These notes refer to the Crime and Courts Act 2013 (c.22) which received Royal Assent on 25 April 2013

CRIME AND COURTS ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Crime and Courts Act 2013 which received Royal Assent on 25 April 2013. They have been prepared by the Home Office and the Ministry of Justice in order to assist the reader of 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.

3. A glossary of abbreviations and terms used in these Explanatory Notes is contained within Annex A.

SUMMARY

4. The Act is in three Parts. Part 1 establishes the National Crime Agency ("NCA"). Part 2 contains various provisions in respect of the modernisation of the courts and tribunals system, awards of damages and costs against publishers of news-related material, community sentencing, extradition, the proceeds of crime and other provision about the administration of justice. Part 3 contains provisions in relation to border control, the immigration appeal system, public order offences and drug driving as well as standard provisions in respect of, amongst other things, orders and regulations, commencement and extent.

5. Part 1 provides for the NCA. Sections 1 to 4 and 8 and Schedules 1, 2 and 4 establish the Agency, set out its functions, provide for the appointment of a Director General as the operationally independent head of the NCA, and make provision for the governance of the NCA. Section 5 and Schedule 3 provide a framework for the NCA and other law enforcement agencies to collaborate in order to assist each other in the discharge of their functions. Section 6 places a duty on the Director General to publish certain information. Sections 7 and 12 and Schedule 7 make provision for the disclosure of information by and to the NCA and for the use of information by the Agency. Sections 9 and 10 and Schedule 5 provide for the operational powers of the Director General and other NCA officers, including by making provision to enable the Director General to designate NCA officers with one of more of the powers of a constable, a customs officer or an immigration officer. Section 11 and Schedule 6 provide for the NCA to be inspected by Her Majesty's Inspectors of Constabulary, and for regulations to make provision for oversight by the Independent Police Complaints Commission. Sections 13 and 14 place restrictions on certain NCA officers taking industrial action and make provision for the determination of such NCA officers' pay and allowances. Section 15 and Schedule 8 abolish the Serious Organised Crime Agency ("SOCA") and the National Policing Improvement Agency ("NPIA") and make transitional and consequential provision. Part 1 is subject to Schedule 24 (The NCA: Northern Ireland) which sets out those 'relevant NCA provisions' in Part 1 that do not apply to Northern Ireland.

6. Part 2 contains provisions to further modernise courts and tribunals and in respect of judicial appointments. Section 17 and Schedules 9 to 11 establish a single county court and single family court in England and Wales. Section 18 and Schedule 12 provide for applications for gang-related injunctions in respect of young persons to be considered by the youth court rather than the county court or High Court. Section 19 provides courts with the power to vary the designation of the local authority responsible for a remanded young person, thus allowing the Youth Justice Board to correctly charge for its services. Section 20 and Schedule 13 make provision in respect of judicial appointments, including in relation to: the number of UK Supreme Court Judges; when a selection commission can be convened for the appointment of UK Supreme Court judges; taking account of diversity considerations to distinguish between candidates who are of equal merit; calculating the maximum number of judges in the Court of Appeal and High Court by reference to the number of full-time equivalent judges; the composition of the Judicial Appointments Commission; the selection of commissioners and commissioners' terms of office; and the transfer of powers of the Lord Chancellor in relation to judicial appointments to the Lord Chief Justice and Senior President of Tribunals. Schedule 13 also makes provision for the delegation of certain functions of Heads of Division in the event of a vacancy in the office or that the office-holder is incapable of exercising specified functions.

7. Section 21 and Schedule 14 make provision for court judges to sit in tribunals, and for tribunal judges to sit as court judges. Section 22 removes the restrictions on the transfer of immigration and nationality applications for judicial review or permission to apply for judicial review from the High Court, the Court of Session and the High Court of Northern Ireland to the Upper Tribunal. Section 23 provides a power for rules of court to be made to restore the second-tier appeals test when the Court of Session considers an application for permission to appeal from the Upper Tribunal. Section 24 abolishes the jurisdiction of judges of the High Court to sit as Visitors to the Inns of Court in barristers' disciplinary hearings and instead gives power for Bar regulators to confer rights of appeal to the High Court. Section 25 makes amendments of Part 3 of the Tribunal, Courts and Enforcement Act 2007 relating to the use of force by bailiffs to enter commercial and domestic premises and the definition of abandonment.

8. Section 26 facilitates the contracting out of all functions of fines officers and makes provision for the costs of collecting fines and other financial penalties to be recovered from offenders in certain circumstances. Section 27 provides for the sharing of information in connection with the enforcement of fines and other financial penalties. Section 28 provides for the sharing of information about social security, earnings and whether an applicant receives tax credits, and information about a person's income, gains and capital, in connection with fee-remission applications. Section 29 provides for the appointment of the Chief Executive of the UK Supreme Court and other staff. Section 30 makes provision for the appointment, training and powers of UK Supreme Court security officers. Section 31 clarifies the circumstances in which there may be filming and broadcasting of judicial proceedings in the UK Supreme Court. Section 32 allows for the filming and broadcasting of judicial proceedings below the UK Supreme Court in specified circumstances. Section 33 abolishes the offence of scandalising the judiciary in England and Wales. Sections 34 to 42, and Schedule 15, set out the new system for exemplary damages and costs in relation to publication of news-related material, as well as defining those who meet the definition of a 'relevant publisher' to whom the new system of exemplary damages will apply.

9. Section 43 makes further provision about the use of force in self-defence. Section 44 and Schedule 16 make a number of changes to the framework governing community and other non-custodial sentences for adult offenders. Section 45 and Schedule 17 provide for deferred prosecution agreements – a new tool to tackle financial and economic crime. Sections 46 and 47 provide for legal aid payments to be made from restrained assets in prescribed circumstances. Sections 48 and 49 and Schedules 18 and 19 amend the Proceeds of Crime Act 2002 in response to the UK Supreme Court judgment in the case of Perry v SOCA (July 2012). Section 50 and Schedule 20 make

various amendments to the Extradition Act 2003, including: introducing a forum bar to extradition and removing the Home Secretary's obligation to consider human rights issues when making an extradition decision.

10. Part 3 contains miscellaneous and general provisions. Section 51 makes a number of amendments relating to immigration appeal rights and facilitating combined appeals in immigration cases. Section 52 removes full rights of appeal against the refusal of a family visit visa. Section 53 removes the in-country right of appeal of persons excluded from the UK by the Secretary of State. Section 54 provides for certain national security deportation appeals to be made out of country if they are clearly unfounded or there is no risk of serious irreversible harm to the individual involved. Section 55 and Schedule 21 make further provision in respect of the powers of immigration officers. Section 56 and Schedule 22 create a new offence of drug driving and make further provision for the taking of preliminary drug tests. Section 57 removes the insulting limb of the offence in section 5 of the Public Order Act 1986.

11. Sections 58 to 61 and Schedule 23 deal with the making of orders and regulations under the Act and provide for the short title, commencement and extent. Schedules 24 and 25 make provision as to the application to Northern Ireland of the provisions in respect of the National Crime Agency and the amendments to the Proceeds of Crime Act 2002.

BACKGROUND

Part 1: the National Crime Agency

The National Crime Agency

12. In July 2010 the Home Office set out the Government's plans for policing reform in *Policing in the 21st Century*[1], including proposals for a new National Crime Agency ("NCA") to lead the fight against serious and organised crime and strengthen border security. Further details of the Government's proposals for the creation of the NCA were announced by the Home Secretary on 8 June 2011 (House of Commons, Official Report, columns 232 to 234). The accompanying *The National Crime Agency: A plan for the creation of a national crime-fighting capability* (Cm 8097[2]) set out the proposed structure of the NCA comprising:

- Organised Crime Command;
- Border Policing Command;
- Economic Crime Command;
- Child Exploitation and Online Protection Command ("CEOP").

13. The four commands would be underpinned by an intelligence hub, tasking and co-ordination arrangements and a National Cyber Crime Unit.

14. The NCA will build on the work of the Serious Organised Crime Agency ("SOCA") which was established by Part 1 of the Serious Organised Crime and Police Act 2005.

15. The establishment of the NCA is part of the Government's wider organised crime strategy, *Local to global: reducing the risk from organised crime*[3], published on 28 July 2011. Part 1 of the Act provides for the establishment of the NCA and the abolition of SOCA and the National Policing Improvement Agency ("NPIA").

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1 https://www.gov.uk/government/publications/policing-in-the-21st-century-reconnecting-police-and-the-people-consultation
2 https://www.gov.uk/government/publications/national-crime-agency-a-plan-for-the-creation-of-a-national-crime-fighting-capability
3 https://www.gov.uk/government/publications/organised-crime-strategy

Abolition of National Policing Improvement Agency

16. The NPIA was established by section 1 of the Police and Justice Act 2006. The Agency was formed in April 2007.

17. The Home Office's plans for policing reform set out in *Policing in the 21st Century* included proposals for streamlining the national policing landscape by, amongst other things, phasing out of the NPIA. On 4 July 2011, the Home Secretary announced plans to set up a police information and communications technology company[4] which would take on certain functions of the NPIA. In written statements on 15 December 2011 (House of Commons, Official Report, columns 125WS to 127WS), 26 March 2012 (House of Commons, Official Report, columns 94WS to 95WS) and 16 July 2012 (House of Commons, Official Report, columns 105WS to 107WS), the Home Secretary set out further proposals. Section 15(2) of the Act provides for the abolition of the NPIA. The statutory duty conferred on the NPIA by section 3 of the Proceeds of Crime Act 2002 to provide a system for the training, monitoring, accreditation and withdrawal of accreditation of financial investigators will move to the NCA as provided for in paragraph 111 of Schedule 8.

Part 2: Courts and Justice

Section 17: Civil and family proceedings in England and Wales

Single County Court for England and Wales

18. County courts are constituted under the County Courts Act 1984. There are approximately 170 county courts in England and Wales, prescribed by article 6 of, and Schedule 3 to, the Civil Courts Order 1983[5], as amended. Each county court has a separate legal identity and serves a defined geographical area. Certain civil matters, for example in respect of proceedings in contract and tort or actions for the recovery of land, can be dealt with by all county courts, whereas other civil cases, for example family proceedings, certain contested probate actions and bankruptcy claims, are handled by designated county courts.

19. In January 2008, the Judicial Executive Board commissioned Sir Henry Brooke to conduct an inquiry into the question of civil court unification. He published his report[6], entitled *Should the Civil Courts be Unified?*, in August 2008. In the report, Sir Henry recommended that consideration should be given to whether the county courts should become a single national court.

20. In March 2011, the Ministry of Justice subsequently published a consultation document (Consultation Paper CP6/2011) entitled *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system*[7]. The consultation paper, which was aimed at reforming the civil justice system in England and Wales, sought views on whether a single county court should be established. On 9 February 2012, accompanied by a written ministerial statement (House of Commons, Official Report, column 53WS), the Government published its response to the consultation (CM 8274)[8], announcing its intention to implement its proposals for the establishment of a single county court. Section 17(1) of the Act implements those proposals.

Single family court for England and Wales

21. Family proceedings are currently heard at first instance in the magistrates' courts (family proceedings courts), the county courts and the High Court. While the Family Procedure

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4 https://www.gov.uk/government/speeches/police-reform-home-secretarys-speech-to-acpo-summer-conference
5 S.I. 1983/713
6 http://www.judiciary.gov.uk/publications-and-reports/reports/civil/civil-courts-unification
7 http://www.justice.gov.uk/downloads/consultations/solving-disputes-county-courts.pdf
8 https://consult.justice.gov.uk/digital-communications/county_court_disputes/results/solving-disputes-in-cc-response.pdf

Rules 2010[9] largely govern the practices and procedures of all courts dealing with family proceedings, each court's family jurisdiction is constituted and governed by a variety of different statues. For example, section 33(1) of the Matrimonial and Family Proceedings Act 1984 allows the Lord Chancellor to designate certain county courts as "divorce county courts", which have jurisdiction to hear and determine any matrimonial matters.

22. In March 2010, the Family Justice Review Panel, chaired by David Norgrove and commissioned by the Ministry of Justice, the Department for Education, and the Welsh Government, began their review of the family justice system in England and Wales. In November 2011 the Family Justice Review Panel published their final report, *Family Justice Review – Final Report*,[10] in which they recommended that a single family court, with a single point of entry, should replace the current three tiers of court. Prior to publication of the Panel's final report the Government consulted on the Panel's interim report and recommendation *Family Justice Review – Interim Report*[11]. An analysis of consultation responses was integrated into the Panel's final report; however, in summary the majority of respondents to the consultation (75%) agreed that a single family court should be created.

23. A written ministerial statement on 6 February 2012 (House of Commons, Official Report, column WS3) announced the publication of the Government's response to that Panel's final report (CM 8273)[12]. The response noted "*we* [the Government] *will establish a single Family Court for England and Wales, with a single point of entry, as the Review recommended*". Section 17(3) of the Act gives effect to this.

Section 18: Youth courts to have jurisdiction to grant gang-related injunctions

24. Gang-related injunctions were introduced by the Policing and Crime Act 2009, which made provision for civil injunctions to be granted by the county court (or High Court) on application by the police or local authority in order to prevent gang related violence. This was amended by the Crime and Security Act 2010 to enable gang-related injunctions to be taken out against those aged between 14 and 17 by creating two new penalties for breach.

25. Section 18, which also introduces Schedule 12, makes amendments to provide for applications for gang-related injunctions for 14 to 17 year olds to be heard in the youth court, sitting in a civil capacity, rather than in the county court (or High Court). The effect of this measure will be to allow the courts with the most appropriate facilities and expertise in dealing with young people to consider these matters.

Section 19: Varying designation of authorities responsible for remanded young persons

26. Section 102(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("2012 Act") requires the court to designate a local authority as the designated authority for a child remanded to youth detention accommodation. A designation has various consequences. One consequence is to make the designated authority liable for the costs of the remand to youth detention accommodation. Regulations made under section 103(2) of the 2012 Act provide for the recovery of a proportion of these costs by the Youth Justice Board for England and Wales ("the YJB") from the designated authority. The youth remand provisions of the 2012 Act, and regulations under section 103(2) of that Act, came into force on 3rd December 2012. In addition, new regulations providing for the recovery from the designated authority of the full costs of the remand to youth detention accommodation were brought into force on 1st April 2013.

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9 S.I. 2010/2955
10 http://www.justice.gov.uk/downloads/publications/moj/2011/family-justice-review-final-report.pdf
11 http://www.justice.gov.uk/downloads/publications/moj/2011/family-justice-review-interim-rep.pdf
12 https://www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf

27. Section 102(7) of the 2012 Act provides for the court to designate any authority which is already looking after the child. If there is no such authority, the court is to designate either the authority in which the child habitually resides ("the home authority") or that in whose area the offence was committed. Section 19 provides that, where the child is not looked after, the court is ordinarily to designate the home authority. However, in some cases the court may not be able to correctly establish the identity of the home authority at the initial remand hearing. It will in those cases designate a different authority. A designation may be changed at a later remand hearing, but any change only has effect from the point at which the change is made. As such the YJB may only recover costs of the remand to youth detention accommodation from the newly designated authority which relate to the period after the change has been made (but not costs which relate to the period *before* the change was made – for which the initially designated authority remains liable).

28. Section 19 amends section 102 of the 2012 Act to allow a court to make a 'replacement designation.' A replacement designation has the effect that the newly designated authority is – for the purpose of liability for the costs of remand to youth detention accommodation – designated during the period before the replacement designation was made. This therefore allows regulations to provide for the YJB to recover from this designated authority the costs of remand to youth detention accommodation in relation to that period of remand.

Section 20: Judicial appointments

29. The Constitutional Reform Act 2005 ("the CRA") made a number of substantial changes to the process for selecting and appointing various judicial office holders within the United Kingdom. Part 4 of the CRA, which established the Judicial Appointments Commission, governs the selection process for appointing judicial office holders to the courts in England and Wales, together with appointments to specified tribunals in the United Kingdom. The Supreme Court of the United Kingdom was also established by section 23 of the CRA. A separate process for selecting and appointing the President, Deputy President and judges of the UK Supreme Court is governed by Part 3 of the CRA.

30. In November 2011, the Ministry of Justice published a consultation document entitled *Appointments and Diversity: A Judiciary for the 21st Century* (CP19/2011)[13]. The consultation sought views on legislative changes to achieve the proper balance between executive, judicial and independent responsibilities and to improve clarity, transparency and openness in the judicial appointments process. In addition the consultation also sought views on creating a more diverse judiciary that is reflective of society. The Government published its response to the consultation on 11 May 2012[14]. Section 20 of, and Schedule 13 to, the Act give effect to the aims outlined above.

Section 21: Deployment of the judiciary

31. The deployment of the judiciary is a function referred to in the CRA and the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). Section 7 of the CRA includes in the list of the Lord Chief Justice's responsibilities as President of the Courts of England and Wales, the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales. Part 2 of Schedule 4 to the 2007 Act provides that the Senior President of Tribunals has the function of assigning judges and other members to the chambers of the First-tier Tribunal and Upper Tribunal.

32. The establishment of Her Majesty's Courts and Tribunals Service ("HMCTS") on 1 April 2011 was designed to provide the Ministry of Justice with the opportunity to manage its resources more flexibly according to changing pressures and demands. However, the Lord Chief Justice and Senior President of Tribunals lack the ability to

13 http://www.justice.gov.uk/downloads/consultations/judicial-appointments-consultation-1911.pdf
14 https://consult.justice.gov.uk/digital-communications/judicial-appointments-cp19-2011

share judicial resource in order to respond to changes in demands. Section 21 introduces Schedule 14 which makes amendments that will enable the Lord Chief Justice to deploy judges more flexibly across different courts and tribunals of equivalent or lower status.

Section 22: Transfer of immigration or nationality judicial review applications

33. Section 22 removes a restriction in existing legislation so as to allow for the transfer, from the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland to the Upper Tribunal, of applications for judicial review or permission to apply for judicial review. This restriction applies to most types of immigration, asylum and nationality applications, and its removal would allow these to be transferred by a direction from the Lord Chief Justice (or, in the case of the Court of Session, by a procedural rule known as an act of sederunt), with the consent of the Lord Chancellor.

Section 23: Permission to appeal from Upper Tribunal to Court of Session

34. Section 23 allows for a rule of court in Scotland to reintroduce the "second-tier appeals test" for applications for permission to appeal from the Upper Tribunal to the Court of Session. This test requires that an application should demonstrate that the appeal would raise an "important point of principle or practice", or "some other compelling reason for the court to hear the appeal". The test applies in England and Wales and in Northern Ireland and was in place in Scotland before it was recently found to be *ultra vires* in a decision of the Court of Session.

Section 24: Appeals relating to regulation of the Bar

35. Judges have long exercised an appellate jurisdiction in relation to the regulation of barristers. Since 1873 judges of the High Court have been exercising this function as part of their "extraordinary functions" under what is now section 44(1) of the Senior Courts Act 1981. The current regulatory arrangements of the Bar Council (as set out in Bar Training Regulations made by the Bar Standards Board and the Hearing before the Visitors Rules 2010) provide for disciplinary decisions of the Council of the Inns of Court and decisions taken by the Bar Council's qualifications committee and its panels to be appealed to the Visitors. This includes decisions about professional misconduct, satisfaction of requirements for a person to be admitted to an Inn or called to the Bar, the conduct of students, the registration of pupillages and the approval of pupil supervisors. The historical jurisdiction of the Visitors is quite wide, however, and includes all decisions relating to the conduct of an Inn's affairs, such as the letting of chambers or payment of dues.

36. In December 2009 the Ministry of Justice consulted on a draft Civil Law Reform Bill[15] which included proposals to transfer the jurisdiction of the Visitors of the Inns of Court to the High Court; that draft Bill was not taken forward. Baroness Deech, Chair of the Bar Standards Board, tabled what is now section 24 of the Act at Report stage in the House of Lords (Official Report, 4 December 2012, columns 605 to 607) to abolish the jurisdiction of judges to sit as Visitors under section 44(1) of the Senior Courts Act 1981 and enable appeal to the High Court.

Section 25: Enforcement by taking control of goods

37. In February 2012 the Ministry of Justice set out its proposals for transforming the enforcement industry and providing more protection against aggressive bailiffs in the consultation paper, *Transforming Bailiff Action.*[16] The Government's response to *Transforming Bailiff Action* was published in January 2013[17] and sets out a series of proposals to strengthen protections from rogue bailiffs who use unsound, unsafe or

15 http://www.justice.gov.uk/downloads/legislation/bills-acts/draft-civil-law-reform-bill.pdf
16 https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action
17 https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action

unfair methods, while at the same time making sure that debts can still be collected fairly. These measures included the implementation of Part 3 of the Tribunals, Courts and Enforcement Act 2007 (the "2007 Act").

38. Part 3 of the 2007 Act makes a number of reforms to bailiff law. The changes would help debtors, creditors and bailiffs understand what their rights and responsibilities are when debts are enforced. The provisions would also codify the existing law and introduce a comprehensive code governing amongst other things: when and how a bailiff can enter somebody's premises; what goods they can and cannot seize and sell; and what costs they can charge.

39. Section 25 makes amendments of Part 3 of the 2007 Act relating to the use of force by bailiffs to enter commercial and domestic premises and the definition of abandonment.

Section 26: Payment of fines and other sums

40. In England and Wales the Lord Chancellor by virtue of section 36 of the Courts Act 2003 ("the 2003 Act") may appoint fines officers for the purpose of managing the collection and enforcement of court fines. Fines officers play a crucial role in the operation of the fine collection scheme detailed in Schedule 5 to the 2003 Act. For example, the role of a fines officer includes chasing payment via texts or letters, and issuing notification to the Department for Work and Pensions for benefit deductions in the event of non-payment of a court fine in certain cases.

41. In 2008 HMCTS launched the Criminal Compliance and Enforcement Blueprint. The fundamental principle of this strategy was to ensure criminal financial penalties imposed by the court were complied with earlier and reduce the use of costly enforcement actions such as issuing a warrant of distress. The costs of collection incurred by HMCTS while attempting the recovery of financial penalties are currently funded via the public purse.

42. To support the implementation of the above strategy and increase the incentive for early compliance, section 26 of the Act will enable the imposition and recovery of a charge imposed on offenders for the costs of collecting or pursuing financial penalties and clarifies the role of the fines officer.

Section: 27 Disclosure of information to facilitate collection of fines and other sums

43. The current data sharing gateway in Schedule 5 to the 2003 Act is amended by section 27 to bring the relevant paragraphs of that Schedule within a new Part 3A of that Schedule. New Part 3A enables the Secretary of State (in practice the Department for Work and Pensions) and a Northern Ireland Department and Her Majesty's Revenue and Customs to share "social security information" and "finances information" with HMCTS for the purpose of the enforcement of unpaid financial penalties.

Section 28: Disclosure of information for calculating fees of courts, tribunals etc

44. In line with chapter 6 'Fees, Charges and Levies' of HM Treasury's *Managing Public Money*[18], HMCTS, the UK Supreme Court and the Public Guardian charge fees for the services they provide. To help individuals of limited financial means to gain access to these services, HMCTS, the UK Supreme Court and the Public Guardian operate fee remission systems for their users. For example, the Civil Proceedings Fees Order 2008[19] sets out the fees payable in civil proceedings (Schedule 1) and the accompanying remission system for those fees (Schedule 2).

45. Currently, to qualify for certain fee remissions an individual must supply HMCTS, the UK Supreme Court or the Public Guardian with a completed application form and up-

18 http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm
19 S.I. 2008/1053

to-date hard copy proof of state benefit entitlement, issued by either the Department for Work and Pensions ("DWP") or Her Majesty's Revenue and Customs ("HMRC") confirming which benefit they receive. Failure to provide evidence can result in the application being refused.

46. To streamline the fee remission process, section 28 allows HMCTS, the UK Supreme Court and the Public Guardian to obtain certain information from the DWP, HMRC or a Northern Ireland Department in order to determine whether an individual qualifies for a fee remission. The Government intends that ultimately the information will, in most cases, be disclosed via a shared IT database. This data gateway therefore removes the need for an individual to supply a hard copy of their benefit entitlement notice in order to satisfy their entitlement for certain fee remissions.

Section 29: Supreme Court chief executive, officers and staff

47. Section 48 of the CRA prescribes that the Lord Chancellor must appoint the chief executive for the UK Supreme Court, after consulting the President of the Court. Similarly, section 49 of the CRA requires the Lord Chancellor to agree the numbers of officers and staff of the UK Supreme Court, and the terms on which these officers and staff are to be appointed.

48. Section 29 removes the Lord Chancellor from both of these processes, leaving the President of the UK Supreme Court solely responsible for appointing the chief executive and the chief executive responsible for determining the number of staff and officers of the Court.

Section 30: Supreme Court Security Officers

49. The Lord Chancellor, in accordance with the Courts Act 2003, appoints and designates security officers for all courts in England and Wales, other than the UK Supreme Court. Security officers are required to comply with training requirements prescribed by secondary legislation. Once the Lord Chancellor designates an individual as a court security officer they have specific powers that they may exercise in court buildings, for example, the power of search, seizure of weapons and other prohibited articles and of restraint and/or removal from a court. Section 30 inserts into the CRA provisions that confer on the President of the Court the power to appoint and designate Supreme Court security officers who will exercise powers identical to those of other court security officers across England and Wales.

Section 31: Making, and use, of recordings of Supreme Court proceedings

50. Upon the creation of the UK Supreme Court, section 47 of the CRA lifted the prohibition against photography and filming in court contained in section 41 Criminal Justice Act 1925 in respect of photography and filming in the UK Supreme Court. Section 9 of the Contempt of Court Act 1981, which prohibits sound recording in court and the broadcast of any such recording, was not amended. There is no suggestion that the practices of the UK Supreme Court or its predecessor are a form of contempt. However, in order to avoid any doubt when comparing section 47 of the CRA to section 32 of the Crime and Court Act 2013, which enables broadcasting in courts below the UK Supreme Court where permitted by Order, section 31 of the Act enables the UK Supreme Court to disapply section 9 of the Contempt of Court Act 1981.

Section 32: Enabling the making, and use, of films and other recordings of proceedings

51. In England and Wales, the recording and broadcasting of the proceedings of a court or tribunal is prohibited by section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981. It is an offence to breach section 41 of the Criminal Justice Act 1925 and it is a contempt of court to breach section 9 of the Contempt of Court Act 1981. By virtue of section 47 of the CRA, the Supreme Court of the United Kingdom

is exempt from the prohibition in the Criminal Justice Act 1925 and proceedings are routinely recorded and broadcast.

52. The Lord Chancellor and Secretary of State for Justice made a written ministerial statement (House of Commons, Official Report, column 17WS and 18WS) on 6 September 2011 stating his intention to allow, in limited circumstances and with certain safeguards, the recording and broadcasting of certain aspects of court proceedings. Further details were set out in a policy paper, *Proposals to allow the broadcasting, filming, and recording of selected court proceedings*, published on 10 May 2012[20]. Section 32 provides the Lord Chancellor with powers to bring forward secondary legislation, with the consent of the Lord Chief Justice, to give effect to this.

Section 33: Abolition of scandalising the judiciary as a form of contempt of court

53. Scandalising the Judiciary (also referred to as scandalising the court or scandalising judges) is defined by Halsbury's Laws of England as 'any act done or writing published which is calculated to bring a court or a judge into contempt or lower his authority'.

54. The call to abolish the offence arose when, in March 2012, the Attorney General of Northern Ireland obtained leave to prosecute the Rt Hon Peter Hain MP following comments made in his autobiography about a High Court judge. Although the proceedings were withdrawn, the proposed use of the offence caused considerable disquiet in Parliament and more widely. They were perceived by many as a serious attack on free speech.

55. An amendment tabled by Lord Lester of Herne Hill, to abolish the offence in England and Wales and in Northern Ireland was debated at Lords Committee (Official Report, 2 July 2012, columns 555 to 566) but was withdrawn. The Law Commission subsequently published a consultation paper in August 2012 provisionally concluding that the offence should be abolished without replacement. In November 2012 the Law Commission published a summary of its conclusions, namely that they consider that the retention of the offence serves no practical purpose and accordingly they support its abolition.[21] Their final report in December 2012 confirmed this recommendation.[22] A further amendment on this issue was tabled at Lords Report stage by Lord Pannick and was agreed by the House (Official Report, 10 December 2012, columns 871 to 876) and now forms section 33 of the Act. In February 2013 the Northern Ireland Assembly considered and accepted an amendment to the Northern Ireland Criminal Justice Bill that would also abolish scandalising in Northern Ireland and that has been enacted as section 12 of the Criminal Justice Act (Northern Ireland) 2013.

Sections 34 to 42: Publishers of news-related material: damages and costs

56. On 29th November 2012 *the Report of An Inquiry into the Culture, Practices and Ethics of the Press* was presented to Parliament (HC 780) ("the Leveson Report")[23]. In the report, the Rt. Hon. Lord Justice Leveson makes a range of recommendations to reform the regulatory framework for the press, creating a new framework for press regulation, with the principle of industry self-regulation at its heart. The new framework proposed is for a system of voluntary self-regulation, overseen by a recognition body established by Royal Charter and strengthened by a series of incentives for members of the press in the application of costs and exemplary damages, encouraging them to join a recognised regulator. Sections 34 to 42 and Schedule 15 set out the new system for exemplary damages and costs, as well as defining those who meet the definition of a 'relevant publisher' to whom the new system of exemplary damages will apply.

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20 http://www.justice.gov.uk/publications/policy/moj/proposals-for-broadcasting-selected-court-proceedings
21 http://lawcommission.justice.gov.uk/consultations/scandalising.htm
22 http://lawcommission.justice.gov.uk/areas/contempt.htm
23 http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780.asp

Section 43: Use of force in self-defence at place of residence

57. Section 43 amends section 76 of the Criminal Justice and Immigration Act 2008 so that the use of disproportionate force can be regarded as reasonable in the circumstances as the accused believed them to be when householders are acting to protect themselves or others from trespassers in their homes. The use of grossly disproportionate force would still not be permitted. The provisions also extend to people who live and work in the same premises and armed forces personnel who may live and work in buildings such as barracks for periods of time. The provisions will not cover other scenarios where the use of force might be required, for example when people are defending themselves from attack on the street, preventing crime or protecting property, but the current law on the use of reasonable force will continue to apply in these situations.

Section 44: Dealing non-custodially with offenders

58. In March 2012, the Ministry of Justice published a consultation on community sentencing entitled *Punishment and Reform: Effective Community Sentences* (Cm 8334). The consultation sought views on a set of proposed reforms to the way sentences served in the community operate in England and Wales. The Government announced its response to the consultation on 23 October 2012 (House of Commons, Official Report, column 50WS to 51WS)[24]. Amongst other things, the Government announced proposals to: require courts to include a punitive requirement in every community order; make greater use of restorative justice; and introduce a new electronic monitoring requirement. Section 44 and Schedule 16 give effect to these proposals. Proposals in the Government response to *Punishment and Reform* to allow courts to access information held by Her Majesty's Revenue and Customs and the Department for Work and Pensions for the purposes of sentencing and enforcing fines are also provided for by Schedule 16 and section 27 respectively.

Section 45: Deferred prosecution agreements

59. In May 2012, the Ministry of Justice published a consultation on proposals for a new tool to deal with corporate economic crime, known as 'Deferred Prosecution Agreements'. The Government published its response to the consultation on 23 October 2012 (House of Commons, Official Report, column 50WS)[25]. Section 45 and Schedule 17 make provision for Deferred Prosecution Agreements.

Section 46: Restraint orders and legal aid, and Section 47: Restraint orders and legal aid: supplementary

60. Section 41 of the Proceeds of Crime Act 2002 ("POCA") prohibits the use of restrained assets to pay for legal expenses related to the offences upon which the restraint order is predicated, which includes making a contribution towards the cost of legal aid. A relevant legal aid payment is that which a person subject to the restraint order is obliged to make under regulations made under sections 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in respect of legal aid provided in connection with the offences underlying the restraint order. Sections 46 and 47 of the Act amend section 41 of the POCA so that a restraint order must be made subject to an exception enabling relevant legal aid payments.

Section 48: Civil recovery of the proceeds etc of unlawful conduct, and Section 49: Investigations

61. Civil recovery under Part 5 of the POCA enables certain enforcement authorities to bring proceedings before the High Court or the Court of Session for the recovery of property which has been obtained through unlawful conduct, or property which represents property obtained through unlawful conduct. The value of the property must

24 https://consult.justice.gov.uk/digital-communications/effective-community-services-1
25 https://consult.justice.gov.uk/digital-communications/deferred-prosecution-agreements

not be less than £10,000. The action is taken against property rather than an individual, and so does not require a criminal conviction. A civil recovery investigation is an investigation to identify property which is, or represents, the proceeds of unlawful conduct. An investigation, however, cannot be undertaken if proceedings for a recovery order have been started in respect of the property, an interim receiving order or interim administration order applies to the property or the property is detained under section 295 of the POCA (the provisions in relation to detained cash).

62. The UK Supreme Court's judgment in the case of Perry v SOCA [2012] UKSC 35 effectively meant that orders made under Chapter 2 of Part 5 of the POCA did not extend to property outside the jurisdiction of the court, and that disclosure orders could not be made against persons who were not within the jurisdiction of the court. The Supreme Court also cast doubt on whether a disclosure order made under Part 8 of the POCA could go beyond property already known, although these comments were not a formal part of the judgment. The original policy intention behind the POCA was always that orders made under Chapter 2 of Part 5 of the POCA should reach beyond the jurisdiction of the court, as the proceeds of unlawful conduct are rarely held in one country and are often placed in jurisdictions where recovery is difficult. However, it was intended that the courts should only deal with cases which had some connection to the United Kingdom. Section 48 and 49, and accompanying Schedules 18, 19 and 25 seek to put this intention beyond doubt.

Section 50: Extradition

63. On 8 September 2010 the Government commissioned a review of the UK's extradition arrangements. The review was tasked to consider a number of specific issues, including whether the existing forum bar to extradition (in the Police and Justice Act 2006) should be brought into force; and the breadth of the Secretary of State's discretion in an extradition case. "A Review of the United Kingdom's Extradition Arrangements" ("the Baker review") was presented to the Home Secretary on 30 September 2011.[26]

64. In October 2012, the Government published its response to the Baker review.[27] Not only taking into account the recommendations made by the review panel, but also the concerns of Parliament and the public that enhanced protections were needed with regards to extradition, the Home Secretary announced her intention to legislate for a new forum bar that would "better balance the safeguards for defendants and delays to the extradition process which were predicted by [the Baker review]."[28] The Government also took the view that the discretion to consider final human rights representations in Part 2 extradition cases should be transferred from the Secretary of State to the courts. Section 50, and accompanying Schedule 20, gives effect to these policy objectives.

65. In the case of BH(AP) & Another v the Lord Advocate & Another (Scotland) [2012] UKSC 24, the UK Supreme Court raised concerns about the operation of certain aspects of the 2003 Act when an appeal of a devolution issue to the UK Supreme Court is made under the Scotland Act 1998. Part 3 of Schedule 20 addresses these concerns and amends the Extradition Act 2003 so that it properly takes account of appeals of devolution issues to the UK Supreme Court from the High Court of Justiciary. The High Court of Justiciary is the final court of appeal in relation to Scottish extradition proceedings except in relation to devolution issues.

Part 3: Miscellaneous and General

Section 51: Immigration cases: appeal rights; and facilitating combined appeals

66. Section 47 of the Immigration, Asylum and Nationality Act 2006 provides for the Secretary of State to make a decision that a person may be removed from the United

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26 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117673/extradition-review.pdf
27 http://www.official-documents.gov.uk/document/cm84/8458/8458.pdf
28 Ibid

Kingdom whilst the person has their leave extended so that they can bring an appeal against a decision on the variation, curtailment or revocation of their leave. Making both decisions and serving them simultaneously enables the two appeals to be considered at the same time. However, the Upper Tribunal concluded in the cases of both *Ahmadi*[29] and *Adamally and Jaferi*[30] that secondary legislation prevents the simultaneous service of these two decisions because the removal decision cannot be made until written notice of the decision to refuse to vary a person's leave to remain has been given to that person. To ensure section 47 of the 2006 Act remains effective, section 51 clarifies when the decision to remove can be made, so that written notice of this decision and the decision to refuse to vary, or to curtail or revoke, leave may be given in the same document or at the same time.

Section 52: Appeals against refusal of entry clearance to visit the UK

67. Section 4 of the Immigration Asylum and Nationality Act 2006 substituted a new version of section 88A for sections 88A, 90 and 91 of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act"). Under section 88A(1)(a), which was commenced on 9 July 2012, a person may not appeal against a refusal of an application for entry clearance as a visitor unless the application was made for the purpose of visiting a person of a class or description prescribed in regulations. The Immigration Appeals (Family Visitor) Regulations 2012[31] prescribes the class or description of family members and includes, for example, where the applicant is the spouse, civil partner, father, mother, son or daughter of the person in the UK being visited. In July 2011, the Home Office published a consultation document entitled "Family Migration: A Consultation"[32]. The consultation sought views on a wide range of family migration proposals, including whether the full right of appeal for family visitors should be retained. The response to the consultation was published on 13 June 2012[33]. In regards to full appeal rights for family visitors it was decided first to restrict (by narrowing the description of the person to be visited and introducing a sponsor status requirement) and then to remove the full right of appeal altogether. Applicants continue to be able to appeal on European Convention on Human Rights ("ECHR") and race discrimination grounds. The first stage was implemented through regulations made under section 88A of the 2002 Act[34], which was further commenced for this purpose[35]; section 52 of the Act gives effect to the second stage of these proposals.

