

# PRISONS AND COURTS BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145).

- These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

1. The purpose of the Bill is to reform prisons and courts by setting a new framework and clear system of accountability in the prison system, strengthening safety and security, improving efficiency and services for users in courts and tribunals, and reforming the claims process for minor whiplash injuries resulting from road traffic accidents.
2. In May 2015, the Government was elected with manifesto commitments to “continue the £375 million modernisation of our courts system, reducing delay and frustration for the public” and for “greater use of mobile phone blocking technology” in prisons.<sup>1</sup> This Bill contains measures to support the delivery of those commitments. It also delivers the provisions outlined in the Queen’s Speech in May 2016, including broader reforms to prisons in England and Wales.
3. The Bill is in 6 parts:
4. Part 1 of the Bill contains measures relating to prisons. It establishes a statutory purpose for prisons and clarifies the role of the Secretary of State; bolsters the independent scrutiny of prisons - strengthening the functions of the Chief Inspector of Prisons by creating an Inspectorate and providing them with new statutory powers, and putting the Prisons and Probation Ombudsman on a statutory footing; and improves prison security to support other operational changes in prisons, through authorising public communications providers to disrupt the use of unlawful mobile phones in prisons, and providing new powers to test for psycho-active substances in prisons so that prisons can respond quickly to new drugs.
5. Parts 2 to 4 contain measures to reform the courts system. Part 2 creates new procedures in civil, family, tribunal and criminal matters. It makes changes to court procedures in the Crown Court and magistrates’ courts to make processes and case management more efficient; allows some offenders charged with summary-only, non-imprisonable offences to be convicted and given standard penalties using a new online procedure; extends the use of live audio and video links, and ‘virtual’ hearings where no parties are present in the court room but attend by telephone or video conferencing facilities; makes provision which will apply across the civil, criminal and tribunal jurisdictions to ensure public participation in proceedings which are heard virtually, including the creation of new criminal offences to guard against abuse; creates a new online procedure rules committee that will be able to create new online procedure rules in relation to the civil, tribunal and family jurisdictions; bans cross-examination of vulnerable witnesses in certain family cases; and confers the power to make procedure rules for employment tribunals and the Employment Appeal Tribunal on the Tribunal Procedure Committee and extends the membership of the Committee to include an employment law practitioner and judge or non-legal member.
6. Part 3 contains measures relating to the organisation and functions of courts and tribunals. It extends the role of court and tribunal staff authorised to exercise judicial functions giving the relevant procedure rules the power to authorise functions in their respective jurisdictions; abolishes local justice areas; replaces statutory declarations with statements of truth in certain traffic and air quality enforcement proceedings; it makes reforms to the arrangements for the composition of employment tribunals and the Employment Appeal Tribunal; and enables the

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<sup>1</sup> The total investment as part of the court modernisation programme is over £1 billion.

High Court to make attachment of earnings orders for the recovery of money due under a judgment debt, as far as practicable, on the same basis as in the County Court.

7. Part 4 contains measures relating to the judiciary and the Judicial Appointments Commission. It enables more flexible deployment of judges; it brings the arrangements for the remuneration of judges and members of employment tribunals under the remit of the Lord Chancellor; changes to judges in leadership positions will support a reformed courts and tribunals system; and gives the Judicial Appointments Commission the power to carry out more work on a cost-recovery basis.
8. Part 5 concerns the claims process for those suffering minor whiplash injuries. It subjects damages for pain, suffering and loss of amenity for whiplash claims to a tariff and regulates the settlement of such claims.
9. Part 6 contains general provisions that apply to the Bill: it makes the necessary legal provision for the short-title of the bill, the extent, orders, regulations and parliamentary procedures, and powers to make consequential, incidental etc. provision.

## Policy background

10. In November 2016, the Government published plans for reforms to the prison system, including measures in this Bill<sup>2</sup>. After the announcement of these reforms in the Queen's Speech in May 2016<sup>3</sup>, the Justice Select Committee issued an initial call for evidence, followed by an inquiry into prison reform, which has taken evidence from witnesses and the Government.<sup>4</sup>
11. The joint statement issued in September 2016 by the Lord Chancellor, Lord Chief Justice of England and Wales, and Senior President of Tribunals outlined the context of reforms to courts and tribunals within which the Bill addresses specific measures that require legislation.<sup>5</sup>
12. The Bill contains measures that give effect to policies outlined in Government consultations<sup>6</sup>

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<sup>2</sup> *Prison Safety and Reform White Paper* Cm 9350: <https://www.gov.uk/government/publications/prison-safety-and-reform>

<sup>3</sup> Queen's Speech Announcement on prison reform: <https://www.gov.uk/government/news/biggest-shake-up-of-prison-system-announced-as-part-of-queens-speech>

<sup>4</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/prison-reform-16-17>

<sup>5</sup> *Transforming our Justice System*, Joint Statement: <https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement>

<sup>6</sup> *Transforming our Courts and Tribunals*, Cm9391: <https://www.gov.uk/government/consultations/transforming-our-courts-and-tribunals>;

*Reforming the soft tissue injury claims process*, consultation: <https://www.gov.uk/government/consultations/reforming-the-soft-tissue-injury-whiplash-claims-process>

*Modernising judicial terms and conditions*, consultation: <https://www.gov.uk/government/consultations/modernising-judicial-terms-and-conditions>

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regarding courts and tribunals reform, judicial policy and compensation for whiplash injuries arising out of road traffic accidents.

## Prisons

13. The Prison Safety and Reform White Paper outlined the Government's plans for reforms, to be delivered through a mix of operational changes in prisons underpinned by legislative changes where required. In that publication, the Secretary of State outlined the "current challenge" facing the prison system and policy rationale for reform. Currently, almost half of all prisoners are reconvicted within a year of release. The cost of reoffending by former prisoners is estimated to be up to £15 billion a year.<sup>7</sup>
14. Evidence shows that the prison system is currently under sustained and serious pressure from security threats and rising levels of violence.
15. The environment in prisons has grown increasingly violent in recent years: rates of violence and self-harm have increased significantly, due in part to the recent increase of dangerous psycho-active drugs in prisons. Assaults on prison staff increased by 40% in the 12 months to September 2016, while self-harm increased by around a quarter. The number of self-inflicted deaths increased by 32% in the 12 months to December 2016.<sup>8</sup>
16. Prisons are facing new security challenges. In 2015 nearly 17,000 mobile phones and SIM cards were found in prisons – an increase from around 7,000 in 2013. There has also been a rise in the number of drones used to fly and drop contraband over prison walls.
17. To address these matters, the Government proposes a programme of reforms to prisons, underpinned by the legislative changes through the Bill. That programme was described in the White Paper as comprising:
  - Getting "the right framework for improvement" by setting out the role of the Secretary of State and accountability arrangements for those managing prisons;
  - "Raising standards" by establishing an overarching purpose for prisons and changes to the performance framework and reporting systems for all prisons;
  - Giving governors more autonomy and accountability that will include greater control over services provided in their prisons, workforce planning based on their local needs, how to spend budgets and decision-making on operational policies, such as releasing prisoners on temporary licence to pursue purposeful activities in work or education;

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*Reforming the Employment Tribunal System*, consultation: <https://www.gov.uk/government/consultations/reforming-the-employment-tribunal-system>

<sup>7</sup> In 2010 the National Audit Office estimated the cost to the economy of re-offending of those released from custody to be between £9 billion to £13.5 billion. This figure has subsequently been updated to up to £15 billion to reflect 2016 prices.

<sup>8</sup> National Statistics: Safety in Custody quarterly: update to September 2016  
<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2016>

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- Improving safety and security in prisons by increasing staffing and the availability of one-to-one support for prisoners, complemented by new measures to address drugs, drones and mobile phones in prisons as well as crimes committed in prisons;
  - Developing leadership and capability through training and investment in prison staff; and
  - Building “the right estate for reform” that is less crowded, better organised, more effective with modern, fit-for-purpose accommodation.
18. The reforms will be mostly delivered through non-legislative changes to the way prisons are run or through changes to secondary legislation in the form of the Prison Rules. For example, in response to the Acheson Review<sup>9</sup>, the Government will create separate units for the small subset of the most high-risk extremists; changes will be made to the prison drug testing regime to enable drug testing on entry to and exit from prison, as part of a more extensive testing programme; and a Government manifesto commitment will be met to “close old, inefficient prisons, building larger, modern and fit-for-purpose ones” as outlined in the White Paper. The Bill contains measures in the areas that do require primary legislation. These measures will change the framework of the prison system to provide for greater authority for the frontline, and new accountability and transparency mechanisms.
19. Part 1 creates a statutory purpose of prisons and updates the existing duties of the Secretary of State in relation to prisons (amending those created in the Prison Act 1952 (“the 1952 Act”)). It creates Her Majesty’s Inspectorate of Prisons, comprising Her Majesty’s Chief Inspector of Prisons (an existing statutory office) and staff who carry out functions on the Chief Inspector’s behalf, places additional reporting requirements on the Chief Inspector in relation to prisons, and provides powers of entry and access to information to facilitate the exercise of the Chief Inspector’s statutory inspection functions in relation to prisons. Part 1 establishes the Prisons and Probation Ombudsman (“PPO”) as a statutory office, and provides the Secretary of State with the powers to add its remit.
20. Part 1 also concerns two aspects of prison security: it enables a public communication providers (“PCPs”) – for example, mobile phone network operators - to be authorised to interfere with wireless telegraphy to disrupt the use of unlawful mobile phones in custody, and makes provision for the testing of prisoners for psychoactive substances (as defined in the Psychoactive Substances Act 2016) within prisons.

## **The statutory purpose of prisons and role of the Secretary of State**

21. The creation of a new statutory purpose for prisons is similar to examples in other legislation: for instance, the probation purposes and aims in the Offender Management Act 2007 and the purpose of the youth justice system in the Crime and Disorder Act 1998. In amending the 1952 Act, the Bill reforms the existing duty of the Secretary of State to provide prisons and maintain prisoners and delivers the policy aim outlined in the White Paper (p. 13, chapter 2) that there should be “a statutory purpose for the prison system around which everyone working in it

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<sup>9</sup> *Summary of the main findings of the review of Islamist Extremism in prisons, probation and youth justice*  
<https://www.gov.uk/government/publications/islamist-extremism-in-prisons-probation-and-youth-justice/summary-of-the-main-findings-of-the-review-of-islamist-extremism-in-prisons-probation-and-youth-justice>

can unite”, and “the role of the Secretary of State for Justice is clear, including how she will account to Parliament for her performance”.

## **Inspectorate and Prisons and Probation Ombudsman**

22. Her Majesty’s Chief Inspector of Prisons is a Crown appointment established in the 1952 Act. The Chief Inspector reports on the conditions in and treatment of those in prison, young offender institutions, secure training centres, immigration detention facilities, police and court custody suites, customs custody facilities and military detention and escort vehicles. The Chief Inspector’s work contributes to the United Kingdom’s obligations under the Optional Protocol to the United Nations Convention against Torture (“OPCAT”) and other Cruel, Inhuman or Degrading Treatment or Punishment. This Protocol requires signatory states to have in place regular independent inspection of places of detention. Part 1 delivers the policy aims in the White Paper (p18, Ch2) to strengthen the ability of the Chief Inspector to provide robust and independent scrutiny of prisons. It makes provision for a statutory Inspectorate and provides the Chief Inspector and Inspectorate staff with new powers to enter places of detention and access information when conducting inspections. The provisions require the Secretary of State to respond to inspection reports in a set timescale and for the Chief Inspector to trigger an urgent response from the Secretary of State where an inspection has raised significant concerns.
23. The PPO is a non-statutory office that carries out independent investigations into deaths in custody and complaints by those in custody. The Bill puts the PPO onto a statutory footing. This delivers the policy aim in the White Paper (p.19 Ch. 2) that a statutory basis will ‘bolster the status’ of the role. The PPO is not currently a statutory office and there have been public statements from the Ombudsman arguing for the office to be placed on a statutory footing – including in his 2015-16 Annual Report. In 2003, the Home Office issued a public consultation on creating a statutory office of the PPO with responsibility for investigating complaints and deaths in custody.

## **Prison security: mobile phones and drug testing**

24. The power of the Secretary of State to authorise governors to interfere with wireless telegraphy to disrupt unlawful mobile phone use in prisons is established in the Prisons (Interference with Wireless Telegraphy) Act 2012 (“PIWTA 2012”). Part 1 amends this provision to create a new power for the Secretary of State to authorise PCPs to effect this interference in an independent capacity. The Wireless Telegraphy Act 2006 makes it a criminal offence to install or use wireless telegraphy apparatus without a licence (section 8) or to use apparatus to deliberately interfere with wireless telegraphy (section 68), but such interference is lawful for the purpose of detecting or preventing the use of illegal mobile phones in prisons when it is carried out by someone authorised under the PIWTA 2012. Ofcom regulates this activity in the UK under powers set out in the Communications Act 2003 and Part 1 uses a definition of a PCP based on section 151 of that Act.
25. The 1952 Act provides prison officers with the power to test prisoners for all drugs that are controlled drugs for the purposes of the Misuse of Drugs Act 1971. In cases where new illegal substances are identified, in order to test prisoners, secondary legislation is required in each case to specify the substance to be authorised for testing.

26. The recent increase in use of psychoactive substances in custody is well-evidenced. There were 851 recorded seizures of psychoactive substances in prison during October and November 2015<sup>10</sup>. The PPO found that in 39 deaths in prison between June 2013 and June 2015, the prisoner was known, or strongly suspected, to have been using psychoactive substances before their deaths<sup>11</sup>. In July 2016, HM Chief Inspector of Prisons described the ‘unpredictable and extreme... dramatic and destabilising’ effects of psychoactive substances, which in his view contributed in ‘large part’ to the violence in prisons<sup>12</sup>.

## Courts and tribunals

27. The joint statement issued by the Lord Chancellor, Lord Chief Justice, and Senior President of Tribunals described plans for a modern court system, shared by the Government and senior judiciary, stating: “the vision is to modernise and upgrade our justice system so that it works even better for everyone, from judges and legal professionals, to witnesses, litigants and the vulnerable victims of crime<sup>13</sup>.”

28. The statement identified a number of “real challenges” that remain in the justice system through inefficient and outdated processes. The Bill concerns the criminal, civil and family jurisdictions and tribunals. It makes provisions to address the matters identified in the joint statement, as well as some of those described in previous reviews of the justice system, particularly relating to the criminal courts. In 1999, Lord Justice Auld was commissioned by the then Government to conduct a review of the criminal courts in England and Wales, which reported in 2001<sup>14</sup>; a subsequent independent review by Lord Justice Leveson was published in January 2015<sup>15</sup>. Their findings focused on the processes, structures and inefficiencies in the criminal justice system. The National Audit Office published a report in 2016 on efficiency in the criminal justice system, which identified geographical variations in performance and the presence of misaligned incentives in the system<sup>16</sup>. Lord Justice Briggs recently conducted a review into civil courts<sup>17</sup>. His final report made several recommendations that relate to policies in the Bill, including the ‘online court’ and civil enforcement.

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<sup>10</sup> House of Lords written question HL4385

<sup>11</sup> Prisons and Probation Ombudsman (2015) *Learning lessons bulletin: New psychoactive substances*, London: PPO

<sup>12</sup> Her Majesty’s Chief Inspector of Prisons, *Annual Report*, 2016: <https://www.justiceinspectorates.gov.uk/hmiprisoners/media/press-releases/2016/07/hm-inspectorate-of-prisons-annual-report-201516-prisons-unacceptably-violent-and-dangerous-warns-chief-inspector/>

<sup>13</sup> *Transforming our Justice System*, p.3

<sup>14</sup> *A review of the Criminal Courts of England and Wales*, Rt. Hon Robert Auld, LJ [2001]

<sup>15</sup> <https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/>

<sup>16</sup> *Efficiency in the Criminal Justice System*: National Audit Office, 2016: <https://www.nao.org.uk/report/efficiency-in-the-criminal-justice-system/>

<sup>17</sup> *Review of Civil Courts Structure*, LJ Briggs [2016] <https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-final-report-published/civil-courts-structure-review-final-report-press-notice/>

## Criminal courts: case allocation and online indication of plea

29. Part 2 makes provision for new procedures in civil and criminal jurisdictions. It makes changes to the way in which cases can be allocated between magistrates' courts and the Crown Court. Offences can be categorised in three ways: summary-only (heard in magistrates' courts), triable either-way (depending on complexity and severity may be heard in either magistrates' courts or the Crown Court), and indictable-only (must be heard in the Crown Court). 'Allocation' is the process by which either-way cases are assigned to a magistrates' court or the Crown Court. 'Sending' refers to the process by which an indictable case (both indictable-only and either-way) is sent from a magistrates' court to the Crown Court. The Magistrates' Courts Act 1980, as amended, sets the framework for how either way offences are allocated. Generally, the practice and procedure which must be followed in relation to all offences is set out in Criminal Procedure Rules made by the Criminal Procedure Rule Committee<sup>18</sup>. This body of legislation and rules determines the circumstances in which a hearing must occur as part of a case's progression, when and how to indicate and enter a plea, and how cases can be moved between the magistrates' courts and the Crown Court.
30. Part 2 makes changes to this framework to increase flexibility for how defendants interact with the system and removes unnecessary hearings. In order to improve processes between magistrates' courts and the Crown Court, Part 2 makes a number of changes to procedure in criminal courts in England and Wales. This will enable a defendant (if he or she wishes) to engage with the court in writing, which includes engaging online using the Common Platform (a unified online platform for all case management in the criminal justice system). If a defendant does not wish to engage through the written/online procedure, then he or she will be required to attend court at a specified time after the time allowed for such engagement has expired, to indicate a plea in person and, for either way offences, to take part in the mode of trial procedure. Part 2 also enables the court to deal with mode of trial in defendants' absence, to send indictable cases to the Crown Court without hearing, and for the Crown Court to remit cases to a magistrates' court where the sentencing powers of the latter would be sufficient and (where the case is being remitted for trial) with the defendant's consent.

## Live-links, virtual hearings and the conduct of certain proceeding 'on the papers'

31. In criminal proceedings, there are certain circumstances in which the courts are able to use technology to facilitate proceedings; whether by live video link, telephone conference or email. This is either under existing statutory provision or under the courts' inherent powers. These powers are explained in the legal background section of these Explanatory Notes. The circumstances in which a hearing is required are prescribed in a wide range of legislation and in the Criminal Procedure Rules.
32. Video link technology is increasingly being used across the court estate. This will continue to be installed and upgraded so becoming more commonplace and enabling greater participation in proceedings from remote locations. Part 2 therefore concerns the extending of use of audio and video link and conferencing technology and amends existing legislation that has the practical effect of restricting the use of this technology. It provides for more matters that would usually be

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<sup>18</sup> The establishment of the Criminal Procedure Rule Committee was an outcome of the Auld Review 2001; and legislation in the Criminal Justice Act 2003; <https://www.gov.uk/government/organisations/criminal-procedure-rule-committee/>

conducted at a physical hearing to be dealt with by a 'virtual-enabled' hearing, where one or more of the participants appear before the court using a live video or audio link and one or more participants will appear in the physical court room; or by a 'fully virtual hearing', where there is no physical court room and the court and participants attend using telephone or video conferencing facilities. These provisions seek to make proceedings in criminal cases more proportionate and efficient for all parties, and so delivers against the Joint Statement's vision (p.5) that "we must make sure that the justice system is proportionate in order to save people time, shrink their costs, and reduce the impact of legal proceedings on their lives. Justice delayed is justice denied".

## Public participation in court and tribunals proceedings

33. Part 2 makes provisions enabling the public to see and hear proceedings which are held virtually. In the context of more proceedings happening outside of a physical courtroom, the Government intends to put in place measures that will maintain transparency, for example by regularising listings and publishing results online. Part 2 enables criminal and civil courts and tribunals to make directions to live stream a hearing which is taking place 'virtually': the Government's intends that it will be possible for these to be viewed by members of the public and media using an in-court screen.
34. There are existing restrictions on photography and sound recording in physical courts. These do not apply to the Supreme Court and where regulations are made by the Lord Chancellor<sup>19</sup>; Section 41 of the Criminal Justice Act 1925 provides prohibitions on photography in courts. The Contempt of Court Act 1981 prohibits the making of unauthorised sound recordings. These offences were created to protect the participants, but long before the concept of a virtual hearing was thought possible. Part 2 therefore creates similar offences to protect participants and prohibits recording or transmitting live-streamed proceedings photography and sound recordings in the context of virtual hearings and live-links.

## Automatic online conviction and standard statutory penalty

35. The Government's response to its consultation '*Transforming our Justice System*' sets out its intention to proceed with a new online conviction and standard statutory penalty procedure, which is a new means for dealing with certain specified summary-only non-imprisonable offences<sup>20</sup>.
36. Many defendants in these cases already choose to enter their plea in writing by post or online. Defendants can also choose to have their case dealt with by a single magistrate under the Single Justice Procedure (SJP), which means they do not have to attend court. The SJP was established through the Criminal Justice and Courts Act 2015. Under this procedure, the case is dealt with "on the papers" by a single magistrate, supported by a legal adviser, who considers the evidence and any written submissions from the defence and prosecution in their chambers. Around half of all cases heard in magistrates' courts in England and Wales are summary-only, non-imprisonable offences where there is no identifiable victim and could potentially be tried under this procedure. Of these, certain offences specified in secondary legislation will be eligible for the

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<sup>19</sup> Section 47 Constitutional Reform Act 2005 and s.31 Crime and Courts Act 2013 makes exemptions for the Supreme Court, and section 32 Crime and Courts Act 2013 enables the Lord Chancellor to make exceptions to the prohibitions on photography and sound recording.

<sup>20</sup> *Transforming our Justice System* <https://www.gov.uk/government/consultations/transforming-our-courts-and-tribunals>

new automatic online conviction and statutory standard penalty procedure provided for in this Bill, which will take place entirely online and without the involvement of a magistrate. Eligible offences will be specified in secondary legislation made by the Secretary of State and will need to be agreed by Parliament by the affirmative procedure.<sup>21</sup>

37. Defendants will be required to opt in to this procedure and choose to receive the automatic online conviction and the penalty specified for their offence.

## Online procedure and online procedure rules

38. The increased use of technology in the justice system and its ability to help people resolve legal disputes has been the subject of a recent report by the Civil Justice Council.<sup>22</sup> The introduction of an 'online court' to resolve some low value civil money claims was one of the key recommendations of the Review of Civil Court Structures led by Briggs LJ, which was published in July 2016.<sup>23</sup>
39. Part 2 will establish a new online procedure which may apply to civil, family and tribunal proceedings. In addition, the provisions will establish an online procedure rule committee. The new rule committee will have expertise in the law and the provision of lay advice and other relevant experience which will enable it to produce court rules which will support the online procedure. The online procedure will be a new digital procedure governed by a new set of rules separate to current processes. It will use a mix of technology, conciliation and judicial resolution to provide a simple and quick dispute resolution process.

## Vulnerable witnesses in family cases

40. Courts hearing family proceedings do not have a specific power to prevent an alleged perpetrator of abuse from cross-examining their alleged victim in person, nor do they have the power to order that an advocate be appointed (and funded) to ask questions on behalf of a litigant in person.
41. The fact that it is possible at present for perpetrators (alleged or otherwise) to cross-examine their victims in person in family proceedings has attracted significant criticism, from the All-Party Parliamentary Group on Domestic Violence among others.<sup>24</sup> It is widely accepted that such cross-examination can cause the victim significant distress and, as the President of the Family Division has said, "can sometimes amount, and on occasion quite deliberately, to a continuation of the abuse".<sup>25</sup> Part 2 prohibits the cross-examination in person in certain circumstances in family proceedings and makes provision for the court, where it is considered necessary in the interests of justice, to appoint a legal representative to carry out the cross-examination. Part 2 also allows the Lord Chancellor to make regulations concerning the payment of legal representatives in these circumstances.

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<sup>21</sup> It is the Government's intention to specify the following offences in the first Order: failure to produce a ticket for travel on a train; failure to produce a ticket for travel on a tram; and fishing with an unlicensed rod and line.

<sup>22</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>

<sup>23</sup> <https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-final-report-published>

<sup>24</sup> <https://1q7dqy2unor827bjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2015/11/APPG-Inquiry-report-domestic-abuse-child-contact-and-the-family-courts.pdf>

<sup>25</sup> <https://www.swansea.ac.uk/media/Sir%20James%20Munby%20Annual%20lecture%202015.pdf>

## Employment Tribunal rules and procedure

42. The consultation on reforming the Employment Tribunal system<sup>26</sup> set out the Government's intention to make sure that the powers to determine how cases are managed in Employment Tribunals and the Employment Appeal Tribunal are as flexible as those that apply to other tribunals regulated by the Tribunals, Courts and Enforcement Act 2007 ("TCEA 2007") and sought views on that intention. The Government response to that consultation confirmed that whilst the Employment Tribunal system would continue to sit outside of the unified tribunals system, it would otherwise be brought in line with the way that other tribunals run by Her Majesty's Courts and Tribunals Service are managed. These amendments to the Employment Tribunals Act 1996, which will enable rules to be made more flexibly and responsively, are essential to enable the effective delivery of the wider reforms whilst enabling the preservation of its unique strengths.
43. Instead of tribunal rules being made by the Lord Chancellor and the Secretary of State for Business, Enterprise and Industrial Strategy under different and limited rule-making powers, the independent, judicial-led Tribunal Procedure Committee will be responsible for making procedure rules for Employment Tribunals and the Employment Appeal Tribunal. The Tribunal Procedure Committee is modelled on the separate rule committees which make rules of court and which makes procedure rules for those tribunals that form part of the unified tribunals system established under the TCEA 2007.
44. The membership of the Tribunal Procedure Committee will be expanded to reflect the Committee's wider remit. The Tribunal Procedure Committee will be better able to determine how cases should be managed in employment tribunals and the Employment Appeal Tribunal, and accordingly will be able to make new rules flexibly and responsively. This will enable any necessary new rules to be scoped, developed and implemented promptly based on user feedback. The revised powers in respect of procedure rules for the employment tribunal system are modelled on those contained in the TCEA 2007 which apply to the First-tier Tribunal and Upper Tribunal.

## Court and tribunal staff: legal advice and judicial functions

45. HM Courts and Tribunals (HMCTS) staff can already be authorised to carry out certain functions of a court or tribunal. Currently staff carry out these duties in most jurisdictions, with the Crown Court and Probate registries being notable exceptions. The duties are authorised in a variety of ways, usually either by the Lord Chancellor (as in magistrates' courts and the Family Court) or by procedure rules (as in the Civil Procedure Rules or Tribunal Procedure Rules) in the relevant jurisdiction. In tribunals, the procedure rules provide that functions can be exercised only if the person is approved by a person specified in the rules. In practice, persons are approved by the Senior President of Tribunals (exercised by Practice Statements). In the civil jurisdiction functions can be assigned to court staff through Civil Procedure Rules, made under the Civil Procedure Act 1997. In magistrates' courts and the Family Court, the Lord Chancellor, with the concurrence of the Lord Chief Justice (see section 28 of the Courts Act 2003), identifies which powers of a single justice can be exercised by a justices' clerk or assistant clerk. Part 3 makes a general provision so that all rules of court governed by the Courts Act 2003 now have the power to provide for the

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<sup>26</sup> *Reforming the Employment Tribunal System*, consultation: <https://www.gov.uk/government/consultations/reforming-the-employment-tribunal-system>

exercise of the functions of the court, or of any judge of the court. Part 3 introduces safeguards for these authorised staff across the jurisdictions to make sure that, amongst other things, they have the necessary independence to undertake judicial functions under the supervision of the judiciary. The Lord Chief Justice and the Senior President of Tribunals will be ultimately responsible for the authorisation and direction of these members of staff.

46. Justices' clerks are the most senior lawyers employed by HMCTS. Their role is limited by Part 2 of the Courts Act 2003 to the work of magistrates. They oversee the provision of legal advice to magistrates and staff when exercising the jurisdiction of a magistrates' court or the Family Court. In order to broaden the role of these lawyers to provide leadership across all jurisdictions, the Government is removing this role, but not function, from statute to align with the changes outlined in Part 3.

## Local justice areas

47. Section 8 of the Courts Act 2003 requires that England and Wales be divided into local justice areas and makes a provision whereby the Lord Chancellor can alter the boundaries of areas by secondary legislation. There are 104 local justice areas in England and Wales. These create geographical boundaries that relate to three main areas of magistrates' court business: initiating and listing cases (sequencing for a court's daily business); the payment and enforcement of fines and community orders; and the leadership and management arrangements for the magistracy. HMCTS (established in the Courts Act 2003) has made certain procedural changes that provide for greater flexibility regarding the allocation of cases and serving magistrates between local justice areas. This included some amendments to Practice Directions (under sections 10 and 30 of the Courts Act 2003), issued by the Lord Chancellor after consulting the Lord Chief Justice (section 10) and with the concurrence of the Lord Chief Justice (section 30), which determine allocation arrangements. Part 3 removes the requirement for the Lord Chancellor to create local justice areas, with the effect of abolishing the areas: magistrates will no longer be appointed to a specific local justice area, instead their appointment will be on a national basis across England and Wales. Part 3 also removes restrictions on allocating and transferring cases between magistrates' courts, and relating to the payment and enforcement of fines and community orders. It amends provisions concerning the organisation and leadership of the magistracy.

