section provides for rules of court to be made by the Crim PRC, to determine the practice and procedure to be followed in all criminal courts in England and Wales. Once

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established, this Crim PRC will deal with the criminal business matters now dealt with by the Magistrates and Crown Court Rule Committees, but will be able to exercise an over-arching, watching brief to ensure consistency in procedures across the criminal courts and for ensuring that rules are made consistently.

177. The section confirms that Criminal Procedure Rules may be made for different cases or different areas. This distinction is intended to enable the Crim PRC to make rules in support of new initiatives - that is, to enable "pilot" schemes to be established. Rules may also be made for specified courts or proceedings, for example, Youth Courts. Subsection (4) sets out guiding principles that the Crim PRC must follow when making rules, consistent with those that the Family Procedure Rule Committee (FPRC) and the Civil PRC must follow.

Section 70: Criminal Procedure Rule Committee

178. This section sets out the proposed membership of the new Crim PRC. The membership includes representatives of all the key groups in the criminal justice system and enables representatives from voluntary groups to be included. Therefore those with a direct interest will be able to participate in the rule-making process.

179. The Lord Chief Justice will chair the Crim PRC and will have a deputy who is a High Court or Court of Appeal judge. The Lord Chancellor will have the power to reimburse the travelling expenses of members of the Crim PRC and any person (for example, an expert in a particular field) invited to assist the Crim PRC in its programme of work.

Section 71: Power to change certain requirements relating to Committee

180. This section makes provision for the Lord Chancellor to revise the membership and other arrangements set out in section 70. The Lord Chancellor must consult with the Lord Chief Justice before making an order to bring about any change. These provisions are intended to give flexibility to adjust the membership and other arrangements.

Section 72: Process for making Criminal Procedure Rules

181. This section sets out the arrangements for the making of the criminal procedure rules. It confirms that the Crim PRC should consult as appropriate and, unless it is inexpedient, meet, before it makes the rules. This is intended to encourage the full discussion of the difficulties with existing procedures and of the potential improvements.

182. The section also describes the power for the Lord Chancellor, with the agreement of the Secretary of State, to allow, alter or disallow any rules made by the Crim PRC and sets out the Parliamentary process for the rules. The agreement of the Secretary of State is necessary as he bears responsibility for criminal policy, while the Lord Chancellor is responsible for the administration of the courts.

183. The section provides for the Lord Chancellor to consult the Crim PRC, before he alters any rules made by them. This is necessary in order to ensure that there is clear understanding of the reasons for any alteration. In addition where rules are altered, they would follow the affirmative resolution procedure in Parliament, enabling alterations to be debated.

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Section 73: Power to amend legislation in connection with the rules

184. This section sets out the powers of the Lord Chancellor to make changes to legislation where, as a result of the work of the Crim PRC, anomalies are discovered. It describes the requirement for the Lord Chancellor to act, with the concurrence of the Secretary of State, when making such changes. The agreement of the Secretary of State is necessary for the reasons set out above in the notes on section 72.

Section 74: Practice directions as to practice and procedure of the criminal courts

185. This section provides that the Lord Chief Justice, with the concurrence of the Lord Chancellor, can issue directions as to the practice and procedure of the criminal courts. This does not prevent the Lord Chief Justice from giving guidance to the criminal courts on law or making judicial decisions without the concurrence of the Lord Chancellor.

Family Procedure Rules and Directions

Section 75: Family Procedure Rules

186. This section establishes the Family Procedure Rule Committee. The FPRC will be the sole body with the authority to make rules regulating the practice and procedure for family proceedings in the High Court, county courts and magistrates' courts and it replaces the existing rule making arrangements.

187. Currently, rules of court for family proceedings in the magistrates' courts are made by the Lord Chancellor after consultation with the Magistrates' Courts Rule Committee under section 144 of the MCA 1980. In relation to family proceedings in the High Court and county courts, rules are presently made by the Lord Chancellor and specified persons, under section 40(1) of the Matrimonial and Family Proceedings Act 1984.

188. Subsection (3) defines family proceedings for which the FPRC can make rules. The FPRC can make different rules for a specific court or description of courts or for specific types of proceedings or jurisdiction. For example, rules can prescribe certain practices to be followed in the Principal Registry of the Family Division or in all county courts. Likewise, rules can prescribe the practice to be followed in all ancillary relief proceedings or how courts should exercise their Children Act 1989 jurisdiction.

189. Subsection (5) sets out guiding principles that the FPRC must follow when making rules, consistent with those that the Criminal Procedure Rule Committee and the Civil Procedure Rule Committee must follow.

Section 76: Further provision about scope of Family Procedure Rules

190. Probate rules will continue to be made by the President of the Family Division with the concurrence of the Lord Chancellor under section 127 of the SCA 1981. Family Procedure Rules may modify the rules of evidence that apply to proceedings in a court within the scope of Family Procedure Rules. Subsection (4)(b) provides that Family Procedure Rules may apply any rules of court which relate to proceedings other than family proceedings, so for instance criminal or civil proceedings in the magistrates' courts. Family Procedure Rules may adopt rules made by another authority that apply to proceedings other than family proceedings in a court within the scope of Family Procedure Rules. So for instance, the Civil Procedure Rules made by the Civil Procedure Rule Committee may be applied by Family Procedure Rules to family proceedings. Family Procedure Rules may also delegate matters

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which could be dealt with by rules of court to the President of the Family Division to deal with by Practice Direction under section 81.

Section 77: Family Procedure Rule Committee

191. This section sets out the membership of the FPRC and deals with the process of appointing members and the consultation requirements. The Lord Chancellor is authorised to remunerate the committee members for travel expenses and out of pocket expenses incurred whilst on committee business.

Section 78: Power to change certain requirements relating to Committee:

192. This section enables the Lord Chancellor to alter the composition of the FPRC by order after consultation with the President of the Family Division. For example, if it were necessary to add a second Circuit Judge to the FPRC or if it became unnecessary to have two Supreme Court Judges as members of the committee, the Lord Chancellor could do so by amending this section thereby reformulating the composition of the committee.

Section 79: Process for making Family Procedure Rules

193. This section describes the process for making Family Procedure Rules. Before making rules the FPRC must meet (unless they are unable to) and consult the appropriate persons. This allows the FPRC to call on the expertise of practitioners, judges, academics or any other experts who are not part of the committee to inform discussion about any proposed rule changes. Any rules drafted by the FPRC must be signed by the majority of the committee before being submitted to the Lord Chancellor who may allow, disallow or alter the rules put to him by the FPRC. Where the Lord Chancellor is to alter rules he must consult with the FPRC before doing so. Rules allowed by the Lord Chancellor are to come into force on such a date as he decides and are to be contained in a statutory instrument. This statutory instrument is to be subject to the negative resolution procedure in Parliament. A statutory instrument containing rules altered by the Lord Chancellor will be subject to the affirmative resolution procedure.

Section 80: Power to amend legislation in connection with the rules

194. This section makes the same provisions as section 4 of the Civil Procedure Act 1997. It provides the Lord Chancellor with an order making power to modify primary legislation and secondary legislation in anticipation of Family Procedure Rules, or as a consequence of these rules or the provisions in sections 75, 76, or 79. It is anticipated that this will be used to make minor revisions to legislation in order, for example, to regularise and modernise terminology to match that in new rules

Section 81: Practice directions relating to family proceedings

195. This section allows the President of the Family Division with the concurrence of the Lord Chancellor to issue practice directions which are binding on the county courts and magistrates' courts in relation to family proceedings. The President of the Family Division and the Lord Chancellor may also approve another person making practice directions for family proceedings in the county courts and magistrates' courts. In the county courts family jurisdiction, the President currently issues Practice Directions with the concurrence of the Lord Chancellor by virtue of s74A(2) of the CCA 1984. No statutory provision deals with the applicability of such directions to magistrates' courts. The President has an inherent

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jurisdiction to make practice directions for High Court family proceedings, so section 81 does not mention the High Court.

196. Subsection (3) clarifies the scope of the power. For example, a practice direction could specify what practice and procedure should be followed in a certain care centre (specific court), how care proceedings should be handled in all courts (specific proceedings), or how all magistrates' courts should handle a particular type of case (specific jurisdiction).

Civil Procedure Rules

Section 82: Civil Procedure Rules

197. This section amends the Civil Procedure Act 1997 (CPA 1997) to ensure that if the Lord Chancellor alters draft Civil Procedure Rules he observes the general objectives of fairness and simplicity.

Section 83: Civil Procedure Rule Committee

198. This section reflects the fact that statutory backing has been given to the posts of Head and Deputy Head of Civil Justice under section 62. The two holders of the posts will be ex officio members of the Civil PRC and the post of Vice-Chancellor is to be removed as an ex officio member of the Committee.

199. There are to be changes to the lay membership of the committee to allow for two members with experience in and knowledge of consumer affairs, or the lay advice sector, or both, rather than the current requirement of one from each. This reflects the fact that experience has shown difficulty in finding suitable members to meet the requirements. The Lord Chancellor is also to have the power to amend the composition of the Committee after consultation with the Master of the Rolls, Head of Civil Justice and the Deputy Head of Civil Justice (when appointed).