Section 53: Restriction on right of appeal from within the United Kingdom

68. The power to exclude a foreign national from the UK is a prerogative power and the decision to do so must be made personally by the Secretary of State (normally the Home Secretary). The Secretary of State will take such a decision if information presented to her leads her to conclude that the exclusion of a person from the UK would be conducive to the public good. The exclusion decision itself is a direction, provided to officials, requiring a mandatory refusal of all applications for entry clearance or entry to the UK courtesy of paragraph 320(6) of the Immigration Rules[36].

69. In March 2011 the Court of Appeal in the case of *Secretary of State for the Home Department v MK (Tunisia)* [2011] EWCA Civ 333 upheld the decision of Mr Justice Collins in the High Court that, despite being subject to an exclusion decision, the claimant had an in country right of appeal against the order of the Secretary of State to cancel his leave to enter under article 13(7)(a) of the Immigration (Leave to Enter

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29 http://www.bailii.org/uk/cases/UKUT/IAC/2012/00147_ukat_iac_2012_ja_afghanistan.html
30 http://www.bailii.org/uk/cases/UKUT/IAC/2012/00414_ukut_iac_2012_ma_sj_srilanka.html
31 S.I. 2012/1532
32 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary
33 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/cons-fam-mig.pdf
34 The Immigration Appeals (Family Visitor) Regulations 2012 (S.I. 2012/1532)
35 The Immigration, Asylum and Nationality Act 2006 (Commencement No. 8 and Transitional and Saving Provisions) (Amendment) Order 2012 (S.I. 2012/1531)
36 http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/

and Remain) Order 2000[37]. The claimant had originally been granted refugee status and indefinite leave to enter the UK in 2001. The claimant had no right of appeal against the exclusion decision itself, but he did have a right of appeal under section 82(2)(e) of the 2002 Act, which gives a statutory right of appeal against a variation of a person's leave to enter or remain in the UK if, when the variation takes effect, the person has no leave to enter or remain. Under section 92(2) of the 2002 Act, this was an in country right of appeal, and under section 3D of the Immigration Act 1971 ("the 1971 Act"), a person has continuing leave while an appeal could be brought under section 82(1) of the 2002 Act. The Court of Appeal found that section 3D of the 1971 Act did not provide a power to exclude a person from entering the UK to exercise an in country right of appeal, and that the claimant had a right to return to the UK from abroad to exercise that right.

70. To ensure exclusion decisions remain effective, section 53 provides a certification power for the Secretary of State to remove the in country right of appeal against the decision of a Secretary of State to cancel an individual's leave to enter or remain in the UK on the grounds that the individual's presence in the UK would not be conducive to the public good.

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54: Deportation on national security grounds: appeals

71. The framework for appeals against a decision to make a deportation order, and other immigration decisions, is set out for most cases in Part 5 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). Section 82(1) of the 2002 Act provides that where an 'immigration decision' is made in respect of a person he may appeal to the Tribunal. Section 82(2) defines 'immigration decision' for the purposes of section 82(1). A decision to make a deportation order is an immigration decision by virtue of section 82(2)(j). Section 82(3A), however, provides that section 82(2)(j) does not apply to a decision to make a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007 ("the 2007 Act"); but a decision that section 32(5) applies is itself an immigration decision and therefore appealable. Section 32 of the 2007 Act requires the Secretary of State to make a deportation order in respect of 'foreign criminals' as defined in section 32(1), provided none of the exceptions set out in section 33 of the 2007 Act applies. Deportation orders made under section 32(5) of the 2007 Act are known as 'automatic deportation orders'.

72. Several sections in Part 5 of the 2002 Act qualify or restrict the right of appeal set out in section 82. In particular, section 92 makes provision for certain appeals to be in-country and therefore suspensive of removal, and for other appeals to be out of country and therefore non-suspensive of removal. Section 92(2) provides that an appeal under section 82(2)(j) against a decision to make a deportation order will be in-country, but an appeal against a refusal to revoke a deportation order need not be. An appeal against a decision that section 32(5) of the 2007 Act applies will not be in-country unless it is made in the circumstances described in section 92(4). Section 92(4)(a) provides that an appeal against any immigration decision will be in-country, if the appellant has made an asylum claim, or a human rights claim, while in the UK.

73. If an appeal falls to be in-country by virtue of section 92(4)(a), section 94(2) provides that the Secretary of State may nevertheless certify that the appellant's asylum or human rights claim is 'clearly unfounded'. The effect of a certificate under section 94(2) is that the appeal in question will not be in-country or suspensive of removal as a result of section 92(4)(a). A certificate under section 94(2) may not be appealed, but is amenable to challenge by way of judicial review.

74. An appeal against a deportation order which states that it is made in accordance with section 32(5) of the 2007 Act may therefore be rendered non-suspensive by a certificate

37 S.I. 2000/1161

under section 94 of the 2002 Act, and such a certificate could be subject to challenge by way of judicial review.

75. Section 97 of the 2002 Act provides for the Secretary of State to certify that an immigration decision was taken wholly or partly in the interests of national security or of the relationship between the UK and another country, or that an immigration decision was taken wholly or partly in reliance on information which should not be made public in the interests of national security, the relationship between the UK and another country, or otherwise in the public interest. Section 97A of the 2002 Act provides for the Secretary of State to certify that a person's deportation would be in the interests of national security. Certificates made under section 97 or section 97A have, among other consequences, the effect that appeals may not be brought or continued under Part 5 of the 2002 Act.

76. Section 2(1) of the Special Immigration Appeals Commission Act 1997 ("the 1997 Act") provides an alternative right of appeal when appeals under Part 5 of the 2002 Act are prevented or discontinued by virtue of certificates under section 97 or 97A of the 2002 Act. Section 2(2) of the 1997 Act then provides that certain provisions in the 2002 Act shall apply, with any necessary modifications, in relation to an appeal against an immigration decision under that section as they apply in relation to an appeal under section 82(1) of the 2002 Act. Section 2(2)(c) of the 1997 Act lists sections 78 and 79 of the 2002 Act. This means that when an immigration decision, including a decision to make or not to revoke a deportation order, is subject to a certificate under section 97 of the 2002 Act, the subject of the decision cannot be removed (section 78), and, where relevant, no deportation order can be made against him (section 79). Section 78(4) restricts the prohibition on removal so that it only applies if the appeal is in-country as a result of section 92 and is still pending, as per the definition in section 104 of the 2002 Act. Section 2(5) of the 1997 Act confirms that an appeal may only be brought under that section in-country if it could be brought or continued in-country under section 82(1) of the 2002 Act. This means that, in respect of most national security immigration decisions, including refusals to revoke a deportation order, it is possible to render appeals out of country using section 94 of the 2002 Act.

77. Section 97A of the 2002 Act is subject to amendment by section 54 of this Act. Prior to amendment, section 97A(2)(c) made alternative provision about the circumstances in which an appeal against a decision to make a deportation order in national security cases certified under section 97A(1) ("a certified decision") would be in-country. Section 97A(2)(a) provided that section 79 will not apply to a certified decision. This means the Secretary of State could make a deportation order while an appeal is still pending. This would have the effect of cancelling the person's leave to enter or remain. Section 97A is the only mechanism that would allow a deportation order to be made, and therefore a person to be deported, while their appeal is pending in a national security case.

78. Even in cases certified under section 97A in its original form, section 78 may have continued to prevent removal in relation to appeals which must be in-country as a result of section 92. But section 97A(2)(c)(i) provided that section 92 of the 2002 Act would not apply to a certified decision by virtue of section 92(2) to 92(3D) of the 2002 Act. This meant that an appeal against a certified decision was not automatically appealable in-country. Section 97A(2)(c)(ii) of the 1997 Act provided that section 92 of the 2002 Act would not apply to a certified decision by virtue of section 92(4)(a) of the 2002 Act in respect of an asylum claim. Section 97A(2)(c)(iii), however, provided that section 92(4)(a) of the 2002 Act was capable of applying to an appeal against a certified decision by reference to a human rights claim, unless the Secretary of State further certified that the removal of the person from the UK would not breach the UK's obligations under the ECHR. Such certification was subject to an in-country appeal as a result of section 97A(3). The effect of these provisions was that there would be a suspensive substantive appeal on the human rights challenge to a deportation order, but the challenge to the national security case would be out of country.

79. There have therefore been three broadly distinct sets of arrangements for making and challenging deportation orders: first, ordinary deportation orders, which are subject to an appeal with automatic suspensive effect; second, deportation orders made under section 32(5) of the 2007 Act, in which appeals may be non-suspensive if any asylum or human rights claim is certified as clearly unfounded; and, third, national security deportation orders, which may be certified under section 97A(2)(c)(iii) of the 2002 Act. Section 54, explained in detail below, amends the third of these sets of arrangements.

Section 56: Drugs and Driving

80. The Misuse of Drugs Act 1971 ("MD Act") prohibits the production, import, export, possession and supply of "controlled drugs" (subject to regulations made under the MD Act). The definition of the term controlled drugs is set out in section 2 of the MD Act. However, it is not an offence under the MD Act to have a controlled drug in your body. Also in relation to drugs, section 4 of the Road Traffic Act 1988 ("the 1988 Act") makes it a criminal offence to drive, or be in charge of, a mechanically propelled vehicle when under the influence of drink or drugs. The difficulties involved in proving impairment due to drugs means that section 4 of the 1988 Act is not often used in drug driving cases. While section 5 of the 1988 Act makes it a separate offence to drive or be in charge of a motor vehicle with an alcohol concentration above the prescribed limit, no similar offence exists for drugs.

81. In December 2009, Sir Peter North CBE QC was appointed, by the then Secretary of State for Transport, to conduct an independent review of the law on drink driving and drug driving. Sir Peter North's *Report of the Review of Drink and Drug Driving Law* was published in June 2010 and made a variety of recommendations in regards to drink and drug driving, including that further consideration should be given to introducing a new specific offence of driving or being in charge of a motor vehicle with a concentration of a controlled drug above a specified limit. Following Sir Peter North's report the Transport Select Committee published, in December 2010, a report on drink and drug driving law (HC 460). The Committee favoured the adoption of a "zero-tolerance" offence for illegal drugs which are known to impair driving.

82. The Secretary of State for Transport made a written ministerial statement on 21 March 2011 (House of Commons, Official Report, column 44WS to 46WS) which announced the publication of the Government's response to the reports by Sir Peter North and the Transport Select Committee on Drink and Drug Driving (CM 8050). The response endorsed Sir Peter North's recommendation that the case for a new offence relating to drug driving should be examined further. Section 56 of the Act provides for such an offence.

Section 57: Public Order Offences

83. It is an offence under section 5 of the Public Order Act 1986 to use threatening, abusive or insulting words or behaviour, or disorderly behaviour, within the sight or hearing of a person likely to be caused harassment, alarm or distress. It is also an offence under section 5 to display any writing or other visible representation which is threatening, abusive or insulting and likely to cause harassment, alarm or distress.

84. Section 57, which was inserted by a non-Government amendment passed during Lords Report stage, removes the word 'insulting' from section 5, thereby decriminalising insulting words, behaviour etc in the hearing or sight of someone likely to be caused harassment, alarm or distress.

TERRITORIAL EXTENT AND APPLICATION

85. With the exception of certain provisions in Part 2 and section 57 which extend to England and Wales only, and section 56 and Schedule 22 (drugs and driving) which extend to Great Britain, the Act extends to the whole of the United Kingdom. However, the application to Northern Ireland of the provisions in respect of the National Crime

Agency (Part 1), and the amendments made to the Proceeds of Crime Act 2002 (by sections 48 and 49 and Schedules 18 and 19), is circumscribed by Schedules 24 and 25; and, as a result of the provisions in those Schedules, the provisions in the Act as a whole relate to non-devolved matters in Northern Ireland. In relation to Wales the provisions largely relate to non-devolved matters. In relation to Scotland the Act addresses both devolved and non-devolved matters.

86. The following provisions in the Act which extend to Scotland relate to matters which are reserved or otherwise not within the legislative competence of the Scottish Parliament:

- Certain consequential amendments arising from the creation of the single county court and single family court in England and Wales (Schedules 9 to 11);
- The amendments to the Constitutional Reform Act 2005 relating to the UK Supreme Court (sections 20 and 29 to 31, and Parts 1 and 2 of Schedule 13);
- The amendments to the Constitutional Reform Act 2005 in respect of the procedure for judicial appointments (section 20 and Parts 2 to 4 of Schedule 13);
- The provisions in respect of the flexible deployment of judges and members of tribunals (section 21 and Schedule 14);
- Provision for the transfer of immigration and nationality judicial reviews from the Court of Session to the Upper Tribunal (section 22);
- Restoration of the second-tier appeal test in Scotland (section 23);
- The creation of information gateways (sections 27 and 28, and Part 7 of Schedule 16);
- The amendments to the Extradition Act 2003 (section 50 and Schedule 20);
- Amendments to immigration legislation, including in respect of appeal rights, deportation on national security grounds and the enforcement powers of immigration officers (sections 51 to 55 and Schedule 21); and
- The creation of a specific offence of drug driving (section 56 and Schedule 22).

87. In relation to Scotland, the provisions in Part 1 of the Act relate to a mix of reserved and devolved matters. The amendments to the Proceeds of Crime Act 2002 made by sections 48 and 49 and Schedules 18 and 19 concern, to some extent, matters within the legislative competence of the Scottish Parliament. The provisions extending the enforcement powers of immigration officers and in respect of drug driving alter the executive competence of Scottish Ministers.

88. In relation to Wales the provisions of the Act do not relate to devolved matters or confer functions on the Welsh Ministers.

89. The following provisions in the Act which extend to Northern Ireland relate to matters which are excepted, reserved or otherwise not within the legislative competence of the Northern Ireland Assembly:

- The National Crime Agency (Part 1 as modified by Schedule 24);
- The amendments to the Constitutional Reform Act 2005 relating to the UK Supreme Court (section 20 and Parts 1 and 2 of Schedule 13, and sections 29 to 31);
- The amendments to the Constitutional Reform Act 2005 in respect of the procedure for judicial appointments (section 20 and Parts 2 to 4 of Schedule 13);
- The provisions in respect of the flexible deployment of judges and members of Tribunals (section 21 and Schedule 14);

- Provision for the transfer of immigration and nationality judicial reviews from the High Court to the Upper Tribunal (section 22);
- The creation of information gateways (sections 27 and 28, and Part 7 of Schedule 16);
- The amendments to the Proceeds of Crime Act 2002 made by sections 48 and 49 and Schedules 18 and 19, as modified by Schedule 25;
- The amendments to the Extradition Act 2003 (section 50 and Schedule 20); and
- Amendments to immigration legislation, including in respect of appeal rights, deportation on national security grounds and the enforcement powers of immigration officers (sections 51 to 55 and Schedule 21);

90. Schedule 24 and 25 contain a number of order-making powers which enable certain provisions in Part 1, sections 48 and 49 and Schedules 18 and 19 to be extended to Northern Ireland with the consent of the Northern Ireland Assembly.

COMMENTARY ON SECTIONS

Part 1: The National Crime Agency

91. The territorial extent of the provisions in Part 1 are subject to Schedule 24 (The NCA: Northern Ireland).

Section 1: The National Crime Agency

92. *Subsection (1)* establishes the National Crime Agency ("NCA") which will be made up of NCA officers. *Subsection (2)* provides for the NCA to be headed by a Director General who will also be an NCA officer. The NCA will be under the direction and control of the Director General who will be operationally independent of Ministers.

93. *Subsections (3) to (11)* provide for the functions of the NCA. These consist of the functions conferred by this section (*subsection (3)(a)*), the functions set out in the Proceeds of Crime Act 2002 (*subsection (3)(b)*) and other functions conferred by this Act and by other enactments (*subsection (3)(c)*). Those other functions will include, for example, being a protection provider for the purpose of the protection of witnesses and other persons under section 82 of the Serious Organised Crime and Police Act 2005.

94. The NCA's principal functions will be the crime reduction function (*subsection (4)*) and the criminal intelligence function (*subsection (5)*).

95. The crime reduction function relates to securing that efficient and effective activities to combat organised crime and serious crime are carried out (whether by the NCA, other law enforcement agencies, or other persons). *Subsections (6) to (10)* amplify the nature of this function and how it may, or may not, be discharged. In discharging this function, the NCA may itself undertake activities to combat serious crime and organised crime, including by preventing, detecting or investigating such crime, or otherwise. *Subsection (11)* explains the reference to 'activities to combat crime'. When discharging functions relating to organised or serious crime, the NCA may carry out activities in relation to any kind of crime (*paragraph 5* of Schedule 1). This reflects the role of the NCA in the reduction of crime in other ways (*subsection (11)(c)*) and mitigating the consequences of crime (*subsection (11)(d)*). This acknowledges that the investigation and prosecution of organised criminals is only one of the strategies that may be deployed to tackle organised criminality and that there are a range of disruption tactics that will need to be deployed by the NCA in order to reduce the harm and impact caused by organised criminal groups.

96. In addition to undertaking activities of its own, the NCA may discharge its crime-reduction function in other ways by: ensuring that other law enforcement agencies and

others also carry out activities to combat serious and organised crime (*subsection (8)*); and by improving co-operation between law enforcement and other agencies to combat serious crime and organised crime and by improving co-ordination of their collective efforts to combat serious crime and organised crime (*subsection (9)*).

97. The role of the NCA in tackling serious crime and organised crime does not include the function of the NCA itself prosecuting offences or, in Scotland, the NCA itself instituting criminal proceedings (*subsection (10)*). In England and Wales the prosecutorial function will be undertaken by the Crown Prosecution Service and the Serious Fraud Office and in Northern Ireland the prosecutorial function will be undertaken by the Public Prosecution Service, whilst in Scotland responsibility for instituting criminal proceedings and prosecuting offences rests with the Crown Office and Procurator Fiscal Service.

98. *Subsection (12)* gives effect to Schedule 1.

Schedule 1: The NCA & NCA Officers

99. *Paragraph 1* provides that the NCA will carry out its functions on behalf of the Crown. In form, the NCA will be a crown body without incorporation. The NCA will be classified as a Non-Ministerial Department.

100. *Paragraph 2* places a duty on the Director General to secure that NCA functions are discharged efficiently and effectively.

101. *Paragraph 3* identifies the financial year of the NCA and includes a transitional provision whereby the first financial year of the Agency begins on the day that the NCA is formally established (by virtue of the commencement of section 1) and ends on the following 31 March.

102. *Paragraph* 4 provides that the NCA will be able to charge for any service it provides to a person at their request.

103. *Paragraph 5*provides that for the purposes of the discharge of NCA functions which relate to organised or serious crime, the NCA may carry on activities in relation to any kind of crime (*sub-paragraph (1)*). This enables the NCA to tackle other crimes that are not serious and/or organised where the outcome will support the disruption or other mitigation of an organised crime group or another serious and/or organised crime. *Sub-paragraph (2)* provides that an NCA officer designated with operational powers is not prevented from exercising their powers in relation to a crime that is not serious or organised where they reasonably suspect that an offence is about to be or is being committed.

104. *Paragraph 6* preserves the role of the Lord Advocate in respect of the investigation and prosecution of crime in Scotland. The NCA may only carry out its activities in relation to an offence which it suspects has been committed (or is being committed) in Scotland, if it does so with the agreement of the Lord Advocate (*sub-paragraph (1)*). In carrying out such activities in Scotland an NCA officer must comply with any directions from the Lord Advocate or the procurator fiscal (*sub-paragraph (2)*). And if an NCA officer suspects an offence has been committed or is being committed in Scotland the NCA officer must notify the procurator fiscal as soon as is practicable (*sub-paragraph (3)*).

105. *Paragraph 7*provides for the selection and appointment of the Director General. The Director General is to be appointed by the Secretary of State (in practice, the Home Secretary) following consultation with Scottish Ministers and the Department of Justice in Northern Ireland. The terms and conditions of appointment are to be determined by the Secretary of State, save that *sub-paragraph (6)* provides for a maximum term of up to five years (there is no bar on re-appointment). The provisions in sections 10 to 14 of the Constitutional Reform and Governance Act 2010, which governs the appointment of civil servants, will not apply to this appointment (*sub-paragraph (7)*). Appointment will

be on merit and the process will be conducted in accordance with the Code of Practice on Public Appointments as set out by the Commissioner for Public Appointments.

106. *Paragraph 8* provides that the Home Secretary may require the Director General to retire or resign in the interests of efficiency or effectiveness, or by reason of any misconduct. Before calling upon the Director General to retire or resign, the Home Secretary must: write to the Director General setting out his or her reasons for so doing; give the Director General the opportunity to make written representations; and consider any such representations made by the Director General. The Home Secretary must also consult Scottish Ministers and the Department of Justice in Northern Ireland.

107. *Paragraph 9* provides that the Director General is responsible for the selection and appointment of other NCA officers and determining their terms and conditions (with the agreement of the Minister for Civil Service), in accordance with the Civil Service Management Code and any other Civil Service policy set by the Minister for the Civil Service.

108. *Paragraph 10*provides that the Director General may delegate his or her functions to a designated senior NCA officer. A designation may extend to one or more senior NCA officers. A senior officer means an NCA officer who is at, or above, a grade specified for this purpose by the Home Secretary in the framework document (which is dealt with in Part 1 of Schedule 2). The power to delegate is subject to any restriction or limitation on the exercise of the function, for example, the Director General's functions in respect of directed tasking under section 5.

109. *Paragraph 11* ensures that the role and responsibilities of the Director General will not be affected by a change in the individual holding the office of Director General. Additionally, it provides that any NCA officer may take up the role and/or responsibilities of any other NCA officer except the Director General.

110. *Paragraph 12* provides that where a person already holds an office with operational powers on becoming an NCA officer – such as the office of constable, officer of Revenue and Customs, or immigration officer – that office is suspended whilst that person remains an NCA officer. The office held is revived once the person ceases to be an NCA officer and returns to his or her previous service. These provisions cease to apply to a person who resigns from or ceases to hold their original office. The effect of the suspension provided for in paragraph 12 is that a person is not bound by their office whilst serving as an NCA officer. The only exception is the office of special constable or a constable in the Police Service of Northern Ireland ("PSNI") Reserve, which a person may continue to hold without suspension while serving as an NCA officer.

111. *Paragraph 13* provides for secondments/attachments to the NCA and establishes that individuals seconded into or attached to the NCA from other organisations will be NCA officers. It further provides that police officers on secondment or attachment to the NCA will be under the direction and control of the Director General. *Paragraph 14*makes equivalent provision for the secondment of NCA officers to UK police forces.

112. *Paragraph 15* provides for the NCA to be able to draw on the expertise and contribution of volunteer officers. *Sub-paragraphs (1) to (3)* provide for the Director General to select such persons for appointment on an unpaid and part-time basis, and for them to be known as "NCA specials". The terms and conditions for the appointment are to be determined by the Director General. *Sub-paragraph (4)* provides that the unpaid nature of NCA specials does not prevent the reimbursement of expenses incurred; or the provision of subsistence, accommodation or training; or the payment of compensation for loss attributable to injury or death resulting from their activity as an NCA special. *Sub-paragraph (5)* provides that the Director General may designate an NCA special with the powers and privileges of a constable, but not the powers of a customs officer or immigration officer. *Sub-paragraph (6)* provides that an NCA special can only be designated with the powers and privileges of a constable in England and Wales and the adjacent United Kingdom waters, and not in Scotland, Northern Ireland or overseas.

Sub-paragraphs (7) and *(8)* exclude NCA specials from some provisions applying to other NCA officers. *Sub-paragraphs* (*9*) and (*10*) also exclude NCA specials from the effects of sections 13 and 14 relating to restrictions on the right to strike in relation to NCA officers holding operational powers, and the setting of pay and allowances. *Sub-paragraph (11)* provides for the suspension of the powers of an NCA special whenever that person acts as special constable or a member of the PSNI Reserve. The effect of this provision is to ensure a person is not able to use the powers of an NCA special when he or she acts as a special constable or a member of the PSNI Reserve. *Sub-paragraph (12)* provides that a person is not a civil servant by virtue of being an NCA special.

Section 2: Modification of NCA functions

113. This section enables the Secretary of State, by order (subject to the super-affirmative procedure (*subsection (5)*) set out in Schedule 23), to make further provision about NCA counter-terrorism functions. By virtue of *subsection (1)(a)* the power may be used to add, remove or otherwise modify such functions. By virtue of *subsection (1)(b)* any order may contain other provisions in connection with, or consequential upon, the altering of NCA functions.

114. *Subsection (2)* provides that if an order is made under *subsection (1)* an NCA officer may only carry out activities in Northern Ireland in relation to the discharge of a function in relation to counter-terrorism with the prior agreement of the Chief Constable of the Police Service of Northern Ireland.

Section 3: Strategic priorities

115. This section requires the Home Secretary to determine the strategic priorities for the NCA. Such priorities may, for example, include protecting the public against illegal drugs, human trafficking and cyber crime. These 'strategic priorities' are to be set in consultation with "the strategic partners" (who are defined in section 16), the Director General, and anyone else the Home Secretary considers appropriate.

Section 4: Operations

116. This section enshrines the operational independence of the Director General and determines how this relates to the strategic direction set by the Home Secretary. The Home Secretary will set the strategic priorities of the NCA, and will issue a framework document for the NCA (see further below). As part of the annual plan, the Director General will explain how he or she intends that the strategic and operational priorities will be given effect to. It will be for the Director General to determine which operations to mount and how they will be conducted (*subsection (1)*). The Director General must have regard to the strategic priorities, annual plan and framework document in exercising his or her functions *(subsection (2)*).

117. *Subsections (3) to (9)* make provision in respect of the annual plan. They provide that at the beginning of each financial year, the Director General must publish an annual plan setting out how the Director General intends that NCA functions are to be exercised for that year. The plan must include any strategic and operational priorities (operational priorities must be consistent with the current strategic priorities), and explain how the Director General intends to deliver against both sets of priorities *(subsection (4)*). In developing the annual plan, the Director General must consult the "strategic partners" (defined in section 16(1)) and anyone else he or she considers appropriate (*subsection (6)*). The duty to consult and approve the plan with Scottish Ministers and the Department of Justice in Northern Ireland, as two of the strategic partners, only applies in so far as the plan relates to activities in Scotland and Northern Ireland respectively (*subsections (7) and (8)*). The Home Secretary must approve the annual plan before it is issued by the Director General (*subsection (8)*).

118. *Subsection (10)* gives effect to Schedule 2.

Schedule 2: The framework document & annual report

119. Part 1 of Schedule 2 makes provision in respect of the NCA framework document. The framework document will in effect be a joint statement of how the Home Secretary and Director General propose to work together, and how they wish the NCA to operate.

120. *Paragraph* 1 provides that the framework document will set out the ways in which the NCA is to operate. In particular it will set out the ways in which NCA functions are to be exercised and the ways in which the NCA is to be administered, for example, the governance and accountability of the Agency including the respective roles of the Home Secretary and Director General; the arrangements in respect of financial and performance management; and the proactive disclosure of information.

121. *Paragraph 2* places a duty on the Secretary of State to issue the framework document and keep it under review and revise it as and when appropriate.

122. *Paragraph 3* provides that the Home Secretary must have regard to the framework document in exercising functions in relation to the NCA. Similarly section 3(2) provides that the Director General must have regard to the framework document when exercising his or her functions.

123. *Paragraph 4* requires that the Home Secretary must consult and obtain the approval of the Director General before issuing any framework document. *Paragraph 5* requires the Secretary of State to consult Scottish Ministers and the Department of Justice in Northern Ireland in preparing the first framework document or any subsequent revision which is, in the Home Secretary's view significant..

124. *Paragraph 6* requires the Secretary of State to lay the framework document (and any subsequent revisions) before Parliament and arrange for it to be published in the manner which the Home Secretary considers appropriate. The Scottish Ministers and the Department of Justice in Northern Ireland are required to lay a copy of the report before the Scottish Parliament and the Northern Ireland Assembly respectively.

125. Part 2 of Schedule 2 makes provision in respect of the NCA annual report.

126. *Paragraph 7* places a duty on the Director General to issue an annual report on the exercise of the NCA functions during that year which must include an assessment of the extent to which the annual plan has been carried out.

127. *Paragraph 8* requires the Director General to arrange publication of the annual report in a manner which he or she considers appropriate but the Director General must send a copy of it to the strategic partners and the Secretary of State. The Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland are required to lay a copy of the report before Parliament, the Scottish Parliament and the Northern Ireland Assembly respectively.

Section 5: Relationships between NCA and other agencies: tasking etc

128. *Subsections (1) to (4)* provide for 'voluntary' arrangements to perform a task. *Subsections (1) and (2)* enable the Director General to request a UK police force or a UK law enforcement agency to perform a task if the Director General considers that performance of the task would assist the NCA to exercise functions and explains how performance of the task would assist the exercise of functions.

129. Similar provisions are made for UK police forces and UK law enforcement agencies to request the NCA to perform a task (*subsections (3) and (4)*).

130. *Subsections (5) to (9)* provide for 'directed' arrangements to perform a task. In certain limited and specified circumstances (see below) the Director General may direct the chief officer of an England and Wales police force or the Chief Constable of the British Transport Police to perform a task specified in a direction where the performance of the task would assist the NCA to exercise functions; it is expedient for the directed

person to perform that task; and voluntary arrangements cannot be made or made in time (*subsections (5) and (6)*). The directed person must comply with the direction (*subsection (7)*). Directions to the Chief Constable of the British Transport Police will require prior consent from the relevant Secretary of State (*subsection (9)*).

131. *Subsection (10)* gives effect to Schedule 3 (relationships between NCA and other agencies). *Subsection (11)* provides that the arrangements in respect of the apportionment of costs, as set out in Part 5 of Schedule 3, are to apply to these voluntary and directed tasking arrangements. *Subsection (12)* signposts the power in paragraph 33 of Schedule 3 which enables the Secretary of State to amend, by order (subject to the affirmative resolution procedure), the list of partners subject to directed tasking and the persons, if any, from whom the Director General of the NCA is required to seek consent before exercising the power of direction.

Schedule 3: Relationships between NCA and other agencies

Part 1: Co-operation

132. *Paragraph 1* places a duty on NCA officers to co-operate with specified persons in order to assist them in their activities to combat crime. It also places a reciprocal duty on members of the armed forces, coastguard and those specified persons to co-operate with NCA officers in the discharge of NCA functions.

133. *Paragraph 2* enables the NCA to enter into co-operation arrangements with other persons for the purposes of discharging any of its functions, such as Police Collaboration Agreements under the Police Act 1996

Part 2: Exchange of information

134. *Paragraph 3* creates a duty on chief officers of UK police forces (as defined in section 16(1)) to keep the NCA informed about certain information and when requested to disclose that information to the NCA. *Sub-paragraph (1)* creates a duty on police forces to inform the Director General of the NCA about any information held by them which is considered by the chief officer to be relevant to the exercise by the NCA of any of its core functions (namely, the crime-reduction function, the criminal intelligence function or functions under the Proceeds of Crime Act 2002). This duty applies to chief officers of police forces in England and Wales, Northern Ireland and Scotland, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. *Sub-paragraph (2)* creates a duty on the chief officer to then disclose that information to the NCA if the Director General makes a request for it. *Sub-paragraph (3)* provides that paragraph 3(1) does not require a chief officer to keep the Director General informed of information that appears to the chief officer to be information obtained from the NCA.

135. *Paragraph 4* imposes a duty on the Director General of the NCA to keep chief officers of UK police forces (as defined in section 16(1)) informed about certain information and is reciprocal in nature to the duty in paragraph 3(1). *Sub-paragraph (1)* creates a duty on the Director General to notify chief officers of any information that the NCA possesses which is considered by the Director General to be relevant to the exercise of a function of the chief officer or any other member of that police force. This duty applies to the Director General in respect of chief officers of police forces in England and Wales, Northern Ireland and Scotland, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. *Sub-paragraph (2)* provides that the duty imposed by paragraph 4(1) does not require the Director General to keep the chief officer informed of information which appears to the Director General to be information obtained from chief officer or any other member of that police force.

136. *Paragraphs 5 to 7* make like provision to that in paragraphs 3 and 4 in respect of other specified bodies, (as defined in paragraph 7) namely the Serious Fraud Office, Border Force and the Director of Border Revenue. By virtue of *paragraph 34*the Secretary of State may by order (subject to the affirmative procedure) amend paragraph 7 so as to

add further persons to the list of Government bodies who will be subject to the duty to keep the NCA informed of information.

Part 3: Assistance within the UK

137. *Paragraph 8* allows for the Director General of the NCA to provide assistance (in the form of officers and other such support) to operate under the direction and control of a UK police force, a UK law enforcement agency, an Island police force or an Island law enforcement agency if they make a specified request for assistance. If a request is made the Director General of the NCA may provide such assistance as the Director General of the NCA considers appropriate.

138. *Paragraph 9* enables a UK police force or a UK law enforcement agency to provide assistance (whether in the form of officers to operate under the direction and control of the NCA or other support) if the Director General of the NCA makes a request for assistance. The person providing the assistance may provide such assistance as they consider appropriate.

139. *Paragraph 10*enables the Home Secretary to direct the Director General of the NCA to provide specified assistance to an England and Wales police force and other listed persons if it appears to the Home Secretary that it is appropriate for directed assistance to be given by the Director General of the NCA.

140. *Paragraph 11* enables the Director General of the NCA to direct a listed person in sub-paragraph (1) to provide specified assistance to the NCA. Such directions may only be given if the Director General of the NCA considers it appropriate for the NCA to receive directed assistance and is subject to the prior consent of the relevant minister as specified in *paragraph 11(3)*.

141. *Paragraphs 12 and 13* concern directed assistance to and from the NCA in relation to Scotland. These enable Scottish Ministers to direct the Director General of the NCA to provide specified assistance to the Police Service of Scotland if Scottish Ministers consider it appropriate for the Police Service of Scotland to receive directed assistance from the NCA and the Home Secretary consents. Scottish Ministers will also have the power to direct the Police Service of Scotland to provide specified assistance to the NCA if Scottish Ministers consider it appropriate for the NCA to receive directed assistance from the Police Service of Scotland.

142. *Paragraphs 14 and 15* make corresponding provision in relation to Northern Ireland. This enables the Department of Justice in Northern Ireland to direct the Director General of the NCA to provide specified assistance to the Police Service of Northern Ireland, if the Department of Justice in Northern Ireland considers it appropriate for the Police Service of Northern Ireland to receive such directed assistance and the Home Secretary consents. It also provides the Department of Justice in Northern Ireland with the power to direct the Police Service of Northern Ireland to provide specified assistance to the NCA, subject to the Department of Justice in Northern Ireland considering it appropriate for the NCA to receive such directed assistance and subject to consultation with the Northern Ireland Policing Board and other persons that the Department of Justice in Northern Ireland considers appropriate to consult.

143. *Paragraph 16* provides that directed assistance powers can only be used where there is a special need for assistance and where it is expedient for the directed party to provide it. It must also be the case that voluntary arrangements cannot be made, or cannot be made in time.

144. *Paragraph 17* describes the form that assistance may take, including (but not limited to) the loan of persons or equipment.

145. *Paragraph 18* provides that individuals who are provided under the assistance provisions will fall under the direction and control of the assisted person.

Part 4: Use of police facilities etc by NCA

146. It is not expected that the NCA will maintain its own custody facilities. Accordingly Part 4 of Schedule 3 enables the NCA to use premises, equipment, facilities or services of police forces, and immigration and customs facilities in accordance with an agreement made between the NCA and such bodies.

147. *Paragraph 19* provides for voluntary arrangements to be made between the Director General and police and crime commissioners, or the chief constable of police forces listed in Schedule 1 to the Police Act 1996 (police forces in England and Wales outside London), for the NCA to make use of their police facilities.

148. *Paragraph 20* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the Metropolitan Police Force.

149. *Paragraph 21* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the City of London Police Force.

150. *Paragraph 22* enables the Director General to make voluntary arrangements for the NCA to use immigration or customs facilities.

151. *Paragraph 23* provides that the Secretary of State may direct a police force in England & Wales to make arrangements for the use of facilities under *paragraph 19*, *20 or 21* of this Schedule, in the absence of satisfactory voluntary arrangement made under those paragraphs.

152. *Paragraph 24*enables the Director General of the NCA to make voluntary arrangements for the NCA to use facilities made available to the Police Service of Northern Ireland. In the absence of a satisfactory voluntary arrangement, under *paragraph 24*, *paragraph 25* enables the Department of Justice in Northern Ireland, with the consent of the Secretary of State, to direct the Director General and the Northern Ireland Policing Board to make arrangements for the NCA to use the facilities made available by the Police Service of Northern Ireland.

153. *Paragraph 26* provides that facility-sharing arrangements must specify or describe the facilities that are the subject of such arrangements (*sub-paragraph (1)*), and may be varied or terminated by the parties (*sub-paragraph (2)*) unless it was made in compliance with a direction, in which case consent must be obtained from the person who gave the direction (*sub-paragraph (3)*).

154. *Paragraph 27*provides that before a person ('D') gives a direction under this Part of the Schedule to a person ('P'), D must notify P of the proposal, and consider representations from P.

155. *Paragraph 28* provides that facilities means premises, equipment and other material, facilities and services.