## Employment tribunals: panel composition and delegation

48. The Government intends to make sure that the powers to determine how cases are managed in employment tribunals and the Employment Appeal Tribunal are as flexible as those that apply to other tribunals regulated by the TCEA 2007. Although the employment tribunal system will continue to sit outside of the unified tribunal system, it will otherwise be brought in line with the way that the First-tier Tribunal and the Upper Tribunal are managed to enable the effective delivery of the wider reforms whilst enabling the preservation of its unique strengths.
49. Panel composition arrangements in the employment tribunals and Employment Appeal Tribunal are currently given effect through primary and secondary legislation. This contrasts with the First-tier Tribunal and Upper Tribunal where the Lord Chancellor has delegated the responsibility for determining panel composition to the Senior President of Tribunals so that it is carried out as a judicial function. Decisions on judicial allocation and deployment are also judicial functions in the courts system.
50. Similarly, the Lord Chancellor will be made responsible for determining panel composition in the employment tribunals and Employment Appeal Tribunal and will have the power to delegate this responsibility. The intention is that this responsibility will be delegated to the Senior President of Tribunals. The revised powers in respect of panel composition for the employment tribunal system are modelled on those contained in the TCEA 2007 which apply to the First-tier Tribunal and Upper Tribunal. As is already the case in the First-tier Tribunal and Upper Tribunal, the

Senior President of Tribunals will be able to delegate any of his judicial functions in relation to the employment tribunals or Employment Appeal Tribunal to members of the judiciary.

## Traffic enforcement: witness statements

51. Currently the civil courts are responsible for handling civil disputes and issues across two main branches of operation: the County Court and the High Court. Both deal with many types of case: money claims, consumer complaints, housing disputes, international business disputes, and patent and contract law. Over 98% of civil claims are handled by the County Court.<sup>27</sup>
52. The reform programme for courts and tribunals (the principles of which were outlined in the Joint Statement), will, as far as is practicable, remove paper-based procedures from the courts with administration handled digitally in back offices.
53. Part 3 makes provisions relating to the enforcement of certain traffic and air quality offences, which are processed through the Traffic Enforcement Centre (“TEC”) in the County Court’s jurisdiction. In certain circumstances, an application may be made to the TEC to set an order for payment aside, for example where a party claims to be unaware of the proceedings relating to an unpaid penalty charge. In some cases a statutory declaration is still required to be used when making an application, while in others a witness statement, which is verified by a statement of truth, is required. Part 3 replaces the requirement to use statutory declarations with a requirement to use a witness statement, verified by a statement of truth in those remaining TEC proceedings that still require the use of a statutory declaration.

## Attachment of Earnings Orders

54. Attachment of Earnings Orders (“AEOs”) are one of the most commonly used methods of enforcement of a monetary judgment in the County Court, but they are not directly available in the High Court for civil debts. If a creditor in the High Court wishes to enforce a judgment debt by way of an AEO, the matter must first be transferred to the County Court. Part 3 extends the AEO powers of the High Court so that the High Court can make AEOs for the recovery of sums due under a judgment debt, as far as practicable, on the same basis as in the County Court. In terms of calculation of the rate and frequency of repayment under AEOs, currently, the rate of repayment under a county court judgement debt AEO is calculated on a case by case basis (by court administrative staff) by reference to the debtor’s income and necessary outgoings. There are provisions in place, but not yet in force, for the introduction of a fixed deductions scheme, that will mean employers are instructed to deduct an amount as prescribed in a deduction table, rather than on the current system where the rate and frequency of deductions from a debtor’s earnings are calculated by court officials on a case by case basis. Part 3 will enable the High Court judgment debt AEOs to be calculated using the fixed deduction scheme.

## The judiciary and the Judicial Appointments Commission

55. Part 4 concerns the judiciary and the Judicial Appointments Commission (“JAC”). With the commitment of the Lord Chancellor, the Lord Chief Justice for England and Wales and the Senior President of Tribunals to reform the courts and tribunals system in England and Wales, the Government has considered how it can help to modernise the judicial system. Some of the

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<sup>27</sup> This is based on 1.62m claims being issued by County Courts in 2014 compared to fewer than 25,000 proceedings started in 2014 across the Queen’s Bench and Chancery Divisions in the High Court. Source: MoJ Civil Justice Statistics Quarterly.

measures proposed by the Government in this respect were subject to public consultation and in parts require primary legislation to take them forward. In its response to the consultation, the Government set out its intention to pursue the policy to reform judicial leadership positions<sup>28</sup> to allow a wider range of these positions to be offered for a fixed period of time. This will allow leaders of the future to plan ahead and develop skills, knowing that development opportunities will become available.

56. On deployment, the judiciary have far reaching powers to deploy flexibly, but these measures seek to address three specific areas where there are gaps in the current legislation. Non-legislative measures will also be taken forward.

## Judicial appointments and deployment

57. Judicial leadership is a function undertaken by the judiciary itself. Judges are supported in executing their roles in this regard by the Judicial Office, who also support them on human resource matters. At present, some leadership roles are held on a fixed term basis whereas others are not. In addition, some leadership roles are rewarded by extra remuneration while others are not; and in many cases the current arrangements mean that an office holder's remuneration does not decrease correspondingly when their leadership post ends. Some judicial leadership roles are statutory and some are not. Part 4 allows fixed-terms to be set for some statutory judicial leadership positions. On the whole legislative provision is already in place to ensure that judges can be paid a leadership allowance on top of their salary, though there is one amendment in Schedule 15 that allows this for District Judges and another that allows it for other leadership judges in the senior courts.
58. Part 4 also concerns the deployment of judges in three particular areas: Recorders sitting as judges in the Upper Tribunal ("UT"); temporary appointments of Deputy High Court Judges; and those judges who are able to sit as judge-arbitrators. The TCEA 2007 sets out the judges who are judges of the UT and therefore may hear cases there. This includes Circuit Judges, District Judges and High Court Judges, but does not include Recorders. Allowing Recorders to sit in the UT would enable the judiciary to deploy Recorders in the UT in order to meet business need.
59. The Lord Chief Justice for England and Wales already has a statutory power to appoint a person meeting the eligibility criteria as a Deputy High Court Judge ("DHCJ") on a temporary and exceptional basis (section 94AA of the Constitutional Reform Act 2005). Part 4 widens this so that the person appointed could sit in any court or tribunal to which a permanent DHCJ could be deployed, as opposed to only the Crown Court or High Court.
60. The Arbitration Act 1996 provides for two types of judge to sit as judicial-arbitrators: judges of the Commercial Court as well as judges conducting official referees' business. The latter is now dealt with by judges of the Technology & Construction Court. This allows cases falling within the jurisdiction of these courts to be resolved through arbitration by a judge sitting as a judge-arbitrator. Part 4 extends the range of judges who can sit as judge-arbitrators to include eligible High Court judges, which is defined as High Court judges and judges sitting as High Court

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<sup>28</sup> *Modernising Judicial Terms and Conditions*, consultation: <https://consult.justice.gov.uk/digital-communications/modernising-judicial-terms-and-conditions/>

judges by virtue of section 9(1) of the Senior Courts Act 1981. The Lord Chief Justice will be able to delegate his functions in agreeing that judges can sit as judge-arbitrators.

## **Appointments to the Employment Appeals Tribunal and remuneration of employment tribunal members**

61. The Secretary of State for Business, Energy and Industrial Strategy currently has the authority to pay remuneration to members of the Employment Tribunals and Employment Appeal Tribunal. Under the revised legislation, arrangements for the remuneration of judges and members of employment tribunals will be under the remit of the Lord Chancellor. This is in line with the TCEA 2007 which provides for Lord Chancellor responsibility for remuneration, pay and expenses of judges and members of the First-tier Tribunal and Upper Tribunal.
62. Section 22 of the Employment Tribunals Act 1996 makes provision for membership of the Employment Appeal Tribunal. The revised legislation will extend the list of those who may be appointed to the Employment Appeal Tribunal, to include the President of Employment Tribunals (England and Wales) and the President of Employment Tribunals (Scotland). This mirrors similar provisions in the TCEA 2007 which provide for First-tier Tribunal Chamber Presidents to be members of the Upper Tribunal.

## **Judicial Appointments Commission**

63. The Judicial Appointments Commission (JAC) was established in 2006 as an executive non-departmental public body to select candidates for judicial office. As a statutory corporation, the JAC derives its powers from statute (the Constitutional Reform Act 2005).
64. In 2015, the Government conducted a triennial review of the JAC, which recommended that it explore providing assistance to a wider range of appointments and develop a charging model for this. The JAC has acknowledged expertise in independent merit-based appointments. Reflecting this, the JAC is occasionally approached to provide assistance outside of core appointments activity.
65. Part 4 provides that the Lord Chancellor may request the JAC to provide assistance in respect of an appointment or recommendation for appointment, whether or not such appointment or recommendation is to be made by the Lord Chancellor or a Minister of the Crown, and that the JAC should be able to charge to enable the costs of such assistance to be met by those who receive it. It makes clear that the JAC's core activities must be prioritised, and retains the Lord Chancellor's obligation to consult before requesting the JAC's assistance.

## **Whiplash**

66. The Government consulted between November 2016 and January 2017 on a package of measures to tackle the continuing high number and cost of whiplash claims and their impact on motor insurance premiums.
67. The Government set out its concern that the volume of road traffic accident related personal injury claims has remained static over the last three years and is over fifty per cent higher than 10 years ago (460,000 claims registered in 2005/06<sup>29</sup> compared with 770,000 in 2015/16). The number of

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<sup>29</sup> <http://webarchive.nationalarchives.gov.uk/20080107205404/http://www.dwp.gov.uk/cru/performance.asp>

claims remains high despite a reduction in the number of road traffic accidents reported to the police and improvements in vehicle safety, for example better head restraints. Similar improvements in vehicle safety in other jurisdictions have led to a reduction in both the number of claims and motor insurance premiums.

68. The continuing high number of low value claims increases the cost of motor insurance premiums, paid by motorists in England and Wales. The Government has set out its view that the level of compensation paid to claimants for these claims is also out of proportion to the level of injury suffered, and is introducing measures to disincentivise minor, exaggerated and fraudulent claims. Part 5 addresses this matter.

## Legal background

69. The legislation relating to prisons, courts and tribunals and the judiciary is set out in a number of statutes and secondary legislation. The following paragraphs explain the current legislative background.
70. In Parts 2, 3 and 4 the Bill makes provisions concerning the reform of the Employment Tribunal system. Employment Tribunals (“ETs”) exercise the jurisdiction conferred on them by or by virtue of the Employment Tribunals Act 1996 (“ETA 1996”) or any other Act. In summary the ETA 1996 makes provision for the following: panel composition of the ETs; regulations to be made by Ministers with respect to proceedings before employment tribunals and the Employment Appeal Tribunal (“EAT”); restriction of publicity in certain ETs cases; financial penalties; early conciliation and the procedure, membership and composition of the EAT.

## Prisons

### The statutory purpose of prisons and role of the Secretary of State

71. The principal statutory framework for prisons in England and Wales is in the Prison Act 1952 (“the 1952 Act”) and the Prison Rules 1999<sup>30</sup>. Section 4 of that Act sets out the general duties of the Secretary of State in relation to prisons and prisoners and section 5 imposes a duty on the Secretary of State to report annually to Parliament on every prison. There is currently no provision in the 1952 Act establishing a statutory purpose for prisons.

### Inspectorate and Prisons and Probation Ombudsman

72. Section 5A and Schedule A1 of the 1952 Act make provision for the appointment of a person to be the Chief Inspector of Prisons and set out his or her functions, including those regarding inspections of prisons in England and Wales and reporting to the Secretary of State on them.
73. There are no existing legislative provisions for the appointment of a person as the Prison and Probation Ombudsman.

### Prison security: mobile phones and drug testing

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<sup>30</sup> Prison Rules 1999 (SI 1999/728)

## **Mobile Phones**

74. Under section 40C of the 1952 Act, it is an offence for a person to convey a mobile telephone into or out of prison. Under section 40D, it is an offence for a person to possess a mobile telephone inside a prison without authorisation. Pursuant to Rule 51(12) of the Prison Rules 1999, it is a disciplinary offence for a prisoner to have in his possession any unauthorised article, which includes an unauthorised mobile telephone. The Prisons (Interference with Wireless Telegraphy) Act 2012 allows the Secretary of State, or Scottish Ministers, to grant an authorisation to prison governors/directors, permitting them to interfere with wireless telegraphy for the purpose of preventing, detecting or investigating the use of mobile telephones within a prison.

## **Psychoactive Substances**

75. Section 16A of the 1952 Act sets out the underlying power which allows a prison officer to require a prisoner to provide a urine sample to ascertain whether he or she has any “drug” in his body. Under the current legislation, “drug” is defined to include any controlled drug under the Misuse of Drugs Act 1971, or any “specified drug,” meaning any substance or product specified in the Prison Rules 1999. In relation to the Prison Rules 1999, rule 2 sets out the definition of “specified drug” which includes a number of listed chemical compounds. Rule 50 sets out the arrangements that apply to compulsory drug testing, including the information that prison officers are obliged to provide to prisoners and the arrangements to prevent the adulteration or falsification of samples. Rule 51(9) sets out that it is a disciplinary offence for a prisoner to be found with a substance in his or her urine which demonstrates that a controlled drug or a specified drug has been administered.

## **Courts and tribunals**

### **Criminal courts: case allocation and online indication of plea**

76. All criminal cases begin in the magistrates’ court. By virtue of the Children and Young Persons Act 1933, a Youth Court is a type of magistrates’ court which deals exclusively with defendants under 18. The vast majority of criminal cases are tried in the magistrates’ court and end there (unless the defendant is committed to the Crown Court for sentence or appeals to either the Crown Court or the High Court.) The remaining cases begin in the magistrates’ court but are sent for trial to the Crown Court with the possibility of an appeal to the criminal division of the Court of Appeal or High Court.

77. The jurisdiction and powers of the magistrates’ court are principally contained in the Magistrates’ Courts Act 1980. The Crown Court derives its jurisdiction from the Senior Courts Act 1981. The statutory mechanisms for sending cases from the magistrates’ court to the Crown Court for trial are set out in sections 50A to 50D of, and Schedule 3 to, the Crime and Disorder Act 1998.

78. The practice and procedure of the magistrates’ court and the Crown Court are prescribed by the Criminal Procedure Rules 2015<sup>31</sup> made under section 69 of the Courts Act 2003 by the Criminal Procedure Rule Committee and supplemented by the Lord Chief Justice’s Criminal Practice Directions.

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<sup>31</sup> Criminal Procedure Rules 2015 (SI 2015/1490)

## Live-links and virtual hearings

79. In criminal proceedings, the courts are able, in certain circumstances, to use technology to facilitate the conduct of the proceedings; for example, through the use of live video link, telephone facilities, or email. There are various statutory provisions which authorise, and regulate, the use of live video links, as detailed in the next paragraph. The courts may also make use of technology through the exercise of their inherent powers to regulate their own procedure. The practice and procedure that must be followed in the exercise of these powers is prescribed by the Criminal Procedure Rules 2015, supplemented by the Lord Chief Justice's Criminal Practice Directions.
80. The legislation which currently permits participation in criminal proceedings by live video link comprises: the giving of evidence by vulnerable or intimidated witnesses, or a vulnerable accused, under Part 2 of the Youth Justice and Criminal Evidence Act 1999; the giving of evidence by witnesses (other than the accused) who are outside the United Kingdom, under section 32 of the Criminal Justice Act 1988; the giving of evidence by witnesses (other than the defendant) who are in the United Kingdom, but outside of the building in which the proceedings are being held, under Part 8 of the Criminal Justice Act 2003; the attendance of, and potentially also the giving of evidence by, an accused who is being held in custody at preliminary or sentencing hearings in the course of proceedings for an offence, or at an enforcement hearing relating to default on a confiscation order, under Part 3A of the Crime and Disorder Act 1998; the attendance of, and potentially also the giving of evidence by, an appellant who is being held in custody at the hearing of his or her appeal by the criminal division of the Court of Appeal, under sections 22(4) and 23(5) of the Criminal Appeal Act 1968; and the attendance of a person affected by an extradition claim who is being held in custody at certain hearings in extradition proceedings, under section 206A of the Extradition Act 2003.

## Public participation in court and tribunal proceedings

81. There are no existing legislative provisions regarding the live-streaming of court or tribunal proceedings for the purpose of public participation for wholly video or wholly audio hearings. In relation to proceedings held in physical court, section 41 of the Criminal Justice Act 1925 prohibits photography (expanded by case-law to cover films) and section 9 of the Contempt of Court Act 1981 prohibits unauthorised sound recordings. Section 32 of the Crime and Courts Act 2013 gives the Lord Chancellor the power to make exceptions to these provisions.

## Automatic online conviction and standard statutory penalty

82. There are no existing legislative provisions regarding automatic online conviction and standard statutory penalties. Section 29 of the Criminal Justice Act 2003 contains provision allowing for a relevant prosecutor to institute criminal proceedings against a person by issuing a written charge which must be accompanied either by a requisition or single justice procedure notice. A "relevant prosecutor" is defined by section 29(5) of the Criminal Justice Act 2003. Section 29(5)(h) allows the Secretary of State to specify relevant prosecutors by order, and two such orders have been made.
83. A single justice procedure notice is a document which requires the person on whom it is served to serve on the designated officer for a magistrates' court specified in the notice a written notification stating whether the person desires to plead guilty or not guilty, and if the person desires to plead guilty, whether or not the person desires to be tried in accordance with section 16A of the Magistrates' Courts Act 1980. Section 16A to 16F of the Magistrates' Court Act 1980 contain the substantive provisions in relation to the Single Justice Procedure.

## Online procedure and online procedure rules

84. There are currently no existing legislative provisions regarding the use of an online procedure. It is intended that the Online Procedure Rule Committee may make rules in relation to any matter

about which the Civil Procedure Rules 1998, Family Procedure Rules 2010 and tribunal procedure rules may be made.

85. The Civil Procedure Rules 1998<sup>32</sup> are made pursuant to the Civil Procedure Act 1997 (“CPA 1997”). The Rules govern the practice and procedure in the civil division of the Court of Appeal, the High Court, and the County Court. Section 1 of the CPA 1997 provides that such rules are to be made with a view to securing that the system of civil justice is accessible, fair and efficient, and the rules are both simple and simply expressed. The rules are made by the Civil Procedure Rule Committee, whose members are made up of persons specified in section 2 of the CPA 1997 and appointed by either the Lord Chief Justice or Lord Chancellor. Section 2 further provides that before making rules, the Committee must consult such persons as they consider appropriate to do so and meet, unless inexpedient to do so. Finally, it provides that the Rules must be signed by a majority of the Committee and then submitted to the Lord Chancellor who may allow or disallow them. The Civil Procedure Rules 1998 are supplemented by Practice Directions made by the Lord Chief Justice (s5 CPA 1997).
86. The Family Procedure Rules 2010<sup>33</sup> are made pursuant to section 75 of the Courts Act 2003. The legislative provisions are similar to those in the CPA 1997 in respect of the Civil Procedure Rules 1998. The Rules govern the practice and procedure in the family division of the Court of Appeal, the High Court and the Family Court (section 75). The rules are made by the Family Procedure Rule Committee, and are subject to similar requirements to those that apply to the Civil Procedure Rules 1998; for example, in respect of membership (section 77 Courts Act 2003) and the process for making the rules (section 79). The Family Procedure Rules are supplemented by Practice Directions made by the Lord Chief Justice (section 81).
87. The Tribunal Procedure Rules<sup>34</sup> are made pursuant to section 22, parts 1 to 4 and Schedule 5 of the Tribunal, Courts and Enforcement Act 2007 (TCEA 2007). The Tribunal Procedure Rules govern the practice and procedure to be followed in the First-tier and Upper Tribunals, as established by section 2 TCEA 2007. Schedule 5 of the TCEA 2007 sets out the provisions regarding how the rules are made (paragraphs 26-30) and the constitution of the Tribunal Procedure Rule Committee (paragraphs 20-25), which are again along similar lines to the requirements that apply to the Civil Procedure Rules. The Tribunal Procedure Rules are supplemented by practice directions made by the Senior President of Tribunals (section 23 of the TCEA 2007).
88. The Online Procedure Rule Committee will also be able to make rules in respect of the employment tribunals and Employment Appeal Tribunal.

## Panel Composition

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<sup>32</sup> Civil Procedure Rules 1998 (SI 1998/3132)

<sup>33</sup> Family Procedure Rules 2010 (SI 2010/2955)

<sup>34</sup> The Tribunal Procedure Rules consist of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685), the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 (SI 2008/2686), the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698), the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273), the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976), the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (SI 2010/2600), the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) and the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (SI 2014/2604).

89. In employment tribunals, section 4(1) of the Employment Tribunals Act 1996 provides that a panel will generally consist of a judge and two non-legal members (NLMs). Section 4(3) of the Employment Tribunals Act 1996 sets out the proceedings where a judge sitting alone may currently hear and determine a case (breach of contract, holiday and redundancy pay, and since 2012, unfair dismissal). In each of these areas the judge retains the discretion to convene a panel with additional members if they consider that the circumstances of the particular case merit this. Section 4(4) of the Employment Tribunals Act 1996 provides for the Secretary of State and the Lord Chancellor, acting jointly, to amend the list of cases that may currently be heard by a single judge. There are also more detailed provisions on panel composition in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013/1237.
90. In the Employment Appeals Tribunal, section 28 of the Employment Tribunals Act 1996 provides for cases to be heard by a single judge unless the judge makes a direction for the panel to include appointed members (i.e. members with knowledge or expertise of industrial relations) or the Lord Chancellor provides for this by Order. If appointed members do sit, there must be an equal number of employer-representative members and worker-representative members.
91. These amendments amend these provisions to introduce more flexibility into arrangements for panel composition for the employment tribunals and the Employment Appeals Tribunal.

## **Vulnerable witnesses in family cases**

92. There is currently no legislation expressly prohibiting cross-examination in person in specified circumstances in family proceedings. The Family Procedure Rules 2010 give courts powers to control evidence by giving directions as to, for example, the way in which evidence is to be placed before the court, and give powers to limit cross-examination, but there is no legislation expressly giving courts hearing family proceedings a discretion to prohibit cross-examination in person. In turn, there is no legislation giving courts hearing family proceedings the power to appoint a legal representative to undertake cross-examination on behalf of a party, or for the costs of those such representatives to be publicly funded. In contrast, provision on these issues is made in relation to proceedings in the criminal courts in sections 34 to 38 of the Youth Justice and Criminal Evidence Act 1999 and section 19(3)(e) of the Prosecution of Offences Act 1985.

## **Court and tribunal staff: legal advice and judicial functions**

93. Section 2(1) of the Courts Act 2003 (“CA 2003”) and section 40(1) of the Tribunal, Courts and Enforcement Act 2007 (“TCEA 2007”) govern the appointment of HMCTS (court and tribunal respectively) staff. Currently HMCTS staff are authorised to perform judicial functions in different ways in different jurisdictions, largely through rules of court made under primary legislation. Sections 27-29, 31-35 of the CA 2003 concern the appointment, status and protections in relation to justices’ clerks and assistant clerks, and their functions in the magistrates’ court (section 144 of the Magistrates Courts Act 1981 makes provision in relation to non-criminal matters). Justices’ clerks’ functions in the Family Court are dealt with in s31O of the Matrimonial and Family Proceedings Act 1984. Paragraph 2 of Schedule 1 to the Civil Procedure Act 1997 gives a power for Civil Procedure Rules to make provision for staff to exercise the jurisdiction of civil courts (County Court, High Court and Court of Appeal). Section 51(2) of the Mental Capacity Act 2005 gives a power for Court of Protection Rules to make provision for staff to exercise the jurisdiction of the Court of Protection. Paragraph 3 of Schedule 5 to the TCEA 2007 gives a power for Tribunal Procedure Rules to delegate functions to tribunal staff.

## **Tribunal Procedure**

94. The Employment Tribunals Act 1996 confers powers on the Secretary of State to make regulations (“employment tribunal procedure regulations”) that appear to him or her to be necessary or expedient with respect to proceedings before the employment tribunals. The Employment

Tribunals Act 1996 has been amended on a number of occasions to provide for very specific circumstances which the regulations may include a provision for. For example section 7 Employment Tribunals Act 1996 lists various circumstances that regulations may cover including requiring persons to attend to give evidence and produce documents (section 7(3)(d)) and provisions about postponement of hearings (s.7(3ZB)).

95. There are other references in the Employment Tribunals Act 1996 to the Secretary of State's power to make regulations: pre hearing reviews and preliminary matters (section 9); national security (section 10); confidential information (section 10A); restriction of publicity in cases involving sexual misconduct and disability (s.11 and section 12) and early conciliation provisions (section 18A). The current employment tribunals procedure rules are in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
96. Section 30 of the Employment Tribunals Act 1996 confers a power on the Lord Chancellor to make Employment Appeal Tribunal procedure rules, following consultation with the Lord President. The current Employment Appeal Tribunal procedure rules are the Employment Appeal Tribunal Rules 1993.
97. These amendments align the employment tribunals and the Employment Appeal Tribunal with the First-tier Tribunal and Upper Tribunal and confer the power on the Tribunal Procedure Committee to make tribunal rules for the employment tribunals and Employment Appeal Tribunal.

## **Tribunal Procedure Committee Membership**

98. Tribunal Procedure Committee ("TPC") membership is dealt with by Part 2 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007. Paragraph 20 sets out that the TPC is to consist of:
  - the Senior President of Tribunals or a person nominated by him
  - the persons currently appointed by the Lord Chancellor under Paragraph 21,
  - the persons currently appointed by the Lord Chief Justice of England and Wales under Paragraph 22,
  - the person currently appointed by the Lord President of the Court of Session under paragraph 23, and
  - any person currently appointed under Paragraph 24 at the request of the Senior President of Tribunals.
99. Paragraph 21 of Schedule 5 sets out the details for the Lord Chancellor's appointments to the Tribunal Procedure Committee states that the Lord Chancellor, having consulted with the Lord Chief Justice for England and Wales, must appoint, three persons each of whom must be a person with experience of practice in tribunals or advising persons involved in tribunal proceedings. Paragraph 22 sets out the Lord Chief Justice's appointments to the TPC.
100. This Bill will make amendments to ensure that there is appropriate employment tribunals and Employment Appeal Tribunal expertise in the membership of the TPC.

## **Local justice areas**

101. Section 8 of the Courts Act 2003 provides that England and Wales is to be divided into areas known as local justice areas. Section 10 provides that when lay justices are appointed, the Lord Chief Justice must assign them to one or more local justice areas. Every lay justice is capable of

acting as such in any local justice area, whether or not he or she is assigned to it, but may do so only in accordance with arrangements made by the Lord Chief Justice.

## **Traffic enforcement: witness statements**

102. By virtue of sections 2 and 19 of the Statutory Declaration Act 1835, a statutory declaration may be used where legislation requires an affidavit, and will be charged at the same fee. As a result, section 58 of the County Courts Act 1984 provides that no fee may be charged for witnessing a statutory declaration in the county court. Knowingly or willingly filing a false declaration is an offence under section 5 of the Perjury Act 1911.
103. Rule 22.1 of the Civil Procedure Rules 1998 requires a witness statement to be verified by a statement of truth, i.e. a statement that confirms that the facts stated in the document are true. Rule 32.14 provides that proceedings for contempt of court may be brought against a person “if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth”.
104. Proceedings which are overseen by the Traffic Enforcement Centre (“TEC”) are listed at paragraph 1.2 of CPR Practice Direction 75. Of these, certain proceedings under Schedule 11 to the Environment Act 1995, Schedule 1 to the London Local Authorities Act 1996, and Schedule 1 to the London Local Authorities and Transport for London Act 2003 still explicitly require the use of statutory declarations in setting aside penalty notices, where other similar proceedings in the TEC permit the use of witness statements.

## **Attachment of Earnings Orders**

105. The Bill includes provisions to extend to the High Court the ability to make attachment of earnings orders (“AEOs”) for the recovery of judgment debts as far as practicable on the same basis that the County Court can make judgment debt AEOs, and for the rates and frequencies of repayments under such AEOs to be calculated on the basis of a fixed deductions scheme. The statutory framework enabling and governing the County Court’s ability to make such AEOs is contained in the Attachment of Earnings Act 1971 (AEA 1971), and is supplemented in particular by Part 89 of the Civil Procedure Rules 1998, which contains provisions on the court procedure to be followed in relation to such AEOs.
106. Section 1 of the AEA 1971 contains the power for the County Court to make AEOs for the recovery of judgment debts. Other key provisions in the 1971 Act are as follows: section 3 (making an application for an AEO, and conditions on the court being able to make such an order); section 6 (effect and contents of an AEO); section 6A (provision for a fixed deductions scheme for the calculation of the rates and frequencies at which deductions can be made from earnings under an AEO); section 9A (suspension of AEOs made on the basis of the fixed deductions scheme); section 14 (power for the court to obtain certain information in order to assist with making an AEO); sections 15A to 15D (data sharing provisions to enable the debtor’s current employer to be found where an AEO has lapsed on a debtor leaving previous employment); section 23 (enforcement). The AEA 1971 has been amended, in particular by the Tribunals, Courts and Enforcement Act 2007. The amendments made by that Act were, primarily, to introduce provisions for and in relation to the fixed deductions scheme, and on data sharing.

## **Remuneration for Employment Tribunal Members**

107. The Secretary of State for Business, Energy and Industrial Strategy currently has the authority to pay remuneration to members of the Employment Tribunals and Employment Appeal Tribunal under sections 5 and 27 of the ETA 1996. Under the revised legislation, arrangements for the remuneration of judges and members of employment tribunals would be under the remit of the Lord Chancellor.

# The judiciary and the Judicial Appointments Commission

## Judicial appointments and deployment

108. Provisions for judicial appointments are contained in a number of statutes. The Senior Courts Act 1981 governs the appointment, tenure, pay and other matters relating to judges of the senior courts, which includes some leadership judges. Section 10 concerns the appointment of judges and section 11 concerns the tenure of those judges. Section 2 sets a maximum number of judges in the Court of Appeal. Section 89 of the Senior Courts Act 1981 governs masters and registrars and section 92 concerns the tenure of office of those judges. Section 6 of the County Courts Act 1984 provides for the appointment and pay of district judges. Paragraph 6 of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 concerns the tenure of the Senior President of Tribunals and Paragraphs 3 and 5 of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007 govern the appointment and tenure of Chamber Presidents and Deputy Chamber Presidents. Provisions in the Constitutional Reform Act 2005 concern the Supreme Court including section 34 which concerns the salaries and allowances of Supreme Court judges.