Section 84: Power to change certain requirements relating to Committee

200. This section allows the Lord Chancellor to amend the composition of the Committee after consultation with the Head and Deputy Head of Civil Justice and the Master of the Rolls. This power to amend the composition of the Committee is to extend only to the class of appointed members. The Committee retains its existing power to co-opt those with specialist expertise in the formulation of particular rules. Such co-optees are not members of the Committee.

Section 85: Process for making Civil Procedure Rules

201. The Civil Procedure Rules, created under the CPA 1997, govern the practice and procedure of the civil division of the Court of Appeal, the High Court and the county courts.

202. This section makes minor amendments to the CPA 1997 by providing for the Lord Chancellor to allow, disallow or alter rules made by the Committee. Before altering rules the Lord Chancellor must consult the committee. Altered rules will be subject to the affirmative resolution procedure in Parliament to allow democratic scrutiny of the exercise of this power by the Lord Chancellor. Those rules which are allowed by the Lord Chancellor without alteration will continue to follow the negative resolution procedure.

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PART 8: MISCELLANEOUS

SUMMARY

203. This part contains provisions relating to criminal and civil procedure, appeals, court fees, periodical payment for personal injury and minor amendments to judicial posts in England, Wales and Northern Ireland.

BACKGROUND

Provisions relating to criminal procedure and appeals

Appeals to Court of Appeal: procedural directions

204. This section inserts new sections into the Criminal Appeal Act 1968 (CAA 1968) to extend the powers of (a) a single judge in the Court of Appeal Criminal Division and (b) the Registrar of the Court of Appeal Criminal Division prior to determination by the full court of an appeal or application for leave to appeal. New section 31B will enable either a single judge or the Registrar to give procedural directions that need not trouble the full court, thus reducing delay. Section 31C provides, in the case of a decision of a single judge, for the appellant, or under specified circumstances, the prosecution, to apply to the full court to review such a direction. Section 31C also provides for the decision by the Registrar to be reviewed by a single judge in the first instance, or if the defence or prosecution so wish, further reviewed by the full court.

205. In the Court of Appeal Criminal Division, single judges consider applications for leave to appeal and act as a 'filter' by carrying out certain specified functions of the full Court of Appeal. Section 31 of the CAA 1968 lists the powers of the Court of Appeal which may be exercised by a single judge. However, the inability of the single judge to make a broader range of procedural directions for the conduct and progress of an appeal can lead to delay and unnecessary complication.

206. The Auld Review recommended that a judge of the Court of Appeal should be empowered, when considering applications for leave to appeal, to give procedural directions for the hearing of the application or of the appeal that need not trouble the full court, subject to a right on the part of the applicant or the prosecution, as the case may be, to renew the application to the full court.

207. The role of the Registrar of Criminal Appeals, who is also the Registrar of the Courts-Martial Appeal Court, currently combines both judicial and administrative functions. The Registrar has ultimate responsibility for the management and running of the Criminal Appeal Office, which has a staff of 150. The Registrar also provides a key reference point for the judiciary in the criminal justice system. He undertakes the judicial responsibilities listed in section 31A of the Criminal Appeal Act 1968. In the future, the judicial and administrative functions of the posts of Registrar of Criminal Appeals and Registrar of the Courts-Martial Appeal Court will be separated so that they become more clearly judicial offices. The Registrar's administrative duties will fall to appropriate Court Service staff. These changes will come into effect upon the appointment of the next office holder.

208. The aim is to enable the Registrar to give procedural directions for the preparation or hearing of the application or of the appeal, subject to a right on the part of the applicant or the prosecution, as the case may be, to submit the matter to a single judge for review. However,

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the intention is also to enable the Lord Chief Justice to further define by practice direction the use and operation of the Registrar's power to make procedural directions. This would allow maximum flexibility in responding to the changing needs of the Court of Appeal Criminal Division.

Prosecution appeals from Court of Appeal

209. The Act amends section 2 of the Administration of Justice Act 1960 and section 34 of the CAA 1968 by extending the time in which an application by either the defence or the prosecution for leave to appeal from a decision of the Court of Appeal Criminal Division can be made. It also makes clear that time begins to run against either the prosecution or the defendant from the date of the Court of Appeal's reasoned judgment, rather than from the date of the Court's decision. The Act makes provision with the same effect in relation to Northern Ireland by amending paragraph 1 of Schedule 1 to the Judicature (Northern Ireland) Act 1978 and section 32 of the Criminal Appeal (Northern Ireland) Act 1980.

210. The Auld Review recommended that section 34(2) of the CAA 1968 should be amended to empower the House of Lords and Court of Appeal, as the case may be, to extend the time within which a prosecutor may apply for leave to appeal, as it does in the case of a defendant.

211. There is a disparity between a defendant and a prosecutor as to the operation of the time limits within which each may petition the House of Lords for leave to appeal where the Court of Appeal, having certified a point of law of general public importance, has refused leave. Both have 14 days from the decision of the Court of Appeal to apply to it for leave and, if leave is refused by the Court, a further 14 days from the date of refusal to petition the House of Lords. Whilst the House or the Court have power at any time to extend a defendant's time for application for leave, neither has power to do so if the prosecutor wishes leave but fails to apply within time. The Act will now give both the defence and the prosecution an extra 14 days. However, it was not considered appropriate to accept the recommendation that the prosecution should be able to apply for an extension of time – this would leave a defendant with the indefinite possibility of the original conviction being restored by the House of Lords.

Retirement age of the Registrar of Criminal Appeals

212. This section brings the retirement age of the Registrar of Criminal Appeals into line with that for other judicial office holders (i.e. a normal compulsory retirement age of 70 for those appointed after the implementation of the Judicial Pensions and Retirement Act 1993 (JPRA 1993) in March 1995). Currently the registrar must retire at the age of 62. This is not only out of line with the retirement age for judicial office-holders generally but also inconsistent with the terms of the judicial pension scheme under which benefits are normally only payable at the age of 65.

Fees, costs and fines

Fees

213. The Act will provide a single unified power for the Lord Chancellor to set the level of fees in the Supreme Court, county courts and magistrates' courts, where another power does not take precedence. This power is subject to the consent of Treasury and it replaces the

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previous separate powers for each tier provided under section 130 of the SCA 1981, section 128 of the CCA 1984 and section 137 of the MCA 1980. It also incorporates and replaces the separate power in relation to family proceedings in the Matrimonial and Family Proceedings Act 1984, section 41. It will allow the Lord Chancellor to set different fees and different levels of fees for different tiers of court and for different types of business and to provide for exemptions, reductions and remissions of fees. It is anticipated that separate fees orders will be made for civil proceedings and family proceedings.

214. When including any provision in an order under this section, the Lord Chancellor must have regard to the principle that access to the courts must not be denied. Any fees orders made under the new unified fee setting power will be subject to negative resolution. Any fees orders made under this new power will require prior consultation with the relevant senior judiciary and, for civil business only, the Civil Justice Council. (The Civil Justice Council is an advisory public body established by the AJA 1999, as a continuing body with responsibility for over-seeing and co-ordinating the modernisation of the civil justice system as laid out in Lord Woolf's report "Access to Justice".)

215. The Act also provides for the Lord Chancellor to take reasonable steps to inform persons of the fees they are likely to pay and will enable the recovery of defaulted fees as a civil debt.

Award of costs against third parties

216. The Act provides for criminal courts to have power to order third parties to pay costs incurred by parties to a criminal case as a result of the third party's serious misconduct.

217. Costs in criminal cases are governed by Part II of the Prosecution of Offences Act 1985 (POA 1985). This provides for certain costs in criminal proceedings, in particular the costs of acquitted defendants, to be paid out of 'central funds' (that is public money). This, taken with the fact that most prosecutions are brought by the State and most defendants are legally aided, means that the legal costs of criminal proceedings are mostly met by the taxpayer

218. Section 19 of the POA 1985 provides for the Lord Chancellor to make regulations which empower the court to order one party to pay the costs incurred by the other as a result of the first party's unnecessary or improper act or omission. Section 19A of the Act provides for the court to make wasted costs orders against legal representatives in criminal proceedings. Regulations provide for costs paid out of central funds or by the Criminal Defence Service to be recouped when an order is made under either of these sections.

219. The POA 1985 does not currently allow for the court to order third parties to pay costs. Where costs are wasted or incurred as a result of a third party's action these would fall to be paid by the parties to the case or, more likely, the taxpayer. In a recent case, a newspaper published an article that caused the abandonment of a trial, leading to wasted costs, mostly payable by the taxpayer, of some £1m.

220. A power for courts to order third parties to pay costs is not novel. A broader power already exists in the civil courts. However, the power introduced by the Act will be limited to instances of serious misconduct by a third party.

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Fines

221. These sections and attendant schedules, coupled with the creation of fines officers in section 36, are intended to improve the effectiveness of fine enforcement. Further background can be found at paragraphs 33-36. The Act introduces (section 97 and Schedules 5 and 6) a range of new powers to improve the effectiveness of fine enforcement.

222. At present, performance in enforcing payment of fines is poor. Much of the work involved in enforcing fines is reserved to magistrates, including tasks that are essentially administrative in nature. The range of incentives and sanctions available to the courts is limited. Courts are constrained by legislation in the approach they can take to enforcing payment of fines and other financial penalties imposed after criminal proceedings.