Part 5: Payment for tasks, assistance or facilities

156. *Paragraphs 29 to 31* make provision for the NCA, police fundholding bodies and law enforcement agencies to pay for tasks, assistance or facilities. However, the parties involved may decide that there should be no such charging.

157. *Paragraph 32* defines the 'appropriate amount' that should be paid as an amount agreed by both parties or, in the absence of such agreement, an amount determined by the Secretary of State. If responsibility for either of the parties is devolved, the Secretary of State must consult with the appropriate devolved administration.

Part 6: General

158. *Paragraph 33* provides an order-making power (subject to the affirmative resolution procedure) by which the Secretary of State may amend the list of partners subject

to directed tasking and assistance arrangements (at section 5 or *paragraph 11* of Schedule 3). The Secretary of State may, in particular, add or remove persons (who were added). But none of the following may be added: the Commissioners for Her Majesty's Revenue and Customs, the Chief Constable for the Police Service of Scotland, any person operating only in Scotland, the Chief Constable of the Police Service of Northern Ireland, and any person operating only in Northern Ireland. The Secretary of State may also amend the requirements for the Director General to seek prior consent from agencies or bodies before issuing directions. Before using this power, the Secretary of State must consult the affected person.

159. *Paragraph 35*places a duty on a person given a direction to comply with it (*sub-paragraph (1)*) and limits the extent of a direction by ensuring that it must not relate to any prosecution function (*sub-paragraph(2)*).

Section 6: Duty to publish information

160. *Subsection (1)* places a duty on the Director General to publish information about the exercise of the NCA's functions and other matters relating to the NCA. *Subsections (2)* and *(3)* specify that in carrying out this duty, the Director General must comply with any requirements set out in the Framework Document.

161. *Subsection (4)* provides the duty to publish information is subject to Schedule 7. This imposes limits on the information that can be published. For example, information obtained from HM Revenue and Customs can only be published with the consent of the Commissioners for Revenue and Customs.

Section 7: Information gateways

162. Section 7 is a broad information gateway. *Subsection (1)* authorises any person to disclose information to the NCA if the disclosure is made for the purposes of the exercise of any NCA function.

163. The only exception to the general power in *subsection (1)* is set out in *subsection (2)* which provides *subsection (1)* does not authorise a person serving in the Security Service, Secret Intelligence Service or GCHQ to disclose information to the NCA so any disclosure of information by such a person to the NCA would be made in accordance with the relevant intelligence service arrangements as defined in *subsection (10)*.

164. *Subsection (3)* provides information obtained by the NCA in connection with the exercise of any NCA function may be used by the NCA in connection with the exercise of any other NCA function. For example, information obtained in the course of gathering criminal intelligence may be used in connection with NCA's crime reduction function.

165. *Subsection (4)* provides that the NCA may disclose information in connection with the exercise of any NCA function if the disclosure is for any "permitted purpose". The term "permitted purpose" is defined in section 16(1). This would apply in situations where, for example, the NCA has received information on suspected criminal activity (such as a 'Suspicious Activity Report' – which help banks and financial institutions protect themselves and their reputation from criminals and help law enforcement to track down and arrest them) and has decided to share this information with an organisation or person outside the NCA (such as a financial institution) for the purpose of preventing or detecting crime.

166. *Subsection (5)* makes it clear that *subsection (4)* only authorises an NCA officer to disclose information obtained under Part 6 of the POCA for the purpose of: the exercise of the functions of the Lord Advocate under Part 3 of the POCA (Scottish confiscation); the exercise of functions by Scottish Ministers under or in relation to Part 5 of the POCA (civil recovery to the proceeds of crime etc).

167. *Subsection (6)* provides that an NCA officer may not disclose information obtained by the NCA under Part 6 of the POCA (revenue functions) under *subsection (4).* An NCA officer may only disclose information obtained under Part 6 of the POCA in accordance with the provisions set out in *subsection (7).*

168. *Subsection (7)* provides that an NCA officer may disclose information obtained under Part 6 of the POCA if the disclosure is to the Commissioners for Revenue and Customs; to the Lord Advocate for the purpose of specified functions; to any person for the purpose of civil proceedings which relate to a matter in respect of which the NCA has functions; or to any person in compliance with an order of a court or tribunal.

169. *Subsection (8)* provides that a disclosure of information in accordance with Part 1 of the Act does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information however imposed (including any statutory restrictions other than those set out in Schedule 7 to the Act). In practice, this provision allows the police, law enforcement agencies, banks and other financial institutions to share information with the NCA and vice versa about organised crime activity, which could involve the disclosure of personal banking records.

Section 8: Other functions etc

170. *Subsections (1) and (2)* add the NCA to the list of bodies subject to the duty in sections 11 (which relates to England) and 28 (which relates to Wales) of the Children Act 2004. Sections 11 and 28 of the Children Act impose a duty on specified agencies to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children. The aim of this duty is to:

- ensure that agencies give appropriate priority to their responsibilities towards the children in their care or with whom they come into contact; and
- encourage agencies to share early concerns about safety and welfare of children and to ensure preventative action before a crisis develops.

171. This duty will be particularly relevant to the work of the NCA in tackling child sex abuse and the human trafficking of children.

172. *Subsections (3) and (4)* provide a general power to the NCA to assist governments or other bodies exercising functions of a public nature outside the British Islands.

173. *Subsection (6)* gives effect to Schedule 4 (NCA General).

Schedule 4: NCA: general

174. *Paragraph 1* allows the Secretary of State to make regulations (subject to the negative resolution procedure) governing the equipment used by the NCA. *Sub-paragraph (2)* enables regulations to be made, for example, in relation to the use of specified equipment. The use of equipment may also be prohibited under the regulations. The NCA is required to comply with any conditions specified in the regulations on the use of equipment. Before making such regulations under *paragraph 1*, the Secretary of State must first consult the Director General of the NCA and any other persons considered appropriate (*sub-paragraph (3)*).

175. Equipment under paragraph 1 includes vehicles, headgear and protective and other clothing (*sub-paragraph (4)*).

176. *Paragraph 2*establishes the NCA's liability in respect of unlawful conduct of any persons acting under the auspices of the NCA in the same way that an employer is liable for the unlawful conduct of employees in the course of their employment.

177. *Sub-paragraphs (2) to (4)* set out the circumstances under which the NCA will be liable for the unlawful actions of persons carrying out functions in relation to the NCA. *Sub-paragraph (2)* sets out the NCA's liability in relation to constables or other persons

carrying out functions whilst seconded to the NCA or when providing assistance to the NCA under Part 3 of Schedule 3. *Sub-paragraph (3)* covers the NCA's liability in relation to the conduct of a person other than an NCA officer who is a member of an NCA-led international joint investigation team, when that person is carrying out functions as a member of that team. *Sub-paragraph (4)* covers the unlawful conduct of a person carrying out surveillance under section 76A of the Regulation of Investigatory Powers Act 2000.

178. *Sub-paragraph (5)* provides that the NCA will be a joint tortfeasor when the unlawful conduct is a tort.

179. *Sub-paragraph (6)* provides that where the Secretary of State receives reimbursement through an international agreement for any sums of money paid by the NCA by virtue of *paragraph 2*, the Secretary of State must pay the sum to the NCA by way of reimbursement.

180. *Paragraph 3*sets out various summary offences relating to obstructing or assaulting members of an international joint investigation team led by the NCA, in accordance with obligations under international agreements to which the United Kingdom is a party.

181. *Sub-paragraph (1)* makes it an offence to assault a member of an international joint investigation team led by the NCA and who is carrying out functions as a member of that team and s*ub-paragraph (3)* makes it an offence to resist or wilfully obstruct a member of that team in similar circumstances. S*ub-paragraphs (2)* and *(4)* provide for the penalties for the two offences.

182. *Paragraph 4* is concerned with certain provisions of sex, disability, race and employment discrimination legislation in Northern Ireland and the operation of those provisions in relation to persons seconded to the NCA. S*ub-paragraph (1)* provides that a person seconded to the NCA is to be treated as an employee of the NCA for the purposes of the provisions listed under s*ub-paragraph (2)*. S*ub-paragraph (3)* provides that for the purposes of s*ubparagraph (4)* the NCA is to be treated as the employer of persons seconded to the NCA.

Section 9: Director General: customs powers of Commissioners & operational powers

183. This section provides the Director General with the same powers as the Commissioners of HM Revenue and Customs have in relation to any customs matter (*subsection (1)*) and also provides for the Secretary of State to be able to designate the Director General to hold operational powers (*subsection (2)*) (these include the powers and privileges of a constable, the powers of an officer of Revenue and Customs and the powers of an immigration officer). *Subsection (5)* provides the mechanism by which the Director General is to be designated (with more detail set out in Part 2 of Schedule 5). *Subsection (6)* provides that the Secretary of State may only exercise the powers of designation if certain conditions are met, that is, where he or she is required to do so under *subsection (5)* or where he or she is required or otherwise authorised to do so by regulations under paragraph 5 of Schedule 5. *Subsection (3)* provides that the Home Secretary may modify or withdraw a designation provided under *subsection (2).*

184. *Subsection (4)* gives effect to Schedule 5 (police, customs and immigration powers).

Section 10: Operational powers of other NCA officers

185. This section provides the Director General with the ability to designate other NCA officers with operational powers. These include the powers and privileges of a constable, the powers of an officer of Revenue and Customs, or the powers of an immigration officer (*subsection (1)*).

186. The Director General may only designate an NCA officer with operational powers if the Director General is satisfied that the NCA officer is capable of exercising those powers,

has received adequate training and is otherwise a suitable person to exercise them (*subsection (2)*). The Director General is able to modify or withdraw a designation given under *subsection (1)* by giving notice to the NCA officer concerned (*subsection (3)*).

Schedule 5: Police, customs and immigration powers

Part 1: Director General: Commissioners' powers exercisable under section 9(1)

187. *Paragraph 1*sets out a further limitation on the Commissioner powers exercisable by the Director General. Section 9 sets out that the powers of the Commissioners are exercisable only in relation to any customs matter. *Paragraph 1* provides that if a power of the Commissioners is exercisable in relation to both a customs matter and any other matter the power is exercisable by the Director General only in relation to a customs matter (as defined in section 9).

188. *Paragraph 2* applies to an enactment if it provides for the issuing of warrants which authorise the Commissioners to exercise any power in relation to a customs matter. The paragraph provides that for the purpose of enabling the Director General to exercise that power in relation to a customs matter the enactment has effect as if the Director General were one of the Commissioners.

189. *Paragraph 3* provides that the Director General cannot exercise the power of the Commissioners to consent to a disclosure of HMRC information under paragraph 2(1) of Schedule 7 or the power of the Commissioners to consent to a further disclosure of HMRC information under *paragraph 2(2)* of Schedule 7.

Part 2: Director General: designation under section 9

190. *Paragraph 4* provides that the Secretary of State must appoint an advisory panel to make recommendations as to the operational powers that the Director General should have (*sub-paragraph (1)*). The panel must be appointed whenever there is an appointment of a Director General, and at any other time that the Secretary of State considers is appropriate. *Sub-paragraph (2)* provides that the requirement to establish an advisory panel is subject to any regulations under paragraph 5. *Sub-paragraph (3)* sets out the membership of the panel which must consist of a person to chair the panel (who must not be a serving civil servant) and other members expert in the training of NCA officers and the respective operational powers – police powers, customs powers and immigration powers. The panel may only consider whether the Director General has received adequate training in respect of the operational powers. The requirements as to capability and suitability for the Director General to exercise operational powers will be addressed as part of the selection and appointment process (*paragraph 7(2)* of Schedule 1). The chair must consider the information given by the expert members in order to decide whether the Director General has received adequate training in order to exercise the operational powers in question and produce a report with recommendations as to the operational powers the Director General should have (*sub-paragraph (5)*).

191. *Paragraph 5* provides that the Secretary of State may make regulations to set out the circumstances in which the Director General may be designated with operational powers other than on the recommendation of the advisory panel. Regulations may provide that the Secretary of State must designate the Director General with operational powers if specified conditions are met (*sub-paragraph (2)*). *Sub-paragraph (3)* provides that the conditions may relate to the training received by a person in one or more of the operational powers before their appointment as Director General.

Part 3: Further provision about designations under sections 9 or 10

192. *Paragraph 6* provides that a designation of an officer as having operational powers may be subject to limitations specified in the designation. This may include limitations on which operational powers the designated officer has or limitations on the purposes for which an NCA officer may exercise operational powers.

193. *Paragraph 7* provides that the designation of an officer as having operational powers does not have any limitation of time unless the designation specifies a period for which it is to have effect. Any designation, however, remains subject to any subsequent modification or withdrawal and only has effect while a person remains an NCA officer.

194. *Paragraph 8* provides that the Director General or other NCA officer may be designated with operational powers whether or not that person already has, or previously had, any such powers. *Sub-paragraph (3)* provides that if a person is both an NCA officer designated with operational powers and a special constable or a member of the PSNI Reserve none of the powers that a person has as an NCA officer are exercisable at any time when the person is exercising any power or privilege of a special constable or a constable of the PSNI Reserve.

195. *Paragraph 9* provides that an NCA officer must produce evidence of his or her designation if they exercise or purport to exercise any operational power in relation to another person and the other person requests the officer to produce such evidence (*sub-paragraph (1)*). This paragraph does not specify the form which such evidence should take. A failure to produce evidence of designation does not make the exercise of the power invalid (*sub-paragraph (2)*).

Part 4: Designations: powers and privileges of constables

196. *Paragraph 10* provides that where the Director General is designated with police powers and privileges, the Director General has in England and Wales and adjacent UK waters all the powers and privileges of an English and Welsh constable and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas. The exercise of police powers is subject to any limitations in the designation.

197. *Paragraph 11* further provides that where an NCA officer (other than the Director General) is designated with police powers and privileges, the NCA officer has: in England and Wales and adjacent UK waters, all the powers and privileges of an English and Welsh constable; in Scotland and the adjacent UK waters, all the powers and privileges of a Scottish constable; in Northern Ireland and the adjacent UK waters, all the powers and privileges of a Northern Ireland constable; and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas (*sub-paragraph (1)*). The exercise of police powers is subject to any limitations in the designation. Furthermore, the exercise of the powers and privileges of a constable in Scotland and Northern Ireland are subject to further requirements by virtue of *sub-paragraphs (3) and (6).*

198. *Paragraph 11*further provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer if a Scottish general authorisation is in force between the Scottish Ministers and the Director General (*sub-paragraph (4)*). *Sub-paragraph (5)* provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer if a Scottish operational authorisation (that is an agreement between the Director General and an officer of the Police Service of Scotland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. *Sub-paragraph (7)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer only if a Northern Ireland general authorisation is in force between the Department of Justice in Northern Ireland and the Director General. *Sub-paragraph (8)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer if a Northern Ireland operational authorisation (that is an agreement between the Director General and an officer of the Police Service of Northern Ireland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. A Northern Ireland operational authorisation must conform with a Northern Ireland general authorisation.

199. *Paragraph 12* provides that the exercise of the powers of a constable by the Director General or other designated NCA officer is subject to the same territorial restrictions as a constable exercising those powers. *Paragraph 13* applies to an enactment if it

provides for the issuing of warrants which authorise a constable to exercise any power or privilege of a constable. The paragraph further provides that for the purpose of enabling a designated officer to exercise his or her powers or privileges the enactment has effect as if the designated officer were a constable.

200. *Paragraph 14* provides that when exercising direction and control of the NCA in relation to the exercise by NCA officers of the powers and privileges of a Scottish constable, the Director General must comply with instructions given by the Lord Advocate or procurator fiscal in relation to the investigation of offences.

201. *Paragraph 15*provides that those NCA officers designated with policing powers and privileges will not be regarded as being in police service for the purposes of certain specified employment legislation.

Part 5: Designations: powers of officers of Revenue and Customs

202. *Paragraphs 16 to 18*provide that an NCA officer (*paragraph 16*) who has been designated with customs powers has the same powers as an officer of Revenue and Customs in relation to any customs matter. The definition of a 'customs matter' is set out in Section 9 and excludes the matters to which section 7 (former Inland Revenue matters) of the Commissioner for Revenue and Customs Act 2005 applies and taxes and duties. Therefore the exercise of customs powers by the Director General of the NCA and designated NCA officers is in relation to non-revenue matters. In both cases the exercise of customs powers in relation to non-revenue matters is subject to any limitations in the designation. Where a customs power is exercisable in relation to both a customs matter and any other matter, the power is only exercisable by an NCA officer in relation to the customs matter (*paragraph 17*).

203. *Paragraph 18*provides that where an enactment enables a warrant to be issued which authorises an officer of Revenue and Customs to exercise any power in relation to a customs matter, a designated NCA officer is to be treated as if he or she were an officer of Revenue and Customs for the purposes of enabling NCA officers to exercise those powers.

Part 6: Designations: powers of immigration officers

204. *Paragraph 19*enables any NCA officer, designated with the powers of an immigration officer, to exercise all the powers of an immigration officer. The exercise of immigration powers is subject to any limitations in the designation.

205. *Paragraph 20*provides that where an enactment enables a warrant to be issued which authorises an immigration officer to exercise any power of an immigration officer, an NCA officer designated with immigration powers is to be treated as an immigration officer for the purposes of enabling them to exercise those powers.

Part 7: Offences relating to designations

206. *Paragraphs 21 to 23* set out various summary offences relating to obstructing, assaulting or impersonating designated officers. They parallel similar offences in relation to police officers, officers of Revenue and Customs and immigration officers in various enactments.

207. *Paragraph 21* makes it an offence to resist or wilfully obstruct a designated officer acting in the exercise of an operational power or to resist or wilfully obstruct a person assisting a designated officer in the exercise of such a power. *Paragraph 22* makes it an offence to assault a designated officer acting in the exercise of an operational power or to assault a person assisting a designated officer in the exercise of such a power. *Paragraph 23* makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated officer. It is also an offence for a designated NCA officer to

make any statement or act in a way that falsely suggests that he or she has powers above and beyond those he or she in fact has.

208. *Sub-paragraph (2)* of each of *paragraphs 21 to 23* sets out the maximum penalties for the three offences in England and Wales, Scotland, and Northern Ireland respectively.

Part 8: General

209. *Paragraph 25*provides that the Director General must pay all proceeds of forfeitures under the customs and excise Acts to the Commissioners for Revenue and Customs.

210. *Paragraph 26* provides that, where an enactment relates to a power or privilege of a constable, or a power of an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer and the enactment refers to a constable, an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer, those references should be read as being, or including a reference to, the Director General or other NCA officer as appropriate.

211. *Paragraph 27*confers an order-making power on the 'relevant national authority' (as defined in *paragraph 30*) to make such provision as considered appropriate in consequence of the Director General having the powers of the Commissioners under section 9 or designated offices having operational powers.

212. *Paragraph 28* confers an order-making power on the 'relevant national authority' to amend by order the functions of a person so that they can be exercised by that person in relation to the NCA, the Director General or NCA officers.

213. The order-making powers in *paragraphs 27 and 28* are subject to the affirmative resolution procedure where they amend primary legislation, but are otherwise subject to the negative resolution procedure.

214. *Paragraph 29* provides that before the Secretary of State exercises a power under *paragraph 27 or 28* in relation to enactments that confer any functions on the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs must be consulted (*sub-paragraph (2)(a)*). Before the Secretary of State exercises the power in relation to an enactment which extends to Scotland or Northern Ireland, the Secretary of State must consult the Scottish Ministers or the Department of Justice in Northern Ireland respectively (*sub-paragraphs (2)(b)* and *(c)*).

215. *Paragraph 30* sets out and defines the various terms that have been used in this Schedule.

Section 11: Inspections and complaints

216. *Subsection (1)* provides for inspection of the NCA by Her Majesty's Inspectors of Constabulary ("HMIC"). HMIC are appointed under section 54 of the Police Act 1996 for the purpose of independently inspecting and reporting on the efficiency and effectiveness of police forces in England and Wales.

217. *Subsection (2)* enables the Secretary of State to request an inspection by HMIC (under subsection (1)) HMIC will conduct inspections of the NCA on its own initiative).

218. *Subsection (3)* requires HMIC to report the outcome of their inspections of the NCA to the Secretary of State (in practice the Home Secretary).

219. *Subsection (4)* enables the Secretary of State to direct HMIC to carry out other duties relating to the efficiency and effectiveness of the NCA.

220. *Subsection (5)* provides that paragraphs 2 and 5 of Schedule 4A to the Police Act 1996 (which enable HMIC to draft inspection programmes and frameworks to be approved

by the Secretary of State) applies to inspection functions of HMIC in relation to the NCA.

221. *Subsection (6)* inserts a new section 26C into the Police Reform Act 2002. New section 26C(1) requires the Secretary of State to make regulations (subject to the negative resolution procedure) conferring functions on the Independent Police Complaints Commission ("IPCC") in relation to the exercise of functions by the Director General of the NCA and other NCA officers. Under new section 26C(2)(a) such regulations may apply, with or without modifications, the provisions of Part 2 of the Police Reform Act 2002 or of regulations made under it. Part 2 confers functions on the IPCC in respect of complaints about, or matters indicating misconduct or death or serious injury involving, persons serving with police forces in England and Wales; such functions include the examination of police forces' complaint handling procedures and undertaking, management or supervision of investigations into complaints or other matters. The purpose of these provisions is not simply to replicate Part 2 of the Police Reform Act 2002, because the arrangements will need to be tailored to the circumstances of the NCA, but they will ensure that the IPCC has oversight of the NCA in broadly the same way as it has in relation to the police. Under new section 26C(2)(b), such regulations may make provision for the NCA to make payments to the IPCC in respect of the exercise of its functions under the new section 26C.

222. New section 26C(3) confines the scope of the IPCC's oversight of the NCA to the exercise of its functions in, or in relation to, England and Wales. New section 26C(4) enables the IPCC and the Parliamentary Commissioner for Administration ("PCA") jointly to investigate a matter in relation to which both of them have functions (limited to matters in relation to which the NCA exercises certain asset recovery functions). New section 26C(5) enables an NCA officer to disclose information to the IPCC, or a person acting on its behalf, for the purposes of the IPCC exercising a function conferred under new section 26C. New section 26C(6) enables the IPCC and the PCA to disclose information to each other for the purposes of the exercise of any functions under new section 26C(4) or the Parliamentary Commissioner Act 1967. New section 26C(7) and (8) enable regulations to make further provision about the disclosure of information under new section 26C(5) and (6) or in relation to the onward disclosure of information by the IPCC of information provided to it by the NCA, and disapplies Schedule 7 to the Act (unless provision is made to the contrary).

223. *Subsection (7)* makes amendments to article 4(4) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 ("the 2007 Order") so as to provide that complaints relating to the acts or omissions of NCA officers exercising functions in Scotland are subject to the oversight of the Police Investigations and Review Commission as set out in an agreement between the Commission and the NCA; such an agreement has been made between the Commission and SOCA under article 4(4) of the 2007 Order.

224. *Subsection (8)* amends section 60ZA of the Police (Northern Ireland) Act 1998 so as to provide that complaints and conduct matters arising from NCA officers exercising functions in Northern Ireland are subject to oversight by the Office of the Police Ombudsman for Northern Ireland as set out in an agreement between the Police Ombudsman and the NCA (which has been made under that section), or as established by order made by the Secretary of State.

225. *Subsection (9)* gives effect to Schedule 6.

Schedule 6: Inspections and complaints

226. *Paragraph 1* requires the Secretary of States to consult Scottish Ministers before requesting an HMIC inspection of NCA activities in Scotland. *Sub-paragraph (2)* provides that, in relation to any inspection wholly or partly in Scotland, HMIC may conduct the inspection jointly with the Scottish inspectors following consultation with the Scottish inspectors on whether a joint inspection is appropriate (*sub-paragraph (3)*).

227. *Paragraph 2* requires the Secretary of State to consult the Department of Justice in Northern Ireland before requesting an HMIC inspection of NCA activities in Northern Ireland.

228. *Paragraph 3* places a duty on the Secretary of State to arrange for every HMIC report to be published. However, *sub-paragraph (2)* provides that parts of an HMIC report may be excluded from publication if the Secretary of State believes that publication would be against the interests of national security, impede the prevention or detection of crime, or jeopardise the safety of any person. Reports must be sent to the NCA and the appropriate Devolved Administration, should the inspection have been carried out in Scotland or Northern Ireland (*sub-paragraph (3)*).

229. *Paragraph 4* places a duty on the Director General of the NCA to comment on each HMIC report, to publish those comments and to send a copy to the Secretary of State and to the Devolved Administrations where they have an interest.

230. *Paragraph 5* requires the Director General of the NCA to disclose information and documents to HMIC or Scottish inspectors as specified in any notification given by them for the purposes of their exercise of inspection functions in relation to the NCA. *Sub-paragraph (4)* enables an NCA officer to disclose information to HMIC or Scottish inspectors for the purposes of their exercise of inspection functions in relation to the NCA. *Sub-paragraphs (5) and (6)* enable the Secretary of State to make regulations to make further provision about the disclosure of information under *paragraph 5*, or in relation to the onward disclosure of information by HMIC or Scottish inspectors of information provided to them by the NCA, and disapplies Schedule 7 (unless provision is made to the contrary).

231. *Paragraph 6*requires the Director General to give HMIC or Scottish inspectors access to NCA premises and other things on such premises for the purposes of their exercise of inspection functions in relation to the NCA.

232. *Paragraph 7*contains definitions of various expressions used in Schedule 6.

233. *Paragraphs 8 to 17* make consequential amendments to the Police Reform Act 2002, arising from the abolition of the NPIA and SOCA, and the conferral of functions on the IPCC in respect of its oversight of the NCA by virtue of section 10(6).

234. *Paragraph 18* makes consequential amendments to articles 2 and 4 of the Police, Public Order and Criminal Justice (Scotland) Act (Consequential Provisions and Modifications) Order 2007 ("the 2007 Order") arising from the provisions in section 11(7) in relation to the oversight of the NCA by the Police Complaints Commissioner for Scotland. *Sub-paragraph (4)* preserves the powers in the Scotland Act 1998, under which the 2007 Order was made, to amend or revoke the amendments made to the 2007 Order by section 11 and Schedule 6.

235. *Paragraph 19* makes a consequential amendment to section 61 of the Police (Northern Ireland) Act 1998, requiring the Office of the Police Ombudsman for Northern Ireland to send a copy of its annual report on the discharge of its functions to the NCA if the report concerns the NCA.

Section 12: Information: restrictions on disclosure etc

236. *Subsection (1)* gives effect to Schedule 7 (Information: restrictions on disclosure), which provides for the restrictions on the disclosure of information.

237. *Subsection (2)* provides that Schedule 7 applies to disclosures of information made for the purposes of the NCA's criminal intelligence function. Information relevant to the NCA's criminal intelligence function will predominantly be that which contains information on known or suspected criminal activity (such as crime reports, surveillance logs, suspicious activity records, analytic research on known criminals or locations); or information that when combined with known or suspected criminal activity can lead to

the identification of further criminality, or opportunities to protect the public (such as company records, regulated sector memberships and transport manifests).

238. *Subsection (3)* provides that any duty to disclose information imposed on an NCA officer (including the duty on the Director General to keep the police and specified government bodies informed of information) and powers of an NCA officer to disclose information, will have effect subject to the restrictions on disclosure set out in Schedule 7. *Subsection (4)* provides that *subsections (2) and (3)* do not limit Schedule 7.

Schedule 7: Information: restrictions on disclosure

239. This Schedule sets out the restrictions on the disclosure of information to and from the NCA. Part 1 sets out the statutory restrictions; Part 2 sets out the restrictions on disclosure of particular types of information; Part 3 sets out the restriction on further disclosure of information; Part 4 sets out the restrictions on published information; Part 5 sets out the wrongful disclosure offences; and Part 6 sets out the consent and interpretation provisions.

Part 1: Statutory restrictions

240. *Paragraph 1* provides that nothing in Part 1 of the Act (including in particular section 6(1) and (7) will authorise or require the disclosure of information to or from the NCA which is in contravention of the Data Protection Act 1998 or of Part 1 of the Regulation of Investigatory Powers Act 2000 ("RIPA").

Part 2: Restrictions on disclosures of particular types of information

241. *Paragraph 2* (HMRC and customs information). *Sub-paragraph (1)* provides that an NCA officer must not disclose HMRC information, personal customs information or personal customs revenue information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information, a person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "HMRC information", "personal customs information" and "relevant authority".

242. *Paragraph 3*(social security information). *Sub-paragraph (1)* provides that an NCA officer must not disclose social security information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information to a person, that person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "relevant authority" and "social security information".

243. *Paragraph 4* (intelligence service information). *Sub-paragraph (1)* provides that an NCA officer must not disclose intelligence service information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information, a person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "intelligence service" and "intelligence service information" and "relevant authority".

244. *Paragraph 5* (arrangements for publishing information) makes provision that the Director General must not disclose information under their duty to make arrangements for the publication of information set out in section 6 if this would breach a requirement imposed by the Framework Document.

Part 3: Restrictions on further disclosures of information

245. *Paragraph 6* (onward disclosure restrictions) *Sub-paragraph (1)* provides that if an NCA officer has disclosed information to a person ("the original recipient"), that person must not further disclose the information unless it is for a purpose connected with any relevant function of the original recipient or otherwise for a permitted purpose (as

defined in section 16(1)). The Director General must also consent to the disclosure. *Sub-paragraph (2)* provides that the onward disclosure restrictions set out in *sub-paragraph (1)* will not apply if *paragraph 7 or 8* of the Schedule applies, or if the original recipient of the information was the Lord Advocate exercising functions under Part 3 of the POCA or Scottish Ministers exercising functions under or in relation to Part 5 of the POCA. *Sub-paragraph (3)* defines the term "relevant function" which is referred to in this paragraph.

246. *Paragraph 7* (onward disclosure by the Commissioners). *Sub-paragraph (1)* provides that this provision applies to information disclosed by an NCA officer under section 7(7) to the Commissioners. *Sub-paragraph (2)* provides that the information may be further disclosed by the Commissioners only if the disclosure is for a purpose connected with any relevant function of the Commissioners or otherwise for a permitted purpose (as defined in section 16(1)). *Sub-paragraph (3)* provides that the information may only be further disclosed by a person other than the commissioner if the disclosure is for a purpose connected with any relevant function of the Commissioners or otherwise for a permitted purpose, and if the Director General consents to the disclosure.

247. *Paragraph 8* covers restrictions on the further disclosure of information obtained by the NCA under Part 6 of the POCA, which may be disclosed by an NCA officer under section 7(7) of the Act.

Part 4: Published information: no restrictions on further disclosure

248. *Paragraph 9* disapplies any restrictions on the further disclosure of information in Part 1 of the Act if the information was included in an NCA annual plan, framework document or annual report, or was otherwise published by the NCA in accordance with arrangements made under section 6.

Part 5: Offences relating to wrongful disclosure of information

249. *Paragraph 10* covers the offence of wrongful disclosure of information. *Sub-paragraph (1)* provides that an NCA officer commits an offence by disclosing information in breach of a relevant duty. *Sub-paragraph (2)* provides that any person commits an offence if they disclose information that breached a relevant duty. *Sub-paragraph (3)* provides for the defence by a person charged with this offence that the disclosure was either lawful or that the information had already and lawfully been made available to the public. *Sub-paragraph (4)* covers the consent for a prosecution to be made in England and Wales and Northern Ireland. *Sub-paragraph (5)* provides that this offence does not prejudice the pursuit of any remedy or action taken in relation to a breach of a relevant duty. *Sub-paragraph (6)* states that a person guilty of the offence is liable on conviction on indictment to either a prison term not exceeding 2 years or a fine, or both. *Sub-paragraph (7)* provides that a person guilty of the offence is liable on summary conviction to either a prison term not exceeding 12 months in England and Wales and in Scotland, or 6 months on conviction in Northern Ireland, or a fine not exceeding the statutory maximum, or both. *Sub-paragraph (8)* provides that the maximum prison term in England and Wales is 6 months for an offence committed before the commencement of section 282 of the Criminal Justice Act 2003.

250. *Paragraph 11* provides that consent to a disclosure of information under any provision of Schedule 7 may be given in relation to a particular disclosure or disclosures made in circumstances specified or described in the consent.

251. *Paragraph 12* defines the terms "Commissioners" and "PCA 2002" used in this Schedule.

Section 13: NCA officers with operational powers: labour relations

252. *Subsections (1) to (3)* prohibit any person (for example, a trade union) from calling a strike by NCA officers designated with operational powers, including the Director

General of the NCA, and provide that the Home Secretary may take civil action against any person who calls such a strike.

253. *Subsection (4)* allows the Home Secretary to seek an injunction restraining a threatened strike by NCA officers holding operational powers.

254. *Subsection (5)* provides that, notwithstanding *subsections (1) to (3)*, any trade union representing NCA officers can still be an independent trade union for the purposes of relevant employment legislation.

255. *Subsection (6)* makes it clear that relevant employment legislation cannot prevent the Home Secretary from enforcing the no-strike provisions.

256. *Subsection (7)* provides that the Home Secretary may suspend and subsequently reinstate the no-strike provisions by order (subject to the affirmative resolution procedure).

257. *Subsection (8)* defines terms used in section 13.

Section 14: NCA officers with operational powers: pay and allowances

258. *Subsection (1)* enables the Home Secretary to make regulations (subject to the negative resolution procedure) providing for the establishment, maintenance and operation of procedures for determining the pay, allowances and other terms and conditions of NCA officers designated with operational powers including the Director General of the NCA.

259. *Subsection (2)* allows such regulations to provide for decisions on the pay, allowances and other terms and conditions of NCA officers designated with operational powers to be made by reference to, for example, non-binding recommendations from an independent pay review mechanism.

260. *Subsection (3)* defines terms used in section 14.

Section 15: Abolition of SOCA and NPIA

261. *Subsections (1) and (2)* abolish the Serious Organised Crime Agency and the National Policing Improvement Agency respectively.

262. *Subsection (3)* gives effect to Schedule 8.

Schedule 8: Abolition of SOCA and NPIA

Part 1: Transitional, transitory and saving provision

263. *Paragraph 1* provides for the Secretary of State to make, and lay before Parliament, staff or property transfer schemes.

264. *Paragraph 2* defines a staff transfer scheme as a scheme which provides for a designated member of staff of SOCA or the NPIA, a designated constable or member of civilian staff in an England and Wales police force (for example in the Metropolitan Police E-Crime Unit which will form part of the NCA as set out in the NCA Plan) and a designated member of personnel or staff in any other body (in connection with an order modifying the functions of the NCA) to become NCA officers, and employed in the civil service of the State. A staff transfer scheme may also provide for the transfer of NPIA staff to the Home Office.

265. *Paragraph 3*defines a property transfer scheme. A property scheme may provide for the transfer to the NCA (or, in the case of the NPIA, to the NCA or the Home Office) of designated property, rights or liabilities from SOCA, NPIA, the chief officer of, or the policing body for, an England & Wales police force or any other person. A property transfer scheme may also create rights or impose liabilities. Such a scheme may also

make provision to ensure that criminal liability for anything done by SOCA or the NPIA passes to the NCA or the Secretary of State as appropriate.

266. *Paragraph 4* provides a staff or property transfer scheme to make provision for any reference to a transferor in any document, instrument, contract or legal proceedings to have effect as, or as including a reference to the NCA.

267. *Paragraph 6* contains transitional provisions to ensure that the abolition of SOCA and the NPIA does not affect the validity of anything done by those organisations prior to abolition; this will ensure that, for example, the continued validity of surveillance authorisations granted by the Director General of SOCA cannot be challenged. *Paragraph 7* provides for the continued application, with necessary modifications, of certain subordinate legislation made under the Serious Organised Crime and Police Act 2005 where Part 1 of the Act includes equivalent delegated powers. The three orders that are preserved: modify certain enactments which confer powers on the police (as well as constables) and immigration officers to enable such powers to be exercised by designated members of the staff of SOCA; ensures that the United Kingdom can comply with the obligations under the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters where a joint investigation team (involving SOCA officers) is operating in the UK for the purpose of conducting criminal investigations; and designates further functions (in addition to the functions listed in section 33 of the Serious Organised Crime and Police Act 2005 and in the Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008) for the purposes of the exercise of which SOCA may disclose information.

268. *Paragraph 8* provides for the Secretary of State to pay such an amount (if any) as the Secretary of State thinks appropriate to a person who ceases to be a SOCA board member (that is, the Chair and the ordinary members) at the changeover.

269. *Paragraph 9* provides that the repealing of sections 7 and 20 of the Serious Organised Crime and Police Act 2005 (annual reports and accounts) will not affect the application of those sections after the changeover to times before the changeover.

270. *Paragraph 10*ensures that amendments to pension's legislation consequent upon the abolition of SOCA and the NPIA do not have the effect of extinguishing pension rights accrued before abolition.

271. *Paragraph 11*is required to ensure that transition arrangements are provided for Scottish Police Reform and the creation of the NCA. In particular, it provides a power to make any necessary provisions to ensure that the NCA provisions have full effect depending on the timing of the creation of the Police Service of Scotland and the creation of the NCA. In light of the formal establishment of the Police Service of Scotland on 1 April 2013, this provision is no longer necessary.

272. *Paragraph 12*is required to ensure transition arrangements are in place if the NCA is created prior to the planned merger of the offices of the Director of Revenue and Customs Prosecutions and the Director of Public Prosecutions.