109. A number of provisions relate to judicial deployment. The list of judicial office holders that are also judges of the Upper Tribunal and First-tier Tribunal is contained in section 6 of the Tribunals, Courts and Enforcement Act 2007. Section 93 of the Arbitration Act 1996 provides for judges of the Commercial Court and judges conducting official referee's business (now dealt with by the Technology & Construction Court) to accept appointment, with the permission of the Lord Chief Justice of England and Wales, as judge-arbitrators. Section 94AA of the Constitutional Reform Act 2005 sets out the circumstances under which the Lord Chief Justice may appoint a person to sit as a deputy High Court judge on a temporary basis where there is an immediate business need for a person to sit in the Crown Court or High Court.

## Membership of the Employment Appeal Tribunal

110. Section 22 of the Employment Tribunals Act 1996 makes provision for membership of the Employment Appeal Tribunal. The revised legislation will extend the list of those who may be appointed to the Employment Appeal Tribunal, to include the President of Employment Tribunals (England and Wales) and the President of Employment Tribunals (Scotland).

## Judicial Appointments Commission

111. The Judicial Appointments Commission ("JAC") was established by the Constitutional Reform Act 2005. Part 4 of the Constitutional Reform Act 2005 sets out the primary functions of the JAC, and Schedule 14 to the CRA 2005 makes provision as to particular offices that are within the remit of the JAC. Schedule 12 to the Constitutional Reform Act 2005 makes further provision as to the constitution and operation of the JAC. The Judicial Appointments Regulations 2013 (SI 2013/2192) make provision as to the selection and appointment process to be followed, and the Judicial Appointments Commission Regulations 2013 (SI 2013/2191) make provision as to the composition of the Commission.

## Whiplash

112. There are currently no legislative provisions that seek to regulate damages for pain, suffering and loss of amenity for road traffic accident related whiplash injuries. The assessment and award of such damages is a matter for the court by reference to the facts of the case, including the severity of the injuries and previous awards for similar injuries. Guidance on damages is provided by the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases.

113. There are currently no legislative provisions which ban the making and acceptance of offers to settle road traffic related whiplash claims. Part 5 of the Bill adopts a similar approach to the ban

as provisions in sections 56 to 60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which ban the payment and acceptance of referral fees and sections 57 to 61 of the Criminal Justice and Courts Act 2015 which ban the offer of inducements in respect of personal injury claims. In both cases, the ban is applied to “regulated persons” (for example, solicitors and barristers), and is monitored and enforced by the relevant regulator (for example, the Law Society and Bar Council) who may make provision in regulations for that purpose. The Lord Chancellor may add to the lists of both regulated persons to whom the ban should apply and relevant regulators.

## Territorial extent and application

114. Clause 70 sets out the extent and application of the provisions in the Bill. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. The commentary on individual Parts or provisions of the Bill includes a paragraph explaining their extent and application. Subject to certain exceptions, the provisions of the Bill extend and apply to England and Wales only. The exceptions are:

### Part 1

115. Clause 2 makes provision about Her Majesty’s Chief Inspector of Prisons. Under the Prison Act 1952 the Chief Inspector already has the function of inspecting prisons (and young offender institutions etc.) and places of court detention in England and Wales, and immigration detention facilities (such as removal centres etc.) throughout the United Kingdom. Clause 2(2), (4) and (7) gives additional functions to the Chief Inspector and extends to England and Wales, and to Scotland and Northern Ireland in its application to the Chief Inspector’s immigration inspection functions as defined in section 5A(5A) of the Prison Act 1952. This is achieved by the amendment to section 55 of the Prison Act 1952 in clause 3(4)(b), which has the same extent, and by clause 70(4).

116. Clauses 4 to 6, 8 to 17 and 20 and paragraphs 1 to 4 of Schedule 1 extend to England and Wales, and to Scotland and Northern Ireland in their application to the Prison and Probation Ombudsman’s functions in relation to immigration detention facilities and escort arrangements, by virtue of clause 70(8).

117. Clause 7 extends to England and Wales and to Scotland and Northern Ireland in its application to the Prison and Probation Ombudsman’s functions in relation to immigration detention facilities and escort arrangements, by virtue of clause 70(8), but only applies to England, Wales and Scotland.

118. Clause 19 extends to England and Wales but only applies to Wales.

119. Clause 21 and Schedule 2 extend to England, Wales and Scotland by virtue of clause 70(3), but only apply to England and Wales.

### Part 2

120. Clause 34 introduces Schedule 6, paragraph 2 of which extends and applies to the United Kingdom and paragraph 3 of which extends and applies to England, Wales and Scotland, by virtue of clause 70(3).

121. Clauses 37 to 45 and Part 2 of Schedule 8 extend and apply to England and Wales and in part to Northern Ireland and Scotland; Part 3 of Schedule 8 extends and applies to England, Wales and Scotland. Clause 70(7) provides that clauses 37 to 45 and Schedule 8 extend to England and Wales, and to Scotland and Northern Ireland in so far as they apply to the First-tier Tribunal and the Upper Tribunal; and to Scotland in so far as they apply to the employment tribunals and

Employment Appeals Tribunal.

122. Clause 48 extends and applies to the United Kingdom by virtue of clause 70(3).

123. Clause 49 introduces Schedule 10 which extends and applies to England, Wales and Scotland by virtue of clause 70(3).

#### Part 3

124. Clause 50 introduces Schedule 11, Part 2 of which extends and applies to the United Kingdom by virtue of clause 70(3).

125. Clause 52 extends and applies to England, Wales and Scotland by virtue of clause 70(3).

126. Clause 53 extends and applies to the United Kingdom by virtue of clause 70(3).

#### Part 4

127. Clause 56 introduces Schedule 15 of which Parts 4, 5 and paragraph 10 of Part 6 extend and apply to the United Kingdom by virtue of clause 70(3).

128. Clause 57(1) to (3) extends and applies to the United Kingdom by virtue of clause 70(3).

129. Clauses 58 and 59 extend and apply to England, Wales and Scotland by virtue of clause 70(3).

130. Clause 60 extends and applies to the United Kingdom by virtue of clause 70(3).

#### Part 6

131. Part 6 makes the necessary legal provision for the short-title of the bill, the extent, regulations and parliamentary procedures, and powers to make consequential, incidental etc provision. Part 6 extends to the United Kingdom as provided by clause 70(10) and applies to England and Wales and in part to Scotland and Northern Ireland.

#### Minor and consequential effects

132. Clause 2 makes provision about Her Majesty's Chief Inspector of Prisons, amending current provision made in section 5A of the Prison Act 1952. Clause 2(5)(b) and (c) make minor changes to section 5A(5A) and (5B). Section 5A(5A) and (5B) of the Prison Act 1952 extends and applies to Scotland and Northern Ireland in its application to the Chief Inspector's immigration inspection functions; therefore these amendments have the same extent. Clause 3(4)(a) extends to the United Kingdom by virtue of clause 70(5) and amends section 55 of the Prison Act 1952 to provide expressly that the extent section in the Prison Act 1952 extends itself throughout the United Kingdom.

133. Clauses 4 to 20 and Schedule 1 make provision about the Prison and Probation Ombudsman. Paragraphs 5 to 7 of Schedule 1 make amendments to the Parliamentary Commissioner Act 1967, House of Commons Disqualification Act 1975 and the Freedom of Information Act 2000 which extend and apply to England, Wales, Northern Ireland and Scotland as appropriate and insert references to the Prison and Probation Ombudsman, as a consequence of putting the Prison and Probation Ombudsman on a statutory footing.

134. Clause 24 makes amendments to section 12 of the Magistrates' Courts Act 1980 to deal with cases where the defendant before a magistrates' court in England and Wales indicates a guilty plea in writing and agrees to be tried without appearing. Clause 24(9) repeals section 12(13) of the Magistrates' Courts Act 1980 which deals with service of documents in Scotland and extends and applies to England, Wales and Scotland. Section 12(13) is a superfluous provision given equivalent provision is made in section 39 of the Criminal Law Act 1977 (as amended by the Criminal Justice Act 2003).

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

135. Clauses 35 and 36 and Schedule 7 create a new type of criminal procedure in England and Wales, which involves the creation of a new type of procedure notice to be served on offenders who may be prosecuted using this new procedure. These defendants will be served with a 'written procedure notice' rather than the current 'single justice procedure notice'. Paragraph 1 of Schedule 7 amends the Crime (International Cooperation) Act 2003 and the Criminal Law Act 1977 which have UK wide extent and application; the Vehicle Excise and Registration Act 1994 which has UK wide extent but only applies in England and Wales; and the Road Traffic Offenders Act 1988 which extends and applies to England, Wales and Scotland. These amendments substitute the reference in those Acts to a 'single justice procedure notice' with references to a 'written procedure notice'. Paragraph 5 of Schedule 7 amends section 8 of the Road Traffic Offenders Act 1998 to include reference to people who indicate a desire to be prosecuted under the new type of procedure. These are consequential amendments which are necessary to give effect to substantive changes being made only in England and Wales, and without which it would not be possible for offenders living in Scotland or Northern Ireland to be prosecuted using this new procedure.
136. Clauses 37 to 45 create a new online procedure in courts and tribunals. Schedule 9 makes consequential amendments to existing legislation as a result of these changes, including to provide that the standard civil, family and tribunal procedure rules do not apply to proceedings which are subject to the online procedure rules, but will do so if the online procedure rules cease to apply. Paragraph 1 of Schedule 9 amends the Employment Tribunals Act 1996 and extends and applies to England, Wales and Scotland; paragraph 4 amends the Tribunals Courts and Enforcement Act 2007 and extends and applies to the United Kingdom; and paragraph 5 amends clause 41(1) and so extends and applies to England and Wales, and to Scotland and Northern Ireland in so far as it applies to the First-tier Tribunal and the Upper Tribunal, and to England, Wales and Scotland in so far as it applies to the employment tribunals and the Employment Appeals Tribunal.
137. Clause 50 and Schedule 11 provide for the authorisation of the exercise of judicial functions by court staff across the jurisdictions, creating a new power for Crown Court, and amending the authorisation power in relation to the magistrates' court, and family courts. Court staff exercising their jurisdiction will be in the same position as any judge and therefore current provision which deems things done by court staff to be treated as being done by the court is unnecessary. Paragraphs 1 and 3 of Schedule 11 remove such deeming provisions from the Criminal Justice Act 1972 and the Bail Act 1976 which extend and apply to England, Wales and Scotland.
138. Clause 51 introduces Schedule 12 which provides for the abolition of local justice areas in England and Wales. Local justice areas currently divide England and Wales into 104 separate areas which are relevant for the purposes of initiating and listing cases; the payment and enforcement of fines and community orders; and the leadership and management arrangements of magistrates. Schedule 12 contains amendments to remove and replace references to local justice areas. Paragraphs 9 and 10 amend provisions of the Magistrates Courts Act 1980 which have UK wide extent; paragraphs 68 to 77 make amendments to the Gambling Act 2005 and Road Safety Act 2006 which extend to England, Wales and Scotland but only apply to England and Wales; paragraph 83 amends section 89(5) of the Criminal Justice and Immigration Act 2008 which extends and applies only to Northern Ireland and paragraph 86 amends Schedule 3 to that Act which extends to England, Wales and Northern Ireland; paragraph 88 makes amendments to the Coroners and Justice Act 2009 which extend and apply to England, Wales and Northern Ireland; paragraph 95 makes amendments to the Serious Crime Act 2015 which has UK wide extent and application; and paragraph 101 makes amendments to the Psychoactive Substances Act 2016 which have UK wide extent and but apply to England, Wales and Northern Ireland. These are consequential amendments which follow from substantive changes being made only in England

and Wales and are necessary to avoid confusion.

### Legislative Consent Motions

139. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
140. Clauses 4 to 20 and Schedule 1 place the Prison and Probation Ombudsman on a statutory footing. In so far as the Prison and Probation Ombudsman has a role in investigating deaths and complaints in secure children's homes, the provision of secure children's homes is devolved to Wales as part of paragraph 15 of Schedule 7 to the Government of Wales Act 2006 and the protection and well-being of children, and therefore this provision requires a Legislative Consent Motion.
141. Clause 54 and Schedule 13 make provision about the enforcement of penalty charge notices for certain traffic and air quality offences. In certain circumstances, an application may be made to the Traffic Enforcement Centre to set the order for payment aside. More recent legislation permits the use of a witness statement when such an application is made. These provisions amend those Acts which still require a statutory declaration to be used when applying to set aside, to require instead the use of a witness statement. Paragraph 1 of Schedule 13 amends paragraph 5 of Schedule 11 to the Environment Act 1995 which extends and applies to England, Wales and Scotland. This involves an amendment to a function of the Welsh Ministers who may exercise the regulation making power under the Environment Act 1995. The environment is devolved to Wales under paragraph 6 of Schedule 7 to the Government of Wales Act 2006. This provision therefore requires a Legislative Consent Motion.
142. The Minister has confirmed that he will seek approval from the National Assembly for Wales for these Legislative Consent Motions.
143. In the view of the UK Government, the other provisions of the Bill which extend and apply to Scotland, Wales and Northern Ireland relate to matters which are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
144. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought.
145. See Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. Annex A also summarises the position regarding matters relating to Standing Orders Nos. 38J to 83X of the Standing Orders of the House of Commons relating to Public Business.

## **Commentary on provisions of Bill**

### **Part 1: Prisons**

#### **Chapter 1: Purpose of prisons and Her Majesty's Chief Inspector and Inspectorate of Prisons**

##### **Clause 1: Prisons: purpose, and role of the Secretary of State**

146. Clause 1 amends the Prison Act 1952 ("the 1952 Act") to establish a statutory purpose for prisons

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

in England and Wales and amend the Secretary of State's existing duty of superintendence of prisons. It provides for a new section A1 to the 1952 Act that sets out the purpose of prisons. New section A1(1) recognises that prisons give effect to sentences or orders imposed by courts for imprisonment or detention. In doing this, prisons must concentrate on four aims: to protect the public, reform and rehabilitate offenders, prepare prisoners for life outside prison and maintain an environment that is safe and secure. This purpose will sit alongside the existing purposes of sentencing in the Criminal Justice Act 2003, and the purposes and aims of probation in the Offender Management Act 2007. Reference to the prison purpose is also found in the amendments made to section 5 to the 1952 Act and in the changes made to the role of Her Majesty's Chief Inspector of Prisons (the "Chief Inspector") in clause 2.

147. Clause 1 also substitutes a new section 1 of the 1952 Act and amends section 5. This amends the responsibility of the Secretary of State for prisons, replacing sections 1-4 of the PA 1952 (which in the existing section 4 provides that the Secretary of State has the general superintendence of prisons and shall make the contracts and do the other acts necessary for the maintenance of prisons and prisoners). New section 1(1) sets out that the Secretary of State has overall responsibility for prisons. New section 1(2) restates her power to do anything necessary to maintain prisons and prisoners, including appointing staff and entering into contracts.
148. The Secretary of State's existing duty in section 5 of the 1952 Act, to issue an annual report on every prison and lay it before Parliament, is amended, to require the Secretary of State to report on prisons and the extent to which they are meeting the purpose in new section A1. This creates a link between the prison purpose and the overall responsibility of the Secretary of State for prisons.

## Clause 2: Her Majesty's Chief Inspector and Inspectorate of Prisons

149. Section 5A of the 1952 Act provides for the Chief Inspector to inspect and report on prisons and court custody and escorts in England and Wales, and immigration facilities and immigration escort arrangements in England and Wales, Scotland and Northern Ireland. Clause 2(2) inserts a new section 5ZA, replacing parts of section 5A. This clause restates that Her Majesty may appoint a Chief Inspector of Prisons, and makes provision for Her Majesty's Inspectorate of Prisons, which may carry out any of the Chief Inspector's functions (with two exceptions). This recognises the existing role of the Chief Inspector's staff in ensuring the delivery of a programme of inspections. New section 5ZA contains the statutory recognition of the Chief Inspector's role in respect of the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Section 5A retains the requirement on the Chief Inspector to inspect or arrange for the inspection of prisons and, in particular, to report to the Secretary of State on the treatment of prisoners and conditions in prisons.
150. Clause 2(6) sets out new additional reporting requirements for the Chief Inspector in relation to prisons in England and Wales only. New section 5B(4) introduces a requirement on the Secretary of State to respond to recommendations made in inspection reports within a fixed period. New sections 5B(2) and (3) provide that the Chief Inspector, when preparing a prison inspection report, must have regard to the prison purpose and consider the effectiveness of leadership in a prison, whether that leadership is provided by the governor or director, prison officers, or other persons. New section 5C requires the Chief Inspector to notify the Secretary of State where he has identified a prison where the treatment of prisoners or the conditions in the prison cause him to have significant concerns, and urgent action needs to be taken. Again, the Secretary of State must respond to such a notification within a fixed period.
151. Clause 2(4) introduces a new section 5ZC (powers of entry etc.), which in turn introduces a new Schedule A2 to the 1952 Act to give the Chief Inspector statutory powers to enter prisons and obtain information for the purpose of conducting prison inspections. These powers also apply to inspections of young offender institutions, secure training centres and secure colleges (by virtue of

amendments to section 43 of the Prison Act 1952 in clause 3, explained further below), immigration detention facilities and immigration escort arrangements (by virtue of consequential changes made to the Prison Act 1952 in clause 2(5)) and to areas of courts where prisoners are detained in custody (“court detention areas”) and court escort vehicles (by virtue of a new section 5A(5D)) of the Prison Act 1952. New section 5A(5E) requires the Chief Inspector to notify the Lord Chief Justice (or his nominee) before exercising powers of entry over court detention areas, and also provides that certain information needed in connection with an inspection of court detention areas, if held by judicial officers or forming part of the court record, may only be disclosed to the Chief Inspector with the consent of the Lord Chief Justice or his nominee.

152. Paragraph 1(2) of Schedule A2 requires any person who holds “relevant information” to make this available to the Chief Inspector, and in particular paragraph 1(2)(b)(iii) requires any person who holds relevant information to provide an explanation of that information. “Relevant information” is defined in paragraph 4 as information that relates to the running of a prison or to prisoners detained in a prison, and which is needed in connection with a prison inspection. Paragraph 1(3) sets out restrictions on the information that may be required by the Chief Inspector: the Chief Inspector may not require information if it might incriminate the person disclosing it, is subject to legal privilege or is intelligence service information. Paragraph 1(4) requires the governor or director of a prison to allow the Chief Inspector to communicate privately with any prisoner, prison officer or other person working at the prison, though this does not confer an obligation on these people to communicate privately with the the Chief Inspector. Paragraph 2 allows the Chief Inspector to certify to the relevant court that a person has, without lawful excuse, obstructed the Chief Inspector in the exercise of these powers of entry or powers to obtain information. Paragraph 3 sets out the restrictions on disclosure that apply to the Chief Inspector, including a requirement that the Chief Inspector must seek the consent of the relevant authority for the disclosure of any intelligence service information.

### Clause 3: Minor and consequential amendments

153. This clause makes consequential amendments to the 1952 Act to reflect the changes made by clauses 1 and 2 and corrects an obsolete reference to the “Prison Commissioners” in section 42 of that Act.

154. In particular, it amends section 43 of the 1952 Act (Places for the detention of young offenders etc.) to apply the provisions described above to young offender institutions, secure training centres and secure colleges. All the changes to the 1952 Act made by clauses 1 and 2 apply to young offender institutions, secure training centres and secure colleges, save that:

- a. the prison purpose in new section A1 does not apply to young offender institutions used wholly or mainly for the detention of persons aged under 18 (“under-18 YOIs”), secure training centres and secure colleges;
- b. the duty on the Secretary of State in section 5(1) (as amended) to issue an annual report on prisons does not apply to secure training centres and secure colleges (which reflects the application of section 5(1) prior to the amendment), and the duty in section 5(2) (as amended) to set out in the annual report the extent to which prisons are meeting the prison purpose does not apply to under-18 YOIs, secure training centres and secure colleges;
- c. the duty in new section 5B(2) on the Chief Inspector to have regard to the purpose of prisons does not apply to under-18 YOIs, secure training centres and secure colleges.

155. This clause also makes changes to the section in the 1952 Act governing the extent of that Act. The Bill does not otherwise change the application of the PA 1952 to young offender institutions,

secure training centres and secure colleges. Secure children's homes are not governed by the 1952 Act. The extent of clauses 2 and 3 are explained elsewhere in these Notes.

### **Territorial extent and application**

156. Under section 5A of, and Schedule 1 to, the Prison Act 1952 ("the 1952 Act") the Chief Inspector already has the function of inspecting prisons (and young offender institutions etc.) and places of court detention in England and Wales, and immigration detention facilities (such as removal centres etc.) throughout the United Kingdom. Section 5A(2) to (5), (5A) and (5B) of the 1952 Act extends and applies to Scotland and Northern Ireland in its application to the Chief Inspector's immigration inspection functions.
157. Clause 2(2), (4) and (7) gives additional functions to the Chief Inspector and extends to England and Wales, and to Scotland and Northern Ireland in its application to the Chief Inspector's immigration inspection functions as defined in section 5A(5A) of the 1952 Act. This is achieved by the amendment to section 55 of the 1952 Act in clause 3(4)(b) and by clause 70(4). Clause 3(4)(b) also extends to England and Wales and to Scotland and Northern Ireland in its application to the Chief Inspector's immigration inspection functions.
158. Clause 2(5)(b), (c) and (e) make minor changes to section 5A(5B) and (5C) of the 1952 Act and clause 3(5) amends the shoulder reference in Schedule A1; these changes have the same extent as the provisions they are amending. Clause 3(4)(a) amends section 55 of the 1952 Act to provide expressly that the extent section in the 1952 Act extends itself throughout the United Kingdom. Otherwise the amendments made to the 1952 Act extend and apply to England and Wales only, reflecting the provisions they amend.

## **Chapter 2: The Prisons and Probation Ombudsman**

### **Clause 4: The Prisons and Probation Ombudsman**

159. Clause 4 creates the statutory office of the Prisons and Probation Ombudsman and introduces Schedule 1 which sets out further provisions about how the statutory office holder is to be appointed and funded and provides the Ombudsman with the power to delegate his functions. The clause sets out the functions of the Ombudsman which are to conduct independent investigations of deaths in custody in England and Wales, or detained in immigration detention facilities or under immigration escort arrangements in England and Wales, Scotland and Northern Ireland, and conduct investigations of complaints from people in custodial settings in England and Wales, or detained in immigration detention facilities or under immigration escort arrangements in England and Wales, Scotland and Northern Ireland, and adult offenders under probation supervision in England and Wales. The clause enables the Ombudsman to carry out further investigations related to its remit where requested to do so by the Secretary of State and enables the Ombudsman to produce a report following any of its functions. *Subsection 2(e)* enables the Secretary of State by regulations to confer additional functions on the Ombudsman, and this will be subject to a consultation requirement (that the Secretary of State must consult with the Ombudsman prior to adding functions to the Ombudsman's remit). The regulation making power is subject to the affirmative procedure.

### **Clause 5: Investigations of deaths within the Ombudsman's remit**

160. *Subsection (2)* sets out what deaths are in the Ombudsman's remit for investigation. This clause should be read in conjunction with the definitions in Clause 20 which sets out which institutions are in scope. *Subsection (3)* imposes a duty on those in charge of institutions within the Ombudsman's remit to ensure the Ombudsman is notified of the death. This could mean notifying the Ombudsman directly or notifying through another person. *Subsection (5)* provides for the

Ombudsman to determine the procedure and extent of the investigation which will be decided by the circumstances of the death.

#### Clause 6: Investigation of deaths following release etc.

161. The Ombudsman will generally not conduct investigations of deaths of people who have been permanently released from custody but clause 6 provides the Ombudsman with the discretion to accept these cases if referred to him where the Ombudsman has reason to believe that the person's death may in some way be connected with his or her detention. For example, if someone dies shortly after release from an authority within remit, a referral can be made to the Ombudsman.

#### Clause 7: Deaths occurring in Scotland: role of the Lord Advocate

162. Clause 7 is included in reference to the Lord Advocate, who leads the system of criminal prosecutions and the investigation of deaths in Scotland. Its inclusion confirms that the Lord Advocate's role as the head of the system of investigation of deaths in Scotland is not affected by this Bill. This is relevant because the Ombudsman has a duty to investigate deaths of those detained in immigration detention facilities or under immigration escort arrangements in Scotland.

#### Clause 8: Reports on deaths investigated by the Ombudsman

163. Clause 8 sets out the reporting requirements following deaths investigated by the Ombudsman. The Ombudsman will have the discretion to choose the form of the findings of an investigation. *Subsections (5) and (6)* provide that all reports that contain recommendations must result in a written response from the Secretary of State (or the registered provider in respect of Secure Children's Homes in England) to those recommendations. *Subsection (4)* enables the Ombudsman to give a copy of the report to other parties. For example, the Ombudsman routinely provides copies to the relevant institution, bereaved families, the Local Authority, the relevant Secretary of State and the Coroner. *Subsection (3)* requires the Ombudsman to publish all reports on investigations into deaths, though the Ombudsman may consider the extent of publication.

#### Clause 9: Investigations of complaints by the Ombudsman

164. Clause 9(1) sets out which persons are eligible to complain to the Ombudsman. The Ombudsman will normally act on direct complaints from eligible persons but will have the discretion to accept complaints from third parties on behalf of individuals, where the individual concerned is either dead or unable to act on their own behalf. *Subsection (2)* requires that eligible complainants must have exhausted the internal complaints procedure of the institution or authority where possible before they can complain to the Ombudsman. Some discretion is provided to ensure that the Ombudsman will be able to consider complaints that have not exhausted the internal complaints mechanism for example, where referrals are made directly from HM Inspectorate of Prisons or Independent Monitoring Boards. *Subsection (3)* provides the Ombudsman with discretion on whether to accept a complaint for investigation, and to determine the methods and extent of an investigation. This would allow for the Ombudsman take no action where the Ombudsman considers that no worthwhile outcome can be achieved, or the complaint raises no substantial issue. *Subsection (4)* allows for regulations to be made in relation to complaints, which may set out to include limitations on matters subject to investigation, investigating procedures (including time limits) and actions available to the Ombudsman in respect of an upheld complaint. For example, it is anticipated that the Ombudsman will not investigate complaints about sentences, immigration status, clinical judgement of medical professionals or matters that are currently or have previously been the subject of civil litigation or civil proceedings. Where a complaint is considered ineligible, or the Ombudsman decides to discontinue an investigation, the Ombudsman will inform the complainant.

#### Clause 10: Reports on complaints investigated by the Ombudsman

165. Clause 10(1) provides that the Ombudsman may produce a report following a complaint. Current practice is that reports will only be written by the Ombudsman where they are making recommendations as result of their investigation, and it is anticipated a similar approach will be adopted by the statutory Ombudsman. The Ombudsman currently provides a written response to all complaints following assessment of their complaint, irrespective of whether the complaint is considered eligible for further investigation.

### Clause 11: Other investigations and reports

166. Clause 11(1) allows the Secretary of State to request the Ombudsman to carry out specific investigations that relate to the Ombudsman's functions. *Subsection (3)* provides for thematic reports based on findings from investigations to be produced at the Ombudsman's own initiative. *Subsection (4)* gives the Ombudsman a discretion in relation to the publication of such reports.

### Clause 12: Power to enter premises

167. Clause 12 authorises entry into the places and institutions listed in the *subsection (1)*. *Subsection (2)* requires the Ombudsman to notify the Lord Chief Justice of an intention to enter a court or accommodation provided by a court pursuant to *subsection (1)*.

### Clause 13: Powers to require information

168. *Subsection (1)* requires any person who holds "relevant information" relating to the institution to make this available to the Ombudsman to carry out the Ombudsman's functions. *Subsection (1)(b)(iii)* in particular requires any person who holds relevant information to provide an explanation of that information. *Subsection (2)* provides that relevant information held by judicial officers must only be disclosed to the Ombudsman with the consent of the Lord Chief Justice. *Subsection (3)* sets out restrictions on the information that may be required by the Ombudsman. *Subsections (4)* and *(5)* require the person in charge of the institution, or probation supervision, to allow the Ombudsman to communicate privately with any person detained or resident, or other person working at the relevant institution, though this does not confer an obligation on these people to communicate privately with the Ombudsman.

### Clause 14: Obstruction

169. Clause 14 allows the Ombudsman to certify to the High Court or in Scotland, the Court of Session that a person has, without lawful excuse, obstructed an authorised person in the exercise of these powers of entry or powers to obtain information.

### Clause 15: Relationship with criminal investigations and disciplinary proceedings

170. Clause 15 requires the Ombudsman to notify the police, law enforcement agencies, or relevant authority where it comes across information that may suggest a criminal investigation or disciplinary proceedings should take place.

### Clause 16: Information sharing

171. Clause 16 allows the Ombudsman to share information with other bodies to assist in exercising their functions. These bodies may include for example, police forces, Safeguarding Children Boards, the Coroner, criminal justice inspectorates, Independent Monitoring Boards and the Independent Police Complaints Commission. *Subsections (3)* and *(4)* set out the Ombudsman's limitations on disclosure of information.

### Clause 17: Restrictions on disclosure of information

172. Clause 17 sets out the Ombudsman's restrictions on disclosure of particular types of sensitive and security information. *Subsection (1)* provides a list of restrictions on disclosure. *Subsection (2)* provides that the Ombudsman must seek consent for the disclosure of any intelligence service information.

## Clause 18: Annual report

173. Clause 18 is self-explanatory.

## Clause 19: Secure children's homes in Wales

174. Clause 19 sets out the sections in the Bill to be disapplied with regard to secure children's homes in Wales. The Children's Homes (Wales) (Amendment) Regulations 2017 will come into force on 1 April 2017 and place a requirement upon the registered manager of a secure children's home in Wales to (i) notify the Ombudsman of the death of any child in the home, (ii) allow the PPO access to the premises and records, and (iii) allow the PPO to interview (with consent) any child, parent, relative or person working in the home.

## Clause 20: Sections 4 to 19: interpretation

175. Clause 20 lists the relevant institutions covered within the Ombudsman's remit which may have a duty to notify the Ombudsman of a death, and to respond to recommendations made by the Ombudsman.