Register of Judgments etc and execution of writs

High Court Writs of Execution

223. Although High Sheriffs are unpaid volunteers whose duties are mainly social and ceremonial, they also have nominal responsibility for High Court enforcement in the area to which they are appointed. High Sheriffs appoint and delegate these duties to an Under Sheriff and Sheriffs Officers who carry out the day to day involvement in High Court enforcement work. Following the publication of the Green Paper: *Towards Effective Enforcement* in July 2001 and reports by the Advisory Group on Enforcement Service Delivery, the Government decided that the current system was unsatisfactory and placed an onerous responsibility on volunteers. Section 99 and Schedule 7 provide for a new system of High Court enforcement.

Damages

224. These sections aim to promote the widespread use of periodical payments as the means of paying compensation for future financial loss in personal injury cases. In principle, periodical payments made as the needs arise provide a more appropriate means of compensating claimants than lump sums. The sections amend provisions in the Damages Act 1996 relating to periodical payments and structured settlements (which are periodical payments funded by an annuity). At present, the court can only order that an award of damages for personal injury be made by way of periodical payments where both parties consent, and otherwise will order payment by way of a lump sum.

225. The Act enables courts in England, Wales and Northern Ireland to order periodical payments for future loss and care costs without the consent of the parties. It also gives the Lord Chancellor a power to enable awards or agreements for periodical payments to be varied under specified circumstances, and prevents the assignment of the right to receive payments unless the court is satisfied that there are special circumstances which make this necessary.

226. Provision is made to extend the statutory protection given to structured settlements under the 1996 Act, and ensure that the continuity of periodical payments is fully protected where the payments are self-funded by an insurer, a public sector body protected by Ministerial guarantee, or a specified Government or health service body, or where payments are funded by an annuity. These provisions will apply to the whole of the United Kingdom.

227. These sections implement proposals set out in *Damages for future loss: Giving the courts the power to order periodical payments in personal injury cases*, a Consultation Paper published by the Lord Chancellor's Department on 13 March 2002. The post-consultation

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which received Royal Assent on 20 November 2003*

report was published on 7 November 2002. These documents have been placed in the Libraries of both Houses.

Provisions relating to Northern Ireland

228. Sections 102 and 104-106 make provision in respect of Northern Ireland equivalent to sections 64, 86, 88, and 92(2). Section 103 also make changes to the future status of the Official Solicitor of the Supreme Court of Northern Ireland so that the office is no longer included with other judicial type posts (statutory officer posts). Instead it will be made the subject of separate and specific provisions governing such matters as appointment and remuneration. The change will not however affect the existing postholder.

COMMENTARY

Provisions relating to criminal procedure and appeals

Section 86: Alteration of place fixed for Crown Court trial

229. This section provides that an application for variation of a place fixed for Crown Court trial no longer needs to be heard by a High Court judge or in open court.

Section 87: Appeals to Court of Appeal: Procedural directions

230. Section 87 extends the powers of a single judge in the Court of Appeal Criminal Division and the Registrar of the Court of Appeal Criminal Division when making procedural directions that need not bother the full court. It amends sections 31 and 31A of the CAA 1968 by allowing a single judge and the Registrar respectively to make orders under section 23(1)(a) of the CAA 1968. This will allow them to order the production of any document, exhibit or anything else connected with the appeal proceedings which they consider to be necessary for the determination of the case.

231. Section 87 inserts two new sections into the CAA 1968. This first section, section 31B, further extends the specific powers of both a single judge in the Court of Appeal Criminal Division and the Registrar of Criminal Appeals as detailed in sections 31 and 31A respectively of the CAA 1968, by allowing them a general power to make procedural directions.

232. The second new section, section 31C, allows for (a) the decision of the single judge, upon application by either the appellant or the prosecution to be reviewed by the full appeal court and (b) the decision of the Registrar to be reviewed by a single judge, again upon application.

Section 88: Prosecution Appeals from Court of Appeal

233. Section 88 makes several small amendments to the Administration of Justice Act 1960 and the CAA 1968 which extend the time within which both the defence and prosecution may make an application for leave to appeal to the House of Lords from 14 days to 28 days.

Section 89: Retirement of Registrar of Criminal Appeals

234. This section brings the retirement age of the Registrar of Criminal Appeals into line with that for other judicial office holders (i.e. a normal compulsory retirement age of 70 for

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those appointed after the implementation of the JPRA 1993 in March 1995). Currently, by virtue of section 92 (2D) and (2E) of the SCA 1981, the registrar must retire at the age of 62.

Section 90: Appeals to Courts-Martial Appeal Court: procedural directions

235. Section 90 extends the powers of both a single judge in the Courts-Martial Court of Appeal and the Registrar of the Courts-Martial Appeal Court when making procedural directions that need not bother the full court. It amends sections 36 and 36A of the Courts-Martial (Appeals) Act 1968 (CM(A)A 1968) by allowing a single judge and the Registrar respectively to make orders under section 28(1)(a) of the CM(A)A 1968. This will allow them to order the production of any document, exhibit or anything else connected with the appeal proceedings which they consider to be necessary for the determination of the case.

236. The section also inserts two new sections into the CM(A)A 1968. Firstly, new section 36B further extends the specific powers of (a) a single judge in the Courts-Martial Appeal Court as detailed in section 36 of the CM(A)A 1968 and (b) the registrar as detailed in section 36A, by allowing them to make further binding procedural directions in a wider range of circumstances than at present

237. Secondly, new section 36C allows for (a) the decision of the single judge, upon application by either the accused or the Defence Council to be reviewed by the full appeal court and (b) the decision of the registrar to be reviewed by a single judge, again upon application. This is to maintain consistency with the procedure in the Court of Appeal (section 87).

Section 91: Extension of time for appeals from Courts-Martial Appeal Court

238. Section 91 makes several small amendments to the Courts-Martial (Appeals) Act 1968 which extend the time within which both the accused and the Defence Council may make an application for leave to appeal to the House of Lords to 28 days. This is to maintain consistency with appeals from the Court of Appeal (section 88).

Fees, costs and fines

Section 92: Fees

239. The Lord Chancellor is provided with a single power, with Treasury consent, to prescribe the fees payable in the Supreme Court, county courts and magistrates' courts. He may set different scales or rates of fees and may provide for exemptions, reductions or remissions of fees. The Lord Chancellor will consult the most senior judiciary in relation to any proposed fees order, as well as the Civil Justice Council for civil proceedings only. The Lord Chancellor is placed under a duty to provide appropriate information on fees to those who might have to pay them. It is intended to use a variety of methods of displaying and disseminating this information. In cases of default, fees in the Supreme Court, county courts and magistrates' courts may be recovered summarily as a civil debt by the court. Unlike fees orders under the current legislation which are simply laid before Parliament, any order made under this section will be subject to the negative resolution procedure. By virtue of subsection (3) the Lord Chancellor must have regard to the principle that access to the courts must not be denied.

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Section 93: Award of costs against third parties

240. Section 93 amends the POA 1985 to provide for magistrates' courts, the Crown Court and the Court of Appeal to have power to order a third party to pay the costs of parties to criminal proceedings that are wasted or incurred as a result of the third party's serious misconduct when the judge thinks it appropriate that the third party should pay the costs.

241. The new section allows for regulations to specify types of misconduct that should not lead to a costs order and ensuring that the court can take account of other costs orders that have been, or will be, made in the case. Regulations may also provide that orders can be made at any time. The third party's conduct, and its effect on the costs in the case, may only come to light after the proceedings have ended. This provision would enable costs to be ordered against a third party where, for example, a verdict is set aside on later discovery that jurors were intimidated.

242. It is intended that regulations will also provide for a third party to have an opportunity to be heard by the court before it makes an order. Third parties ordered to pay costs by a magistrates' court or the Crown Court will have a right of appeal to a higher court. This mirrors the provisions for appeal against wasted cost orders under section 19A.

Section 94: Award of costs in appeals under Proceeds of Crime Act 2002

243. This section amends the Proceeds of Crime Act making it clear that the criminal division of the Court of Appeal has the power to award costs in appeals relating to the making of a restraint order or the appointment of a receiver. Part 2 of the Proceeds of Crime Act provides a single consolidated scheme in the Crown Court for the confiscation of benefit from all criminal conduct. This includes the power to make a restraint order that freezes assets which might be used to satisfy a confiscation order, and a power to appoint a receiver to manage and realise such assets. It is unclear as a matter of law whether these proceedings are criminal or civil in nature, and on appeal the criminal division of the Court of Appeal can only automatically award costs in criminal cases. This amendment provides explicit provision to ensure costs can be awarded. The power is retrospective to the date of the commencement of the confiscation scheme, 24 March 2003.

Section 95: Fixing of fines: failure to furnish statement of financial circumstances

244. Section 95 amends section 20A of the Criminal Justice Act 1991 and section 128 of the Powers of Criminal Courts (Sentencing) Act 2000.

