CRIME AND POLICING BILL

DELEGATED POWERS MEMORANDUM

Introduction

1. This memorandum has been prepared by the Home Office, Ministry of Justice, Ministry of Defence, and Department for Environment, Food and Rural Affairs for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Crime and Policing Bill. The memorandum identifies the provisions of the Bill, as introduced in the House of Lords on 19 June 2025, which confer new or modified powers to make delegated legislation. It explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

Overview and purposes of the Bill

2. The Bill supports the delivery of the Government's Safer Streets Mission to halve knife crime and violence against women and girls in a decade and increase confidence in policing and the wider criminal justice system to its highest levels. It aims to support neighbourhood policing and give the police the powers they need to tackle anti-social behaviour, crime and terrorism, whilst introducing reforms to ensure that law enforcement agencies perform to the highest standards expected by the public and focus on front-line policing.

3. The Bill includes the following measures which contain new or amended delegated powers:

   (i) Introduction of Respect Orders to tackle persistent anti-social behaviour.
   (ii) Requiring relevant bodies to have regard to guidance about anti-social behaviour case reviews.
   (iii) Conferring a power on the Secretary of State to issue guidance on fly-tipping enforcement.
   (iv) Placing a duty on relevant authorities to provide prescribed information about anti-social behaviour to the Secretary of State.
   (v) Introduction of civil sanctions for unlawful online weapons sales.
   (vi) New police powers to seize, retain and destroy bladed articles held in private where they have a reasonable suspicion that the article is likely to be used in connection with unlawful violence.
   (vii) Strengthened requirements in respect of age verification relating to the online sale and delivery of knives and crossbows.
   (viii) Introduction of requirement on online retailers to report bulk sales of knives.
   (ix) Introduction of a new offence of child criminal exploitation and associated civil prevention orders.
   (x) Introduction of new offences relating to "cuckooing" (home takeover) and coerced internal concealment.
   (xi) Introduction of new offences relating to child sexual abuse image-generators and online facilitation of child sexual abuse and exploitation.
   (xii) Scanning electronic devices for child sexual abuse material at the border.

(xiii) Requiring certain persons working with children to report suspected child sexual offences.

(xiv) Placing the guidance supporting the Child Sex Offender Disclosure Scheme on a statutory footing.

(xv) Strengthening of notification requirements on registered sex offenders.

(xvi) Introducing restrictions on certain registered sex offenders applying for replacement identity documents in a new name.

(xvii) Introduction of statutory guidance to better protect victims of stalking.

(xviii) Introduction of new offences relating to the possession and supply of "SIM farms" and of other specified articles used to facilitate fraud by means of electronic communications.

(xix) Introduction of new public order offences relating to the possession of a pyrotechnic article at a protest and climbing on specified memorials.

(xx) New powers to suspend IP addresses and domain names used in serious crime.

(xxi) Extension of the data-sharing arrangements in respect of driver licensing information between the DVLA and the police and other law enforcement agencies.

(xxii) Clarify powers of law enforcement agencies to access remotely stored electronic data.

(xxiii) Extension of police powers to test persons in police detention for the presence of specified controlled drugs.

(xxiv) Reform of the post-conviction confiscation regime in respect of the proceeds of crime.

(xxv) Enabling chief officers of police to appeal to a Police Appeals Tribunal (PAT) in respect of disciplinary matters concerning officers and special constables in the chief officer's force and enabling local policing bodies to appeal to a PAT in respect of disciplinary matters concerning the chief officer of police of their force.

(xxvi) Requiring the National Crime Agency, British Transport Police, Civil Nuclear Constabulary and Ministry of Defence Police to maintain lists of barred persons and advisory lists and prohibits them (and others) from employing or appointing a barred person.

(xxvii) Conferring power on the Secretary of State to give directions to critical police undertakings.

(xxviii) Introduction of Youth Diversion Orders, a new counter-terrorism risk management tool specifically designed for young people aged 21 or younger.

(xxix) A power to implement international agreements on sharing information for law enforcement purposes.

(xxx) Standard powers to amend legislation consequential upon the provisions of the Bill and in respect of commencement.

4. Clauses 198 and 199 make general provision in respect of regulations made under powers conferred by the Bill (with the exception of regulations made under clause 201 (commencement)). Clause 198(1) provides that such regulations may make consequential, supplementary, incidental, transitional or saving provision; and may make different provision for different purposes or different areas.

Analysis of delegated powers by clause

Clause 1 – new section B1(7) of the Anti-social Behaviour, Crime and Policing Act 2014: Power to amend list of relevant authorities that can apply for a Respect Order

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by Statutory Instrument*

Parliamentary procedure: *Draft affirmative resolution procedure*

Context and purpose

5. Clause 1 of the Bill inserts new Part A1 into the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") which provides for Respect Orders, a new civil preventative order to tackle persistent anti-social behaviour ("ASB"). Respect Orders will be made on application by a "relevant authority" and include prohibitions and requirements designed to prevent the person subject to an order engaging in further anti-social behaviour and to address any underlying causes of the behaviour, such as alcohol or drug dependency. Breach of an order will be a criminal offence (see new section I1). Relevant authorities are listed in new section B1(2) and include the police, local authorities and social housing providers. The Respect Order partially replaces the civil injunction as provided for in section 1 of the 2014 Act for persons aged 18 or over. The list of relevant authorities in new section B1(2) is the same as the list of relevant authorities in section 5(1) of the 2014 Act. New section B1(7) confers a power to amend new section B1 and new section N1 in relation to expressions used in that section. In particular, the power could be used to add to, remove or otherwise alter the list of relevant authorities in subsection (2) of new section B1 and associated definitions in subsections (3) to (6) of that section and in new section N1. The Secretary of State is required to consult the Welsh Ministers before making regulations which add, remove or vary an entry in the list which relates to a devolved Welsh authority.

Justification for the delegated power

6. New section A1(6) and B1 set out the persons who may apply for a Respect Order to prevent a person engaging in ASB. The regulation-making power enables the Secretary of State to amend new section B1 so as to allow other persons or categories of person to apply for a Respect Order under new section A1 and to otherwise amend the list of persons who may apply. The power ensures that there is the flexibility to add, remove and vary the list of persons who may apply for a Respect Order, for example, to take account of the creation of new bodies or the extension of the functions of existing bodies such that they take on new or enhanced responsibilities for tackling ASB or to update references to existing bodies if necessary. The regulation-making power is analogous to that in section 5(5)(a) of the 2014 Act.

Justification for the procedure

7. By virtue of new section 182(2)(za) of the 2014 Act, as inserted by clause 1(3), the regulation-making power in new section B1(7) is subject to the draft affirmative procedure. This level of parliamentary scrutiny is considered appropriate given that one possible effect of any regulations is to add to the list of persons who may apply for a Respect Order. As Parliament would have approved the initial list of relevant authorities as set out in the Bill, both Houses should be afforded the opportunity to debate and approve any additions to the list. The draft affirmative procedure is also apt given the Henry VIII nature of the power. The application of the draft affirmative procedure is consistent with the approach taken in the 2014 Act as regards the analogous power in section 5(5)(a) of that Act (as recommended by the DPRRC in its 12th Report of session 2013/14).

Clause 1 – new section M1 of the Anti-social Behaviour, Crime and Policing Act 2014: Power to issue statutory guidance about Respect Orders

Power conferred on:	Secretary of State
Power exercised by:	Statutory guidance
Parliamentary procedure:	None

Context and purpose

8. Clause 1 of the Bill inserts new Part A1 into the 2014 Act which provides for Respect Orders, a new civil preventative order to tackle persistent ASB. Respect Orders will be made on application by a "relevant authority" and include prohibitions and requirements designed to prevent the person subject to an order engaging in further anti-social behaviour and to address any underlying causes of the behaviour, such as alcohol or drug dependency. Breach of an order will be a criminal offence (see new section I1). Relevant authorities are listed in new section B1 and include the police, local authorities and social housing providers. The Respect Order partially replaces the civil injunction as provided for in section 1 of the 2014 Act for persons aged 18 or over.

9. New section J1 requires that before applying for a Respect Order a relevant authority must carry out a risk assessment in relation to the application. A person undertaking such a risk assessment must, in doing so, have regard to any guidance issued by the Secretary of State under new section M1 of the 2014 Act.

10. New section M1 of the 2014 Act confers a power on the Secretary of State to issue guidance to persons entitled to apply for a Respect Order about the exercise of their functions under new Part A1 of the 2014 Act.

11. The respect order partially replaces the civil injunction (provided for in section 1 of the 2014 Act) for persons aged 18 or over. Clause 2 introduces Schedule 1 which makes consequential amendments to Part 1 of the 2014 Act to provide for youth injunctions and housing injunctions which will continue to operate in the way as the existing injunctions under Part 1 of the 2014 Act. To complement new section J1, paragraph 15 of Schedule 1 inserts new section 13A into the 2014 Act which requires a relevant authority before applying for an injunction under Part 1 to carry

out a risk assessment in relation to the application. New section 13A(3) requires a person carrying out such a risk assessment to have regard to any guidance issued by the Secretary of State under section 19 of the 2014 Act. As such, this is not a new power to issue statutory guidance but an augmenting of an existing power.

Justification for the delegated power

12. The purpose of any guidance under new section M1 is to support the police and other relevant public authorities who are eligible to apply for a Respect Order in how they discharge their functions under new Part A1 of the 2014 Act. There are analogous powers to issue guidance about the exercise of functions under Parts 1 and 2 of the 2014 (which relate to injunctions and Criminal Behaviour Orders); that guidance is available here. As with the existing statutory guidance under Parts 1 and 2 of the 2014 Act, the guidance under new section M1 is expected to cover such issues as the test for applying for a Respect Order, the appropriate prohibitions and requirements to seek to attach to an Order, the factors to be taken into consideration when conducting a pre-application risk assessment and the process for applying for an Order or for its variation or discharge. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with operational good practice.

Justification for the procedure

13. Any guidance issued under new section M1 of the 2014 Act will not be subject to any parliamentary procedure on the grounds that it would provide practical advice to frontline practitioners on the discharge of their functions under new Part 1A of the 2014 Act and would be worked up in consultation with the police and other interested stakeholders. The guidance will not conflict with, or alter the scope of, the powers in new Part A1 of the 2014 Act in respect of Respect Orders. Moreover, whilst a person undertaking a risk assessment under new section J1 will be required to have regard to the guidance when exercising those functions, the guidance will not be binding. The approach taken in new section M1 of the 2014 Act is consistent with other legislative provisions providing for statutory guidance under the 2014 Act and elsewhere.

14. Similarly, the addition of the requirement for a person applying for an injunction under Part 1 of the 2014 Act to have regard to any guidance issued under section 19 of that Act when undertaking a risk assessment does not materially change the nature of the section 19 guidance and, as such, the Government continues to consider it appropriate that such guidance should not be subject to any parliamentary procure.

Rules of court:

(i) Clause 1(2) – new sections E1(3), K1(5) and L1(2) of the Anti-social Behaviour Crime and Policing Act 2014: Power to make rules of court in respect of proceedings relating to Respect Orders.

(ii) Paragraph 3 of Schedule 1 – new section 1A(8) of the of the Anti-social Behaviour Crime and Policing Act 2014: Power to make rules of court in respect of applications for a housing injunction.

(iii) Clause 44(6) and 50(2) and new section 358I(2) of the Sentencing Act 2020 (as inserted by Schedule 5): Power to make rules of court in respect of proceedings relating to applications for and appeals relating to Child Criminal Exploitation Prevention Orders.

(iv) Clause 66(7): Power to make rules of court in respect of proceedings relating to an offence under section 65 outside of the United Kingdom.

(v) Clause 97(9) – new section 13(3) of the Stalking Protection Act 2019: Power to make rules of court in respect of applications to vary, renew or discharge a Stalking Protection Order.

(vi) Paragraph 19(3) of Schedule 16 – new section 35B(1) of the Proceeds of Crime Act 2002: Power to make rules of court in respect of the effect of part payment on the default term.

(vii) Clauses 175(5), 178(5), 181(1) and 182: Power to make rules of court in respect of proceedings relating to Youth Diversion Orders.

(viii) Clause 196(5): Power to make rules of court in respect of proceedings for an offence committed by a body corporate or partnership by virtue of clause 196.

Power conferred on:	*In England and Wales, the Criminal Procedure Rules Committee and Civil Procedure Rule Committee* *In Northern Ireland, the Magistrates' Courts Rules Committee, the Crown Court Rules Committee and the County Court Rules Committee* *In Scotland, High Court of Justiciary and Court of Session*
Power exercisable by:	*Rules contained in statutory instrument* *In Scotland, Act of Adjournal or Act of Sederunt*
Parliamentary procedure:	*England and Wales and Northern Ireland - Negative resolution* *Scotland – None specified*

Context and purpose

15. The Bill contains various provisions to enable rules of court to make provision relating to specified matters as detailed in paragraphs 16 to 29 below. See also paragraphs 288 to 294 which relates to provision in Schedule 13 for rules of court relating to IP address suspension orders and domain name suspension orders.

16. Clause 1 inserts new Part A1 into the anti-social Behaviour, Crime and Policing Act 2014 which provides for Respect Order, a new civil order to tackle persistent anti-social behaviour. Applications for a Respect Order are to be made to the High Court or county court (new section A1(7) of the 2014 Act). New section E1 of the 2014 Act provides for applications to be made without notice to the respondent. New section E1(3) enables rules of court to provide for an appeal from a decision

of the High Court or the county court (a) to dismiss an application for a Respect Order made without notice, or (b) to refuse to make an interim order when adjourning proceeds on an application for a without notice order, may be made without notice being given to the respondent.

17. New section K1 of the 2014 Act provides that, save in respect of without-notice applications, notice of an application for a Respect Order must be given to the respondent. New section K1(5) provides for rules of court to determine the means by which notice of an on-notice hearing is given to the applicant and respondent.

18. New section L1 of the 2014 Act provides that the special measures for vulnerable and intimidated witnesses as set out in Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 apply to respect order proceedings. Such measures may include giving evidence behind a screen or by video link or in private. New section L1(2) provides that rules of court made under or for the purpose of Chapter 1 of Part 2 of the 1999 Act apply to proceedings under new Part A1 of the 2014 Act to the extent provided by rules of court, and subject to any modifications provided by rules of court.

19. Schedule 1 which makes consequential amendments to Part 1 of the 2014 Act to provide for youth injunctions and housing injunctions which will continue to operate in the same way as the existing injunctions under Part 1 of the 2014 Act. Paragraph 3 of Schedule 1 inserts new section 1A into the 2014 Act which will enable relevant authorities to able to apply for a housing injunction for ASB perpetrators aged 18 or over committing housing related anti-social behaviour that is causing nuisance or annoyance in the same way as with previous civil injunctions. New section 1A(8) provides that an application for a housing injunction must be made to the High Court or county court, subject to any rules of court made under section 18(2) of the 2014 Act (as amended by paragraph 17 of Schedule 1).

20. Clauses 42 to 54 make provision for Child Criminal Exploitation Prevention Orders ("CCEPOs") made on application or by the court on its own volition at the end of criminal proceedings on acquittal or a finding that the individual was not guilty by reason of insanity or is under a disability and has done the act charged against them. Clause 55 and Schedule 5 make provision for CCEPOs made on conviction. A CCEPO is a new civil order, which enables prohibitions or requirements to be imposed by courts on individuals involved in CCE in order to protect children from harm from criminal exploitation by preventing future offending. Clause 50 sets out the circumstances in which an affected person may appeal against a decision of a court in respect of a CCEPO. Clause 50(6) provides that rules of court may make provision for appeals of a court decision following a without notice application may be made without notice being given to the defendant. Clause 54(2) provides that applications (for the making, variation or discharge of CCEPOs) are to be made by complaint to the magistrate's court or in accordance with rules of court in any other case. New section 358I(2) of the Sentencing Act 2020, as inserted by Schedule 5, provides that applications under new Chapter 2A of part 11 of the Sentencing Act (which provides for CCEPOs on conviction, and permits applications for variation or discharge of such orders) are to be made by complaint to a magistrates' court, or in accordance with rules of court, in any other case.

21. Clause 65 provides for a new offence of carrying out relevant activity with the intention of facilitation child sexual exploitation and abuse. This is designed to cover individuals who are colloquially known as 'moderators' or 'administrators' of websites containing child sexual abuse material ("CSAM"). Clause 66 provides for the offence in clause 65 to have extra-territorial application in certain circumstances. Clause 67(2) and (3) make it an offence in England and Wales, Scotland and Northern Ireland for a British citizen, UK body or UK resident to undertake conduct overseas which if committed in the UK would constitute an offence under clause 65. In the case of a UK resident, the conduct must also constitute an offence in the country where it took place (subsection (3)(b)). Clause 66(4) and (5) extends the extra-territorial application of the offence to non-UK citizens, bodies and residents in cases where they have become a UK citizen, body or resident at the time proceedings are brought in the UK. Again, in such cases there is a dual criminality requirement (subsection (4)(b)). Clause 66(7) provides that the condition in subsection (3)(b) and (4)(b) is to be taken to be met unless, not later than rules of court may provide, the defendant services notice on the prosecution a notice setting out the matters set out in paragraphs (a) to (c) of subsection (7).

22. Clause 97 amends the Stalking Protection Act 2019 ("the SPA 2019") so as to extend to the courts in England and Wales the power to impose a stalking protection order ("SPO") on acquittal. Currently the 2019 Act makes provision for SPOs to be made by a magistrates' court only on application by a chief officer of police. Clause 97(9) inserts new subsection (3) into section 14 of the SPA 2019 which provides for an application (for the variation, renewal or discharge of an SPO) to the Crown Court under any provision in the SPA 2019 is to be made in line with the rules of court.

23. Schedule 16 makes various reforms to the confiscation regime in respect of the proceeds of crime as provided for in Part 2 of the Proceeds of Crime Act 2002. Paragraph 19 of Schedule 16 replaces section 35 of POCA (enforcement as fines) with new sections 35A to 35R. The purpose of these new provisions is to allow the Crown Court to enforce confiscation orders where appropriate. (Under the current law, enforcement of confiscation orders is dealt with by a magistrates' court.) New section 35B specifies the formula by which the default term should be reduced where there has been part payment of the confiscation order in accordance with rules of court.

24. Chapter 1 of Part 14 introduces new Youth Diversion Orders ("YDOs") for terrorism-related cases. The YDO is a new counter-terrorism risk management tool available for individuals under the age of 22. The intention of the YDO is to divert a young person away from terrorist offending (and/or further terrorist offending) and enable the police to intervene at an earlier stage.

25. Clause 175 makes provision for applications for a YDO without notice being given to the respondent. Clause 175(2) provides that, where the application is made without notice in England and Wales or Northern Ireland, the applicant is not required to comply with the consultation requirements set out in clause 174(1) (duty to consult). However, the applicant must meet the clause 174(1) consultation requirement before the first hearing, of which notice has been given. Clause 175(5) provides that in clause 175 "full hearing" means a hearing of which notice has been

given to the applicant and the respondent in accordance with rules of court.

26. Clause 178 makes provision for appeals against YDOs. Subsection (5) provides for Rules of Court to make provision about appeals against decisions made without notice to the Respondent.

27. Clause 181 makes provisions for rules of court relating to YDO proceedings to make provision for anonymity orders. Subsection (2) provides for an anonymity order to include such prohibitions or restrictions as the court considers are appropriate relating to the disclosure of information, by such persons as the court specifies or by persons generally, regarding the identity of the respondent or any information that may identify the respondent.

28. Clause 182 makes provision for YDO applications to be made by complaint to a youth court or other magistrates' court and, in any other case, should be made in accordance with rules of court.

29. Clause 196 clause enables a body corporate or partnership to be held criminally liable where a senior manager commits any offence while acting within the actual or apparent authority granted by the organisation. Subsection (5)(a) provides that for the purpose of proceedings under this clause against a partnership, rules of court relating to the service of documents have effect as if the partnership were a body corporate.

Justification for the power

30. Rules Committees exist in England and Wales, Scotland and Northern Ireland to make and maintain, or keep under review and comment on, rules governing the practice and procedure of the criminal and civil courts. The committees are independent of government. The powers provided in the provisions specified above refer to powers that already exist in legislation to make criminal or civil procedure rules. Rules of court may make provision at a level of detail that is not appropriate to be made in primary legislation. The point of allowing the Rules to provide the supplementary procedures is to keep criminal or civil procedure, as the case may be, consistent and easy to find, and to make it possible for procedures to be up to date and efficient in the light of experience. It is not considered that proceedings relating to the civil orders or offences specified above require a departure from the existing procedures for making rules for the relevant court.

Justification for the procedure

31. Rules of court in England and Wales, relating to criminal proceedings, are made by the Criminal Procedure Rule Committee under section 69 of the Courts Act 2003. The power of the Criminal Procedure Rule Committee to make Criminal Procedure Rules is subject to the Lord Chancellor "allowing the rules" and section 72(6) of the 2003 Act provides that a statutory instrument containing such rules is subject to the negative procedure. It is therefore considered that the negative procedure is most appropriate level of Parliamentary scrutiny for this new rule-making power.

32. Rules of court in England and Wales relating to civil proceedings, are made by the Civil Procedure Rule Committee under powers contained in the Civil Procedure Act

1997. Under section 2(8) of the 1997 Act, rules made by the Civil Procedure Rule Committee must be submitted to the Lord Chancellor who can "allow or disallow them" and section 3(2) of the 1997 Act provides that a statutory instrument containing such rules is subject to the negative procedure. It is therefore considered that the negative procedure is most appropriate level of Parliamentary scrutiny for this new rule making power.

33. Section 305 of the Criminal Procedure (Scotland) Act 1995 provides for rules and regulations for criminal procedure to be made by Act of Adjournal. The Criminal Courts Rules Council, established under section 304 of the 1995 Act, must consider and comment on any draft Act of Adjournal in relation to court rules. Section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that an Act of Adjournal is a Scottish Statutory Instrument. Acts of Adjournal that prescribe matters which relate to the practice and procedure of the Scottish Courts are not subject to parliamentary scrutiny, but must be laid before the Scottish Parliament as soon as is practicable after they are made. Civil procedure rules are made by the Court of Session by Act of Sederunt under powers conferred by sections 103 and 104 of the Courts Reform (Scotland) Act 2014. Acts of Sederunt are not subject to any parliamentary procedure.