## Territorial extent and application

176. Clauses 4 to 6, 8 to 17 and 20 and paragraphs 1 to 4 of Schedule 1 extend to England and Wales, and to Scotland and Northern Ireland in their application to the Prison and Probation Ombudsman's functions in relation to immigration detention facilities and escort arrangements, by virtue of clause 70(8).

177. Clause 7 extends to England and Wales and to Scotland and Northern Ireland in its application to the Prison and Probation Ombudsman's functions in relation to immigration detention facilities and escort arrangements, by virtue of clause 70(8), but it only applies to England, Wales and Scotland given it concerns the role of the Lord Advocate in Scotland.

178. Clause 18 extends and applies to England and Wales only given it relates to the Ombudsman's function of producing an annual report. Clause 19 extends to England and Wales but applies to Wales only, limiting the application of certain provisions on secure children's homes in relation to Wales.

179. Paragraphs 5 to 7 of Schedule 1 make amendments to the Parliamentary Commissioner Act 1967, House of Commons Disqualification Act 1975 and the Freedom of Information Act 2000 which extend and apply to England, Wales, Northern Ireland and Scotland as appropriate and insert references to the Prison and Probation Ombudsman, as a consequence of putting the Prison and Probation Ombudsman on a statutory footing.

## Chapter 3: Prison security

180. Clause 21 and Schedule 2 extend to England, Wales and Scotland (reflecting the extent of the Prisons (Interference with Wireless Telegraphy) Act 2012 ("PIWTA 2012")) but apply to England and Wales only. Clause 22 extends and applies to England and Wales only.

## Clause 21: Interference with wireless telegraphy in prisons etc.

181. This clause allows the Secretary of State to authorise public communication providers ("PCPs") to interfere with wireless telegraphy in prison in England and Wales, in addition to the existing authority that can be given to governors.

182. Section 1 of the PIWTA 2012 is amended to allow authorisation of PCPs by the insertion of new subsections (2A) to (2C), and there are further consequential changes to section 1 so that governors, directors and PCPs can deliberately interfere with wireless telegraphy in prisons without

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committing an offence under the Wireless Telegraphy Act 2006.

## Clause 22: Testing prisoners for psychoactive substances

183. The current legislative framework for drugs testing in prison in England and Wales allows tests to be carried out for controlled drugs under the Misuse of Drugs Act 1971 (“MDA 1971”) and for “specified drugs”. “Specified drug” means any substance or product specified in prison rules for the purposes of section 16A of the 1952 Act. If a new drug is identified that is not a controlled drug for the purposes of the MDA 1971, it can be added to the list in the prison rules by secondary legislation.
184. Permitting specified drugs to be added by secondary legislation to the list of drugs that can be tested for was a response to the rise in the use in prison of psychoactive substances. The change was made in section 16 of the Criminal Justice and Courts Act 2015 at a time when psychoactive substances were not banned or controlled, hence their alternative name of “legal highs”. The change was also made because at that time there was no statutory definition of a psychoactive substance. The Psychoactive Substances Act 2016 (PSA 2016) introduced a statutory definition, as well as criminalising the following activities with regard to psychoactive substances: production; supplying or intending to supply, possession with intent to supply; importing or exporting; and possession in a custodial institution.
185. The clause adopts the generic definition of a psychoactive substance contained in the PSA2016 so that in future tests can be carried out for controlled drugs and for psychoactive substances covered by this definition, without the need to add each individual psychoactive substance by secondary legislation. It is a feature of psychoactive substances that new substances appear regularly with slight alterations to the chemical make-up. The generic definition is adopted by *subsection (2)* adding “psychoactive substances” into the title of section 16A of the 1952 Act and *subsection (3)* adding “psychoactive substances” into section 16A(1). *Subsection (4)* adds the definition of a psychoactive substance to section 16A(3), stating that it has the same meaning as in the Psychoactive Substances Act 2016.
186. *Subsections (5), (6) and (7)* make a number of necessary consequential changes to secondary legislation. *Subsection (5)* removes the definition of “specified drug” that currently appears in a number of places in the Prison Rules 1999, namely rule 2 (interpretation), rule 50 (compulsory testing for controlled or specified drugs), rule 51(9) and (24) (offences against discipline) and rule 52 (defences to rule 51(9)). *Subsection (6)* makes equivalent consequential changes to the Young Offender Rules 2000. These changes are necessary because all of the chemical compounds that are currently on the list of specified drugs for which prisoners can be tested in rule 2 of the Prison Rules 1999 are now covered by the generic definition of psychoactive substance. *Subsection (7)* revokes the two statutory instruments that added those compounds to the definition of specified drug.

## Part 2: Procedures in criminal, civil and family matters

### Chapter 1: Conducting preliminary proceedings in writing: criminal courts

187. Chapter 1 makes changes to the law of England and Wales with the exception of the repeal of section 12(13) MCA 1980 (service of documents in Scotland) in clause 24(9) which extends and applies to England, Wales and Scotland.

#### Clause 23: The written information procedure

188. Clause 23 provides (in *subsections (1) and (2)*) that Criminal Procedure Rules (which are made by the Criminal Procedure Rule Committee) must include provision for a ‘written information

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procedure' whereby a person charged with offences may choose to give specified information, which is only to be used for the purposes of case management, to the court in writing. The Rules must also make provision for what the court is able to do with such information.

189. *Subsection (3)* provides that the written information procedure may allow defendants to give an indication of whether they intend to plead guilty or not guilty, but not to give an actual plea of guilty or not guilty. Clause 23 only concerns how Criminal Procedure Rules may make provision for the written information procedure itself. The clause does not affect existing procedures where legislation already allows a court to convict a defendant on the basis of an indication of an intention to plead guilty, such as the written guilty plea procedure in section 12 of the Magistrates' Courts Act 1980 (MCA 1980) and the Single Justice Procedure in section 16A MCA 1980.
190. *Subsection (4)* states that Criminal Procedure Rules may provide for defendants to be given information about the 'written information procedure', including how it works and the consequences of following it, and information about the offence and about legal advice and representation. Such provision ensures that the defendant receives information adequate to making an informed decision about whether to engage with proceedings in writing or in court. The Rules may also provide whether information should be given to a parent or guardian in respect of a young defendant. This includes a local authority if the young defendant is in care or local authority accommodation.
191. *Subsection (5)* enables Criminal Procedure Rules to make provision for how and by whom written information may be given to the defendant, including by a police officer or civilian representative of a police force, as well as the criminal courts and a prosecutor who can issue written charges and requisitions.
192. *Subsection (6)* provides that the written information procedure may apply to defendants against whom proceedings have been commenced by summons or written charge, or by their being charged at a police station.
193. *Subsection (7)* clarifies that the power to make Criminal Procedure Rules in relation to the written information procedure does not limit the Criminal Procedure Rule Committee's existing powers to make Criminal Procedure Rules which may overlap, such as those which govern the making of Rules about the practice and procedure of the criminal courts in section 69 of the Courts Act 2003, for example.
194. For the avoidance of doubt, *subsection (8)* also confirms that parties may make admissions of fact in writing but not admissions of guilt. Accordingly, in the event that a defendant, for whatever reason, later changed his or her indicated guilty plea to a plea of not guilty, then the fact that a guilty plea had previously been indicated could not be admitted as evidence in the subsequent criminal proceedings.

#### Clause 24: Charge by police or prosecutor: non-appearance in court after guilty plea

195. Clause 24 amends section 12 of the MCA 1980, which sets out a procedure that has been commonly known as 'pleading guilty by post' (although it is now equally capable of applying to online communication). Section 12 currently provides that a defendant against whom proceedings for a summary-only offence have been commenced by summons or written charge, may, if documents containing the evidence have been served on him or her, notify the court in writing of an intention to plead guilty. The court may then proceed to try the defendant as if he or she had so pleaded, without his or her appearing before the court, and in the absence of the parties to the case. (Although, to note, a magistrates' court cannot sentence a defendant to custody or impose a driving disqualification without first bringing the defendant before the court: section 11(3) and (4) MCA 1980.) The main purpose of the amendments in this clause is to cause section 12 to apply also where a defendant has been charged with a summary offence at a police station.

196. The clause also removes the power enabling the Secretary of State to specify by order summary offences to which section 12 is not to apply; this power has never been exercised and is not now thought to be necessary. If a case is considered unsuitable for the section 12 procedure (e.g. because a sentence of imprisonment is likely), then the court, relevant prosecutor or police can disapply the procedure by not serving the notice containing information as to the effect of section 12 (as required by *subsection (3)(a)*), whenever the defendant is charged or the summons or written charge is issued, as applicable.
197. New *subsection (5A)* ensures that where a defendant has been remanded to attend the court (i.e. after being charged by the police), then if the defendant has chosen to plead guilty and be tried in absence in accordance with section 12, the court may discharge the defendant from any duty to surrender to the court so as to be able to proceed to try him or her in absence
198. New *subsection (5B) to (5D)* retains the current prohibition on sentencing a defendant in absence under section 12. Having convicted the defendant in absence, the court does not then have power to impose in absence a prison sentence, suspended sentence, or other form of detention or driving disqualification without first bringing the defendant before the court.
199. *Subsection 12(6)* of MCA 1980 also retains the safeguard that if the court receives a notification withdrawing an indicated guilty plea on behalf of the defendant prior to a trial hearing, the court shall proceed to deal with the summary offence as if the indication had not been given.
200. Clause 24(9) repeals section 12(13) of the Magistrates' Courts Act 1980 which dealt with service of documents in Scotland. Accordingly, this repeal only extends and applies to England, Wales and Scotland. Section 12(13) is a superfluous provision given equivalent provision is made in section 39 of the Criminal Law Act 1977 (as amended by the Criminal Justice Act 2003).

### Clause 25: Either way offence: choice of written procedure for plea before venue

201. Criminal offences are categorised as summary-only (which must be tried in a magistrates' court), indictable-only (which must be tried in the Crown Court) or triable either-way (which can be tried in the Crown Court or a magistrates' court depending on the seriousness and complexity of the case, or wishes of the defendant).
202. Section 17A of the MCA 1980 requires defendants charged with 'either-way' offences to be asked on first appearing in a magistrates' court to indicate whether they would plead guilty or not guilty, before the court considers where the case should be tried. This procedure is known as 'plea before venue'.
203. Clause 25 inserts a new section 17ZA that provides for the defendant charged with an either-way offence to have the choice to engage with the plea before venue procedure in writing and without having to attend court, provided that he or she has been given certain pieces of information by the court, including explanations as to the procedure, choices and effects of those choices (*subsection 17ZA(3)*). It is envisaged that almost all such written interactions with the court will occur online via the Common Platform.
204. It will not always be appropriate for the choice of written procedure to apply; for example, where a defendant wishes to plead guilty as soon as possible. Criminal Procedure Rules can state when the choice of written procedure is not to apply: new *subsection 17ZA(2)*.
205. Where the defendant indicates a guilty plea in writing in accordance with new section 17ZA then the offence is treated as if it were a summary offence: section 17ZA(4). This is so as to allow a hearing to be arranged for the defendant to confirm his or her plea before the court. If this is a guilty plea, then the defendant can be convicted without hearing any evidence in accordance with section 9 MCA 1980. On conviction, the magistrates' court could proceed immediately to sentence or commit the case to the Crown Court for sentence under sections 3 or 3A of the Powers of

Criminal Courts (Sentencing) Act 2000 (PCC(S)A 2000) if the court considers its sentencing powers to be inadequate. On receipt of any written indication of a guilty plea, the magistrates' court can use existing case management powers to prepare for a hearing at which the defendant can confirm his or her guilty plea and be convicted and sentenced; for example, the court could direct that a pre-sentence report be prepared.

206. Where the defendant indicates a not guilty plea in writing, he or she is then given the choice of agreeing to the court proceeding to decide mode of trial outside court in his or her absence. Mode of trial is to be determined in accordance with new section 17F (as inserted by clause 25): new section 17ZA(5). (See notes for clause 26 below.) After the allocation decision, the magistrates' court can use existing case management powers to prepare the case for trial at the start of which the defendant will be asked to confirm his or her plea.
207. Where the defendant fails to give any written indication of plea, the proceedings continue in accordance with existing court-based procedures: new section 17ZA(6).
208. Clause 25 provides that a defendant who has given an indication of plea in writing may withdraw it in writing at any time before his or her case is heard, with the result that the proceedings would continue with a hearing in accordance with section 17A, at which the defendant must give his or her indication of plea in person before the court (new section 17ZA(11)).
209. For the sake of completeness, in addition to triable either-way cases, defendants will also be able to choose to give an indication of plea in writing (usually online) if charged with any summary-only or indictable-only offence. Any such procedure will be set out in Criminal Procedure Rules. Clause 23 (written information procedure) requires Rules to provide for specified information to be given to the court in writing and this may (in particular) allow a person charged with any offence to choose to give a written indication of plea outside court: see clause 23(3). Once an indication of plea has been given in summary-only and indictable-only cases, existing case management powers will enable the court to prepare the case for trial of its own motion, or on any applications by the parties. For indictable-only offences, the case must also be sent to the Crown Court (and the process of sending can also occur outside of court in the absence of the defendant: see notes on clause 29 below).

### Clause 26: Either way offence: choice of written procedure for mode of trial

210. This clause inserts new section 17F into the MCA 1980 to make provision for defendants to choose to have mode of trial dealt with in writing, so that the procedures set out in sections 19 to 23 of the MCA 1980 can, if the defendant so chooses, be dealt with outside of court and without the defendant being present: new section 17F(5).
211. Mode of trial is the procedure by which the court decides whether to try a case in the magistrates' court (a summary trial) or in the Crown Court (trial on indictment.) The prosecution and the defence have the opportunity to make representations as to whether summary trial or trial on indictment would be more suitable: section 19(2)(b) of the MCA 1980. In the process of making these representations, the prosecution is also given an opportunity to inform the court of any previous convictions recorded against the defendant: section 19(2)(a), since this would affect the appropriate sentence. Where the defendant chooses to have mode of trial decided in writing, then these representations must be made in writing: see new section 19(2A) MCA 1980 as inserted by clause 26(4).
212. The magistrates' court then makes the decision as to whether summary trial or trial on indictment is more suitable: section 19(1). This is primarily made on the basis of whether the magistrates' sentencing powers would be adequate to deal with the case on conviction: section 19(3).
213. If the magistrates reject jurisdiction (i.e. because trial on indictment is more suitable), the defendant is sent to the Crown Court for trial under section 51 of the Crime and Disorder Act 1998

(CDA 1998): section 21 MCA 1980. The defendant's consent is not required.

214. If the court decides that summary trial is more suitable, the defendant is asked to choose between trial in the magistrates' court and trial in the Crown Court: section 20(2) MCA 1980. Before making this choice, the defendant may request an indication from the court as to whether, if he or she were to plead guilty, the sentence would be custodial or non-custodial: section 20(3). If an indication is given, the defendant has an opportunity to change his or her indication of plea from "not guilty" to "guilty": section 20(5). If the defendant consents to summary trial, the trial takes place in the magistrates' court. If the defendant chooses Crown Court trial, the defendant is sent to the Crown Court for trial under section 51 CDA 1998.
215. Clause 26 now makes available two options for how mode of trial can be dealt with. One option ("the written option"), by way of section 17F, is to enable it to be dealt with outside of court in the defendant's absence where the defendant has been given adequate information about the procedure and proceedings (new section 17F(3)), plea before venue has been dealt with in writing (new section 17F(1)) and the defendant also wants mode of trial to be dealt with in writing (new section 17F(5)). As with the plea before venue, it will not always be appropriate for the choice of written procedure to apply (e.g. where a defendant wishes to plead guilty as soon as possible) and so again Criminal Procedure Rules can state when the choice of written procedure is not to apply: new *subsection 17F(2)*. Under the written option, all the interactions with the court described above can be conducted in writing if the defendant so chooses.
216. The other court based option applies where either (a) plea before venue has been dealt with in court (see section 18(1) MCA 1980) or (b) it has been dealt with in writing, but the defendant now does not want mode of trial to be dealt with also in writing (see section 18(1A) MCA 1980). In these circumstances, defendants can have mode of trial dealt with in court (as is currently the practice) by way of section 18 as amended by clause 26: new section 17F(6).
217. Where the route into sections 19 to 22 or 23 of MCA 1980 is by way of section 18 (i.e. where the defendant wants mode of trial to be dealt with in court), then sections 19 to 23 operate in the same way as they currently do (i.e. in court, in the presence of the defendant). Where the route in is by way of new section 17F, sections 19 to 23 operate with various modifications, all aimed at enabling the steps above to be taken in writing: see new sections 19(2A) (decision as to allocation), 20(10) (procedure where summary trial appears more suitable), 21(2) (procedure where trial on indictment appears more suitable), and 22(6A) (certain offences triable either way to be tried summarily if value involved is small) MCA 1980 and as inserted by clause 26 (4) to (7).
218. Clause 26(8) amends section 47 of the Police and Criminal Evidence Act 1984 (bail after arrest) so that when a custody officer grants bail to a person subject to a duty to appear before a magistrates' court, then the date, time and place to be appointed by the custody officer for that court appearance is the date, time and place designated by the relevant court officer. This enables those defendants who have been charged by the police to have the opportunity to engage in the written procedure (where it is appropriate to do so) before being required to attend court. If the defendant does choose to engage in writing then the court will be able to use existing powers under the Bail Act 1976 to appoint a different date, time or place for him or her to surrender to the custody of the court. The use of these existing powers in such situations will give the court the flexibility to ensure that wherever possible, any case management which is necessary to prepare for a hearing (e.g. the ordering of sentencing reports in the case of an indicated guilty plea) will, where appropriate, have taken place outside of court in advance of the defendant's appearance in court. In addition, if the person were charged with an indictable-only offence, the defendant could be bailed to appear at the Crown Court rather than the magistrates' court (because, where appropriate, clause 29 enables such cases to be sent to the Crown Court without a hearing).

## Clause 27: Power to proceed if accused absent from allocation proceedings

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

219. Clause 27 inserts new section 18A into MCA 1980. This enables a magistrates' court to decide mode of trial for either-way offences in the absence of an adult defendant where either: (i) the defendant has failed to give a written indication of plea and has also failed to appear at the court hearing at which plea before venue and mode of trial are to be dealt with; or (ii) the defendant has indicated a not-guilty plea in writing but not chosen to have mode of trial dealt with in writing, and has failed to appear at the allocation hearing.
220. Clause 27 provides a safeguard in that the court can only proceed to decide mode of trial in absence in such circumstances if it is also satisfied that all the relevant documents on the written procedure have been given to the defendant and that the defendant has been made aware of the date of the allocation hearing. The defendant can be made aware of the latter information either by having notice of it served on him or her, or by the fact that he or she has appeared in court on a previous occasion (when the matter would have been listed for the allocation hearing in the defendant's presence): see new section 18A(2)(e) and (3)(f) MCA 1980. The court must also provide the defendant with an explanation that, if he or she does not engage in writing and then does not attend the allocation hearing, the court can proceed to deal with allocation in his or her absence: see new section 17ZA(3)(g) MCA 1980 as inserted by clause 25.
221. In cases where mode of trial is to be decided in the defendant's absence he or she is deemed to have indicated a not guilty plea, and the court then proceeds to allocate the case for summary trial or trial on indictment, as appropriate. This allocation decision is made on the basis of whether the magistrates' sentencing powers would be adequate to deal with the case on conviction. Where a case is allocated for summary trial, the defendant (who will not have previously consented to be tried summarily), may still elect Crown Court trial at any time before the start of the summary trial: see new section 19(7) MCA 1980 as inserted by clause 27(3). Accordingly the right to elect jury trial is unaffected. Of course, the court does not have to allocate the case in the defendant's absence in accordance with this new provision but (as before) may choose to adjourn the proceedings to deal with allocation in the presence of the defendant whether or not by also issuing a warrant for the arrest of the defendant.

### Clause 28: Low value shoplifting: choice of written election for Crown Court trial

222. Section 22A MCA 1980 currently provides that offences of low-value shoplifting are triable only summarily but subject to the defendant's right to elect trial in the Crown Court. Clause 28 amends section 22A to give defendants in low-value shoplifting cases the choice of exercising that right in writing outside court when they choose to have the court determine mode of trial in writing.

### Clause 29: Sending cases to the Crown Court: adults

223. Clause 29 will amend section 51 CDA 1998 so as to enable indictable offences to be sent to the Crown Court without a hearing; that is, both in respect of offences that are only triable on indictment and those that are triable either way but which have been allocated for trial in the Crown Court. Criminal Procedure Rules can state when sending without a hearing is not to apply: new *subsection 51(1A)*.
224. New *subsection (2A)* sets out that the magistrates' court must give certain documents to the defendant which explain: the charge against the defendant; that the court is required to send him or her to Crown Court for trial; and any other relevant information as required by the Criminal Procedure Rules: new section 51(2B). As soon as practicable after the relevant documents have been given to the defendant, the magistrates' court must send him or her to the Crown Court for trial. As now, this can be done by a single justice (see section 51(13) CDA 1998), but under amendments in new section 51(2B) sending can be done outside of a court hearing. Where a defendant has been charged with an indictable-only offence and there is no other reason to hold a hearing (e.g. to consider issues of bail/remand), then a court hearing is superfluous because the

defendant will be sent to Crown Court for trial regardless of his or her consent. In a triable either-way case, where a defendant has engaged with the court in writing and elected for Crown Court trial, then equally there is no need to hold a hearing solely to send the case to the Crown Court. The fact of sending can be communicated to the defendant in writing.

225. The circumstances when joined cases or co-defendants are also to be sent to the Crown Court along with the main offence are to be removed from the face of the statute and dealt with by Criminal Procedure Rules made under new *subsection (3A)* which may also include provision for related summary-only offences to be sent to the Crown Court: see new *subsection (3B)*. In the event that, for whatever reason, the indictment subsequently changes so that only the summary offence(s) remain, there is a new general power to remit the case from the Crown Court back to the magistrates: see clause 46.

### Clause 30: Children and young people

226. Clause 30 introduces Schedule 3, which contains amendments to existing legislation to enable preliminary proceedings which involve children and young people to be conducted in writing.

## Chapter 2: Conduct of certain criminal proceedings on the papers

227. Chapter 2 makes changes to the law of England and Wales.

### Clause 31: Conduct of criminal proceedings on the papers

228. Clause 31 creates a power for the Lord Chancellor, by regulations, to make provision to enable or facilitate the determination of preliminary and enforcement decisions on the basis of documents before the court, without a hearing. Such regulations may only be made with the agreement of the Lord Chief Justice and may not remove from the court the option of holding a hearing. Changes may be made to primary or secondary legislation, and would be subject to the affirmative resolution procedure.

## Chapter 3: Audio and video technology: criminal courts

229. This chapter makes changes to the law of England and Wales.

### Clause 32: Expansion of the availability of live links in criminal proceedings

230. This clause gives effect to Schedule 4.

### Clause 33: Expansion of availability of live links in other criminal hearings

231. This clause gives effect to Schedule 5.

## Chapter 4: Public participation: court and tribunal proceedings conducted by video or audio

### Clause 34: Public participation in court and tribunal proceedings conducted by video or audio

232. This clause gives effect to Schedule 6.

233. These provisions extend and apply to England and Wales only in relation to court proceedings; but to the United Kingdom in so far as proceedings in the First-tier Tribunal and Upper Tribunal are concerned; and to England, Wales and Scotland in so far as proceedings in the employment tribunals and Employment Appeals Tribunal are concerned. Paragraph 2 of Schedule 6 amends the TCEA 2007 and so extends and applies to the United Kingdom and Paragraph 3 of Schedule 6 amends the ETA 1996 and so extends and applies to England, Wales and Scotland.

## Chapter 5: Automatic online conviction and standard statutory penalty

234. Chapter 5 makes changes to the law of England and Wales, with the exception of certain consequential amendments made by paragraphs 1 and 5 of Schedule 7.

### Clause 35: Changes to institution of proceedings by written charge

235. This clause amends section 29 of the Criminal Justice Act 2003. *Subsection (2)* amends the title of section 29 so that it more accurately describes the provision.

236. Section 29 provides for criminal proceedings to be commenced by way of a written charge accompanied either by a requisition or by a single justice procedure notice. Clause 35 amends section 29 to replace the single justice procedure notice with the written procedure notice (*subsection (3)*). This is a notice which sets out the procedures which may be available for dealing with the charge (*subsection (4)*).

237. Section 29(3A) (as amended by *subsection (5)*) stipulates that the relevant prosecutor must serve the written procedure notice and written charge on the defendant and on the designated officer for a magistrates' court specified in the notice.

238. As the single justice procedure notice currently does, the written procedure notice requires the person to respond to it with a written notification stating whether they desire to plead guilty or not guilty, and if they desire to plead guilty whether they are content for the case to be dealt with by way of the single justice procedure. The notice will indicate to the accused individual a number of ways in which they might return their written notification, for instance by post or online. It will additionally indicate that if responding online the person may be offered the automatic online conviction option.

239. New subsection (3AA) (inserted by *subsection (6)*) requires prosecutors to give notice to the designated officer, when complying with subsection 29(3A) (see above), of their decision that the criminal proceedings in that case are to be capable of leading to the automatic online conviction option being offered. This is the means by which the prosecutor communicates the exercise of their discretion as to which eligible cases are appropriate for the automatic online conviction option to be offered (see paragraph 324).

240. *Subsection (7)* replaces other references to a "single justice procedure notice" in section 29 with references to the new "written procedure notice".

241. New subsection (3D) (inserted by *subsection (8)*) provides that the person need not indicate whether they wish to be tried in accordance with the single justice procedure if they are offered and accept the automatic online conviction option in relation to the offence. The automatic online conviction option is an online means by which an individual may choose to receive an automatic conviction and a standard statutory penalty for certain offences without the involvement of a magistrate. The substantive provisions dealing with that option are inserted into the Magistrates' Courts Act 1980 by Clause 32.

242. Section 29 of the Criminal Justice Act 2003 provides that only relevant prosecutors may institute proceedings by written charge, and section 29(5) defines the term "relevant prosecutor". That definition includes at section 29(5)(h) a person specified in an order made by the Secretary of State or a person authorised by such a person to initiate proceedings. Section 29(5A) provides that such an order must also specify whether that person and any person authorised by them to institute criminal proceedings, is authorised to issue written charges, requisitions and single justice

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procedure notices or only written charges and single justice procedure notices. *Subsection (9)* amends subsection (5A) so that it refers to written procedure notices in place of single justice procedure notices. *Subsection (10)* is a transitional provision which ensures that those prosecutors already authorised to issue single justice procedure notices will, after commencement, be authorised to issue written procedure notices.

### Clause 36: Automatic online conviction and standard statutory penalty

243. *Subsection (1)* inserts new sections 16G to 16M into the Magistrates' Courts Act 1980 to provide for the new automatic online conviction and standard statutory penalty.

244. New section 16G(1) defines references in the Magistrates' Courts Act 1980 to a person being offered the automatic online conviction option and *subsection (2)* defines references in the Magistrates' Courts Act 1980 to a person accepting that option.

245. New section 16G(1) provides that an offer of the automatic online conviction option will be a written notification by electronic means which will be given in accordance with Criminal Procedure Rules. The electronic means referred to will be the online system through which the accused person is responding to the written procedure notice. The notification will explain fully to the person that if they intend to plead guilty he or she may agree to be convicted of the offence under new section 16H and be penalised for the offence under section 16I. The explanation will make clear to the accused the consequences of accepting the offer, being those which usually flow from a criminal conviction (such as the relevant disclosure regimes).

246. New section 16G(2) provides that references to a person accepting such an offer is a person giving a written notification by electronic means, in accordance with Criminal Procedure Rules. This will indicate that he or she pleads guilty and agrees to be convicted under new section 16H and penalised under new section 16I.

247. New section 16G(3) provides that the reference to notifications given by a person in section 16G(2) includes a reference to notifications purporting to be given by the person, or their legal representative.

248. New section 16H sets out the circumstances in which a criminal conviction will result from an offer of the automatic online conviction option being made.

249. New section 16H(1) provides that the section applies if (i) the "qualifying conditions" are met and (ii) the accused person is offered and accepts the automatic online conviction option.

250. The qualifying conditions are set out in new section 16H(3). The automatic online conviction option will only ever be available in relation to summary-only non-imprisonable offences (see new section 16H(4)) which are specified by order made by the Secretary of State (new subsection (3)(a)), where the accused person was aged at least 18 at the time the offence is alleged to have occurred (new subsection (3)(b)) and where the "required documents" are served on the accused in accordance with Criminal Procedure Rules (new subsections (3)(c) and (d)).

251. It will be for prosecutors to decide in each case whether it is appropriate for the online conviction option to be made available. They will be expected to filter out cases which are technically not eligible or which might not otherwise be suitable for the procedure. In practice the online system will then ask the accused a series of further filtering questions which will determine what information the person receives and whether the person is in fact offered the option: for example, if a person answers that there are mitigating circumstances that they would like a court to

consider, an offer of the automatic online conviction procedure option will not be made to them by the system.