245. The amendment to section 20A of the Criminal Justice Act 1991 creates an offence for failing to provide requested financial information

246. Section 128 of the 2000 Act obliges a court, following conviction but before fixing the amount of any fine to be imposed on an individual, to take into account both the financial circumstances of the offender and the seriousness of the offence. Subsection (5) sets out the circumstances under which, if the court considers it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

247. Section 95 amends section 128(5) so that where an official request has been made for financial information and a defendant has attended court without that information, if he is sentenced to a financial penalty, an inference can be drawn as to his means.

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248. "Official request" is defined in s20A of the CJA 1991 as a request which is made by the court for the offender to inform the court, in the event of conviction, of his financial circumstances for the purpose of determining the amount of any fine the court may impose.

249. The intention is to ensure that the onus is on the defendant to provide information about his income and expenditure to the court, on request, before the court considers the case. If he fails to respond to an official request the court will be entitled to make assumptions about his ability to pay and fine accordingly. The provision is aimed at providing an incentive for the offender to co-operate so the court will be able to set any fine at an appropriate level (making it more likely to be paid).

Section 96: Recovery of fines etc by deductions from income support: failure to provide information.

250. Section 96 amends section 24 of the Criminal Justice Act 1991 to enable a court to require an offender on benefits to provide such information as is necessary to make a DFB application. It amends section 24 of the Act by making it an offence for an offender to fail to provide such information or gives false, recklessly false or knowingly incomplete information. The sanction for this offence is a Level 2 fine (not exceeding £500).

Section 97: Collection of fines and discharge of fines by unpaid work

251. Section 97 gives effect to Schedules 5 and 6 which specify the new powers available to the court and to fines officers, created by section 36, to enforce payment of fines. Section 97 also provides the Lord Chancellor with powers to introduce the arrangements for fines collection, and discharge of payment by unpaid work schemes set out in Schedules 5 and 6 as pilot schemes in specified local justice areas. It enables him to introduce a permanent scheme after completion of the pilots. The permanent scheme could be either one of the pilot schemes or a version that has been modified in the light of operational experience.

Schedule 5: Collection of fines

252. This makes provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings. It provides new powers for fines officers to enable enforcement action to be taken swiftly and without the need for a court hearing in many instances. It also provides additional powers of enforcement to the court.

Part 1: Introductory

253. Paragraph 1 defines the types of financial penalty to which the Schedule applies. The Schedule applies if the sum a person ('P' - the offender), who is over 18, is liable to pay consists of or includes a fine. 'Fine' does not include pecuniary forfeiture or compensation. If P is not liable to pay a fine no collection order may be made. But if he is liable to pay a fine other sums he is liable to pay, such as compensation, may also be collected under the new regime.

254. Paragraph 2 defines 'the sum due'. The definition includes compensation and costs. This definition is important in differentiating fines (which may be subject to a discount or increase - see below) from compensation, costs or fixed penalties registered as fines.

255. Paragraph 3 defines 'existing defaulter'. The effect of paragraph 3 is that P is classed as an existing defaulter if he is currently in default on any fine or similar sum ordered to be

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paid by the court (whether or not a collection order has been made under this schedule), unless he can show an adequate reason for the default.

256. In the case of fixed penalties registered as fines, there will already have been opportunities for the offender to show he has good reason for being in default. Therefore, once the unpaid penalty has reached the stage of being registered as a fine, no excuses will be accepted and the offender will be classed as an existing defaulter.

257. Paragraph 3 also defines 'immediately' as meaning, where the offender has been informed of his liability to pay in a notice, that he must pay within 10 working days of the date of the notice.

Part 2: Immediate payment of fines: discounts

258. Part 2 deals with fines which are paid immediately.

259. Paragraphs 4 - 6 provide that P is eligible for a discount on the fine if the sum due less the amount of the discount is paid immediately. They empower the Lord Chancellor (not the fines officer) to make regulations setting out the amount of the discount (so the percentage may be changed without requiring further primary legislation). The maximum discount allowed is 50%. The purpose of the discount is to provide an incentive for offenders to pay their fines promptly. The discount does not apply to any compensation or costs element of the sum due.

260. By virtue of paragraph 4, the discount is not available:

- if P is an existing defaulter (unless the court has accepted that there is a good reason for the default and is prepared to allow the discount - such cases are likely to be rare). The underlying philosophy is that the discount should not be available to offenders who are currently in default; or
- if the sum due is a fixed penalty registered as a fine (unpaid fixed penalties are increased prior to registration as a fine). It would be if the offender was able to wipe out the increase in the fixed penalty by promptly paying up once the money owed was registered as a fine.

Part 3: Attachment of Earnings Orders and applications for benefit deductions

261. Paragraph 7 stipulates that Part 3 of the Schedule applies if the sum due is not paid immediately, i.e. if the court decides that the offender should be allowed time to pay, or if the offender was required to pay immediately but failed to do so.

262. It defines 'the relevant court' as being the court that imposed the liability to pay the sum due, or if the offender was required to pay immediately but failed to do so, the magistrates' court responsible for the enforcement. Fines may be imposed by a magistrates' court or by the Crown Court, but responsibility for enforcement falls solely to the magistrates' courts.

263. Paragraph 8 applies if the court finds that the offender is an existing defaulter who can show no good reason for being in default. In such cases, and provided it is not impracticable or inappropriate to do so, the court must either:

- immediately make an AOE order if the offender is employed, or

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- immediately apply to the Secretary of State for Work and Pensions for a DFB

If it appears to the court that it would be possible to attach earnings or make a DFB, it must do one or the other, but not both.

264. Paragraph 9 enables the court to make an AOE or DFB application, with the offender's consent, provided he is not an existing defaulter (if he is an existing defaulter, the attachment is imposed automatically, by virtue of paragraph 8). Under current legislation, while an offender can ask for an AOE to be made, he is unable to volunteer for DFBs.

265. Paragraph 10 defines 'relevant benefit' as being income support or jobseekers allowance, and 'applications for benefit deductions' as being an application to the Secretary of State for Work and Pensions.

Part 4: Making of collection orders

266. Paragraph 11 stipulates that Part 4 of the Schedule applies if the court decides either that the offender should be allowed time to pay, or if the offender was required to pay immediately and failed to do so. It also stipulates that Part 4 applies whether or not the court has made an attachment order or applied for DFB under Part 3.

267. Paragraph 12 provides that the court must make a collection order relating to payment of the sum due, unless it appears to the court that it is impracticable or inappropriate to do so. Once subject to a collection order, the offender can be dealt with using the powers contained in Schedule 5 and the fines collection regulations made under the Schedule.

268. Paragraph 13 sets out the contents of the collection order. The order must give a breakdown of the sum due; state whether the court has decided that the offender is an existing defaulter; whether an AOE or DFB has been ordered or applied for; identify the fines office which is to be empowered to deal with the case; and contain information about the effect of the order (i.e. the consequences of default).

269. 'Fines officer' is defined as a fines officer or any fines officer working at the fines office specified in the collection order.

270. Paragraph 14 specifies that if the court has not ordered AOE or applied for a DFB under Part 3, the collection order must state payment terms. These are defined as either a term requiring the offender to pay within a specified period, or terms requiring payment by instalments.

271. Paragraph 15 specifies that if the court has ordered AOE or applied for DFB under Part 3, the collection order must state the 'reserve terms'. These are repayment terms with which the offender will be expected to comply if either order should fail. These reserve terms may be varied by the fines officer if the offender's circumstances have changed in the interim. The offender may appeal against the fines officer's decision to vary or not to vary. (Paragraphs 31, 32, 35 and 39 of the Schedule).

272. Paragraph 16 sets out the circumstances under which an AOE order fails. These are:

- if the offender's employer fails to comply with the order; or
- if the order is discharged at a time when the offender is still liable to pay any part of the sum due.

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273. Paragraph 17 sets out the circumstances under which an application for benefit deductions fails. These are:

- if the court withdraws the application;
- if the Secretary of State for Work and Pensions decides not to make deductions (e.g. if the offender has already reached the limit on deductions from his benefits because of other debts);
- if an appeal against the decision of the Secretary of State for Work and Pensions to make deductions succeeds; or
- if the Secretary of State for Work and Pensions ceases to make deductions (e.g. because the offender is already subject to the maximum of three deductions from benefits, including the fine, and a deduction for a higher priority debt displaces the fine).

Part 5: Discount where collection order made

274. Part 5 deals with the prompt payment discount where a collection order is made. Paragraph 18 stipulates that Part 5 applies if a collection order has been made in respect of a sum due, the sum due is not a fixed penalty which has been registered as a fine and the offender is not an existing defaulter. In other words, provided the offender is not an existing defaulter, he is eligible for the prompt payment discount on his fine. But no discount is available for a fixed penalty registered as a fine (Paragraph 4 of the Schedule).

275. By virtue of Paragraph 19, the offender is entitled to a discount on the fine (but not costs or compensation) if the sum due (i.e. all monies owing, including any compensation and costs) is paid without the offender at any time having been in default on the order. If the offender defaults, the discount is lost.

276. The amount of the discount is to be determined (by the Lord Chancellor not the fines officer) in the fines collection regulations, but the discount must not be more than 50% of the fine. The discount is given effect by wiping out the offender's liability to pay the part of the fine that is equal to the amount of the discount. For example, if the offender is ordered to pay a fine of £100 in weekly instalments of £10, and the discount is set at 20%, provided he pays the first £80 in accordance with the terms set, he will not have to pay the final two instalments.