273. *Paragraph 13* sets out and defines the various terms that have been used in Part 1 of this Schedule.

Parts 2 to 4: Minor and consequential amendments and repeals

274. Parts 2 to 4 of the Schedule make other amendments to enactments, both primary and secondary, as a consequence of the abolition of SOCA and the NPIA.

275. *Paragraph 26* of the Schedule protects the pension arrangements for those officers of precursor agencies who are eligible for membership of the police pension scheme on moving into the NCA. It also provides for serving police officers (including members of the PSNI Reserve) to retain their eligibility for the police pension scheme on being

appointed as Director General of the NCA or on taking up key posts within the NCA designated by the Director General.

276. *Paragraph 89* adds the NCA to the list of organisations specified in section 23 of the Freedom of Information Act 2000. The effect of this amendment is to exempt from the Freedom of Information Act as a class all information held or supplied by the NCA.

277. *Paragraph 184*provides that references to the "Serious Organised Crime Agency", "SOCA", etc in the specified legislation will be substituted with a reference to the National Crime Agency and other equivalent related references.

278. *Paragraph 188*provides that SOCA related references in subordinate legislation may be read as the corresponding NCA reference listed in the table. This provision is without prejudice to the consequential order making power in section 58 of the Act.

Section 16: Interpretation of Part 1

279. *Subsection (1)* defines various terms used in Part 1, including "chief officer", "functions", "NCA function", "law enforcement agency" and "permitted purpose". The definition of "strategic partners" refers to those other law enforcement agencies and other key bodies to which, for example, the Director General must send a copy of the NCA's Annual Report.

280. *Subsection (2)* clarifies that a reference to the powers and privileges of a constable is a reference to any powers and privileges of a constable. It also provides that references to the "Police Service of Northern Ireland" ("PSNI") are taken to include the PSNI Reserve.

281. *Subsection (3)* provides that any subsequent reference to the "functions" or "officers" of the National Crime Agency should be understood within the terms of Part 1 of the Act.

282. *Subsection (4)* identifies those terms which are defined elsewhere in Part 1 of the Act.

Part 2: Courts and Justice

Section 17: Civil and family proceedings in England and Wales

283. Section 17(1), (2) and (5) create a single county court with a national jurisdiction for the whole of England and Wales, sitting at various locations within England and Wales in a similar way to the High Court and the Crown Court. The principal provision is *subsection (1)*, which inserts into the County Courts Act 1984 ("the 1984 Act") a new section A1, providing for the establishment of a single county court.

284. The new section A1(1) provides for there to be a county court exercising jurisdiction in England and Wales, and for the jurisdiction of that court to be that which is conferred on it by or under the 1984 Act or any other Act, or any Act or measure of the National Assembly for Wales. This mirrors the position for the individual county courts at present, but on a national basis for the single court.

285. The new section A1(2) provides for the single county court to be a court of record with a seal. This again mirrors the position for the individual county courts at present (each of which is in its own right a court of record with its own seal), but on a national basis for the single court, with a single seal.

286. *Subsection (2)* repeals sections 1 and 2 of the 1984 Act, which provide for there to be individual county courts, each for its own district and with its own seal. These sections are replaced by the new section A1. With their repeal the geographical jurisdictional boundaries in the existing county court structure are removed.

287. *Subsection (3)* inserts a new section 31A of the Matrimonial and Family Proceedings Act 1984 to provide for the creation of a family court with jurisdiction throughout England and Wales. The family court will exercise the jurisdiction and powers

conferred on it by statute, including the jurisdiction and powers currently exercised by county courts and magistrates' courts in relation to family proceedings. The family court will be a court of record and shall have a seal.

288. *Subsection (4)* repeals Part 2 of, and associated provisions in, the Children, Schools and Families Act 2010 (which relates to the publication of information relating to family proceedings).

289. *Subsection (5)* introduces Schedule 9, which makes amendments to the 1984 Act and in numerous other statutes in connection with and in consequence of the single county court replacing the existing county courts.

290. *Subsection (6)* introduces Schedules 10 and 11 which make further amendments to the Matrimonial and Family Proceedings Act 1984 and other enactments in connection with and in consequence of the creation of the single family court.

Schedule 9: Single county court in England and Wales

291. Schedule 9 makes amendments, particularly in the 1984 Act itself, but also in a wide range of other legislation referring to the existing county courts, in connection with and in consequence of the establishment of the single county court.

Part 1 of Schedule 9: Amendments of the County Courts Act 1984

292. Part 1 of the Schedule contains amendments to the 1984 Act, other than the principal provisions establishing the single county court which are contained in section 17. Of particular importance are the amendments made by *paragraphs 2 and 3* in relation to sittings of the single county court, and *paragraphs 4 to 6* in relation to the judges of the single county court.

293. *Paragraph 2*amends section 3 of the 1984 Act by substituting for *subsections (1) and (2)* (which provide for where and when the existing county courts may sit) four subsections which make flexible provision for the single county court to be able to sit anywhere in England and Wales, for sittings to be able to be continuous or intermittent or occasional, for sittings to be able to be simultaneously held in different places, and for the places where the county court sits, and the days and times at which it sits in any place, to be determined in accordance with directions given by the Lord Chancellor after consulting the Lord Chief Justice.

294. *Paragraph 3* amends section 4 of the 1984 Act, which provides for the use of public buildings for individual county courts, so that it provides for the use of such buildings for sittings of the single county court.

295. *Paragraph 4*substitutes for section 5 of the 1984 Act, which makes provision in respect of those judges (other than district judges) who may sit in the county courts, a new section 5. While, in practice, Circuit judges and district judges will remain the principal judges of the county court, the effect of this amendment and, in particular, *subsection (2)* of the new section 5, will be to enable a wider range of other judges to sit, on a flexible basis, in the single county court as "judges of the county court". The new section 5 does not reproduce those provisions of the present section 5 which provide for the assignment of circuit judges to districts, since, with the establishment of the single county court on a national basis, these are no longer required. *Paragraphs 5 and 6*similarly amend sections 6 and 8 of the 1984 Act to remove those provisions which relate to the assignment to districts of district judges and deputy district judges respectively.

296. *Paragraph 7*amends section 12 of the 1984 Act to replace the provision for the district judge for a district to keep such records as may be prescribed by the Lord Chancellor in regulations with a provision enabling the Lord Chancellor to provide by regulations for the keeping of records for the single county court.

297. *Paragraphs 8 and 9*make amendments to sections 13 (officers of the court not to act as solicitors of that court) and 14 (penalty for assaulting officers) of the 1984 Act, which make provision in relation to district judges of a county court, so that the provision operates instead in terms of judges of the single county court more generally.

298. *Paragraph 10*makes a large number of amendments to the remainder of the 1984 Act. A number of the amendments repeal existing provisions of the 1984 Act which provide for there to be specific county courts to exercise specialist jurisdictions, such as Admiralty and contentious probate jurisdiction (see sub-paragraph (3) in particular). Any such specialist jurisdiction will instead be conferred on the single county court as a whole, and exercised by such judges and in such locations as are determined under existing allocation powers (such as section 1 of the Courts and Legal Services Act 1990).

299. Other provisions in paragraph 10 remove or amend provisions which confer powers or functions specifically on district judges or circuit judges, so that those provisions instead confer the powers or functions on the court or on a judge of the court without specifying whether this is a district judge, circuit judge or other judge (see, for example, *sub-paragraphs (12) to (20)*). The allocation of powers and functions to tiers of judge in the single county court will then be determined under existing powers of direction.

300. Further, other provisions in *paragraph 10* amend or remove provisions in the 1984 Act which operate by reference to an individual county court, or to a court's jurisdiction in relation to a specific district, so that they operate for the single county court as a whole (see, for example, *sub-paragraphs (35), (36), (42), (48), and (51) to (53)*); and other provisions simply amend references to "a county court" or "a court" or "any court" or to "county courts" or "courts" in the plural so that they refer instead to "the county court" and will operate appropriately in relation to the single county court (see, for example, *sub-paragraphs (63) to (67)*).

Parts 2 to 4 of Schedule 9: Other amendments and repeals

301. Parts 2 and 3 make consequential amendments to other Acts of Parliament which make reference to county courts and the judges who sit in them. The amendments are similar to those made to the 1984 Act by Part 1 of the Schedule. However, in relation to other Acts, by far the most numerous amendments are those which substitute, for references to "a county court", references to "the county court". Other amendments remove or modify provisions which tie jurisdiction to specific county courts or districts and judges for a district, and a small number of amendments repeal provisions which confer specialist jurisdiction on a specific county court or courts - in particular *paragraph 30*, which repeals those provisions of the Copyright, Designs and Patent Act 1988 which establish a Patents County Court (intellectual property jurisdiction will be re-allocated and structured under existing powers). Part 4 contains consequential repeals.

Schedule 10: The family court

302. *Paragraph 1* inserts new sections 31B to 31P into the Matrimonial and Family Proceedings Act 1984.

303. New section 31B (Sittings) provides that sittings of the family court and any other business of the court may take place anywhere in England and Wales. Sittings of the family court at any place may be continuous, intermittent or occasional (new section 31B(2)) and the court shall have power to adjourn cases from place to place at any time (new section 31B(3)). Under new section 31B(4) the Lord Chancellor, after consulting the Lord Chief Justice, shall direct where the family court shall sit and the days and times at which it will sit. The Lord Chief Justice may nominate a judicial office holder to exercise the Lord Chief Justice's functions under new section 31B (new section 31B(5)). It is expected that any delegation of powers would be to the President of the Family Division as the Head of Family Justice.

304. New section 31C (Judges) lists, at *subsection (1)*, the judges of the family court, and includes (amongst others) all levels of judiciary currently able to deal with family proceedings in the High Court, county courts and magistrates' courts. Decisions of the family court made by judges of the High Court and above and by former Court of Appeal and High Court judges will be binding on those listed at paragraphs (j) to (y) of *subsection (1)*. Such decisions will also be binding on justices' clerks and assistants to justices' clerks except where they are carrying out functions of the court with a judge listed in paragraphs (a), (b) and (c) of *subsection (2)*. *Subsection (3)* ensures that fee-paid, or unsalaried, part-time judges of the family court who are also engaged in legal practice do not sit in cases in which their firm is acting for a party.

305. New section 31D (Composition of the court and distribution of its business) provides at *subsection (1)* for the Lord Chief Justice or his or her nominated judicial office holder to make rules, with the agreement of the Lord Chancellor, about the composition of the family court and the allocation of the work of the court to the appropriate level of judiciary. Rules about the composition of the family court may provide for the court to be constituted differently for the purpose of deciding different matters (*subsectio*n (2) (a)). For example, such rules may prescribe certain types of proceedings or applications within proceedings that are to be heard by a judge, a single justice of the peace or by a two or three magistrate bench. Rules may also allocate different types of proceedings to specified levels of judiciary and provide that only judges authorised for the purpose may deal with certain proceedings (new section 31D(3)), thereby ensuring that different types of cases are heard by those judges with the relevant expertise. This power to limit the range of proceedings that certain types of judge may deal with does not apply to High Court judges and above (*subsection (4)*). Before making Rules under new section 31D, the Family Procedure Rule Committee, which is the statutory body responsible for making rules of court governing the practice and procedure to be followed in family proceedings, must be consulted.

306. New section 31E (Family court has High Court and county court powers) enables the family court to make any order that could be made by the High Court if the proceedings were in the High Court, or any order that could be made by the county court if the proceedings were there (*subsection (1)*). The family court will be able to issue warrants making provision for anything which, were the matter in the High Court, could be included in a writ (*subsection (2)*). The power in *subsection (1)* will not extend to orders of a type listed in section 38(3) of the County Courts Act 1984 ("the 1984 Act") or to other orders prescribed by regulations made under that section (*subsection (3)*). The Lord Chancellor has the power to make provision in regulations dealing with the effect and execution of warrants issued by the family court. The provision in those regulations will mirror existing provision in relation to High Court writs or county court warrants *(subsection (5)).*

307. New section 31F (Proceedings and decisions) bestows on the family court certain powers relating to hearings and orders that mirror existing powers contained in the 1984 Act and the Magistrates' Courts Act 1980. This includes the power to adjourn hearings (*subsection (1)*). Provision is also made regarding the nature of orders of the family court (*subsection (2)*), their effect (*subsection (3)*), what may be contained in orders requiring something to be done, other than the payment of money (*subsection (4)*), what may be included in an order requiring the payment of money (*subsection (5)*) and the ability of the family court to vary, suspend, rescind or revive its orders (*subsection (6)*). The family court will have the ability to proceed in the absence of one or more parties, but this is subject to rules of court (*subsection (7)*) and it will have the same power as the High Court to enforce an undertaking given by a solicitor in relation to any proceedings before it (*subsection (8)*). *Subsection (9)* is a general provision enabling the family court to adopt and apply the general principles of practice in the High Court.

308. New section 31G (Witnesses and evidence), which is modelled on section 97 of the Magistrates' Courts Act 1980, sets out the circumstances in which the family court may summons a witness to give evidence and produce documents (*subsection (2)*) and

specifies the penalties that the court may impose (*subsection (4)*) where a person fails to attend before the court or produce documents, without just excuse (*subsection (3)*). New section 31G(6) provides that where a self representing party appears to be unable to cross-examine a witness effectively, the court may put, or cause to be put, questions to the witness.

309. The family court will have the power to deal with all types of contempt of court that may currently be dealt with in family proceedings in the High Court, county courts and magistrates' courts. New section 31H (Contempt of court: power to limit court's powers) enables the Lord Chancellor, after consulting the Lord Chief Justice, to make regulations limiting or removing any of those powers in specified circumstances (*subsection (1)*). Such regulations may make different provision for different purposes (new section 31P(1)(b)) and may be used, for example, to impose limits on the penalties imposed for certain types of contempt by specified tiers of judiciary in the family court.

310. New section 31I (Powers of the High Court in respect of family court proceedings), which is modelled on section 41 of the 1984 Act, provides at *subsection (1)* that the High Court may transfer proceedings pending in the family court to the High Court (which will continue to have all jurisdiction to deal with family proceedings that it currently has) where it considers it desirable to do so, without prejudice, and subject to, the matters set out in *subsection* (2).

311. New section 31J (Overview of certain powers of the court under other Acts) sets out for convenience certain powers of the family court contained in the Senior Courts Act 1981 and the 1984 Act.

312. New 31K (Appeals) provides that any party dissatisfied with a decision of the family court may appeal to the Court of Appeal, subject to any order made under section 56(1) of the Access to Justice Act 1999 which may alter the destination of appeals (*subsection* (1)). This provision does not duplicate or remove any right of appeal conferred under any other enactment (*subsection* (2)). Provision may be made by Order (made by the Lord Chancellor after consultation with the Lord Chief Justice or his or her nominee) as to when appeals may be made in relation to decisions on the transfer, or proposed transfer, of proceedings from or to the family court (*subsections* (3), (4) and (8)). Where requested by a party at any hearing where there is a right to appeal, a judge shall make a note of the matters referred to in *subsection* (5) which, when signed by the judge may be provided to the party and be used at any subsequent appeal hearing (*subsection* (6)).

313. New section 31L (Enforcement) makes specific provision at *subsection* (1) mirroring for the family courts the powers contained in section 140 of the Senior Courts Act 1981 in relation to the enforcement of the payment of a fine or penalty imposed by the court. *Subsection* (2) enables rules of court (which will be the Family Procedure Rules made under section 75 of the Courts Act 2003) to make provision for the recovery of periodical payments and the apportioning of payments in circumstances where there are two or more orders under which the same person is required to make periodical payments to the same recipient. *Subsections* (4) to (7) replicate the provisions in section 62 of the Magistrates' Courts Act 1980 allowing a person with whom a child has his or her home to take certain steps in their own name in relation to an order requiring periodical payments or a lump sum to be paid to a child, without affecting the right of the child to proceed in his or her own name.

314. New section 31M (Records of proceedings), which is modelled on section 12 of the 1984 Act, provides for the Lord Chancellor to make regulations, after consulting the Lord Chief Justice, for the keeping of records (*subsections* (1) and (3)). Entries made in a book or other document kept under such regulations or a signed and certified copy of such an entry will be admitted as evidence of the entry (*subsection* (2)).

315. New section 31N (Summonses and other documents) mirrors, for the purposes of the family court, the provisions of section 133(1) of the 1984 Act in relation to proof of

service of a summons (*subsection* (1)), and applies sections 133(2) (*subsection* (2)), 135 and 136 of that Act (*subsection* (3)).

316. New section 31O (Justices' clerks and assistants: functions) contains provisions for the purposes of the family court based on sections 28, 29, 31 and 32 of the Courts Act 2003 regarding the functions (*subsections* (1), (2) and (3)), independence (*subsection* (4)) and immunity (*subsections* (5), (6) and (7)) of justices' clerks and assistants to justices' clerks.

317. New section 31P (Orders, regulations and rules under Part 4A) relates to the various powers of the Lord Chancellor to make provision in secondary legislation which are conferred under Part 4A of the Matrimonial and Family Proceedings Act 1984. The parliamentary procedures to apply to the statutory instruments made under those powers are specified in subsections (2) and (3) of that section. By way of example, the procedure in subsection (2), whereby specified regulations and rules may not be made unless a draft of the statutory instrument containing the regulations or rules has been laid before, and approved by, a resolution of each House of Parliament, will be applied when the Lord Chancellor makes the first rules under new section 31O(1) enabling functions of the family court, or of a judge of the court, to be carried out by a justices' clerk, and enabling functions of a justices' clerk to be carried out by an assistant to a justices' clerk.

318. Part 2 *(paragraphs 2 to 98)* makes amendments to other enactments arising out of the creation of the family court. Principally these amendments are to enable existing family legislation to apply to proceedings in the new family court.

319. *Paragraph 99*contains repeals and revocations to legislation in consequence of Parts 1 and 2 of the Schedule.

Schedule 11: Transfer of jurisdiction to family court

320. *Paragraphs 1 to 209*make amendments to legislation providing for the transfer of jurisdiction to the family court. Principally these amendments reflect the fact that the county court and magistrates' courts will no longer deal with family proceedings and transfer their family jurisdiction to the new family court.

321. *Paragraph 210*contains repeals and revocations in consequence of Part 1 of the Schedule.

Section 18: Youth courts to have jurisdiction to grant gang-related injunctions

322. Section 18 amends the Policing and Crime Act 2009 with the effect that applications for injunctions to prevent gang related violence against persons aged 14 to 17 should be made in the youth court, sitting in a civil capacity, rather than in the county court or High Court. Section 18 also gives effect to Schedule 12.

Schedule 12: Gang-related injunctions: further amendments

323. Schedule 12 makes consequential amendments, including an amendment to secure that appeals against decisions of the youth court lie to the Crown Court.

324. Schedule 12 also makes a minor change to what may be permitted by rules of court for all gang-related injunctions, regardless of age, so that if a without notice application is dismissed an appeal may be brought by the applicant without informing the respondent.

Section 19: Varying designations of authorities responsible for remanded young persons

325. Section 19 amends provisions in Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act") relating to the designation of a local authority for a child who is remanded to youth detention accommodation.

326. Section 102(6) of the 2012 Act requires the court (where a child is remanded to youth detention accommodation) to designate a local authority as the designated authority for the child. The designation operates for various purposes, including for the purpose of regulations made under section 103(2) about the recovery of costs from the designated authority.

327. Section 102(7)(a) provides that the court must, where the child is looked after, designate the authority which looks after the child. Section 102(7)(b) provides that, where section 102(7)(a) does not apply, the court must designate either the local authority in whose area it appears to the court that the child habitually resides, or the local authority in whose area it appears to the court that the offence was committed. *Subsection (4)* of section 19 inserts new section 102(7A) and (7B) into the 2012 Act to provide that a court is to designate the local authority in whose area the child habitually resides, unless it considers it inappropriate to do so, or is unable to identify any place in England and Wales where the child habitually resides. It also provides that where it appears to the court that the offence was not committed in England and Wales, and it is not required under new section 102(7A) to designate the local authority in whose area the child habitually resides, the court may designate a local authority which it considers appropriate in the circumstances of the case.

328. *Subsection (5)* inserts new section 102(7C) to (7J) into the 2012 Act. These provisions give a court the power to make an order to replace a designated local authority with another local authority. A court currently has the power to change the designated authority, but such a change only has effect from the date on which the change is made. A replacement designation under the new provisions would have the effect that the newly designated local authority becomes liable, by virtue of any regulations made under section 103(2) of the 2012 Act, to pay any costs of accommodation, including during the period before the replacement (that is, when the original local authority was designated). The provisions would make further, ancillary provision. In particular, new section 102(7H) provides that if a designated local authority has paid an amount by virtue of regulations made under section 103(2) for the costs of the remand of a child to youth detention accommodation, and a replacement designation has been made, that amount must be repaid to the original local authority.

329. *Subsections (6) and (7)* provide that, although a replacement designation under new section 102(7C) of the 2012 Act may be made in respect of a remand ordered before the commencement of section 19, the substitution of a newly designated local authority does not have effect in respect to any time before commencement. Subject to this, the amendments to section 102 of the 2012 Act made by section 19 would only have effect in relation to remands ordered after commencement.

Section 20: Judicial appointments

330. Section 20 gives effect to Schedule 13.

Schedule 13: Judicial appointments

Part 1: Judges of the Supreme Court: number and selection

331. Part 1 of Schedule 13 amends aspects of the Constitutional Reform Act 2005 ("the CRA") which created the Supreme Court of the United Kingdom. The changes relate to the number of judges who are appointed to the UK Supreme Court and how they are selected.

332. *Paragraph 2* amends section 23 of the CRA to allow for there to be fewer than 12 full-time equivalent judges at any time. The paragraph provides that rather than specifying that the Court consists of 12 judges, the Court will instead consist of those persons appointed as its judges but there may be no more than the full-time equivalent of 12 at any time.

333. *Paragraph 3* amends section 26 of the CRA which makes provision for the selection of UK Supreme Court judges. *Sub-paragraph (2)* amends section 26(5) and *sub-paragraph (3)* inserts a new subsection (5A) into section 26 of the CRA to provide that the Lord Chancellor must convene a selection commission for a new appointment to the Court if there is a vacancy in the office of President of the Supreme Court or the office of Deputy President of the Court (or if it appears to the Lord Chancellor that there will soon be such a vacancy) or if the Lord Chancellor or the senior judge of the Court in consultation with the other, consider it desirable that a recommendation be made for an appointment. The new section 26(5B) provides that the senior judge means the President of the Court or, if there is no President, the Deputy President or, if there is no President and no Deputy President, the most senior ordinary judge of the UK Supreme Court.

334. *Paragraph 4*inserts new subsections (1A) to (1D) into section 27 of the CRA, which deals with the selection process for judges of the UK Supreme Court. These new subsections set out the requirements in relation to the composition of selection commissions for UK Supreme Court appointments. A selection commission must include:

- a minimum of 5 members and in every case must consist of an odd number of members;
- at least one serving judge of the UK Supreme Court;
- at least one non-legally-qualified member; and
- at least one member of each of the following bodies:
  - the Judicial Appointments Commission ("JAC");
  - the Judicial Appointments Board for Scotland; and
  - the Northern Ireland Judicial Appointments Commission.

335. Further provisions in relation to the composition of selection commissions for the appointment of the President of the Court and Deputy President of the Court are made; in particular, that they must not be a member of a selection commission convened to select their replacement. *Paragraph 4(2)* provides for a definition of "non-legally-qualified".

336. *Paragraph 5* inserts a new section 27A into the CRA, conferring a duty on the Lord Chancellor to make regulations to make further provision about the membership of selection commissions and the selection process to be applied in any case where a selection commission is required. The regulations must also secure that in every case there must come a point where a selection by the selection commission is accepted by or on behalf of the Lord Chancellor. These regulations must be made with the agreement of the senior judge and are subject to the affirmative resolution procedure by virtue of paragraph 7(9) of Schedule 13 which amends section 144(5) of the CRA.

337. *Paragraph 6* inserts new section 27B into the CRA. This sets out the procedure which the Lord Chancellor must follow when issuing guidance about the UK Supreme Court selection process and specifies the circumstances in which such guidance can be revoked. Specifically, it confers a duty on the Lord Chancellor to consult the senior judge of the UK Supreme Court before laying a draft of the proposed guidance before both Houses of Parliament. The guidance will be subject to the affirmative resolution procedure.

338. *Paragraphs 7 and 8* make consequential amendments, repeals and revocations. In particular, section 27(2) and (3) of, and Parts 1 and 2 of Schedule 8 to, the CRA are repealed, as are sections 28 to 31 and 60(5) of the CRA. *Paragraph 7(4)* inserts a new section 26(7A) into the CRA to define for the purposes of that section and Schedule 8 when a person is considered as having been selected.

Part 2: Diversity

339. Part 2 provides for measures to promote consideration of diversity in the appointments process.

340. *Paragraph 9*amends section 27 of the CRA to provide that a UK Supreme Court selection commission is not prevented from preferring one candidate over another for the purposes of increasing diversity in the UK Supreme Court where two candidates are of equal merit.

341. *Paragraph 10(3)* amends section 63 of the CRA. New section 63(4) of the CRA provides that neither the requirement to select candidates for judicial office solely on merit, nor Part 5 of the Equality Act 2010, prevents the selecting body from preferring one candidate over another, where two persons are judged to be of equal merit, for the purposes of increasing diversity within the judiciary.

342. *Paragraph 11* introduces a new section 137A to the CRA. The new section places the Lord Chancellor and Lord Chief Justice under a duty to take such steps as they consider appropriate for the purposes of encouraging judicial diversity.

343. *Paragraph 13* amends section 2 of the Senior Courts Act 1981 to allow the maximum number of ordinary judges of the Court of Appeal to be made up of a full-time equivalent ("FTE") of 38 ordinary judges, rather than a maximum of 38 individual judges. It also includes reference as to how to calculate the FTE, namely by taking the number of full-time ordinary judges and adding, for each ordinary judge who is not full-time, such fraction as is reasonable.

344. *Paragraph 14* amends section 4 of the Senior Courts Act 1981 to allow the maximum number of puisne judges of the High Court to be made up of a FTE of 108, rather than a maximum of 108 individual puisne judges. It also includes reference as to how to calculate the FTE, namely by taking the number of full-time puisne judges and adding, for each puisne judge who is not full-time, such fraction as is reasonable.

Part 3: Judicial Appointments Commission

345. Part 3 makes changes to the number of members of, and composition of, the JAC by amending Schedule 12 to the CRA. In particular it removes some of the detailed provisions of that Schedule and introduces new regulation-making powers.

346. *Paragraph 17* amends Schedule 12 to the CRA to enable the Lord Chancellor, with the agreement of the Lord Chief Justice, to determine the number of Commissioners of the JAC through regulations. Paragraph 1 of Schedule 12 currently requires that the JAC consist of a chairman and 14 other Commissioners.

347. *Paragraph 18*repeals paragraphs 2(2) to (5) and 4 to 6 of Schedule 12 to the CRA which provide for the composition of the JAC. Currently the JAC must consist of five judicial members, two professional members, five lay members, one member holding an office listed in Part 3 of Schedule 14 to the CRA (which lists members of tribunals and other similar office holders appointed by the Lord Chancellor) or an office listed in paragraph 2(2A) of Schedule 12 to the CRA, and one lay justice member.

348. *Paragraph 19*inserts new paragraphs 3A to 3C into Schedule 12 to the CRA. New paragraph 3A provides that the number of Commissioners who are judicial office holders must be less than the number of non-judicial office holders. New paragraph 3B enables the Lord Chancellor to make provision about the composition of the JAC in regulations agreed with the Lord Chief Justice. These regulations will make provision for the categories of different members of the JAC, but the Lord Chancellor must exercise his or her power so that the JAC includes judicial office holders, employed or practising lawyers and lay members. The regulations may include provisions about the number of Commissioners of any specified category (for example, the number of lay members) and may make provision about the eligibility for appointment as a

Commissioner or chairman. New paragraph 3C enables the Lord Chancellor, with the agreement of the Lord Chief Justice, to make regulations defining the terms:

- "lay member" for the purposes of Part 4 of Schedule 12 to the CRA; and
- "holder of judicial office" for the purposes of the exercise of the regulation-making powers in paragraph 3A (number of Commissioners), paragraph 3B(2)(a) (composition of Commission), paragraph 11 (vice-chairman) and also paragraph 20(5) (committees of the Commission must include at least one judicial member if exercising the function of selection) of Schedule 12 to the CRA.

349. *Paragraph 20* substitutes paragraphs 7 to 10 of Schedule 12 to the CRA which deal with matters relating to the selection of Commissioners with new paragraphs 6A and 6B which provide that the Lord Chancellor may make regulations, with the agreement of the Lord Chief Justice, to make provision for or in connection with the selection or nomination of Commissioners. New paragraph 6A(2) provides details of the matters that may be addressed in such regulations, including provision that selection or nomination is to be by a person, or body, specified in or appointed under the regulations; the matters which the selecting body or person is to, or is not to, have regard to; that the selecting body or person can determine its own selection procedure for the purpose of appointing a Commissioner; and requiring that there is a Commissioner who has special knowledge of a particular geographical area or of a particular matter. However, it is also specified in new paragraph 6B that the power to make regulations should be exercised with a view to ensuring that as far as practicable at least one of the lay Commissioners has special knowledge of Wales. The regulations may also make provision for payment to selectors of remuneration, fees and expenses incurred while carrying out their duties.

350. *Paragraph 21* amends paragraph 11 of Schedule 12 to the CRA which provides for the vice-chairman of the JAC. As now, the vice-chairman is to be the most senior of the judicial members of the Commission. However, the judicial member who ranks as the most senior will now be determined in accordance with regulations made by the Lord Chancellor with the agreement of the Lord Chief Justice (*sub-paragraph (3)*). *Sub-paragraph (4)* amends paragraph 11(3) of Schedule 12 to the CRA which lists those functions of the chairman of the JAC which the vice-chairman may not exercise in the absence of the chairman (on the grounds that, in the absence of the chairman, such functions should not be exercised by a judicial member of the JAC). The functions in question are sitting on the panel for selecting: judges of the UK Supreme Court; the Lord Chief Justice; a Head of Division; the Senior President of Tribunals; or a Lord Justice of Appeal.

351. *Paragraph 22* replaces paragraph 13 of Schedule 12 to the CRA which deals with the maximum term of office for a Commissioner with a new paragraph 13 providing a regulation-making power for the Lord Chancellor, in agreement with the Lord Chief Justice, to determine the period for which a Commissioner may hold office. New paragraph 13(2) also sets out what may be included in any such regulations, including the number of times a person can be appointed, the length of appointment and the total period for which they may hold office as a Commissioner. Currently a Commissioner may serve a maximum of two terms of up to five years apiece.

352. *Paragraph 23* replaces sub-paragraphs (1) and (2) of paragraph 14 of Schedule 12 to the CRA which deal with circumstances where persons cease to be a Commissioner or chairman on the basis that they are no longer eligible for appointment as a Commissioner or are no longer eligible to be a Commissioner of a particular description. New paragraph 14(1) of Schedule 12 to the CRA provides a regulation-making power for the Lord Chancellor, exercisable in agreement with the Lord Chief Justice, to provide when a Commissioner ceases to be a Commissioner or when the chairman ceases to be the chairman, and to provide a power to disapply or suspend these provisions in individual cases.

353. By virtue of the amendment made to section 144(5)(e) of the CRA by *paragraph 27*, all regulations made under Part 1 of Schedule 12 to the CRA, as amended, are subject to the affirmative resolution procedure.

354. *Paragraphs 24 to 28* make supplementary and consequential amendments to the CRA and the Tribunals, Courts and Enforcement Act 2007.

Part 4: Judicial appointments: selection, and transfer of powers of Lord Chancellor

355. Part 4 provides for responsibility for certain decisions in relation to judicial appointments to be transferred from the Lord Chancellor to the Lord Chief Justice and Senior President of Tribunals. It also makes amendments to the CRA in relation to the processes for selecting persons for appointment to judicial office.

356. The Lord Chief Justice will acquire the power to appoint persons to a number of courts-based judicial offices below the High Court and will acquire the power to decide upon selections made by the JAC in relation to appointments to a number of other courts-based judicial offices where Her Majesty The Queen makes the appointment. The Lord Chancellor will retain the power to decide upon selections by the JAC, or selection panel, in relation to appointments to the High Court and above and will retain the power to appoint in relation to a number of other courts-based judicial offices.

357. In relation to those offices where the Lord Chief Justice will, in future, have the power to appoint, most if not all of those offices are held by the holders on a renewable fixed-term basis. The power to extend, or to refuse to extend, such fixed-term appointments will be retained by the Lord Chancellor.

358. The Lord Chancellor will retain overall responsibility and accountability for judicial terms and conditions of appointment and service.

359. The Senior President of Tribunals will acquire the power to appoint persons as judges or other members of the First-tier Tribunal, other members of the Upper Tribunal, Chamber Presidents and Deputy Chamber Presidents of the First-tier Tribunal or the Upper Tribunal and deputy judges of the Upper Tribunal. The Senior President of Tribunals will also acquire the power to decide upon selections made by the JAC in relation to appointments as judges of the Upper Tribunal for which Her Majesty The Queen has the power to appoint.

360. Where any of the offices for which the Senior President of Tribunals will, in future, have the power to appoint are held by the holder on a renewable fixed-term basis, the Lord Chancellor will retain responsibility for the extension of (or refusing to extend) such fixed-term appointments. The Lord Chancellor will retain power to remove a person from office and, again, the Lord Chancellor will retain responsibility for judicial terms and conditions of appointment and service.

361. *Paragraph 29*amends Part 1 of Schedule 14 to the CRA (appointments by Her Majesty) so as to transfer responsibility for deciding upon selections made by the JAC in relation to certain judicial appointments from the Lord Chancellor to the Lord Chief Justice or the Senior President of Tribunals. *Paragraph 30* makes consequential amendments to paragraphs 1(2)(d) and 1(3) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

362. *Paragraph 32*amends section 21 of the Courts Act 1971 which deals with the appointment of Recorders who are fee-paid Crown Court and county court judges who hold office for a renewable fixed-term. Section 21(3) deals with the terms of appointment of a Recorder. Subsection (3)(c) provides that the terms of appointment must specify the circumstances in which the Lord Chancellor may either terminate the appointment or decline to extend the term of the appointment. The power to renew or refuse to renew the fixed-term appointments of these judicial offices will remain with the Lord Chancellor and not be transferred to the Lord Chief Justice. *Sub-paragraph (3)*

inserts a new subsection (8) to provide that subject to the preceding provisions of section 21 a person holds and vacates office as a Recorder in accordance with the terms of the person's appointment and those terms are to be such as the Lord Chancellor may determine. *Sub-paragraph (3)* also inserts a new subsection (9) into section 21 which enables the Lord Chief Justice to nominate a senior judge to exercise functions under section 21(4) or (4C).

363. *Paragraph 34* relates to the appointment of deputy Circuit judges by the Lord Chief Justice. *Paragraph 34(3)* amends section 24(1)(a) of the Courts Act 1971 to transfer the power to appoint persons as deputy Circuit judges from the Lord Chancellor to the Lord Chief Justice, but any decision to appoint a person must be made with the concurrence of the Lord Chancellor (reversing the current roles). *Paragraph 34(5)* inserts new subsections (5A) to (5D) into section 24 of the Courts Act 1971 to provide for the circumstances in which a deputy Circuit judge may be removed from office by the Lord Chancellor (new section 21(5A)), the extension of a deputy Circuit judge's fixed-term of appointment by the Lord Chancellor (with any agreement of the Lord Chief Justice, or the Lord Chief Justice's nominee, that may be required by the terms and conditions of appointment and service (new section 21(5B) and (5C)), and the determination of other terms of appointment by the Lord Chancellor (new section 21(5D)).

364. *Paragraph 35* amends section 91 of the Senior Courts Act 1981, which deals with the appointment of deputy and temporary Masters, Registrars etc. of the High Court. *Paragraph 35(2)* amends section 91(1) to transfer to the Lord Chief Justice (from the Lord Chancellor) the power to appoint such office holders. *Paragraph 35(3)* substitutes section 91(1ZA) to provide that the Lord Chief Justice cannot appoint a holder of relevant office (as defined in section 91(1ZC)) as a deputy Master etc without the agreement of the Lord Chancellor. *Paragraph 35(4)*inserts new subsections (6A) to (6D) into section 91 to provide for the circumstances in which a deputy or temporary Master etc. may be removed from office by the Lord Chancellor (new section 91(6A)), the extension of a deputy or temporary Master's etc. fixed-term appointment by the Lord Chancellor (with any agreement of the Lord Chief Justice (or the Lord Chief Justice's nominee) that may be required by the terms and conditions of appointment and service (new section 91(6B) and (6C)), and the determination of other terms of appointment by the Lord Chancellor (new section 91(6D)).

365. *Paragraph 35(5) to (7)* make consequential amendments to the CRA and Tribunals, Courts and Enforcement Act 2007.