252. New section 16H(5) provides for the affirmative resolution procedure in respect of the power to make orders conferred by new section 16H(3)(a).
253. New section 16H(6) defines the required documents referred to in 3(c) as: (a) a written charge and written procedure notice; (b) the notice required by new section 29(3AA) of the Criminal Justice Act 2003 (see paragraph 312 above); and (c) any other relevant documents prescribed by the Criminal Procedure Rules (see section 29(3B) of the Criminal Justice Act 2003).
254. New section 16I and 16J provide for the penalty to be imposed on offenders convicted via the new automatic online conviction procedure. In all cases the penalty will consist of a fine, a surcharge and prosecution costs. In certain cases the penalty may also consist of an amount for compensation or a number of penalty points to be endorsed on the offender's driving record.
255. Offenders will be given the full details of the prospective fixed fine, surcharge and costs (and compensation and penalty points if relevant) before agreeing to accept the automatic conviction and penalty.
256. New section 16I(2) gives the Secretary of State the power to, by order, set the fine to be automatically imposed on conviction. New section 16J(1)(a) gives the Secretary of State the power to, as part of that order, set different fine amounts for different offences; and 16J(1)(b) gives the Secretary of State the power to set different fine amounts for an offence depending on the circumstances in which the offence is committed.
257. New section 16I(3) gives the Secretary of State the power to, by order, specify that an offence is one which on automatic conviction must result in a specified number of penalty points, and other specified particulars, being endorsed on the offender's driving record. New section 16J(2) limits the above power so that only offences which may already carry penalty points on conviction may be specified.
258. New section 16I(4) gives the Secretary of State the power to, by order, specify that an offence is one for which an automatic conviction may result in the offender being liable to pay compensation. New section 16I(5) states that the amount of compensation payable is determined by the prosecutor within a cap which will be set by the Secretary of State who may specify different caps for different offences, and different caps for an offence depending on the circumstances in which the offence is committed (new section 16J(3)).
259. New section 16I(8) gives the Secretary of State the power to, by order, specify the amount of the surcharge to be automatically imposed on conviction. New section 16J(5) gives the Secretary of State the power to, as part of that order, specify the amount of the surcharge as a proportion of the fine amount specified for that offence.
260. The way in which the fixed fine is set using the above powers will be based on current fining practice. Relevant factors in setting the fine level for each offence may be the overall average of fines imposed for the offence, sentencing guidelines published by the Sentencing Council, current sentencing practice, and income data. It is necessary for the power to cover the ability to set different fines for different offences, or different fines for an offence committed in different circumstances: for example, if at some point a speeding offence were specified as suitable for this procedure, it may be appropriate to set a fine of a certain amount for offenders convicted of

driving at 1 to 20mph over the limit; and a higher amount for offenders convicted of driving above that speed.

261. New section 16J(6) provides for the negative resolution procedure in respect of the powers conferred by section 16I.
262. New section 16K deals with notice of penalty. Section 16K(1) provides that a person convicted under 16H must be given a notice of penalty, this is (new subsection (2)) a written notification which sets out the penalties for which the person has become liable as a result of accepting the online conviction option, and to which fines office the notice has been allocated. It requires the person to pay the fine in the manner specified in the notice and within the 28 day period beginning with the day on which the person's conviction took effect (new subsection (3)).
263. New section 16K(4) provides that a notice of penalty must be provided by electronic means in accordance with the Criminal Procedure Rules. In practice this will be by way of the online system through which the procedure has taken place. New subsection (5) makes clear that if there is any defect in the form or substance of this notice it will not affect the conviction and penalty imposed.
264. New section 16L(1) provides that the time when a conviction under section 16H takes effect is to be determined in accordance with Criminal Procedure Rules.
265. New section 16L(2) and (3) provide respectively that a conviction imposed under new section 16H and a penalty imposed under new section 16I are to be treated as if they had been imposed by a magistrates' court. This means that any law which would normally attract to a conviction or penalty imposed by a magistrates' court will attract to a conviction and penalty imposed by way of this new automatic procedure despite the fact that no magistrate was involved in their imposition.
266. Similarly, under new sections 16L(4) to (7) the other aspects of the penalty which is imposed are to be treated as if a magistrates' court had ordered them under the law which would ordinarily apply to the imposition of that type of penalty.
267. New section 16M provides the magistrates' court with a power to set aside a conviction or replace a penalty. New section 16M(1) provides that it may do so if it appears to the court that the conviction is unjust. If the court sets aside the conviction this does not affect the validity of the written charge or the written procedure notice, such that the proceedings can then begin anew (new section 16M(2)).
268. New section 16M(3) provides that a magistrates' court setting aside a conviction may be composed of a single justice who would consider the matter on the papers. If an application is made for such a set aside and the single justice is minded to refuse to set aside the conviction, new section 16M(4) specifies that the decision must then be referred to a full magistrates' court which must consider the matter at a full hearing.
269. New section 16M(5) provides that a magistrates' court may set aside a penalty imposed under new section 16I if it appears that the amount is unjust and if it does so then it may then impose any sentence that it could have imposed for that offence if the person had pleaded guilty before it at the earliest opportunity. That sentence will then be a normal sentence imposed by the magistrates' court, rather than one imposed under section 16I.

270. New section 16M(6) enables a magistrates' court to exercise the powers conferred by this section on an application by the person convicted, the relevant prosecutor who initiated the proceedings, or of its own motion.

271. *Subsection (2)* is transitional provision which stipulates which magistrates' court is being referred to in new section 16L, until the coming into force of provisions elsewhere in this Bill which abolish local justice areas.

272. *Subsection (3)* introduces Schedule 7, which contains other amendments in relation to the new procedure.

## Chapter 6: The online procedure: the civil and family courts and the tribunals

### Clause 37: Rules for an online procedure in courts and tribunals

273. Clause 37 provides that there are to be online procedure rules which require parties to civil, family or tribunal proceedings to use the online procedure. The rules are to apply to proceedings specified in regulations made by the Lord Chancellor under *subsection (3)*. Rules may provide for all or any part of the procedure for conducting proceedings online, including starting and defending proceedings and participating in hearings. *Subsection (6)* enables different rules to be made for different kinds of proceedings.

274. *Subsection (7)* provides that the online procedure rules, which give effect to the regulations made by the Lord Chancellor under *subsection (3)*, may provide for circumstances in which the rules are not to apply or are to cease to apply to proceedings so enabling, for example, particularly complex cases to be transferred out of the online procedure to the appropriate court or tribunal and so subject to the civil, family, or tribunal procedural rules ('the standard rules') as appropriate.

275. *Subsection (7)* also permits the rules to provide for alternative procedures to accommodate those cases to which the online procedure rules would otherwise cease to apply, so giving effect to the regulations made by the Lord Chancellor under *clause 38(2)*. For example, where a party might not have access to the requisite IT, so creating a parallel procedure which may still be subject to those features of the online procedure that are readily available to the parties. *Subsection (9)* permits rules to provide for separate proceedings to be taken in a different court than the normal one and for separate proceedings to be taken together.

### Clause 38: Regulations for the purposes of clause 37

276. This clause establishes that the proceedings which may be specified in regulations as subject to the online procedure and online procedure rules are civil, family or tribunal proceedings. *Subsection (2)* provides a non-exhaustive list of the factors by reference to which proceedings may be specified as coming within the scope of the online procedure, including the legal basis of the proceedings (for example, a breach of contract) and the factual basis of the proceedings (for example, a money claim), and the value of any claim within the proceedings.

277. The Lord Chancellor will make regulations which the rules will give effect to. *Subsection (2)* enables the Lord Chancellor to specify the circumstances in which a party to proceedings may choose whether to use the online procedure or the appropriate alternative civil or family court or tribunal to which the standard rules apply. In addition, the subsection enables the Lord Chancellor to make regulations to provide for the circumstances in which rules are to be made under *clause 38(7)*.

278. Before making any regulations under this clause or *clause 37*, the Lord Chancellor must consult the Lord Chief Justice or, if the regulations concern tribunal proceedings, the Senior President of

Tribunals.

### Clause 39: The Online Procedure Rule Committee and its powers

279. This clause sets out the membership of the online procedure rule committee and its powers. It also includes the procedure for appointing members. The Lord Chancellor is authorised to reimburse the committee members for travel expenses and out of pocket expenses incurred whilst on committee business. The online procedure rule committee has the same rule making powers that are available to the Civil Procedure Rule Committee, the Family Procedure Rule Committee and the Tribunal Procedure Committee and may apply any other rules of court.

### Clause 40: Power to change certain requirements relating to the Committee

280. This clause enables the Lord Chancellor to alter the composition of the online procedure rule committee with the concurrence of the Lord Chief Justice and the Senior President of Tribunals. As the scope of the online procedure rules increases, it may be necessary to increase its membership or widen its expertise in order to assist in making rules.

### Clause 41: Making online procedure rules

281. This clause describes the process for making online procedure rules. Before making or amending rules the committee must hold a meeting (unless it is inexpedient to do so) whether in person or otherwise, and consult any appropriate persons, which allows the committee to call on the expertise of non-committee members to inform discussion about any proposed rule changes. Any rules drafted by the committee must be signed by at least three members before being submitted to the Lord Chancellor who may allow or disallow rules made by the committee. Where a rule is disallowed the Lord Chancellor must give the committee written reasons for doing so. Rules come into force on such a date as the Lord Chancellor decides and are to be contained in a statutory instrument subject to the negative resolution procedure.

### Clause 42: Power of the Lord Chancellor to require rules to be made

282. The Lord Chancellor may give the online rule committee written notice that he or she thinks that the online rules should include provision to achieve a specified purpose. The committee must make the rules within a reasonable period and in accordance with the procedure for making rules, outlined above.

### Clause 43: Power to make consequential amendments

283. This clause enables the Lord Chancellor by regulations to amend primary and secondary legislation in consequence of clauses 37 or 39 and the online procedure rules and to amend legislation made prior to the commencement of this clause to facilitate the making of online procedure rules. It is anticipated that this will be used to make minor revisions to legislation in order, for example, to regularise and modernise terminology to match that in new rules. Before making regulations, the Lord Chancellor must consult the Lord Chancellor and the Senior President of Tribunals.

### Clause 44: Amendments to other legislation

284. Clause 42 gives effect to Schedule 9.

### Clause 45: Interpretation

285. Clause 43 defines terms used in this chapter and Schedules 8 and 9.

### **Territorial extent and application**

286. Clauses 37 to 45 and Part 2 of Schedule 8 extend and apply to England and Wales, and to Scotland and Northern Ireland in so far as they apply to the First-tier Tribunal and the Upper Tribunal; Part 3 of Schedule 8 makes provision about the employment tribunals and the Employment Appeals

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Tribunal and extends and applies to England, Wales and Scotland.

287. Schedule 9 makes consequential amendments as a result of the creation of the new online procedure. Paragraph 1 of Schedule 9 amends the ETA 1996 and extends and applies to England, Wales and Scotland accordingly; paragraph 4 amends the TCEA 2007 and extends and applies to the United Kingdom accordingly; paragraph 5 amends clause 41(1) and so extends and applies to England and Wales, and to Scotland and Northern Ireland in so far as it applies to the First-tier Tribunal and the Upper Tribunal.

## **Chapter 7: Powers to remit proceedings to another court**

288. Chapter 7 makes changes to the law of England and Wales.

### **Clause 46: Powers to remit proceedings to another court**

#### **Crown Court power to remit proceedings to magistrates' court**

289. *Subsection (1)* of this clause inserts new section 46ZA into the Senior Courts Act 1981 so as to give the Crown Court a new general power to send cases back to the magistrates' court, including the youth court, for trial (see new *subsection 46ZA(1)*) and for sentencing (see new *subsection 46ZA(2)* and (3)). As a result the existing powers to send back for trial in the prescribed circumstances of paragraphs 7 to 13 of Schedule 3 to the Crime and Disorder Act 1998 have been removed.
290. The power to remit cases back to the magistrates' court can only be exercised if the Crown Court is satisfied that the magistrates' court would have adequate sentencing powers to deal with the case: section 46ZA(4). In doing so, *subsection (6)* requires the court to consider any other offence before the court so that the Court looks at the adequacy of sentencing powers in relation to all offences which are joined to the main offence, whether in relation to the same defendant or a co-defendant).
291. By way of *subsection (5)*, if the Crown Court is sending an either-way offence back for a trial, it must obtain the defendant's consent to do so where the defendant is aged 18 or over at the date of the remittal decision (or is a body corporate). Accordingly, the defendant's right to elect for jury trial is unaffected. (There is no requirement for the defendant to consent to the court remitting a summary-only offence or have the remitting of a summary offence be carried out in open court in the defendant's presence.)
292. The defendant's consent is also not required to remit a case back to the magistrates' court for sentence. Such a decision can be made by the Crown Court outside of court without the defendant being present.
293. In light of the general principle of summary trial in the youth court for under 18 year olds, new *subsection (7)* requires the Crown Court to give reasons whenever it decides not to send an under-18 defendant back to the magistrates' court.
294. *Subsection (8)* ensures that the power to remit is supplementary to any other powers which the Crown Court has to send a person to a magistrates' court for any purpose. For example, sections 8 to 10 of PCC(S)A 2000 already enable the Crown Court to remit young offenders to a youth court for sentence in certain circumstances.

#### **Powers of youth court to remit to Crown Court**

295. *Subsection (2)* of clause 46 amends section 47 of CDA 1998 (powers of youth courts) in order to make provision for the youth court to remit defendants to the adult magistrates' court or Crown Court where they have turned 18 years of age. The youth court may remit defendants charged with summary or triable either-way offences to the adult magistrates' court; and defendants charged with indictable offences to the Crown Court.

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## **Territorial extent and application**

296. These clauses primarily change only the law of England and Wales. The repeal of section 12(13) MCA 1980 (service of documents in Scotland) extends and applies to England, Wales and Scotland.

## **Chapter 8: Prohibition of cross-examination in family proceedings**

297. This chapter makes changes to the law of England and Wales.

### **Clause 47: Prohibition of cross-examination in person in family proceedings**

#### **New Section 31Q – Prohibition of cross-examination in person: introductory**

298. Section 31Q MFPA 1984 defines various terms used later in Part 4B, including providing that “the court” means the family court or the High Court, which are the courts in which family proceedings are heard in England and Wales and a “witness” includes a party to these proceedings.

#### **New Section 31R – Prohibition of cross-examination in person: victims of offences**

299. Section 31R MFPA 1984 provides that any person involved in family proceedings who has an unspent conviction for, or who is charged with a “specified offence” cannot cross-examine in person the victim of that offence, or alleged offence, during the course of the family proceedings. The section also provides that the (alleged) victim cannot, in person, cross examine the (alleged) perpetrator. The prohibition will not apply if the conviction is spent (under the Rehabilitation of Offenders Act 1974). If the court was not aware of the conviction or charge, any court decisions made will still be valid even if there was cross-examination in breach of the prohibition.

300. The offences that are relevant here are to be specified in regulations to be made by the Lord Chancellor under the power in section 31R(5). It is intended to use regulations to specify a comprehensive list of sexual offences, child abuse offences and domestic violence offences, based on the list of offences set out in documents issued by the Lord Chancellor as referred to in regulations 33 and 34 of the Civil Legal Aid (Procedure) Regulations 2012. The regulations may also specify offences under laws which are no longer in force.

#### **New Section 31S – Prohibition of cross-examination in person: persons protected by injunctions etc.**

301. Section 31S MFPA 1984 makes provision for a prohibition on cross examination in person when an “on-notice protective injunction” is in place. The person who is protected by the injunction may not be cross-examined by the person against whom the injunction is in force, and the person against whom the injunction is in force may not be cross-examined by the person protected by the injunction.

302. *Subsection (5)* sets out what is meant by “on notice”.

303. The first instance is where the court is satisfied that there has been a hearing at which the person against whom the injunction was made has had a chance to ask for it to be varied or set aside. This might occur where the court has made an injunction to last for a given period, without the person against whom it was made having been told that the court was considering making the injunction. If there has since been a hearing which the person against whom the injunction was made has been informed about, where that person could have asked the court to vary or remove the order, then the position will be that the injunction will be “on notice”.

304. The second instance is where the injunction was made at a hearing which the court is satisfied that both the person protected by the injunction and the person against whom it was made had been

informed about the hearing.

305. Section 31S(4) MFPA 1984 provides that “protective injunctions” are to be specified in regulations made by the Lord Chancellor. It is intended to use those regulations to specify a comprehensive list of protective injunctions, based on the definition of “protective injunction” in regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012. It is intended to include, for example, non-molestation orders made under the Family Law Act 1996.

306. If cross-examination takes place in breach of the provision, because the court was not aware of the existence of the on-notice protective injunction, then the validity of decisions made by the court is not affected.

#### New Section 31T - Direction for prohibition of cross-examination in person: other cases

307. Section 31T MFPA 1984 provides that, in addition to the absolute bar on cross-examination in person provided for in sections 31R or 31S, there are circumstances where the court has the discretion to prohibit cross examination in person. The discretion can be exercised if someone involved in the proceedings applies for this to happen or if the court raises the issue. The court can prohibit the cross-examination in person if it is satisfied that either the “quality condition” or the “significant distress condition” is met and that it will not be contrary to the interests of justice to direct that cross-examination by a party in person is prohibited.

308. The “quality condition” will be met if the quality of the witness’s evidence on cross-examination would be diminished if the cross-examination was by a party in person, and that quality would likely to be improved if the court prohibited that cross-examination in person.

309. The “significant distress condition” will be met if the cross-examination in person would be likely to cause significant distress to the witness and the distress caused is greater than if they were cross-examined by someone else.

310. Section 31T(5) MFPA 1984 sets out factors that the court should consider when deciding whether the “quality condition” or “significant distress condition” is met. This covers views expressed by the witness, the possible content of the questions, any finding of fact that has been made about the party’s behaviour, how the party is acting and the relationship between the party and the witness. This list is not exhaustive and the court may have regard to other things when deciding if the “quality condition” or “significant distress condition” is met.

311. Section 31T(6) and (7) explain what is meant by quality of evidence given by the witness.

#### New Section 31U – Directions under section 31T: supplementary

312. Section 31U MFPA 1984 provides more detail in relation to directions made by the court under section 31T. This covers how long a direction made under section 31T may last and the circumstances where a court may stop a direction it has given under section 31T.

313. The court should provide their reasons for making, refusing or stopping directions under 31T (section 31U(4)).

314. It is also intended that there should be procedural rules of court in relation to these directions. The Family Procedure Rule Committee will be invited to consider making such rules under existing rule-making powers in the Courts Act 2003.

#### New Section 31V – Alternatives to cross-examination in person

315. Section 31V MFPA 1984 makes provision in relation to alternatives to cross-examination in person. It applies where a party is prevented from cross-examining in person under section 31R, 31S or 31T.

316. Firstly, the court must consider whether there is a “satisfactory alternative” means for the witness to be cross-examined, or of obtaining the evidence that the witness would have given under cross-examination. Examples for doing this include the court putting questions to the witness, or the court accepting pre-recorded evidence that was given in cross-examination in related criminal proceedings.
317. If the court concludes that there is no satisfactory alternative means that can be used, the court will ask the party who has been directed not to conduct the cross-examination to arrange, within a specified time, a qualified legal representative to cross-examine the witness, and to notify the court of the arrangements.
318. If the party has either notified the court that there is no qualified legal representative to act for them, or the court has not received any notification of which legal representative will cross-examine the witness, then the court must consider if it should appoint a qualified legal representative to undertake the cross examination. If the court decides it is in the interests of justice for this to be done, then the court should appoint such a qualified legal representative. This legal representative, appointed by the court, is not responsible to the party.
319. The term ‘qualified legal representative’ is defined at section 31V(8)(b) MFPA 1984.

#### New Section 31W – Costs of legal representatives appointed under section 31V

320. Section 31W MFPA 1984 is a power for the Lord Chancellor to make regulations about the payment of fees and costs of a qualified legal representative appointed under section 31V MFPA and to cover related costs connected to their appointment.

#### New Section 31X – Regulations under Part 4B

321. Section 31X MFPA 1984 sets out that the regulations made under powers included in new Part 4B MFPA 1984 will be made via statutory instruments, subject to the negative resolution procedure in Parliament.

## **Chapter 9: Tribunal rules**

322. Chapter 9 makes changes to the law of the United Kingdom in so far as clause 48 amends the TCEA 2007; and to the law of England, Wales and Scotland in so far as clause 49 and Schedule 10 amend the ETA 1996.

### **Clause 48: Tribunal Procedure Committee membership**

323. Clause 48 amends the current membership of the Tribunal Procedure Committee set out in Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 to include additional members who have specific experience of proceedings in the employment tribunal system. Specifically, it provides for the Lord Chancellor and the Lord Chief Justice to each be able to appoint an additional member to the Committee. It also clarifies the existing criteria for a Lord Chancellor appointment by making it clear that experience of the tribunal system also includes experience of employment tribunals and the Employment Appeal Tribunal.

### **Clause 49: Employment Tribunal Procedure**

324. At present, employment tribunals and the Employment Appeal Tribunal have different sets of rules. The rule making powers rest with the Secretary of State for Business Enterprise and Industrial Strategy for employment tribunals and the Lord Chancellor for the Employment Appeal Tribunal. Whilst these are both subject to parliamentary procedure, there is no standard form or approach, and no statutory requirement to consult stakeholders. In the unified tribunals system and the courts, rules are made by independent rule committees with judicial and practitioner membership, allowing for consistency in the development of procedure, where

appropriate. The intention is to replicate this arrangement for the employment tribunal system by providing that procedure rules will be made by the existing Tribunal Procedure Committee that is responsible for making rules for the First-tier Tribunal and the Upper Tribunal established by the Tribunal, Courts and Enforcement Act 2007.

325. Clause 49 provides for the powers to make procedure rules for employment tribunals and the Employment Appeal Tribunal to be conferred on the Tribunal Procedure Committee and that the Committee will have similar powers to that which apply when it makes procedure rules for the unified tribunal system.

## **Part 3: Organisation and functions of courts and tribunals**

### **Chapter 1: Functions of staff of courts and tribunals**

#### **Clause 50: Court and tribunal staff: provision of legal advice and judicial functions**

326. This clause gives effect to Schedule 11.

327. The provision made by Schedule 11 means that court staff exercising their jurisdiction will be in the same position as any judge and therefore current provision which deems things done by court staff to be treated as being done by the court is unnecessary. Paragraphs 1 and 3 of Schedule 11 remove such deeming provisions from the Criminal Justice Act 1972 and the Bail Act 1976 which extend and apply to England, Wales and Scotland. These are consequential amendments which follow from substantive changes being made only in England and Wales. Part 2 of Schedule 11 makes amendments to the TCEA 2007 and so extends and applies to the United Kingdom by virtue of clause 70(3). Otherwise the amendments made by Schedule 11 apply and extend to England and Wales only.

### **Chapter 2: Abolition of local justice areas**

#### **Clause 51: Abolition of local justice areas**

328. This clause gives effect to Schedule 12.

329. Schedule 12 makes changes to the law of England and Wales, with the exception of certain consequential amendments. Paragraphs 9 and 10 amend provisions of the Magistrates Courts Act 1980 which have UK wide extent; paragraphs 68 to 77 make amendments to the Gambling Act 2005 and Road Safety Act 2006 which extend to England, Wales and Scotland but only apply to England and Wales; paragraph 83 amends section 89(5) of the Criminal Justice and Immigration Act 2008 which extends and applies only to Northern Ireland and paragraph 86 amends Schedule 3 to that Act which extends to England, Wales and Northern Ireland; paragraph 88 makes amendments to the Coroners and Justice Act 2009 which extend and apply to England, Wales and Northern Ireland; paragraph 95 makes amendments to the Serious Crime Act 2015 which has UK wide extent and application; and paragraph 101 makes amendments to the Psychoactive Substances Act 2016 which have UK wide extent and but apply to England, Wales and Northern Ireland. These are consequential amendments which follow from substantive changes being made only in England and Wales and are necessary to avoid confusion.

## Chapter 3: Composition of employment tribunals and the Employment Appeal Tribunal

330. Chapter 3 makes changes to the law of England, Wales and Scotland.

### Clause 52: Composition of tribunals

331. Clause 52 provides for powers to determine the composition of tribunal panels in the Employment Tribunals Act 1996.

332. *Subsection 2* substitutes section 4 of the Employment Tribunals Act 1996 and provides a power for the Lord Chancellor to determine the composition of tribunal panels in Employment Tribunals. Under this power the Lord Chancellor may delegate this power to the Senior President of Tribunals or the President of Employment Tribunals. Before making any regulations under this section the Lord Chancellor must consult the Senior President of Tribunals. This new section is modelled on those contained in the Tribunals Courts and Enforcement Act 2007 which apply to the unified tribunals system.

333. Paragraph 3 substitutes section 28 of the Employment Tribunals Act 1996 and provides a power for the Lord Chancellor to determine the composition of tribunal panels in the Employment Appeal Tribunal. Under this power the Lord Chancellor may delegate this power to the Senior President of Tribunals or the President of the Employment Appeal Tribunal. Before making any regulations under this section the Lord Chancellor must consult the Senior President of Tribunals. This new section is modelled on similar provisions contained in the Tribunals Courts and Enforcement Act 2007 which apply to the unified tribunals system.

## Chapter 4: Delegation of functions by the Senior President of Tribunals

334. Chapter 4 makes changes to the law of England, Wales, Scotland and Northern Ireland.

### Clause 53: Senior President of The Tribunals: power to delegate

335. Clause 53 provides that the Senior President of Tribunals may delegate any of his functions to any judge or other member of the Employment Tribunals or Employment Appeal Tribunal or staff appointed under section 40(1) of the Tribunals, Courts and Enforcement Act 2007. This new section is modelled on similar provisions contained in the Tribunals, Courts and Enforcement Act 2007 which apply to the unified tribunals system.

## Chapter 5: Other changes

336. Chapter 5 makes changes to the law of England and Wales.

### Clause 54: Traffic and air quality offences: use of statements of truth

337. Clause 54 gives effect to Schedule 13.

### Clause 55: Extension of High Court powers to make attachment of earnings orders

338. This clause and Schedule 14 amend the Attachment of Earnings Act 1971 (“AEA 1971”) to extend the attachment of earnings powers of the High Court so that the High Court can make attachment of earnings orders (“AEO”) for the recovery of moneys due under a judgment debt, as far as practicable on the same basis that the County Court can make such orders using a fixed deductions scheme established under section 6A of the AEA 1971.

339. Clause 55 (1) amends section 1(1) of the AEA 1971 to allow the High Court jurisdiction to make an AEO to secure payment of a judgment debt of £5 or more, or of any other sum that may be prescribed by rules of court. The effect of the amendment is to extend the power of the High Court

to make AEOs so that the High Court can make AEOs in relation to judgment debts, in addition to its current powers to make AEOs to secure payments under a High Court maintenance order.

340. Clause 55 (2) allows the High Court to make AEOs for the recovery of money due under a judgment debt where the judgment pre-dates the coming into force of the provision to extend the High Court powers as described above. This mirrors section 1(5) of the AEA 1971.

341. Clause 5(3) gives effect to Schedule 14, which makes amendments to other parts of the AEA 1971.

## **Part 4: The judiciary and the Judicial Appointment Commissions**

### **Chapter 1: Judicial appointments in deployment**

#### **Clause 56: Judges with roles in the leadership of the judiciary**

342. This clause gives effect to Schedule 15.

#### **Clause 57: Deployment of judges**

343. Sections 85, 86, 87 and 88 of the Constitutional Reform Act 2005 set out the Judicial Appointments Commission (“JAC”) process which usually applies for appointment of a deputy judge of the High Court. Section 94AA of the Constitutional Reform Act 2005 (as inserted by the Crime & Courts Act 2013) provides a limited exception to this, and provides the Lord Chief Justice, after consultation with the Lord Chancellor, with a power to appoint a person as a temporary deputy judge of the High Court under certain circumstances without a JAC process. Previously the legislation allowed this person to be deployed only to the High Court or Crown Court; clause 57 (1) expands this to permit the person to be deployed to any court or tribunal in which a deputy judge of the High Court appointed under section 9(4) of the Senior Courts Act 1981 is able to sit.

344. Section 6 of the Tribunals, Courts and Enforcement Act 2007 sets out a list of judges who are judges of the Upper Tribunal. Clause 57(2) adds recorder judges to this list at section 6, which will enable recorders to also hear cases in the Upper Tribunal.

345. Section 93 of the Arbitration Act 1996 sets out the judges that may accept appointment as a judge-arbitrator in England and Wales. This is currently limited to judges of the Commercial Court or judges conducting official referees’ business (now judges sitting in the Technology & Construction Court). Clause 57 (3 to 5) expands this to allow any High Court judge to accept appointment and therefore sit as a judge- arbitrator.

#### **Clause 58: President of Employment Tribunals may be appointed to Appeal Tribunal**

346. Clause 58 adds the President of Employment Tribunal (England and Wales) and the President of the Employment Tribunal (Scotland) to the list of judges who are members of the Employment Appeal Tribunal. It does so by means of an amendment to section 22 of the Employment Tribunals Act 1996. This mirrors similar provisions in the Tribunals, Courts and Enforcement Act 2007 which provide for First- tier Tribunal Chamber Presidents to be members of the Upper Tribunal.

#### **Clause 59: Remuneration of members of employment tribunals etc.**

347. Clause 59 amends sections 5 and 27 of the Employment Tribunals Act 1996 to provide that the Lord Chancellor will be responsible for paying remuneration in employment tribunals and the Employment Appeal Tribunal.

### **Territorial extent and application**

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

348. Parts 4 and 5 of Schedule 15 amend the TCEA 2007 and so extend and apply to the United Kingdom; paragraph 10 of Part 6 of Schedule 15 amends the CRA 2005 and so extends and applies to the United Kingdom; clause 57(1) to (3) also amends the TCEA 2007 and the CRA 2005 and extend and apply to the United Kingdom. Clauses 58 and 59 amend the ETA 1996 and so extend and apply to England, Wales and Scotland.

## Chapter 2: The Judicial Appointments Commission

349. Chapter 2 makes changes to the law of England, Wales, Scotland and Northern Ireland.

### Clause 60: The Judicial Appointments Commission

350. *Subsections (2D), (2E) and (2F)* provide safeguards in respect of the exercise of the Lord Chancellor's power under this provision. The existing requirement in section 98(5) that the Lord Chancellor must consult with both the JAC and the Lord Chief Justice remains and should be viewed as operating in conjunction with these additional safeguards.
351. *Subsection (2E)(a)* provides that the Lord Chancellor must be satisfied that the request for assistance is appropriate having regard to the nature of the JAC's other statutory functions, for example where an appointment requires an assessment of merit which is clearly independent from government or the judiciary.
352. *Subsection (2E)(b)* provides that the assistance provided by the JAC should relate to their areas of acknowledged experience. Fulfilling the request for assistance should not require the JAC to obtain additional skills or substantial additional resource.
353. *Subsection (2F)* provides that the priority of the JAC must remain its statutory functions in relation to judicial appointments across the UK, and requires that the effective fulfilment of these duties should not be compromised by any request for additional assistance. This should be understood to include sufficient reputational standing for the JAC as well as sufficient resourcing.
354. Paragraph 18 of Schedule 12 Constitutional Reform Act 2005 is substituted for new paragraphs 18A and 18B.
355. Paragraph 18A provides that the JAC may provide assistance to any person, which can include making available any of the JAC's resources where appropriate.
356. Paragraph 18B allows the JAC, as a statutory body, to appropriately recover costs from those who receive its assistance. The current funding arrangement for its core activities remains unchanged. This is intended to provide that broader funding considerations do not prevent assistance being provided by the JAC where appropriately requested.