34. Rules of court in Northern Ireland are statutory rules for the purposes of the Statutory Rules (Northern Ireland) Order 1979. Rules of court in relation to the Magistrates' Court are made by the Magistrates' Courts Rules Committee in accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 ("the 1981 Order"). Under Article 13A of the 1981 Order, Magistrates' Court Rules are subject to negative resolution before the Northern Ireland Assembly.

35. Rules of court in relation to the County Court are made by the County Court Rules Committee in accordance with Article 47 of the County Courts (Northern Ireland) Order 1981 ("the County Courts Order"). Under Article 47A of the County Courts Order, County Court Rules are subject to negative resolution before the Northern Ireland Assembly.

36. Rules of court in relation to the Crown Court are made by the Crown Court Rules Committee in accordance with section 53A of the Judicature (Northern Ireland) Act 1978 ("the 1978 Act"). Under section 56(1) of the 1978 Act, as applied by section 53(3) of that Act, Crown Court Rules are subject to negative resolution before the Northern Ireland Assembly.

37. Where the Magistrates' Courts Rules, the County Court Rules, or the Crown Court Rules, deal (or would deal) with an excepted matter, they are required to be submitted to the Lord Chancellor and are also subject to negative resolution in Parliament.

38. As these provisions are in line with the existing powers to make rules of court, it is considered that the relevant procedures afford the most appropriate level of scrutiny for these new rule-making powers.

Clause 6(5)(d) – new paragraph 11 of Schedule 4 to the Anti-social Behaviour, Crime and Policing Act 2014: Duty to have regard to guidance about anti-social behaviour case reviews

Schedule 3 - paragraph 10 of new Schedule 4A to the Anti-social Behaviour, Crime and Policing Act 2014: Duty to have regard to guidance about local policing bodies' anti-social behaviour case reviews

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

39. Sections 104 and 105 of and Schedule 4 to the 2014 Act makes provisions about Anti-Social Behaviour (ASB) Case Reviews. An ASB Case Review gives victims of ASB the right to request a review of their case where a local threshold is met. The local threshold is to be defined by local agencies, but is at least three complaints of ASB in the previous six-month period. The review is designed to bring agencies together to take a joined-up, problem solving approach to find a solution for the victim. Responsibility for conducting ASB case reviews rests with "the relevant bodies", namely the local authority, police, clinical commissioning groups and providers of social housing.

40. Clause 6(3) inserts new section 104A into the 2014 Act which provides for an oversight role for local policing bodies in respect of ASB case reviews. In particular, new section 104A confers on local policing bodies powers to undertake a review of an ASB Case Review (an "LPB case review") in response to an application by a victim of ASB or someone acting on their behalf. Clause 6(5)(d) inserts new paragraph 10 into Schedule 4 to the 2014 Act which places a further duty on local policing bodies to promote awareness of ASB case reviews. New Schedule 4A to the 2014 Act makes further provision in respect of LPB case reviews, including provision in respect of the making and revising of LPB case review procedures, the conduct of LPB case reviews and a duty to promote awareness of LPB case reviews. Paragraph 10 of new Schedule 4A to the 2014 Act requires local policing bodies to have regard to any guidance issued by the Secretary of State when carrying out its functions under section 104A of or Schedules 4 or 4A to the 2014 Act.

41. Clause 6(5)(d) also inserts new paragraph 11 into Schedule 4 to the 2014 Act which requires relevant bodies to have regard to any guidance issued by the Secretary of State when carrying out their functions under section 104A of or Schedules 4 to the 2014 Act.

42. In each instance, the Bill does not confer a statutory power on the Secretary of State to issue such guidance, instead any such guidance will be issued by the Secretary of State exercising the common law powers of the Crown. Non-statutory guidance in respect of ASB case reviews is already provided by the Home Office.

Justification for taking the powers

43. Section 104 of and Schedule 4 to the 2014 Act set out on the face of that Act certain functions of "relevant bodies" in respect of ASB case reviews. Similarly, clause 6 of and Schedule 3 to the Bill set out on the face of the 2014 Act certain functions of local policing bodies in respect of LPB case reviews. Guidance will assist in ensuring that relevant bodies and local policing bodies carry out their functions in relation to ASB case reviews and LPB case reviews consistency across England and Wales. The guidance is intended to assist and not direct relevant bodies and local policing bodies by providing practical advice on how they may effectively discharge these functions. There is a vast range of statutory and non-statutory guidance issued each year and it is important that guidance can be readily updated to keep pace with events and operational good practice.

Justification for the procedure

44. Any non-statutory guidance issued by the Secretary of State for the purpose of paragraph 11 of Schedule 4 and paragraph 8 of new Schedule 4A to the 2014 Act is not subject to any parliamentary procedure. It will deal with practical advice to relevant bodies and local policing bodies in exercising their powers under section 104 or 104A of or Schedules 4 or 4A to the 2014 Act and will have been the subject of consultation with interested parties before it is issued. The guidance will not conflict with the statutory framework governing the operation of ASB case reviews or LPB case reviews and although relevant bodies and local policing bodies must have regard to any guidance issued, there will be no statutory duty for persons to abide by the guidance – the aim is to assist practitioners not to direct them. This approach is in keeping with the statutory guidance provided for in the 2014 Act.

Clause 7 – new section 105A(1) of the Anti-social Behaviour, Crime and Policing Act 2014: Power to require provision of information relating to anti-social behaviour

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative procedure*

Context and purpose

45. Anti-social behaviour ("ASB") causes significant harms to communities with Crime Survey for England and Wales data for year ending June 2024 suggesting 36% of respondents personally witnessed or experienced ASB in their area. One million ASB incidents were recorded by the police in the year ending June 2024.

46. Current information on ASB incidents and the response to them held by central government is limited, constituting a gap in the national picture of the use of ASB powers to tackle the problem. Despite non-police agencies, such as local

authorities and social housing providers, playing a central role in the response to ASB, there is currently no national data on volumes of ASB reports made to non-police agencies, how these agencies use the ASB powers in the 2014 Act, or how many ASB case reviews local agencies conduct. Collecting this data will enable better monitoring of targeted ASB interventions and help to inform future activity to tackle ASB.

47. To this end, clause 7 of the Bill inserts new section 105A into the 2014 Act which confers a power on the Secretary of State, by regulations, to make provision requiring specified relevant authorities to provide to the Secretary of State specified information relating to anti-social behaviour.

48. Such regulations may, in particular, require a relevant authority (as defined in new section 105A(8)) to provide information about reports of anti-social behaviour made to the authority, responses of the authority to ASB, and ASB case reviews carried out by a relevant authority (new section 105A(2)). Regulations may require a relevant authority to collect or otherwise obtain information, create information, retain information or process information for the purpose of providing specified information to the Secretary of State (new section 105A(3)). The regulations may further specify the form and regularity of such reports (new section 105A(4)). Regulations may make different provision for different purposes, for example, different relevant bodies may be required to submit categories of information that are unique to them (new section 105A(5)). Regulations may not require the disclosure of information in contravention of data protection legislation (new section 105A(6)).

49. Before making regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate (new section 105A(7)).

Justification for the delegated power

50. Clause 7 establishes the principle that relevant authorities, such as local authorities and social housing providers, are to provide specified information about ASB to the Secretary of State. The categories of information to be provided and the form and regularity in which it is to be provided is a secondary matter appropriately left to regulations. The categories of information that it is appropriate to collect make vary over time, for example to reflect the introduction of new powers to tackle ASB or the changing nature of ASB. Specifying the data sets to be reported to the Secretary of State in regulations will enable the requirements on relevant bodies to be updated promptly in response to such developments.

51. Section 44 of the Police Act 1996 confers a similar power on the Secretary of State to require a chief officer of police to provide the Secretary of State with information on such matters as may be specified in the requirement, being matters connected with the policing of the police area for which that police force is maintained, or the discharge of the national or international functions of that police force. This power is exercised administratively rather than by statutory instrument.

Justification for the procedure

52. By virtue of section 182(4) of the 2014 Act, any regulations made under new section 105A of the 2014 Act are subject to the negative resolution procedure. Given the regular parliamentary interest in ASB and the response to it, including periodic parliamentary questions requesting statistical information, it is considered appropriate to provide this level of parliamentary scrutiny to these regulations, notwithstanding the precedent of section 44 of the Police Act 1996 which confers a similar power on the Secretary of State in relation to information requests to chief officers of police and which is not subject to any parliamentary procedure. The negative procedure is also considered appropriate given that any such regulations would place new requirements on relevant authorities to provide ASB-related information to the Secretary of State.

Clause 9 - New section 34CZA(1) of the Environmental Protection Act 1990: Power to issue guidance to waste collection authorities on the exercise of fly-tipping enforcement functions

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: Laying only

Context and purpose

53. New section 34CZA of the Environmental Protection Act 1990 ("the 1990 Act") confers a power on the Secretary of State to issue guidance to waste collection authorities (namely local authorities) in connection with the enforcement of:

- section 33(1)(a) of the 1990 Act (prohibition on unauthorised deposit of controlled waste); and
- section 34(2A) of the 1990 Act (duty to secure that household waste transferred only to authorised persons).

54. The guidance will support waste collection authorities in implementing a consistent, proportionate and effective approach to enforcement against these offences, with the aim of establishing general best practice, ensuring greater consistency between different waste collection authorities and improving public confidence in such enforcement activity.

55. The guidance will also help councils understand Government expectations in particular scenarios. For example, where householders leave small amounts of waste next to their bins on collection day or unwanted, but reusable items, at the boundary of their property for other to take for free. Enforcement action in these scenarios may be viewed as illegitimate or disproportionate, which undermines public confidence and can impede the ability for enforcement to achieve the aims of reducing fly-tipping and reinforcing social pressure against fly-tipping behaviour in general.

56. In accordance with new section 34CZA(2) of the 1990 Act, an English waste collection authority must have regard to any guidance issued under section new section 34CZA.

57. Before issuing any guidance the Secretary of State must consult such persons as they consider appropriate. Any guidance, or revised guidance, issued to waste collection authorities must be laid before Parliament and published.

Justification for taking the powers

58. The power to issue statutory guidance is necessary to ensure that the various waste collection authorities undertake their fly-tipping enforcement functions in a consistent proportionate and effective way, so that they operate as an effective deterrent and retains the support of the wider public across the country. It would not be appropriate to have the kind of considerable detail necessary to achieve this aim in legislation, especially given that this is an area where a local response, tailored to a particular community, is required. Best practices may also develop and change over time.

59. A similar power is contained in section 88B of the 1990 Act (inserted by section 68 of the Environment Act 2021) to issue guidance to litter authorities on the exercise of littering enforcement functions.

Justification for the procedure

60. Any guidance issued under new section 34CZA of the 1990 Act is not subject to any parliamentary procedure, beyond a requirement to lay the guidance before Parliament, on the grounds that it would provide practical advice to waste collection authorities on enforcement against offences under sections 33(1)(a) and 34(2A) of the 1990 Act and would be developed in consultation with local authorities and other interested stakeholders. The guidance will not conflict with, or alter the scope of, fly-tipping enforcement powers in the 1990 Act. Moreover, whilst English waste collection authorities will be required to have regard to the guidance, they may diverge from the guidance when this is appropriate for the particular scenario. The requirement to lay the guidance before Parliament is consistent with the position taken with the analogous power in section 88B of the EPA 1990 and the recommendation of the Delegated Powers and Regulatory Report Committee in its report on the Environment Bill (Third Report of session 2021/22).

Civil penalties for content managers of platforms advertising etc unlawful weapons:

a) **Clause 13(1): Duty to designate coordinating officer for the purposes of Chapter 1 of Part 2;**
b) **Clause 18(3): Power to uprate civil penalty for failure to comply with content manager requirements;**
c) **Clause 18(6): Power to uprate civil penalty for failure to comply with content removal notice or decision notice;**
d) **Clause 20(5)(f): Power to specify form of, and further information contained in, content removal notice;**

e) Clause 24: Power to issue guidance about the exercise of functions under, or in connection with, Chapter 1 of Part 2.

Power conferred on:	Secretary of State
Power exercised by:	(a) Administrative direction (b) to (d) Regulations made by statutory instrument (e) Statutory guidance
Parliamentary procedure:	(a) and (e) None (b) to (d) Negative resolution procedure

Context and purpose

61. Chapter 1 of Part 2 of the Bill (comprising clauses 12 to 26 and Schedule 4) introduces a sanctions regime for social media platforms, online marketplaces and online search services, together with their senior managers, who fail to take down illegal content relating to knives and offensive weapons. The measures implement the Labour Party's manifesto commitment to personally hold to account executives of online companies that flout the laws regulating the online sale of knives. These measures also support the tightening of controls on online sales of knives and the Government's Safer Streets Mission on halving knife crime in a decade.

62. These clauses grant chief officers of police and the Director General of the National Crime Agency ("NCA") the power to issue content removal notices ("CRNs") to online companies and a designated UK based senior manager of that organisation to act as the "content manager" for the purpose of these provisions. These will require companies to take down specified illegal content relating to the sale of knives and offensive weapons within 48 hours. Recipients of CRNs will have the right to request they are reviewed by the police or NCA, as the case may be.

63. Clause 13(1) requires the Secretary of State to designate a "coordinating officer" to perform the functions conferred on that officer under Chapter 1. The coordinating officers must be a member of a relevant police force or an NCA officer.

64. Clauses 14, 15, 16 and 17 set out the criteria and process for online companies to appoint an appropriate person as content manager. Clause 18(2) confers on the coordinating officer the power to issue a CPN of up to £60,000 to companies that fail to appoint an appropriate person as content manager when required to do so.

65. Following failure to comply with a CRN, clause 23 confers on the police and NCA the power to issue civil penalty notices ("CPN") of up to £60,000 to the online company and up to £10,000 to the designated content manager.

66. Clause 18(3) and clause 23(6) confer a power on the Secretary of State, by regulations, to uprate the maximum level of the civil penalties of £60,000 and £10,000 to reflect changes in the value of money.

67. Clause 20(4) sets out the required content of a CRN and clause 20(5)(f) confers on the Secretary of State the power, by regulations, to prescribe the form of a CRN and prescribe additional information that must be included in such a notice.

68. Clause 24 confers on the Secretary of State the power to issue statutory guidance to chief officers of police and the Director General of the NCA on how to exercise their functions under Chapter 1 of Part 2 of the Bill. Chief officers and the NCA Director General must have regard to such guidance when exercising these functions.

Justification for the power

69. The provisions in Chapter 1 of Part 2 serve to ensure that unlawful weapons content (as defined in clause 19) is promptly removed from online platforms. By their nature such platforms operate across the UK and are not confined to a particular police force area. That being the case, it is appropriate that various functions under Chapter 1 of Part 2 are discharged by a single national coordinating officer rather than duplicated across the NCA and individual police forces throughout the UK. The Bill stipulates that the coordinating officer must be a member (that is a police officer) of a relevant police force or an NCA officer. Beyond that, it is considered appropriate the vest in the Secretary of State the administrative task of designating a qualifying person as the coordinating officer, not least as the designated coordinating officer is likely to change periodically, for example, as the designated officer changes role or retires.

70. By virtue of clause 20(5)(a) to (e), the information to be included in a CRN is largely set out on the face of primary legislation. It is considered appropriate to confer on the Secretary of State to prescribe additional information to be included in a CRN to reflect experience in the operation of the scheme and technological developments. For example, should new forms of social media emerge, additional information in a CPN may help social media platforms locate the specified illegal content to be removed.

71. The power to prescribe a standardised form of a CRN will assist the consistent operation of the scheme across the country to the benefit of both the police/NCA and online companies/content managers. Leaving the form to be prescribed in secondary legislation will also enable it to be readily updated to reflect experience in operating the scheme and the addition of any new prescribed information to be included in a CRN. Moreover, prescribing the form of a CRN is an administrative matter appropriately left to secondary legislation. There are numerous precedents for the form of statutory notices and other similar documents to be left to subordinate legislation.

72. The powers to amend the sums specified in clauses 18 and 23 will allow the civil penalties under this regime to be uprated in line with inflation. This will ensure that the amount of these civil penalties is not devalued over time. These are narrow powers, in particular, they do not extend to a power to make quantitative changes to the prescribed sums beyond those necessary to take account of inflation. There are numerous precedents for monetary limits specified in primary legislation being amended by secondary legislation.

73. The purpose of statutory guidance issued under clause 24 is to support the police and NCA in the discharge of their functions under Chapter 1 of Part 2 of the Bill. Specifically, the guidance will provide detail on the responsibilities of the coordinating officer; the administration of appointment notices, CRNs, and CPN; the process for reviewing CRNs; and any other necessary detail on the operation of the sanctions regime. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with operational good practice.

Justification for the procedure

74. The power to designate a coordinating officer under clause 13 is not subject to any parliamentary procedure. This is considered appropriate given the administrative nature of such a designation.

75. By virtue of clause 198(4) of the Bill, regulations made under clauses 18, 20 and 23 are subject to the negative resolution procedure.

76. In relation to the powers to update the civil penalties in line with inflation, the negative procedure is considered to afford an adequate level of parliamentary scrutiny, notwithstanding that this is a Henry VIII power, as the effect of any such regulations would be no more than to restore the value of the civil penalties as originally approved by parliament when enacting this legislation.

77. In relation to the regulation-making power in clause 20, the negative procedure is considered to afforded an appropriate level of parliamentary scrutiny given the administrative nature of any such regulations which will either simply proscribe the form of a CRN or specify additional information to be included in such a notice (by its nature, any such additional information, must be relevant to the operation of the scheme as set out in primary legislation).

78. Any guidance issued under clause 24 will not be subject to any parliamentary procedure on the grounds that it would provide practical advice on the discharge by chief officers and the NCA Director General of their functions under Chapter 1 of Part 2 of the Bill. The guidance will not conflict with, or alter the scope of, the duties on chief officers / the NCA Director General in Chapter 1 of Part 2. Moreover, whilst chief officers and the NCA Director General will be required to have regard to the guidance when exercising those functions, the guidance will not be binding.

Clause 30 – new section 93ZA(11) of the Armed Forces Act 2006: Power to make provision in respect of appeals against refusal of an application to a commanding officer for an order for delivery of seized bladed articles

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Negative resolution procedure*

Context and purpose

79. Clause 29 creates a new police power to seize, retain and destroy legally held bladed articles from private property when a constable is lawfully on the private premises and they have reasonable grounds to suspect the bladed article will likely be used in connection with unlawful violence. Clause 29(6) to (8) enable a person claiming to be the owner of a seized bladed article to apply to a magistrates' court to recover the article. A magistrates' court may make an order for the return of the article if they are satisfied that the claimant is the owner of the article and it would be just to make such an order. In determining whether it was just to make an order, a magistrate would, amongst other things, be expected to consider whether the test for the seizure of the article has been made out, namely that there were reasonable grounds for suspecting that the relevant article would be likely to be used in connection with unlawful violence. Subsection (8) provides that a relevant article cannot be disposed of within six months of its seizure and then only on the conclusion of any proceedings in respect of the recovery of the article.

80. Clause 30 confers equivalent powers to those in clause 29 for the service police, that is the Royal Military Police, the Royal Navy Police and the Royal Air Force Police. Where the owner of a seized bladed article seeks to recover the article, an application is to be made to their commanding officer rather than to a magistrates' court (new section 93ZA(7) of the Armed Forces Act 2006 ("the 2006 Act")). New section 93ZA(10) then provides for a right of appeal to a judge advocate (as defined in section 362 in the 2006 Act) against a decision of a commanding officer regarding delivery of the relevant article. New section 93ZA(11) enables the Secretary of State, by regulations, to make further provision in respect to the practice and procedure which is to apply in connection with applications for a determination under new section 93ZA(7) and appeals under new section 93ZA(10). Such regulations may also make provision for conferring functions on judge advocates in relation to appeals under section 93ZA(10).

Justification for taking the power

81. The 2006 Act allows the Secretary of State to make rules of court for the Court Martial, Service Civilian Court and Summary Appeal Court. Where it is not clear which Court would have jurisdiction, the 2006 Act generally confers functions on an individual judge advocate or upon a commanding officer. Where this is done, it is necessary to prescribe specific procedural rules which fall outside the individual court rules. An example of this is section 94 of the 2006 Act, and the Armed Forces (Disposal of Property) Regulations 2023 which were made under that section. New section 93ZA(7) deals with a similar issue to that dealt with in section 94 - the return of property that has come into the possession of the service police – and so similar powers are required.

Justification for the procedure

82. By virtue of section 373(4) of the 2006 Act, regulations made under new section 93ZA(11) are subject to the negative procedure. The powers in new section 93ZA(11) relate to procedure for appeals before a judge advocate. With the exception of rules as to the constitution of the Court Martial, and the sentencing

powers of the Court Martial where a person elects for trial by Court Martial, which are subject to the draft affirmative procedure by virtue of section 373(3)(f) of the 2006 Act, all of the Secretary of State's powers to make procedural rules for the service courts are subject to the negative procedure. It is therefore considered appropriate that the power under new section 93ZA(11) should also be subject to the negative procedure.