277. Paragraph 20 defines 'in default on a collection order' as being failure by the offender to pay any amount due under the payment terms (or, if they have effect, the reserve terms) on or before the date specified.

Part 6: Variation of collection order containing payment terms

278. Part 6 deals with applications to the fines officer to vary the payment terms set by the court when imposing a collection order. Paragraph 22 stipulates that the offender may apply to the fines officer for a variation in payment terms at any time after the collection order is made and before Part 7 applies, provided he is not in default on the order.

279. The offender may apply for the payment terms to be varied, or volunteer for AOE or DFB. However, such an application may not be made unless:

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- there has been a material change in the offender's circumstances since the collection order was made, or since the fines officer last used his powers to vary under this paragraph; or
- if the offender has provided more information about his circumstances (i.e. the information that was not available to the court when the original payment terms were set).

On application, the fines officer may decide whether or not to vary the payment terms in the offender's favour, or decide whether or not to make an AOE or application for DFB.

280. If the fines officer decides to make an AOE or application for DFB, he must also set reserve terms which will apply should the order fail. The reserve terms must be no more onerous than the payment terms originally set by the court.

281. The fines officer's decision must be in writing, dated and delivered to the offender.

282. Paragraph 23 gives the offender the right of appeal to the magistrates' court against the fines officer's decision. The appeal must be lodged within 10 working days of the date of the decision. On appeal the magistrates' court may:

- confirm or vary the payment terms (or reserve terms);
- make an AOE or application for DFB benefits; or
- discharge the collection order and handle the case itself, using its standard powers. These are defined in Paragraph 50 of the Schedule as being any power which a magistrates' court would have had if a collection order had not been made, and any power given to the court by virtue of the fines collection regulations made under this Schedule.
- if the court attached earnings or benefits, it must vary the collection order so that it states reserve terms for use should the attachment/deduction fail.

283. Paragraph 24 details the nature of the power to vary the terms of the collection order in the offender's favour. Under this paragraph, the fines or court may:

- require the offender to pay by instalments rather than within a given period; or
- require the offender to pay within a given period, rather than by instalments.

284. If the sum due is to be paid by instalments, the fines officer may vary the number of instalments, the amount of any instalment, and the date on which any instalment should be paid.

285. The paragraph also gives the fines officer the same powers in relation to varying the reserve terms which may be applied should an AOE or DFB fail.

Part 7: Effect of first default on collection order containing payment terms

286. Part 7 sets out the effect of the first default on a collection order containing payment terms (see Part 4). Paragraph 25 states that Part 7 applies unless one of the following is pending:

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- an application by the offender for the fines officer to vary payment terms or attach earnings or benefits;
- an appeal against the fines officer's decision;
- a referral of the case, by the fines officer, to the magistrates' court.

287. Paragraph 26 stipulates that on first default, and provided it is not impracticable or inappropriate to do so, the fines officer must either:

- make an AOE order if the offender is employed; or
- apply to the Secretary of State for Work and Pensions for deductions to be made from benefit.

If it appears to the fines officer that it would be possible to attach earnings or make a DFB, it must do one or the other(not both).

288. Paragraph 27 provides for an increase to be imposed on the fine (but not compensation or costs) if:

- the AOE or DFB application made on first default (under paragraph 26) fails; or
- the fines officer does not make an AOE or DFB under paragraph 26.

289. Unlike the discount, the increase will apply to fixed penalties registered as fines. The amount of the increase is determined (by the Lord Chancellor, not the fines officer) in the fines collection regulations, but the increase must not be more than 50% of the fine. The increase is given effect by treating it as part of the fine originally imposed on the offender.

290. The liability to pay the increase ranks after the liability to pay any other part of the sum due (i.e. after the original fine and any compensation or costs).

291. Whether the increase takes effect is then dependent on the behaviour of the offender. If he co-operates and make arrangements leading to full payment of the sum due, without further default, the offender's liability to pay the increase is waived (Paragraph 35(6) and 39(2)).

292. Paragraph 28 stipulates that if an increase is imposed the fines officer must send the offender an 'increase notice', which informs him of the increase. The increase notice must state that the offender has 10 working days from the date of the notice to contact the fines officer (in person or in writing) so that the case can be reviewed.

293. New payment terms, which include the increase, will then be sent by the fines officer (see Part 9 below). The offender will be warned that the increase will stand and further enforcement steps will be taken unless he complies with these new payment terms. Provided the offender co-operates and makes arrangements leading to full payment of the sum due, without further default, he does not have to pay the increase (see paragraphs 35(6) and 39(2)).

Part 8: Collection orders: operation if attachment of earnings order etc fails

294. Part 8 (Paragraph 29) deals with what should happen if an AOE or benefits made under Part 3 or Part 6 should fail. In other words, this is what should happen on failure of the attachment, whether the attachment was imposed on the offender straightaway (Part 3), or

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whether the offender volunteered for an attachment when applying for a variation in payment terms (Part 6).

295. Paragraph 30 stipulates that the fines officer must write to the offender (i.e. send a 'payment notice') informing him that the AOE or DFB has failed and that the reserve terms of the collection order now have effect. The notice must say what the offender must do to comply with the reserve terms, and inform him that he may apply to the fines officer (under paragraph 31 of the Schedule) for the reserve terms to be varied.

296. Paragraph 31 stipulates that the offender may apply to the fines officer for a variation in the reserve terms at any time after he has been informed (by means of a payment notice under paragraph 30) that the attachment or deductions order has failed and before an increase in the fine has been imposed under paragraph 33. The application may only be made if:

- the offender is not in default on the collection order; and
- there has been a material change in the offender's circumstances since the reserve terms were set, or since the fines officer last issued his powers to vary under this paragraph; or
- the offender has provided more information about his circumstances.

On application the fines officer may decide whether or not to vary the payment terms in the offender's favour.

297. The fines officer's decision must be in writing, dated and delivered to the offender.

298. Paragraph 32 gives the offender the right of appeal to the magistrates' court against the fines officer's decision. The appeal must be lodged within 10 working days of the date of the decision. On appeal the magistrates' court may:

- confirm or vary the reserve terms; or
- discharge the collection order and handle the case itself, using its standard powers. These are defined in paragraph 50 of the Schedule as being any power which a magistrates' court would have had if a collection order had not been made, any power given to the court by virtue of the fines collection regulations made under this Schedule.

299. Paragraph 33 provides for an increase to be imposed on the fine (but not compensation or costs) if the offender defaults on the collection order. Unlike the discount, the increase will apply to fixed penalties registered as fines. The amount of the increase is determined (by the Lord Chancellor, not the fines officer) in the fines collection regulations, but the increase must not be more than 50% of the fine. The increase is given effect by treating it as part of the fine originally imposed on the offender.

300. The liability to pay the increase ranks after the liability to pay any other part of the sum due (i.e. after the original fine and any compensation or costs).

301. Whether the increase then takes place is dependent on the behaviour of the offender. If he co-operates and makes arrangements leading to the full payment of the sum due, without further default, the offender's liability to pay the increase is waived (see paragraphs 35(6) and 39(2)).

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302. Paragraph 34 stipulates that the fines officer must send the offender an 'increase notice', which informs him of the increase. The increase notice must state that the offender has 10 working days from the date of the notice to contact the fines officer (in person or in writing) to explain why he is in default. New payment terms, which include the increase, will then be set by the fines officer (see Part 9 below). The offender will be warned that the increase will stand and further enforcement steps will be taken unless he sticks to the new payment terms. Provided the offender co-operates and makes arrangements leading to the full payment of the sum due, without further default, he does not have to pay the increase.

Part 9: Operation of collection orders after increase imposed

303. Part 9 deals with the operation of collection orders after an increase in the fine has been imposed as a result of the offender going into default.

304. Paragraph 35 explains what should happen if the offender contacts the fines officer as required by an increase notice issued under Paragraphs 28 or 34 of the Schedule.

305. The fines officer may decide whether or not to vary the payment terms (or reserve terms) in the offender's favour. The new terms cover the sum due, plus the increase that has been imposed. The fines officer's decision must be in writing, dated and delivered to the offender.

306. The offender has the right to appeal to the magistrates' court against the fines officer's decision. The appeal must be lodged within 10 working days of the date of the decision.

307. The offender will be warned that the increase will stand and further enforcement steps will be taken unless he sticks to these new terms. Provided the offender co-operates and makes arrangements leading to full payment of the sums due, without further default, he does not have to pay the increase.

308. Paragraph 36 stipulates that following a variation in payment terms (or reserve terms) the offender may at any time apply to the fines officer for a further variation, provided:

- he is not in default on the collection order;
- he is not subject to a 'further steps' notice under paragraph 37; and
- there has been a material change in circumstances since the last variation was made; or
- he has provided more information about his circumstances.

On application, the fines officer may decide whether or not to vary the payment terms (or reserve terms) in the offender's favour. The fines officer's decision must be in writing, dated and delivered to the offender.

309. The offender has the right of appeal to the magistrates' court against the fines officer's decision. The appeal must be lodged within 10 working days of the date of the decision.