## Part 5: Whiplash

357. Part 5 makes changes to the law of England and Wales.

### Chapter 1: Whiplash cases

#### Clause 61: "Whiplash injury" etc.

358. This clause specifies those road traffic accident ('RTA') related whiplash injuries, and the circumstances in which such injuries are incurred, which are subject to the provisions under this Part. *Subsection (1)* defines "whiplash injury" as an injury of the neck or neck and upper torso of a description specified in regulations by the Lord Chancellor. A minor psychological injury or injuries sustained in addition to the whiplash injury will also be subject to the provisions under this part. *Subsection (3)* provides that these provisions will apply in those cases where a driver of a motor vehicle on a road or other public place in England and Wales causes such an injury to another driver or passenger riding in or on a motor-vehicle, by reason of the driver's negligence.

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The effect of *subsection (5)* is to include cases where a driver has caused an RTA by their negligence, but the acts constituting the negligence could also be relied on to establish another cause of action, such as a breach of statutory duty, against them or somebody else.

## Chapter 2: Damages for whiplash

### Clause 62: Damages for whiplash injuries

359. This clause enables the Lord Chancellor to specify in regulations, in the form of a tariff, the damages that a court may award for pain, suffering and loss of amenity (“PSLA”) for relevant whiplash injuries sustained in road traffic accidents, as specified in clause 61, in those cases where the duration of the injury does not exceed or is not expected to exceed two years. The tariff will provide for an ascending scale of fixed sum payments with the relevant tariff for a particular case identified by reference to the severity of the injury. Regulations may specify different sums for different descriptions of injury: it is intended that the power will enable the Lord Chancellor to (a) set and describe each category of severity of injury on the tariff; and (b) set the amount of fixed sum payment for each such category. The Lord Chancellor may amend the categories, and/or the amount of the payments and may increase or decrease the amounts. The Lord Chancellor may also include within, or in addition to, the specified sums, an additional sum for minor psychological injuries (often referred to as ‘travel anxiety’) arising from the same accident.

### Clause 63: Uplift in exceptional circumstances

360. This clause enables the Lord Chancellor to provide in regulations that the court may, in its discretion, increase the prescribed sum under the tariff and may also specify that the court may only do so in exceptional circumstances. Regulations must specify, by reference to a percentage of the prescribed sum, the maximum increase that might be applied and may increase or decrease the maximum uplift.

## Chapter 3: Settlement of whiplash claims

### Clause 64: Rules against the settlement of claims before medical report

361. This clause bans regulated persons (as defined in clause 67) from making or accepting a payment in settlement, or inviting, or offering to settle an RTA related whiplash claim without appropriate medical evidence. It also enables the Lord Chancellor to specify in regulations what constitutes appropriate medical evidence and those who may provide it. The ban will apply to any material benefit including (but not limited to) a cash payment. This clause applies to all relevant regulators except the Financial Conduct Authority.

### Clause 65: Effect of rules against settlement before medical report

362. This clause requires relevant regulators (as defined in clause 67) to have arrangements in place to monitor and enforce the ban on settling or seeking to settle relevant whiplash injury claims when not in receipt of appropriate medical evidence. This clause enables the relevant regulators to make new rules to supplement any existing rules for this purpose.

### Clause 66: Regulation by the Financial Conduct Authority

363. Where the relevant regulator is the Financial Conduct Authority (FCA), this clause provides for the Treasury to make regulations to enable the FCA to monitor and enforce the ban on settling whiplash claims when not in receipt of appropriate medical evidence.

### Clause 67: Interpretation

364. This clause lists both the regulators who are required to monitor and enforce the ban on making pre medical offers to settle (including the General Council of the Bar, the Law Society and the Chartered Institute of Legal Executives) and those legal service providers to whom the ban would

apply ('regulated persons', namely barristers, legal executives, solicitors and alternative business structures). The Lord Chancellor has the power by regulation to extend to other regulators and regulated persons both the ban and the duty to monitor and enforce it through secondary legislation through the negative procedure for Statutory Instruments.

## Part 6: Final provisions

### Clause 68: Consequential and transitional provisions etc.

365. This clause allows the Secretary of State or Lord Chancellor to make regulations which make consequential, supplementary, incidental, transitional, transitory or savings provision in relation to any provisions of the Bill.

366. Regulations may amend, repeal or revoke primary and secondary legislation, but may only amend, repeal or revoke provision of an Act passed before this Bill is passed or in the same session or any secondary legislation made before the regulations come into force.

367. Under *subsections (3) and (4)*, regulations made under this section will be subject to the negative resolution procedure in Parliament unless they amend primary legislation, in which case they will be subject to the affirmative resolution procedure.

### Clause 69: Regulations

368. This clause provides that regulations under the Bill are to be made by statutory instrument. The clause stipulates that where regulations under this Bill are subject to the negative resolution procedure, they are subject to annulment in pursuance of a resolution of either House of Parliament, and that where regulations made under this Bill are subject to the affirmative resolution procedure, a draft of the regulations must be laid before Parliament and approved by a resolution of each House of Parliament.

369. *Subsections (4) and (5)* provide that where regulations are made under this Bill (apart from Commencement regulations), those regulations may make consequential, supplementary, incidental, transitional, transitory or savings provision. *Subsection (4)(a)* also allows regulations to make different provision for different purposes or areas.

### Clause 70: Extent

370. Clause 70 sets out the extent of the Bill (see commentary on individual clauses, paragraphs 114 to 145 and Annex A for further information).

### Clause 71: Commencement

371. The provision in clause 60 will come into force two months after Royal Assent, the provision in clause 47 will come into force on such day or days as the Lord Chancellor may by regulations appoint and Part 6 will come into force on the day on which the Bill is passed. All other provisions will come into force on such day as the Secretary of State may by regulations appoint.

372. *Subsection (6)* allows for regulations to appoint different days for different purposes or areas and to make transitional, transitory or savings provision.

### Clause 72: Short title

373. This clause confirms the short title of the Bill.

## Schedules

### Schedule 1: The Prisons and Probation Ombudsman

374. This Schedule makes provision for the appointment, conditions of tenure and functions of the

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office of the Ombudsman.

## Schedule 2: Interference with wireless telegraphy in prisons

375. Further changes to the Prisons (Interference with Wireless Telegraphy) Act 2012 (PA 2012) are set out in Schedule 2 to the Bill. Section 2 of the PA 2012 describes the safeguards that apply when interference with wireless telegraphy is being authorised under the Act and includes a requirement for the Secretary of State to give directions in writing to any person so authorised. The directions cover information that must be provided to Ofcom, and the frequency with which such information must be provided. New *subsection (3A)* confirms that a PCP that is authorised to interfere with wireless telegraphy must act in accordance with any directions given to the Secretary of State.

376. New *subsection (4A)* sets out how the directions given to an authorised PCP will differ from those given to an authorised governor. The main difference is that while directions given to an authorised governor include information that he or she must provide to Ofcom, directions for an authorised PCP will specify what information it must provide to the governor of the prison where the interference is taking place and it will be the responsibility of the governor to pass any required information to Ofcom under new *subsection (4B)*. The rationale is that although the authorisation allows the PCP to act independently to interfere with wireless telegraphy in a particular prison, the policy is that the person responsible for the institution should continue to be responsible for the dialogue with Ofcom about activity in the institution as is already the case under the PA 2012.

377. Section 3 of the PA 2012 sets out provisions covering retention and disclosure of information obtained as a result of interference with wireless telegraphy. As now, responsibility for decisions about retention and disclosure of such information will continue to rest with the governor of the relevant institution. The proposed changes to section 1 mean that in future such information could be obtained through authorisation of a PCP and in such cases, new section 1(2C) provides that the authorisation can apply to one or more relevant institutions. To avoid any uncertainty about which governor is responsible for deciding about retention and disclosure, new *subsection 3(10)* makes clear which is the relevant institution when information has been obtained as a result of the authorisation of a PCP. *Subsections (11) and (12)* make equivalent provision to ensure that information obtained by an authorised PCP is also subject to appropriate provisions concerning retention and destruction.

378. Section 4 of the PA 2012 defines various terms used in the Act and a definition of a “public communications provider” has been inserted at new section 4(1). The definition derives from section 151 of the Communications Act 2003 and as amended by new section 4(1) would read in full as:

“public communications provider” means—

- (a) a provider of a public electronic communications network;
- (b) a provider of a public electronic communications service;”

379. “public electronic communications network” means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public;

380. “public electronic communications service” means any electronic communications service that is provided so as to be available for use by members of the public.

## Schedule 3: Conducting preliminary proceedings in writing: children and young people

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

## **Involvement of parent or guardian in proceedings conducted in writing**

381. Paragraph 1 of Schedule 3 amends section 34A of the Children and Young Persons Act 1933 (CYPA 1933). The amendment provides that where a defendant under the age of 18 is charged with an offence and the proceedings are conducted in writing, the court undertakes certain functions unless and to the extent that it is unreasonable to do so, having regard to the circumstances of the case. The court must undertake these functions where the defendant is under 16 years of age and may undertake them where the defendant is aged 16-17 years. These functions are: to ascertain whether a person who is a parent or guardian of the defendant is aware that written proceedings are taking place; provide information about the written proceedings to that person if he or she is not aware of them; ascertain whether a person who is a parent or guardian of the defendant is aware that the written indication of plea has been given; and bring that written indication of plea to their attention if they are not aware of it.

## **Indication of plea by under-18: choice of written procedure**

382. Paragraph 2 of Schedule 3 provides for a new section 24ZA to be inserted into the MCA 1980. This is an equivalent to the new section 17ZA (Either way offence: choice of written procedure for plea before venue) which is to be inserted into the MCA 1980 by clause 25 in relation to adult defendants.
383. The court is currently required to ask an under-18 defendant to indicate a plea in court where the case falls within section 24A MCA 1980 (child or young person to indicate intention as to plea in certain cases); that is, it is not a case which must be sent to the Crown Court (e.g. homicide or firearms offences) and it is a case where there is either (a) an adult co-defendant being sent to the Crown Court, (b) a “serious offence” for which if found guilty the youth court’s sentencing powers may not be adequate<sup>35</sup> or (c) a related offence to be sent up to the Crown Court together with a main offence. New section 24ZA provides for the under-18 defendant to have the choice to engage with this plea before venue procedure in writing without having to attend court, provided that he or she has been given certain pieces of information by the court including explanations as to the procedure, choices and effects of those choices (*subsection (3)*). It is envisaged that almost all such written interactions with the court will occur online via the online Common Platform.
384. It will not always be appropriate for the choice of written procedure to apply; for example, where a defendant wishes to plead guilty as soon as possible. Criminal Procedure Rules will state when the choice of written procedure is not to apply: *subsection 24ZA(2)*.
385. Where the defendant indicates a guilty plea in writing in accordance with new section 24ZA then the offence is treated as if it were a summary offence: section 24ZA(4). This is so as to allow a hearing to be arranged for the defendant to confirm their plea before the court. If this is a guilty plea, then the defendant can be convicted without hearing any evidence in accordance with section 9 MCA 1980. On conviction, the court could proceed immediately to sentence or commit the case to the Crown Court for sentence under sections 3B or 3C of the PCC(S)A 2000 if the court considers its sentencing powers to be inadequate. On receipt of any written indication of a guilty plea, the magistrates’ court could use existing case management powers to prepare for a hearing

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<sup>35</sup> This is an offence punishable with a sentence under section 91(1) of the Powers of Criminal Courts (Sentencing) Act 2000 or section 226B of the Criminal Justice Act 2003.

at which the defendant is to confirm his or her guilty plea and be convicted and sentenced; for example, the court could direct that a pre-sentence report be prepared.

386. Where the defendant indicates a not guilty plea in writing, then the court will determine allocation. This can be determined outside of court in the defendant's absence. After the allocation determination, the court can use existing case management powers to prepare the case for trial at the start of which the young defendant will be asked to confirm his or her plea.
387. Where the young defendant does not engage in writing and fails to give any written indication of plea, the proceedings continue in accordance with existing court-based procedures: section 24ZA(6) and amendments to section 24A as made by paragraph 3 of Schedule 3. New section 24ZA(9) also provides for the opportunity for an under-18 defendant who has given an indication of plea in writing to withdraw it in writing at any time before his or her case is heard, with the result that the proceedings would continue with a hearing under section 24A.
388. For the sake of completeness, it will also be possible for under-18 defendants to indicate a plea in writing (usually online) for any other offence which falls outside section 24ZA. Where the defendant does so, their interaction with the court is subject to the amendments to section 34A of the Children and Young Persons Act 1933 made by Paragraph 1 of Schedule 3 (involvement of parent or guardian in proceedings conducted in writing). Clause 23 (written information procedure) requires Rules to provide for specified information to be given to the court in writing and this may (in particular) allow a person charged with any offence to choose to give an indication of plea: see clause 23(3). Once an indication of plea has been given, existing case management powers will enable the court to prepare the case for trial of its own motion or on any applications by the parties. For cases involving children or young person which must be sent to the Crown Court, the process of sending can also occur outside of court in the absence of the defendant: see clause 29).

#### **Power to proceed if accused under 18 absent from allocation proceedings.**

389. Paragraph 4 of Schedule 3 inserts a new section 24DA into the MCA 1980. Where the court is required to determine the allocation of a case in respect of a young defendant, then this enables a magistrates' court to do so in the defendant's absence where the young defendant has both failed to indicate a plea in writing and attend the hearing at which allocation is to be decided.
390. The clause provides a safeguard that the court can only proceed to allocate the case in absence if it is satisfied that notice has been served on the defendant. There is also provision that the defendant has been provided with an explanation to the effect that, if he or she does not engage online, then the court can proceed to deal with allocation in his or her absence: see new *subsection 24ZA(3)(g)* as inserted by Paragraph 2 of Schedule 3 above.
391. In cases where mode of trial is to be decided in the defendant's absence he or she is deemed to have indicated a not guilty plea, and the court will proceed to allocate the case for summary trial or trial on indictment, as appropriate. This allocation decision is made on the basis of whether the magistrates' sentencing powers would be adequate to deal with the case on conviction or not.
- 392. Section 51A of the Crime and Disorder Act 1998 - Sending cases to Crown Court; children and young people**
393. Paragraph 5 of Schedule 3 amends section 51A CDA 1998 so as to enable cases involving children and young persons which must be sent to the Crown Court to be able to be sent without a hearing. Criminal Procedure Rules can state when sending without a hearing is not to apply: new *subsection 51A(A2)*.
394. New *subsection (3A)* as inserted by Paragraph 5(5) sets out that the magistrates' court must give certain documents to the defendant which explain: the charge against the defendant; that the court

is required to send him or her to Crown Court for trial; and any other relevant information as required by the Criminal Procedure Rules. As soon as practicable after the relevant documents have been given to the defendant, the magistrates' court must send him or her to the Crown Court for trial. This can be done by a single justice and outside of a court hearing: new *subsection (3B)*.

395. The circumstances when joined cases or co-defendants are also to be sent to the Crown Court along with the main offence are to be removed from the face of the statute and dealt with by Criminal Procedure Rules: see new section 51A(4A) and (4B).

## Schedule 4: Live links in criminal proceedings

### Part 1 – Expansion of powers under the Criminal Justice Act 2003

396. Paragraphs 1 and 2 introduce a number of amendments to section 51 of the Criminal Justice Act 2003 ("CJA 2003") to expand the courts' powers to use technology across a wider range of hearings, and participants.

397. The court may direct that a person (but not a jury) take part in eligible criminal proceedings through the use of a live audio link or a live video link.

398. Paragraph 2(3) expands the list of "eligible criminal proceedings" in subsection (2) to include proceedings that are preliminary or incidental to an appeal to the Crown Court; a trial on indictment or any other trial in the Crown Court for an offence; proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964 (CPIA 1964); proceedings under Part 3 of the Mental Health Act 1983 (MHA 1983); proceedings under section 11 of the Power of the Criminal Courts (Sentencing) Act 2000 (CCSA 2000), or section 81(1)(g) of the Senior Courts Act 1981 or section 16 of the CJA 2003 in respect of a person who has been remanded by a magistrates' court on adjourning a case under that section of the 2000 Act; proceedings that are preliminary or incidental to an appeal to the criminal division of the Court of Appeal; a reference to the Court of Appeal by the Attorney General under Part 4 of the Criminal Justice Act 1988 (CJA 1988) (and associated preliminary and incidental proceedings); proceedings that are preliminary or incidental to the hearing of a reference under section 9 or 11 of the Criminal Appeal Act 1995 ("CAA 1995"); a hearing under section 142(1) or (2) of the Magistrates' Courts Act 1980 ("MCA 1980") or under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 (PCCSA 2000); proceedings that are preliminary or incidental to a hearing before the Court of Appeal under section 80 of the CJA 2003; and any hearing following conviction held for the purpose of making a decision about bail for the person convicted.

399. Paragraph 2(4) substitutes new *subsection (4)* so as to require the court to be satisfied that a live link direction is in the interests of justice before making one. By way of additional safeguard, it also provides for the parties, and the relevant youth offending team in youth cases, to be given the opportunity to make representations to the court before the court determines whether to make a live link direction.

400. Paragraph 2(5) inserts new subsections (4A) to (4G). The court may direct the use of live link to multiple, or all persons participating in particular proceedings, and may also give a direction which only applies to certain aspects of the proceedings, for example the giving of evidence. A person directed to give evidence in proceedings by live link must only give evidence in accordance with the direction. Persons outside of England and Wales may participate through a live link if the court so directs. These powers are subject to the restrictions set out in new Schedule 3A.

401. New *subsection (4D)* enables the court to rescind a live link direction at any time, but only if this is in the interests of justice, and only after having considered representations from the parties or relevant youth offending team in youth cases. New *subsection (4F)* clarifies a live link direction may be rescinded by the court of its own motion or on an application by a party (in the latter case there must have been a material change of circumstances since the direction was given). A hearing related to the giving or rescinding of a live link decision may happen with the use of live link.
402. Paragraph 2(7) substitutes new *subsections (7) to (12)*. *Subsection (7)* sets out particular factors which the court will have to consider when deciding whether to make a live link direction, some of which relate to all participants, and some specifically to witnesses. The court must give reasons for not giving (or for rescinding) live link directions. *Subsection (9)* enables a single justice to give or rescind a live link direction, or to require a person to attend a hearing about either matter by live link.
403. New *subsection (10)* prohibits a court from refusing or revoking a person's bail at a hearing taking place with participation through live audio link (other than for the purpose of giving evidence) if the person objects to the refusal or revocation. This does not apply if section 4 of the Bail Act 1976 does not apply to the person.
404. New *subsection (12)* prohibits the courts from dealing with a person for contempt of court at eligible criminal proceedings which are audio attended (other than for the purpose of giving evidence).
405. Paragraph 2 (8) omits section 52 of the CJA 2003 (effect of, and rescission of, direction) as it is no longer required.
406. Paragraph 3 amends section 53 of the CJA 2003 (magistrates' courts permitted to sit at other locations) to accommodate any participation through live link, rather than just the giving of evidence.
407. Paragraph 4 inserts new section 53A of the CJA 2003 (requirement to attend court, perjury) to provide that persons who participate in eligible criminal proceedings through a live audio or video link as directed by the court are to be treated as complying with any requirement to attend or appear before court, or to surrender to the custody of the court, and are to be treated as present in court for the purposes of the proceedings.. It also provides that a wholly audio or video proceeding is to be regarded as taking place at the location of the judge or justices. A statement made on oath by a witness outside the United Kingdom and given in evidence via live link is to be treated for the purposes of section 1 of the Perjury Act 1911 as having been made in the proceedings in which it is given in evidence.
408. Paragraph 5 amends section 54 of the CJA 2003 (warning to jury) in accordance with the expanded power to use live links.
409. Paragraph 6 amends section 55 of the CJA 2003 (rules of court) in accordance with the expanded power to use live links, and to enable the Criminal Procedure Rules to provide for contested as well as uncontested live link applications to be determined without a hearing.
410. Paragraph 7(2) amends section 56 of the CJA 2003 (interpretation) to provide definitions of 'bail', 'eligible criminal proceedings' and 'relevant youth offending team'.
411. Paragraph 7(3) substitutes new sections (2A) to (2E) which set out the meaning of a person taking part in eligible criminal proceedings, participation through live audio link, wholly audio proceedings, participation through live video link, and wholly video proceedings.
412. Paragraph 8 creates a new Schedule 3A to the CJA 2003, which introduces additional prohibitions and limitations on use of live links in certain circumstances.

413. Paragraph 1 of Schedule 3A provides that eligible criminal proceedings may be conducted as wholly audio proceedings if they meet one of the following conditions (unless the court is minded to deal with a person for contempt of court): the proceedings are preliminary or incidental to an appeal to the Crown Court or criminal division of the Court of Appeal, or to a reference to the Court of Appeal by the Attorney General under Part 4 of the CJA 1988, or to the hearing of a reference under s9 or 11 of the CAA 1995); a hearing following conviction held for the purpose of making a decision about whether to impose or vary conditions of bail in respect of the person convicted; or a hearing following conviction held for the purpose of deciding whether to grant or continue bail for the person convicted, and either section 4 of the Bail Act 1976 does not apply to the person, or the making of the decision is not disputed, and the court is not minded to revoke bail of its own motion.
414. Paragraph 2 of Schedule 3A limits wholly video proceedings to those proceedings listed in paragraph 1, as well as an appeal to the Crown Court which is an appeal only against sentence or, where the parties agree to this, an appeal arising out of a summary trial which was itself conducted as a wholly video hearing; proceedings which are preliminary or incidental to a hearing before the Court of Appeal under section 80 of the CJA 2003; any hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted; and proceedings in magistrates' courts for summary only, non-imprisonable offences, where a trial by a single justice on the papers was proposed, but which could not take place, and the parties agree to the trial being conducted wholly as video proceedings.
415. Paragraph 3 of Schedule 3A sets out that in eligible criminal proceedings which meet any of the conditions in paragraph 1 a defendant may not give evidence by live audio link. Persons other than the defendant may not give evidence by live audio link unless there are no suitable live video link arrangements and the parties agree they may do so. This is aimed to deal with the situation in *R v Clark* [2015] EWCA Crim 2192. See also CPR rule 3.2(5).
416. Paragraph 4 of Schedule 3A sets out that in eligible criminal proceedings which do not meet any of the conditions in paragraph 1, or where the court is minded to deal with a person for contempt of court, a defendant (or a person whom the court is minded to deal with for contempt of court) may not take part by live audio link, and other persons may only take part through a live audio link for the purpose of giving evidence and only then when there are no suitable video link arrangements and the parties agree. In proceedings under section 4A or 5 of the CPIA 1964, the defendant's representative may give this agreement.

## **Part 2 – Other amendments**

417. Part 2 amends the CAA 1968 in accordance with the expanded powers to use live links under section 51 of the CJA 2003 in relation to appeals to the criminal division of the Court of Appeal. It also provides for a single judge of the Court of Appeal and the Registrar of Criminal Appeals to be able to exercise these powers.

## **Schedule 5: Live links in other criminal hearings**

### **Part 1 – Expansion of powers under the Crime and Disorder Act 1998**

418. Part 1 expands the use of live links in Part 3A of the Crime and Disorder Act 1998 (CDA 1998) beyond the attendance of the accused at certain preliminary, sentencing and enforcement hearings to all participants in preliminary, sentencing and enforcement hearings.
419. Paragraph 2(4) inserts new *subsections (4) to (10)* which clarify the meaning of a person taking part in a hearing, participation through live audio link, wholly audio proceedings, participation through live video link, and wholly video proceedings. New *subsection (10)* sets out that nothing

in this Part affects the power of the court to make an order, give directions or give leave of a description in relation to any witness, or to exclude evidence at its discretion. Paragraph 3 amends section 57B to expand the availability of live links at preliminary hearings in a magistrates' court or the Crown Court to include live video and audio links and all persons participating in the hearing, not solely live video links for the accused when in custody. Safeguards are introduced such that the court in making any live link direction in a preliminary hearing must be satisfied that it is in the interests of justice to do so. The parties or the relevant youth offending team must also have been given the opportunity to make representations.

420. Paragraph 3 also inserts new *subsections (3A) to (3G)* which make similar provision in relation to live links in preliminary hearings as in paragraph 2(56) of Schedule 4 does in relation to live links in 'eligible criminal proceedings'.
421. Paragraph 3(5) substitutes new *subsection (6)* which specifies that the court will need to give its reasons for not giving (or for rescinding) live link directions.
422. Paragraph 3(6) introduces new *subsections (8) and (9)* which prohibit a court from refusing or revoking bail for a person who objects to the refusal or revocation, or accepting a guilty plea by the defendant, at a preliminary hearing taking place with participation through live audio link (other than for the purpose of giving evidence).
423. New *subsection (10)* prohibits the courts from dealing with a person for contempt of court at preliminary hearings with participation through live audio link (other than for the purpose of giving evidence).
424. Paragraph 3(7) omits sections 57C of the CDA 1998 (use of live link at preliminary hearings where accused is at police station) and 57D of the CDA 1998 (continued use of live link for sentencing hearing following a preliminary hearing) as they are no longer required.
425. Paragraph 4 introduces a number of amendments to section 57E of the CDA 1998 to expand the use of live links in sentencing hearings in a similar way to preliminary hearings.
426. Paragraph 5 amends section 57F of the CDA 1998 to expand the use of live links in enforcement hearings in a similar way to preliminary and sentencing hearings
427. New *subsection (11)* provides that a court may not impose imprisonment or detention in default of payment of a sum at an enforcement hearing where proceedings are being conducted with participation via live audio link (other than for the purpose of giving evidence).
428. Paragraph 6 inserts new section 57G of the CDA 1998 (requirement to attend court, perjury) which makes identical provision in relation to hearings conducted in accordance with a direction under section 57B, 57E or 57F as Paragraph 4 of Schedule 4 does in relation to "eligible criminal proceedings" conducted in accordance with a live link direction.
429. Paragraph 7 creates a new Schedule 3A to the CDA 1998, which introduces additional prohibitions and limitations on use of live links.
430. Paragraph 2 of Schedule 3A provides that a defendant may not give evidence at a preliminary hearing through live audio link. Persons other than the defendant may give evidence through live audio link but only where there are no suitable live video link arrangements and the parties agree they may do so.
431. Paragraph 3 of Schedule 3A provides that at a preliminary hearing at which the grant or continuation of bail is disputed, the defendant may not take part using live audio link. All other persons may only take part using live audio link for the purpose of giving evidence (and only

where there are not suitable live video link arrangements and the parties agree).

432. Paragraph 4 of Schedule 3A sets out that where the court is minded to deal with a person for contempt of court, a defendant (or a person whom the court is minded to deal with for contempt of court) may not take part by live audio link, and other persons may only take part through a live audio link for the purpose of giving evidence and only then when there are no suitable video link arrangements and the parties agree.
433. Paragraph 5 of Schedule 3A provides that a hearing under section 4 of the CPIA1964 may not be conducted as a wholly video hearing or with participation through live audio link (other than for the purpose of giving evidence).
434. Paragraph 6 of Schedule 3A provides that the court may not give a direction for a preliminary hearing to be conducted with participation through live audio link (other than for the purpose of giving evidence) if it expects that the defendant will enter a plea of guilty.
435. Paragraph 9 of Schedule 3A provides that a sentencing hearing may not be conducted with participation via live audio link (other than for the purpose of giving evidence where there are no suitable live video link arrangements available and the parties agree).
436. Paragraph 12 of Schedule 3A provides that the person liable to pay the relevant sum must not give evidence in an enforcement hearing through live audio link. Other persons may participate through live audio link, but only for the purpose of giving evidence, and only where there are no suitable live video link arrangements available and the parties agree.
437. Paragraph 13 of Schedule 3A provides that if the court is minded to impose imprisonment or detention in default of a payment of a sum or financial penalty at an enforcement hearing, the hearing must not be conducted with participation through live audio link (other than for the purpose of giving evidence).
438. Paragraph 14 of Schedule 3A makes identical provision in relation to contempt of court in enforcement hearings as Paragraph 4 does in relation to contempt of court in preliminary hearings.

## **Part 2 – Other amendments**

439. Part 2 makes amendments to the Police and Criminal Evidence Act 1984 in accordance with the expanded powers to use live links under section 57B of the CDA 1998. It also amends section 22 of the Prosecution of Offences Act 1985 to reflect the fact that a jury no longer determines whether a defendant is unfit to plead. It omits section 32 of the Criminal Justice Act 1988 (evidence given by persons abroad through television links) as it is no longer required.

## **Schedule 6: Public participation in court and tribunal proceedings conducted by video or audio**

### **Criminal, civil and family proceedings**

440. Paragraph 1 of Schedule 6 inserts new sections 85A, 85B, 85C and 85D to the Courts Act 2003 (CA 2003), making provisions for the live streaming of wholly audio or video hearings.

#### New Section 85A – Enabling the public to see and hear proceedings

441. *Subsections (1) and (2)* provide that the court may direct for proceedings which are conducted as wholly video proceedings or wholly audio proceedings (a ‘fully virtual’ hearing) to be broadcast for the purpose of enabling members of the public to observe proceedings. The broadcast is to be in a manner specified by the direction. The court may also direct that a recording of proceedings may also be made for record-keeping purposes.

442. *Subsection (3)* provides that these directions may apply to the whole, or to part, of the proceedings.