366. *Paragraph 36* amends section 102 of the Senior Courts Act 1981 which provides for the appointment of deputy district judges for the High Court. *Sub-paragraph (2)* amends section 102(1) to allow the Lord Chief Justice (rather than the Lord Chancellor) to appoint persons as deputy district judges. *Sub-paragraph (3)* amends section 102(1B) so that the Lord Chief Justice cannot appoint without the agreement of the Lord Chancellor a person who holds the office of district judge or a person who ceased to hold the office of district judge within two years ending with the date when the appointment takes effect. *Sub-paragraph (4)* inserts new subsections (5ZA) to (5ZE) into section 102 to provide for the circumstances in which a deputy district judge may be removed from office by the Lord Chancellor (new section 102(5ZA)), the extension of a deputy district judge's fixed-term of appointment by the Lord Chancellor (with any agreement of the Lord Chief Justice (or the Lord Chief Justice's nominee) that may be required by the terms and conditions of appointment and service) (new section 102(5ZB) and (5ZC)), the determination of other terms of appointment by the Lord Chancellor (new section 102(5ZD)) and the delegation of the Lord Chief Justice's functions under section 102 (new section 102(5ZE)). *Paragraph 36(5) and (6)* make consequential amendments to the Senior Courts Act 1981 and the CRA as a result of the above changes.

367. *Paragraph 37*makes similar provisions to those outlined above, but in relation to deputy district judges for the county court, by amending section 8 of the County Courts Act 1984.

368. *Paragraph 38*makes like provisions for Deputy District Judges (Magistrates' Courts) by amending section 24 of the Courts Act 2003.

369. *Paragraph 39* amends section 10 of the Courts Act 2003 and provides for the Lord Chancellor's powers of appointment in respect of lay justices (magistrates) to be transferred to the Lord Chief Justice. The appointments themselves will, as now, continue to be made in the name of Her Majesty The Queen. *Sub-paragraph (3)* inserts a new section 10(1A) to provide that a lay justice is to hold and vacate office in accordance with terms of appointment as determined by the Lord Chancellor. *Sub-paragraph (4)* inserts a new section 10(2ZA) to provide that the Lord Chief Justice must ensure that arrangements for the exercise (so far as affecting any local justice area) of functions under subsection (1) include arrangements for the consulting of persons appearing to the Lord Chief Justice to have special knowledge of matters relevant to the exercise of that function in relation to that area. *Sub-paragraph (6)* inserts a new section 10(6A) to enable the Lord Chief Justice to nominate a senior judge (as defined by section 109(5) of the CRA) to exercise his power to appoint lay justices.

370. *Paragraph 40* introduces a requirement into section 94A of the CRA for the Lord Chancellor and the Lord Chief Justice to seek the concurrence of the other before making certain judicial appointments, selection for which is not undertaken by the JAC.

371. *Paragraph 41* amends Part 2 of Schedule 14 to the CRA so that the transfer of the power to appoint in relation to particular courts-based judicial offices from the Lord Chancellor to the Lord Chief Justice is reflected in that Schedule.

372. *Paragraphs 42 and 43*amend the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act") to confer upon the Senior President of Tribunals (in place of the Lord Chancellor) the power to appoint Chamber Presidents for the First-tier Tribunal or the Upper Tribunal.

373. *Paragraph 44(1)* introduces a new subsection (1A) into section 8 of the 2007 Act, which restricts the power of the Senior President of Tribunals to delegate his power to appoint judges and other members to the First-tier Tribunal to a Chamber President of a chamber of the Upper Tribunal. *Paragraph 44(2)*amends section 8(2) of the 2007 Act in order to detail which functions the Senior President of Tribunals may not delegate. *Paragraph 44*(3) inserts new section 46(7) into the 2007 Act to provide a definition of 'senior judge' for the purposes of Schedules 2 to 4 to that Act in relation to refusals to extend fixed-term appointments.

374. *Paragraph 45(2)*amends Schedule 2 to the 2007 Act to confer on the Senior President of Tribunals the power to appoint judges and other members of the First-tier Tribunal. *Paragraph 45* further amends Schedule 2 to set out the grounds on which the Lord Chancellor may remove from office judges and other members of the First-tier Tribunal appointed on a fee-paid basis, and makes provisions regarding the extension of fixed-term appointments by the Lord Chancellor (with any agreement of a senior judge (as defined under section 46(7)), or a nominee of a senior judge, that may be required by the terms and conditions of appointment and service).

375. *Paragraph 46* makes similar provisions in relation to the appointment of other members of the Upper Tribunal by amending Schedule 3 to the 2007 Act, and also confers upon the Senior President of Tribunals the power to appoint deputy judges of the Upper Tribunal by way of amendment to paragraph 7(1) of Schedule 3.

376. *Paragraph 47* amends Schedule 4 to the 2007 Act to transfer certain functions from the Lord Chancellor to the Senior President of Tribunals in relation to the appointment of Chamber Presidents and deputy Chamber Presidents. *Sub-paragraph (14)* inserts new paragraph 5A into Schedule 4 to provide for the removal of Chamber Presidents

and deputies from office by the Lord Chancellor and extensions of their appointments where they are fixed-term appointments by the Lord Chancellor (with any agreement of a senior judge (as defined under section 46(7)), or a nominee of a senior judge, that be required by the terms and conditions of appointment and service).

377. *Paragraph 48(2)* substitutes a new section 94B(1)(b) of the CRA to provide that for certain appointments (where section 94B applies) the Lord Chancellor and the Senior President of Tribunals are not to make an appointment (or recommendation for appointment) without the concurrence of the other.

378. *Paragraph 49* makes consequential amendments to Part 3 of Schedule 14 to the CRA to reflect the transfer of the Lord Chancellor's power to appoint in relation to certain tribunals-based judicial offices to the Senior President of Tribunals.

379. *Paragraph 50*amends section 50 of the Equality Act 2010 to amend the definition of "public office" so as to bring into its scope those judicial offices for which the Lord Chief Justice and the Senior President of Tribunals will, in future, have the power to appoint. It will therefore be unlawful for the Lord Chief Justice or the Senior President of Tribunals to discriminate against, harass or victimise persons who are, or wish to be, appointed to those judicial offices for which the Lord Chief Justice and the Senior President of Tribunals will have the power to appoint.

380. *Paragraph 51* makes consequential amendments to section 51 of the Equality Act 2010.

381. *Paragraph 52*amends section 9 of the Senior Courts Act 1981 so that requests may only be made to a Circuit Judge, Recorder or Tribunal judge to sit in the High Court if they are a member of a pool selected by the JAC for such purposes.

382. *Paragraph 53*repeals several sections of the CRA, and inserts a new section 94C into that Act. The new section 94C will require the Lord Chancellor to make regulations with the agreement of the Lord Chief Justice to:

(a) make further provision about the process to be applied where the Lord Chancellor has requested the JAC to select persons for appointment as a High Court judge or to one of the offices listed in Schedule 14 to the CRA or to a pool mentioned in the amendment made by *paragraph 52*. Although the JAC will have the power under section 88(1) of the CRA to determine the selection process to be applied by it, the regulations may make further provision about the entire process;

(b) make further provision about the membership of the selection panels convened for selecting persons for appointment as Lord Chief Justice, Heads of Division, Senior President of Tribunals or ordinary judges of the Court of Appeal;

(c) make further provision about the process to be applied in a case where such a selection panel is required to be convened.

383. The regulations must also secure that in every case there must come a point where a selection by the JAC or selection panel is accepted. New section 94C(2) sets out what the regulations may in particular provide for. Notably, such regulations may give functions to the Lord Chancellor including the powers to require a selection panel to reconsider a selection or any subsequent selection, and to reject a selection. Furthermore, under these regulations the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals (depending upon who has the power to decide upon a selection by the JAC) could be given power to reject or require reconsideration of initial or subsequent selections by the JAC made on a request under section 87, and to require reconsideration by the JAC of a decision where a selection process has not identified candidates of sufficient merit.

384. *Paragraphs 54 to 80* provide for other changes to be made to the CRA in relation to selection processes and complaints about the selection/appointment process. Paragraph 55 amends section 66(1)(a) of the CRA so that before issuing any guidance to the JAC

about selection procedures the Lord Chancellor must now obtain the agreement of the Lord Chief Justice.

385. *Paragraph 58(2)* inserts new subsections (1A) to (1D) into section 70 of the CRA, setting out requirements in relation to the composition of selection panels for selecting persons for appointment as Lord Chief Justice or Heads of Division. Similarly, sections 75B and 79 are amended (*paragraphs 60(2) and 63(2)*) to set out requirements for the composition of selection panels for selecting persons for appointment as the Senior President of Tribunals and ordinary judges of the Court of Appeal, respectively. The new subsections notably require that the panel must consist of an odd number of members and not less than five, that at least two members must be non-legally qualified (which may be defined in regulations made under new section 94C), that at least two must be judicial members and that at least two must be members of the JAC.

386. *Paragraph 64(4)* provides for the Lord Chancellor, by order and after consulting the Lord Chief Justice of England and Wales, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, to provide that section 85 of the CRA does not apply to appointments to an office listed in Schedule 14 to the CRA that is specified in the order. In essence this will provide that certain offices may be removed from the scope of the JAC. Those offices may only be those that do not require particular legal qualifications.

387. *Paragraph 65* amends section 86 of the CRA, in relation to the duties to make appointments or recommendations for appointment.

388. *Paragraph 66* amends section 87 of the CRA. *Sub-paragraph (2)* inserts new subsection (1A) which provides that the Lord Chancellor may request the JAC to select a person for membership of a pool from which requests may be made under section 9(1) of the Senior Courts Act 1981 to assist with the business of certain courts.

389. *Paragraph 67* makes consequential amendments to section 88 of the CRA, which deals with the selection process. It includes an amendment to section 88(4) to provide that only one person may be selected in relation to each request for a person to be selected for membership of a pool for the purposes of section 9(1) of the Senior Courts Act 1981.

390. *Paragraph 68* substitutes a new section 94 into the CRA. If the Lord Chancellor gives the JAC notice of a request which the Lord Chancellor expects to make under section 87, the JAC must seek to identify persons it considers would be suitable for selection on the request. The Lord Chancellor, however, may with the agreement of the Lord Chief Justice make regulations about how the JAC is to comply with this duty. *Paragraph 69*provides further detail and consequential amendments to section 95 of the CRA regarding the Lord Chancellor's power to withdraw or modify a request made under section 69, 78 or 87 of the CRA or paragraph 2(5) of Schedule 1 to the 2007 Act.

391. *Paragraph 70*makes consequential amendments to section 97(1) and (4) of the CRA.

392. *Paragraphs 71 to 77*make consequential amendments to sections 99 to 105 of the CRA which concern complaints about the selection/appointment process, including referrals to the Judicial Appointments and Conduct Ombudsman ("Ombudsman"). *Paragraph 71* incorporates a definition of "LCJ complaint" and "SPT complaint" into section 99 of the CRA, and *paragraph 72* imposes a duty upon the Lord Chief Justice and Senior President of Tribunals to investigate complaints made to them. *Paragraphs 73 to 75* concern the duties of the Ombudsman to investigate complaints and submit reports to the Lord Chief Justice, Senior President of Tribunals and the Lord Chancellor. *Paragraph 78*amends section 144(5) of the CRA to add to the list of orders and regulations that are subject to the affirmative resolution procedure. *Paragraphs 79*and*80*make further consequential amendments to the CRA.

Part 5: Selection of Lord Chief Justice and Heads of Division: transitory Provision

393. *Paragraph 82* temporarily amends the CRA to provide an amended selection process for appointments of the Lord Chief Justice or a Head of Division. This will allow the next Lord Chief Justice to be selected using a new selection process. These transitory provisions also provide a new selection process for a Head of Division should the next Lord Chief Justice be an existing Head of Division. Section 71 of the CRA currently provides that the panel for the selection of the Lord Chief Justice and Heads of Division is comprised of four persons and chaired by the most senior England and Wales Supreme Court judge, who has an additional casting vote in the event of a tie. As provided for by the temporary new section 71(2) and 71(3) of the CRA as inserted by *paragraph 82(3)* of Schedule 13, under the new process for the selection of a Lord Chief Justice there will be a five member panel chaired by a lay commissioner of the Judicial Appointments Commission. For Heads of Division, new sections 71A(2) and 71A(3) as inserted by *paragraph 82(3)* of Schedule 13 provide that the selection panel will comprise five members and be chaired by the Lord Chief Justice. Furthermore, new section 70(2A)(a) of the CRA, inserted by *paragraph 82(2)* of Schedule 13, will require the Lord Chancellor to be consulted as part of the processes for selecting Heads of Division and the Lord Chief Justice. In the case of the selection of the Lord Chief Justice, new section 70(2A)(b) as inserted by *paragraph 82(2)* of Schedule 13 requires the First Minister for Wales to be consulted as well as the Lord Chancellor. New section 94C of the CRA as inserted by *paragraph 53* of Schedule 13 provides for these selection processes in future to be set out in secondary legislation. Following the completion of the selection exercise for the next Lord Chief Justice and the making of the secondary legislation under new section 94C this transitory provision will be removed by virtue of *paragraph 81*and cease to have effect.

Part 6 – Appointment of judge to exercise functions of a Head of Division in case of incapacity or a vacancy etc.

394. *Paragraphs 83 to 88* provide for the Lord Chief Justice, with the concurrence of the Lord Chancellor, to temporarily appoint a judge of the Senior Courts to exercise relevant functions of a Head of Division where that Head of Division is incapable of exercising those functions or the office is vacant. *Paragraph 84* provides that the appointment must be in writing, specify the functions that may be exercised by the appointed judge and must set out the duration of the appointment. *Paragraph 85* defines "Head of Division". These are the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division and the Chancellor of the High Court. *Paragraph 86* defines "relevant functions" and *paragraph 87* provides that the Lord Chancellor may amend by order the list of relevant functions in *paragraph 86*. *Paragraph 88* amends section 10 of the Senior Courts Act 1981 by inserting a new subsection (6A) which has the effect that where a Head of Division is incapacitated, that office is to be treated as vacant for the purpose of section 10(6).

Part 7: Abolition of office of assistant recorder

395. From April 2000, appointments to the office of assistant Recorder (fee-paid judicial office holders with a fixed-term appointment) were no longer made, with all subsequent appointments being made to the office of Recorder. However, residual references to the office of assistant Recorder still remain in legislation. *Paragraph 89* removes any reference to this office in section 24 of the Courts Act 1971, and provides for consequential amendments to be made to that Act, the Judicial Pensions and Retirement Act 1993, the Senior Courts Act 1981, the Courts Act 2003, the CRA and the 2007 Act.

Section 21: Deployment of the judiciary

396. Section 7(2) of the CRA lists responsibilities of the Lord Chief Justice as President of the Courts of England and Wales. These responsibilities include, at paragraph (c),

the "maintenance of appropriate arrangements" for the deployment of the judiciary of England and Wales. Similarly, Part 2 of Schedule 4 to the 2007 Act specifies that the Senior President of the Tribunals has the function of assigning judges and members to the chambers of the First-tier Tribunal and Upper Tribunal.

397. In the tribunals, the scheme of assignment is in part specified in the 2007 Act itself and supplemented by a policy which the Senior President of Tribunals is required to publish (by paragraph 13 of Schedule 4). Within the court system the arrangements for deploying judges are largely uncodified. Each piece of legislation dealing with court jurisdiction specifies which judicial office holders may sit in that court, and arrangements for their deployment to that court are overseen by the Lord Chief Justice.

398. Judges of the First-tier Tribunal and Upper Tribunal cannot at present be deployed into the courts at all. The purpose of section 21 and Schedule 14 is to resolve these difficulties. See also the provisions inserted by Schedules 9 and 10 about who are to be judges of the county court and family court.

399. Section 21 expands the Lord Chief Justice's deployment responsibilities insofar as they are not already covered by section 7(2) of the CRA, and requires him or her to have regard to the similar responsibilities of the Senior President of Tribunals. The responsibilities are to maintain appropriate arrangements for the deployment to tribunals of judiciary who are deployable to tribunals, and for the deployment to courts in England and Wales of judiciary who are deployable to those courts. Further, it provides that Schedule 14 has effect.

Schedule 14: Deployment of the judiciary

400. In summary, Schedule 14 expands the lists in statute of the judicial office holders who are capable of sitting in each type of court and tribunal.

401. Schedule 14 is divided into seven parts:

- Parts 1 is concerned with judicial office holders who may sit in the Senior Courts (in particular, the Court of Appeal and High Court);
- Part 2 is concerned with the judicial office holders who may sit in the magistrates' courts;
- Part 3 is concerned with the judicial office holders who may sit in the Court of Protection;
- Part 4 is concerned with the judicial office holders who may sit in the First-tier Tribunal and Upper Tribunal;
- Parts 5, 6 and 7 are concerned with the judicial office holders who may sit in the Employment Appeal Tribunal and the Employment Tribunals.

Part 1: Deployment under section 9 of the Senior Courts Act 1981

402. Part 1 provides for a wider range of judicial office holders to provide assistance with the transaction of judicial business in the Senior Courts. The intended position is shown in Annex B. It also provides that selection for appointment to the office of deputy judge of the High Court under section 9(4) of the Senior Courts Act 1981 ("the 1981 Act") should be by the JAC.

403. *Paragraph 1* amends section 9 of the 1981 Act. *Sub-paragraph* (2) provides that a person who has been a puisne judge of the High Court or has been a Court of Appeal judge can be requested to sit in the family and county courts. *Sub-paragraph* (3) adds the Senior President of Tribunals to those who may be requested to sit in the Court of Appeal or the High Court. *Sub-paragraphs (4)* and *(5)* provide that the Upper Tribunal judges and the Presidents of the Employment Tribunals are added to the table (in section 9(1) of the 1981 Act) and so are able to be requested to sit in the High Court.

Sub-paragraph (6) provides that a request to the Senior President of Tribunals may only be made after consulting the Lord Chancellor. *Sub-paragraph* (7) provides for the concurrence of the JAC in relation to a request for a Circuit judge to sit in the Criminal Division of the Court of Appeal. *Sub-paragraph* (8) specifies which judges must comply with a request and those judges that do not have to comply with a request.

404. New subsections (8A) and (8B) of section 9 of the 1981 Act (inserted by *paragraph 2(3)*) expressly provide the Lord Chancellor with the power to remove deputy judges of the High Court and determine the terms of their appointments.

405. *Paragraph 3(1)* inserts the deputy judge of the High Court into new Table 2 of Part 2 of Schedule 14 to the CRA (as created as a result of the amendments made by paragraph 41 of Schedule 13 to the Act) which requires appointments made under section 9(4) of the 1981 Act, to be made following a JAC selection process.

406. *Paragraph 3(3)* inserts new section 94AA into the CRA which provides for a limited exception to the requirement that the appointments of deputy judges of the High Court are to be made following a JAC selection process. New section 94AA enables the Lord Chief Justice to appoint a person as a deputy judge of the High Court, after consultation with the Lord Chancellor, where: (a) there is an urgent need in respect of particular business of the High Court or Crown Court; (b) it is expedient as a temporary measure to make an appointment to dispose of the particular business and; (c) there are no other reasonable steps that may be taken in the time available (new section 94AA(2)). In such circumstances the normal JAC selection process is dis-applied and a person may be appointed as a temporary deputy judge of the High Court for a specified period in order to deal with the urgent business or until when the urgent business is expected to conclude (new section 94AA(3)).

Part 2: Deployment of judges to the magistrates' court

407. *Paragraph 4* amends section 66 of the Courts Act 2003 to expand the list of judges who have the powers of a justice of the peace who is a District Judge (Magistrates' Courts). The offices which have been added are, the Master of the Rolls, an ordinary judge of the Court of Appeal, the Senior President of Tribunals, judges of the First-tier and Upper Tribunals, county court and High Court district and deputy district judges and Masters, and members of a panel of Employment Judges.

Part 3: Deployment of judges to the Court of Protection

408. *Paragraph 5* amends section 46 of the Mental Capacity Act 2005 to add to the list of judges who may be nominated by the Lord Chief Justice, or a person acting on his behalf, to sit as a judge of the Court of Protection.

Part 4: Deployment of judges to the First-tier Tribunal and the Upper Tribunal

409. *Paragraph 7* amends section 4(1) of the 2007 Act to provide that any judge specified in new section 6A of that Act (inserted by *paragraph* 9 of Schedule 14) is a judge of the First-tier Tribunal).

410. *Paragraph 8* amends section 6(1) of the 2007 Act to provide that the following judges are also judges of the First-tier and Upper Tribunals: the Lord Chief Justice of England and Wales, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Judge Advocate General and a deputy judge of the High Court.

411. *Paragraph 9*inserts a new section 6A into the 2007 Act which expands the list of judges who are First-tier Tribunal judges to include a deputy Circuit Judge, a Recorder, High Court Masters, county court and High Court deputy district judges, Deputy District Judges (Magistrates' Courts), the Vice Judge Advocate General and Assistant Judge Advocates General.

Part 5: Deployment of judges to the Employment Appeal Tribunal

412. *Paragraph 11* amends section 22 of the Employment Tribunals Act 1996 ("the 1996 Act") by expanding the list of judicial office holders that may be nominated by the Lord Chief Justice to sit in the Employment Appeal Tribunal. Currently, only judges of the Court of Appeal or the High Court may be nominated to sit in the Employment Appeal Tribunal. Following the changes, the Senior President of Tribunals, the Judge Advocate General, deputy judges of the High Court, Circuit Judges, judges of the Upper Tribunal, district judges and District Judges (Magistrates' Courts) will be able to be nominated by the Lord Chief Justice.

Part 6: Deployment of judges to the employment tribunals

413. *Paragraph 12* amends section 5D of the 1996 Act which relates to the provision of judicial assistance in the employment tribunals. The list of judges that may be deployed to the employment tribunals is expanded to include the Lord Chief Justice and (with the Lord Chief Justice's consent) any of the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court in England and Wales, a deputy judge of the High Court, a Recorder, a county court or High Court deputy district judge, a Deputy District Judge (Magistrates' Court), High Court Masters and both the Judge Advocate General and any non-temporary assistants. Lastly, the paragraph makes it possible for the Senior President of Tribunals to sit in employment tribunals.

Part 7: Amendments following renaming of chairmen of Employment Tribunals

414. *Paragraph 13* updates various statutory references to "chairmen of employment tribunals" to "Employment judges". This change of name was given effect to by paragraph 247 of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683) which in turn amended regulation 8(3)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I. 2004/1861) which provides for the membership of Employment Tribunals.

Section 22: Transfer of immigration or nationality judicial review applications

415. Currently the only class of immigration and asylum judicial review applications and applications for permission to apply for judicial review that may be transferred to the Upper Tribunal are those which call into question a decision by the Secretary of State not to treat submissions as an asylum or human rights claim (within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002) wholly or partly on the basis that they are not significantly different from material that has been previously considered. Certain other conditions must also be met. These types of cases are commonly referred to as "fresh claim" judicial reviews. *Subsection (1)* amends section 31A of the Senior Courts Act 1981 to remove this limitation in respect of applications for judicial review or for permission to apply for judicial review made to the High Court in England and Wales. Any classes of immigration and nationality judicial reviews will therefore be capable of being designated in a direction made by, or on behalf of, the Lord Chief Justice under Schedule 2 to the CRA. *Subsection (2)* amends section 20 of the Tribunals, Courts and Enforcement Act 2007 to remove the same restrictions which apply to the transfer to the Upper Tribunal of applications made to the supervisory jurisdiction of the Court of Session. *Subsection (3)* amends section 25A of the Judicature (Northern Ireland) Act 1978 to remove the same restrictions which apply to transfers from the High Court in Northern Ireland to the Upper Tribunal of applications for judicial review or leave to seek judicial review. *Subsection (4)* repeals section 53 of the Borders, Citizenship and Immigration Act 2009 which introduced the exception for fresh claim cases to the general bar on transferring immigration and nationality cases; given that the generality of such cases may now be transferred there is no need for the exception.

Section 23: Permission to appeal from Upper Tribunal to Court of Session

416. Section 23 amends section 13 of the Tribunals, Courts and Enforcement Act 2007 to allow a rule of court in Scotland that would reintroduce the "second-tier appeals test" for applications for permission to appeal from the Upper Tribunal to the Court of Session. This test requires that an application should demonstrate that the appeal would raise an "important point of principle or practice", or "some other compelling reason for the court to hear the appeal". The test applies in England and Wales and in Northern Ireland. The same test, provided for in a rule of court, was in place in Scotland before that rule was recently found to be *ultra vires* in the Court of Session's decision in *KP and MRK v. The Secretary of State for the Home Department*. This section provides the statutory basis should such a rule be made again in Scotland.

Section 24: Appeals relating to regulation of the Bar

417. Section 24 abolishes the jurisdiction of High Court judges to sit as Visitors to the Inns of Court and confers on the Bar Council and the Inns of Court the power to confer rights of appeal to the High Court in relation to the matters that were covered by the Visitors' jurisdiction. The section applies to matters relating to, among other things:

- Persons seeking relief from disciplinary decisions of the Council of the Inns of Court and decisions of the Bar Council;
- Aspiring barristers seeking to overturn the decisions of the Qualifications Committee of the Bar Council (these relate primarily to requests for complete or partial exemptions from the Bar qualification criteria); and
- Disputes between an Inn of Court and a member of the Inn, or a dispute between members of the Inn on property matters such as the letting of chambers within the Inns of Court and dues payable to the Inn by its members.

418. This is achieved by repealing section 44 of the Senior Courts Act 1981 in so far as it confers jurisdiction on High Court Judges to sit as Visitors of the Inns of Court (*subsection (1)*) and conferring power on the Bar Council and the Inns of Court to confer rights of appeal to the High Court (*subsections (2) and (3)*).

419. The Bar Council, an Inn of Court, or two or more Inns of Court acting collectively (such as in the form of the Council of the Inns of Court), may confer a right of appeal to the High Court in respect of a matter relating to: (a) regulation of barristers; (b) regulation of other persons regulated by the person conferring the right; (c) qualifications or training of barristers or persons wishing to become barristers; or (d) admission to an Inn of Court or call to the Bar (*subsection (2)*). It is drafted in general terms to reflect the historically wide extent of the Visitors' jurisdiction in addition to encompassing how it is currently exercised.

420. An Inn of Court may also confer a right of appeal to the High Court in respect of: (a) a dispute between the Inn and a member of the Inn; or (b) a dispute between members of the Inn (*subsection (3)*). Any reference to a member of an Inn includes a reference to a person wishing to become a member of that Inn. Subsection (3) is in recognition of the fact that, historically, the Visitors' jurisdiction extended to appeals from all decisions relating to the conduct of an Inn's affairs.

421. A decision of the High Court on an appeal under this section is final (*subsection (4)*) with the exception of a decision to disbar a person (*subsection (5)*). As a result, such a decision may be appealed to the Court of Appeal (with permission). The High Court may make such order as it thinks fit on an appeal under this section (*subsection (6)*). Subsection (7) provides for the person who confers a right of appeal to remove it, for example, should regulatory arrangements change in future. It also enables any Inn to remove a right of appeal conferred by two or more Inns acting collectively in so far as it relates to that Inn. This reflects the ability of any Inn to cancel or amend on its

part the undertaking currently agreed between the Bar Council and the Council of the Inns of Court.

Section 25: Enforcement by taking control of goods

422. Section 25 amends Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). Schedule 12 makes provision for a codified procedure of "taking control of goods" to be followed by enforcement agents when seizing goods and will replace the existing law relating to the powers of bailiffs in this respect.

423. *Subsections (2) and (3)* insert new paragraph 18A(1) into Schedule 12 to the 2007 Act. New paragraph 18A(1) provides a general power, which replaces existing uncodified powers, to use reasonable force (but not against the person) to enter commercial premises to enforce High Court and county court debts pursuant to a writ or warrant of control.

424. *Subsection (4)* (together with subsection (2)) inserts new paragraph 19A(1) into Schedule 12 of the 2007 Act. New paragraph 19A(1) provides for a general power, which replaces existing uncodified powers, to use reasonable force (but not against the person) to secure re-entry to all premises without a court warrant (or further warrant) providing the conditions detailed in new paragraph 19A(1) are met.

425. *Subsection (5)* removes the power for regulations to prescribe circumstances in which force against the person may be used, so that force against the person may not now be permitted. *Subsection (8)* is consequential on the removal of the power to authorise the use of force against a person, and clears away references to the power which is being removed.

426. *Subsections (6) and (7)* amend the current definition of the "abandonment" of goods. This would mean that goods unsold at auction would no longer be deemed abandoned and would not further require the enforcement agent to "take control" of them again.

427. *Subsection (9)* makes updating amendments to Schedule 13 to the 2007 Act.

Section 26: Payment of fines and other sums

428. Section 26 makes provision: (a) to enable the recovery of charges for some or all of the administrative costs of collecting or pursuing criminal financial penalties from offenders who have defaulted on that sum; and (b) to facilitate the performance of the functions of fines officers by staff provided under contract.

429. *Subsection (1)* inserts a new section 75A into the Magistrates' Courts Act 1980 ("the 1980 Act"), which deals with the recovery of fine collection costs. A charge may be made in relation to the administrative costs incurred for the purpose of collecting or pursuing criminal financial penalties (new section 75A(1)). The charge would be added to the amount outstanding of the financial penalty imposed on conviction and treated in the same way (new section 75A(2)). This also means the charge would be recoverable in the same way and subject to the same sanctions for default. The offender must be notified of the obligation to pay the charge (new section 75A(3)): this will either be done in the collection order where the court has made such an order (a collection order is an order, which the court is required under paragraph 12 of Schedule 5 to the Courts Act 2003 ("the 2003 Act") to make unless it is impracticable or inappropriate to do so, relating to the payment of the financial penalty and containing information about the amount of the financial penalty and how it is to be paid) or via some other form of notice where no collection order is made.

430. The collection costs will not be chargeable where the court has allowed time to pay or where a person is paying by instalments and the sum has been satisfied within the time allowed or the payments are up to date (new section 75A(4) and (5)). The collection costs do not apply to costs related to taking control of goods (new section 75A(6)).

431. *Subsection (2)* inserts a new section 36A into the 2003 Act which makes it clear that the role and functions of the magistrates' court fines officer under that Act are to be treated as not involving the making of judicial decisions or the exercise of judicial discretion. This would facilitate the performance of those functions by staff provided under contract under section 2(4) of the 2003 Act.

432. *Subsections (3) to (8)* make amendments to other legislation consequential on the main changes made by subsections (1) and (2). *Subsection (3)* inserts provision into Schedule 5 to the 2003 Act to ensure that collection orders contain an explanation of the possibility of collection costs being chargeable in the event of default. *Subsection (4)* amends section 85 of the 1980 Act to provide that collection costs may be remitted in the same way as a fine to which they are added. *Subsection (5)* amends section 139 of the 1980 Act, which makes provision for how the balance of receipts on account of fines is to be applied: the amendment makes the provision subject to directions which may be made under section 139A of that Act. *Subsection (6)* inserts that new section 139A into the 1980 Act. The new section 139A enables the Lord Chancellor to give directions for money received in respect of collection costs to be paid to the person who charged the amount, which allows for flexibility in the arrangements for applying that money, for example if fine collection functions were to be performed under contract.

433. *Subsection (7)* amends section 24(2) of the Criminal Justice Act 1991 to ensure that regulations about applications by courts for benefit reductions for payment of fines may make provision about deductions in connection with the sum being increased on account of collection costs. *Subsection (8)* amends section 56(3) of the Education and Skills Act 2008 (which provides for non-participation fines imposed in respect of failure to attend education or training to cease to be enforceable as fines once the person in question has reached 18, except in so far as necessary to complete enforcement which is already under way) so that it covers amounts in respect of collection costs incurred in relation to such a fine in the same way as amounts in respect of the fine itself.

Section 27: Disclosure of information to facilitate collection of fines and other sums

434. Paragraphs 9A to 9C of Schedule 5 to the Courts Act 2003 (the "2003 Act"), as amended by this section, will enable the Secretary of State, a Northern Ireland department and Her Majesty's Revenue and Customs to share social security and finances information with Her Majesty's Courts and Tribunals Service for the purpose of facilitating the making of a decision by a court or a fines officer as to whether to make an attachment of earnings order or an application for benefits deductions against the offender, or of facilitating the making of such an order or application.

435. New paragraph 9A(2) of Schedule 5 to the 2003 Act defines finances information to include details about an offender's income, gains or capital and social security information to include information which is held for the purposes of functions relating to social security. The new paragraph 9A(1) refers to a Northern Ireland Department to ensure that social security information on Northern Ireland residents held on the Department for Work and Pension's database can be shared with Her Majesty's Courts and Tribunals Service.

436. *Subsections (6)* to *(8)* amend the criminal offence in paragraph 9B to prevent further disclosure of any information shared with Her Majesty's Courts and Tribunals Service save in the circumstances set out in amended paragraph 9B(3) and (4). *Subsections (9)* and *(10)* increase the maximum penalties in relation to the offence to be imprisonment not exceeding two years and/or a fine if tried on indictment and imprisonment not exceeding 6 months (increasing to 12 months when section 154(1) of the Criminal Justice Act 2003 is brought into force) and/or a fine not exceeding the statutory maximum if tried summarily.

Section 28: Disclosure of information for calculating fees of courts, tribunals etc

437. Section 28 makes provision for the disclosure of information about tax credits, social security information and information about a person's income, gains or capital in order to determine a person's eligibility for a remission from paying fees to courts, tribunals or the Public Guardian.

438. *Subsection (1)* provides that the Secretary of State (in practice, the Secretary of State for Work and Pensions), or a relevant Northern Ireland Department, or a person providing services to them, may disclose social security information to a relevant person in order for that person to determine whether an applicant is eligible for a fee remission.

439. *Subsection (2)* enables Her Majesty's Revenue and Customs to disclose tax credit information or information about a person's income, gains or capital to a relevant person in order for that person to determine whether an applicant is eligible for a fee remission.

440. *Subsection (3)* provides that information disclosed to a relevant person under *subsection (1) or (2)* may only be shared with another relevant person who wants the information to assess whether someone is eligible for a fee remission; such information cannot be used for any other purpose.

441. *Subsection (4)* explains the limited circumstances in which information received for the purpose of deciding whether someone is eligible for a fee remission under either *subsection (1)* or *(2)* may be further disclosed. Further disclosure is only permitted where that information has already been disclosed to the public with lawful authority, where it is disclosed in a form such that information about an individual cannot be identified from it or where disclosure is necessary to comply with a court order or statutory duty.

442. *Subsection (*5) provides that it is an offence to disclose or use this information other than for the purposes specified.

443. *Subsection (6)* provides that where a person is charged with an offence under subsection (5), it is a defence that they reasonably believed that the disclosure or use of the information was lawful.

444. *Subsection (7)* sets out the applicable penalties where a person is guilty of the offence under subsection (5). A conviction on indictment may attract a sentence of imprisonment for a term not exceeding two years, a fine or both. On summary conviction a person is liable to a term of imprisonment not exceeding 12 months, a fine not exceeding the statutory maximum, or both.

445. *Subsection (8)* provides that in relation to summary convictions for the offence at *subsection (5)*, a prison sentence not exceeding 6 months applies to offences committed in England and Wales before the implementation of section 154(1) of the Criminal Justice Act 2003 (which provides that a magistrates court does not have the power to impose a sentence of more than 12 months for one offence) or for offences committed in Northern Ireland.

446. *Subsection (9)* provides that, in England, Wales, and Northern Ireland, a person may only be prosecuted for an offence under this section by or with the consent of the relevant Director of Public Prosecutions.

447. *Subsection (10)* defines the terms used in this section. It sets out what is meant by a relevant person and includes a list of court, tribunal and other fee-charging provisions to which the disclosure regime applies.

Section 29: Supreme Court chief executive, officers and staff

448. *Subsection (1)* amends section 48 of the Constitutional Reform Act 2005 making the President of the UK Supreme Court responsible for the appointment of the Chief Executive of the UK Supreme Court instead of the Lord Chancellor.

449. *Subsection (3)* amends section 49 of the Constitutional Reform Act 2005 removing the requirement that the Lord Chancellor agree the numbers of officers and staff of the UK Supreme Court, and the terms on which these officers and staff are to be appointed.

450. *Subsection (4)* amends the same section inserting a new subsection (2A) which provides that all UK Supreme Court staff and officers, including the Chief Executive, are civil servants.

Section 30: Supreme Court security officers

451. *Subsection (1)* inserts new sections 51A to 51E in the Constitutional Reform Act 2005 which provide for Supreme Court security officers who will operate in any building where the business of the UK Supreme Court or the judicial committee of the Privy Council is carried on. The new sections are based on sections 51 to 57 of the Courts Act 2003 (security officers for other courts).

452. *Subsection (2)* amends section 48 of the Constitutional Reform Act 2005 so that the power of the President of the UK Supreme Court to appoint security officers provided in the new provisions on court security (new sections 51A to 51E) may be delegated to the Chief Executive of the UK Supreme Court

453. New section 51A (Supreme Court security officers) establishes that every Supreme Court security officer must be appointed by the President of the Supreme Court under section 49(1) or provided under a contract. They must also be designated as security officers by the President. It is envisaged that there will be a period of training. New section 51A(2) enables the President to give directions for training and to specify the conditions which must be met before a person can be designated as a Supreme Court security officer. New section 51A(3) provides that Supreme Court security officers must be identifiable. For the purposes of these sections "court building" means any building where the business of the UK Supreme Court, or of the Judicial Committee of the Privy Council, is carried on, and where the public has access.