310. Paragraph 37 sets out what should happen if:

- the offender fails to contact the fines officer as required by an increase notice issued under Paragraph 28 or 34 of the Schedule; or
- if the offender does contact the fines officer, but the fines officer decides not to vary terms and the offender does not appeal against the decision.

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311. The paragraph also applies if, after the increase is imposed and payment terms have been varied to accommodate this, the offender again defaults and provided:

- no appeal is outstanding;
- no application for a further variation in terms is outstanding; and
- the fines officer has not referred the case back to the court.

312. Under these circumstances, the fines officer must either refer the case to the magistrates' court, or issue a notice (a 'further steps notice') stating that he intends to take one or more of the enforcement measures set out in Paragraph 38 of the Schedule.

313. The notice must be in writing and dated, and must specify the steps that are to be taken. The offender has 10 working days from the date of the notice in which to lodge an appeal against it to the magistrates' court.

314. Paragraph 38 sets out the range of further steps available against defaulters. These are:

- issuing a distress warrant;
- registering the sum in the register of judgments set up under the Act (and so potentially affecting the defaulter's credit rating);
- making an AOE order or DFB application ;
- making a clamping order (i.e. immobilising a vehicle registered in the offender's name);
- taking any other step that may be permitted under the fines collection regulations.

315. Paragraph 39 deals with the powers of the magistrates' court after an increase has been imposed, when hearing:

- an appeal against the fines officer's decision about variations following an increase;
- a referral of the case by the fines officer to the court;
- an appeal against a further steps notice.

If the court is satisfied that there are exceptional circumstances, and the sum due is paid without the offender again defaulting, it may make an order waiving the increase.

316. The court may also vary or quash any decision made by the fines officer, take any of the further steps listed in paragraph 38 of the Schedule, or discharge the collection order and deal with the case itself using any of its standard powers. These are defined in paragraph 50 of the Schedule as being any power which a magistrates' court would have had if a collection order had not been made, and any power given to the court by virtue of the fines collection regulations made under this Schedule.

317. Paragraph 40 stipulates that if the offender does not appeal against a further steps notice, or if his appeal fails, any step specified in the notice may be taken.

318. Paragraph 41 provides the power for the court to order a vehicle that has been clamped and held in accordance with a clamping order to be sold. This gives the court the

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opportunity to decide whether the sale of the vehicle is proportionate to the amount of the fine outstanding, taking into consideration the history of the case.

319. Paragraph 42 provides that a fines officer may refer a case to the magistrates' court at any time before the fine is paid in full. It enables the court to deal with cases where there may be exceptional or mitigating circumstances, which the fines officer does not have the powers to deal with appropriately. For example, where an offender has no means with which to pay the fine (and where an order making the offender subject to fines payment work under Schedule 6: Discharge of Fines by Unpaid Work may be appropriate), or where an offender is not co-operating with the fines officer. The fines officer may also issue a summons requiring the offender to attend court.

Part 10: Supplementary provisions and interpretation

320. Paragraph 43 defines 'fines collection regulations' as meaning any regulations made by the Lord Chancellor for the purpose of giving effect to the Schedule.

321. Paragraph 44 enables regulations to modify any statute for the purpose of giving effect to the Schedule. The new measures are to be piloted, and therefore enactments for the implementation of the scheme cannot be permanently modified until completion of the pilots. These powers are required so that the court and the fines officer are given powers enabling the new measures to be tested fully. Once the pilots are finished all amendments to primary legislation will be laid before Parliament by way of affirmative resolution in accordance with section 108.

322. Paragraph 45 will enable provision to be made, by means of the fines collection regulations, for the method of calculating the amounts which are to be deducted from an offender's earnings. The intention is to pilot a fixed table approach to such calculations, similar to that currently in operation for recovering Council Tax from an offender's earning. This approach will greatly simplify the calculation of the amount to be deducted, saving time for both court staff and employers.

323. Paragraph 46 provides that regulations will set out the operational procedures and safeguards applicable to a clamping order being imposed. A clamping order will provide opportunities to pay the fine before the vehicle is sold.

324. Paragraph 47 enables regulations to make provision for cases which are transferred from one area to another where the offender moves to a different address. They will set out a procedure for the information held on a defaulter to be passed to another fines officer in a different area.

325. Paragraph 48 permits a fines officer to request information about an offender's means at any time. This will enable him to make a decision on the approach to take in enforcing the sum. It establishes the offence, punishable by a fine (level 4, up to £2,500) of giving false information to a fines officer or failing to disclose relevant information, similar to an existing offence for providing false information to a court. It also establishes the offence, also punishable by a fine (level 2, up to £500) of failing to provide a statement of his financial circumstances to a fines officer on request (this information will be used to enable an AOE or DFB to be made). The paragraph also specifies the time period within which such proceedings may be taken.

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326. Paragraph 49 establishes an offence, punishable by a fine (level 3, up to £1,000) for removal, or attempted removal, of an immobilisation notice or immobilisation device which has been fitted to a vehicle as a further sanction against a fine defaulter.

327. Paragraph 50 defines the courts 'standard powers in respect of persons liable to pay fines' as being any power which a magistrates' court would have had if a collection order had not been made, and any power given to the court by virtue of the fines collection regulations made under this Schedule.

328. Paragraph 51 provides that references to the period during which an appeal is pending include the period within which it may be brought (whether or not an appeal is in fact brought).

329. Paragraph 52 defines '10 working days' as being any period of 10 days excluding weekends and public holidays.

330. Paragraph 53 defines 'the magistrates' court' in relation to a collection order as being any magistrates' court acting in the local justice area in which the court which made the collection order was sitting.

Schedule 6: Discharge of fines by unpaid work

331. This Schedule enables a court to allow an offender sentenced to a fine to discharge his sentence by means of unpaid work, where it appears to the court that the amount owing cannot be collected by any of the normally available methods. The court does this by means of making a 'work order'.

Part 1: Introductory

332. Paragraph 1 applies the Schedule to individuals over 18 who are liable to pay a fine or a sum treated for enforcement purposes as a fine, but excluding amounts due as compensation or costs. It defines terms used subsequently, in particular, 'the prescribed hourly sum', which is the conversion rate from amount owing into hours of work, to be as prescribed by regulations, and 'the relevant court' to be the court imposing the fine or the magistrates' courts enforcing a fine imposed by any court.

333. Paragraph 2 sets out the circumstances in which a 'work order' may be made. A court may make such an order on the application of a fines officer, or may decide to do so itself, where it appears that, from the information before it of the offender's financial circumstances, the normal methods of fine collection are likely to be impracticable or inappropriate. It lists these collection methods as warrants of distress; application for enforcement by the High Court or county court; imposition of a supervision order; AOE; DFB; and a collection order under the Collection of Fines Schedule in this Act. The court must be satisfied that the offender appears suitable to carry out the work. The paragraph also requires that the offender must consent to the making of the order.

334. Paragraph 3 sets out the provisions of a work order. It requires the offender to work for a specified number of hours in accordance with instructions given by a fines officer. The order must state the amount that is to be discharged by work; the fines office to which the order is allocated and the person who is to supervise the actual work being carried out by the offender. This person is called 'the supervisor'. The number of hours to be worked is

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calculated by dividing the sum owed by the prescribed hourly sum and rounding up to the nearest hour. The order must specify a date by which the number of hours is to be performed.

335. Paragraph 4 requires that the payment of the amount to be discharged through work must not be enforced unless the work order is revoked. It also requires that any existing orders relating to such enforcement must be revoked when a court makes a work order.

336. Paragraph 5 stipulates that no supervisor may be appointed without the offender's consent. It also sets out the duties of a supervisor as being to monitor the offender's compliance with the requirements of the work order and to provide information to the court about that compliance as required.

337. Paragraph 6 states that an offender subject to a work order must work where, when and for the specified number of hours as instructed by the fines officer. The fines officer must ensure that, so far as is practicable, the instructions given should avoid both conflict with the offender's religious beliefs and interference with his work or education. It also provides that if the work is completed before the specified date, the liability to pay the amount due is discharged.

338. Paragraph 7 allows the offender to discharge his liability by paying the sum in respect of which the work was set. He can also reduce the number of hours he has to work by paying part of the sum, in which case fractions of an hour are to be disregarded.

339. Paragraph 8 provides for the order to be revoked or varied at any time on application to the fines officer. If the offender has failed, or is failing to comply but has a reasonable excuse, or a change in circumstances means he is unlikely to be able to comply, the court may revoke the order or may allow more time to do the work. The fines officer is given the power to issue a summons to require the offender to attend court where such an application has been made.

340. Paragraph 9 stipulates that where an order has been revoked and it appears to the court that the offender has performed at least one hour of work, the court must specify, by order, the number of hours that have been worked, rounding down to the nearest hour. The offender's liability to pay is then reduced by the amount corresponding to this number of hours (calculated using the prescribed hourly sum).

341. Paragraph 10 allows the amount outstanding following the revocation of an order, reduced under paragraph 9 if applicable, to be enforced against the offender. When doing so, the court may nevertheless allow time for payment or direct payments by instalments.

342. Paragraph 11 provides that the only way of enforcing the obligations of an offender subject to a work order is under the provisions of paragraph 10.