#### New Section 85B – Offences of recording or transmission in relation to broadcasting

443. *Subsection (1)* makes it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of any image or sound of a wholly audio or video proceeding broadcast in accordance with a direction under s85A.

444. *Subsection (2)* makes it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of a person observing (viewing or listening) such a broadcast.

445. *Subsection (3)* provides a defence for a person accused of an offence under s85B(1) or (2) to prove that he or she was not in a designated live-streaming premises, and that he or she did not know, and could not reasonably have known, that the image or sound was being broadcast in accordance with a direction under section 85A, or that the person recorded was observing a relevant broadcast.

446. *Subsection (4)* provides that the maximum penalty for being found guilty of these offences is a fine not exceeding level 3 on the standard scale.

447. *Subsection (5)* clarifies that it does not matter whether the person making the transmission or recording intends for it to be seen or heard by another person.

448. *Subsection (6)* clarifies that a recording or transmission is ‘unauthorised’ unless it has been authorised under s85A by the court; or (generally or specifically) by the court or Lord Chancellor.

#### New Section 85C – Offences of recording or transmitting participation through live link

449. *Subsection (1)* makes it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of an image or sound which is being transmitted through a live audio or video link.

450. *Subsection (2)* makes it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of a person’s participation in court proceedings through a live link. This includes a recording or transmission of the person’s own participation.

451. *Subsection (3)* provides a defence for a person accused of an offence under s85C (1) or (2) to prove that he or she did not know, and could not reasonably have known, that the image or sound was being transmitted through a live audio or video link; or that it was an image of, or sound made by, a person participating in court proceedings through live audio or video link.

452. *Subsections (4) to (6)* make identical provisions as those in *subsections (4) to (6)* of s85A for the offences set out in this section.

#### New Section 85D – Interpretation

453. *Subsection (2)* defines the ‘court’ for the purposes of s85A-C. Definitions are also given for ‘court proceedings’, ‘designated live-streaming premises’, ‘recording’ and ‘transmission’.

454. *Subsections (3) and (5)* describe the elements required for participation through a live video link and live audio link.

455. *Subsections (4) and (6)* describe the elements required for proceedings to be conducted wholly by video proceedings and audio proceedings.

456. *Subsection (7)* clarifies the meaning of transmission of an image or sound through live audio and live video link.

### **First-tier Tribunal and Upper Tribunal**

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

457.Paragraph 2 of Schedule 6 inserts new sections 29A, 29B, 29C and 29D to the Tribunals Courts and Enforcement Act 2007, making provisions for the live streaming of wholly audio or wholly video hearings.

458.New sections 29A to 29D make identical provision as that in s85A to 85D CA2003 for wholly video or wholly audio proceedings in First-tier Tribunals and Upper Tribunals.

### **Employment tribunals and the Employment Appeal Tribunal**

459.Paragraph 3 of Schedule 6 inserts new sections 39A, 39B, 39C and 39D to the Employment Tribunals Act 1996, making provisions for the live streaming of wholly audio or wholly video hearings.

460.New sections 39A to 39D make identical provision as that in s85A to 85D CA2003 for wholly video or wholly audio proceedings in employment tribunals and the Employment Appeal Tribunal.

### **Schedule 7: Automatic online conviction and standard statutory penalty**

461.The schedule makes various amendments to other legislation consequential on the replacement of the single justice procedure notice with the written procedure notice.

462.Paragraph 1 of Schedule 7 amends the Crime (International Cooperation) Act 2003 and the Criminal Law Act 1977 which have UK wide extent and application; the Vehicle Excise and Registration Act 1994 which has UK wide extent but only applies in England and Wales; and the Road Traffic Offenders Act 1988 which extends and applies to England, Wales and Scotland. These amendments substitute the reference in those Acts to a ‘single justice procedure notice’ with references to a ‘written procedure notice’.

463.Section 16A of the Magistrates’ Courts Act 1980 is amended to clarify that the single justice procedure can be used to prosecute legal persons such as corporations (as opposed to the automatic online conviction and statutory standard penalty procedure, which is only available for individuals over the age of 18) and to provide that the single justice procedure may not be used where the accused has accepted the automatic online conviction option.

464.Section 108 of the Magistrates’ Courts Act 1980 is amended so that any person convicted under section 16H of that Act may not appeal to the crown court against the conviction or sentence, unless they have been re-sentenced by a magistrates’ court under new section 16M(5)(b).

465.Section 8 of the Road Traffic Offenders Act 1988 which extends and applies to England, Wales and Scotland is amended consequentially by paragraph 5 to ensure that the relevant provision applies appropriately to the new online convictions procedure.

466.Schedule 5 to the Courts Act 2003, which deals with arrangements for the collection of fines and other sums imposed on conviction, is amended to apply its provisions as appropriate to those subject to a notice of penalty within the meaning of new section 16K of the Magistrates’ Courts Act 1980. The intention is that all the enforcement powers available in respect of a court-imposed fine will be available in respect of a standard statutory penalty, including the ability for a fines officer to allow payment by instalments.

467.Paragraph 6(9) is transitional provision to specify the relevant fines officer for the purpose of these provisions, until the coming into force of amendments to Schedule 5 of the Courts Act 2003 made elsewhere in this Bill, which will make this specification unnecessary.

### **Schedule 8: Practice Directions**

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

468. Part 1 of this schedule allows the Lord Chief Justice or his nominee, with the approval of the Lord Chancellor, to issue practice directions in civil and family proceedings to which online procedures apply. The Lord Chancellor's approval of a practice direction is not required where the practice direction consists of guidance about the application and interpretation of the law or the making of judicial decisions. Such directions require consultation with the Lord Chancellor as well as with the approval of the Lord Chief Justice. Part 2 of Schedule 8 sets out similar procedures in respect of the First-tier and Upper-tier tribunals and Part 3 of Schedule 8 sets out similar procedures in respect of Employment and Employment Appeal Tribunals. Practice directions in Parts 2 and 3 which require only consultation with (rather than approval of) the Lord Chancellor will require the approval of the Senior President of Tribunals, rather than the Lord Chief Justice.

### Schedule 9: Amendments relating to the online procedure in courts and tribunals

469. Schedule 9 provides amendments to existing legislation as a result the new online procedure in courts and tribunals. In particular, these amendments provide that the standard civil, family and tribunal procedure rules do not apply to proceedings which are subject to the online procedure rules, but will do so if the online procedure rules should cease to apply. Part 2 contains other consequential amendments.

### Schedule 10: Employment Tribunals Procedure

470. Schedule 10 makes provision (Part 1) to amend the Employment Tribunals Act 1996 to provide new powers to make procedure rules.

471. Paragraph 2 substitutes section 7 of the Employment Tribunals Act 1996. This new section provides that procedure rules for employment tribunals are to be made by the Tribunal Procedure Committee as constituted under Part 2 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 (as amended by this Bill).

472. Paragraph 2 also introduces new section 7AZA into the Employment Tribunals Act 1996 which provides a new power for the Lord Chancellor to amend, repeal or revoke any enactment in pursuance of a rule change. This power is based upon the existing provisions in the Tribunals, Courts and Enforcement Act 2007 and the Civil Procedure Act 1997. An order exercising this power which amends, repeals or revokes primary legislation is subject to affirmative resolution procedure. The aim of this provision is to ensure that the employment tribunal system operates smoothly and without conflicting with legislation on the statute book.

473. Paragraph 3 substitutes section 30 of the Employment Tribunal Act 1996. This provides that procedure rules for the Employment Appeal Tribunal are to be made by the Tribunal Procedure Committee as constituted under Part 2 of Schedule 5 to the Tribunals Courts and Enforcement Act 2007 (as amended by this Bill).

474. Paragraph 3 also introduces new sections 30A and 30B into the Employment Tribunals Act 1996. Section 30A provides a new power for the Lord Chancellor to amend, repeal or revoke any Act in pursuance of a rule change. This power is based upon the existing provisions in the Tribunals, Courts and Enforcement Act 2007 and the Civil Procedure Act 1997. An order exercising this power is subject to the affirmative resolution procedure. The aim of this provision is to ensure that the employment tribunal system operates smoothly and without conflicting with legislation on the statute book.

475. Section 30B provides the Lord Chancellor with a new power to make regulations to determine the procedure that the Employment Appeal Tribunal is to follow in national security cases. This power is based on the existing provisions in section 10 of the Employment Tribunals Act 1996. The aim of the provision is to ensure that national security cases can be managed consistently across the employment tribunal system.

476. Paragraph 4 introduces new section 42A into the Employment Tribunals Act 1996. This provides for any references to Employment Tribunal Procedure Rules in other legislation to mean Procedure Rules made under sections 7 or 30 of the Employment Tribunal Act 1996 (as amended by this Bill) as appropriate.
477. Paragraph 5 inserts Schedule A1 into the Employment Tribunals Act 1996. Schedule A1 states (Part 1) the overriding objective to be followed by the Tribunal Procedure Committee when making Procedure Rules for employment tribunals and the Employment Appeal Tribunal, and makes provision for (Part 2) what the Employment Tribunal Procedure Rules may contain and (Part 3) the process for making Employment Tribunal Procedure Rules.
478. Part 2 of Schedule A1 sets out matters which may be covered by Employment Tribunal Procedure Rules. It empowers the Tribunal Procedure Committee to make procedure rules for Employment Tribunals and the Employment Appeal Tribunal which include provisions in respect of:
- Delegation of functions to staff (Paragraph 2)
  - Time limits for case management (paragraph 3), to include initiating or taking steps in proceedings before the tribunal.
  - Determining where to start proceedings (Paragraph 4)
  - Repeat applications (Paragraph 5)
  - A tribunal acting of its own initiative (Paragraph 6)
  - The extent to which matters may be decided without a hearing and whether a hearing may be public or private (Paragraph 7)
  - Proceedings without prior notice (Paragraph 8)
  - Representation (Paragraph 9)
  - Intervention by Secretary of State, allowing him or her to appear and be heard by the tribunal (paragraph 10)
  - Evidence, witnesses and attendance, including provisions relating to the enforcement of compliance of an order of the Employment Tribunal by the Employment Appeal Tribunal and the payment of expenses for those attending hearings (paragraph 11)
  - Use of information (Paragraph 12)
  - Set-off (Paragraph 13)
  - Review of decisions (Paragraph 14)
  - Correction of decisions and setting aside of decisions on procedural grounds (Paragraph 15)
  - Registration and proof of decisions (Paragraph 16)
  - Ancillary powers (Paragraph 17)
  - Rules that may refer to practice directions (Paragraph 18)
  - Presumptions (Paragraph 19)
  - Differential provision (Paragraph 20)

479. This is not an exhaustive list and does not limit the broad power to make procedure rules. Rather, the Tribunal Procedure Committee will exercise its judgement, within the process set out in Part 3 of Schedule A1, to determine which rules are needed. It is not intended that rules that cover every aspect listed will necessarily be produced. Rather the list in Part 2 includes matters which could be considered an extension of the general provisions.

480. Part 3 of Schedule A1 details the process by which Tribunal Procedure Rules are to be made. This makes provision for the process for making Procedure Rules for the unified tribunals system contained in Part 3 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 to apply. Under this process the committee is required to consult such persons as it considers appropriate and the Lord President, if rules relate to Scotland before rules are made. In order for the rules to be submitted to the Lord Chancellor they must be approved by the committee. The Lord Chancellor's powers once rules are submitted to him are limited to powers to allow or disallow. The Lord Chancellor does, however, have the power to specify a purpose which must be achieved by rules. This is to ensure that, although the Tribunal Procedure Committee is independent, the Lord Chancellor is able to set objectives for the rules.

481. Once allowed by the Lord Chancellor, rules made under this process take effect as a statutory instrument subject to negative resolution procedure. The current employment procedure regulations made by the Secretary of State and the Lord Chancellor will continue to be in force until new rules are made by the Tribunal Procedure Committee.

482. Part 3 also makes consequential amendments to facilitate the above.

### Schedule 11: Court and tribunal staff: provision of legal advice and judicial functions

483. Paragraph 13 amends section 31C(2) of the Matrimonial and Family Proceedings Act 1984 ("MFPA 1984") (which makes provision for precedent in relation to certain decisions of the Family Court), in consequence of replacing references to justices' clerks or assistants to justices' clerks with persons authorised under section 67A(2) of the Courts Act 2003. The effect of this is that persons authorised under section 67A(2) must follow decisions made by a judge listed in section 31C(1)(a) to (i) in the same way that a justices' clerk or assistant to a justices' clerk previously had to.

484. Paragraph 14 substitutes a new section 31O MFPA 1984 which now provides for the giving of legal advice to judges of the Family Court by persons authorised by the Lord Chief Justice or his nominee. The functions authorised in new section 31O(1) largely replicate those in the current section 31O(2) that relate to justices' clerks. The current power in section 31O(1) of the Lord Chancellor to authorise justices' clerks to carry out functions of the family court or a judge of the court, is now covered by a power for rules of court under new section 67A(1) of the Courts Act 2003.

485. New section 31O(2) places limitations on persons who can be authorised to give legal advice by the Lord Chief Justice. A person can only be authorised if they are appointed under section 2(1) of the Courts Act 2003 or under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007) (i.e. members of court or tribunal staff) and have the qualifications prescribed by the Lord Chancellor in regulations (subject to the negative resolution procedure) with the agreement of the Lord Chief Justice.

486. New sections 31O(4) and (5) MFPA 1984 ensure the independence of persons authorised to give legal advice under section 31O(1) by providing that they are subject only to the direction of the Lord Chief Justice and are not subject to the direction of the Lord Chancellor or any other person.

487. The Lord Chief Justice may nominate one or more judicial office holders or members of court or tribunal staff to carry out his authorisation and direction functions (section 31O(6)). Independence is ensured for nominees who are members of court or tribunal staff by providing

that they are subject only to the direction of the Lord Chief Justice or a judicial officer holder (section 31O(7)).

i. Crime and Disorder Act 1998

488.Paragraph 19 omits subsections 49(2) to (5) of the Crime and Disorder Act 1998 (“CDA 1998”) which makes provision for rules to provide for certain powers of a magistrates’ court that may be exercised by a single justice of the peace to be exercised by a justices’ clerk. Such power will instead be provided under new section 67A of the Courts Act 2003.

489.Paragraph 20 makes consequential provision on the removal of justices’ clerks, amending section 50(4), removing reference to justices’ clerks and replacing such reference with a person authorised under new section 67A(2) of the Courts Act 2003 to exercise the powers of a single justice. This means that (as is currently the position for a justices’ clerk) a person authorised under section 67A(2) Courts Act 2003 cannot remand an accused person in custody or, without the consent of the prosecutor and the accused, remand the accused on bail on conditions other than those (if any) previously imposed.

ii. Courts Act 2003

Sections 28 and 29: Legal Advice

490.Paragraph 22 substitutes new sections 28 and 29 for previous sections 27 to 29 of the Courts Act 2003 (“CA 2003”). Current section (27) sets out how a justices’ clerk may be appointed and designated, the qualifying criteria necessary to be appointed as such, and provisions dealing with the appointment to a local justice area. The new sections follow a similar approach to new section 31O MFPA 1984 (above) by setting out provisions relating to the authorisation and independence of court staff who will provide legal advice.

491.New section 28 CA 2003 replaces the current provision for legal advice to be provided by justices’ clerks to justices of the peace so that the function of giving legal advice is exercised by a person authorised by the Lord Chief Justice or someone nominated by him. Authorised persons must be members of court and tribunal staff and have such qualifications as are prescribed in regulations (subject to the negative resolution procedure) made by the Lord Chancellor with the agreement of the Lord Chief Justice (section 28(3)). The Lord Chief Justice may nominate one or more judicial office holders or members of court or tribunal staff to carry out his authorisation functions (section 28(5)). Independence is ensured for nominees who are members of court or tribunal staff by providing that they are subject only to the direction of the Lord Chief Justice or a judicial officer holder (section 28(6)).

492.New sections 29(1) to (4) provide for a person authorised to exercise functions under new section 28(1) to be subject only to the direction of the Lord Chief Justice or his nominee. *Subsection (2)* specifies that apart from such directions authorised persons are not subject to the direction of the Lord Chancellor or any other person. The power to give directions can be delegated under subsection (3) to a nominated judicial office holder or member of court or tribunal staff. As with the authorisation function, independence is ensured for nominees giving directions who are members of court or tribunal staff by providing that they are subject only to the direction of the Lord Chief Justice or a judicial officer holder (*subsection (4)*).

New Part 6A CA 2003: Exercise of court jurisdiction by authorised persons

493.Paragraph 28 inserts new Part 6A (Exercise of judicial functions by authorised persons). It creates the power (by rules of court) to authorise court and tribunal staff to exercise the functions of a court to which the duty in section 1 of the CA 2003 applies, or of any judge of the court. This includes the Family Court, Court of Protection, High Court, magistrates’ courts and, for the first time, the Crown Court. It also provides for the authorisation, independence and liability of such

staff.

494. There is equivalent provision in relation to authorisation, independence and liability for tribunals in Part 2 of the Schedule inserting new sections 29E to 29I of the Tribunals, Courts and Enforcement Act 2007.
495. New section 67A makes provision to enable authorised persons to exercise the functions of the court, or of any judge of the court. Subsection (1) provides that powers to make rules of court include power to provide for the functions of a court to which the duty in section 1 of the CA 2003 applies, or of any judge of the court, to be exercised by court or tribunal staff, and allows the rules to specify the appropriate level of experience or qualifications required.
496. New section 67A(2) requires a person to be authorised by the Lord Chief Justice before being able to exercise the jurisdiction of a court under rules of court.
497. New section 67A(5) provides for the Lord Chief Justice to be able to nominate one or more judicial office holders or members of court or tribunal staff to exercise his or her functions of authorisation under this section.
498. New section 67A(6) ensures independence for nominees carrying out authorisation functions who are members of court or tribunal staff by providing that they are subject only to the direction of the Lord Chief Justice or a judicial officer holder.

#### 67B Directions and independence: authorised persons

499. New section 67B provides that an authorised person under new section 67A is not subject to the direction of any person other than the Lord Chief Justice or his nominee. The Lord Chief Justice may nominate one or more judicial officer holders or members of court or tribunal staff to carry out these functions. Independence is ensured for nominees carrying out direction functions who are members of court or tribunal staff by providing that they are subject only to the direction of the Lord Chief Justice or a judicial officer holder.

#### 67C Protection of authorised persons

500. New sections 67C to 67E CA 2003 provide for the same protections from legal proceedings, costs in legal proceedings, and indemnities that currently apply to justices' clerks and assistants to justices' clerks under sections 31 to 35 CA 2003 to apply to authorised persons under new section 67A. These provisions will now apply to all authorised persons exercising the functions of a court or judge of the court under procedure rules.
501. New section 67C(1)(a) and (b) provide that no legal action can be brought against an authorised person in respect of anything done or not done in execution of their duties as an authorised person or relating to their jurisdiction.
502. New section 67C(2)(a) and (b) provide that legal action can be brought against the authorised person in respect of anything done or not done in purported execution of their duties as an authorised person or relating to a matter not within their jurisdiction if it is proven that they acted in bad faith.
503. New section 67C(3)(a) and (b) provide that if legal action is brought against an authorised person under circumstances where the individual is protected under 67C(1) or (2) then the court may strike out the proceedings and may order costs against the person bringing the action.

#### 67D Costs in legal proceedings: authorised persons

504. New section 67D(1) provides that a court cannot order an authorised person to pay costs in respect of what the person does or does not do while executing their duties and exercising the functions of a court or judge.

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505. New section 67D(2)(a) and (b) provides that the provision in 67D(1) does not apply where the authorised person is being tried for an offence or appealing against a conviction or acted in bad faith.
506. New section 67D(3) provides that a court prevented, under 67D(1), from ordering an authorised person to pay costs, may instead order the Lord Chancellor to pay the costs.
507. New section 67D(4)(a) and (b) provides that the Lord Chancellor may, after consulting with the Lord Chief Justice, make regulations to decide when a court must and must not order the Lord Chancellor to pay costs under section 67D(3) and to decide how the amount is to be determined.
508. New section 67D(5) provides that the Lord Chief Justice may nominate a judicial office holder to exercise his functions under this section.

#### 67E Indemnification of authorised persons

509. New section 67E(1) and (2) set out which costs the authorised person is protected against including the costs of disputing a claim, damages awarded against and ordered to be paid by the person, costs of settling a claim and any costs reasonably incurred in connection with proceedings.
510. New sections 67E(3) to (7) provide that the Lord Chancellor must indemnify the authorised person if the person acted reasonably and in good faith. The Lord Chancellor shall decide whether, and to what extent the person shall be indemnified and can determine, before certain costs are incurred or a settlement made, whether those certain costs will be paid (subject to such limitations as the Lord Chancellor thinks proper, and providing it does not affect the outcome of the proceedings).

#### Further amendments to the Courts Act 2003

511. Paragraph 29(2) amends section 70 CA 2003 (Criminal Procedure Rules Committee) so that a person authorised to provide legal advice under new section 28(1) CA 2003 is required to be a member of the committee (replacing the reference to a justices' clerk).
512. Paragraph 29(3) inserts new section 70(4A) CA 2003 to provide that an authorised person appointed to the Criminal Procedure Rules Committee is not subject to the direction of the Lord Chancellor or any other person.
513. Paragraph 31 makes identical amendments to section 77 CA 2003 in respect of a person authorised to provide legal advice under section 31O(1) of the MFPA 1984 in relation to membership of the Family Procedure Rule Committee.
514. **Part 2** of the Schedule deals with the exercise by court and tribunal staff of the jurisdiction of the employment tribunal, Employment Appeal Tribunal, First-tier Tribunal and the Upper Tribunal. It provides for the authorisation of court and tribunal staff to exercise functions of the tribunal by the Senior President of Tribunals and makes similar provision for the independence, protection and liabilities of such staff as provided in new sections 67B to 67E CA 2003.

515. Part 2 makes some notable consequential amendments:

#### Tribunals, Courts and Enforcement Act 2007

516. Paragraph 34 inserts wording into subsection 8(2) of the Tribunal, Courts and Enforcement Act 2007 ("TCEA 2007") to provide that the Senior President of Tribunals may not, under section 8(1) delegate his functions under new sections 29F and 29H of, or Paragraph 3 of Schedule 5 to the TCEA 2007 or of Paragraph 2 of Schedule 1A to the Employment Tribunals Act 1996.
517. Paragraph 35 inserts new sections 29E to 29I TCEA 2007 with the effect of giving equivalent protection to officers and staff authorised by the Senior President of Tribunals to exercise the

functions of a tribunal as the protection given to authorised persons exercising the functions of a court or judge of the court under new section 67A of the CA 2003.

Section 29E Meaning of “authorised person”

518. New section 29E defines an authorised person as a person authorised by the Senior President of Tribunals under Paragraph 3 of Schedule 5 to exercise the functions of the First-tier Tribunal and the Upper Tribunal or under Paragraph 2 of Schedule A1 to the Employment Tribunals Act 1996 to exercise functions of an employment tribunal or the Employment Appeal Tribunal.

Section 29F: Directions and independence: authorised persons

519. New sections 29F(1) and (2) provide that the Senior President of Tribunals, or his delegate, may give directions to an authorised person but that apart from these directions an authorised person is not subject to the directions of the Lord Chancellor or any other person when exercising the functions of a tribunal.

520. New sections 29F(3) and (4) provide that the Senior President of Tribunals may delegate this direction function to one or more judicial officer holders or members of court or tribunal staff. Independence is ensured for delegates who are members of court or tribunal staff by providing that they are subject only to the direction of the Senior President of Tribunals or a judicial office holder when exercising these functions.

Section 29G: Protection of authorised persons

521. New sections 29G(1) to (4) set out the situations in which actions can or cannot be brought against authorised persons and how the court should deal with an action brought inappropriately.

Section 29H: Costs or expenses in legal proceedings: authorised persons

522. New section 29H deals with when costs in relation to proceedings against an authorised person can and cannot be made and against who those costs can be made. It inserts a new power for the Lord Chancellor to make regulations (after consulting the Senior President of Tribunals or his delegate (who must be a judicial office holder)) specifying when a court may order the Lord Chancellor to pay costs in respect of proceedings against an authorised person, and how the amount should be determined. As a consequence, paragraph 36 amends section 49 TCEA 2007 to provide that the negative resolution procedure applies.

Section 29I: Indemnification of authorised persons

523. New sections 29I(1) to (6) set out which costs the authorised person is protected against and describe the conditions under which the Lord Chancellor must indemnify authorised persons.

524. Paragraph 37(2) amends Schedule 5 (Tribunal Procedure Rules), paragraph 3 so that it adds persons appointed under section 2(1) Courts Act 2003 to those appointed under section 40(1) TCEA 2007, as those persons who can be authorised to exercise the functions of the tribunal.

525. Paragraph 37(3) amends Schedule 5 (Tribunal Procedure Rules), paragraph 3 so that it now provides for a person to exercise functions by virtue of Tribunal Rules only if authorised by the Senior President of Tribunals or his delegate. The Senior President of Tribunals may delegate this authorisation function to one or more judicial officer holders or members of court or tribunal staff. Independence is ensured for delegates who are members of court or tribunal staff by providing that they are subject only to the direction of the Senior President of Tribunals or judicial office holder.

526. Paragraph 2 of Schedule A1 to the Employment Tribunals Act 1996 provides equivalent provisions concerning the delegation of functions to staff in relation to employment tribunals and the Employment Appeal Tribunal.

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## Schedule 12: Abolition of local justice areas

527. Schedule 12 makes consequential amendments to various Acts which are necessary following the abolition of local justice areas. In particular:

528. Paragraph 2 amends section 27A of the **Magistrates' Courts Act 1980** concerning the power to transfer criminal proceedings so that a magistrates' court may at any time transfer a case to another magistrates' court without the defendant having to physically attend the original court before the case is transferred.

529. Paragraph 4 amends section 57A(1) concerning the transfer of civil proceedings to enable a magistrates' court to transfer a case without the parties having to physically attend the original court before the case is transferred.

530. Paragraph 8 removes section 89, which requires a Transfer of Fines Order for the transfer of fines from one local justice area to another.

531. Paragraph 11 amends section 148(2), so that court business is no longer tied to a particular local justice area but can be conducted by any court in England and Wales.

532. Paragraph 14 amends section 46 of the **Police and Criminal Evidence Act 1984** which governs the location of the magistrates' court to which the police should direct a defendant to appear after he or she has been charged with an offence. It provides that a person charged with an offence should be brought before the magistrates' court:

- i. as soon as practicable, and in any event no later than the day after the day on which he or she was charged;
- ii. except where that day is a Sunday, Christmas Day, or Good Friday, in which case the person must be brought before a magistrates' court the first day after the day on which the person was charged that is not one of those days.

533. The amendments also remove the requirement for a designated officer to arrange for a magistrates' court to sit as this provision is no longer considered necessary. This is because the increased use of technology and video links by the courts should mean that there would always be a magistrates' court sitting somewhere in the country (except on a Sunday, Christmas Day or Good Friday) which the defendant could appear before, whether or not it is near his or her physical location. The provision has been retained which ensures that a defendant who is in hospital should not be required to be brought before a court if he or she is not well enough to do so.

534. Paragraphs 20 and 21 amend sections 73(6) and 74(4) of the **Powers of Criminal Courts (Sentencing) Act 2000**, to the effect that the local justice area in which the offender resides will no longer be named in a reparation order, and arrangements for implementing reparation orders should be available in the area in which the offender resides or will reside (rather than the local justice area named in the order). References to local probation boards have been removed as they no longer exist.

535. Paragraph 24 amends section 140(1), to the effect that a fine imposed, or a recognizance forfeited by the Crown Court shall be treated for the purpose of collection, enforcement and remission of the fine or other sum as having been imposed or forfeited by a magistrates' court.

- 536.Paragraph 26 amends paragraph 1(2) of Schedule 5, to the effect that any summons or warrant issued under paragraph 1 shall direct the offender to appear or be brought before any magistrates' court.
- 537.Paragraph 33 removes section 8 of the **Courts Act 2003** and the requirement that England and Wales should be divided into separate local justice areas specified by the Lord Chancellor for the purposes of assigning magistrates and cases.
- 538.Paragraph 34 makes a number of amendments to section 10. It removes the requirement for the Lord Chief Justice to appoint magistrates to a particular local justice area and removes any restrictions as to where magistrates can be assigned to sit in England and Wales. It removes *subsection (4)* which contains a power for rules to make provision about training courses to be completed by lay justices. Paragraph 35 introduces a new section 10A providing that the Lord Chief Justice may make arrangements for the deployment, training, development and appraisal of lay justices, as well as in respect of approval for magistrates to preside in court and authorisations for magistrates to act as judges of the family court or as a member of the youth courts.
- 539.Paragraph 37 amends section 16 which sets out the arrangements for keeping records of serving lay justices. It removes any requirement for records to be kept by local justice area and replaces these with more general requirements to ensure that an accurate record is maintained for England and Wales.
- 540.Paragraph 38 removes sections 17 to 20 which deal with the organisation and management of magistrates, including: the election of Chairman and deputy Chairmen (section 17) and the rights to preside and size of bench (section 18); the training and development of magistrates (section 19); and the power to make rules for these arrangements (section 20). The purpose of making these arrangements non-statutory is to ensure that the organisation of magistrates becomes a matter for the judiciary (as it currently is for judges) and can be managed by way of a protocol allowing for more flexibility (taking account of the removal of local justice areas) and greater judicial control. These provisions are replaced with new section 10A, referred to above.
- 541.Paragraph 41 amends section 27 to remove the requirement for justices' clerks to be assigned to particular local justice areas.
- 542.Paragraph 42 makes a number of amendments to section 30 which governs the distribution of magistrates' court business among local justice areas. These amendments create more flexible arrangements which would mean that, irrespective of where a case is initiated, a case could be listed to be heard, for example, either at the court closest to where the victims and witnesses live or at a less busy neighbouring court to ensure that it is heard at the earliest opportunity. The changes remove references to local justice areas but retain the power of the Lord Chancellor (with the concurrence of the Lord Chief Justice) to make directions as to:
- a. the places in England and Wales at which magistrates' courts may sit, having regard to the need to ensure that court-houses are accessible to the public;
  - b. the distribution of the general business of magistrates' courts, having regard to:
    - where the offence is alleged to have been committed;
    - where the person charged with the offence resides;
    - where the witnesses, or a majority of the witnesses, reside;
    - where cases raising similar issues are being dealt with; and

c. the days and times at which magistrates' court may sit.