454. New section 51B (Powers of search, exclusion, removal and restraint) gives a Supreme 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. Supreme Court security officers may only require the removal of a coat, jacket, headgear, gloves or footwear. New section 51B(4) provides the Supreme Court security officers with powers to restrain persons, or exclude or remove them from the UK Supreme Court. Officers may exclude or remove a person who 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 UK Supreme Court, may risk the safety of a person, 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 UK Supreme Court or enable its business to be conducted without disruption. New section 51B(6) provides that a Supreme Court security officer may also remove any person from a courtroom at the request of a judge of the UK Supreme Court or a member of the Judicial Committee of the Privy Council. New section 51B(7) provides that the powers to exclude, remove and restrain persons include the power to use reasonable force.

455. New section 51C (Surrender, seizure and retention of knives and other articles) requires a Supreme Court security officer to request the surrender of any article that the officer reasonably believes ought to be surrendered. An officer may also seize an article where the officer has requested its surrender but the request has been refused. Specific grounds for surrender and seizure are laid out in new section 51C(2)(a) to (c): because possession of the article may jeopardise the maintenance of order in the UK Supreme 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. A Supreme Court security officer may 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, the officer 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.

456. In conjunction with the Supreme Court security officers' powers to retain an article surrendered or seized under new section 51C 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. New section 51D (Regulations about retention of knives and other articles) 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 new section defines an unclaimed article as one that has been retained and which a person is entitled to have returned but which the person has not requested and which has not been returned.

457. New section 51E (Assaulting and obstructing court security officers) provides that assaulting a Supreme Court security officer in the execution of the officer's duty is an offence punishable on summary conviction with a fine not exceeding level 5 (£5000) on the standard scale or imprisonment for up to six months. It also provides that resisting or wilfully obstructing a Supreme Court security officer in the execution of the officer's duty is an offence punishable on summary conviction with a fine not exceeding level 3 (£1000) on the standard scale.

Section 31: Making, and use, of recordings of Supreme Court proceedings

458. The purpose of this section is to disapply the provisions relating to the prohibition on sound recording and the subsequent broadcasting of any such recordings, as contained within section 9 of the Contempt of Court Act 1981, in relation to UK Supreme Court proceedings.

459. *Subsection (2)* inserts new subsection (1A) into section 9 of the Contempt of Court Act 1981. Subsection (1A) disapplies the prohibition laid out in section 9(1)(b) of the Act (which prohibits the broadcast of sound recordings of legal proceedings) where a recording of UK Supreme Court proceedings is broadcast or disposed of with the leave of the Court.

460. *Subsection (3)* provides that the UK Supreme Court is able to grant leave to use in court, or to bring into court for use, any tape recorder or other instrument for the purpose of recording sound, subject to any conditions the UK Supreme Court considers appropriate relating to the subsequent publication or disposal of any recording.

461. *Subsection (4)* makes it a contempt of court to publish or dispose of any sound recording which is made in contravention of any conditions of leave granted under new subsection (1A).

Section 32: Enabling the making, and use, of films and other recordings of judicial proceedings

462. The purpose of this section is to permit filming and broadcast of proceedings in courts and tribunals in certain circumstances. It is expected that such circumstances will be set out in secondary legislation and where appropriate in non-statutory operational guidance.

463. *Subsection (1)* provides that the Lord Chancellor may, by order made with the agreement of the Lord Chief Justice, provide that the enactments in *subsection (2)* do not apply. Any such order is subject to the affirmative resolution procedure (see section 58(4)).

464. Subsection (2) contains the enactments that may be disapplied. They are section 41 of the Criminal Justice Act 1925, which prohibits photography or drawing in court, and section 9 of the Contempt of Court Act 1981, which prohibits sound recordings in court without the permission of the court.

465. *Subsection (3)* provides that, where an order has been made, a court or tribunal may direct that the enactments in subsection (2) may continue to apply, or will only be disapplied if certain conditions are satisfied. The court may only give such a direction if this is in the interests of justice or to ensure that a person is not unduly prejudiced.

466. *Subsection (4)* provides that any direction under subsection (3), or a decision not to make a direction, is not subject to appeal

467. *Subsection (5)* defines 'recording' and 'prescribed'.

468. *Subsection (6)* clarifies that the preceding provisions do not apply in relation to the broadcasting of proceedings from the UK Supreme Court.

469. *Subsections (7)* and *(8)* amend section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 so as to provide that the restrictions they impose are to be read as being subject to this section.

Section 33: Abolition of scandalising the judiciary as a form of contempt of court

470. *Subsection (1)* abolishes the common law offence of scandalising the judiciary (also referred to as scandalising the court or scandalising judges) as a form of contempt of court in England and Wales.

471. *Subsection (2)* clarifies that conduct that is contempt of court (such as abuse of a judge in the face of the court or that otherwise interferes with particular proceedings) and that would also have been scandalising the judiciary remains contempt of court.

Section 34: Awards of exemplary damages

472. Section 34 establishes when exemplary damages may be awarded against a relevant publisher (defined in section 41) upon a finding of liability under a relevant claim (as defined in section 42). By *subsection (2)*, a defendant who was a member of an approved regulator at the material time (defined in section 42) would be entirely excluded from liability to exemplary damages, whether under the common law or this statutory scheme. However, *subsection (3)* allows the court to disregard subsection (2) if it considers that a decision by an approved regulator either to impose a penalty on the defendant or not to do so was manifestly irrational, and that otherwise it would have made an award of exemplary damages against the defendant. For unregulated defendant publishers, *subsection (4)(b)* prevents exemplary damages being awarded in respect of relevant claims under the common law – they may only be awarded under the statutory scheme. Exemplary damages must be specifically claimed by the claimant. The test of liability is in *subsection (6)* – exemplary damages require conduct:

(a) showing a deliberate or reckless disregard of an outrageous nature for the claimant's rights;

(b) of an order meriting punishment (that is, some response beyond just compensation of the victim); and

(c) in relation to which other remedies are insufficient to punish (for example, the size of the compensation is not sufficient punishment in itself on the facts of the case).

473. The court will look at all the circumstances. Under *subsection (8)* the decision on whether to award exemplary damages, and if so the decision as to the size of the award, may only be made by a judge - jury involvement is excluded.

Section 35: Relevant considerations

474. Section 35 gives the court detailed guidance about particular factors to take into account in deciding whether to award exemplary damages. Under *subsection (2)* the court should not usually award exemplary damages if a defendant has already been punished in relation to the same conduct through a criminal conviction. *Subsection (3)* provides that the court should also take account of whether the defendant could have joined a regulatory scheme and if they did not, the reasons for that decision. In addition, under *subsections (3) and (4)* the court should consider whether, irrespective of regulatory scheme membership, the defendant had satisfactory internal compliance procedures in place in relation to how material is obtained and the circumstances in which it is published, and adhered to them. *Subsection (5)* provides that the court may have regard to the need for deterrence – both of the defendant and others. The provisions of *subsection (6)* make clear, notwithstanding these specific directions, that the court has a general discretion to look at all relevant circumstances.

Section 36: Amount of exemplary damages

475. Section 36 provides that when determining the amount of exemplary damages, the court must have regard to the need for the award to be no more than the minimum needed to punish the defendant, and must ensure that the award is proportionate to the seriousness of the conduct. The court is also required to take account of the nature and extent of loss or harm caused, or intended to be caused, by the defendant's conduct, and the benefit the defendant derived, or hoped to derive, from that conduct. As with section 35, *subsection (4)* provides that the court may have regard to the need for deterrence – both of the defendant and others, while *subsection (5)* makes clear that the court has a general discretion to look at all matters relevant to its decision on determining the amount of exemplary damages.

Section 37: Multiple claimants

476. Section 37 applies to claims involving more than one claimant. In such cases, *subsection (5)* prevents any later claims for exemplary damages where an earlier award of such damages has been made. Additionally, *subsection (4)* ensures that the total amount awarded by way of exemplary damages where two or more claimants are concerned is not excessive and with this purpose in mind, *subsection (2) and (3)* ensure that prior out of court settlements made by the defendant with other claimants can be taken into account.

Section 38: Multiple defendants

477. Section 38 applies to claims involving more than one defendant. In such cases *subsection (1)* provides that in relation to exemplary damages awarded under section 34 liability will always be "several" so that the court can look at each defendant individually and punish that defendant according to the actual extent of their wrongdoing. Notwithstanding subsection (1), *subsection (2)* preserves the position as regards joint liability in relation to partnerships. *Subsection (3)* prevents defendants from seeking contributions from other defendants in relation to the exemplary damages paid where their liability is several as a result of this provision.

Section 39: Awards of aggravated damages

478. Section 39 makes clear that "aggravated damages" are distinct from exemplary damages. Aggravated damages relate to mental distress caused by the defendant's wrongdoing which goes over and above the level of mental distress that the basic award of compensation addresses. However, they are essentially still compensatory not punitive, unlike exemplary damages. Section 39 puts this question beyond doubt in relation to the type of cases to which section 34 applies.

Section 40: Awards of costs

479. Section 40 relates to cases where the relevant publisher is a defendant to a relevant claim. In such cases, when making a decision about whether and to what extent the defendant should pay the claimant's costs of the case, the usual costs rules will not apply and the court will be required either to award, or not to award, costs against the defendant in accordance with *subsections (2) and (3)*. Subsection (2) applies where at the time the claim was commenced, either the defendant was a member of an approved regulator or was unable to be a member for reasons beyond the defendant's control, or it was unreasonable in the circumstances for the defendant to have been a member. In those circumstances the court must not award costs against the defendant regardless of the outcome of the case – unless the court is satisfied that one of two exceptions applies. The exceptions are that the issues raised by the claim could not have been resolved by using an arbitration scheme provided by the approved regulator, or that in all the circumstances of the case it is just and equitable to award costs against the defendant. Subsection (3) would apply where at the time the claim was commenced the defendant was not a member of an approved regulator but could have been, and it was reasonable for the defendant to have been a member. In those circumstances, the position is the converse of that under subsection (2) and the court must award costs against the defendant, regardless of the outcome of the case, unless the court is satisfied that one of two exceptions applies. The exceptions are that the issues raised by the claim could not have been resolved by using an arbitration scheme provided by the approved regulator, or that in all the circumstances of the case it is just and equitable to make a different order, or no order, as to costs.

480. *Subsection (4)* concerns costs protection other than that for defendants under subsection (2), and would require the Secretary of State to take steps to put in place arrangements for protecting the position in costs of parties to relevant claims who are represented under a conditional fee agreement under section 58 of the Courts and Legal Services Act 1990. *Subsection (5)* provides that this section is not to be read as limiting any power to make rules of court. *Subsection (6)* makes transitional provision, to the effect that the section's provisions do not apply until such time as a body is first recognised as an approved regulator.

Section 41: Meaning of "relevant publisher"

481. Section 41 sets out to whom the provisions in sections 34 to 40 are to apply, subject to the exclusions contained within Schedule 15. A number of elements make up the definition in order to establish who is covered by the "relevant publisher" test. *Subsection (1)* provides that a relevant publisher is a person publishing news-related material (defined by section 42) as part of their business, whether or not that business is carried on with a view to making a profit. The material must be written by different authors and be subject to some degree of editorial control. Editorial control is defined in *subsection (2)*, which provides that editorial control is exercised if a person, whether the publisher, or another person, such as an employee, has editorial or equivalent responsibility for the content of the material, how that material is to be presented, and whether to publish it. *Subsections (3) and (4)* provide that, in relation to a website, a publisher is not to be considered as exercising editorial responsibility if they did not post the relevant material to the website themselves, or if they only exercise moderation functions over such material. This definition therefore excludes single author bloggers, tweeters, news aggregators, social networking sites, website moderators and moderated forums. There are then a series of express exclusions from this test. *Subsections (5) and (6)* provide that, notwithstanding a publisher may fall within the provisions of subsection (1), they will not be regarded as a relevant publisher if either they are specified by name in Schedule 15, or their publication of news-related material falls within the category or case of a person set out in that Schedule.

Schedule 15: Exclusions from Definition of "Relevant Publisher"

482. Schedule 15 provides for certain persons, and certain activities to be excluded from the definition of "relevant publisher" set out in section 41. As subsections (5) and (6) of section 41 make clear, the exclusions operate to either exclude a named person, or to exclude a person insofar as they carry out activity set out in the Schedule. *Paragraphs 1 and 2* exclude the British Broadcasting Corporation and Sianel Pedwar Cymru (the broadcaster S4C). The effect of these paragraphs is that all activities carried on by these bodies will be excluded from the definition of relevant publisher, and they will fall outside the provisions of section 34 to 42 entirely. *Paragraph 3* excludes the holders of a licence under the Broadcasting Acts 1990 and 1996, insofar as they publish news-related material in connection with their broadcasting activities as regulated by their licence. *Paragraph 4* excludes the publishers of special interest titles, which are connected with pastimes, hobbies, trade, business, industry or a profession in relation to their publication of news-related material which is incidental to, and relevant to, the subject matter of that title. *Paragraph 5* excludes scientific and academic publications, where news-related material is incidental to, and relevant to, the scientific and academic content. *Paragraph 6* excludes publications made by public bodies and charities where they publish news-related material in connection with the carrying out of their functions. Public body is defined as a person or body whose functions are public functions.

483. *Paragraph 7* is a similar exclusion, but excludes persons publishing newsletters or circulars, rather than titles, about their own business, where the news-related material is relevant to that business. *Paragraph 8* excludes persons carrying on a micro-business having fewer than 10 employees and with an annual turnover not exceeding £2,000,000, where they publish news-related material contained either in a multi-author blog, or published on an incidental basis relevant to the main activities of the business. *Paragraph 9* excludes the publishers of books. Books do not include a title published on a periodic basis with substantially different content.

Section 42: Other interpretative provisions

484. Section 42 provides interpretative provisions for the operation of sections 34 to 41 and Schedule 15. An "approved regulator" and the concept of recognition as a regulator are central to identifying whether the statutory exemplary damages regime applies to a particular publisher. *Subsections (2) and (3)* define an "approved regulator" for the purpose of sections 34 to 41 and Schedule 15. *Subsection (4)* lists six types of "relevant claim" which are potentially relevant to the situation where a person experiences wrongful behaviour by a publisher and are therefore covered by sections 34 to 41 and Schedule 15. *Subsection (5)* explains that this does not include claims under section 13 of the Data Protection Act 1998, and that "harassment" means a claim under the Protection from Harassment Act 1997.

485. *Subsection (6)* defines "material time" as referring to the time of the events which gave rise to the claim. This is relevant in particular to the incidence of the power to award exemplary damages, the relevance of membership of an approved regulator to the decision whether to award exemplary damages and the availability of the provisions on costs. "News related material" is defined in *subsection (7)* to capture news, information and opinion about current affairs, and gossip about celebrities, other public figures and those in the news. *Subsection (8)* sets out the relationship between publication of news-related material and a relevant claim – this relationship is made clear in order to avoid the application of the statutory scheme to behaviour of relevant publishers which is unrelated to their news publishing activities (for example, an harassment claim relating to the relevant publisher's private rather than professional activities). *Subsection (9)* makes clear that publications are caught regardless of the medium on which they are made. *Subsection (10)* clarifies that "conduct" can relate both to omissions, and also to activity following a point after which the events giving rise to the claim occurred (for example, in defamation cases, conduct of the defendant after the defamatory publication itself can be relevant to the court's decisions on damages).

Section 43: Use of force in self-defence at place of residence

486. Section 76 of the Criminal Justice and Immigration Act 2008 applies when the court is considering the question of whether the level of force used by a defendant who claims to have acted in self defence was reasonable in the circumstances as he or she believed them to be.

487. Section 43 amends section 76 of the 2008 Act to give people who defend themselves or others from intruders in their homes greater legal protection. For the purpose of this section, these cases are known as householder cases.

488. *Subsection (2)* inserts new subsection (5A) of section 76. This provides that in a "householder case", the level of force used by householders when defending themselves from trespassers (or people they believe to be trespassers) will not be regarded as having been reasonable in the circumstances as they believed them to be if that level of force was grossly disproportionate in those circumstances. In other words, it could be reasonable for householders to use disproportionate force to defend themselves from burglars in their homes.

489. *Subsection (3)* amends section 76(6) to make it clear that in cases other than householder cases (for example, when people are acting for other legitimate purposes such as defending themselves when they are attacked outside their dwellings, defending property or preventing crime) the current law continues to apply.

490. *Subsection (4)* inserts new subsections (8A) to (8F) of section 76. These subsections define the meaning of "a householder case" for the purposes of subsection (5A).

491. Subsection (8A) states that the heightened defence applies when (a) householders are defending themselves or others; (b) they are in, or partly in, a building or part of a building that is a dwelling or is armed forces accommodation; (c) they are not trespassing at the time the force is used; and (d) they are defending themselves from a person who they believe is in or entering the building as a trespasser. The use of the terms 'partly in' in subsection (8A)(b) and 'entering' in subsection (8A)(d) ensure that a householder could rely on the defence for example if he or she encountered an intruder on the threshold of his or her dwelling. The heightened defence would not apply, however, if the confrontation occurred wholly outside the building or part.

492. Subsection (8B) ensures that people who live in buildings which serve a dual purpose as a place of residence and a place of work (for example, a shopkeeper and his or her family who live above the shop) can rely on the defence regardless of which part of the building they were in when they were confronted by an intruder, providing that there is internal means of access between the two parts of the building. The defence would not extend to customers or acquaintances in the shop unless they were also residents in the dwelling.

493. Subsection (8C) creates a similar provision for the armed forces whose living or sleeping accommodation may be in the building they work in and where there is internal access between the two parts.

494. Subsection (8D) applies subsections (4) and (5) of section 76 for the purposes of subsection (8A)(d). This means that householders can still rely on the new defence provided they have a genuine belief that the person is a trespasser. This applies even if their belief was mistaken. A person does not, however, cease to be a trespasser just because they have the permission of a trespasser to be on the premises (subsection (8E)).

495. The term 'building' for the purposes of the new subsections includes a vehicle or vessel. This means that people who live in caravans or houseboats, for example, could rely on the heightened defence. It also defines the meaning of 'forces accommodation' for those purposes.

496. *Subsection (5),* in amending section 76(9), confirms that these new provisions change the law and are not merely intended to be clarificatory. The amendments will not operate retrospectively *(subsection (6)).*

Section 44: Dealing non-custodially with offenders

497. This section gives effect to Schedule 16.

Schedule 16: Dealing non-custodially with offenders

Part 1 – Community Orders: punitive elements

498. Part 1 of Schedule 16 amends section 177 of the Criminal Justice Act 2003 ("the CJA 2003") so as to require a court imposing a community order either to include a requirement that fulfils the purpose of punishment in the order or to impose a fine (or do both) unless there are exceptional circumstances that would make that unjust.

499. At present, when a court imposes a community order it may choose from a menu of thirteen possible requirements, namely:

- Unpaid work (known as community payback);
- Residence (requiring an offender to reside at a place specified in the court order);
- Mental health treatment;
- Drug rehabilitation;
- Alcohol treatment;
- Supervision (requiring an offender to attend appointments as instructed by a probation officer);
- Attendance centre (requiring an offender under 25 to attend a particular centre at specified times);
- Prohibited activity (requiring an offender to refrain from participating in certain activities as set out in the court order);
- Curfew (confining an offender to a specified place for a specified number of hours per day);
- Exclusion (prohibiting the offender from entering a place specified in the court order);
- Programme (requiring the offender to participate in an accredited programme such as anger management courses);
- Activity (requiring the offender to participate in certain activities such as basic skills classes).
- Foreign travel prohibition requirement.

500. Section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act") provides for a fourteenth community order requirement: an alcohol abstinence and monitoring requirement. Under section 77 of the 2012 Act, this requirement must be piloted before it can be rolled out nationally.

501. When dealing with an offender for his or her offence the court is required to have regard to the five statutory purposes of sentencing (namely: punishment, crime reduction, rehabilitation, public protection and reparation). However, none of the requirements of the community order currently has to fulfil any specific one of these purposes.

502. Under *paragraph 2*, when a court is imposing a community order it must either include in the order at least one requirement that has the purpose of punishment, or impose a fine, or do both (new section 177(2A) of the CJA 2003). New section 177(2A) does not set out which requirements fulfil the purpose of punishment; this will be for the court to decide in all the circumstances of the particular offence and offender before it.

503. The requirement for a community order to include a punitive element applies in all cases except where the court considers that there are exceptional circumstances relating to the offender or to the offence which would make the imposition of a punitive requirement or a fine unjust (new section 177(2B) of the CJA 2003).

504. When a court imposes a community order, the requirements imposed must, in the court's opinion, be the most suitable for the offender and any restrictions on the offender's liberty must be commensurate with the seriousness of the offending. *Paragraph 3* makes these conditions subject to the new duty on the court to impose a punitive element (by virtue of the amendment made to section 148 of the CJA 2003).

Part 2: Deferring the passage of sentence to allow for restorative justice

505. Section 1 of the Powers of Criminal Courts (Sentencing) Act 2000 ("the 2000 Act") provides for courts to defer for up to six months passing sentence after an offender has been convicted if the offender consents and undertakes to comply with any requirements that the court considers it appropriate to impose. The current provisions also provide for the offender to be returned to court (in case of breach) before the end of the period of deferment. They also provide for the court to appoint a supervisor.

506. *Paragraph 5* inserts a new section 1ZA into the 2000 Act to make it explicit that the court's existing power to defer sentence after conviction includes a power to defer sentence to allow for restorative justice activities in cases where the offender and every other person who would be a participant in the activity consents (new section 1ZA(1) and (3)).

507. A restorative justice activity is an activity:

- involving the offender and one or more victims;.
- which seeks to bring home to the offender the impact of their offending on the victim or victims; and
- which gives the victim or victims the opportunity to talk about, or otherwise express, the impact of the offending upon them (new section 1ZA(2)).

508. New section 1ZA(6) of the 2000 Act requires those persons running restorative justice activities to have regard to any guidance that the Secretary of State issues, with a view to encouraging good practice in the delivery of such activities.

509. A victim is a victim of, or other person affected by, the offending (new section 1ZA(7)). Restorative justice activities might include the victim and offender meeting face to face to discuss the crime, or giving the victim an opportunity to explain by other means to the offender the impact of the crime. These activities can conclude with an agreement which involves the offender making some form of reparation to the victim.

510. The court may have regard to the offender's engagement (or lack of engagement) when they pass their sentence. However, the participation of the offender in restorative justice activities will not automatically affect the sentence that he or she receives. It will be for the court to decide on the sentence that is ultimately imposed.

Part 3: Removal of limits on compensation orders made against adults

511. Part 3 makes changes to the current power of magistrates' courts (in section 131 of the 2000 Act) to impose a compensation order on an offender who has caused personal injury, loss or damage to a victim. The maximum value of a single compensation order

made by a magistrates' court is currently £5,000. There is no limit on the value of a compensation order made by the Crown Court.

512. *Paragraph 8* amends section 131 of the 2000 Act to provide that the current £5000 limit will only apply in the case of a compensation order imposed on a young offender (that is an offender under the age of 18). The effect of the amendment is that in future there will be no limit on the value of a single compensation order handed down to an adult offender by a magistrates' court.

513. *Paragraph 9* makes a consequential amendment to section 33B of the Environmental Protection Act 1990, which concerns offences related to the deposit or disposal of waste. The amendment updates the reference to section 131 of the 2000 Act and makes it clear that section 131 will only apply in relation to young offenders.

Part 4: Electronic Monitoring of offenders

514. Part 4 broadens the provisions in the CJA 2003 that enable the courts to impose an electronic monitoring requirement as part of a community order or suspended sentence order.

515. *Paragraphs 12 and 13* amend sections 177 and 190 of the CJA 2003 so as to add "electronic monitoring requirement" to the list of primary requirements that may be imposed as part of a community order or suspended sentence order respectively, so that electronic monitoring may be imposed for the purpose of monitoring compliance with other requirements of the order or for the purpose of monitoring an offender's whereabouts.

516. *Paragraph 16* extends the definition of "electronic monitoring requirement" to enable the courts to impose the monitoring of an offender's whereabouts as a requirement as well as for monitoring compliance with other requirements. *Paragraph 16* also makes express provision that an offender subject to an electronic monitoring requirement (whether one imposed for the purpose of monitoring whereabouts or one imposed for the purpose of monitoring compliance) must submit to the fitting, installation, inspection or repair of the tagging equipment and must not interfere with that equipment. Tampering with a tag to the extent that it stops functioning constitutes a breach of an electronic monitoring requirement and the provision simply puts the matter beyond doubt.

517. The use of location data gathered under an electronic monitoring requirement (whether one imposed for the purpose of monitoring whereabouts or one imposed for the purpose of monitoring compliance) is subject to the requirements of the Data Protection Act 1998. *Paragraph 17* inserts a new section 215A into the CJA 2003 which imposes a duty on the Secretary of State to issue a code of practice on the retention, use and sharing of such data.

518. Amendments to section 218 of the CJA 2003 restrict the power for courts to impose requirements for the purpose of monitoring whereabouts to cases where the court has been notified by the Secretary of State that the necessary electronic monitoring facilities are available in the local justice area. In addition, courts must be satisfied that the offender can be fitted with any necessary apparatus under the arrangements currently available and that arrangements are generally operational throughout England and Wales under which the offender's whereabouts can be monitored (see *paragraph 18*).

519. *Paragraph 20* allows for the transfer of electronic monitoring arrangements to Northern Ireland when the offender lives, or intends to move to, that jurisdiction, and where the court is satisfied that arrangements are in place for the requirement to be enforced.

Part 5: Community Orders: further provision

520. *Paragraph 22*removes uncommenced elements of section 67 of the 2012 Act and makes a minor consequential amendment to the CJA 2003. This removes a court's power to take no action if an offender is brought back to court as a consequence of a breach of a community order. The effect is that if a court finds that an offender has breached an order without reasonable excuse, it must make the order more onerous, revoke the order and re-sentence for the original offence, or impose a fine.

521. *Paragraph 23*amends section 150 of the CJA 2003. This section, itself amended by the 2012 Act, inadvertently prevented the court from giving a 16 or 17 year old a Youth Rehabilitation Order for the new aggravated offence of knife possession. *Paragraph 23* corrects this technical error, so that the new provisions work as they were originally intended to.

Part 6: Statements of assets and other financial circumstances of offenders etc

522. Part 6 makes changes to the current powers of courts to order offenders to provide a statement of their financial circumstances in various contexts. These powers exist in order to support courts in fixing a fine or other financial order that is proportionate and equitable with regard to an offender's circumstances. The provisions in Part 6 make it clear that courts can order such a statement to provide details of an offender's assets as well as their income or outgoings. Courts' powers under existing provisions are broadly framed, and provide them with discretion to require such details as they see fit. As a result, these changes will give courts the discretion to request information about offenders' assets, rather than requiring them to do so in every case.

523. *Paragraph 24* amends the power of courts under section 162 of the CJA 2003 to order a statement of an offender's financial circumstances before sentencing him or her. Section 162, as amended, makes it clear that a court can order an offender to provide such a statement of his or her assets and other financial circumstances as the court may require.

524. *Paragraph 25* amends the power of magistrates' courts (in section 84 of the Magistrates' Courts Act 1980) to require a statement of an offender's means before considering whether to issue a distress warrant or commit to custody in cases involving offenders who have defaulted on a fine or other sum payable on conviction. This change makes it clear that a statement required under section 84 may relate to an offender's assets as well as to the offender's other financial circumstances.

525. *Paragraph 2*6 makes consequential amendments to the offence under section 20A of the Criminal Justice Act 1991 of failing to provide information about financial circumstances to a court after an official request. The amendments make it clear that the references in the section to a statement of financial circumstances include references to a statement of assets, of other financial circumstances or of both.

526. *Paragraph 27* amends the power of courts (in section 13B of the Crime and Disorder Act 1998) to order a statement of financial circumstances when considering whether to impose a parental compensation order on the parent or guardian of a child under 10 who, were it not for their age, would by their behaviour have committed an offence. The amendments make it clear that the statement may relate to assets as well as to other financial circumstances.

527. *Paragraph 28* makes consequential amendments to the offence under Schedule 5 to the Courts Act 2003 of making a false statement in response to a request for information about financial circumstances. It also amends the power of magistrates' courts under Schedule 6 to that Act to order a statement of financial circumstances from a fine defaulter in respect of whom the court is considering making a work order. The amendments make it clear that the statements concerned may relate to assets as well as to other financial circumstances.

Part 7: Information to enable a court to deal with an offender

528. Part 7 creates a new data sharing gateway to enable the Secretary of State (in practice the Department for Work and Pensions) and a Northern Ireland Department and Her Majesty's Revenue and Customs ("HMRC") to share social security information and finances information on defendants with Her Majesty's Courts and Tribunals Service ("HMCTS") and the Service Prosecuting Authority ("the SPA") for service court proceedings.

529. *Paragraph 29(9)*defines terms used in *paragraph 29*, including "finances information" and "social security information". "Finances information" is certain information about a defendant's income, gains or capital and "social security information" is certain information which is held for the purposes of functions relating to social security. *Paragraph 29* refers to a Northern Ireland Department to ensure that social security information on Northern Ireland residents held on the DWP's database can be shared with HMCTS and the SPA.

530. *Paragraph 29(1) and (2)* enable the Secretary of State, a Northern Ireland Department and HMRC to share social security and finances information respectively with a "relevant person", which will be a person in HMCTS or the SPA because of the definition of "relevant person" in *paragraph 29(9)*. *Paragraph 29(3) and (6)* secure that information can be further disclosed by a relevant person to a court or service court at any time after a defendant has been charged with an offence but only where the court or service court is inquiring into or determining a person's financial circumstances in connection with dealing with the person for an offence. This will assist the court when it is imposing a fine or compensation order. *Paragraph 29(5)* prohibits further disclosure of any information shared with HMCTS or the SPA (except to a court or service court as mentioned above or to relevant persons who want the information so that it can be put before a court or service court as mentioned above). *Paragraph 29(5)* does not apply in the circumstances set out in *paragraph 29(7)* (for example, where disclosure is to the defendant or his or her representative; where disclosure is of summary information from which the defendant cannot be identified; where disclosure is of information that has already been disclosed to the public with lawful authority; and where disclosure is necessary to comply with a duty imposed by or under any Act or with an order of a court or tribunal).

531. *Paragraph 30*makes it an offence to disclose or use any information shared with HMCTS or the SPA in contravention of paragraph 29(5). *Paragraph 30(3)* provides for the maximum penalties to be imprisonment not exceeding two years and/or a fine if tried on indictment, and imprisonment not exceeding 6 months (increasing to 12 months when section 154(1) of the CJA 2003 is brought into force) and/or a fine not exceeding the statutory maximum if tried summarily.

Part 8: Related amendments in Armed Forces Act 2006

532. Part 8 makes amendments in relation to the sentencing powers available to service courts under the Armed Forces Act 2006. It makes provision equivalent to or consequential on, the amendments to criminal courts' sentencing powers in Part 1 (punitive elements), Part 3 (compensation orders), Part 4 (electronic monitoring) and Part 6 (statements of assets and other financial circumstances).

533. *Paragraph 32* amends section 178 of the Armed Forces Act 2006 so that the duty on courts to include a punitive element in a community order or to impose a fine applies to service courts imposing a service community order.

534. *Paragraph 33* amends section 182 of the Armed Forces Act 2006 so that that duty also applies to service courts imposing an overseas community order on an offender who is aged 18 or over when convicted. *Paragraph 34* amends section 270 of the Armed Forces Act 2006 so that existing restrictions on the requirements that may be included in a service community order or overseas community order are subject to that duty.

535. *Paragraph 36* amends section 284 of the Armed Forces Act 2006 so that the £5,000 limit to which the Service Civilian Court is currently subject when imposing a service compensation order applies only where the offender is aged under 18 on conviction.

536. *Paragraph 37* amends sections 182 and 183 of the Armed Forces Act 2006 to provide that an electronic monitoring requirement may not be included in an overseas community order.

537. *Paragraph 38* amends section 266 of the Armed Forces Act 2006 to make it clear that a service court's power to make a financial statement order includes power to require information about an offender's assets as well as other financial circumstances.

Section 45: Deferred prosecution agreements

538. This section gives effect to Schedule 17.

Schedule 17: Deferred prosecution agreements

Part 1: General

539. *Paragraph 1* sets out the principal characteristics of a deferred prosecution agreement ("DPA"). A DPA is an agreement between a prosecutor and an organisation facing prosecution for an alleged economic or financial offence specified in Part 2 of the Schedule. *Paragraph 1(2)* sets out the two sides of this agreement. The organisation agrees to comply with a range of terms and conditions (*paragraph 1(2)(a)*) and the prosecutor agrees to institute but then defer criminal proceedings for the alleged offence in accordance with paragraph 2 on approval of the DPA (*paragraph 1(2)(b)*).

540. *Paragraph 2* details the court process once a DPA has been approved – essentially, the prosecution is commenced but is then deferred. Paragraph 2(1) provides that a prosecutor must commence proceedings by bringing charges against an organisation for the alleged offence in the Crown Court by way of a modified procedure for preferring a voluntary bill of indictment. This means that there is no need for any involvement of a magistrates' court in the DPA process. Once the proceedings have been instituted in this way, they are automatically suspended (paragraph 2(2)). Paragraph 2(3) provides that the suspension of the proceedings can only be lifted upon application by the prosecutor which may not occur whilst the DPA is in force (that is, the suspension of the proceedings may only be lifted following the DPA's termination as a consequence of a breach of the Agreement). The suspension of the proceedings is the means by which the prosecution is deferred. The threat of the prosecution proceeding in the event of breach hangs over the organisation to make compliance with the DPA more likely.

541. Paragraph 2(4) provides that no other person (this would include a private prosecutor), may bring charges against the organisation for the same alleged offence whilst the prosecution is deferred.

542. *Paragraph 3(1)* specifies the "designated prosecutors" who may enter into a DPA. The Schedule provides that these are the Director of Public Prosecutions ("DPP") and the Director of the Serious Fraud Office ("DSFO"), and any other prosecutor the Secretary of State designates by order (made subject to the affirmative procedure) (paragraph 3(1)(c)).

543. *Paragraph 3(2)* provides that the decision to enter into a DPA must be exercised personally by a designated prosecutor (that is, either by the DPP or DSFO). However, *paragraph 3(3)* provides that, if the designated prosecutor is unavailable, another person who has been authorised in writing by that prosecutor to exercise the power to enter into a DPA may do so, but they must do so personally.

544. *Paragraph 4* sets out those organisations which may enter into a DPA with a prosecutor. It also provides that an individual may not enter into a DPA.

545. Paragraph 4(2) and (3) provide that when the organisation that is a party to the DPA is a partnership or an unincorporated association, the DPA must be entered into in the name of the partnership or association (and not in the names of the partners or members) and any money payable under the DPA must be paid out of the funds of the partnership or association.

546. *Paragraph 5* outlines the content of a DPA. Paragraph 5(1) provides that every DPA must contain a statement of facts relating to the alleged offence which may include admissions made by the organisation. There is no requirement for admissions to be made by an organisation but any that are made will be included in the statement. The statement will have been agreed by the parties before inclusion in the DPA. The inclusion of a statement of facts in every DPA is to ensure openness and transparency. If the organisation subsequently breaches the DPA, and criminal proceedings are brought, this statement of facts will be treated as an admission by the organisation (*see paragraph 13(2)*).

547. Paragraph 5(2) sets out the only other mandatory requirement for every DPA: each agreement must specify an expiry date upon which it will cease to have effect (unless, in a particular case, it has already been terminated following breach – see paragraph 9). This is to ensure that both parties have clarity about the duration of the deferral period. There is no prescribed maximum or minimum period as the terms of each DPA will depend on the particular circumstances of the case.

548. Paragraph 5(3) provides a non-exhaustive illustrative list of potential terms and conditions that may be included in a DPA. This list is not prescriptive. This is to ensure that each DPA can be tailored to the particular facts of an individual case. Paragraph 5(3) also provides that the DPA can set time limits for the organisation to comply with specific terms of the agreement within the deferral period. For example, the agreement could specify dates for the payment of compensation (paragraph 5(3)(b)) or of a financial penalty (paragraph 5(3)(a)). Any financial penalty will be collected by the prosecutor and paid into the Consolidated Fund (as set out at *paragraph 14*). Any disgorgement of profits under the Agreement (*paragraph* 5(3)(d)) will also be collected by the prosecutor and paid into the Consolidated Fund in the same way. Alongside or instead of monetary conditions, a DPA could also include terms such as the implementation of a compliance programme which could require, for example, revisions to an organisation's anti-corruption or anti-fraud policies and procedures and additional training provision for staff (paragraph 5(3)(e)); or cooperation with any related investigations, either of individuals or other organisations (paragraph 5(3)(f)). It may also include the appointment of an independent monitor to scrutinise the implementation of any compliance measures.

549. A DPA may also provide for the payment of reasonable prosecution costs (paragraph 5(3)(g)). The expectation is that the amount of the costs negotiated and agreed by the parties will be clearly set out on the face of the agreement, and they will be treated independently of any financial penalty, that is the prosecutor will not be able to defray any of its costs from a financial penalty paid by the organisation. This provision reflects the position regarding the payment of prosecutorial costs in ordinary criminal proceedings.

550. Paragraph 5(4) provides that the amount of the financial penalty agreed by the parties under a DPA must broadly reflect the likely fine that a court would have imposed on the organisation on conviction for the alleged offence following a guilty plea. When setting this amount, both parties will need to take into account all the relevant factors that would be considered by a sentencing court. These would include relevant Sentencing Guidelines covering specific offences and other matters such as the principle of a reduction of sentence following the entry of a guilty plea at the first reasonable opportunity. Consideration would also need to be given to the means of the organisation, any compensation or charitable donations payable, the extent of any disgorgement of profits, and prosecutor's costs that would be payable.