Remote sale of knives and crossbows:

a) **Clause 31: new section 141B(4A)(d) of the Criminal Justice Act 1988 – Power to add to the list of identity documents;**
b) **Clause 32: new section 39A(5)(d) of the Offensive Weapons Act 2019 – Power to add to the list of identity documents;**
c) **Clause 33: new section 1B(5)(d) of the Crossbows Act 1987 - Power to add to the list of identity documents;**
d) **Clause 32: new sections 39A(7), 40A(9), 40B(9), 40C(9) and 40D(14) of the Offensive Weapons Act 2019 – Power to provide for other defences for a person charged with an offence under section 38, 40A, 40B, 40C and 40D respectively.**
e) **Clause 34: new section 1D(6), 1E(7), 1F(7), 1G(7) and 1H(12) of the Crossbows Act 1987 - Power to provide for other defences for a person charged with an offence under section 1C, 1E, 1F, 1G and 1H respectively.**
f) **Clause 32: amendment to section 66(1) of the Offensive Weapons Act 2019 – Power to issue guidance relating to offensive weapons etc**
g) **Clause 35(3): amendment to section 66(1) of the Offensive Weapons Act 2019 – Power to issue guidance relating to offensive weapons etc**

Power conferred on:	*Secretary of State*
Power exercisable by:	*(a) to (e) Regulations made by statutory instrument* *(f) and (g) Statutory guidance*
Parliamentary procedure:	*(a) to (c) Negative procedure* *(d) and (e) Draft affirmative procedure* *(f) and (g) None*

Context and purpose

83. Clauses 31 and 32 introduce stricter age verification checks for the online sale and delivery of knives following the stabbing carried out in Southport in July 2024. The attacker had used a false identity to buy knives. The purpose is to impose strict requirements for age verification checks, and to ensure the item is only delivered to the buyer and not given to anyone else (where the buyer is an individual), to mitigate the risk that under 18s use fraudulent ways of identification in order to purchase knives online. The policy intention is to deter the acquisition of knives by under-18s, and to support the wider intention of reducing knife crime. Clauses 33 to 35 make similar provision for stricter age verification checks for the online sale, letting on hire, and delivery of crossbows or part of a crossbow.

84. Clause 31 amends section 141B of the Criminal Justice Act 1988 ("CJA 1988"). Section 141A of the CJA 1988 (sale of knives, etc., to persons under 18) provides

that a person who sells to a person a 'bladed article[1]' will be guilty of an offence, subject to a maximum penalty of six months' imprisonment (to be increased to two years by clause 11 of the Bill) or an unlimited fine or both. It is a defence for the defendant to prove they took all reasonable precautions and exercised all due diligence.

85. Section 141B of the CJA 1988 provides some limitations to that defence. Where the seller or seller's agent is not in the presence of the buyer, the seller will not be regarded as having taken 'all reasonable precautions and exercised all due diligence' unless all of the following conditions were met:

    - Condition A: the seller operated a system for checking a buyer is not under 18, and the system was likely to work.
    - Condition B: the package containing the article was clearly marked by the seller that it contained a bladed or sharply pointed article and it should only be delivered into the hands of a person aged 18 or over.
    - Condition C: the seller took all reasonable precautions and exercised all due diligence to ensure that it would be delivered into the hands of someone over 18.
    - Condition D: the seller did not deliver the package (or arrange for its delivery) to a "locker"[2].

86. Section 38 of the OWA 2019 (delivery to residential premises) provides that where the seller and buyer are not in each other's presence at the time of the transaction, the seller commits an offence if the seller delivers or arranges delivery of the 'bladed product' to a residential premises or to a locker.

87. Section 38 is subject to the defences in section 40, including where:

    - the seller took all reasonable precautions and exercised due diligence;
    - the seller, when delivering, had procedures in place to ensure it would not be given to a person aged under 18 at residential premises;
    - the seller made sure the courier had procedures in place;
    - the bladed article was a bespoke item for that buyer or was adapted for the buyer;
    - the seller reasonably believed the buyer had bought bladed article for sporting purposes or historical re-enactment.

88. Section 39 of the OWA 2019 (delivery to persons under 18) provides where a UK-based seller has an arrangement with a courier which includes the delivery of bladed products, the courier when delivering to a residential premises commits an offence if the bladed article is not delivered into the hands of a person aged 18 or over. It is a defence for the courier to show they took all reasonable precautions and exercised all due diligence.

[1] i.e., any knife, knife blade, razor blade, axe and any other article which has a blade or is sharply pointed made or adapted for use causing injury to the person.
[2] As defined in ss141B(9).

89. Where a section 141A ‘article’ is purchased and the seller and buyer are not present, clause 31 amends Condition A, one of the conditions that need to be met in order for the seller to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of an offence. The revised ‘Condition A’ requirement is that before the sale of the article (a) the seller must have obtained from the buyer (i) a copy of an identity document issued to the buyer, and (ii) a photograph of the buyer, and (b) on the basis of the documents obtained under paragraph (a), a reasonable person would have been satisfied that the buyer was aged 18 or over. For these purposes, new section 141B(4A)(a) to (c) of the CJA 1988 defines an identity document as a UK passport, a foreign passport, or a GB or Northern Ireland driving licence.

90. New section 39A of the OWA 2019 (inserted by clause 30(2)) introduces defences for a seller in England and Wales who delivers or arranges for delivery of a bladed product to residential premises in contravention of the existing offence under section 38. New section 40A (inserted by clause 32(3)) creates an offence for a courier or person on behalf of the courier to deliver a bladed product sold by UK seller to residential premises. New section 40B makes it an offence for a seller to deliver a bladed product to a collection point in England and Wales or arrange for a bladed product to be delivered to a collection point in England and Wales. New section 40C creates an offence for a courier to deliver a bladed product sold by a UK seller to a collection point in England and Wales. New section 40D makes it an offence for the operator of a collection point or a person acting on behalf of the operator to hand over a bladed product to a person who is not an “eligible person”. An eligible person is someone who is 18 or over and (if the buyer is an individual) is the buyer. New section 42A (inserted by clause 32(4)) creates an offence for a courier or person on behalf of the courier to deliver a bladed article sold by a non-UK seller to premises in England and Wales.

91. The new offences created by clause 32 apply to a seller, courier or operator of a collection point unless they put measures in place to ensure that the item will not be handed to a person under 18 and to a person other than the buyer (if the buyer is an individual). The collection point operator, or person acting on behalf of an operator, must give the bladed product into the hands of the buyer, who must be at least 18 years old. If the courier, collection point operator, or person acting on behalf of an operator fails to do act as required, they may commit a summary offence attracting a maximum penalty of an unlimited fine.

92. It will be a defence for a seller to show that they marked the package to say that it contained a bladed product and that it should only be handed to an eligible person, and that they took all reasonable precautions and exercised all due diligence to ensure that the package containing the bladed product would be given into the hands of such a person.

93. It will be a defence for a courier to show that the package was marked to say that it contained a bladed product and that it should only be handed to an eligible person, and that they took all reasonable precautions and exercised all due diligence to ensure that the package containing the bladed product would be given into the hands of such a person.

94. It will be a defence for a collection point operator or person acting on behalf of an operator to show that (where the buyer is an individual) the prescribed form of identity document (defined as a UK or foreign passport or GB or Northern Ireland driving licence) was checked and that the ID would have satisfied a reasonable person that the person receiving was over 18 and (if the buyer was an individual) was the buyer.

95. It will be a defence for a courier, collection point operator, or person acting on behalf of an operator to show that they did not know, and a reasonable person would not have known, that the product was a bladed product.

96. New section 141B(4A)(d) of the CJA 1988 and new section 39A(5)(d) of the OWA 2019 confer powers on the Secretary of State, by regulations, to add to the list of identity documents for these purposes.

97. New section 39A(7), 40A(9), 40B(9), 40C(9) and 40D(14) of the OWA 2019 enable the Secretary of State, by regulations, to provide for other defences for a person charged with an offence under sections 38, 40A, 40B, 40C and 40D respectively.

98. Clause 32(10) amends section 66(1)(j) of the OWA 2019 to extend the power conferred on the Secretary of State to issue guidance relating to offensive weapons to include guidance on the effect of new sections 42A of that Act (delivery of bladed articles sold by non-UK seller to premises). Such guidance would also be capable of covering the provisions in new sections 39A, 40A, 40B, 40C and 40D of the OWA 2019 by virtue of the existing drafting of section 66(1)(j).

99. Clause 35(3) also amends section 66(1) of the OWA 2019 to extend the power conferred on the Secretary of State to issue guidance relating to offensive weapons to include guidance on the offences under the Crossbows Act 1987.

100. Clause 33 amends the Crossbows Act 1987 (“CA 1987”). Section 1 of the CA 1987 makes it an offence to sell or let for hire ‘a crossbow or part of a crossbow’ to a person under 18 unless they believe the person to be 18 or older and that they had reasonable grounds for the belief. The maximum penalty is six months’ imprisonment or an unlimited fine. Sections 2 and 3 create offences of under-18s buying a crossbow or part of a crossbow and possessing a crossbow or part of a crossbow.

101. Section 1A of the CA 1987, which applies to Scotland only, provides some limitations to the defence in section 1. It is a defence to show that:

(i) the accused believed the person to whom the crossbow or part was sold or let on hire to be aged 18 or over and either
(ii) the accused had taken reasonable steps to establish the purchaser or hirer's age, or
(iii) no reasonable person could have suspected from the purchaser or hirer's appearance that the purchaser or hirer was under the age of 18.

102. For the purpose of (i) above, the accused is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if the accused

was shown a passport, a UK driving licence or a European Union photocard driving licence (or in the case of Scotland such other documents as the Scottish ministers may by order made by statutory instrument prescribe).

103. The amendments to the CA 1987 to introduce equivalent age verification methods as those in 141B of the CJA 1988 (as described in paragraph 18 above) for the sale or letting of a crossbow or part of a crossbow and with similar amendments to 'Condition A' as those proposed in the age verification policy for bladed articles (as described in paragraph 18 above).

104. As with bladed articles, before dispatch of the crossbow or part of a crossbow, the seller must receive from the buyer a copy of an identity document (namely a UK passport, a foreign passport, or a GB or Northern Ireland driving licence) issued to the buyer and a photograph of the buyer and confirm that they are aged 18 or over.

105. Clause 32 inserts new section 1C into the CA 1987 to create a new offence on the part of the seller if they deliver or arrange for delivery to residential premises in respect of the sale or letting of a crossbow or part of a crossbow similar to that set out in section 38 of the OWA 2019, with equivalent defences to those in section 39A of the OWA 2019 in new section 1D of the CA 1987.

106. Clause 32 also inserts new section 1E into the CA 1987 which provides for a new offence on the part of the courier or person delivering on their behalf (where the seller is in the UK) equivalent to the new offence described for the delivery of bladed article in new section 40A of the OWA 2019 and new section 1I equivalent to new offence described for the delivery of a bladed product on behalf of a non-UK seller in new section 42A of the OWA 2019. Finally, clause 32 also inserts new sections 1F, 1G and 1H into the CA 1987 which create offences relating to delivery of crossbows to collection points in England or Wales, similar to those for bladed articles, following a remote sale or letting on hire.

107. The courier, person delivering on behalf of the courier or operator of a collection point must only provide the crossbow or part of a crossbow into the hands of the actual buyer and (in the case of a delivery to residential premises) only at the address the buyer provided at the outset. If the courier, person delivering on behalf of the courier or operator of a collection point fails to do this, they will commit a summary offence attracting a penalty of an unlimited fine.

108. It will, however, be a defence for a courier, person delivering on behalf of the courier or operator of a collection point to show that they checked an official identity document (defined as a UK or foreign passport or GB or Northern Ireland driving licence) and that the ID has the name of the person indicated by the seller, and it shows that the holder is over 18, and that as far as they can tell, the picture in the ID is of the person at the doorstep or collection point and is the buyer or hirer. It will also be a defence for a courier, collection point operator, or person acting on behalf of an operator to show that they did not know, and a reasonable person would not have known, that the product was a crossbow.

109. New section 1B(5)(d) of the CA 1987 confers power on the Secretary of State, by regulations, to add to the list of identity documents for these purposes.

110. New sections 1D(6), 1E(7), 1F(7), 1G(7) and 1H(12) of the CA1987 enable the Secretary of State, by regulations, to provide for other defences for a person charged with an offence under sections 1C, 1E, 1F, 1G and 1H respectively.

Justification for the delegated power

111. Section 141B of the CJA 1988, section 39A of the OWA 2019 and section 1B of the CA 1987, as amended/inserted by the Bill, will set out the forms of acceptable proofs of identity for the purpose of the schemes relating to the sale and delivery of knives and crossbows provided for in those Acts. It is considered appropriate to include powers in the Bill to add to the list of identity documents for the purposes of these schemes. Such powers are necessary given that both physical and digital identity mechanisms are subject to innovation and technological change. In particular, the Data (Use and Access) Bill currently before the House seeks to set digital identity services on a statutory basis and it is likely that the Government will want to amend the sales of knives legislation to add digital forms of ID to the list of acceptable forms of proof of identity.

112. The clauses amending the OWA 2019 and CA 1987 provide for various defences for the offences in sections 38, 40A, 40B, 40C and 40D of the OWA 2019 and section 1C, 1E, 1F, 1G and 1H of the CA 1987. It is considered appropriate to include powers to add to the list of defences, given that sale and delivery processes are subject to technological change. This may include the development of identity and age verification mechanisms that are not based on documents. Additionally, the Government may consider that it is appropriate to add additional defences to protect employees of sellers and couriers. There is an analogous power in section 40(13) of the OWA 2019 to add to defences provided for in section 40 in respect of the offences in sections 38 and 39 of that Act relating to the delivery of bladed products to residential premises and persons under 18, as such the new powers ensure parity and consistency with the existing legislation.

113. The purpose of guidance issued under section 66 of the OWA 2019 is to aid the implementation of the provisions in Parts 1 to 3 of the Act and existing legislation, as amended by that Act, governing the sale and possession of knives and offensive weapons by supplementing the legal framework provided for in Parts 1 to 3 of the Act and the legislation amended by those Parts. The guidance is available at: Statutory guidance: Offensive Weapons Act 2019 (accessible) - GOV.UK. The existing guidance-issuing power already covers the provisions in sections 38 to 42 of the OWA 2019 relating to the sale and delivery of knives etc and the amendments to the scope of the power, including to cover the offences in section 42A of the OWA 2019 and sections 1 to 3 of the CA 1987, does not materially change the nature of the guidance.

Justification for the procedure

114. By virtue of new section 141B(11) of the CJA 1988, new section 68(2A) of the OWA 2019 and new section 6A(3) of the CA 1987, regulations made under section

141B(4A)(d) of the CJA 1988, section 39A(5)(d) of the OWA 2019 and new section 1B(5)(d) of the CA 1987 are subject to the negative resolution procedure. The negative procedure is considered appropriate given that any additions to the list of authorised identity documents will not alter the core requirements on online retailers to effectively establish the age and identity of their customers while, at the same time, affording greater choice and flexibility to such customers in terms of evidencing their age.

115. By virtue of new section 68(2A) of the OWA 2019 and new section 6A(2) of the CA 1987, regulations made under new sections 39A(7), 40A(9), 40B(9), 40C(9) and 40D(14) of the OWA 2019 and new sections 1D(6), 1E(7), 1F(7), 1G(7) and 1H(12) of the CA 1987 are subject to the draft affirmative resolution procedure. The affirmative procedure is considered appropriate given that any regulations will narrow the scope of the relevant offences as approved by Parliament and it is therefore fitting that both Houses should first debate and approve any new defences. The application of the affirmative procedure is consistent with the approach taken in respect of the equivalent power in the OWA 2019.

116. Guidance issued under section 66 of the OWA 2019 is not subject to any parliamentary procedure on the basis that it deals with practical advice to those affected by the legislation and has been the subject of consultation with interested parties before it is issued (as required by section 66(6)). The guidance does not, and indeed cannot, conflict with the statutory framework governing the sale and delivery of knives, offensive weapons and crossbows and there is no statutory duty for persons to have regard to or abide by the guidance. The extended power to issue guidance under section 66 does not materially change the nature of the power or the guidance and, as such, the Government continues to consider that it is appropriate that such guidance is not subject to any parliamentary procedure.

Bulk sale of knives etc - clause 36:

(a) new section 141D(1) of the Criminal Justice Act 1988 – power to make provision about the reporting of remote sales of knives etc;

(b) new section 141D(15) of the Criminal Justice Act 1988 – power to amend definition of a reportable sale of bladed articles

(c) amendment to section 66(1) of the Offensive Weapons Act 2019 – Power to issue guidance relating to offensive weapons etc

Power conferred on: *Secretary of State*

Power exercisable by: *(a) and (b) Regulations made by statutory instrument*
(c) Statutory guidance

Parliamentary procedure: *(a) Negative resolution procedure*
(b) Draft affirmative procedure
(c) None

Context and purpose

117. Clause 36 inserts new section 141D into the CJA 1988 which creates a duty on sellers to report “bulk” online sales, following the Clayman review. The Clayman review recommended that retailers are required to report bulk or suspicious sales

of knives[3]. The purpose of the reporting is to enable informed law enforcement intervention to inhibit circumvention of controls on knife sales by individuals or "grey market" resellers of knives. These resellers typically do not apply requirements relating to age verification in the CJA 1988, or in the requirements in respect of the marketing of knives in the Knives Act 1997.

118. The reporting requirements for bulk sales will apply to sales of section 141A 'articles[4]' purchased or supplied when the seller and buyer are not present, but:

- excluding cutlery that does not have a sharp point; and
- with separate provision for sets of knives, such as those found in "knife blocks", or hobby knife sets, according to which they are treated as a single purchase if conditions are met.

119. The reporting requirements will only apply if the buyer is an individual (as opposed to, for example, a company).

120. Failure to comply with the reporting requirements will be an offence, subject to a maximum penalty of an unlimited fine.

121. New section 141D(2) defines a reportable sale of bladed articles as any of the following:

(a) 6 or more bladed articles, none of which form a qualifying set;
(b) 2 or more qualifying sets;
(c) 1 or more qualifying sets and 5 or more bladed articles that do not form a qualifying set.

122. New section 141D(3) defines a "qualifying set" as "three or more bladed articles packaged together for sale as a single item, where each bladed article is a different size or shape from the others".

123. The requirement to report applies where the number of bladed articles, qualifying sets or combination of the two as specified in new section 141D(2) are purchased either (a) in a single remote sale, or (b) in two or more remote sales in any period of 30 days— (i) to one person, or (ii) where the bladed articles are to be delivered to the same residential premises (see new section 141D(4)). The term "remote sale" is defined in new section 141A(5).

124. New section 141D(1) of the CDA 1988 confers a power on the Secretary of State to prescribe the details of the reports and the reporting process, that is to whom reports must be made. By virtue of new section 141D(13), such regulations may in particular include requirements about:

[3] The Clayman Review is available at the following link: Independent end-to-end review of online knife sales - GOV.UK

[4] i.e., any knife, knife blade, razor blade, axe and any other article which has a blade or is sharply pointed made or adapted for use causing injury to the person. This definition will also include knives, the possession of which are prohibited (subject to statutory defences) under the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 and the Restriction of Offensive Weapons Act 1959.

(a) how reports are to be made (that is the method of submission and to whom (expected to be a central police unit)),
(b) when reports are to be made, and
(c) the information reports must include (expected to be the details of the purchase and the name, address, and age of the purchaser) .

125. New section 141D(15) of the CJA 1988 confers a power on the Secretary of State to amend:

a) the number of bladed articles specified in new section 141D(3)(a);
b) the number of qualifying sets specified in new section 141D(3)(b);
c) the number of qualifying sets specified in new section 141D(3)(c);
d) the number of bladed articles specified in new section 141D(3)(c); and
e) the period specified in new section 141D(4)(b).

126. Clause 36(2) amends section 66(1) of the OWA 2019 to extend the power conferred on the Secretary of State to issue guidance relating to offensive weapons to include guidance on the effect of new sections 141D of that CJA 1988 (Duty to report remote sales of knives etc in bulk: England and Wales).

Justification for the delegated power

127. New section 141D establishes the duty to report bulk purchases of bladed articles. The administrative arrangements in respect of the submission of reports, including the detail to be included in such reports, the method of submission, to whom they are to be sent and the deadline for submission, may appropriately be left to secondary legislation. The relevant details may change over time, for example if the central hub for receipt of such reports were to change or if additional categories of information were considered to be necessary, and leaving such details to regulations would enable necessary changes to be made promptly (as necessitated by the public safety purpose of the reporting scheme). There is an analogous power in respect of the reporting of suspicious sales of regulated or reportable substances under section 3C(7) of the Poisons Act 1972.

128. Similarly, new section 141D sets out what constitutes a bulk purchase for the purposes of the reporting duty. As the reporting requirement beds in, evidence may emerge that supports specifying a different qualifying number of bladed articles and/or qualifying sets or a different period for the purposes of new section 141D(4). For example, the police may find that they receive too many reports that do not form useful intelligence and request that the limits are increased. In these circumstances, it is considered appropriate that the specified qualifying amounts or the 30-day period can be changed promptly via secondary legislation to reduce the burdens on business and the police.

129. The purpose of guidance issued under section 66 of the OWA 2019 is to aid the implementation of the provisions in Parts 1 to 3 of the Act and existing legislation, as amended by that Act, governing the sale and possession of knives and offensive weapons by supplementing the legal framework provided for in Parts 1 to 3 of the Act and the legislation amended by those Parts. The guidance is available at: Statutory guidance: Offensive Weapons Act 2019 (accessible) -

GOV.UK. The existing guidance-issuing power already covers the provisions in sections 38 to 42 of the OWA 2019 relating to the sale and delivery of knives etc and the amendment to the scope of the power to cover the duty to report bulk sales does not materially change the nature of the guidance.

Justification for the procedure

130. By virtue of new section 141D(14) of the CJA 1988 any regulations made under new section 141D(1) are subject to the negative resolution procedure. The negative resolution procedure is considered appropriate for the power in new section 141D(1) given that regulations made under that subsection will essentially deal with the administrative arrangements for the submission of report. The negative procedure mirrors the position with the analogous power in the Poisons Act 1972.

131. By virtue of new section 141D(16) of the CJA 1988 any regulations made under new section 141D(15) are subject to the draft affirmative resolution procedure. In relation to the power in new section 141D(15), the affirmative procedure is considered appropriate given that one potential effect of any regulations would be to place more onerous burdens on businesses to report knife sales to the police. The affirmative procedure is also considered apt as this is a Henry VIII power.

132. Guidance issued under section 66 of the OWA 2019 is not subject to any parliamentary procedure on the basis that it deals with practical advice to those affected by the legislation and has been the subject of consultation with interested parties before it is issued (as required by section 66(6)). The guidance does not, and indeed cannot, conflict with the statutory framework governing sale and delivery of knives and offensive weapons, including the new duty to report bulk sales, and there is no statutory duty for persons to have regard to or abide by the guidance. The extended power to issue guidance under section 66 does not materially change the nature of the power or the guidance and, as such, the Government continues to consider that it is appropriate that such guidance is not subject to any parliamentary procedure.