343. Paragraph 12 gives a court the power to issue a summons requiring the attendance of the supervisor before it. The power is available where the court is determining whether the offender has performed the work and where it believes that the supervisor will be able to help, but where the supervisor will not attend voluntarily.

344. Paragraph 13 gives a power to make regulations requiring:

- a work order to contain prescribed information;
- that copies of the order are given to prescribed persons; and

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- that a court varying or revoking an order gives notice of the revocation or variation to prescribed persons.

Register of judgments etc. and execution of writs

Section 98: Register of Judgments and order etc.

345. A new register is set up by this provision to replace the county court register under sections 73 and 73A of the CCA 1984. The new register expands the scope of the previous register, which was only concerned with county court judgments and orders.

346. The new register is designed to incorporate judgments of the High Court and criminal court fines. This will bring defaults from all the civil and criminal courts under one register. In the case of civil proceedings all judgments and orders will be registered unless an exception applies. In the criminal courts only certain cases, decided on an individual basis, will be registered. The provision allows for the register to be kept in house or contracted out.

Section 99: High Court writs of execution

347. This section will relieve High Sheriffs (being unpaid volunteers, appointed annually) of their legal obligations in connection with the enforcement of High Court judgments. The existing competence and probity of those actively engaged in High Court enforcement, currently in the names of the Sheriffs, will be maintained.

348. The High Court will continue to issue writs of execution - that is, in summary, writs for the enforcement of judgment debts, and writs to enforce judgments for the possession of land. England and Wales will be divided into enforcement districts defined by the Lord Chancellor. There will be a number of individuals authorised as High Court enforcement officers, either by the Lord Chancellor or by someone acting on his behalf. The Lord Chancellor (or his delegate) will assign at least one authorised enforcement officer to every district.

349. The existing jurisdiction of the High Court in relation to writs of execution will not be removed. But these provisions will give the High Court a new, efficient and adaptable tool to enforce its judgments.

Schedule 7: High Court writs of execution

350. Schedule 7 gives High Court enforcement officers the same obligations and powers that sheriffs have under common law. The Lord Chancellor or his delegate must approve arrangements for the allocation of a writ where more than one enforcement officer could be obliged to execute it. In practice, those arrangements are likely to be based closely on the existing administrative arrangements under which writs directed to sheriffs can be delivered to a single address in central London from which they are distributed. The constable's duty to assist an enforcement officer, adopts and brings up to date the comparable provision that applies to sheriffs under section 8 of the Sheriffs Act 1887.

351. Paragraphs 6 to 11 make the same provision, with the amendments needed to include enforcement officers, as sections 138, 138A and 138B of the SCA 1981, which the Act will omit. The Act will, by consequential amendments under Schedule 8, make it a criminal offence to obstruct a High Court enforcement officer who is executing a writ.

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Damages

Section 100: Periodical payments

352. Section 100 replaces section 2 of the Damages Act 1996 with new sections 2, 2A and 2B for England, Wales and Northern Ireland and makes consequential amendments to section 329AA of the Income and Corporation Taxes Act 1988 (ICTA 1988) for the whole of the United Kingdom.

353. The new section 2 gives courts the power to order, without the consent of the parties, that damages for future pecuniary loss (i.e. loss of future earnings and care costs) in personal injury cases are wholly or partly to take the form of periodical payments, and requires the court to consider in all cases whether periodical payments are appropriate. The power to make an order without the consent of the parties only relates to awards in respect of future pecuniary loss, and the new section preserves the current position in respect of other damages (i.e. non-pecuniary loss and past financial loss) by allowing the court to order periodical payments where the parties consent. The court must be satisfied that the continuity of the payments is reasonably secure before it makes a periodical payments order. The continuity of payments is deemed to be reasonably secure if it is protected by the Financial Services Compensation Scheme or a Ministerial Guarantee given under section 6 of the 1996 Act or where the source of the payments is a government or health service body (new section 2A enables the Lord Chancellor to specify in an order the bodies that will constitute “government and health service bodies” for this purpose). The court must also be satisfied as to the security of any subsequent changes to the way in which payments are funded, unless the new method is protected in one of the above ways.

354. To ensure that the real value of periodical payments is preserved over the whole period for which they are payable, new section 2 provides that periodical payments orders will be treated as linking the payments to the Retail Prices Index (RPI). The timing and manner of adjustments to take account of inflation will be determined by, or in accordance with, Civil Procedure Rules. It is expected that, as now, periodical payments will be linked to RPI in the great majority of cases. However subsection (9) preserves the court’s power to make different provision where circumstances make it appropriate.

355. To avoid the possibility of claimants receiving less than the true value of the award as a result of their assigning their right to receive the payments in return for a lump sum, section 2 also prevents the assignment of the right to receive periodical payments unless the court is satisfied that there are special circumstances that make it necessary. This does not affect the claimant's ability to borrow against their future income. Unsecured loans will thus be allowed, but not secured loans that put the claimant's right to receive payments at risk.

356. The new section 2A enables Civil Procedure Rules to specify matters which the court is required to take into account when considering whether to order a periodical payment or approve an assignment, and when considering the security of the payment. These could for example specify factors which might make a periodical payments order less, or more, appropriate than a lump sum order, such as the life expectancy of the claimant (where a short life expectancy might make a lump sum preferable but periodical payments might be more suitable for a longer life expectancy) and where there has been significant contributory negligence (which may mean that periodical payments would not be adequate to support the care required).

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357. The new section 2B gives the Lord Chancellor an order-making power to enable the court to vary periodical payments under specified circumstances. A range of provisions which may be contained in such an order are set out in subsection (3). An order made under this power is subject to prior consultation by the Lord Chancellor and the affirmative resolution procedure. Following the recent consultation it is intended that the first order will enable variation of periodical payments orders only where there is a significant medical deterioration or improvement in the claimant's condition which can be foreseen at the time of the original order and where the court provides for the possibility of variation in that order. Because of the potential overlap with the current system of provisional and further damages, the section allows an order made by the Lord Chancellor to apply or vary the enactments governing these areas.

358. The section also makes a number of consequential amendments to section 329AA of the ICTA 1988 to reflect the new provisions and ensure that all periodical payments made in respect of personal injury (including those made by the Motor Insurers' Bureau under the Untraced Drivers Agreement and the Uninsured Drivers Agreement) are exempt for income tax purposes however funded.

Section 101: Periodical payments: security

359. Section 101 replaces sections 4 and 5 of the Damages Act 1996 with a new section 4. The purpose of this amendment is to ensure that protection under the Financial Services Compensation Scheme (FSCS) can apply to a wider range of options for funding periodical payments. It replaces the term "structured settlement" which is no longer apt given the court's power to order periodical payments. The section also makes provision for the treatment of periodical payments in the event of the recipient's bankruptcy.

360. At present, private sector defendants and insurers generally provide periodical payments under a "structured settlement", that is by the purchase of an annuity for the claimant. This is because payments under an annuity are secured against the failure of the Life Office under the statutory protection provided by the FSCS (the scheme created under section 213 of the Financial Services and Markets Act 2000).

361. The FSCS currently provides protection in respect of 90% of the payments due under an annuity. Sections 4 and 5 of the DA 1996 override this limitation for annuities bought pursuant to a "structured settlement". In other words, periodical payments for personal injury damages can be 100% protected under the FSCS by this route.

362. Subsections (1) and (2) of the new section 4 have the same effect. They apply where a claimant has a right to receive periodical payments of damages for personal injury, and that right is protected under the FSCS – in other words the claimant is the beneficial owner of an annuity (whether purchased by the defendant, the defendant's insurer or the Motor Insurers' Bureau).

363. In future, periodical payments may be ordered rather than agreed. It is intended that defendants and their insurers should be entitled to fund these payments in whatever way they choose, provided the continuity of payment is adequately secure. Protection under the FSCS will be deemed to constitute adequate security. There are a number of options that may be relevant. For example, a general insurer may prefer to fund the payments directly rather than purchase an annuity, perhaps purchasing an annuity at a later date when annuity rates are

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more favourable. Or the insurer may wish to purchase an annuity in its own name, and then undertake to pass the periodical payments to the claimant. This may be attractive, for example, where there is a possibility of the payments being reduced on appeal or variation.

364. At present, the FSCS would not operate effectively to protect the claimant's right to continue to receive the payments in the event of the failure of the underlying insurer. In the example of self-funding by the defendant's insurer, the defendant rather than the claimant would be the policy-holder, and it would be for him to pursue any claim under the FSCS. But if the defendant was a large firm, it would not be eligible to claim under the FSCS. And unless the general insurance policy in question was one of compulsory insurance (motor or employer's liability), the scheme would only protect 90% of the payments due. Similar issues arise where the insurer owns the annuity that is funding the periodical payments.

365. Subsections (3) and (4) of the new section 4 provide for recipients of periodical payments to have a direct claim under the FSCS, and for that claim to cover 100% of the payments, when any arrangement is put in place to fund periodical payments that attracts the protection of the FSCS – that is where it is underpinned by an annuity or a relevant general insurance contract (certain categories of general insurance are not protected by the FSCS). In these circumstances, subsection (4) gives the claimant a direct claim under the FSCS in respect of the full amount of the periodical payments, and extinguishes any other potential claim. It provides that the claimant shall be deemed to be protected by an arrangement of the same kind as the one that is actually in place, that is by an annuity or a relevant general insurance contract. (It is not intended to suggest that the claimant is deemed to have the same class of general insurance as that underpinning the actual arrangement – this would not make sense for example in the case of third party liability insurance.)