551. Paragraph 5(5) states that the DPA itself may provide for the consequences of an organisation's failure to comply with the agreement. For example, the DPA may include a term specifying a punitive rate of interest for a late payment of a financial penalty. In the event that such a term were to be engaged, the prosecutor would have the option of either: (i) settling the failure to comply in accordance with the term provided in the agreement; or (ii) applying to the court under paragraph 9 (breach of a DPA).

552. *Paragraph 6* provides for a DPA Code of Practice for prosecutors setting out guidance on the DPA process. The Code must be issued jointly by the DPP and DSFO. Paragraph 6(1)(a) explains that this Code must give guidance on general principles to be applied by prosecutors in determining whether a DPA is likely to be appropriate in a given case. The Code must also include guidance on the disclosure of information by a prosecutor to the organisation both in the course of DPA negotiations and after a DPA has been agreed (paragraph 6(1)(b)). It is expected that guidance on disclosure in the DPA process included in the Code will reflect existing guidance on this subject (such as the Attorney General's Guidelines on Plea Discussions and the Attorney General's Guidelines on Disclosure) and general common law principles. Paragraph 6(2) sets out other relevant matters that may be included in the Code, including guidance on variation, breach and termination of a DPA. Prosecutors must take account of the Code when exercising their functions throughout the DPA process (paragraph 6(6)).

553. The DPP is obliged to set out this Code in his or her annual report to the Attorney General which is laid before Parliament (paragraph 6(3)). This is consistent with the process for publishing the Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985. Paragraph 6(4) requires that any alterations to the Code must be agreed between the DPP and DSFO and any other designated prosecutor. Following any amendments to the Code, paragraph 6(5) provides that any alterations to the Code or any new Code must be set out in the DPP's annual report to the Attorney General.

554. *Paragraph 7* outlines the court's role at the preliminary hearing. Following a prosecutor's indication that it is minded to enter into a DPA, and having negotiated outline terms with the organisation, paragraph 7(1) provides that the prosecutor must seek a declaration from the Crown Court that entering into a DPA with the organisation is likely to be in the interests of justice and that the proposed terms are fair, reasonable and proportionate.

555. Paragraph 7(2) provides that the court must give reasons for its decisions at a preliminary hearing. The court's declaration and reasons would remain confidential to the judge, prosecutor and the organisation under paragraph 7(4), but would be made publicly available under paragraph 8(7) in the event that a DPA were to be approved (subject to any restrictions necessary to protect ongoing or future prosecutions).

556. Paragraph 7(3) allows flexibility for there to be several preliminary hearings if for whatever reason the court has declined to declare that a DPA is likely to be in the interests of justice, and/or, its terms are fair reasonable and proportionate.

557. Paragraph 7(4) provides that the preliminary hearing must be held in private and any declarations also made in private. This is to avoid jeopardising any future prosecution of the organisation, and to limit any potential damage to the organisation's commercial interests at this stage. For example, if the detail of a preliminary hearing were made public, particularly where a judge considered that the alleged conduct was such that a DPA would not be likely to be in the interests of justice, it may be prejudicial to future criminal proceedings, whether against the organisation or another person.

558. *Paragraph 8* outlines the court's function at the final hearing. Once the court has approved the DPA in principle at a preliminary hearing and the terms have been agreed by both parties, paragraph 8(1) provides that the prosecutor must apply to the Crown Court for a final declaration that the DPA is in the interests of justice and that its terms are fair, reasonable and proportionate. Paragraph 8(3) provides that the DPA only takes

effect when the court has made this final declaration. Paragraph 8(4) provides that the court must give reasons for its decision whether or not to make a declaration.

559. Paragraph 8(5) provides that the final hearing may be held in private: this is to allow the final proposed DPA to be set out before the judge and any final issues to be resolved in a free and frank environment. But if the court decides to approve the DPA and make a declaration, the court must do so in open court, giving reasons for its decision (paragraph 8(6)). Upon approval of the DPA, the prosecutor will be obliged to publish the final Agreement and all declarations made by the court at the preliminary and final hearings, including the reasons for these decisions (paragraph 8(7)). The prosecutor should publish these documents immediately, unless an enactment or an order of the court under paragraph 12 made to avoid prejudice to any ongoing or future proceedings prevents him from doing so.

560. *Paragraph 9* makes provision for any instances where an organisation fails to comply with any term of the DPA. Following any breach of the Agreement (including any instance of breach provided for in the DPA itself as outlined at paragraph 5(5)), the prosecutor may seek a factual determination from the court as to whether or not there has been a breach (paragraph 9(1)). Paragraph 9(2) provides that the court must then decide whether, on the balance of probabilities, the organisation has failed to comply with the terms of the Agreement. If the court determines that a breach has occurred, paragraph 9(3) provides that the court may either: (i) invite the parties to agree proposals to remedy the breach; or (ii) decide to terminate the Agreement. The court must give reasons for the decision it has made (paragraph 9(4)).

561. If the Agreement is terminated, then the prosecutor may seek to have the suspension of the criminal proceedings against the organisation lifted (see paragraph 2(3)).

562. Paragraph 9(5) provides that in cases where the court finds that the organisation has not failed to comply with terms of the DPA, the prosecutor must publish the court's decision and the reason for this decision (unless prevented by an enactment or order of the court made under paragraph 12 to avoid prejudice to any ongoing or future proceedings).

563. The prosecutor will be required to publish the court's decision and reasons to invite the parties to agree proposals to remedy the organisation's failure to comply with the Agreement (paragraph 9(6)). Similarly, paragraph 9(7) ensures that, upon termination of a DPA following breach, the prosecutor must publish both the fact of the termination and the court's reasons for its decision. Both these publication requirements are subject to any enactment or order of the court made under paragraph 12 to prevent prejudice to any ongoing or future proceedings.

564. There is also an obligation on the prosecutor, set out at paragraph 9(8), to publish a decision not to bring a suspected breach of a DPA before the court, in order to ensure that such decisions are made transparently. This would include any instance of breach for which the consequences were provided for in the Agreement (as set out at paragraph 5(5)). In these cases the prosecutor is obliged to publish reasons both for their belief that the organisation has failed to comply and for their decision not to bring the suspected breach before the court. These reasons might include the prosecutor's view that the matter was capable of being dealt with adequately through the mechanism provided in the DPA. This might be the case in particular where the organisation agrees that a breach has occurred, and is content to settle the matter with the prosecutor without involving the court.

565. *Paragraph 10* deals with variation of the DPA. Variation of the DPA may occur where the court has invited the parties under paragraph 9(3)(a) to remedy a breach of the DPA through varying its terms (paragraph 10(1)(a)). Paragraph 10(1)(b) provides that variation will otherwise be permissible only in exceptional cases. These are limited to situations where variation is necessary to avoid a breach of the DPA, and the circumstances giving rise to the potential breach could not have been foreseen at the time that the DPA was agreed. Paragraph 10(2) provides that the court must approve

any application to vary the Agreement. By virtue of paragraph 10(3), any variation will only take effect once the court gives its approval. The court will have discretion whether to approve the proposed variation and will apply the same tests as for the original terms of the DPA, that is, whether the variation is in the interests of justice and the terms as varied are fair, reasonable and proportionate. The court must give reasons for the decision made (paragraph 10(4)). Where it refuses to approve the variation the original Agreement will stand.

566. Paragraph 10(5) provides that the hearing for an application for variation may be held in private to allow the proposed variation and the reasons for it to be set out before the judge confidentially. This may be necessary, in particular, if the reasons giving rise to the proposed variation are commercially, or otherwise, sensitive. However, if the judge decides to approve the variation and make a declaration to that effect, the judge must do so in open court, and must give reasons for that decision. The prosecutor is required to publish the varied DPA and the court's declaration, unless prevented by any enactment or order of the court made under paragraph 12 to avoid prejudice to future or ongoing proceedings. Paragraph 10(7) provides that, if the court does not decide to approve the variation, the prosecutor must also publish this decision and the reasons for it (subject to the same restrictions).

567. If the organisation complies with the terms of the DPA throughout its duration, the DPA will expire on the expiry date set out in the Agreement in accordance with paragraph 5(2).*Paragraph 11* provides that the criminal proceedings against the organisation that were instituted under paragraph 2 are to be discontinued on expiry of the Agreement. Once the prosecutor has discontinued proceedings in this way, paragraph 11(2) provides a bar to any further criminal proceedings being brought against the organisation for the same offence (but this would not prevent proceedings being instituted against any other person for the same offence). This gives certainty to the organisation that, upon complying with the terms of the Agreement, it will not be vulnerable to future prosecution for the same alleged offending. However, this bar does not prevent the institution of fresh proceedings against the organisation for the same offence if the prosecutor finds that during negotiations for the DPA the organisation provided inaccurate, misleading or incomplete information to the prosecutor (paragraph 11(3)).

568. Paragraph 11(4) to (7) provide that if, in the particular circumstances of a case, there are ongoing breach proceedings and the Agreement's expiry date has been reached, the DPA will not be considered to have expired until the entire process for dealing with the breach has been completed, including full compliance with any remedy for the breach agreed by the parties.

569. Following full compliance with the Agreement**,** paragraph 11(8) provides that the prosecutor must publish the fact of the discontinuance of proceedings and details of how the organisation complied with the DPA (unless prevented from doing so by any enactment or order of the court made under paragraph 12 to prevent prejudice to any future or ongoing proceedings).

570. *Paragraph 12* provides that the court may order the postponement of the publication of information relating to the DPA process. This will cover the obligations on the prosecutor to publish the final Agreement and all court rulings upon approval of the Agreement; details of the facts and approach taken in the event of any breach or variation of the Agreement and details of how the terms and conditions of the DPA have been complied with by the organisation at the end of the DPA process. This is to ensure there is no prejudice to any ongoing or future proceedings by the publication of such material. The court may make such an order on its own motion or following an application.

571. *Paragraph 13* concerns the use of material arising out of the DPA process in criminal proceedings. Where a DPA has been entered into (subject to any necessary publication restrictions to avoid prejudice to future prosecutions) the final Agreement, including the statement of facts, will be a matter of public record. Once a DPA has been approved,

paragraph 13(1) and (2) provide that the statement of facts, having been agreed by the organisation, can be treated as a formal admission in any future criminal proceedings against the organisation.

572. Where a DPA has not been approved (paragraph 13(3)), a prosecutor will not be able to rely either on the fact that it conducted DPA negotiations with the organisation, or on any draft DPA created during the negotiations in any future criminal proceedings, save in the circumstances set out at paragraph 13(4). These circumstances would be: (i) any criminal proceedings against the organisation for an offence consisting of the provision of inaccurate, misleading or incomplete information; or (ii) in proceedings for another offence, where the organisation makes a statement in evidence that is inconsistent with a statement it made in the course of the DPA process. Paragraph 13(6) sets out the range of material created in the course of unsuccessful DPA negotiations (a draft DPA, draft statement of facts and any statement indicating that the organisation entered into DPA negotiations) that cannot be used against the organisation except in these circumstances. However, prosecutors would not be prevented from relying on evidence obtained from investigations pursued as a result of anything said in any unsigned statement of facts or draft DPA. Further, any pre-existing material provided by the organisation during the DPA process would be admissible in proceedings for any offence (subject to existing rules on admissibility of evidence).

573. *Paragraph 14* provides that any money received by a prosecutor under a term of a DPA (that is, either a financial penalty or disgorged profits) must be paid into the Consolidated Fund.

Part 2: Offences in relation to which a DPA may be entered into

574. *Paragraphs 15 to 30* specify each of the economic or financial offences in relation to which a DPA will be available, including common law, statutory and ancillary offences.

575. *Paragraph 31* confers a power on the Secretary of State, exercisable by order made by statutory instrument (subject to the affirmative resolution procedure), to amend Part 2, either by adding or removing an economic or financial offence from that Part.

Part 3: Deferred prosecution agreements: consequential and transitional provision

576. *Paragraphs 32 to 38* make consequential amendments to other enactments.

577. *Paragraph 39* provides that DPAs will be available for conduct that took place before the commencement of this Schedule, where no proceedings have yet commenced against the organisation. Paragraph 39(2)(b) ensures that this general provision for the retrospective application of DPAs also applies to any new offences added by order made by the Secretary of State to Part 2 of the Schedule.

Section 46: Restraint orders and legal aid

578. This section amends section 41 of the Proceeds of Crime Act 2002 ("POCA") which relates to restraint orders; a restraint order is an order made in court to preserve assets where there is a risk of dissipation ahead of any court hearing or enforcement activity relating to criminal conduct (see section 40 of the POCA). *Subsection (2)* provides that an exception must be made to a restraint order to enable relevant legal aid payments to be made. A relevant legal aid payment is that which a person specified in the restraint order is obliged to make by regulations made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 for legal aid provided in relation to an offence which falls within section 41(5) of the POCA. *Subsection (5)* inserts new subsections (5A) and (5B) into section 41 of the POCA which provide that a legal aid exception to a restraint order must be made subject to prescribed restrictions as to the amount of any payments and as to the circumstances in which payments may be made, and subject to any other prescribed conditions. The court retains the power to impose conditions on

exceptions to restraint, whether relating to legal aid payments or otherwise. *Subsection (6)* provides that regulations under new subsection (5A) will be made by the Secretary of State. *Subsection (7)* amends section 459 of the POCA to provide that regulations made under new section 41(5A) of that Act will be subject to the affirmative resolution procedure.

Section 47: Restraint orders and legal aid: supplementary

579. Section 47 allows the Secretary of State to make regulations about the making of relevant legal aid payments from property subject to a restraint order under Part 2 of the POCA, and in connection with cases in which such payments are or may be made. *Subsection (2)* sets out a non-exhaustive list of the types of provision that the Secretary of State might make in regulations. The types of provisions that might be made include provision about how much property may be restrained, including provision framed by reference to the amount or estimated amount of relevant legal aid payments. They also include provision to allow a restraint order to remain in force until a relevant legal aid payment is made when the order would otherwise be discharged. Provision may also be made about powers of investigation, entry, search and seizure and about the disclosure and use of documents, information and other evidence. Provision may also be made about the use of property in cases in which there is or has been a restraint order, including about the order in which different payment obligations may or must be satisfied. Provision may also be made about the payment of compensation by the Lord Chancellor. *Subsection (3)* provides that regulations made under this section may amend, repeal, revoke or modify existing primary legislation and may make provision conferring or removing functions. Regulations made under this section will be subject to the affirmative resolution procedure.

Section 48: Civil recovery of the proceeds etc of unlawful conduct

580. *Subsection (2)* of section 48 inserts new section 282A into Chapter 2 of Part 5 of the POCA which provides expressly that the High Court in England and Wales and the Court of Session in Scotland have the power to make orders under that Chapter in respect of property, wherever that property is situated, and in respect of a person, wherever that person is domiciled, resident or present. However, the High Court in England and Wales or the Court of Session in Scotland may not make such an order in respect of property outside the United Kingdom or property in the United Kingdom but otherwise outside the jurisdiction of the court unless there is or has been a connection between the case and the jurisdiction of the court.

581. A non-exhaustive list of connecting factors is provided in new Schedule 7A to the POCA (inserted by *subsection (3)*) and this includes (but is not limited to) connections arising from the unlawful conduct, the property (including property held on trust) or the person.

582. The term “unlawful conduct” refers to the conduct through which the property (or property representing that property) was obtained (see sections 241 and 242 of the POCA).

583. New section 316(8B) of the POCA, inserted by *subsection (5)*, clarifies that an enforcement authority in England and Wales and Scotland may take proceedings in respect of any property or person, irrespective of whether the property or person is in that part of the United Kingdom.

584. *Subsection (7)* provides that the amendments to the POCA made by this new section and Schedule 18 have retrospective effect.

585. *Subsection (8)* provides that the amendments to the POCA made by this section and Schedule 18 do not affect the extent to which other provisions of the POCA or other enactments apply in respect of persons or property outside the jurisdiction of the court.

586. In respect of Scotland, these provisions are applicable rather than those in section 20 of, and Schedule 8 to, the Civil Jurisdiction and Judgments Act 1982 ("CJJA").

Schedule 18: Proceeds of crime: Civil recovery of the proceeds etc of unlawful conduct

587. Part 1 of Schedule 18 amends section 18 of the CJJA, which provides for the enforcement of judgments made in one part of the United Kingdom in another part of the United Kingdom. It provides that the arrangements under the CJJA for the recognition of judgments apply in relation to interim orders made under Chapter 2 of Part 5 of the POCA. There are four types of civil interim orders provided for in connection with civil recovery under that Chapter. A property freezing order freezes property and an interim receiving order freezes property with the addition of a court appointed receiver to manage and investigate property. The equivalent orders in Scotland are a prohibitory property order and an interim administration order. These orders are all made before a civil recovery order.

588. Part 2 of Schedule 18 amends Chapter 2 of Part 5 of the POCA by inserting new sections 282B to 282F. The new provisions facilitate the enforcement outside the United Kingdom of orders made under Chapter 2 of Part 5 of the POCA and the transmission of requests for evidence held outside the United Kingdom. The provisions are modelled on existing mutual legal assistance provisions in Chapter 2 of Part 1 of the Crime (International Co-operation) Act 2003 and section 74 of the POCA.

589. New section 282B of the POCA makes provision for an enforcement authority to transmit a request for certain assistance in relation to property to the Secretary of State with a view to it being forwarded to the government of the receiving country. Enforcement authorities are those who can take civil recovery proceedings in the High Court in England and Wales and the Court of Session in Scotland. In respect of England and Wales, the enforcement authorities are the Serious Organised Crime Agency (in future, the National Crime Agency), the Crown Prosecution Service and the Serious Fraud Office. In Scotland, the enforcement authority is the Scottish Ministers. An enforcement authority may send a request for assistance if the property freezing conditions are met, the property is not property to which a recovery order applies, and the enforcement authority believes that the property is in a country outside the United Kingdom (the "receiving country"). It is envisaged that the government of the receiving country would secure that any person is prohibited from dealing with the property and that assistance is given in the management of the property (which includes securing its detention, custody or preservation). The Secretary of State retains discretion to forward the request for assistance onto the government of the receiving country. Also it will be for government of the receiving country, in accordance with its own law, to decide whether or not to accede to a request, and how that request will be executed. The property freezing conditions for England and Wales are set out in section 245A(5) and (6) of the POCA and for Scotland in section 255A(5) and (6) of the POCA.

590. New section 282C of the POCA makes provision about enforcement abroad by a receiver, or in Scotland, an administrator before a civil recovery order is made. Assistance can only be requested if a property freezing order, interim receiving order or interim administration order has effect in relation to the property and the receiver or administrator believes that the property is in a country outside the United Kingdom ("receiving country"). The request would be for the government of the receiving country to secure that any person is prohibited from dealing with the property and to assist in connection with the management of the property (which includes securing its detention, custody or preservation). The request is sent to the Secretary of State, who must forward the request to the government of the receiving country. In contrast to the provisions in new section 282B, there is no discretion on the part of the Secretary of State to refuse to forward the request. This is considered appropriate because receivers and administrators have been appointed by a court.

591. New section 282D of the POCA makes provision about the obtaining of evidence located overseas by an interim receiver or, in Scotland, an interim administrator, or a person subject to an investigation by the interim receiver or the interim administrator. An interim receiver or an interim administrator can make a direct request for assistance if it is thought that there is relevant evidence in a country outside the United Kingdom. There must be an interim receiving order or an interim administration order in effect in relation to property and it must be an order which requires the interim receiver or interim administrator to take steps to establish whether the property is recoverable property or associated property or any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it. The High Court in England and Wales or the Court of Session in Scotland can make a request for assistance on an application by an interim receiver or interim administrator or a person subject to their investigation if the court thinks there is relevant evidence in a country outside the United Kingdom. A request for assistance may be sent to a court, tribunal, government or authority where the evidence is to be obtained. This mirrors the existing provisions for the obtaining of evidence for criminal investigations. Alternatively, a request may be sent to the Secretary of State, who must forward the request to the court, tribunal, government or authority. There is no discretion on the part of the Secretary of State to refuse to transmit the request. If the matter is urgent, a request may be sent to the International Criminal Police Organisation or any person competent to receive it under any provisions adopted under EU Treaties, for onward transmission. The term "International Criminal Police Organisation" refers to Interpol and Europol.

592. New section 282D(11) of the POCA provides that there is a power to make rules of court with regard to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge.

593. New section 282E of the POCA provides that evidence obtained by means of a request for assistance under section 282D cannot be used for any purpose other than for carrying out the functions of the interim receiver or interim administrator, or for the purposes of certain proceedings. However, the court, tribunal, government or authority that received the request and provided the evidence can consent to the use of the evidence for other purposes.

594. New section 282F of the POCA makes provision about how a civil recovery order made in England and Wales or Scotland may be enforced abroad by an enforcement authority or the trustee for civil recovery. If a civil recovery order has effect in relation to the property and the enforcement authority or trustee for civil recovery believes that the property is in a country outside the United Kingdom ("the receiving country"), a request for assistance may be sent to the Secretary of State with a view to this being forwarded to the receiving country. The request for assistance is a request to the receiving country for assistance in connection with the management and disposal of the property. The Secretary of State must forward the request made by the trustee for civil recovery to the receiving country, but has discretion as to whether to forward a request for assistance from an enforcement authority. This reflects the fact that a trustee for civil recovery is court appointed. If the receiving country issues a certificate of realisation of the property, it is admissible as evidence of the facts it states, if it states the property has been realised in pursuance of a request made by an enforcement authority or the trustee for civil recovery, the date of the realisation and the proceeds of the realisation.

Section 49: Investigation

595. Section 49 introduces Schedule 19 which makes provisions about orders and warrants, including provision for obtaining evidence overseas, in connection with civil recovery investigations under Part 8 (investigations) of the POCA.

596. Part 8 of the POCA has five types of investigation orders: production orders require a person to either produce or allow access to material; search and seizure warrants provide the power to enter premises to seize and retain material; disclosure orders authorise the

investigator to require a person to answer questions, provide information and/or produce documents; customer information orders authorise the investigator to request certain details of clients' names, dates of birth and addresses, account numbers, dates that accounts were held and similar information; and account monitoring orders authorise the monitoring of account transactions in a specific account over a certain period.

Schedule 19: Proceeds of crime: Investigation

597. Part 1 of Schedule 19 amends Part 8 of the POCA. The main changes are changes to the definition of a civil recovery investigation to clarify that the focus of an investigation can be a person or property and also to clarify that there can be an investigation into property that has not yet been clearly identified. As a result, an investigation may begin with a person and, as property is identified and more is known about the property, become an investigation into property. Equally, an investigation may begin with property, and as more information about its ownership emerges, become an investigation into a particular person.

598. Part 2 of Schedule 19 inserts new sections 375A, 375B, 408A and 408B into the POCA. These provisions are modelled on sections 7 to 9 of the Crime (International Co-operation) Act 2003.

599. New section 375A of the POCA makes provision for evidence to be obtained from a court, tribunal, government or authority outside the United Kingdom ("receiving country") if a person or property is subject to a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation (as defined in section 341). It enables a judge to make a request for assistance upon an application by an appropriate officer or a person subject to the investigation, providing that the judge thinks there is relevant evidence in a country or territory outside the United Kingdom. However a senior appropriate officer or the relevant Director may make a direct request for assistance if it is thought that there is relevant evidence in a country or territory outside of the United Kingdom. The meanings of "appropriate officer", "senior appropriate officer" and "relevant Director" are found in sections 352(5A) and 378 of the POCA. In the case of urgency, a request may be sent via the International Criminal Police Organisation (Interpol or Europol) or any person competent to receive it under any provisions adopted under the EU Treaties, for onward forwarding to the receiving country.

600. New section 375A(10) of the POCA provides a power to make rules of court as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge.

601. New section 375B of the POCA provides that evidence obtained by a request for assistance under new section 375A must not be used for any other purpose other than for the purpose of the investigation for which it was obtained or for the purposes of certain proceedings. However, the court, tribunal, government or authority that received the request and provided the evidence, can consent to the use of the evidence for other purposes.

602. New sections 408A and 408B of the POCA provide the equivalent provisions to sections 375A and 375B of the POCA for Scotland.

603. Part 3 of Schedule 19 makes consequential amendments to the provisions of the POCA, as amended by Parts 1 and 2 of that Schedule, to insert references to immigration officers and officers of the National Crime Agency.

Section 50: Extradition

604. Section 50 gives effect to Schedule 20

Schedule 20: Extradition

605. Part 1 of Schedule 20 amends the Extradition Act 2003 ("the EA 2003") to provide for a new forum bar to extradition. Forum concerns the place where a person ought to be prosecuted for an offence he or she is alleged to have committed. *Paragraphs 1, 2 and 3* of Schedule 20 amend Part 1 of the EA 2003, which deals with extradition to European Union Member States, while p*aragraphs 4, 5 and 6* similarly amend Part 2 of the EA 2003, which deals with extradition to non-European Union Member States with which the UK has extradition relations.

606. The amendments to the EA 2003 would require the judge at an extradition hearing to consider the issue of forum when deciding whether an individual should be extradited to face prosecution. Paragraphs 3 and 6 of Schedule 20 insert new sections 19B and 83A into the EA 2003, which provide that extradition can be barred by reason of forum if the judge decides that: firstly, a substantial measure of the relevant activity was performed in the UK; and secondly, having regard to a list of specified matters, it would not be in the interests of justice for the extradition to take place. Subsection (3) of new sections 19B and 83A outlines the specified matters relating to the interests of justice: (i) where most of the harm or loss occurred; (ii) the interests of any victims; (iii) any belief of a UK prosecutor that the UK is not the most appropriate place to prosecute the person; (iv) whether evidence needed to prosecute the person is or could be made available in the UK; (v) any delay that may result in proceeding in one country rather than another; (vi) the desirability and practicality of all prosecutions relating to the offence taking place in one place; and (vii) the person's connections with the UK.

607. Paragraphs 3 and 6 also insert new sections 19C, 19D and 19E, and 83B, 83C and 83D into the EA 2003, which provide that extradition cannot be barred on forum grounds if a designated prosecutor issues a certificate that he or she has: firstly, considered the offences for which the person could be prosecuted in the UK; secondly, decided that there are one or more such offences which correspond to the extradition offence; and, thirdly, decided that either the person should not be prosecuted in the UK for a corresponding offence because the prosecutor believes that there is insufficient admissible evidence or it would not be in the public interest, or believes that the person should not be prosecuted in the UK because of concerns about disclosure of sensitive material. A designated prosecutor may apply for an adjournment in the proceedings in order to consider whether to give a certificate. The certificate can be challenged, but only as part of an appeal to the High Court under the EA 2003. The High Court must apply the procedures and principles of judicial review when reviewing a certificate. If the High Court quashes a certificate, it must then consider the issue of forum.

608. *Paragraphs 7, 8 and 9* contain transitional provisions, savings and repeals consequent to the amendments made by paragraphs 1 to 6.

609. *Paragraphs 10, 11, 12 and 13* of Part 2 of Schedule 20 amend the EA 2003 to provide that in Part 2 cases, that is those involving extradition to non-European Union Member States with which the UK has extradition relations, human rights issues, including those raised after the end of the normal statutory process, must not be considered by the Secretary of State, but may be raised with the courts right up until the time of surrender. At present, human rights matters in Part 2 cases are considered by the judge at an extradition hearing and any subsequent appeal hearing(s). However, once the appeal process is complete, but before the person's surrender has taken place, the person may raise human rights issues with the Secretary of State, but only new representations that have not already been considered by the courts.

610. Paragraphs 10 to 13 of the new Schedule amend the process by ensuring that the Secretary of State is not to consider human rights issues raised after the end of the statutory appeal process or indeed at any time during the Part 2 process. Instead, in cases where the person wishes to raise late human rights issues he or she will be able to give notice of appeal out of time. The High Court will consider the appeal if it is satisfied

that: (i) the appeal is necessary to avoid real injustice; and (ii) the circumstances are exceptional and make it appropriate to consider the appeal.

611. Part 3 of Schedule 20 addresses concerns raised by the UK Supreme Court about certain aspects of the operation of the EA 2003 when an appeal of a devolution issue is made to the UK Supreme Court under the Scotland Act 1998. Part 3 of the Schedule principally provides that where the authority or territory seeking a person's extradition intends to appeal to the UK Supreme Court against the determination of a devolution issue, the court must remand the person whose extradition is sought in custody or on bail.

612. *Paragraph 17* provides that where a judge has ordered a person's discharge at an extradition hearing and the authority that issued the arrest warrant under Part 1 of the EA 2003 ("the issuing authority") intends to appeal to the High Court under section 28 of the EA 2003, then the judge must remand the person in custody or on bail whilst the appeal is pending. Paragraph 17 secures that section 30 of the EA 2003 does not apply to Scotland and inserts a new section 30A into the EA 2003 setting out when an appeal ceases to be pending where the issuing authority intends to appeal to the High Court under section 28 of the EA 2003. This new section 30A takes account of there being a subsequent appeal of a devolution issue to the UK Supreme Court by the issuing authority.

613. Section 33 of the EA 2003 sets out the powers of the UK Supreme Court when considering an appeal under Part 1 of that Act in English and Welsh extradition proceedings. This includes setting out when the UK Supreme Court must remand in custody or on bail the person who is the subject of extradition proceedings. This section only applies to appeals to the UK Supreme Court under Part 1 of the Act and so does not apply to an appeal of a devolution issue to the UK Supreme Court in Scottish extradition proceedings. *Paragraph 18* inserts new section 33ZA into the EA 2003 requiring the UK Supreme Court to remand a person in custody or on bail if on an appeal of a devolution issue in extradition proceedings the UK Supreme Court order that person's extradition or remits the case to the High Court.

614. Section 33A of the EA 2003 requires the court to remand a person in custody or on bail whilst an appeal by the issuing authority to the UK Supreme Court under section 32 of the EA 2003 is pending. Section 33A does not apply to Scotland. *Paragraph 19* inserts new section 33B into the EA 2003 to require the High Court to remand a person is custody or on bail while an appeal of a devolution issue by the issuing authority to the UK Supreme Court is pending.

615. *Paragraph 20* amends section 34 of the EA 2003 to make clear that the provisions of the EA 2003 do not prevent an appeal of a devolution issue to the UK Supreme Court.

616. Section 36 of the EA 2003 sets out the time limit for extraditing a person where there is an appeal under section 26 of that Act and the result of the appeal process is that the person is to be extradited. Section 36 does not take account of the possibility of an appeal of a devolution issue to the UK Supreme Court in Scottish extradition proceedings. *Paragraph 21* amends section 36 so that it does not apply to Scotland and inserts new section 36A that only applies to Scotland. The new provision sets out the time limit for extraditing a person where there is an appeal under section 26 in Scottish extradition proceedings and the result of the appeal process is that the person is to be extradited.

617. Section 107 of the EA 2003 applies where a judge has ordered a person's discharge at an extradition hearing and the category 2 territory requesting the person's extradition intends to appeal to the High Court under section 105 of the EA 2003. In these circumstances the judge is required to remand the person in custody or on bail while the appeal is pending. In determining when an appeal ceases to be pending section 107 does not take account of there being a subsequent appeal of a devolution issue to the UK Supreme Court. *Paragraph 23* provides that section 107 does not apply to Scotland and inserts new section 107A into the EA 2003 which only applies to Scotland. The

new provision is based on section 107 but in determining when an appeal ceases to be pending takes account of there being a subsequent appeal of a devolution issue to the UK Supreme Court.

618. Section 112 of the EA 2003 applies where the Secretary of State or Scottish Ministers order a person's discharge from extradition proceedings. Where the category 2 territory intends to appeal against this decision to the High Court under section 110, the remand order in respect of the person whose extradition is sought remains in force while the appeal is pending. In determining when the appeal ceases, section 112 does not take account of the category 2 territory subsequently appealing a devolution issue to the UK Supreme Court. *Paragraph 24* provides that section 112 does not apply to Scotland and inserts new section 112A into the EA 2003 which only applies to Scotland. The new provision is based on section 112 but in determining when an appeal ceases to be pending, takes account of there being a subsequent appeal to the UK Supreme Court by the category 2 territory to the UK Supreme Court against the determination of a devolution issue by the High Court.

619. Section 115A of the EA 2003 applies where on appeal under Part 2 of the Act, the High Court orders a person's discharge and the category 2 territory requesting the person's extradition intends to appeal against the High Court's decision under section 114 of the Act. In these circumstances, the court must remand the person in custody or on bail while the appeal is pending. This section does not apply to Scotland as there can be no appeal to the UK Supreme Court under section 114. There is no equivalent provision where the category 2 territory intends to appeal a devolution issue to the UK Supreme Court. *Paragraph 25* inserts new section 115B into the EA 2003 which applies to Scotland and provides where on an appeal under Part 2 of the EA 2003 the High Court orders a person's discharge and the category 2 territory intends to appeal a devolution issue to the UK Supreme Court. In these circumstances the High Court must remand the person is custody or on bail pending the UK Supreme Court appeal.

620. Section 116 of the EA 2003 provides that a decision by a judge, the Secretary of State or Scottish Ministers under Part 2 of the Act can only be challenged by means of an appeal under Part 2 of the Act. *Paragraph 26* amends section 116 to make clear that this section does not prevent an appeal of a devolution issue to the UK Supreme Court in Scottish extradition proceedings.

621. Section 118 of the EA 2003 applies where there is an appeal to the High Court under Part 2 of the Act against a decision relating to a person's extradition and the effect of the appeal process is that the person is to be extradited. Section 118 sets out the time limit for the person's extradition. Section 118 does not take account of there being an appeal of a devolution issue to the UK Supreme Court in Scottish extradition proceedings. *Paragraph 27* amends section 118 so that it does not apply to Scotland and inserts new section 118A of the EA 2003 which only applies to Scotland. The new provision sets out the time limit for extraditing a person where there is an appeal under Part 2 and the result of the appeal process is that the person is to be extradited and takes account of there being an appeal of a devolution issue to the UK Supreme Court.

622. Section 115 of the EA 2003 sets out the powers of the UK Supreme Court where there is an appeal under section 114 of the Act including the circumstances when the UK Supreme Court must remand a person in custody or on bail. Section 114 does not apply to Scotland. There is no equivalent provision in relation to remand where a devolution issue is appealed to the UK Supreme Court. *Paragraph 28* inserts new section 118B into the EA 2003 requiring the Supreme Court to remand a person in custody or on bail if on an appeal of a devolution issue the UK Supreme Court orders the person's extradition or remits the case to the High Court.

Section 51: Immigration cases: appeal rights; and facilitating combined appeals

623. *Subsection (1)* amends the Nationality, Immigration and Asylum Act 2002 (the "2002 Act") to reinstate race discrimination as a ground of appeal against an immigration

decision by inserting a reference into section 84(1)(b) to section 29 of the Equality Act 2010 so far as it relates to race, as defined in section 9(1) of the Equality Act 2010. Prior to the Equality Act 2010, it was possible to bring an immigration appeal on the grounds that an immigration decision was unlawful under the Race Relations Act 1976. However, the Equality Act 2010 repealed the Race Relations Act and related consequential amendments removed the associated ground of appeal. This subsection therefore restores the position that existed prior to the commencement of the Equality Act.

624. *Subsection (2)* amends the 2002 Act by deleting a reference in section 99 of that Act to section 96 of the 2002 Act so that where a case is certified under section 96, which means that an appeal cannot be brought against a refusal decision, that certification will have no effect on an appeal that is already underway.

625. *Subsection (3)* amends section 47 of the Immigration, Asylum and Nationality Act 2006 by inserting new subsections (1) and (1A) so as to clarify when an appealable decision to remove a person from the United Kingdom can be made. Where the Secretary of State gives a person notice of a "pre-removal" decision, new section 47(1) allows the Secretary of State to give the person notice that the person is to be removed from the United Kingdom. In particular, it allows the removal notice to be given alongside the notice of the pre-removal decision. New section 47(1A) defines a "pre-removal" decision.

Section 52: Appeals against refusal of entry clearance to visit the UK

626. Section 52 amends section 88A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), and section 4 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act"), so as to remove full rights of appeal for persons refused a visa for a family visit to the United Kingdom.

627. The original section 88A of the 2002 Act, as inserted by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act"), restricted rights of appeal against refusal of entry clearance if the decision to refuse was taken on certain grounds specified by an order of the Secretary of State.

628. Sections 90 and 91 of the 2002 Act restrict rights of appeal against refusal of entry clearance by non-family visitors (those visiting family members, as specified in an order of the Secretary of State, retain an appeal right) and students respectively.

629. Section 4 of the 2006 Act was intended to substitute sections 88A, 90 and 91 of the 2002 Act with one provision (a new section 88A) which would restrict all appeals against refusal of entry clearance to limited grounds (human rights and race discrimination), with the exception of those in the categories listed. The categories of applicant who would retain a full right of appeal were certain family visitors (new section 88A(1)(a)) and dependants of persons in the United Kingdom (new section 88A(1)(b)) to be prescribed by regulations.