Clause 58(1), (2) and (3): Power to amend list of cuckooing specified offences in Schedule 6

Power conferred on:	*Secretary of State; Scottish Ministers; Department of Justice in Northern Ireland*
Power exercised by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Draft affirmative resolution procedure*

Context and purpose

133. Clause 56, together with clause 57 and Schedule 6, provides for an offence of controlling another's home for criminal purposes, commonly known as "cuckooing". "Cuckooing" refers to the practice whereby criminals take over the property of another person, who is often vulnerable, to perpetrate illegal activity. The activity

is commonly related to the storage, preparation, and sale of illegal drugs but cases of cuckooing linked to sexual, weapon and fraud offences have also been seen.

134. Subsection (1) of clause 56 provides that a person (A) commits an offence if (a) they exercise control over the dwelling of another person (B), (b) they do so for the purpose of enabling the dwelling to be used in connection with the commission of one or more relevant offences (by any person), and (c) B does not consent to A exercising that control for that purpose. The offence applies UK-wide. Subsection (2) defines a relevant offence as an offence listed in Part 1, 2 or 3 of Schedule 6 which respectively apply where the dwelling where the cuckooing occurred was located in England and Wales, Scotland or Northern Ireland. The lists of specified offences include sexual offences, firearms offences and drug-related offences, among others. The maximum penalty for the offence, on conviction on indictment, is five years' imprisonment, a fine, or both (subsection (4)).

135. Clause 58(1), (2) and (3) confers a power on the Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland, by regulations, to amend Part 1, 2 and 3 of Schedule 5 respectively. The powers vested in the Scottish Ministers and Department of Justice are limited to adding or removing offences (or otherwise amending existing entries) insofar as the offences relate to devolved matters; where the offences relate to reserved or excepted matters the power to amend Parts 2 and 3 of Schedule 6 rests with the Secretary of State.

Justification for taking the power

136. The Bill itself provides for the cuckooing offence and contains, in Schedule 6, a list of specified criminal offences which the control over the dwelling is to be for the purpose of enabling the dwelling to be used in connection with the commission (by any person) of one or more such offences. This list of specified offences reflects the Government's current understanding of the context in which cuckooing occurs. However, the contexts in which cuckooing occurs is still evolving and criminals may adapt their models. In order to respond quickly to tackle any cuckooing activity which emerges in future, the Government considers it appropriate to take a power for the Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland to amend the list of specified offences, where appropriate. This is considered justified due to the need to respond to the emerging threat of cuckooing-related activity quickly, and on the basis that any newly created criminal offences which may be added to the Schedule will already have been scrutinised by Parliament when being made into law. While it is the case that it could be expected that any new Bill creating a new cuckooing-related offence could itself amend Schedule 6, the link to cuckooing activity may only emerge at a later date. The regulation-making power will also enable existing criminal offences to be added to the Schedule to reflect the expansion of cuckooing activity into new areas of criminality.

Justification for the procedure

137. By virtue of clause 198(3)(a), 199(1)(a) and 199(5)(a) regulations made under clause 58(1), (2) and (3) are subject to the draft affirmative procedure. This is considered appropriate as any such regulations would have the effect of expanding

the application of the cuckooing offence in clause 56(1). It is also befitting the Henry VIII nature of this power.

Clause 59(9): Power to amend section 59 section for purpose of changing items which are specified items

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Draft affirmative resolution procedure*

Context and Purpose

138. Clause 59 creates two new criminal offences to tackle coerced internal concealment (one against a child and one against an adult). Coerced internal concealment (also known as "plugging") refers to the practice whereby criminals conceal or cause the concealment of certain items (usually controlled drugs) inside another person's body, through compulsion, coercion, deception or through controlling or manipulative behaviour, for criminal purposes. It is most often associated with illegal activity, in particular for the purposes of carrying out county lines[5] related criminal activity. The maximum penalty for both offences on conviction on indictment is 10 years' imprisonment, a fine, or both.

139. Subsection (8) of the clause includes an exhaustive list of "specified items" for the purposes of both offences. This list includes controlled drugs, psychoactive substances, mobile telephones, SIM cards, electronic devices, cash, payment cards, jewellery and offensive weapons. Subsection (11) contains definitions, including of terms used in subsection (8). Subsection (9) confers on the Secretary of State, a power, by regulations, to amend section 59 for the purpose of changing items which are specified items.

Justification for the delegated power

140. The Bill itself provides for the two new offences of coerced internal concealment and sets out the constituent elements of those offences, including that the offence is only made out where a specified item is concealed inside a person's body. The list of specified items is set out in subsection (8). This is an exhaustive list of items, which includes items that are commonly the subject of internal concealment including controlled drugs, SIM cards, mobile telephones, money and offensive weapons. This ensures that the new offences are sufficiently targeted, as they remain focused on the specific criminal contexts in which coerced internal concealment most often occurs (such as drugs and weapons supply) and the specific harms, such as physical damage or psychological harm, that are most

[5] "County lines" is defined in Criminal exploitation of children and vulnerable adults: county lines (accessible version) - GOV.UK as "a term used to describe gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK, using dedicated mobile phone lines or other form of "deal line". They are likely to exploit children and vulnerable adults to move and store the drugs and money and they will often use coercion, intimidation, violence (including sexual violence) and weapons"

likely to occur as a result of concealment of those items. The nature of county lines and other criminal enterprises is, however, subject to change as criminals frequently adapt, and we may see in future that other items commonly become concealed. It is therefore considered appropriate that the Secretary of State should have the power to amend the section for the purpose of changing the items which are specified through secondary legislation, to enable the Government to respond quickly to any coerced internal concealment activity which emerges in future. This is considered justified due to the potential harmfulness of coerced internal concealment and the need to respond to tackle it quickly, together with the fact that in order for the offence to be made out, the defendant must intend, know or reasonably suspect that the specific item has been or may be used in connection with criminal conduct. Moreover, the constituent elements of the offence, including that the offence is only made out where a specified item is concealed, is clearly set out in primary legislation (as is the power to amend that list), which Parliament will have already approved during the passage of the Bill.

Justification for the procedure

141. By virtue of clause 198(3)(a), regulations made under clause 59(9) are subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate as the effect of any regulations would be to alter, and potentially, expand the scope of the offence (albeit in a limited sense – to amend the list of specified items which may be concealed). This level of parliamentary scrutiny is also apt given that it is a Henry VIII power.

Clause 60: Power to issue guidance about the exercise of functions in relation to child criminal exploitation, cuckooing and causing internal concealment of an item for criminal purposes

Clause 61: Power to issue guidance about the exercise of functions in relation to child criminal exploitation and cuckooing

Power conferred on:	*Secretary of State / Department of Justice in Northern Ireland*
Power exercisable by:	*Statutory guidance*
Parliamentary procedure:	*None*

Context and purpose

142. Clause 40 of the Bill provides for a new offence of child criminal exploitation ("CCE") and clauses 42 to 55 and Schedule 5 provide for a new civil order to protect victims of child criminal exploitation and prevent offending and re-offending - the CCE Prevention Order. These provisions currently apply to England and Wales only, but the government has tabled amendments for Report stage which apply the offence (but not CCE Prevention Orders) UK-wide.

143. Clause 56 provides for a new offence of controlling another person's home for criminal purposes (known colloquially as "cuckooing"). This offence applies UK-wide.

144. Clause 59 creates two new criminal offences of coerced internal concealment ("CIC"). CIC (also known as "plugging") refers to the practice whereby criminals conceal or causes the concealment of certain items (usually controlled drugs) inside another person's body, usually through control, coercion, deception or manipulation, to avoid detection. It is most often associated with illegal activity, in particular for the purposes of carrying out county lines related criminal activity. The offences apply to England and Wales.

145. Clause 60 enables the Secretary of State to issue statutory guidance to "relevant officers" about the exercise of their functions in respect of:

(a) the prevention, detection and investigation of CCE offences under clause 40;
(b) CCE prevention orders under clause 43;
(c) CCE prevention orders made on conviction under new Chapter 2A of Part 11 of the Sentencing Code;
(d) the prevention, detection and investigation of cuckooing offences under clause 56;
(e) the prevention, detection and investigation of coerced internal concealment offences under clause 59.

146. "Relevant officers" are defined in subsection (3) and (4) as chief officers in England and Wales, the Chief Constable of the British Transport Police (in respect of their functions under Part 4 in England and Wales), the chief constable of the Ministry of Defence Police (in respect of the functions under Part 4 throughout the UK) and the Director General of the NCA (in respect of their functions under Part 4 in England and Wales, and Northern Ireland).

147. Before issuing any guidance, the Secretary of State is under a duty to consult such persons as the Secretary of State considers appropriate (for example, the National Police Chiefs' Council and the NCA); the duty to consult is disapplied in cases where revisions to the guidance are insubstantial (subsections (6) and (7)). Relevant officers will be under a duty to have regard to the guidance when exercising such functions (subsection (2)).

148. The guidance, and any revisions to it, must be published (subsection (8)).

149. A similar such power is contained in section 5C of the Female Genital Mutilation Act 2003 (as inserted by the Serious Crime Act 2015) and section 77 of the Serious Crime Act 2015 (which provides for guidance about the investigation of the offence of controlling or coercive behaviour in an intimate or family relationship).

150. Clause 61 confers a similar power on the Department of Justice in Northern Ireland to issue statutory guidance to the Chief Constable of the Police Service of Northern Ireland about the exercise of their functions in respect of the prevention, detection and investigation of the CCE offence under clause 40 and the cuckooing

offence under clause 56. Again, the Chief Constable of the Police Service of Northern Ireland is required to have regard to such guidance.

Justification for taking the power

151. The Bill itself provides for the CCE, cuckooing and coerced internal concealment offences and provision in respect of CCE Prevention Orders. The purpose of any guidance under clauses 60 and 61 is to support the police and NCA in giving effect to the provisions in Part 4 of the Bill. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with operational good practice.

152. Such statutory guidance would, amongst other things, cover:

- The intent behind using the CCE offence alongside underlying offences (for example, drugs offences) the child is being exploited to carry out and similar offences (for example, modern slavery offences).
- How those responsible for applying for CCE Prevention Orders and managing (i.e. monitoring and enforcing) CCE Prevention Orders do so effectively and appropriately. Such guidance may, for example, set out circumstances when it is appropriate to apply for a CCE Prevention Orders rather than other available prevention orders (such as a Serious Crime Prevention Order). Additionally, the guidance will clarify how and to which court applications are to be made, who is best placed to make that application, and give illustrative examples of the types of prohibitions and requirements that may be contained in orders.
- Support implementation of the CIC and cuckooing offences, including how enforcement partners should pursue and investigate cases of CIC and cuckooing, their response when children are identified in connection with CIC or cuckooing, and support for how policing should respond and safeguard victims of exploitation when they are identified as part of an investigation.

Justification for the procedure

153. Any guidance issued under clauses 60 and 61 will not be subject to any parliamentary procedure on the grounds that it would provide practical advice to the police and NCA, including on the investigation of the CCE, cuckooing and coerced internal concealment offences and applications for CCE Prevention Orders. The guidance will not conflict with the provisions in Part 4 of the Bill. Moreover, whilst a relevant officer exercising functions under Part 4 will be required to have regard to the guidance when exercising those functions, the guidance will not be binding. The approach taken in these new clauses is consistent with other legislative provisions providing for statutory guidance, including section 5C of the Female Genital Mutilation Act 2003 and section 77 of the Serious Crime Act 2015.

Clause 63(5): Power to make provision about testing of child sexual abuse image-generators

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Negative resolution procedure*

Context and Purpose

154. There is considerable evidence that child sexual abuse offenders are using AI to create the most severe forms of child sexual abuse material ("CSAM"). Offenders are downloading mainstream text-to-image AI models and optimising these, for example by training them on known series of CSAM, to enhance their capability to create photo-realistic CSAM that depicts the most extreme forms of child abuse. This CSAM can feature the likeness of real children, including known victims of child sexual abuse.

155. Under current law these AI models, referred to as "CSA image-generators" are not illegal. Clause 63(1) inserts new sections 46A to 46C into the Sexual Offences Act 2003 which make it an offence for a person to make, adapt, possess, supply or offer to supply a CSA image-generator and provide for certain defences. Such defences cover conduct by law enforcement agencies for the purpose of preventing, detecting or investigating crime, by the intelligence agencies for purposes connected to the exercise of their functions and by OFCOM in the exercise of their online safety functions.

156. Clause 63(5) confers a power on the Secretary of State by regulations to authorise the carrying out of tests either by the Secretary of State or by a person specified in the regulations and the doing of things, including the retention of information, in connection with such tests for the purpose of investigating CSA image-generators. Clause 63(6) provides that such regulations may impose conditions on such testing. Clause 63(7) enable regulations to provide that conduct in pursuance of such testing which is in accordance with any specified conditions would not constitute an offence under section 2 of the Obscene Publications Act 1959 (publication of obscene matter), section 1(1)(a) of the Protection of Children Act 1978 (taking or making any indecent photograph or pseudo-photograph of a child), section 127(1) of the Communications Act 2003 (sending of obscene messages etc) and the new section 46A of the Sexual Offences Act 2003.

Justification for the delegated power

157. This regulation-making power would provide legislative cover for organisations who have a legitimate need to test and/or investigate CSA image-generators with a view to preventing future crimes and safeguarding children. The Bill itself establishes the principle that the Home Office or other designated organisation may be authorised to undertake testing of CSA image-generators and that in undertaking such testing they are not caught by the offence in new section 46A of the Sexual Offences Act 2003 or other specified offences. Having established this principle it is appropriate to leave to secondary legislation the designation of persons authorised to undertake such testing and the conditions (which are likely to be technical in nature) under which such testing may take place. The persons authorised to undertake such testing may change over time and it is important that

amending regulations can be made promptly to ensure there is not a gap in the ability to test CSA image-generators which could increase the risk of harm to children.

Justification for the procedure

158. By virtue of clause 198(4) of the Bill, regulations made under clause 63(5) are subject to the negative resolution procedure. This is considered to provide an appropriate level of parliamentary scrutiny as the designation of a person or persons to undertake the testing of CSA image-generators and specifying the conditions under which such testing may take place is essentially a contractual or regulatory process to be undertaken within the framework provided for in primary legislation.

Clause 65(6): Power to amend list of specified offences in Schedule 7

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Draft affirmative resolution procedure*

Context and Purpose

159. Clause 65 provides for a new offence of carrying out relevant activity with the intention of facilitating child sexual exploitation and abuse. This is designed to cover individuals who are colloquially known as 'moderators' or 'administrators' of websites containing child sexual abuse material. The term 'child sexual exploitation and abuse' is defined in clause 65(4) and covers conduct in the UK that would constitute one of the offences listed in Schedule 7 to the Bill or conduct outside the UK which, had it been undertaken in the UK, would have constituted such an offence. Schedule 7 is divided into three parts listing relevant offences in England and Wales, Scotland and Northern Ireland respectively. Clause 65(6) confers a power on the Secretary of State to amend Schedule 7. The Secretary of State must consult the Scottish Ministers and Department of Justice in Northern Ireland before making regulations to amend Parts 2 and 3 of Schedule 7 respectively (subsections (7) and (8)).

Justification for the delegated power

160. While the offence provided for in clause 65 relates to reserved matters in Scotland and Northern Ireland, the generality of the criminal law relating to child sexual exploitation and abuse is devolved or transferred and it is therefore open to the Scottish Parliament and Northern Ireland Assembly to enact legislation which amends, or repeals offences listed in Parts 2 and 3 of Schedule 7 or creates new offences which it would be appropriate to add to the Schedule. The Scottish Parliament and Northern Ireland Assembly won't have the legislative competence to amend Schedule 7 so it is necessary to confer a regulation-making power on the Secretary of State to enable them to make any necessary changes to the list of offences in Parts 2 and 3 of the Schedule. While any legislation at Westminster

amending or repealing offences listed in Part 1 or creating new offences which should be added to Part 1 can itself make the necessary consequential amendments to Part 1 of Schedule 7, it is considered prudent also to include a power to amend Part 1 of the Schedule to cater for cases where relevant legislation at Westminster inadvertently fails to make necessary consequential amendments to Part 1.

Justification for the procedure

161. By virtue of clause 198(3)(a), regulations made under clause 65 are subject to the draft affirmative procedure. The draft affirmative procedure is considered to be appropriate as any additions to the list of offences in Schedule 7 would have the effect of expanding the scope of the offence in clause 65(1). The draft affirmative procedure is also apt as this is a Henry VIII power.

Clause 71 – new section 164B(2)(a) of the Customs and Excise Management Act 1979: Power to type approve scanning technology for purpose of detecting child sexual abuse material at the border

Power conferred on:	*Secretary of State*
Power exercisable by:	*Administrative type approval*
Parliamentary procedure:	*None*

Context and purpose

162. Many of those who pose a direct risk to children travel frequently across the UK border to commit child sexual abuse offences abroad. The border represents a unique chokepoint through which individuals leaving or entering the UK must pass, at which point they can be questioned and their baggage searched for 'prohibited goods' as defined by the Customs and Excise Management Act 1979 ("CEMA"). The importation of obscene or indecent articles is prohibited by section 42 of the Customs Consolidation Act 1876. Similarly, the export of child sexual abuse material ("CSAM") is also illegal because mere possession of the material is illegal, and there is no right to export an item the possession of which is itself unlawful. Consequently, such articles or material may be seized by Border Force officers exercising powers under CEMA.

163. Before the development of digital media devices, CSAM would typically present in the form of printed photographs, video cassettes or DVDs. As such, it would be detected routinely via a baggage search under CEMA. However, CSAM is now usually held digitally and within the memory of digital devices such as phones, tablets and laptops – all of which are protected by passcodes or biometrics. Whilst, acting under CEMA, a Border Force officer is able to compel an individual to present digital devices, the Act does not enable the officer to require that the digital device is unlocked in furtherance of a search to detect CSAM. Effectively, this prevents Border Force from detecting digital CSAM in the manner previously possible.

164. In recent years, the Home Office has developed the Child Abuse Image Database ("CAID") – a repository of all known CSAM detected during UK Police investigations. The CAID now holds millions of unique files. In parallel to the CAID, the capability now exists to undertake a rapid scan of an unlocked digital device to determine whether known material is held within its memory. Accordingly, it is possible to scan a digital device (such as a phone) for CAID material. As a scan is not a download, it will take approximately 15 seconds to identify whether CAID material is or is not present. This capability has now been operationalised at the UK Border, with trials generating significant intelligence around individuals representing a sexual risk to children – leading to investigation and arrests. This has included merchant sailors coming into the UK for shore leave as well as prolific travellers to high-risk countries. As a device is required to be unlocked for a scan to go ahead and there is no legal power that Border Force can use to require a person to unlock their device, all scans to date have been possible only where the individual has consented. Inevitably, large numbers of individuals whom Border Force suspects may represent a sexual risk to children do not consent. Follow-up with UK police highlights some have committed offences subsequently which would have been prevented had CSAM been detected in their possession at the border.

165. Clause 71 inserts new section 164B into CEMA to address this gap in the powers of Border Force officers. New section 164B enables Border Force officers to require an individual entering or leaving the UK to unlock or unblock their digital devices for examination, where that officer reasonably suspects that the device may contain evidence of child sexual abuse material. Such an examination will take the form of a scan of the device for CSAM using technology approved for the purpose by the Secretary of State (new section 164B(2)(a)). If the individual refuses, then the existing offence of 'obstruction of an officer of Revenue and Customs' under section 31 of the Commissioners for Revenue and Customs Act 2005 would be triggered – which would enable the arrest of the individual and seizure of the device, thereby creating a double-lock.

Justification for the delegated power

166. New section 164B of CEMA confers a power on Border Force officers to scan digital devices in the possession of people encountered at the border where they suspect that such devices may contain CSAM. New section 164B(2)(a) of CEMA then provides for the scanning technology to be of a type approved by the Secretary of State. It is important for the integrity of these intrusive powers that the scanning technology deployed by Border Force officers is reliable and indisputably capable to detecting CSAM. It is appropriate not to draft new section 164B by reference to the specific scanning technology currently deployed as it is likely that this will be vulnerable to change over time. Accordingly, new section 164B(2)(a) ties the power to the Home Office's current approved technology. Such type approval is necessarily by reference to technical specifications of the technology which is an appropriate matter to be left to an administrative process.

167. A similar approach is adopted in, for example, the Road Traffic Act 1988, sections 6A and 6C of which provide for the Secretary of State to type approve

devices for the purpose of administering preliminary breath tests (to detect the level of alcohol in a person's breath or blood) and preliminary drug tests.

Justification for the procedure

168. The power to type approve scanning devices under new section 164B(2)(a) of CEMA is not subject to parliamentary approval. The Bill itself sets out the powers of Border Force officers to require a person to permit the scan of an electronic device in their possession at the border where the officer has reasonable suspicion that CSAM is stored on the device. The type approval of the scanning technology used for these purposes is a technical process which does not justify any parliamentary scrutiny. The analogous powers in the Road Traffic Act 1998 are similarly not subject to any parliamentary procedure.

Chapter 2 of Part 5: Duty to report child sexual abuse

(i) Clause 72(4): Power to make provision about the way in which an oral or written notification is to be made
(ii) Clause 78: Power to provide exception to duty to report for persons providing specified services
(iii) Clause 81: Power to make certain amendments relating to the duty to report child sex offences

Power conferred on:	*Secretary of State*
Power exercised by:	*Regulations by statutory instrument*
Parliamentary procedure:	*(i) and (ii) Negative resolution procedure; (iii) Draft affirmative resolution procedure*

Context and purpose

169. In its final report to the Government (October 2022), the Independent Inquiry into Child Sexual Abuse recommended the introduction of a 'mandatory reporting' regime for child sexual abuse in England.[6] On 6 January 2025 the Home Secretary announced that the Government would implement the recommendation. Chapter 2 of Part 5 provided for the duty to report child sexual abuse.