543. The current section 30 directions will apply to all cases listed and initiated before the commencement of these provisions, as well as those cases listed and initiated after the commencement of these provisions, until such time as the section 30 directions may be amended.

544. Paragraph 51 amends section 23A(6A) of **Criminal Justice Act 2003** so that any financial penalty relating to a conditional caution no longer has to be paid to the designated officer of a specific local justice area and can instead be paid at any magistrates' court.

545. Paragraphs 54 and 55 amend sections 191 and 210 which make provision for the court responsible for an order to review a suspended sentence order (s.91) and a drug rehabilitation requirement (s.210). These amendments provide that the court responsible will be that by which the order was made except in cases where the order was made on appeal from the Crown Court or Court of Appeal in which case the responsible court will be the Crown Court.

546. Paragraph 56 amends section 212A(12) which provides that a court may not include an alcohol abstinence and monitoring requirement in a community order or suspended sentence order unless it has been notified by the Secretary of State that relevant arrangements are in place in the specified local justice area. This amendment replaces local justice area with "area in which the offender resides or will reside".

547. Paragraph 57 removes section 216 so that there will no longer be a requirement to specify a local justice area on a community order or suspended sentence order. As a matter of administrative practice, the offender's address will be recorded on the order, but this will be a non-statutory requirement.

548. Paragraph 58 amends section 218 so that a court may only impose requirements in a community order or suspended sentence order if it is satisfied that arrangements may be made in the area in which the offender resides or will reside.

549. Paragraph 59 makes consequential amendments to section 219 to reflect the abolition of local justice areas and so that the court is required to provide copies of a community order to the Secretary of State (acting on behalf of the National Probation Service) instead of to local probation boards which no longer exist.

550. Paragraph 64 makes a number of amendments to Schedule 8 which covers breach, revocation or amendment of community orders. If while a community order is in force, it appears to a justice of the peace that an offender has failed to comply with any of the requirements of the order, paragraph 7(3) of Schedule 8 now provides that the justice must direct the offender to appear or be brought before any magistrates' court.

551. Paragraph 65 makes a number of amendments to Schedule 12 which covers breach revocation or amendment of suspended sentence orders. These changes mean that in all of these cases the relevant activity could be undertaken by any magistrates' court, including in the case of drug rehabilitation requirements and suspended sentence orders which are subject to review. The amendments remove references to local probation boards, which no longer exist.

552. Paragraph 84 amends Schedule 1 (youth rehabilitation orders) of **the Criminal Justice and Immigration Act 2008**, to the effect that the requirements contained in a Youth Rehabilitation Order may be made where the court is satisfied that it is feasible to secure compliance with such a

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requirement, rather than linking the availability of arrangements to the local justice area in which the offender resides or is to reside. Paragraph 85 amends Schedule 2, to the effect that local justice areas will no longer be specified in a Youth Rehabilitation Order. Where such an order contains specific area requirements, these will be linked to the area in which the offender resides, rather than the local justice area specified in the order.

### Schedule 13: Traffic and air quality offences: use of statements of truth

553. Unpaid penalty charge notices for certain road traffic and air quality contraventions may ultimately be enforced in the county court through the Traffic Enforcement Centre (“TEC”). In certain circumstances, an application may be made to the TEC to set the order for payment aside, for example where a party claims to be unaware of the proceedings relating to the unpaid penalty charge. Earlier legislation concerning such contraventions required the use of a statutory declaration when applying to set aside. More recent legislation permits the use of a witness statement when such an application is made. This clause and Schedule amend those Acts, namely the Environment Act 1995, the London Local Authorities Act 1996 and the London Local Authorities and Transport for London Act 2003, which still require the use of a statutory declaration, to permit the use of a witness statement instead.

### Schedule 14: Attachment of earnings orders in the High Court

554. **Paragraph 1** sets out that the Attachment of Earnings Act 1971 (“AEA 1971”) is amended accordingly.

555. **Paragraph 2** amends section 3(6) and (7) of the AEA 1971 to insert references to the High Court. The effect of the amendment to section 3(6) is to give power to the High Court to order recovery of certain taxes and other sums payable to the State, by an AEO to secure the payment of the judgment debt, rather than via committal under section 5 of the Debtors Act 1869. The amendments therefore apply to the High Court the existing position in relation to the County Court.

556. The effect of the amendment to section 3(7) is to prevent the High Court from making an AEO where there is already in force an order or warrant for the debtor's committal under section 5 of the Debtors Act 1869, in respect of that debt. Under section 3(7) the High Court may discharge the order or warrant with a view to making an AEO instead. The amendments therefore again apply to the High Court the existing position in relation to the County Court.

557. **Paragraph 3** inserts a reference to the ‘High Court’ in section 6 (1A) of the AEA 1971. The effect is that when making a judgment debt AEO, the High Court, as well as the County Court, must specify that repayment is to be calculated on the basis of the fixed deductions scheme established under section 6A of the AEA 1971.

558. Section 6A of the AEA 1971 enables the Lord Chancellor to make, by way of regulations exercisable by statutory instrument, a fixed deductions scheme. The purpose of the scheme is to specify the rates and frequency of deductions which are to be applied by way of an AEO to secure repayment of a judgment debt. **Paragraph 4** amends section 6A to make it clear that the scheme is to be applied in High Court judgment debt AEOs as well as in those made by the County Court.

559. Section 8 (2) of the AEA 1971 is amended by **paragraph 5**, so that if a judgment debt AEO is made in the High Court, no order or warrant for commitment can be issued as a result of any proceedings for recovery of the debt begun before the AEO. Furthermore, no other enforcement action can be taken against the debtor’s property for recovery of the debt while the AEO is in force without the permission of the court. The amendments therefore replicate for the High Court the current position in relation to the County Court.

560. Section 9A of the AEA 1971 makes provision about suspending an AEO calculated on the basis of

the fixed deductions scheme. **Paragraph 6** amends section 9A (1), (2), (4), and (5) so that the provisions in relation to suspending a County Court AEO calculated on the basis of the fixed deductions scheme will apply to High Court AEOs for the recovery of judgment debts too.

561. **Paragraph 7** amends section 14 (1A) of the AEA 1971 to give the High Court the same power as the County Court to obtain certain specified information from the debtor regarding his or her employment, in relation to proceedings related to an AEO calculated on the basis of the fixed deductions scheme.
562. **By paragraph 8**, references to the ‘High Court’ have been inserted at section 17 (1) and (4) of the AEA 1971 giving the High Court power to make an AEO to secure the payment of any number of judgment debts. This means the High Court (as with the County Court) has the power to consolidate two or more judgment debts.
563. **By paragraph 9**, the reference to “an official of the Office of Public Service” in section 22 (4) of the AEA 1971 has been updated to refer to “a person authorised for this purpose by the Minister for the Civil Service”.
564. **By paragraph 10(a)**, references to the ‘High Court’ have been inserted at section 23 (1ZA). The effect is that where the debtor fails to attend the High Court following notice from the High Court regarding the making, varying, or suspension of an AEO, the High Court will have power to order the debtor’s attendance, and if the debtor fails to attend or attends but refuses to be sworn or give evidence, to make an order of imprisonment. The current County Court powers are therefore replicated for the High Court.
565. **By paragraph 10(b)**, erroneous (and ineffective) references to ‘suspension order’ have been removed from section 23(2) (c) and (f).
566. **Paragraph 11** amends the definition of “court” in section 25(1) of the AEA 1971 to include a reference to the High Court.

### Schedule 15: Judges with leadership roles

567. **Part 1** amends sections 2, 10 and 11 of the Senior Courts Act 1981. Paragraphs 1 and 2 provide that the Lord Chief Justice or a Head of Division may be appointed for a fixed term, the duration of which will be specified on appointment. Judges who were appointed to such leadership positions would, unless they were already justices of the Supreme Court, be given an office as a Court of Appeal judge to which they would be appointed at the end of that fixed term.
568. Paragraph 3 provides that the LCJ or Heads of Division, who hold an office in the Court of Appeal by virtue of their leadership position ending, would not be counted as part of the statutory headcount for the purposes of determining whether there was a vacancy in the Court of Appeal.
569. In **Part 2**, paragraphs 4 and 5 allow for Masters and Registrars to be appointed on a fixed term. Relevant leadership roles include Senior Master of the Queen’s Bench Division, Chief Chancery Master, Chief Taxing Master, Chief Bankruptcy Registrar and Senior District Judge of the Family Division.
570. In **Part 3**, Paragraph 6 amends the County Courts Act 1984 to bring district judges into line with most other judges and provide that they can be paid allowances in addition to salary.
571. **Part 4** concerns appointments to Court of Appeal. Paragraph 7 provides that if the Senior President of Tribunals is qualified to be a judge of the Court of Appeal and is appointed and was not previously a judge of the Court of Appeal or Supreme Court, then he or she will also be appointed as a judge of the Court of Appeal to hold as an underlying office whilst they are Senior President of Tribunals, to ensure that there is a position for that judge to hold at the end of their fixed term. The Senior President of Tribunals may already be a Court of Appeal judge on

appointment in which case they would continue to hold that appointment as an underlying office, again to ensure that there is a position for them to return to at the end of their fixed term.

572. As the number of Court of Appeal judges is limited by statute, the provisions in paragraph 11 of Part 6 provide that he or she should not count for the purposes of that maximum number whilst he or she is performing their role as the Senior President of Tribunals and at the end of their fixed term. The provisions here also provide that they are not paid a salary or allowance for that underlying office whilst they still hold the leadership position.

573. Paragraph 8 of **Part 5** provides that Chamber Presidents and Deputy Chamber Presidents can be appointed for a fixed term. They also provide that if a Chamber President or Deputy Chamber President is qualified to be a judge of the Upper Tribunal and is appointed and was not previously a judge of the Upper Tribunal, then he or she will also be appointed as a judge of the Upper Tribunal, such appointment to take effect at the end of the fixed term, to ensure that there is a position for that judge to hold at the end of their fixed term. They may already be an Upper Tribunal judge on appointment in which case they would continue to hold that appointment as an underlying office, again to ensure that there is a position for them to return to at the end of their fixed term.

574. **Part 6** makes provisions for Supreme Court Justices to be appointed to the leadership roles of Heads of Division or Senior President of Tribunals on a fixed term basis. Supreme Court justices who take up leadership posts will continue to hold office as a Supreme Court justice whilst they are holding a fixed term leadership post, in order to ensure that they can go back to that position at the end of their fixed term. As Supreme Court justice posts are limited by statute, these amendments provide that they should not count for the purposes of that maximum number whilst a person holding that position who is appointed to a post to which these provisions apply should not count for the purposes of that maximum number whilst they are performing their role as the Lord Chief Justice or a Head of Division and at the end of their fixed term. This amendment also ensures that they are not paid a salary or pension for their office as Supreme Court Justice whilst they hold their leadership role.

## Commencement

575. The provisions specified in clause 60 will commence two months after Royal Assent.

576. The other provisions in the Bill will be brought into force by means of regulations made by the Lord Chancellor and Secretary of State.

## Financial implications of the Bill

577. It is not anticipated that the Bill's measures concerning prisons will generate new Government expenditure and they are not intended to deliver quantifiable financial benefits. The Bill's measures concerning courts and tribunals reform (parts 2 to 4) are estimated to enable a reduction in public expenditure of £252m once implemented from 2023-24. The figures set out in the impact assessments accompanying the Bill are estimates, based on certain assumptions about implementation that are subject to change. This financial assessment will be updated in light of new information available and refinements will be made.

## Parliamentary approval for financial costs or for charges imposed

578. The additional expenditure arising from the Bill is subject to a Money Resolution. The House of Commons will be asked to agree that any expenditure arising out of the Bill that is incurred by the Government will be taken out of money provided by Parliament or charged on and paid out of the Consolidated Fund.

## Compatibility with the European Convention on Human Rights

579. The Secretary of State for Justice, The Rt Hon Elizabeth Truss MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

"In my view, the provisions of the Prisons and Courts Bill are compatible with the Convention rights."

580. The Government has published a separate ECHR memorandum with its assessment of compatibility of the Bill's provisions with the Convention rights: this memorandum is available on the Government website.

## Related documents

581. The following documents are relevant to the Bill and can be read at the stated locations:

- Prison Safety and Reform White Paper:  
<https://www.gov.uk/government/publications/prison-safety-and-reform>
- Justice Select Committee inquiry into Prison Reform:  
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/prison-reform-16-17>
- Transforming our Justice System (Joint Statement by the Lord Chancellor, Lord Chief Justice, and Senior President of Tribunals):  
<https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement>
- Transforming our Courts and Tribunals consultation:  
<https://www.gov.uk/government/consultations/transforming-our-courts-and-tribunals>
- Reforming the soft tissue injury claims process consultation:  
<https://www.gov.uk/government/consultations/reforming-the-soft-tissue-injury-whiplash-claims-process>
- Modernising judicial terms and conditions, consultation:  
<https://www.gov.uk/government/consultations/modernising-judicial-terms-and-conditions>

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- Reforming the Employment Tribunal System, consultation:  
<https://www.gov.uk/government/consultations/reforming-the-employment-tribunal-system>
- Summary of the main findings of the review of Islamist Extremism in prisons, probation and youth justice:  
<https://www.gov.uk/government/publications/islamist-extremism-in-prisons-probation-and-youth-justice/summary-of-the-main-findings-of-the-review-of-islamist-extremism-in-prisons-probation-and-youth-justice>
- Civil Justice Council - Online Dispute Resolution Advisory Group report into Online Dispute Resolution: <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>
- Lord Justice Briggs' report into the Civil Courts Structure:  
<https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-final-report-published>

# Annex A - Territorial extent and application in the United Kingdom

Subject to certain exceptions, the provisions of the Bill extend and apply to England and Wales only. The exceptions are set out below. The commentary on individual Parts or provisions of the Bill includes a paragraph explaining their extent and application. For this purpose, minor and consequential effects are outlined in a separate section following the table:

## Part 1

Clause 2 makes provision about Her Majesty's Chief Inspector of Prisons. Under the 1952 Act the Chief Inspector already has the function of inspecting prisons (and young offender institutions etc) and places of court detention in England and Wales, and immigration detention facilities (such as removal centres etc.) throughout the United Kingdom. Clause 2(2), (4) and (7) gives additional functions to the Chief Inspector and extends to England and Wales, and to Scotland and Northern Ireland in its application to the Chief Inspector's immigration inspection functions as defined in section 5A(5A) of the Prison Act 1952. This is achieved by the amendment to section 55 of the Prison Act 1952 in clause 3(4)(b), which has the same extent, and by clause 70(4).

Clauses 4 to 6, 8 to 17 and 20 and paragraphs 1 to 4 of Schedule 1 extend to England and Wales, and to Scotland and Northern Ireland in their application to the Prison and Probation Ombudsman's functions in relation to immigration detention facilities and escort arrangements, by virtue of clause 70(8).

Clause 7 extends to England and Wales and to Scotland and Northern Ireland in its application to the Prison and Probation Ombudsman's functions in relation to immigration detention facilities and escort arrangements, by virtue of clause 70(8), but only applies to England, Wales and Scotland.

Clause 19 extends to England and Wales but only applies to Wales.

Clause 21 and Schedule 2 extend to England, Wales and Scotland by virtue of clause 70(3), but only apply to England and Wales.

## Part 2

Clause 34 introduces Schedule 6, paragraph 2 of which extends and applies to the United Kingdom and paragraph 3 of which extends and applies to England, Wales and Scotland, by virtue of clause 70(3).

Clauses 37 to 45 and Part 2 of Schedule 8 extend and apply to England and Wales and in part to Northern Ireland and Scotland; Part 3 of Schedule 8 extends and applies to England, Wales and Scotland. Clause 70(7) provides that clauses 37 to 45 and Schedule 8 extend to England and Wales, and to Scotland and Northern Ireland in so far as they apply to the First-tier Tribunal and the Upper Tribunal; and to Scotland in so far as they apply to the employment tribunals and Employment Appeals Tribunal.

Clause 48 extends and applies to the United Kingdom by virtue of clause 70(3).

Clause 49 introduces Schedule 10 which extends and applies to England, Wales and Scotland by virtue of clause 70(3).

## Part 3

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

Clause 50 introduces Schedule 11, Part 2 of which extends and applies to the United Kingdom by virtue of clause 70(3).

Clause 52 extends and applies to England, Wales and Scotland by virtue of clause 70(3).

Clause 53 extends and applies to the United Kingdom by virtue of clause 70(3).

#### Part 4

Clause 56 introduces Schedule 15 of which Parts 4, 5 and paragraph 10 of Part 6 extend and apply to the United Kingdom by virtue of clause 70(3).

Clause 57(1) to (3) extends and applies to the United Kingdom by virtue of clause 70(3).

Clauses 58 and 59 extend and apply to England, Wales and Scotland by virtue of clause 70(3).

Clause 60 extends and applies to the United Kingdom by virtue of clause 70(3).

#### Part 6

Part 6 makes the necessary legal provision for the short-title of the bill, the extent, regulations and parliamentary procedures, and powers to make consequential, incidental etc. provision. Part 6 extends to the United Kingdom as provided by clause 70(10) and applies to England and Wales and in part to Scotland and Northern Ireland.

In the view of the Government of the United Kingdom, the following provisions relate exclusively to England and Wales and it would be within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly to make corresponding provision<sup>36</sup>: clauses 1 (Prisons: purpose, and role of Secretary of State), 18 (Annual report), 21 (Interference with wireless telegraphy in prisons etc.), 22 (Testing prisoners for psychoactive substances), 23 to 30 (Conducting preliminary proceedings in writing: criminal courts), 31 (Conduct of certain criminal proceedings on the papers), 32 and 33 (Audio and video technology: criminal courts), 35 and 36 (Automatic online conviction and standard statutory penalty), 46 (power of Crown Court to remit proceedings to magistrates' courts), 47 (Prohibition of cross-examination in family proceedings), 51 (Abolition of local justice areas), 54 (Traffic and air quality offences: witness statements and statements of truth), 55 (Extension of power of High Court to make attachment of earnings orders) and Part 5 (Whiplash) and Schedules 2 (Interference with wireless telegraphy in prisons etc.), 3 (Conducting preliminary proceedings in writing: children and young people), 4 (Live links in criminal proceedings), 5 (Live links in other criminal hearings), 7 (Automatic online conviction and standard statutory penalty), 12 (Abolition of local justice areas), 13 (Traffic and air quality offences: witness statements and statements of truth) and 14 (Attachment of earnings orders in the High Court).

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<sup>36</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1: Prisons – Purpose of prisons; Her Majesty’s Chief Inspector and Inspectorate of Prisons								
Clause 1	Yes	Yes	No	No	No	Yes	Yes	No
Clause 2	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 3	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Part 1: Prisons – The Prisons and Probation Ombudsman								
Clause 4	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 5	Yes	In part	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 6	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 7	Yes	Yes	In part	No	N/A	N/A	N/A	Yes (W)
Clause 8	Yes	In part	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 9	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 10	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 11	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 12	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 13	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 14	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 15	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 16	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 17	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Clause 18	Yes	Yes	No	No	No	Yes	Yes	Yes (W)
Clause 19	No	Yes	No	No	N/A	N/A	N/A	Yes (W)
Clause 20	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Part 1: Prisons – Prison security								
Clause 21	Yes	Yes	No	No	No	No	Yes	No
Clause 22	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: New procedures in civil, family and criminal matters – Conducting preliminary proceedings in writing: criminal courts								
Clause 23	Yes	Yes	No	No	No	Yes	Yes	No
Clause 24	Yes	Yes	No	No	No	Yes	Yes	No
Clause 25	Yes	Yes	No	No	No	Yes	Yes	No
Clause 26	Yes	Yes	No	No	No	Yes	Yes	No
Clause 27	Yes	Yes	No	No	No	Yes	Yes	No

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 28	Yes	Yes	No	No	No	Yes	Yes	No
Clause 29	Yes	Yes	No	No	No	Yes	Yes	No
Clause 30	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: New procedures in civil, family and criminal matters – Conduct of certain criminal proceedings on the papers								
Clause 31	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: New procedures in civil, family and criminal matters – Audio and video technology: criminal courts								
Clause 32	Yes	Yes	No	No	No	Yes	Yes	No
Clause 33	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: New procedures in civil, family and criminal matters – Public participation: court and tribunal proceedings conducted by video or audio								
Clause 34	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Part 2: New procedures in civil, family and criminal matters – Automatic online conviction and standard statutory penalty								
Clause 35	Yes	Yes	No	No	No	Yes	Yes	No
Clause 36	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: New procedures in civil, family and criminal matters – Online procedure: the civil and family courts and the tribunals								
Clause 37	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 38	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 39	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 40	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 41	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 42	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 43	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 44	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 45	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Part 2: New procedures in civil, family and criminal matters – Powers to remit proceedings to other courts								
Clause 46	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: New procedures in civil, family and criminal matters – Prohibition of cross-examination in family proceedings								
Clause 47	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: New procedures in civil, family and criminal matters – Tribunal rules								
Clause 48	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 49	Yes	Yes	Yes	No	N/A	N/A	N/A	No

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 3: Organisation and Functions of Courts and Tribunals – functions of staff of courts and tribunals								
Clause 50	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Part 3: Organisation and Functions of Courts and Tribunals – Abolition of local justice areas								
Clause 51	Yes	Yes	No	No	No	Yes	Yes	No
Part 3: Organisation and Functions of Courts and Tribunals – Composition of employment tribunals and the Employment Appeals Tribunal								
Clause 52	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Part 3: Organisation and Functions of Courts and Tribunals – Delegation of functions by the Senior President of the Tribunals								
Clause 53	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3: Organisation and Functions of Courts and Tribunals – Other changes								
Clause 54	Yes	Yes	No	No	No	Yes	Yes	Yes (W)
Clause 55	Yes	Yes	No	No	No	Yes	Yes	No
Part 4: The Judiciary and the Judicial Appointments Commission – Judicial appointments and deployment								
Clause 56	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 57	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 58	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 59	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Part 4: The Judiciary and the Judicial Appointments Commission – The Judicial Appointments Commission								
Clause 60	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 5: Whiplash – Whiplash cases								
Clause 61	Yes	Yes	No	No	No	Yes	Yes	No
Part 5: Whiplash – Damages for whiplash								
Clause 62	Yes	Yes	No	No	No	Yes	Yes	No
Clause 63	Yes	Yes	No	No	No	Yes	Yes	No
Part 5: Whiplash – Settlement of whiplash claims								
Clause 64	Yes	Yes	No	No	No	Yes	Yes	No
Clause 65	Yes	Yes	No	No	No	Yes	Yes	No
Clause 66	Yes	Yes	No	No	No	Yes	Yes	No
Clause 67	Yes	Yes	No	No	No	Yes	Yes	No
Part 6: Final Provisions								
Clause 68	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 69	Yes	Yes	In part	In part	N/A	N/A	N/A	No

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 70	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 71	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 72	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Schedules								
Schedule 1	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (W)
Schedule 2	Yes	Yes	No	No	No	No	Yes	No
Schedule 3	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 4	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 5	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 6	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Schedule 7	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 8	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Schedule 9	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Schedule 10	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Schedule 11	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Schedule 12	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 13	Yes	Yes	No	No	No	Yes	Yes	Yes (W)
Schedule 14	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 15	Yes	Yes	In part	In part	N/A	N/A	N/A	No

*These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145)*

## Minor or consequential effects<sup>37</sup>

The following provisions that apply to England and Wales have effects outside England and Wales, all of which are, in the view of the Government of the United Kingdom, minor or consequential (and have not therefore been included in the summary above):

- a. Clause 2 makes provision about Her Majesty's Chief Inspector of Prisons, amending current provision made in section 5A of the Prison Act 1952. Clause 2(5)(b) and (c) make minor changes to section 5A(5A) and (5B). Section 5A(5A) and (5B) of the Prison Act 1952 extends and applies to Scotland and Northern Ireland in its application to the Chief Inspector's immigration inspection functions; therefore these amendments have the same extent. Clause 3(4)(a) extends to the United Kingdom by virtue of clause 70(5) and amends section 55 of the Prison Act 1952 to provide expressly that the extent section in the Prison Act 1952 extends itself throughout the United Kingdom.
- b. Clauses 4 to 20 and Schedule 1 make provision about the Prison and Probation Ombudsman. Paragraphs 5 to 7 of Schedule 1 make amendments to the Parliamentary Commissioner Act 1967, House of Commons Disqualification Act 1975 and the Freedom of Information Act 2000 which extend and apply to England, Wales, Northern Ireland and Scotland as appropriate and insert references to the Prison and Probation Ombudsman, as a consequence of putting the Prison and Probation Ombudsman on a statutory footing.
- c. Clause 24 makes amendments to section 12 of the Magistrates' Courts Act 1980 to deal with cases where the defendant before a magistrates' court in England and Wales indicates a guilty plea in writing and agrees to be tried without appearing. Clause 24(9) repeals section 12(13) of the Magistrates' Courts Act 1980 which deals with service of documents in Scotland and extends and applies to England, Wales and Scotland. Section 12(13) is a superfluous provision given equivalent provision is made in section 39 of the Criminal Law Act 1977 (as amended by the Criminal Justice Act 2003).
- d. Clauses 35 and 36 and Schedule 7 create a new type of criminal procedure in England and Wales, which involves the creation of a new type of procedure notice to be served on offenders who may be prosecuted using this new procedure. These defendants will be served with a 'written procedure notice' rather than the current 'single justice procedure notice'. Paragraph 1 of Schedule 7 amends the Crime (International Cooperation) Act 2003 and the Criminal Law Act 1977 which have UK wide extent and application; the Vehicle Excise and Registration Act 1994 which has UK wide extent but only applies in England and Wales; and the Road Traffic Offenders Act 1988 which extends and applies to England, Wales and Scotland. These amendments substitute the reference in those Acts to a 'single justice procedure notice' with references to a 'written procedure notice'. Paragraph 5 of Schedule 7 amends section 8 of the Road Traffic Offenders Act 1998 to include reference to people who indicate a desire to be prosecuted under the new type of procedure. These are consequential amendments which are necessary to give effect to substantive changes being made only in

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<sup>37</sup> References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

England and Wales, and without which it would not be possible for offenders living in Scotland or Northern Ireland to be prosecuted using this new procedure.

- e. Clause 51 introduces Schedule 12 which provides for the abolition of local justice areas in England and Wales. Local justice areas currently divide England and Wales into 104 separate areas which are relevant for the purposes of initiating and listing cases; the payment and enforcement of fines and community orders; and the leadership and management arrangements of magistrates. Schedule 12 contains amendments to remove and replace references to local justice areas. Paragraphs 9 and 10 amend provisions of the Magistrates Courts Act 1980 which have UK wide extent; paragraphs 68 to 77 make amendments to the Gambling Act 2005 and Road Safety Act 2006 which extend to England, Wales and Scotland but only apply to England and Wales; paragraph 83 amends section 89(5) of the Criminal Justice and Immigration Act 2008 which extends and applies only to Northern Ireland and paragraph 86 amends Schedule 3 to that Act which extends to England, Wales and Northern Ireland; paragraph 88 makes amendments to the Coroners and Justice Act 2009 which extend and apply to England, Wales and Northern Ireland; paragraph 95 makes amendments to the Serious Crime Act 2015 which has UK wide extent and application; and paragraph 101 makes amendments to the Psychoactive Substances Act 2016 which have UK wide extent and but apply to England, Wales and Northern Ireland. These are consequential amendments which follow from substantive changes being made only in England and Wales and are necessary to avoid confusion.

## Subject matter and legislative competence of devolved legislatures

- f. In Part 1:
- Clause 1 provides for a new statutory purpose for prisons and the role of the Secretary of State; clause 18 requires the Prison and Probation Ombudsman to produce an annual report; and clause 22 relates to the testing of prisoners for psychoactive substances. The management of prisons and prisoners is not devolved to the Welsh Assembly under the Government of Wales Act 2006 (Schedule 7). In relation to Scotland, the management of prisons and prisoners is not reserved to the UK Government under the Scotland Act 1998 (Schedule 5). In relation to Northern Ireland, the management of prisons and prisoners is not a reserved or excepted matter under the Northern Ireland Act 1998 (Schedules 2 and 3).
  - Clause 21 and Schedule 2 amend the Prisons (Interference with Wireless Telegraphy) Act 2012. The purpose of this measure relates specifically to prison management and security, which is a transferred matter, rather than the regulation of wireless telegraphy, which is a reserved matter under paragraph 29 of Schedule 3 to the Northern Ireland Act 1998. Northern Ireland Assembly would therefore be able to make corresponding provision.
- g. In so far as Parts 2 and 3 deals with court procedure within the single legal jurisdiction (criminal, civil and family jurisdictions) this is not devolved to the Welsh Assembly under the Government of Wales Act 2006 (Schedule 7); it is not reserved to the UK Government under the Scotland Act 1998 (Schedule 5); nor is it a reserved or excepted matter under the Northern Ireland Act 1998 (Schedules 2 and 3).
- h. Part 5 deals with whiplash: making damages for pain, suffering and loss of amenity for minor

soft tissue injury claims arising out of road traffic accidents subject to a tariff; and regulating the settlement of such claims. The purpose of these provisions relates to civil claims under the law of tort and awards of damages. This is not devolved to the Welsh Assembly under the Government of Wales Act 2006 (Schedule 7). In relation to Scotland, this is not reserved to the UK Government under the Scotland Act 1998 (Schedule 5). In relation to Northern Ireland, this is not a reserved or excepted matter under the Northern Ireland Act 1998 (Schedules 2 and 3).

# **PRISONS AND COURTS BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Prisons and Courts Bill as introduced in the House of Commons on 23 February 2017 (Bill 145).

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