630. Section 4 of the 2006 Act has been commenced, so far as it relates to applications of a kind identified in immigration rules[38] as requiring to be considered under a "Points Based System". That partial commencement resulted in the substitution of the original section 88A inserted by the 2004 Act, whilst sections 90 and 91 remained in force. Section 4 of the 2006 Act was further commenced, with effect from 9 July 2012, in so far as it relates to appeal rights for family visitors. The Immigration Appeals (Family Visitor) Regulations 2012 made under section 88A(1) specify the type of family member to be visited and the immigration status the person to be visited must have. That partial commencement for the purposes of family visitors superseded the existing section 90. Section 91 will be superseded when section 4 of the 2006 Act is further commenced in relation to appeal rights for dependants.

38 http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/

631. Section 52 amends the partially commenced section 88A (*subsection (1)*) and the yet to be fully commenced section 4 of the 2006 Act *(subsection (2))* by deleting paragraph (a) from both versions of section 88A(1), thus removing family visitors from the categories of applicant who retain a full right of appeal (*subsection (3)*). This section also removes from both of those sections the supplementary provisions to make regulations under section 88A(1)(a) contained in sections 88A(2)(a) and (c) (*subsections (4) and (5)*). When commenced section 52 will replace the provisions of the Immigration Appeals (Family Visitor) Regulations 2012.

632. *Subsection (6)* ensures correct referencing across the 2006 Act and *subsection (7)* ensures that the power to make commencement orders under section 62 of the 2006 Act allows section 4(1) to be commenced as amended by this section.

Section 53: Restriction on right of appeal from within the United Kingdom

633. Section 53 amends the 2002 Act by inserting a new subsection (2A) into section 92 (*subsection (2)*) and a new section 97B (*subsection (3)*), which provides for a certification power for the Secretary of State, acting in person, to remove the application of the in-country right of appeal provisions in section 92 of the 2002 Act where:

- A person's leave is cancelled under section 82(2)(e) of the 2002 Act wholly or partly on the grounds that it would not be conducive to the public good to allow them to have leave to enter or remain in the UK; and
- That decision is taken whilst the individual is outside the UK.

In such cases, the affected person will still be able to make an out-of-county appeal.

Section 54: Deportation on national security grounds: appeals

634. Section 54 will allow the Secretary of State to remove an appellant's in-country right of appeal if the Secretary of State certifies that the removal of the appellant, prior to the appellant's appeal against a deportation order being exhausted, would not breach the UK's obligations under the European Convention on Human Rights (ECHR). The grounds on which the Secretary of State may reach this conclusion include one or both of the following: first, that all or part of the appellant's human rights claim is clearly unfounded; and, second, that removal from the UK pending the appeal being exhausted would not cause serious, irreversible harm. The section amends section 97A of the 2002 Act.

635. *Subsection (2)* inserts new subsection (1A) into section 97A of the 2002 Act. Section 97A applies where the Secretary of State certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his or her removal from the UK would be in the interests of national security. New subsection (1A) allows section 97A to apply to section 32(5) of the UK Border Act 2007 cases, which relate to the automatic deportation of foreign criminals, where the Secretary of State certifies that the removal would be in the interest of national security.

636. *Subsection (3)* replaces subsection (2)(c) of section 97A so that section 2(5) of the Special Immigration Appeals Commission Act 1997 will not apply where section 97A of the 2002 Act applies. Section 2(5) of the Special Immigration Appeals Commission Act 1997 provides for a person to bring or continue an appeal against an immigration decision while in the UK only if he or she would be able to bring or continue an appeal under section 82(1) of the 2002 Act: section 82(1) of that Act provides that where an immigration decision is made in respect of a person, he or she may appeal to the tribunal.

637. *Subsection (4)* creates the power for the Secretary of State to render an appeal out of country by certifying that the removal of the appellant, prior to the appellant's appeal against a deportation order being exhausted, would not breach the UK's obligations under the ECHR. It also creates a mechanism for an appellant to apply to the Special

Immigration Appeals Commission to have a certificate given under section 97A as amended set aside.

638. In particular, subsection (4) inserts into section 97A the following provisions: New subsection (2A) removes the right of an appellant to bring or continue a suspensive (in-country) appeal against a deportation order or refusal to revoke a deportation order unless the appellant has made a human rights claim while in the UK. New subsection (2B) provides that an appeal may not be brought in the UK under new subsection (2A) if the Secretary of State certifies that the removal of an individual to the country or territory to which it is proposed to remove the individual, despite the individual's appeals process not having been begun or completed, would not breach the UK's obligations under the ECHR. New subsection (2C) provides that the grounds on which the Secretary of State may issue a certificate under section (2B) include one or both of the following: first, that the person would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which the person is proposed to be removed; second, that the whole or part of any human rights claim made by the person is clearly unfounded. New subsection (2D) provides that new subsection (2A) does not allow the person while in the UK to bring or continue an appeal on a non-human-rights ground if the Secretary of State certifies that removal of the person to the country or territory to which the person is proposed to be removed, despite the appeals process in relation to the non-human-rights ground not having been begun or exhausted, would not breach the UK's obligations under the ECHR. New subsection (2E) defines "non-human-rights ground" for the purposes of new subsection (2D).

639. New subsection (2F) provides that if a certificate in respect of a person is given under new subsection (2B), the person may apply to the Special Immigration Appeals Commission to set it aside. New subsection (2G) requires the Special Immigration Appeals Commission to decide an application made under new subsection (2F) by applying the principles that would be applied in judicial review proceedings. New subsection (2H) provides that the Commission's determination of a review under section (2F) is final, so that it may not be subject to an appeal. New subsection (2J) allows the Special Immigration Appeals Commission to direct that a person who has made and not withdrawn an application under subsection (2F) is not to be removed from the UK at a time when the review has not been finally determined by the Commission. New subsection (2K) provides that sections 5 and 6 of the Special Immigration Appeals Commission Act 1997 apply in relation to reviews under new subsection (2F) and to applicants for such reviews as they apply in relation to appeals under section 2 or 2B of that Act, and to people bringing such appeals. This means that the Lord Chancellor will be able to make rules in relation to reviews under new subsection (2F) and that special advocates may be appointed to represent a person who applies for a review under subsection (2F) in proceedings from which the person's legal representatives are excluded. New subsection (2L) requires that any exercise of the power to make rules under section 5 of the Special Immigration Appeals Commission Act 1997 must be with a view to securing that proceedings on such reviews are handled expeditiously.

640. *Subsection (5)* provides that a person in respect of whom a certificate is made under new section 97A(2D) may apply to the Special Immigration Appeals Commission to set the certificate aside.

Section 55: Powers of immigration officers

641. Immigration criminal investigators working in the Home Office (in what was the former UK Border Agency) have responsibility for investigating immigration crimes.

642. *Subsection (1)* amends section 93(5) of the Police Act 1997, to extend the list of "authorising officers" who can authorise applications to interfere lawfully with property

and wireless telegraphy. Property interference within the Code of Practice[39] is taken to include entry on – or interference with – property or interference with wireless telegraphy. Therefore, whilst not defined in the Police Act 1997, property interference is any activity which, if not authorised, would be illegal or actionable in the civil courts such as a trespass to land or to goods such as bag searching or installing recording equipment on possessions, vehicles and premises. Wireless telegraphy includes radio, TV and mobile telephone communications and Global Positioning System (GPS) information.

643. Section 93(5) as amended provides for immigration criminal investigators to be able to apply to exercise property interference powers equivalent to those already used by customs officials pursuant to section 93(5)(h) of the Police Act 1997. Section 93(5) as amended also enables a senior official in the Home Office to be designated as the "authorising officer" to authorise property interference applications from immigration officers for the purpose of investigating organised immigration crime.

644. *Subsection (2)* similarly amends section 32(6) of the Regulation of Investigatory Powers Act 2000 ("RIPA") to extend the list of "senior authorising officers" who can authorise applications for intrusive surveillance to include a senior official in the Home Office, designated for this purpose by the Secretary of State.

645. "Intrusive surveillance" is defined under RIPA as covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle. This kind of surveillance may take place by means either of a person or device located inside the residential premises or private vehicle of the person who is subject to the surveillance, or by means of a device placed outside which consistently provides a surveillance product of equivalent quality which would be obtained from a device located inside.

646. *Subsection (3)* introduces amendments to the Proceeds of Crime Act 2002 ("POCA") made by subsections (4) and (5).

647. *Subsection (4)* provides for immigration officers to be "appropriate officers", as defined in section 47A of the POCA, for the purposes of the search and seizure powers set out in sections 47B to 47S of that Act. This will enable immigration officers to seize property and search people, vehicles and premises (subject to certain conditions) with a view in particular to preventing the dissipation of property that may be used to satisfy a confiscation order, actual or anticipated. These powers are currently restricted to customs officers, constables and accredited financial investigators.

648. *Subsection (5)* amends section 378 of the POCA (which lists the appropriate officers and senior appropriate officers who may apply for the orders and warrants set out in set out in Chapter 2 of Part 8 of that Act) by including immigration officers as "appropriate officers" for the purposes of confiscation, detained cash and money laundering investigations under the POCA. This will allow immigration officers to apply at any part of such investigations for production, disclosure and account monitoring orders (and customer information orders if they are sufficiently senior, or authorised to do so by a senior officer), as well as for search and seizure warrants. At present, only accredited financial investigators, constables or customs officers (and, in the case of confiscation investigations, employees of the Serious Organised Crime Agency) are "appropriate officers" for these purposes. This provision will also allow immigration officers, who are of an equivalent rank to a police superintendent, to act as a "senior appropriate officer" in a confiscation investigation, which will permit them to apply for, or to vary, a customer information order or to authorise another to do so. The provisions will, therefore, provide immigration officers with powers equivalent to those used already by other law enforcement officers when conducting investigations of the sort referred to above.

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39 Covert Surveillance and Property Interference Revised Code of Practice http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert?view=Binary

649. *Subsection (6)* amends section 24 of the UK Borders Act 2007. It provides a new definition of "unlawful conduct", covering both immigration and nationality offences, for the purposes of the exercise by immigration officers of the power to search for cash under section 289 of the POCA. This will address the problem which immigration officers currently encounter whereby if, when on premises, they discover cash which is known to be the product of, for example, drug dealing, they are unable to seize it as it is not related to an immigration offence.

650. *Subsection (7)* applies sections 136 to 139 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") to immigration officers (subject to the restrictions contained in *subsection (8)* and paragraphs 41 to 43 of Schedule 21 to the Act). Sections 136 to 139 of the 1994 Act allow various law enforcement powers applicable in one country of the UK to be exercised in another country of the UK. The relevant powers are those concerning the execution of warrants, arrest or detention of suspects, and search powers available on arrest. At the moment these provisions apply to police constables, officers of Revenue and Customs and designated customs officials.

651. *Subsection (8)* provides that an immigration officer may only exercise powers under sections 136 to 139 of the 1994 Act when exercising a function: (i) relating to the entitlement of non-UK nationals to enter, transit across or be in the UK (including a function relating to conditions or other controls on any such entitlement); (ii) under or for the purposes of one or more of the nationality-related enactments mentioned in *subsection (8)(b)*; or (iii) in connection with the prevention, investigation or prosecution of an offence of refusal or failure to submit to examination or to furnish information, or obstruction of an immigration officer, or assaulting an immigration officer.

652. *Subsection (9)* introduces the amendments made to the Criminal Law (Consolidation) (Scotland) Act 1995 ("the 1995 Act") by subsections (10) to (12).

653. *Subsection (10)* amends section 24 of the 1995 Act so that it applies to immigration officers as it does Revenue and Customs officials. Section 24 relates to the detention and questioning of those suspected of committing a criminal offence. Section 24 of the 1995 Act as amended provides an immigration officer in Scotland with powers to detain and question when the officer suspects that a person has committed or is committing an immigration or nationality offence punishable by imprisonment.

654. *Subsection (11)* amends section 26A of the 1995 Act which provides a power of arrest in Scotland. Section 26A of the 1995 Act as amended enables an authorised immigration officer to arrest without warrant someone whom the officer reasonably suspects to be guilty of an immigration or nationality offence or immigration enforcement offence which the officer has reasonable grounds to suspect has been, or is being, committed. This provision further provides that an 'authorised immigration officer' means an immigration officer acting with the authority (general or specific) of the Secretary of State.

655. *Subsection (12)* amends 26B of the 1995 Act. Section 26B is an interpretation section and inserts definitions of 'immigration enforcement offence', 'immigration offence' and 'nationality offence', thus limiting the range of matters in relation to which immigration officers may use the substantive provisions within the 1995 Act pursuant to the Act.

656. *Subsection (13)* amends the definition of 'officer of law' in section 307 of the Criminal Procedure (Scotland) Act 1995 to include immigration officers acting with the authority (general or specific) of the Secretary of State. It also provides that such immigration officers shall only be "officers of law" in relation to immigration offences and nationality offences, as defined in Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995. In particular, the 'officer of the law' status allows immigration officers to seek, obtain and execute common law search warrants in Scotland.

657. *Subsection (14)* gives effect to Schedule 21.

Schedule 21: Power of immigration officers: further provision

658. *Paragraphs 1 to 4* make further amendments to Part 3 of the Police Act 1997 to provide for immigration officers to apply for authorisation to interfere with property and wireless telegraphy. Authorisation will be sought from a senior official of the Home Office, who is also an immigration officer and designated for this purpose.

659. The amendments make the necessary changes to Part 3 of that Act so that:

- the senior official in the Home Office designated for this purpose must not grant an authorisation for property and wireless interference save where the application is made by an immigration officer *(paragraph 2(3));*
- an authorisation for property and wireless interference may only be granted for the purpose of preventing or detecting an immigration or nationality offence *(paragraph 2(4) to (6));*
- a deputy, who is also designated for this purpose, may authorise urgent applications in the absence of the authorising officer *(paragraph 3);*
- the Prime Minister may exclude from a copy of any report of the Chief Surveillance Commissioner to be laid before Parliament any matters which may prejudice the functions of the Secretary of State relating to immigration *(paragraph 4).*

660. Guidance will be produced by the Home Office in due course stipulating that applications for authorisation for intrusive surveillance are to be made only by immigration criminal investigators.

661. *Paragraphs 5 to 13*make further amendments to RIPA to bring the powers of immigration officers under that Act into line with those of customs officers. The changes to the powers of immigration officers include:

- the senior official in the Home Office designated for this purpose must not grant an authorisation for carrying out intrusive surveillance save where the application is made by an immigration officer *(paragraph 7);*
- a deputy, who is also designated for this purpose, may authorise urgent applications in the absence of the senior authorising officer *(paragraph 8)*;
- any grant, renewal or cancellation of an authorisation for intrusive surveillance must be notified to a Surveillance Commissioner *(paragraph 9);*
- except in urgent cases, authorisations granted for intrusive surveillance will not take effect until they have been approved by a Surveillance Commissioner and written notice of the Commissioner's decision has been given to the person who granted the authorisation *(paragraph 10);*
- a Surveillance Commissioner may quash or cancel an authorisation *(paragraph 11);*
- immigration officers are subject to the obligation to comply with any request of a Surveillance Commissioner to supply documents or information required by that Commissioner for the purpose of enabling him or her to carry out the Commissioner's functions *(paragraph 12);* and
- an authorisation by a senior official within the Home Office is not subject to the prohibition on authorisations extending to Scotland *(paragraph 13).*

662. *Paragraphs 14 to 38*make further amendments to the POCA to bring the powers of immigration officers under that Act into line with those of customs officers. The changes to the powers of immigration officers include:

- Introducing a power for an immigration officer to seize property, and to retain such property pursuant to a restraint order, when exercising an immigration function;

- Granting senior immigration officers (that is, those of an equivalent rank to a senior police officer) the power to approve seizures of property, and to search premises, people and vehicles;
- Conferring on senior immigration officers (that is, those of an equivalent rank to a senior police officer) the power to give notice for the forfeiture of cash without a court order (so as to avoid wasting public funds in going to court where cash is unclaimed);
- Allowing immigration officers to release cash that is the subject of a forfeiture notice;
- Allowing immigration officers to apply for search and seizure warrants for the purposes of confiscation, money laundering, and detained cash investigations. In the context of detained cash investigations, the amendments will also allow immigration officers to retain relevant material seized under such a warrant;
- Enabling immigration officers to apply for production orders, customer information orders (so long as they are sufficiently senior/have the appropriate authorisation) and account monitoring orders for the purposes of confiscation and money laundering investigations;
- Enabling immigration officers to apply for production orders and customer information orders for detained cash investigations;
- Allowing senior immigration officers to apply for, or to vary, a customer information order or to approve such an application by an immigration officer;
- In exercising these functions, immigration officers will be subject to a code of practice made under section 377 of the POCA *(paragraph 37);*
- In cases of serious default by an immigration officer during an investigation, compensation may be payable to the victim by the Secretary of State *(paragraph 19).*

663. *Paragraph* 39 amends section 24 of the UK Borders Act 2007 to provide that approval for a search for cash by an immigration officer, under the POCA, may only be given by a person who is of an equivalent rank to a police inspector (namely a senior immigration officer).

664. *Paragraph 40*contains a saving provision so that sections 1(4), 3(5), 7(5) and 11(4) (the glossing provisions) of the Borders, Citizenship and Immigration Act 2009 ("BCIA") continue to apply to the provisions of any Act amended by section 55 of, or Schedule 21 to, the Act. The glossing provisions of the BCIA taken together ensure that references in relevant legislation to Her Majesty's Revenue and Customs ("HMRC"), the Commissioners for HMRC or an officer of Revenue and Customs are construed as including a reference to the Secretary of State, the Director of Border Revenue or a designated customs official or designated customs revenue official as the case may be. This is necessary to facilitate the machinery of government change introduced by BCIA as a result of which HMRC has the lead responsibility for customs matters in-country and, in operational terms at least, the Home Office (through the UK Border Force) has the lead responsibility for the same customs matters at the border.

665. *Paragraphs 41 to 43* modify the application of the Criminal Justice and Public Order Act 1994 so that immigration officers have the same powers as a constable when exercising cross border powers under sections 136 to 139 of the Criminal Justice and Public Order Act 1994.

666. *Paragraphs 44 to 49*amend the Criminal Law (Consolidation) (Scotland) Act 1995 so that the provisions in that Act relating to the questioning and detention and treatment of suspects apply to immigration officers and their investigations.

667. *Paragraph 50*makes consequential amendments relating to legal aid in Scotland. The consequential amendments add immigration and nationality offences to section 8A of the Legal Aid (Scotland) Act 1986 so that legal advice and assistance will be available in certain circumstances. The provision also amends regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (criminal advice and assistance: automatic availability in certain circumstances) and regulation 3 of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 so that they also include immigration or nationality offences. These modifications are necessary to ensure that those detained, questioned or arrested have access to legal aid and legal advice (subject to certain restrictions).

Section 56: Drugs and driving

668. *Subsection (1)* introduces an offence of driving, attempting to drive or being in charge of a motor vehicle with a specified controlled drug in the blood or urine in excess of the specified limit for that drug. The new offence is inserted as a new section 5A in the Road Traffic Act 1988 ("the 1988 Act"). A "controlled drug" is defined in section 11 of the 1988 Act, as amended by *subsection (2)(a)*, by reference to the Misuse of Drugs Act 1971 ("MD Act"). The definition of a controlled drug is set out in section 2 of the MD Act, which in turn refers to drugs listed in Schedule 2 to that Act (and also to drugs subject to temporary control by virtue of the making of a temporary class drug order). Legal controls apply over controlled drugs to prevent them being misused, for example being obtained or supplied illegally.

669. It is already an offence under section 4 of the 1988 Act to drive whilst impaired by drugs (or alcohol), and the section 4 offence will remain in place alongside the new offence. Unlike the section 4 offence, the new offence will not require proof of impairment. In this respect it is similar to the offence in section 5 of the 1988 Act of driving, attempting to drive or being in charge of a motor vehicle with an alcohol concentration above the prescribed limit. The penalties available for the new offence, set out in *subsection (4)* (which amends Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988), are the same as those for the offence in section 5 of the 1988 Act (i.e. the penalties set out in Schedule 2 to the Road Traffic Offenders Act 1988 as increased, for England and Wales, by certain provisions of the Criminal Justice Act 2003 which are not yet in force).

670. New section 5A(8) of the 1988 Act introduces a regulation-making power (exercisable by the Secretary of State in relation to England and Wales and by the Scottish Ministers in relation to Scotland) to specify which controlled drugs are covered by the offence, and the specified limit in relation to each. Such regulations will be subject to the affirmative resolution procedure (by virtue of the amendment to section 195 of the 1988 Act made by *subsection (3)*). There is already a requirement in section 195(2) and (2A) of the 1988 Act to consult before making regulations under the 1988 Act.

671. New section 5A(2) of the 1988 Act allows for different specified limits to be set for different controlled drugs. Specified limits could be set based on evidence of the road safety risk posed by driving after taking the drug, or based on an approach whereby it is not acceptable to drive after taking any appreciable amount of the drug (or somewhere in between). New section 5A(9) provides that specified limits could be zero, though this does not mean that limits would in fact be set at zero.

672. New section 5A(3) of the 1988 Act provides for a defence if a specified controlled drug is prescribed or supplied in accordance with the MD Act and taken in accordance with medical advice. The offence in section 4 of the 1988 Act would continue to be used to deal with those whose driving is impaired by specified controlled drugs taken in such circumstances. It would also continue to be used to deal with those whose driving is impaired by drugs which are not specified for the purposes of the offence (including other prescribed drugs and 'legal highs'). New section 5A(4) of the 1988 Act provides that the defence is not available if medical advice about not driving for a certain period of time after taking the drug has not been followed.

673. New section 5A(6) of the 1988 Act provides for a defence for someone who is accused of being in charge of a motor vehicle with a specified controlled drug in the blood or urine above the specified limit for that drug, if it can be shown that there was no likelihood of the person driving the vehicle while over the specified limit. This is similar to the defence in section 5(2) of the 1988 Act.

674. *Subsections (5) and (6)* make transitional provision for the period before the coming into force of certain provisions of the Criminal Justice Act 2003 that increase, for England and Wales, the maximum terms of imprisonment for summary offences.

675. *Subsection (7)* introduces Schedule 22.

Schedule 22: Drugs and driving: minor and consequential amendments

676. *Paragraph 2*amends section 3A of the 1988 Act so that if the person had been driving carelessly and had a controlled drug in the blood or urine in excess of the specified limit for that drug, the person could be charged with the more heavily penalised offence in that section of causing death by careless driving when under the influence of drink or drugs.

677. *Paragraph 3*amends section 6C of the 1988 Act so as to allow up to three preliminary tests of saliva or sweat to be taken when testing for drugs. The current position is that one test can be taken, but this would be insufficient for the purposes of the new offence, given that current drug screening technology can test for a limited range of drugs only using a single preliminary test. Evidential testing for drugs would continue to be through blood or urine samples. Saliva or sweat tests would therefore not be used in the same way as evidential breath tests are for drink driving and indeed sweat tests are not under consideration even as preliminary tests. For drink driving breath tests are the most frequent method used for both preliminary and evidential testing.

678. *Paragraph 4*amends section 6D of the 1988 Act to allow for a power of arrest after a preliminary drug test relating to the new section 5A offence.

679. *Paragraph 10*amends section 15 of the Road Traffic Offenders Act 1988 to provide for certain assumptions to be made about the level of a drug in the body at the time of a suspected offence compared to the time when an evidential test is taken. The amendments parallel provisions related to the prescribed drink drive limit.

Section 57: Public order offences

680. Section 57 removes the ‘insulting’ limb from section 5 of the Public Order Act 1986 (“the 1986 Act”), thereby making the use of insulting words, behaviour etc which is likely to cause harassment, alarm or distress no longer a criminal offence.

681. *Subsection (2)* removes the word ‘insulting’ from section 5(1) of the 1986 Act, which sets out the offence.

682. *Subsection (3)* removes the word ‘insulting’ from section 6(4) of the 1986 Act, which provides that a person is guilty of an offence under section 5 only if they intend their words, behaviour etc to be threatening, abusive or insulting, or are aware that their words, behaviour etc may be threatening, abusive or insulting.

Section 58: Orders and regulations

683. Section 58 details the parliamentary procedure to be applied to each of the various orders and regulations contained in the Act. *Subsection (3)* introduces Schedule 23 which details the super-affirmative procedure that will apply to any order under section 2 modifying the functions of the National Crime Agency. *Subsection (12)* provides that any order or regulations under the Act may include supplementary, incidental or consequential provision and may make transitional, transitory or saving provision.

Schedule 23: Super-affirmative procedure

684. *Paragraph 1*requires the Secretary of State to consult the persons who would be affected by an order. If following consultation the Secretary of State wishes to proceed with the making of an order, *paragraph 2*requires the Secretary of State to lay a draft order and explanatory document before Parliament, but he or she may not do so for 12 weeks from the beginning of the consultation process. *Paragraph 3* provides that any orders must be approved by Parliament through the use of the affirmative procedure (approval by a resolution of each House of Parliament) unless the procedure described in the following paragraph applies.

685. *Paragraph 4* sets out that affirmative procedure, which is to be followed if either House of Parliament so requires, or a Committee of either House so recommends (and the recommendation is not rejected by the House). Such a resolution or recommendation must be made within 30 days of the laying of a draft order. This procedure extends the scrutiny period for an order to 60 days, and requires the Secretary of State to have regard to any recommendations or representations made by Parliament during this period. Following the conclusion of the scrutiny period, the Secretary of State would have the option of laying a revised draft order.

Section 59: Consequential amendments

686. This section enables the Secretary of State and Lord Chancellor, by order, to make provision consequential upon the Act, including consequential amendments to other enactments. Any such order which amends primary legislation is subject to the affirmative resolution procedure; otherwise the negative resolution procedure applies.

Schedule 24: The NCA: Northern Ireland

687. The provisions in Part 1 of the Act are subject to Schedule 24 which provides that specified "relevant NCA provisions" do not extend to Northern Ireland, except by order and with the consent of the Northern Ireland Assembly (insofar as they make transferred provision).

688. *Paragraph 1(2)* enables the Secretary of State to provide that any other provision of Part 1 of the Act (that is, a provision which is not a specified 'relevant NCA provision') is not to extend to Northern Ireland. *Paragraph 2* enables the Secretary of State to reverse the effect of an order under *paragraph 1* or to provide that a relevant NCA provision will extend to Northern Ireland. *Paragraph 3* enables the Secretary of State to make such provision as she considers appropriate, in consequence of, or in connection with a provision in the Act extending to Northern Ireland by virtue of an order under paragraph 2. *Paragraph 4* enables the Secretary of State to make such provision as she considers appropriate, in consequence of, or in connection with, a provision in the Act not extending to Northern Ireland by virtue of paragraph 1(1) or an order under paragraph 1(2). *Paragraph 5* enables the Secretary of State to modify the ways in which (a) the NCA's functions are exercised in Northern Ireland; or (b) the exercise of NCA functions in Northern Ireland is planned or supervised.

689. *Paragraph 6*provides that any order made under this Schedule which makes transferred provision may only be made with consent of the Northern Ireland Assembly. *Paragraph 7* provides that an order under paragraph 2, 3, 4 or 5 may include provision: (a) conferring, removing or otherwise modifying a function (which includes an NCA function and a function of the Secretary of State), or (b) amending, repealing, revoking or otherwise modifying any enactment. This means that any order made under paragraphs 2 to 5 of the new Schedule may, in particular, make textual amendments to Part 1 of the Act to modify its application to Northern Ireland, or modify one or more of the enactments amended in Parts 2 and 3 of Schedule 8 to the Act. An order made under paragraph 5 is subject to affirmative resolution procedure. Orders made under paragraphs 1 to 4 are subject to the negative resolution procedure.

690. *Paragraph 9*lists those provisions in Part 1 of the Act which are "relevant NCA provisions" and which do not extend to Northern Ireland. Notable amongst the relevant NCA provisions is that NCA officers cannot be designated with the powers and privileges of a Northern Ireland constable (under paragraph 11(1)(c) of Schedule 5). So whilst the arrangements in Part 1 – under section 10 and paragraph 11 of Schedule 5 – provide that an NCA officer can be designated with the powers and privileges of a constable, paragraph 9 of Schedule 24 removes the ability to designate an NCA officer with the powers and privileges of an Northern Ireland constable.

Schedule 25: Proceeds of crime provisions: Northern Ireland

691. Schedule 25 modifies the extent of the provisions in sections 48 and 49 and Schedules 18 and 19 so that certain provisions referred to as "relevant civil recovery provision" (namely section 48(2), (3), (5) and (6) and Schedule 18 and section 48(7), as far as it relates to those provisions and Part 2 of Schedule 18) and "relevant investigation provision" (namely paragraphs 2 to 13, 25 to 27, 29 and 30 of Schedule 19 and section 49 so far as it relates to those provisions) do not extend to Northern Ireland.

692. Schedule 25 confers powers on the Secretary of State to extend by order a "relevant civil recovery provision" and a "relevant investigation provision" to Northern Ireland. It also confers a power on the Secretary of State to make provision in consequence of, or in connection with, a provision extending to Northern Ireland. The Schedule also confers power on the Secretary of State by order to make provision in consequence of, or in connection with, the provisions not extending to Northern Ireland But the Secretary of State must secure the consent of the Northern Ireland Assembly before making an order under Schedule 25 which contains provision in respect of transferred matters falling within the legislative competence of the Northern Ireland Assembly (see paragraph 6).. The order-making powers are subject to the negative procedure.

Section 60: Transitional, transitory or saving provisions

693. This section enables the Secretary of State and Lord Chancellor, by order, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Act. Such an order is not subject to any parliamentary procedure.

Section 61: Short title, commencement and extent

694. *Subsection (1)* sets out the short title for the Act.

695. *Subsections (2) to (11)* provide for commencement. The provisions in Part 4 of Schedule 16 (electronic monitoring of offenders) may be brought into force at different times in different areas thereby enabling the piloting of these provisions. Such a pilot may be time limited, but may be extended by a further order (*subsection (9)*).

696. *Subsections (12) to (17)* set out the extent of the provisions in the Act, subject to Schedule 24 (The NCA: Northern Ireland) and Schedule 25 (proceeds of crime provisions: Northern Ireland) *(subsections (18) and (19))*.

697. *Subsection (20)* enables the provisions in section 51, 52, 53 or 54 (immigration matters) to be extended to the Channel Islands and Isle of Man by Order in Council; such an Order is not subject to any parliamentary procedure.

698. *Subsection (21)* enables the provisions in Part 8 (armed forces) of Schedule 16 to be extended to any of the Channel Islands, the Isle of Man or any of the British overseas territories by Order in Council.

699. *Subsection (22)* enables the provisions in Schedule 16 which amend the Criminal Justice Act 2003 to be extended to any of the Channel Islands or the Isle of Man by Order in Council.

COMMENCEMENT

700. Part 5 of Schedule 13 (and section 20 so far as relating to that Part), sections 43, 48 (except *subsection 6(a)*) and 58 to 61, Part 2 of Schedule 18, and Schedules 24 and 25, come into force on Royal Assent.

701. Section 19 comes into force on the day after the day of Royal Assent. Sections 26(2), 31 and 33 come into force two months after Royal Assent.

702. Sections 34 to 39 (the provisions on exemplary damages in relation to publication of news-related material) come into force one year after the date on which a body is established by Royal Charter to carry on activities relating to the recognition of independent regulators of relevant publishers.

703. All other provisions will be brought into force by means of commencement orders made by the Secretary of State or, in the case of the provisions in sections 17 and 20 to 30 and 32, and Schedules 9 to 11, 13 and 14, by the Lord Chancellor.

HANSARD REFERENCES

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

Stage	***Date***	***Hansard Reference***
House of Lords		
Introduction	10 May 2012	Vol. 737 Col. 26
Second Reading	28 May 2012	Vol. 737 Col. 973-1068
Committee	18 June 2012	Vol. 737 Col. 1560-1648
	20 June 2012	Vol. 737 Col. 1780-1831
	25 June 2012	Vol. 738 Col. 11-118
	27 June 2012	Vol. 738 Col. 252-293
	02 July 2012	Vol. 738 Col. 494-566
	04 July 2012	Vol. 738 Col. 689-782
	30 October 2012	Vol. 740 Col. 515-586
Recommitment	13 November 2012	Vol. 740 Col. 1415-1506
Report	27 November 2012	Vol. 741 Col. 93-164
	04 December 2012	Vol. 741 Col. 545-655
	10 December 2012	Vol. 741 Col. 861-972
	12 December 2012	Vol. 741 Col. 1079-1134
Third Reading	18 December 2012	Vol. 741 Col. 1466-1526
House of Commons		
Introduction	19 December 2012	No Debate
Second Reading	14 January 2013	Vol. 556 Col. 633-707
Committee	22 January 2013	Hansard Crime and Courts Bill Public Bill Committee
	24 January 2013	
	29 January 2013	

Stage	***Date***	***Hansard Reference***
	31 January 2013	
	05 February 2013	
	07 February 2013	
	12 February 2013	
Report and Third Reading	13 March 2013	Vol. 560 Col. 315-424
	18 March 2013	Vol. 560 Col. 681-764
Ping Pong		
Lords consideration of Commons Amendments	25 March 2013	Vol. 744 Col. 805-917
Commons consideration of Lords Amendments	22 April 2013	Vol. 561 Col. 685-692
Lords consideration of Commons Amendments	23 April 2013	Vol. 744 Col. 1387-1395
Royal Assent	25 April 2013	Vol. 744 Col. 1564 (Lords)
		Vol. 561 Col. 1068 (Commons)

ANNEX A: GLOSSARY

1971 Act	Immigration Act 1971
1980 Act	The Magistrates' Court Act 1980
1981 Act	Senior Courts Act 1981
1984 Act	County Courts Act 1984
1986 Act	Public Order Act 1986
1988 Act	Road Traffic Act 1988
1994 Act	Criminal Justice and Public Order Act 1994
1995 Act	Criminal Law (Consolidation) (Scotland) Act 1995
1996 Act	Employment Tribunals Act 1996
1998 Act	Data Protection Act 1998
2000 Act	Powers of Criminal Courts (Sentencing) Act 2000
2002 Act	Nationality, Immigration and Asylum Act 2002
2003 Act	Courts Act 2003
2004 Act	Asylum and Immigration (Treatment of Claimants, etc.) Act 2004
2006 Act	Immigration, Asylum and Nationality Act 2006
2007 Act	Tribunals, Courts and Enforcement Act 2007
2012 Act	Legal Aid, Sentencing and Punishment of Offenders Act 2012
BCIA	Borders, Citizenship and Immigration Act 2009
CJA 2003	Criminal Justice Act 2003
CJJA	Civil Jurisdiction and Judgments Act 1982
CRA	Constitutional Reform Act 2005
DPA	Deferred prosecution agreement
DPP	Director of Public Prosecutions
DSFO	Director of the Serious Fraud Office
DWP	Department for Work and Pensions
EA 2003	Extradition Act 2003
ECHR	European Convention on Human Rights
FTE	Full-Time Equivalent
HMCTS	Her Majesty's Courts and Tribunals Service
HMRC	Her Majesty's Revenue and Customs
IPCC	Independent Police Complaints Commission
JAC	Judicial Appointments Commission
MD Act	The Misuse of Drugs Act 1971
NCA	National Crime Agency
NPIA	National Policing Improvement Agency

PCA	Parliamentary Commissioner for Administration
POCA	Proceeds of Crime Act 2002
PSNI	Police Service of Northern Ireland
RIPA	Regulation of Investigatory Powers Act 2000
SOCA	Serious Organised Crime Agency
SPA	Service Prosecuting Authority
YJB	Youth Justice Board

ANNEX B: DEPLOYMENT OF THE JUDICIARY

Judge	Competent to sit on request	Authorisation required	Duty to comply with request?
A judge of the Court of Appeal	The High Court and the Crown Court	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes
A person who has been a judge of the Court of Appeal	The Court of Appeal, the High Court, the family court, the county court and the Crown Court	Lord Chief Justice request to sit with the concurrence of the Lord Chancellor	No
A puisne judge of the High Court	The Court of Appeal	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes
A person who has been a puisne judge of the High Court	The Court of Appeal, the High Court, the family court, the county court and the Crown Court	Lord Chief Justice request to sit with the concurrence of the Lord Chancellor	No
The Senior President of Tribunals	The Court of Appeal and the High Court	Lord Chief Justice request to sit after consulting the Lord Chancellor	Yes, unless holder of office is a judge of the Court of Session or of the High Court or Court of Appeal in Northern Ireland
Circuit Judge	The Criminal Division of the Court of Appeal and the High Court	For Criminal Division of the Court of Appeal: Lord Chief Justice request to sit with the concurrence of the Judicial Appointments Commission	Yes
		For High Court: Lord Chief Justice request to sit from judges within Judicial Appointments Commission selected pool after consulting Lord Chancellor	
Recorder	The High Court	Lord Chief Justice request to sit from judges within Judicial Appointments Commission selected pool after consulting Lord Chancellor	Yes

Judge	Competent to sit on request	Authorisation required	Duty to comply with request?
Judge of the Upper Tribunal[40] and President of Employment Tribunals	The High Court	Lord Chief Justice request to sit from judges within Judicial Appointment Commission selected pool after consulting Lord Chancellor	Yes

40 Only if the judge is a Chamber President or a Deputy Chamber President of a Chamber of the Upper Tribunal or the First-tier Tribunal; a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007; a transferred-in judge of the Upper Tribunal or a deputy judge of the Upper Tribunal.

40 Only if the judge is a Chamber President or a Deputy Chamber President of a Chamber of the Upper Tribunal or the First-tier Tribunal; a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007; a transferred-in judge of the Upper Tribunal or a deputy judge of the Upper Tribunal.