170. Clause 72(1) places a duty on persons aged 18 or over engaged in "relevant activity" in England to notify suspected child sex offences (as listed in Part 1 of Schedule 8) to the police or local authority. The term "relevant activity" is defined in subsection (11) of the clause as covering a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (for example, healthcare professionals or teachers), or (b) an activity specified in Part 2 of Schedule 8 (this includes certain positions of trust not captured in the 2006 Act, and police constables). Subsection (2)(a) requires notifications to be made to the relevant police force or local authority (or both). Subsection (2)(c) requires notifications to be made as soon as practicable,

[6] https://www.iicsa.org.uk/reports-recommendations/publications/inquiry/final-report.html

although clause 72(5) sets out that where a person on whom the duty falls reasonably believes that making a notification would give rise to a risk to the life or safety of the child, this may be delayed for a maximum of seven days. Clause 72(2)(d) provides that a notification may be made orally or in writing. Clause 72(4) confers a power on the Secretary of State, by regulations, to make provision about the way in which oral or written notifications may be made. Such regulations may, in particular provide that a notification is to be made in accordance with locally prescribed requirements set by the police force or local authority.

171. The duty to report is subject to certain exceptions. Clause 72(6) disapplies the duty if the person on whom the duty falls has reason to believe that another person has previously, or will imminently, make a notification under clause 72(1) in connection with the same suspected child sex offence. Clauses 75 and 76 disapply the duty to report where certain conditions are met relating to consensual sexual activity among children. Clause 77 provides for an exception to the duty in respect of certain disclosures by children relating to their own behaviour. Additionally, clause 78 confers a power for the Secretary of state, by regulations, to disapply the duty to report in relation to persons providing a specified service, or a service of a specified description. Clause 80 modifies the duty as imposed by clause 72 where it applies to a constable.

172. Clause 79 provides for an offence of preventing or deterring a person from complying with duty imposed by clause 72(1). A failure to report child sex offences will not of itself be an offence, instead failing to comply with the duty imposed by clause 72(1) will be treated as conduct potentially giving rise to a person being included on the children's barred list maintained by the Disclosure and Barring Service (or, in the case of a constable, conduct potentially giving rise to misconduct proceedings) or (where applicable) potential disciplinary action instituted by a professional regulator. Clause 81(2) amends paragraph 4(1) of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (barred lists) to specify that failing to comply with the duty imposed by clause 72(1) is relevant conduct for the Disclosure and Barring Service to consider when proposing inclusion of an individual in the children's barred list.

173. Clause 81(1) confers a power on the Secretary of State to make regulations to make certain amendments to Chapter 2 of Part 5 of the Crime and Policing Act in relation to the duty imposed by clause 72(1). In particular, such regulations may amend:

a) Clause 72 so as to change the person or persons to whom a notification under that clause is to be made;
b) Chapter 2 of Part 5 of the Crime and Policing Act so as to add or change (but not remove) an exception to the duty under clause 72 (such exceptions are provided for in or under clauses 72(6), 75, 76, 77 and 78); and
c) Schedule 8.

174. Section 5B(8) of the Female Genital Mutilation Act 2003 (as inserted by the Serious Crime Act 2015) contains an analogous power to that referred to in paragraph 60(a) above in respect of the duty to report FGM.

Justification for the power

175. Given the large number of police forces and local authorities which reports can be made to, and the fact that such notifications can be made orally or in writing, it may be necessary to specify precisely how a notification is to be made in order to ensure clarity and consistency. For example, it may be that a written notification is to be made to an email address published by the local authority on its website for such a purpose. The way in which such reports are to be made is an administrative matter and, as such, appropriately left to regulations.

176. With any novel change to our well-established child safeguarding systems, the Government is mindful of the need to effectively manage a wide range of operational impacts. It is therefore considered necessary for the Secretary of State to retain the ability to disapply the duty from specific services on an exceptional basis, where their functions relate to the safety or protection of children and ongoing confidentiality is considered an operational necessity. This may be required in order to prevent services which provide confidential support and advice to children from closing ahead of the duty's commencement and leaving significant gaps in safeguarding provision. As the providers of such services are likely to change over time, it is important that, in appropriate cases, they can be promptly excepted from the duty to report via secondary legislation so that the provision of such services is not interrupted following a change in provider.

177. The Bill itself provides for the core elements of the duty to report suspected child sex offences. It sets out the duty and the exceptions to it, identifies the categories of person to whom the duty applies, the requirement to make notifications to the police or local authority and to do so as soon as practicable (and, in any event, within seven days), and the consequences for preventing or deterring a person from discharging the duty (other consequences for non-compliance are provided for in separate legislation). The Government considers it necessary to be able to modify aspects of the scheme by regulations in the light of experience and in recognition of the unique nature of child sexual abuse as a constantly evolving threat, including through the utilisation of technology and the internet. It may, for example, be necessary to extend the categories of professionals to whom the duty applies if, in the light of experience, it is evident that other professionals would have the requisite knowledge as a result of victims making disclosures to them. Similarly, it may be necessary to modify the list of child sex offences in Part 1 of Schedule 8 to reflect changes to the offences so listed or to add relevant new offences. Such a power is considered appropriate as Parliament would have approved the principle of the reporting duty, including its application to persons working in specified categories of "relevant activity".

Justification for the procedure

178. By virtue of clause 198(4), the regulation-making powers in clauses 72(4) and 78 are subject to the negative resolution procedures. In relation to clause 72(4), the Bill itself establishes the duty to report suspected child sexual offences to either the police or local authority children's services. The way in which such reports are to be made is an administrative matter and, as such, the negative procedure is considered to afford an appropriate level of parliamentary scrutiny. In relation to

clause 78, the Bill itself establishes the principle that persons providing a specified service, or a service of a specified description, are exempt from the duty in clause 73. That being the case, it is considered that the negative procedure provides for an appropriate level of parliamentary scrutiny for regulations which then specifies the relevant service providers.

179. By virtue of clause 198(3)(a), the regulation-making power in clause 81 is subject to the affirmative procedure. This is considered appropriate given the 'Henry VIII' nature of the power. It also recognises that in approving the reporting scheme as provided for in the Bill, Parliament will have agreed a particular set of regulated professions to whom the duty should apply and the parameters of the duty and, as such, the affirmative procedure will ensure that both Houses have the opportunity to consider and approve any changes to the scheme before such changes can take effect. This approach is consistent with that taken in section 5B of the Female Genital Mutilation Act 2003.

Clause 83: Power to issue guidance about disclosure of information by the police for purpose of preventing sex offending

Power conferred on: Secretary of State

Power exercised by: Statutory guidance

Parliamentary procedure: None

Context and purpose

180. The Child Sex Offender Disclosure Scheme ("the scheme"), often referred to as "Sarah's law" (after Sarah Payne), was implemented across all police forces in England and Wales in 2011.

181. The scheme has two elements: the "right to ask" and the "right to know". Under the scheme, a member of the public may ask the police to check whether a person who has some form of unsupervised contact with a named child or children poses a risk of sexual harm. This is the "right to ask". If records show that a child may be at risk of sexual abuse from the person concerned, the police will consider disclosing the information to the person best placed to protect the child or children named in the enquiry.

182. The "right to know" states that the police may make a disclosure if they receive indirect information regarding a person that may impact the safety of children. This could include (but is not limited to): (a) information becoming known to the police about a relationship involving a child sex offender and a person who has responsibility for a child or children; (b) information obtained during an investigation into other matters that identifies a need for a person to receive information about someone who may pose a risk to a child; and (c) information received that suggests impending contact between a named child and a person who poses a risk to them.

183. In each case, a disclosure can be made lawfully by the police under the scheme if the disclosure is made in accordance with the police's common law powers to

disclose information where it is necessary to prevent crime and if the disclosure also complies with data protection legislation (UK General Data Protection Regulation and Part 3 of the Data Protection Act 2018), established case law and human rights legislation (Human Rights Act 1998 and European Convention on Human Rights). It must be reasonable and proportionate for the police to make the disclosure based on a credible risk of harm to a child. Where the case overlaps with other disclosure processes, such as those under the Multi-Agency Public Protection Arrangements or the Domestic Violence Disclosure Scheme, the police will need to decide which process is most appropriate and act accordingly.

184. Non-statutory guidance for the police on the operation of the scheme was first published by the Home Office in 2010 and was updated in April 2023.

185. The Government aims to drive greater use and consistent application of the scheme by putting the guidance underpinning the scheme on a statutory footing and placing a duty on the police to have regard to the guidance as provided for in clause 83(2) of the Bill. The guidance will apply to police forces in England and Wales, the British Transport Police (in respect of their functions in England and Wales) and Ministry of Defence Police. The Home Secretary is under a duty to consult the National Police Chiefs' Council and such other persons as he or she considers appropriate before issuing or revising the guidance.

186. The provisions in clause 83 are modelled on those in section 77 of the Domestic Abuse Act 2021 which provides for statutory guidance in respect of the Domestic Violence Disclosure Scheme. The power in clause 83 is drafted in such a way that the Home Secretary may issue additional guidance to chief officers of police regarding the use of their common law disclosure powers to prevent sexual harm in other contexts or against other categories of victim.

Justification for the power

187. The purpose of the guidance is to support the delivery of the scheme and assist front line officers and those who work in the area of public protection with the practical application of the scheme.

188. The scheme does not introduce any new powers for the police to disclose personal data. The scheme is based on the police's common law powers to disclose information where it is necessary to prevent crime, and in accordance with data protection and human rights legislation, as explained above at paragraph 78. The scheme and the accompanying guidance provide structure and processes for the exercise of the powers. It does not, of itself, provide the power to disclose or to prevent disclosures being made in situations which fall outside the scheme because they are outside of the police's common law powers to disclose information. Given this, it is appropriate for such practical advice to be included in guidance which can readily be revised from time to time, as necessary, to reflect evolving good practice and relevant case law.

189. Topics which may be covered in the statutory guidance include (but are not limited to):

- Recommended minimum levels of knowledge and experience required by practitioners to discharge their functions under the scheme effectively;
- Suggested step-by-step processes and timescales for the two disclosure routes under the scheme (the "right to ask" and the "right to know"), including example scenarios for each route;
- Minimum standards of information to be obtained from the applicant;
- Minimum standards of intelligence checks to be completed;
- Guidance on effective engagement with a multi-agency forum such as a Multi-Agency Risk Assessment Conference to inform decision-making;
- Guidance on robust risk assessment and safety planning in order to safeguard the individual or individuals potentially at risk of sexual harm caused by the offender;
- Suggested types of information which may be disclosed under the scheme, such as details of allegations, charges, prosecutions and convictions for relevant offences;
- Guidance on what constitutes a "reasonable and proportionate" disclosure in line with case law, relevant human rights and data protection legislation; and
- Suggested forms of wording for communicating outcomes at each stage of the scheme process.

Justification for the procedure

190. Any guidance issued under clause 83 would not be subject to any parliamentary procedure on the grounds that it would provide practical advice on the effective operation of the scheme and would be worked up in consultation with the police and any other persons the Home Secretary considered appropriate. As indicated above, the guidance will not of itself create any new powers to disclose personal information. Moreover, whilst chief officers of police must have regard to any guidance issued under this power, the guidance will not be binding. The analogous power in section 77 of the Domestic Abuse Act 2021 similarly provides for no parliamentary procedure (the DPRRC made no comment on that delegated power in their report on the Domestic Abuse Bill (21st Report of session 2019-21)).

Clause 88(1) and (2) – New section 85ZA(8) and 85A(7A) of the Sexual Offences Act 2003: Power to amend the period specified in section 85ZA(2) and 85A(2) respectively

Power conferred on:	*Secretary of State, the Scottish Ministers, Department of Justice in Northern Ireland*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative resolution procedure*

Context and purpose

191. Part 2 of the 2003 Act requires relevant sex offenders to notify the police of specified information (such as their name(s) and home address) within the period of three days beginning with the relevant date (i.e., the date of their conviction or release from custody where they received a custodial sentence) or within the period of three days of their notifiable information changing or annually. Section 80(1) of the 2003 Act provides that a person is subject to the notification requirements of Part 2 if they are convicted of an offence in Schedule 3 to the 2003 Act, or they are found not guilty of such an offence by reason of insanity or they are found to be under a disability and to have done the act charged against them in respect of such offence; or they have been cautioned in respect of such an offence. Under Section 103G of the 2003 Act, the making of a sexual harm prevention order (in respect of an offender who otherwise would not be required to notify) triggers the notification requirements in Part 2 of the 2003 Act. Such a person is referred to as a "relevant offender".

192. Clause 88(1) inserts new section 85ZA into the 2003 Act. New section 85ZA(2) requires a relevant offender to notify the police if they intend to be absent from their sole or main residence (their home address) for a period of more than five days. Such a notification must be made not less than 12 hours before leaving their home address. The notification must contain the information set out in section 85ZA(3), namely:

a) the date on which the relevant offender will leave their home address;
b) such details as the relevant offender holds about — (i) their travel arrangements during the relevant period; (ii) their accommodation arrangements during that period; (iii) their date of return to that home address.

193. New section 85ZA(8) enables "the appropriate authority", by regulations, to amend subsection (2) so as to change the duration of the relevant period, provided that the relevant period is at least five days. New section 85ZA(9) defines the appropriate authority as, in relation to England and Wales, the Secretary of State, and in relation to Scotland, the Scottish Ministers.

194. Section 85A of the 2003 Act already makes analogous provision for Northern Ireland to that contained in new section 85ZA in relation to England and Wales and Scotland. Under section 85A(2), the notification requirement applies where the RSO is to be away from their home address for a period of more than three days. Clause 60(2) inserts new subsection (7A) into section 85A which contains an equivalent power for the Department of Justice to change the relevant period in section 85A(2) provided the period is at least three days.

Justification for the power

195. These changes to the notification requirements are intended to assist the police in the more effective management of the risk of reoffending by relevant offenders where they reside at a place other than their home address for more than five days. In providing for such notification requirements there is a balance to be struck

between ensuring the police have the necessary information to effectively manage the risk of reoffending by relevant offenders and putting in place requirements that are disproportionate in terms of their impact on the offender or unwieldy in terms of the administrative burdens they place on the police. It is currently assessed that a requirement on relevant offenders to notify the police in advance of absences from their home address of more than five days is proportionate. But in the light of operational experience, it may be necessary to extend the five-day period. It is considered that such fine tuning of the notification requirements is an appropriate matter to be left to secondary legislation.

Justification for the procedure

196. By virtue of section 138(3) of the 2003 Act, regulations under new section 85ZA(8) and 85A(7A) are subject to the negative resolution procedure. While these are Henry VIII powers and therefore would normally be subject to the affirmative procedure, the negative procedure is considered appropriate in this instance given the narrow ambit of the powers and the fact that the power cannot be exercised to reduce the relevant period to less than five days (or three days in Northern Ireland). Moreover, any increase in the five-day (or three-day) period would make the notification requirement less onerous for relevant offenders.

Clause 89 –

(i) New section 86B(2)(c) of the Sexual Offences Act 2003: Power to specify other information to be included in a section 86B notification.
(ii) New section 86B(3) of the Sexual Offences Act 2003: Power to specify meaning of "qualifying premises" for the purposes of section 86B.
(iii) New section 86B(4) of the Sexual Offences Act 2003: Power to specify circumstances in which a further section 86B notification is not required.

Power conferred on:	*Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland*
Power exercisable by:	*Regulations made by statutory instrument (statutory rules in Northern Ireland)*
Parliamentary procedure:	*(i) Negative resolution procedure* *(ii) and (iii) Draft affirmative procedure*

Context and purpose

197. Clause 89 inserts new sections 86A to 86D into the 2003 Act which place additional requirements on relevant offenders to notify the police before entering qualifying premises at which children are present. These provisions are intended to strengthen the safeguarding of children by ensuring that the police are notified

in advance of contact within qualifying premises between relevant offenders of particular concern and children.

198. New section 86A enables a chief officer of police to give a notice (a "section 86A notice") to a relevant offender (a "section 86B relevant offender") if satisfied that it is necessary, for the purpose of protecting children generally, or particular children, from sexual harm, for the RSO to be subject to the requirements in section 86B. New section 86B(1) provides that a section 86B relevant offender must notify the police before entering qualifying premises at which children are present. A notification under new section 86B(1) must specify the date on which the offender is to enter the premises, and must be given at least 12 hours before the offender enters the premises.

199. A notification under new section 86B(1) must include: (a) the address of the premises to which the notification relates; (b) the date on which the offender is to enter the premises; and (c) such other information as "the appropriate authority" may specify in regulations (new section 86B(2)).

200. New section 86B(4) confers power on the appropriate authority, by regulations, to specify the circumstances in which a section 86B relevant offender, having given a notification under section 86B(1) is not required to give another notification in relation to the same children or premises. If, for example, a section 86B relevant offender makes regular visits to the home of a sibling where nephews or nieces are present, the police may conclude on the basis of a risk assessment (taking into account whether another adult is present on the premises) that repeat notifications in advance of every visit within a certain timeframe is not required.

201. New section 86B(3) provides that for the purpose of section 86B, "qualifying premises" means premises of a kind specified in regulations made by the appropriate authority.

202. New section 86B(8) defines the appropriate authority as, in relation to England and Wales, the Secretary of State; in relation to Scotland, the Scottish Ministers; and in relation to Northern Ireland, the Department of Justice in Northern Ireland.

<u>Justification for the power</u>

203. The requirement on certain RSOs to notify the police before entering qualifying premises where children are present will be established on the face of the 2003 Act. New sections 86A to 86D of the 2003 Act provide for the fundamentals of the scheme.

204. New section 86B(2) establishes that a notification under section 86B(1) must include certain information. New section 86B(2)(a) and (b) provide that a notification must, in all cases, specify the address of the premises to which the notification relates and the date on which the offender is to enter the premises. Other relevant information will be case specific and, as such, is appropriately left to be specified in secondary legislation. For example, where a section 86B relevant offender is entering another dwelling, for example the dwelling of a relative, it may be appropriate for the notification to specify the name and age of each child living

at the address. It may not be possible for a section 86B relevant offender to provide such information when entering venues to which the public have access, such as a sports centre. Specifying other categories of information in regulations affords the flexibility to tailor the requirements to different settings and ensure that regulations made under new section 86B(4) can dovetail with regulations made defining qualifying premises.

205. The circumstances in which it may be unnecessary for a section 86B relevant offender to make a repeat notification in relation to the same children or same premises will also be subject to variation depending on the nature of the premises and contact with the child/children. As indicated in paragraph 95 above, a repeat notification may not be necessary where the section 86B relevant offender regularly visits the home of a sibling or other adult relative where relatives under 18 years old are present, and another adult is also present. Attendance at other premises where children are present may pose greater safeguarding risks and it may be necessary to require a further notification under new section 86B(1) for each visit. Specifying the circumstances in which a single notification may cover multiple events is to apply in regulations affords the necessary flexibility to take account of visits to different categories of premises and nature of contact with children, and again ensures that regulations made under subsection (4) of section 86B can dovetail with those made under subsection (2)(c) and (3).

206. Providing for the meaning of qualifying premises to be prescribed in regulations will enable the notification requirements in new sections 86B to be readily expanded in response to the risk presented by relevant offenders and new categories of premises where they may seek to engage in predatory behaviour. In particular, the leisure industry is dynamic and new types of facility may be established where children may be at risk from predatory sex offenders. Were that to be the case, it is important that the meaning of qualifying premises can be quickly updated so that the notification requirements in new section 86B can be applied.

Justification for the procedure

207. By virtue of section 138(3) of the 2003 Act, regulations under new section 86B(2)(c) are subject to the negative procedure. Such regulations relate only to the detail of the information to be included in a section 86B notification. This is essentially an administrative matter and, as such, the negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

208. By virtue of section 138(2) of the 2003 Act, as amended by paragraph 16 of Schedule 7, regulations under new section 86B(3) and (4) are subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate for the regulation-making power in new section 86B(4) as the effect of such regulations will be to enable the notification of multiple events on a single occasion(as set out on the face of the 2003 Act) in specified circumstances. It is considered appropriate that such regulations should be subject to debate and approval by both Houses so that Parliament can be satisfied that the prescribed exceptions to the notification requirements are justified.

209. The affirmative procedure is similarly considered appropriate for regulations made under new section 86B(3) given that the prescribed meaning of qualifying premises is a key aspect of the scope of the notification requirements provided for in section 86B. Given this, it is again appropriate that such regulations are debated and approved by both Houses.

Clause 91 –

(i) New section 87A(1)(b), (6) and (9) of the Sexual Offences Act 2003: Power to specify conditions that must be satisfied in order for a registered sex offender to notify information to the police virtually

(ii) New section 87A(10) of the Sexual Offences Act 2003: Power to direct form of acknowledgement for notification under section 87A

Power conferred on:	*Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland*	
Power exercisable by:	*(i)*	*Regulations made by statutory instrument (statutory rules in Northern Ireland)*
	(ii)	*Administrative direction*
Parliamentary procedure:	*(i)*	*Negative resolution procedure*
	(ii)	*None*

Context and purpose

210. Part 2 of the 2003 Act requires relevant offenders to notify the police of specified information (such as their name(s) and home address) within the period of three days beginning with the relevant date (i.e., the date of their conviction or release from custody where they received a custodial sentence) or within the period of three days of their notifiable information changing or to update the information annually.

211. Section 87(1) of the 2003 Act requires a relevant offender to give a notification required by section 83(1), 84(1) or 85(1) by attending a police station in the person's local police area that is for the time being specified in a document published by the chief officer for that local police area (or, in the case of Scotland and Northern Ireland, specified in regulations) and to give an oral notification to a police officer or anyone authorised to receive such notification.

212. Clause 91 inserts new section 87A of the 2003 Act which enables a relevant offender to make a notification to the police virtually if the following conditions are met:

- Condition 1 - that a senior police officer has given a relevant offender a notice authorising them to give notifications virtually, and the notice has not been cancelled (new section 87A(2)).

- Condition 2 – that the notification does not relate to a matter specified by the appropriate authority in regulations (a “specified matter”) (new section 87A(6)).
- Condition 3 - that the notification is given to a person authorised to receive virtual notifications by the chief officer of police for the relevant offender’s local police area (new section 87A(7)).