366. The new approach makes it unnecessary to replicate the other provisions contained in the current section 5 of the 1996 Act in order to retain their effect (for example the fact that enhanced protection for the claimant no longer turns on his being an annuitant means that the express provisions in section 5(5) for payments to be received and held on trust on behalf of an annuitant will no longer be necessary). The courts will retain full discretion to specify the period for and intervals at which the payments are to continue, to provide for specified future increases or adjustments (e.g. an increase when the claimant turns 18).

367. Section 101(2) and (3) makes consequential amendments to section 6(1) of, and the Schedule to, the DA 1996 to reflect the terms of the new section 2 (as inserted by Section 100).

368. Section 101(4) and (5) protect the continuity of periodical payments in respect of future loss in the event of the recipient's bankruptcy. The effect of the provisions is that on bankruptcy, periodical payments do not automatically form part of the bankrupt's estate. They can only be claimed for the estate for the duration of the bankruptcy by way of an Income Payments Order, under section 310 of the Insolvency Act 1986. In order to fully protect any care cost element to the payments, the new section prevents an Income Payments Order being made in respect of any part of the payments identified as relating to expenditure likely to be incurred as a result of the injury.

369. Subsections (1) to (3) of section 101 will apply to the whole of the UK, although some of the funding arrangements envisaged are unlikely to be relevant in Scotland where the courts will not have the power to order periodical payments (subject to any future legislation

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which may be passed by the Scottish Parliament). Subsections (4) and (5) of the section apply to England, Wales and Northern Ireland only.

Provisions relating to Northern Ireland

Section 102: Power to alter judicial titles: Northern Ireland

370. This section provides the Lord Chancellor with a power to amend the judicial titles listed (the list encompasses all of the judicial titles in the Supreme Court and county courts in Northern Ireland) in the future should the need arise. Some titles may need modernisation, to make them more helpfully explanatory to court users. The acceptance commanded by titles containing a presumption of male gender might also change. Such orders may only be made following consultation with the Lord Chief Justice of Northern Ireland. Section 64 makes similar provision for England and Wales.

Section 103: Official Solicitor of Northern Ireland

371. This section removes the post of Official Solicitor to the Supreme Court in Northern Ireland from the list of statutory offices in Schedule 3 to the Judicature (Northern Ireland) Act 1978 as all the other statutory officers exercise judicial functions. This section specifies the amendments to section 75 of the J(NI)A 1978 that relate to the position and further to this, now allows barristers as well as solicitors to be appointed as the Official Solicitor of Northern Ireland.

Section 104: Alteration of place fixed for Crown Court trial: Northern Ireland

372. This section amends the J(NI)A 1978 to provide that an application for variation of the place fixed for Crown Court trial no longer needs to be heard in open court.

Section 105: Extension of time for criminal appeals to House of Lords: Northern Ireland

373. Section 105 amends the J(NI)A 1978 and the Criminal Appeal (Northern Ireland) Act 1980 to extend, from 14 days to 28 days, the time within which applications may be made for leave to appeal to the House of Lords.

Section 106: Fees: Northern Ireland

374. This section provides for the insertion of a new subsection (1A) into section 116 of the J(NI)A 1978. Section 116(1) of the 1978 Act provides for the Lord Chancellor, after consultation with the Lord Chief Justice and the Treasury, to fix the fees to be taken in the Northern Ireland courts and the Enforcement of Judgments Office.

375. The effect of the new subsection will be to allow any order fixing fees to provide for the exemption from, or full or partial remission of, those fees.

PART 9: FINAL PROVISIONS

SUMMARY

376. Part 9 contains minor definitions and qualifications referred to in the Act, and states the parliamentary scrutiny to be employed for sections allowing the Lord Chancellor to make rules, regulations and orders. This part also provides for the enactment of the transitional and saving, consequential and repeal Schedules of the Act and states that provisions in the Courts Act extend only to England and Wales, subject to a few exceptions. Part 9 allows the

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Lord Chancellor to make transitional and consequential provisions by order and also contains the short title of the Act.

COMMENTARY ON SECTIONS: PART 9

Section 107: Interpretation

Section 108: Rules, regulations and orders

377. Section 107 contains definitions used throughout the Act (e.g. ‘judge’), and definitions of Acts referred to in the Act. Section 108 sets out the parliamentary scrutiny to be employed for sections allowing the Lord Chancellor to make rules, regulations and orders.

Section 109: Minor and consequential amendments, repeals etc.

378. Section 109 introduces Schedule containing transitional provisions and savings, consequential amendments and repeals. Subsection (3) allows the Lord Chancellor to make an order for supplementary, consequential and transitional provisions, while subsection (4) makes it clear that such an order can, if necessary, amend or repeal other enactments

379. Schedule 8 contains minor and consequential amendments arising from, among other things, provisions in this Act removing magistrates’ courts committees, the post of JCE, commission areas and petty sessions areas. Schedule 9 contains transitional and savings provisions in consequence of the Act. Schedule 10 contains repeals.

380. Given the scale of these consequential amendments, the power to make consequential amendments by order is necessary both because further statutory references in need of amendment may come to light and because Acts passed in the same Parliamentary Session as this Act contain references to, for example, petty sessions areas could be enacted or implemented before provisions in the Courts Act, requiring consequential amendment.

Section 110: Commencement

Section 111: Extent

Section 112: Short title

381. Section 110 provides for the Lord Chancellor to order commencement dates for provisions in the Act. By virtue of section 111, provisions in the Courts Act extend only to England and Wales, subject to subsections (2) and (3) which contain exceptions. The Short title of the Act is the Courts Act 2003, by virtue of section 112.

COMMENCEMENT

382. The provisions in the Act will come into force on a day or days appointed by commencement order of the Lord Chancellor, save for sections 42, 94, 107, 108, 109(4) to (6), 110, 111, and 112 which come into force on Royal Assent.

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HANSARD REFERENCES

383. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	28 November 2002	Vol 641; Col 956
Second Reading	9 December 2002	Vol. 642; Col 13 & Col 42
Committee	Day 1 - 20 January 2003	Vol 643; Col 500-516 Vol 643; Col 532-550
	Day 2 - 28 January 2003	Vol 643; Col 1044-1118
	Day - 4 February 2003	Vol 644; Col 140-194
	Day 4 - 10 February 2003	Vol 644; Col 466-538
	Day 5 - 11 February 2003	Vol 644; Col 578-628 Vol 644; Col 637-662
	Day 6 - 18 February 2003	Vol 644; Col 1097-1126
	Day 7 - 27 March 2003	Vol 646; Col 913-947 Vol 646; Col 996-1033
Report	Day 1 - 8 May 2003	Vol 647; Col 1187-1226 Vol 647; Col 1237-1295
	Day 2 - 12 May 2003	Vol 648; Col 12-30 Vol 648; Col 46-108
Third Reading	19 May 2003	Vol 648; Col 498-548
House of Commons		
Introduction	20 May 2003	Vol 405;
Second Reading	9 June 2003	Vol 406; Col 438-508
Committee	From 26 June 2003-10 July 2003 (7 sittings)	Hansard Standing Committee D; Col 1-237
Report and Third Reading	20 October 2003	Vol 411; Col 392-477
Lords Consideration of Commons Amendments	12 November 2003	Vol 654; Col 1377-1410
Commons Consideration of Lords Amendments	17 November 2003	Vol 413; Col 494-501
Royal Assent	20 November 2003	House of Lords Hansard Vol 654 Col 2114 House of Commons Hansard Vol 413 Col 1037

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GLOSSARY OF ABBREVIATIONS

AJA 1999	Access to Justice Act 1999
AOE	Attachment of Earnings Order
BTDC	Bench Training and Development Committee
CA 1971	Courts Act 1971
CAA 1968	Criminal Appeal Act 1968
CAFCASS	Children and Family Court Advisory and Support Service
CCA 1984	County Courts Act 1984
CJA 1991	Criminal Justice Act 1991
CJS	Criminal Justice System
Civil PRC	Civil Procedure Rule Committee
CM (A)A 1968	Courts-Martial (Appeals) Act 1968
CPA 1997	Civil Procedure Act 1997
Crim PRC	Criminal Procedure Rule Committee
DA 1996	Damages Act 1996
DFB	Deduction from Benefit
FPRC	Family Procedure Rule Committee
FSCS	Financial Services Compensation Scheme
GLMCA	Greater London Magistrates' Courts Authority
ICTA 1988	Income and Corporation Taxes Act 1988
JCE	Justices Chief Executive
J (NI)A 2002	Justice (Northern Ireland) Act 2002
JPA 1997	Justices of the Peace Act 1997
MCA 1980	Magistrates Courts Act 1980
MCCs	Magistrates' Courts Committees
POA 1985	Prosecution of Offences Act 1985
RIA	Regulatory Impact Assessment
RPI	Retail Prices Index
SA 1887	Sheriffs Act 1887
SCA 1981	Supreme Court Act 1981
TUPE	Transfer of Undertakings (Protection of Employment)

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