213. New section 87A(1)(b) enables the appropriate authority to specify further conditions in regulations. New section 87A(9) provides that the conditions which may be specified in regulations under subsection (1)(b) include further conditions about the means of giving the notification.

214. New section 87A(8) provides that a notification is given virtually if it is given by a means which enables the relevant offender and the person receiving the notification to see and hear each other without being together in the same place; in effect via a live link using an electronic device such as a personal computer.

215. New section 87A(10) provides that a notification under new section 87A must be acknowledged in writing, in such form as the appropriate authority may direct. This mirrors the existing provision in section 87(3) in respect of in-person notifications.

216. New section 87A(12) defines the appropriate authority as the Secretary of State, the Scottish Ministers and the Department of Justice in relation to England and Wales, Scotland and Northern Ireland respectively.

Justification for the power

217. The notification scheme provided for in Part 2 of the 2003 Act currently requires relevant offenders to make notifications to the police in person by attending a police station. This enables the police to confirm the identity of the offender and assess their demeanour in order to help form a judgment about the veracity of the information provided (it is an offence to knowingly provide false information). In moving to a system whereby certain notifiable information may be supplied virtually it is important to ensure that the police can visually confirm the offender’s identity and assess their demeanour. The Bill will insert onto the face of the 2003 Act the basic framework for virtual notifications, but it is considered appropriate to confer powers on the appropriate authority to add to the conditions that must be satisfied before notifications can be made virtually. This will, in particular, enable the conditions for making virtual notifications to be adjusted to take account of developments in technology. The power to specify the information that may be notified virtually will enable the list of specified matters to be adjusted, including to reflect additions to the list of notifiable information (section 83(5)(h) enables additional information to be prescribed by regulations).

218. As now, it will assist the police to have a standard format for the written acknowledgement of a notification. This is a purely administrative process and, as such, the form of the acknowledgement may be left to be determined by a ministerial direction rather than a prescribed form.

Justification for the procedure

219. By virtue of section 138(3) of the 2003 Act, regulations under new section 87A(1) and (6) are subject to the negative resolution procedure. The Bill itself establishes the overarching framework for the making of virtual notifications, that being the case the negative procedure is considered to afford an appropriate level of parliamentary scrutiny for regulations specifying the matters that may be notified virtually or for adding to the conditions that must be satisfied before notifications may be made virtually (the regulation-making power in new section 87A(1) cannot be exercised so as to remove or override the conditions specified in that section).

220. Any direction under new section 87A(10) is not subject to any parliamentary procedure. Such directions deal with purely administrative matters (the form of an acknowledgement) which can properly be left to the appropriate authority without any form of parliamentary scrutiny.

Clauses 92 and 93 and paragraphs 12, 16(3)(a) and 17(2) of Schedule 10 –

(i) New section 91EB(6) of the Sexual Offences Act 2003: Power to amend the period specified in section 91EB(1)
(ii) New paragraph 4(4) of Schedule 3A to the Sexual Offences Act 2003: Power to amend the period specified in paragraph 4(1) of Schedule 3A
(iii) New paragraph 6C(5) of Schedule 3A to the Sexual Offences Act 2003: Power to amend the period specified in paragraph 6C(1) of Schedule 3A
(iv) Amended section 93F of the Sexual Offences Act 2003: Duty to issue guidance to chief officers of police about the determination of own motion reviews
(v) New paragraph 7(1A) of Schedule 3A to the Sexual Offences Act 2003: Duty to issue guidance to Chief Constable about the determination of own motion reviews

Power conferred on:	*Secretary of State and Department of Justice in Northern Ireland*
Power exercisable by:	*(i) to (iii) Regulations made by statutory instrument (statutory rules in Northern Ireland)* *(iv) and (v) Statutory guidance*
Parliamentary procedure:	*(i) to (iii) Negative resolution procedure* *(iv) and (v) None*

Context and purpose

221. Part 2 of the 2003 Act requires relevant offenders to notify the police of specified information (such as their name(s) and home address) within the period of three days beginning with the relevant date (i.e., the date of their conviction or release from custody where they received a custodial sentence). Relevant offenders must

also notify any changes of their details within a period of three days or, by virtue of changes being made in the Bill, in advance of planned uses of new names or entry into specified premises where children are present. Relevant offenders must also notify annually (or weekly if they are of no fixed abode). Section 80(1) of 2003 Act provides that a person is automatically subject to the notification requirements of Part 2 if they are convicted of an offence in Schedule 3 to the 2003 Act, or they are found not guilty of such an offence by reason of insanity or they are found to be under a disability and to have done the act charged against them in respect of such offence; or they have been cautioned in respect of such an offence. Such a person is referred to as a "relevant offender".

222. The duration of the notification requirements is dependent on the relevant offender's sentence and neither the courts nor police have any discretion over this. The maximum notification period, which applies to relevant offenders sentenced to a term of imprisonment of 30 months or more, is indefinite in length. However, those subject to indefinite notification may request the police to review this after 15 years (eight years for juveniles) and remove the requirement if they consider that the offender no longer poses a risk. If the police refuse the request, there is an avenue of appeal to a magistrates' court.

223. Section 91A to 91F of the 2003 Act (as inserted by the Sexual Offences Act 2003 (Remedial) Order 2012) provides a mechanism for a relevant offender subject to indefinite notification to apply to the relevant chief officer of police after the minimum duration for a determination that the qualifying relevant offender is no longer subject to the indefinite notification requirements. Clause 92(3) inserts new sections 91EA to 91ED into the 2003 Act which confer a power on the relevant chief officer of police to be able to determine whether a relevant offender, who has notified for the minimum duration but not made an application for a police review should remain subject to the notification requirements. The test for discontinuing indefinite notification requirements following an "own motion review" is the same as the test for application-led reviews: that the chief officer is satisfied that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the relevant offender to remain subject to indefinite notification requirements.

224. In conducting an own motion review, the relevant chief officer must inform the relevant offender that they have 35 days to make representations and may notify a responsible body (that is, the probation and prison services and bodies listed in section 325(6) of the Criminal Justice Act 2003) within seven days of the start of the review that they are beginning an own motion review. A responsible body then has 28 days of receipt of the notification to submit to the relevant chief officer any information they consider relevant to the review. New section 91EB(1) requires the relevant chief officer of police, within six weeks of the date mentioned in new section 91EB(2), to determine whether the qualifying relevant offender should remain subject to the indefinite notification requirements and give notice of the determination to the qualifying relevant offender. New section 91EB(2) provides that the relevant date is the latest date on which the qualifying relevant offender may make representations to the relevant chief officer. New section 91EB(6) confers a power on the Secretary of State, by regulations, to amend the six week period in section 91EB(1). Section 91C(5) of the 2003 Act contains an equivalent

power in relation to applications for the termination of indefinite notification requirements by a qualifying relevant offender.

225. Clause 93 inserts new paragraphs 6A to 6D into Schedule 3A to the 2003 Act which makes analogous provision for Northern Ireland to that contained in new sections 91EA to 91ED in respect of England and Wales. New paragraph 6C(5) of Schedule 3A contains an equivalent power for the Department of Justice to amend the period of 12 weeks (as opposed to the six weeks period applicable in England and Wales) in new paragraph 6C(1).

226. Paragraph 17(2) of Schedule 10 inserts new paragraph 4(4) into Schedule 3A to the 2003 Act which confers a power on the Department of Justice to amend the period of 12 weeks specified in paragraph 4(1) which the Chief Constable of the Police Service of Northern Ireland has to come to a conclusion on an application by a relevant offender for a review of their indefinite notification requirements.

227. Paragraph 12 of Schedule 10 amends section 91F of the 2003 Act to require the Secretary of State to issue guidance to chief officers of police as to the determination of own motion reviews. This is an extension of the existing duty on the Secretary of State to issue guidance about the making and determination of applications to review indefinite notification requirements. Paragraph 16(3)(a) of Schedule 9 inserts new sub-paragraph (1A) into paragraph 7 of Schedule 3A to the 2003 Act which makes equivalent provision for Northern Ireland.

Justification for the power

228. It is important that an own motion review is conducted expeditiously and brought to an early conclusion. Accordingly, the Bill requires such reviews to be completed within six weeks (12 weeks in Northern Ireland) once the period for submitting representations has elapsed. However, as own motion reviews will be a new process it may be that, in the light of operational experience, police forces need more (or less) time to complete such reviews. Were that to be the case, it is important that the relevant period can be extended quickly by regulations given that chief officers would be in default of a statutory obligation if the six-week period was breached. Similar considerations arise with the existing framework in Northern Ireland in respect of applications by relevant offenders for a review of indefinite notification requirements.

229. The purpose of any guidance under amended section 91F of and new paragraph 7(1A) of Schedule 3A to the 2003 Act is to support chief officers of police in their discharge of their functions under new sections 91EA to 91ED and new paragraphs 6A to 6D of Schedule 3A and, in particular, determine own notion reviews. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with operational good practice and case law.

Justification for the procedure

230. By virtue of section 138(3) and (8) of the 2003 Act, regulations under new section 91EB(6) and new paragraphs 4(4) and 6C(5) of Schedule 3A are subject

to the negative resolution procedure. While this is a Henry VIII power and therefore would normally be subject to the affirmative procedure, the negative procedure is considered appropriate in this instance given the narrow ambit of these powers. Moreover, any variation of the six-week period (12 weeks in Northern Ireland) would not have a significant adverse impact on qualifying relevant offenders.

231. Guidance issued under amended section 91F and new paragraph 7(1A) of Schedule 3A to the 2003 Act will not be subject to any parliamentary or Assembly procedure on the grounds that it would provide practical advice to the police on the discharge of their functions under new sections 91EA to 91ED and new paragraphs 6A to 6D of Schedule 3A and would be worked up in consultation with the police. The guidance will not conflict with, or alter the scope of, the powers in new sections 91EA to 91ED and new paragraphs 6A to 6D in respect of own motion reviews. The approach taken here is consistent with the existing guidance-issuing duty in section 91F and paragraph 7 of Schedule 3A.

Clause 94(1) –

(i) New section 93B(6)(d) of the Sexual Offences Act 2003: Power to amend list of identity documents.

(ii) New section 93C(2)(c) of the Sexual Offences Act 2003: Power to specify information to be contained in, and documents to accompany, an application under section 93C.

(iii) New section 93C(6)(b) of the Sexual Offences Act 2003: Power to prescribe conditions that must be satisfied in order for a chief officer of police to authorise registered sex offender to change their name.

(iv) New section 93H of the Sexual Offences Act 2003: Power to issue guidance about the determination of applications under section 93C of the Sexual Offences Act 2003.

Powers conferred on:	*(i)-(iii) Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland* *(iv) Secretary of State and the Department of Justice in Northern Ireland*
Power exercisable by:	*(i)-(iii) Regulations made by statutory instrument (statutory rules in Northern Ireland)* *(iv) Statutory guidance*
Parliamentary procedure:	*(i) Draft affirmative resolution procedure* *(ii) Negative resolution procedure* *(iii) Draft affirmative resolution procedure* *(iv) None*

Context and purpose

232. Clause 94(1) inserts new sections 93A to 93H into the 2003 Act. These provisions are intended to strengthen the safeguarding of children and members of the public more widely by preventing RSOs from changing their names with the intention of reoffending by concealing their criminal past.

233. New section 93A enables a chief officer of police to give a notice (a "section 93A notice") to a relevant offender (a "section 93B relevant offender") if satisfied that it is necessary, for the purpose of protecting the public or any particular members of the public from sexual harm, or for protecting children or vulnerable adults generally or any particular children or vulnerable adults from sexual harm from the offender outside the UK, for the relevant offender to be subject to the restriction under section 93B(1). New section 93B(1) provides that a section 93B relevant offender may not apply for an identity document to be issued to them in a new name unless: (a) authorisation to apply for the document to be issued to them in that name has been granted by the police under section 93C, and (b) that authorisation has not expired or been cancelled. New section 93B(6)(a) to (c) defines an identity document for these purposes, namely an immigration document (as defined in section 7(2) of the Identity Documents Act 2010), a UK passport or a driving licence. It is an offence to fail to comply with the requirement in new section 93B(1) without reasonable excuse (new section 93B(3)). New section 93B(6)(d) confers a power on "the appropriate authority", by regulations, to add to the list of identity documents to which the restriction on section 93B relevant offenders is to apply.

234. New section 93C makes provision for a section 93B relevant offender to apply to the police for authorisation to apply for an identity document of the same type in a name which is different from the name in which the document is currently held. New section 93C(2) requires such applications to be in writing; specify the identity document which the section 93B relevant offender intends to apply for; and contain such other information, or be accompanied by such documents, as the appropriate authority may specify in regulations. New section 93C(5) provides that the chief officer may grant authorisation only if satisfied that: (a) the offender meets any of the conditions described on the face of the Bill or in regulations made by the appropriate authority, and (b) it is not necessary, for the purpose of protecting the public or any particular members of the public from sexual harm, or for protecting children or vulnerable adults generally or any particular children or vulnerable adults from sexual harm from the offender outside the UK, for the offender to be refused authorisation.

235. New section 93C(9) and (10) makes provision for the cancellation of authorisations granted under new section 93C. New section 93D makes provision for a chief officer of police to give a notice (a "parental notice") to the parent of a section 93B relevant offender who is under the age of 18. It then falls to the parent to comply with section 93B and 93C. New section 93E makes provision for the periodic review of section 93A notices. New section 93F makes provision for appeals to a magistrates' court, including against a decision to give a person a section 93A notice and a refusal to grant authorisation to apply for an identity document in a new name. New section 93H imposes a duty on the Secretary of State and the Department of Justice in Northern Ireland to issue guidance to chief officers of police in England and Wales and to the chief constable of the Police

Service of Northern Ireland respectively in relation to determinations of 93C applications (new section 93H does not apply to Scotland). By virtue of section 93C(4) chief officers are required to have regard to such guidance. Such guidance must be published.

236. New section 93B(8) defines the appropriate authority for the purposes of new sections 93C to 93H as the Secretary of State, the Scottish Ministers and the Department of Justice in relation to England and Wales, Scotland and Northern Ireland respectively.

Justification for the power

237. The restriction on section 93B relevant offenders applying for a passport, driving licence or other official identity document in a new name without the authorisation of the police will be established on the face of the 2003 Act. New sections 93A to 93H of the 2003 Act provide for the fundamentals of the scheme.

238. New section 93B(6)(a) to (c) lists the identity documents for the purposes of the scheme. This list is a sub-set of the list of identity documents in section 7 of the Identity Documents Act 2010; the section 7 list also includes passports issued by jurisdictions outside the UK, documents that can be used (in some circumstances) instead of a passport and driving licences issued by jurisdictions outside of Great Britain which are not relevant for the purposes of the scheme in new sections 93A to 93H of the 2003 Act. It is considered appropriate to include a power in the Bill to add to the list of identity documents in new section 93B(6). In the event a new official document is introduced that could be used for the purpose of confirming a person's identity, it would be important to promptly add that document to the list in new section 93B(6) so that the protections afforded by the scheme in new sections 93A to 93H (to prevent section 93B relevant offenders from evading safeguarding checks) are applied to the new document type. This regulation-making power is analogous to that in section 7(6) of the Identity Documents Act 2010 (which, in turn, replicated that in section 26(4) of the Identity Cards Act 2006). In its third report of session 2010/12, the DPRRC indicated that there was nothing in the Identity Cards Bill which the Committee wished to draw to the attention of the House.

239. The question of what information must be contained in a section 93C application and what documentation should accompany such an application is a secondary detail and one that may appropriately be left to be determined by regulations made by the Secretary of State. The information is expected to include, as a minimum, relevant personal details of the section 93B relevant offender (name, address, date of birth etc) and their reasons for making an application for an identity document in a new name. The required information and documentation is likely to vary according to the circumstances leading to the section 93B relevant offender seeking to change their name. For example, if the name change was as a result of marriage or a change of religion, the information and documentation to be supplied would need to be tailored accordingly. This level of detail is not suitable for primary legislation.

240. The Government accepts that the circumstances in which a chief officer may grant an authorisation is a core part of the scheme and should be underpinned by

legislation. The Bill itself provides for a public protection test, but this is accompanied by a requirement that an application should only be granted if specified conditions are met. Certain specified conditions are on the face of the Bill in new section 93C(6): marriage or civil partnership; where name change is a legitimate feature of a section 93B relevant offender's change in religion or belief; any exceptional circumstances not accounted in for in legislation.

241. The circumstances in which it may be legitimate for a section 93B relevant offender to change their name are varied and given the evolving threat they pose it is considered appropriate to specify additional conditions in secondary legislation. The conditions to be specified in regulations are likely to include the following:

- Where a notified RSO changes gender;
- Where a notified offender faces Article 2 risks or a risk of harm.

242. The Bill itself establishes the framework by which section 93B relevant offenders must obtain prior authorisation from the police before they can apply for an identity document in a new name. The purpose of any guidance under new section 93G is to support chief officers in discharging their functions under new section 93C. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with good practice and the changing nature of the threat from relevant offenders. The guidance will be prepared in consultation with policing practitioners.

Justification for the procedure

243. By virtue of section 138(2) of the 2003 Act, as substituted by paragraph 15(2) of Schedule 10, regulations under new section 93B(6)(d) are subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate as the effect of adding a new class of identity document to new section 93B(6) would be to extend the restrictions imposed by new section 93B on section 93B relevant offenders. The draft affirmative procedure mirrors the procedure applicable to the analogous power in section 7(6) of the Identity Documents Act 2010.

244. By virtue of section 138(3) of the 2003 Act, as substituted by paragraph 15(2) of Schedule 10, regulations under new section 93C(2)(c) are subject to the negative procedure. Such regulations relate only to the detail of the information to be included in a section 93C application, and any documents required to accompany such applications. This is essentially an administrative matter and, as such, the negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

245. By virtue of section 138(2) of the 2003 Act, as substituted by paragraph 15(2) of Schedule 10, regulations under new section 93C(6)(b) are subject to the draft affirmative procedure. This is considered appropriate given that such regulations will determine the circumstances in which a section 93B relevant offender will be able to apply for an identity document in a new name. Such regulations will need to balance the private life of section 93B relevant offenders with the need to protect the public from harm. Given such impact and balancing requirements, it is appropriate that such regulations are debated and approved by both Houses.

246. Any guidance issued under new section 93H will not be subject to any parliamentary procedure on the grounds that it would provide practical advice on the discharge by chief officers of their functions under new section 93C and would be drafted in consultation with policing stakeholders. The guidance will not conflict with, or alter the scope of, the duties on chief officers in section 93C and the associated regulations. Moreover, whilst chief officers will be required to have regard to the guidance when exercising those functions, the guidance will not be binding.

Clause 94(2) – new section 93I of the Sexual Offences Act 2003: Power to make provision placing restrictions on granting replacement driving licences in new name

Power conferred on: *Secretary of State*

Power exercised by: *Regulations made by statutory instrument*

Parliamentary procedure: *Draft affirmative resolution procedure*

Context and purpose

247. Clause 94(2) inserts new section 93I into the 2003 Act which makes provision in relation to the granting, by the Secretary of State (in practice, by the Driver and Vehicle Licencing Agency), of replacement driving licences in a new name. New section 93I is consequential on the provisions in new sections 93A to 93H inserted by clause 94(1) and detailed in paragraphs 232 to 236 above. Where a chief officer of police has given a relevant offender a section 93A notice ("a section 93B relevant offender") they will be prohibited from applying for a replacement identity document, including a driving licence, in a new name unless authorised to do so under new section 93C. New section 93I complements such a prohibition by ensuring that the Secretary of State may prevent a section 93B relevant offender from being granted a replacement driving licence in a new name.

248. New section 93I(1) confers on the Secretary of State a power to make provision, by regulations, to prevent a section 93B relevant offender from being granted a replacement driving licence if: (a) the offender holds, or has held, a driving licence, (b) the name to be specified in the replacement licence is different from that specified in the most recent licence granted to the offender, and (c) the offender is not authorised under new section 93C to apply for a driving licence in the new name. Provision that may be made by virtue of section 93I(1) includes amendments to Part 3 of the Road Traffic Act 1988, the legislative framework governing the licencing of drivers of vehicles (new section 93H(6)).

249. New section 93I(2) and (3) enables regulations made under new section 93I(1) to establish an information sharing gateway authorising or requiring the appropriate chief officers of police and the Secretary of State to disclose specified information to each other, as the case may be, to enable them to carry out their functions under or by virtue of the regulations or in connection with the detection or investigation of an offence under new section 93B(3) (offence of failure to comply with requirement

for authorisation before applying for certain identity documents in new name). New section 93I(4) enables regulations to make provision about how the appropriate chief officer of police and the Secretary of State may or must use any information which is provided to each of them by the other. New section 93I(5) provides that regulations may not contravene the data protection legislation.

Justification for the power

250. New sections 93A to 93H will set out on the face of the 2003 Act the core legislative framework for preventing section 93B relevant offenders from applying for replacement identity documents in a new name and preventing from being granted a replacement driving licence (it is not necessary to make statutory provision preventing the Home Office granting replacement immigration documents or passports to a section 93B offender as these documents are issued under secondary legislation and the royal prerogative respectively). It is necessary to leave to regulations the detailed provision preventing a section 93B relevant offender from being granted a replacement driving licence, because the operation of the scheme is dependent on the police knowing whether a section 93B relevant offender has, or has had, a driving licence. To ensure that the police have such information, it is intended to exercise the regulation-making power in sections 83(5)(h) and 84(1)(ca) of the 2003 Act (notification regulations) to require relevant offenders to notify the police of details of any identity documents (including driving licences) issued in their name. Given this approach, it is also considered appropriate to specify in secondary legislation the restriction on driving licences being granted in a new name so that it can operate in tandem with the notification regulations which are needed to make the restriction work.

Justification for the procedure

251. By virtue of section 138(2) of the 2003 Act, as substituted by paragraph 15(2) of Schedule 10, regulations under new section 93I are subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate as regulations under section 93I would need to amend provisions relating to the circumstances in which the Secretary of State may or must grant a replacement licence (section 99 of the Road Traffic Act 1988). The draft affirmative procedure also reflects the fact that this is a Henry VIII power.

Clause 99 – new section 7A of the Protection from Harassment Act 1997: Power to issue guidance about stalking

Power conferred on:	*Secretary of State*
Power exercisable by:	*Statutory guidance*
Parliamentary procedure:	*None*

Context and purpose

252. Stalking is a prevalent form of Violence Against Women and Girls with 3.1% of persons over 16 (1.5 million) experiencing it in the year ending June 2024

according to the Crime Survey for England and Wales[7]. In November 2022, the Suzy Lamplugh Trust, on behalf of the National Stalking Consortium, submitted a super-complaint on the police response to stalking[8]. This set out several concerns which outlined systemic issues with the police response in England and Wales, which have since been investigated by the College of Policing, His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, and the Independent Office for Police Conduct. A report of their findings was published in September 2024 titled, "The police response to stalking: Report on the super-complaint made by the Suzy Lamplugh Trust on behalf of National Stalking Consortium"[9]. This report highlighted police misunderstanding and misidentification of stalking, resulting in failings to provide adequate safeguarding advice to victims of stalking. In its 2024 general election manifesto, the Government committed to "strengthen the use of Stalking Protection Orders and give women the right to know the identity of online stalkers". In line with these manifesto commitments and as part of the Government's response to the super-complaint, the Minister for Safeguarding and Violence Against Women and Girls, Jess Phillips MP, announced in an oral statement on 3 December 2024 (Official Report, House of Commons, columns 182 to 184) that the Government would legislate to:

- "introduce a power to issue multi-agency statutory guidance on stalking, which will set out for the first time a robust framework for how frontline professionals should define stalking and better work together";
- "introduce statutory "right to know" guidance that will set out the process by which the police should release identifying information about anonymous stalking perpetrators to victims"; and
- "enable the courts to impose stalking protection orders, of their own volition, which can impose restrictions and positive requirements on those who pose a risk, on conviction and on acquittal".

253. The Stalking Protection Act 2019 ("the 2019 Act") makes provision for Stalking Protection Orders and section 12 of that Act already requires the Secretary of State to issue guidance to chief officers of police about the exercise of their functions under that Act. That guidance is available here. As demonstrated by the findings of the super-complaint, there is a need for wider guidance for the police and other frontline practitioners to ensure that victims of stalking receive effective and consistent support and protection across England and Wales. Accordingly, clause 99 inserts new section 7A into the Protection from Harassment Act 1997 ("the 1997 Act") to enable the Secretary of State to issue guidance about: (a) the effect of any of sections 2A, 2B, 4A, 4B and 7 of the 1997 Act (offences and power of entry relating to stalking); (b) the effect of any provision of the 2019 Act: (c) the effect of Chapter 3A of Part 11 of the Sentencing Act 2022 (stalking protection orders made on conviction); and (d) other matters relating to stalking. Such statutory guidance would, amongst other things, help promote understanding amongst public authorities of stalking and the powers available to them to protect and support

[7] Crime in England and Wales - Office for National Statistics
[8] Download.ashx (suzylamplugh.org)
[9] The police response to stalking: Report on the super-complaint made by the Suzy Lamplugh Trust on behalf of National Stalking Consortiumhttps://assets.college.police.uk/s3fs-public/2024-09/Officer-and-staff-perspectives-on-the-policing-response-to-stalking.pdf

victims. A person exercising public functions to whom such guidance is given must have regard to the guidance in the exercise of those functions.

254. In preparing the guidance or substantive revisions to the guidance, the Secretary of State would be under a duty to consult such persons as the Secretary of State considers appropriate (for example, the police and other practitioners).

255. Similar such powers are contained in section 5C of the Female Genital Mutilation Act 2003 (as inserted by the Serious Crime Act 2015), section 84 of the Domestic Abuse Act 2021.

Justification for taking the power

256. The purpose of any guidance under new section 7A of the 1997 Act is to support the police and other relevant public authorities (other than the courts) in how they discharge their functions so as to better protect and support victims of stalking and to prevent offending. Amongst other things, the guidance would provide examples of stalking acts, how such acts cause harm and impact on victims, the prevalence of stalking, risk factors, the sharing of information between agencies and training for front line practitioners. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with operational good practice.

Justification for the procedure

257. Any guidance issued under new section 7A of the 1997 Act will not be subject to any parliamentary procedure on the grounds that it would provide practical advice on the provision of protection and support to victims of stalking and the management of offenders and would be worked up in consultation with all interested stakeholders and practitioners. The guidance will not conflict with, or alter the scope of, the powers in the 1997 Act or 2019 Act or new Chapter 3A of Part 11 of the Sentencing Act 2022 in respect of Stalking Protection Orders. Moreover, whilst a person exercising public functions will be required to have regard to the guidance when exercising those functions, the guidance will not be binding. The approach taken in clause is consistent with other legislative provisions providing for statutory guidance, including section 5C of the Female Genital Mutilation Act 2003 and section 84 of the Domestic Abuse Act 2021.

Clause 100 – new section 12A of the Stalking Protection Act 2019: Power to issue guidance about the disclosure of information in relation to stalkers

Power conferred on: *Secretary of State*

Power exercisable by: *Statutory guidance*

Parliamentary procedure: *None*

Context and purpose

258. Clause 100 inserts new section 12A into the 2019 Act which enables the Secretary of State to issue guidance to chief officers of police about the disclosure of police information for the purpose of protecting persons from risks associated with stalking. Such guidance would, in particular, set out the process by which the police should release identifying information about anonymous stalking perpetrators to victims for the purpose of safeguarding such victims.

259. In such cases, a disclosure can already be made lawfully by the police if the disclosure is made in accordance with the police's common law powers to disclose information where it is necessary to prevent crime and if the disclosure also complies with data protection legislation (Part 3 of the Data Protection Act 2018), the Rehabilitation of Offenders Act 1974 and the Human Rights Act 1998. It must be reasonable and proportionate for the police to make the disclosure based on a credible risk of violence or other harm.

260. Chief officers of police are required to have regard to the guidance.

261. In preparing the guidance or substantive revisions to the guidance, the Secretary of State is under a duty to consult the National Police Chiefs' Council and such other persons as the Secretary of State considers appropriate (for example, the Information Commissioner).

262. A similar such power is contained in section 77 of the Domestic Abuse Act 2021.

Justification for taking the power

263. New section 12A into the 2019 Act does not introduce any new powers for the police to disclose personal data. The police will continue to rely on their common law powers to disclose information where it is necessary to prevent crime, and in accordance with data protection and human rights legislation. The guidance provides structure and processes for the exercise of the powers. It does not, of itself, provide the power to disclose or to prevent disclosures being made in situations which fall outside of the police's common law powers to disclose information. Given this, it is appropriate for such practical advice to be included in guidance which can readily be revised from time to time, as necessary, to reflect evolving good practice and relevant case law.

Justification for the procedure

264. Any guidance issued under new section 12A into the 2019 Act will not be subject to any parliamentary procedure on the grounds that it would provide practical advice on the disclosure of information to victims and alleged victims of stalking and would be worked up in consultation with all interested stakeholders and practitioners. The guidance will not conflict with, or alter the scope of, the police's common law powers in respect of the disclosure of information. Moreover, whilst chief officers of police will be required to have regard to the guidance when exercising those functions, the guidance will not be binding. The approach taken in new section 12A is consistent with other legislative provisions providing for statutory guidance, including section 77 of the Domestic Abuse Act 2021.

Clause 114(4): Power to amend section 114 (Sections 112 and 113: meaning of "SIM farm" etc)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument.

Parliamentary procedure: Draft affirmative resolution procedure

Context and purpose

265. Clauses 112 and 113 provide for two new offences relating to the possession and supply of a "SIM farm", subject in each case to a defence of good reason or lawful authority. Schedule 11 sets out the required entry and search powers to enable law enforcement authorities to find evidence of such an offence along with the necessary conditions and procedures for exercising them.

266. SIM (subscriber identity module) farms are electronic devices that are capable of using five or more SIM cards simultaneously or interchangeably, which allows the user to send messages, such as Short Messaging Service ("SMS") texts or phone calls in large numbers over the telecommunications network. Whilst there is a limited set of legitimate uses for SIM farms, they are frequently used by criminals engaged in fraud to send fraudulent messages to a large number of recipients at once. These messages frequently impersonate family members or trusted institutions such as banks in order to persuade the recipient to reveal personal information such as bank details or passwords or to transfer funds to a criminal. They can also send out malicious links that, once clicked on by the recipient, download malware onto the recipient's device. SIM farms are available on online marketplaces, at low prices, with limited or no requirement to verify the buyer's identity. This makes them an easy access, low-cost option for criminals looking to phish for sensitive data.

267. Clause 114 provides a definition of SIM farms that reflects information the Home Office received during the consultation and further engagement with stakeholders. Clause 114(4) enables the Secretary of State to amend clause 114 (other than subsection (4)) for the purpose of modifying the definition of SIM farms it contains.

Justification for taking the power

268. The Home Office consulted extensively with stakeholders to co-develop an appropriate definition of SIM farms for the purpose of the new offences that accurately reflects the devices the Government intends to ban and exempt current legitimate use purposes. However, communications technology is dynamic and develops constantly. The emergence of new technologies, such as eSIMs2 (downloadable SIM cards that a person can access on the internet), may lead to new versions of SIM farms that cannot currently be foreseen and necessitate an updating of the definitions provided for in the Bill. The purpose of this power is to enable future proofing of the current definition to ensure that equivalent future iterations of the technology continue to be banned.

Justification for the procedure

269. By virtue of clause 198(3)(a), regulations made under clause 114(4) are subject to the draft affirmative procedure. This is considered appropriate given that any such regulations could alter the ambit of the two offences. The draft affirmative procedure is also considered appropriate given that this is a Henry VIII power.

Clause 117(1): Power to specify articles for the purposes of the offences in clauses 115 and 116

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative resolution procedure

Context and purpose

270. Clauses 115 and 116 replicate the offences, defences and maximum penalties in clauses 112 and 113, which apply to the possession and supply of SIM farms, to the possession and supply of any "specified article", that is an article specified in regulations made under clause 117. Clause 117 enables the Secretary of State, by regulations, to specify articles for the purpose of the offences in clauses 115 and 116. An article may be so specified only where the Secretary of State considers that there is a significant risk of such an article being used for a purpose connected with fraud perpetrated by means of (a) an electronic communications network, or (b) an electronic communications service. The provisions set out in Schedule 11, which confer powers of entry etc in relation to the SIM farm offences also apply to the offences in clauses 112 and 113 (clause 117(4)).

271. Before making such regulations, the Secretary of State is required to consult such persons as the Secretary of State considers will be affected by the regulations (clause 117(3)).

Justification for taking the power

272. Technology continues to develop and criminals constantly change their mode of operation, not least in response to new measures that disrupt their activity. This power ensures that the Government and law enforcement agencies are able to respond promptly to threats that emerge in the future by extending the ban to communication technologies that criminals may turn to or develop to target fraud victims.

273. While the Home Office consulted with a wide range of stakeholders, the Government does not consider it is possible to compile an exhaustive list of items, beyond SIM farms, to list on the face of the Bill to ensure that the ban remains effective as technology develops. Fraudsters can be quick to adapt, and the Government wants to ensure that these provisions can be adjusted accordingly. The power will therefore enable the Secretary of State to apply the complementary

offences in clauses 115 and 116 to new electronic communications technologies that can be used to facilitate fraud via electronic communications network and services.

274. The regulation-making power has been tightly drawn. It is not a power per se to create new offences, these are provided for on the face of the Bill at clauses 115 and 116. Rather, it is power to apply those offences to particular technologies used to facilitate fraud which may be developed in the future.

Justification for the procedure

275. By virtue of clause 198(3)(a), regulations made under clause 117(1) are subject to the draft affirmative procedure. It is considered that affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny, given that any such regulations would be applying the offences in clauses 115 and 116 to new electronic communications technologies that can be used to facilitate fraud. Consultation with those likely to be affected prior to introducing any regulations provides an additional level of scrutiny and checks to exercising this power.

Clause 121(7): Power to exempt certain articles from the definition of "pyrotechnic article"

Power conferred on: *Secretary of State*

Power exercisable by: *Order made by statutory instrument*

Parliamentary procedure: *Negative procedure*

Context and purpose

276. Clause 121 makes it an offence to possess a pyrotechnic article at any time while taking part in a public procession that constitutes a protest, a public assembly which constitutes a protest or a one-person protest. It is a defence for a person charged with this offence to show that they had a reasonable excuse for possessing a pyrotechnic article at the time. In particular, if they were possessing the item in connection with their work.

277. Subsection (7) of the clause defines a "pyrotechnic article" for the purposes of the offence. The definition is the same as that used in Regulation 3(1) of the Pyrotechnic Articles (Safety) Regulations 2015 (SI 2015/1533) and covers all items this offence is intended to apply to, including, in particular, fireworks, flares and smoke bombs. Matches are expressly excluded from the definition of a pyrotechnic article. Paragraph (b) of the definition of "pyrotechnic article" confers on the Secretary of State a power to exempt other specified articles, or articles of a specified description, from the definition of a "pyrotechnic article". An identical power is contained in section 134 of the Policing and Crime Act 2017 (possession of pyrotechnic articles at musical events).

Justification for taking the power

278. This is intended to be a reserve power. Regulation 3(2) of the Pyrotechnic Articles (Safety) Regulations 2015 lists a number of articles excluded from the definition in Regulation 3(1). These exclusions are not relevant in the context of this offence, for example, it is not currently proposed to exclude from the ambit of the offence the possession of sparklers or toy guns "firing" percussion caps (see Regulation 3(2)(e)), albeit that the regulation-making power could be used to this end. However, new products may emerge on the market which fall within the definition of a pyrotechnic article which do not present a risk of harm if used at a protest. This regulation-making power would enable the Government readily to exclude such a product from the definition of a pyrotechnic article.

Justification for the procedure

279. By virtue of clause 198(4), regulations made under clause 121 are subject to negative procedure. The core elements of the offence, namely that it applies to the possession of a pyrotechnic article (as defined in the clause) at a protest, will be set out on the face of primary legislation, as such, the Government is satisfied that the negative procedure affords an appropriate level of Parliamentary scrutiny when it comes to exercising the reserve power to exclude certain articles from the definition of a pyrotechnic article. The application of the negative procedure mirrors the approach taken in respect of the analogous offence relating to musical events (see section 134(6) of the Policing and Crime Act 2017).

Clause 122(4): Power to amend list of specified memorials

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: *Draft affirmative resolution procedure*

Context and purpose

280. Clause 122(1) makes it an offence for a person to climb on a specified memorial. Subsection (2) provides for three defences, namely where the person charged with the offence: (a) had a good reason for climbing on the specified memorial; (b) were the owner or occupier of the specified memorial; or (c) had the consent of the owner or occupier of the specified memorial, or other lawful authority, to climb on it. The maximum penalty for the offence is three months imprisonment, a level 3 fine, or both (subsection (5)).

281. The specified memorials for the purposes of the offence are the war memorials listed in Part 1 of Schedule 12 to the Bill, the parts of war memorials listed in Part 2 of Schedule 12 and the other memorials listed in Part 3 of Schedule 12 (Part 3 currently only lists the statue of Sir Winston Churchill in Parliamentary Square). The war memorials, or parts thereof, listed in Parts 1 and 2 of Schedule 12 are those included on Historic England's National Heritage List for England (NHLE) as a grade 1 listed memorials. A grade 1 listing covers memorials of exceptional interest. Clause 90(4) confers a power on the Secretary of State, by regulations, to add to the list of specified memorials in Schedule 12. Clause 122(5) provides that

the Secretary of State can only add a memorial to Schedule 12 if they consider there is a significant public interest in the memorial being specified.

Justification for taking the power

282. In protests related to the Gaza conflict there have been instances of protestors climbing on war memorials, including the Royal Artillery Memorial, Hyde Park Corner. Similarly, there have been other protests where protesters have climbed on the statue of Sir Winston Churchill in Parliamentary Square. These instances have revealed a gap in legislation. Legislating to address this gap would provide the police with clarity about how to treat individuals who climb on war and other memorials of significant public interest. The new offence of climbing on a specified memorial seeks to do this.

283. In relation to Parts 1 and 2 of Schedule 12, there is no legislative definition of what constitutes a war memorial, but the Imperial War Museum maintains a Register of War Memorials which they deem to be a "comprehensive national database of UK war memorials and the names of the individuals they commemorate". The Register, which contains over 100,000 memorials, include memorials commemorating members of the armed forces, civilians and animals from all conflicts, and those who died in service. Many of the memorials are not free-standing structures capable of being climbed on but plaques within or on the outside of buildings or stained-glass windows. Other war memorials include benches which are intended to be sat on if not climbed on.

284. Any offence criminalising climbing on a war memorial must be framed in a way that brings legal certainty for members of the public, the police and prosecutors. The offence in the Bill therefore lists the 25 memorials (or part thereof) included on Historic England's National Heritage List for England (NHLE) as a grade 1 listed memorials which are located on land accessible to the public. This lists in Parts 1 and 2 of Schedule 12 cover the war memorials, or parts thereof, of the most exceptional interest and therefore the ones deemed to be in most need of further protection through this new offence.

285. A similar rational applied to the inclusion of other memorials in Part 3 of Schedule 12. Initially, Part 3 only includes the statue of Sir Winston Churchill in Parliament Square, but the Government has indicated its intention to add the National Holocaust Memorial in Victoria Tower Gardens once built.

286. The causes and locations of protests are multifarious and change over time as new issues emerge sparking new protests. It may well be the case that other memorials either become the target or focal point of a protest or risk being climbed upon by virtue of being along the route of a public procession or within the vicinity of a public assembly. In such circumstances, it may be appropriate to expand the protection afforded by this offence to other memorials. In such an event, it would be necessary to specify the further memorials to which the offence is to be applied. It is considered appropriate for this to be done through secondary legislation given the detailed and technical nature of any additions to the list of specified memorials. The power can also be used to remove or amend existing entries in Schedule 12, in the event that there is a demonstrable need to do so. This may, for example, be

as a result of changes in the NHLE or where it is assessed that the description of a particular memorial listed in Schedule 12 requires amendment to ensure the offence functions as intended in practice.

Justification for the procedure

287. By virtue of clause 198(3)(a), regulations made under clause 122(4) are subject to the draft affirmative procedure. This is considered appropriate as any such regulations would have the effect of expanding the application of the offence in clause 122(1). It is also befitting the Henry VIII nature of this power.

Paragraph 12 of Schedule 13: Power to make provision as to the practice and procedure to be followed in connection with proceedings relating to IP address and domain name suspension orders

Power conferred on:	*In England and Wales, the Criminal Procedure Rules Committee* *In Northern Ireland, the Crown Courts Rules Committee* *In Scotland, High Court of Justiciary*
Power exercisable by:	*Rules contained in statutory instrument or Act of Adjournal in Scotland*
Parliamentary procedure:	*England and Wales and Northern Ireland - Negative resolution* *Scotland – None specified*

Context and purpose

288. Clause 127 and Schedule 13 enables certain law enforcement and investigative agencies to obtain a court order for the suspension of an internet protocol (IP) address or domain name where it is being used for the purposes of serious crime. Suspension orders require a third-party provider to suspend access to an IP address or domain name. Schedule 13 makes provision for applications for suspension orders, the conditions for making an order, non-disclosure requirements, the discharge, variation and extension of orders and the service of applications and orders.

289. Paragraph 12 of Schedule 13 enables rules of court to make provision relating to the practice and procedure to be followed in proceedings relating to orders under the Schedule: Criminal Procedure Rules in England and Wales, Crown Court Rules in Northern Ireland and Act of Adjournal in Scotland.

Justification for the power

290. Rules Committees exist in England and Wales, Scotland and Northern Ireland to make and maintain, or keep under review and comment on, rules governing the

practice and procedure of the criminal courts. The committees are independent of government. The powers provided in paragraph 12 of Schedule 13 refer to powers that already exist in legislation to make criminal procedure rules. In respect of England and Wales, paragraph 12(1)(a) makes clear that Criminal Procedure Rules can be made to make provision about the practice and procedure in connection with orders under the Schedule. Rules of court may make provision at a level of detail that is not appropriate to be made in primary legislation. The point of allowing the Rules to provide the supplementary procedures is to keep criminal procedure consistent and easy to find, and to make it possible for procedures to be up to date and efficient in the light of experience. It is not considered that proceedings relating to suspension orders require a departure from the existing procedures for making rules for the relevant court.

Justification for the procedure

291. Rules of court in England and Wales are made by the Criminal Procedure Rule Committee under section 69 of the Courts Act 2003. The power of the Criminal Procedure Rule Committee to make Criminal Procedure Rules is subject to the Lord Chancellor "allowing the rules" and section 72(6) of the 2003 Act provides that a statutory instrument containing such rules is subject to the negative procedure. It is therefore considered that the negative procedure is most appropriate level of Parliamentary scrutiny for this new rule-making power.

292. Rules of court are statutory rules for the purposes of the Statutory Rules (Northern Ireland) Order 1979. Rules of court in relation to the Crown Court in Northern Ireland are made by the Crown Court Rule Committee in accordance with section 53A of the Judicature (Northern Ireland) Act 1978. Under section 56(1) of the 1978 Act, rules submitted to the Lord Chancellor are subject to affirmative resolution (which deal (or would deal) with an excepted matter – which is not the case here), or otherwise rules submitted to the Department of Justice are subject to negative resolution.

293. Section 305 of the Criminal Procedure (Scotland) Act 1995 provides for rules and regulations for criminal procedure to be made by Act of Adjournal. The Criminal Courts Rules Council, established under section 304 of the 1995 Act, must consider and comment on any draft Act of Adjournal in relation to court rules. Section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that an Act of Adjournal is a Scottish Statutory Instrument. Acts of Adjournal that prescribe matters which relate to the practice and procedure of the Scottish Courts are not subject to parliamentary scrutiny, but must be laid before the Scottish Parliament as soon as is practicable after they are made.

294. As these provisions are in line with the existing powers to make rules of court, it is considered that the relevant procedures afford the most appropriate level of scrutiny for this new rule-making power.

Clause 132(2): Power to amend list of enforcement officers and senior officers for purposes of clause 130

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Draft affirmative resolution procedure*

Context and Purpose

295. Data stored on electronic devices is vital for both the investigation of crime, particularly in serious and organised crime, including immigration crime, terrorism, hostile state activity and sexual abuse cases, and to protect UK national security. Advances in technology resulted in this data increasingly being stored in the cloud and accessed from online accounts connected to the device, rather than being stored on the device itself.

296. This type of data is commonly referred to as data in the cloud, otherwise known as remotely stored electronic data ("RSED"). RSED includes accounts with end-to-end encrypted communication or social media services such as Telegram, Instagram or Facebook and cloud storage and productivity services such as Microsoft OneDrive or Google Drive.

297. It is therefore necessary to update the existing framework for the investigation of electronic data to reflect changes in technology and to bring the UK in line with international practice. Without these updates, vital evidence and intelligence could be missed.

298. Clause 130 creates an explicit new power for law enforcement agencies, subject to strong safeguards, to access specified online accounts and extract information where they have seized a device under existing powers. This will require authorisation by a senior officer and include a requirement to use other means of accessing the information where practicable. The exercise of the powers will also be subject to a statutory code of practice.

299. By virtue of clause 130(1) the power to access RSED is vested in an "enforcement officer" who has been authorised for the purpose by a "senior officer". Clause 132(1) defines an "enforcement officer" and "senior officer" for the purposes of clause 130. Clause 132(2) enables the Secretary of State, by regulations, to amend the table in subsection (1) so as to add or remove a reference to a person or to modify a description of a person mentioned in that table.

Justification for the power

300. The case has been made for the persons listed in clause 130 to make use of these powers as they have responsibilities for the prevention, detection, investigation or prosecution of crime and they have an operational requirement to access RSED to support those purposes. It is possible that over time other agencies with relevant law enforcement functions with an operational requirement

to access RSED will be identified and the power will need to be extended to them as quickly as possible once the case has been established. It is also possible that persons who are listed may see their responsibilities change, such that they no longer need to access to RSED, or their name changed.

301. An analogous power is contained in section 44 of the Police, Crime, Sentencing and Courts Act 2022 which enables the Secretary of State to amend Schedule 3 to that Act which lists persons authorised to extract information stored on a digital device from that device for purposes including preventing, detecting, investigating or prosecuting a criminal offence.

Justification for the procedure

302. By virtue of the amendment to clause 198(3)(a), regulations made under clause 132(2)(a) or (b) adding or removing a reference to a person are subject to the draft affirmative procedure. By virtue of clause 198(4), regulations made under clause 132(2)(c) modifying the description of a person mentioned in the table are subject to the negative procedure. Regulations adding a person to or removing a person from the table in clause 132(1) will have the effect of altering the list of enforcement officers previously approved by Parliament and, in the former case, would expand the list of persons who may access RSED. As such, it is appropriate to subject any such regulations to the draft affirmative resolution procedure. The affirmative procedure is also appropriate in such circumstances given that this is a Henry VIII power. However, the negative resolution procedure is considered to afford an adequate level of scrutiny for any regulations which do no more than reflect a change in the description of a person listed in the table. Any such regulations will not have the effect of increasing or reducing the categories of person who can exercise these powers, so the negative resolution procedure is considered appropriate.

Clause 133: Power to provide for circumstances in which the duty to make inaccessible or delete protected information does not apply

Power Conferred on: *Secretary of State*

Power Exercisable by: *Regulations made by Statutory Instrument*

Parliamentary Procedure: *Draft affirmative resolution procedure*

Context and purpose

303. Clause 133 applies where it appears to any person that information extracted under clause includes confidential information. Confidential material within the meaning of the clause includes “confidential journalistic material” within the meaning of the Investigatory Powers Act 2016 and “protected material”, which includes items subject to legal privilege, excluded material and special procedure material.

304. Where confidential material has been extracted, clause 133(2) creates a duty that such information must be made inaccessible or, where the extraction involved

a copy being made, for the copy to be destroyed. Where confidential information is comprised in other information and it is not reasonably practicable to separate the confidential information from the relevant information without prejudicing its use in relation to a reasonably line of enquiry, the duty is disapplied, but the material must not be examined or copied or put to any other use than to enable the use of the relevant information.

305. Clause 133(7) provides a power for the Secretary of State to provide for circumstances in which the duty in subsection (2) of the clause does not apply to certain types of protected material not including items subject to legal privilege.

Justification for the power

306. The powers under clause 130 apply where an electronic device has been seized under an existing power in legislation.

307. Additionally, by virtue of clause 132(1) the powers may be exercised by a wide range of different law enforcement agencies with varying requirements to regularly access certain protected material of the kind mentioned in paragraphs (a)(ii) and (iii), b(ii), and (c)(ii) and (iii) of subsection (6) of clause 133 to meet their core law enforcement functions. For instance, the Serious Fraud Office has bespoke seizure powers, including under the Criminal Justice Act 1987. Taking into account the functions of the organisation, the primary purpose of the seizure powers is to obtain business material (as included in the definition of "protected material" by virtue of subsection (6)(a)(ii) of clause 133. Such business material is not considered confidential material within the Criminal Justice Act 1987, but it would become confidential material if stored in an online account under the new clause and therefore not be accessible by the Serious Fraud Office.

308. The Government considers that accounting for these particular circumstances and making the power in clause 130 operate effectively and ensure the duties created by clause 133 apply consistently with existing legislation is best achieved through setting this out in regulations. This is so that due consideration can be given to the balance between ensuring that vital evidence pertaining to key law enforcement activities is not made inaccessible, while ensuring that sufficient safeguards are in place.

309. The Government considers that it would never be appropriate for the duty in subsection (2) not to apply to items subject to legal privilege or in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. This material is therefore not included in the power. Excluded material is included (within the meaning of section 11 of the Police and Criminal Evidence Act 1984 ("PACE 1984") and Article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989) ("PACE 1989"), which includes confidential journalistic material, and special procedure material (within the meaning of section 14 of PACE 1984 and Article 16 of PACE 1989).

Justification for the procedure

310. By virtue of clause 198(3), regulations made under clause 133(7) will be subject to the draft affirmative procedure. The regulations will have the effect that certain types of protected material will not be captured by the duty in clause 133(2) and may therefore be used as evidence in criminal investigations in the same way as other information extracted under the power in clause 130. As such, it is appropriate to subject any such regulations to the draft affirmative resolution procedure.

Clause 134: Duty to issue a code of practice regarding the exercise of powers relating to extraction of online information

Power Conferred on: *Secretary of State*

Power Exercisable by: *Regulations made by Statutory Instrument*

Parliamentary Procedure: *Negative resolution*

Context and purpose

311. Clause 134 places a duty on the Secretary of State to issue a code of practice containing guidance for enforcement officers and senior officers about the exercise of the powers in clause 130 in respect of the extraction of online information from digital devices. In preparing the code, the Secretary of State is required to consult the Information Commissioner, the Investigatory Powers Commissioner, the Scottish Ministers, the Department of Justice in Northern Ireland, and such other persons as the Secretary of State considers appropriate. Once prepared, the code must be laid before Parliament and published, and is to be brought into force by regulations. The code may be revised from time to time – and the provisions on consultation, laying, publication and bringing into force apply to revisions (other than revisions which the Secretary of State considers to be insubstantial, where there is no duty to consult).

Justification for the power

312. The Government considers that a code of practice will assist enforcement officers and senior officers understanding the purpose and appropriate use of the new powers and considerations they should be making before relying on the powers. A code of practice will provide guidance to all enforcement officers and senior officers who use the powers on the purposes for which the powers can be used and by which authority. It will deliver greater consistency and ensure that those authorised persons relying on the power will be better able to achieve an effective balance between pursuing the purposes for which the powers may be exercised (for example, investigating crime) and the rights of persons whose electronic devices have been seized in the course of an investigation.

313. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with good practice in the exercise of these powers and with the evolution of technology. The guidance will be prepared in consultation with the Information Commissioner and others.

Justification for the procedure

314. The code (and any revised code) will be brought into force by regulations subject to the negative procedure (see clause 134(5) read with clause 198(4)). In this instance, provision for parliamentary scrutiny is considered appropriate because of the intrusive nature of the powers provided for in clause 130 and the level of parliamentary and public interest in the investigation and prosecution of crimes. The code will not conflict with, or alter the scope of, the powers which will be set out in primary legislation and will be prepared in consultation with the Information Commissioner and others.

Clause 138 – New section 71 of the Criminal Justice and Court Services Act 2000: Power to make driver information regulations

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative resolution procedure*

Context and purpose

315. Section 71(1) of the Criminal Justice and Courts Act 2000 ("the 2000 Act") provides for the Secretary of State to make driver licensing records available for use by constables (as defined in section 71(4)) and National Crime Agency ("NCA") officers. Section 71(2) enables the Secretary of State to make regulations specifying the purposes for which constables and NCA officers may use such information and the circumstances in which such information may be onwardly disclosed.

316. Clause 138 substitutes a replacement section 71 of the 2000 Act. New section 71(1) confers a power on for the Secretary of State to make driver licensing records available for use by an "authorised person" for purposes relating to policing and law enforcement. An authorised person is defined in new section 71A. This lists the persons (a constable, a member of civilian police staff, NCA officer etc) who can receive driver information for the purpose of section 71 when authorised to do so by the authorising officer specified in the second column of the table in new section 71A(1).

317. New section 71(2) requires the Secretary of State to make "driver information regulations" which make provision about the making available of driver licensing information under section 71. New section 71(3) provides that driver information regulations must specify the circumstances in which information may be made available. New section 71(4) provides that driver information regulations may also in particular include provision:

- specifying conditions that must be met for a person to be, or remain, authorised to receive driver licensing information;

- specifying conditions that must be met before information may be made available under section 71;
- imposing requirements relating to the receipt and use of information made available under section 71;
- restricting the kind of information that may be made available to, or the purposes for which information may be used by, specified descriptions of authorised persons;
- about the purposes for which, and the circumstances in which, information made available by virtue of section 71 may be further disclosed by an authorised person (including provision about the persons to whom it may be further disclosed).

318. Before making driver information regulations, the Secretary of State is required to consult the persons specified in new section 71(5).

Justification for the power

319. New section 71 of the 2000 Act re-establishes on the face of primary legislation the principle that DVLA driver records can be shared with policing and other law enforcement agencies for policing and law enforcement purposes. Having established that principle on the face of the Bill and the permitted purposes for which driver licensing information may be made available, the Government considers it appropriate to leave to regulations the precise circumstances in which, driver records may be made available to an authorised person. The police and other law enforcement officers listed in new section 71A carry out an array of functions and regulations will ensure that driver records can only be accessed in particular prescribed circumstances. The replacement power in new section 71(2) is broadly analogous to the power in the existing section 71(2).

Justification for the procedure

320. By virtue of section 76(6) of the 2000 Act regulations made under new section 71 are subject to the negative procedure. The negative procedure for the section 71 regulations is considered appropriate as the overall purposes for which driver licence records may be accessed by an authorised person will be established in primary legislation and such regulations would necessarily then narrow the circumstances for which such records may be made available. The existing power in the current section 71(2) is also subject to the negative procedure.

Clause 138 – New section 71B of the Criminal Justice and Court Services Act 2000: Code of practice about access to driver licence records

Power conferred on: *Secretary of State*

Power exercisable by: *Statutory code of practice*

Parliamentary procedure: *Laying only*

Context and purpose

321. Clause 138 also inserts new section 71B into the 2000 Act. New section 71B(1) confers a power on the Secretary of State to issue a code of practice about the receipt and use of driver licence records accessed under new section 71. New section 71B(2) enables the code to make different provision for different purposes or different areas. New section 71B(3) sets out a requirement to consult listed bodies and persons before issuing a code. New section 71B(6) requires any persons to whom driver licence records are made available under section 71 to have regard to the code.

Justification for the power

322. The processing of driver licence records will be subject to the requirements in the driver information regulations and the UK General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under new section 71B of the 2000 Act is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance with the data protection legislation. For example, the Government envisages that the code will set out a clear framework on the secure, ethical, fair, diligent and impartial use of data for legitimate purposes when accessed from the DVLA.

323. The Government considers that a code of practice is the most appropriate vehicle to set out expectations and broad responsibilities in relation to the processing of driver licence records. There is a vast range of statutory guidance issued each year and it is important that guidance can be readily updated to keep pace with events and operational good practice.

Justification for the procedure

324. Given the likely content and nature of the code, and in particular the fact that it will not define or create new legal responsibilities and that the processing of data must be in accordance with the requirements of data protection legislation, the Government does not consider it is necessary for the code to be subject to any parliamentary procedure beyond a requirement for the code to be laid before Parliament.

Clause 139(3) – New section 63C(6)(b) and (8) of the Police and Criminal Evidence Act 1984: Powers to specify controlled drugs and amend list of trigger offences for the purposes of section 63B of PACE

Power conferred on:	*Secretary of State*
Powers exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative resolution procedure for regulations specifying controlled drugs; draft affirmative resolution procedure for regulations amending list of trigger offences*

Context and purpose

325. Currently, the police have a statutory, discretionary power to drug test for specified Class A drugs in police detention, as provided for by sections 63B and 63C of the Police and Criminal Evidence Act ("PACE") 1984 (as inserted by section 57 of the Criminal Justice and Court Services Act 2000 (the "2000 Act")). Specifically, section 63B(1) of PACE provides the police with the power to take a sample of urine or a non-intimate sample from a person in police detention for the purpose of ascertaining whether they have any specified Class A drug in their body. For this discretionary power to be triggered, certain conditions must be met, including the arrest condition or the charge condition. The arrest condition is that the person has been arrested but not charged for an offence and either that offence is a trigger offence; or a police officer of at least the rank of inspector has reasonable grounds for suspecting the misuse by that person of a specified Class A drug caused or contributed to the offence and has authorised the sample to be taken (section 63B(1A)). The charge condition is that the person concerned has been charged with an offence and either that offence is a trigger offence; or a police officer of at least the rank of inspector has reasonable grounds for suspecting that the misuse of that person of any specified Class A drug caused or contributed to the offence and has authorised the sample to be taken (section 63B(2)). Drug testing on arrest can take place if an individual is aged 18 or over; and drug testing on charge can take place if an individual is aged 14 or over. "Class A drug" has the same meaning as in the Misuse of Drugs Act 1971 ("the 1971 Act"). "Specified" (in relation to a Class A drug) and "trigger offence" have the same meanings as in Part III of the 2000 Act (section 63C(6)). Section 70(1) of the 2000 Act provides that "specified" (in relation to a Class A drug) means specified by an order made by the Secretary of State; and "trigger offence" has the meaning given by Schedule 6 to that Act (which lists trigger offences). That power is subject to the negative resolution procedure. Section 70(2) of the 2000 Act confers a power on the Secretary of State to amend, by order, Schedule 6 to that Act so as to add, modify or omit any description of offence. That power is subject to the draft affirmative resolution procedure (section 76(5) of the 2000 Act).

326. Clauses 139 and 140 of the Bill expand the drugs that can be tested for in police detention (on arrest for individuals aged 18 and over; after charge for individuals aged 14 and over), and the subsequent drug assessment regime for the misuse of drugs, to "specified controlled drugs", which includes Class A, Class B and Class C drugs.

327. Clause 139(2) and (3) substitutes "Class A" in each place it appears in section 63B of PACE, for "controlled". Clause 139(3)(b) substitutes new subsections (6) to (11) of section 63C of PACE for the existing section 63C(6). New section 63C(6)(b) and (c) replace the definitions of "specified" and "trigger offences" in the existing section 63C(6) of PACE with the following definitions:

- "specified controlled drug" means a controlled drug (within the meaning of the 1971 Act) specified in regulations made under new section 63C(6)(b).
- "trigger offence" means an offence specified in new Schedule 2B to PACE.

328. Schedule 15 to the Bill in turn inserts new Schedule 2B into PACE and new section 63C(8) confers power on the Secretary of State to amend the Schedule.

329. New section 63C(9) enables regulations made under new section 63C(6)(b) and (8) to make different provision for different purposes or different areas; and make transitional, transitory or saving provision. Amongst other things, this would enable regulations to specify different trigger offences for the testing of Class A, Class B or Class C drugs. Clause 96(6) repeals Schedule 6 to the 2000 Act and the associated power to amend that Schedule as there is now no drug testing or assessment provision in the 2000 Act which relies upon the definition of trigger offences.

Justification for taking the power

330. The amendments to PACE made by clause 139 will enshrine on the face of primary legislation the power to drug test a person in police detention for any specified controlled drug (that is, specified Class B and Class C drugs in addition to specified Class A drugs). It is appropriate to then provide a power to the Secretary of State to specify in secondary legislation the controlled drugs for which arrested (or charged) persons may be tested for as Parliament will have approved during the passage of the Bill the expansion of drug testing in police detention. The controlled drugs which may be specified for drug testing have also been approved by Parliament as being so harmful and dangerous that they must be controlled, as only controlled drugs under the 1971 Act may be specified. Further, specifying the relevant controlled drugs in regulations enables the list to be readily updated in response to emerging drug trends and threats to ensure the police have the appropriate powers to divert individuals to drug treatment and support services, alongside the development in new technologies, that will allow testing of additional drugs in the future, and ultimately to reduce drug-related offending. The power for the Secretary of State to specify the drugs within scope of drug testing is in line with the existing legislative framework for drug testing in police detention, where the Secretary of State may specify in secondary legislation the Class A drugs that can be tested for. This approach also recognises that the list of controlled drugs in Schedule 2 to the 1971 Act is itself open to amendment by secondary legislation (see section 2(2) of that Act).

331. The Bill will itself enshrine on the face of PACE the list of trigger offences for the purposes of section 63B of PACE, which aligns with the current position whereby the list of trigger offences is included in Schedule 6 to the 2000 Act, subject to amendment by the Secretary of State in secondary legislation. It is considered necessary for there to be a power to amend the list of trigger offences in order to tackle new and emerging drug-related criminality as quickly as possible or the creation of a new offence. This is analogous to the existing power in section 70(2) of the 2000 Act.

Justification for the procedure

332. By virtue of new section 63C(10) and (11) of PACE, the powers to specify the controlled drugs within scope of drug testing in police detention is subject to the negative procedure while the power to amend the list of trigger offences is subject to the draft affirmative procedure. This is in line with the existing powers in section 70(1) and (2) of the 2000 Act. The negative procedure for the power to specify controlled drugs is considered to afford an appropriate level of Parliamentary

scrutiny as Parliament will have approved during passage of the Bill the expansion of drug testing in detention to specified Class B and C drugs. Moreover, there are existing processes for controlling substances under the 1971 Act, including the requirement to consult with the Advisory Council on the Misuse of Drugs and established Parliamentary processes prior to controlling a drug under the 1971 Act. The analogous power in section 70(1) of the 2000 Act is also subject to the negative resolution procedure. The draft affirmative procedure is considered appropriate for the power to amend the list of trigger offences as any regulations adding to the list of trigger offences would have the effect of bringing more persons within the drug testing regime without requiring a police officer at least the rank of inspector to authorise the drug test, where there are reasonable grounds to suspect the drug use caused or contributed to the offence. The draft affirmative procedure is also appropriate in this instance given that this is a Henry VIII power. The analogous power in section 70(2) of the 2000 is also subject to the draft affirmative procedure.

Paragraph 19 of Schedule 16 – new section 35A(5) of the Proceeds of Crime Act ("POCA") 2002: Power to amend section 35A(3) of POCA (default term of imprisonment or detention)

Power conferred on: Secretary of State

Power exercised by: Order made by statutory instrument

Parliamentary procedure: Draft affirmative resolution procedure

Context and purpose

333. Schedule 16 to the Bill amends the confiscation regime in England and Wales as provided for in Part 2 of the Proceeds of Crime Act 2002 ("POCA"). Amongst other things, the amendments to Part 2 extend the enforcement powers available to a magistrates' court to the Crown Court, to enable the flexible transfer of proceedings and allow the courts to tailor enforcement to the facts of each case.

334. New sections 35A and 35D of POCA replace and re-structure the current section 35 (enforcement as fines) of that Act, to clearly separate out the setting of the default term of imprisonment or detention (for non-payment of a confiscation order) in section 35A, as directed by section 129 of the Sentencing Code, from the enforcement of the confiscation order in section 35D, as directed by section 132 of the Sentencing Code. New section 35A(3) sets out the maximum default term of imprisonment or detention that a court may impose for non-payment by reference to a sliding scale geared to the amount required to be paid under a confiscation order. New section 35A(5) enables the Secretary of State to amend the table in section 35(3). Such amendments may vary the existing entries in the table to modify the amounts in the first column of the table or the maximum amount of the default sentence in the second column. The power may also be used to add additional tiers to the table or to remove tiers.

Justification for the power

335. The new section 35A(3) of POCA will, as now, set out in primary legislation the maximum default sentences where a person fails to discharge the terms of a confiscation order. It is considered appropriate that there should be a power to amend the table in new section 35A(3) by regulations, including to adjust the various monetary thresholds to take account of changes in the value of money or to change the maximum default sentences in the light of experience with the operation of the reforms to the confiscation regime provided for in the Bill and, in particular, its effectiveness in encouraging compliance with compensation orders. Save in one respect, the power in new section 35A(5) is equivalent to the existing power in section 35(2C) of POCA (inserted by section 10 of the Serious Crime Act 2015) which is repealed by the Bill. Having regard to the DPRRC comments on the order-making power in section 35(2C) in its Second Report of session 2014/15, the replacement power does not include a power to set minimum terms of imprisonment.

Justification for the procedure

336. By virtue of section 459(6)(a) of POCA, as amended by paragraph 19(8) of Schedule 8, regulations made under new section 35A(5) are subject to the draft affirmative procedure. This is considered appropriate given that the power can amend imprisonment or detention terms in default of payment of a confiscation order. Parliament will debate and vote on any amendments. The draft affirmative procedure is also considered appropriate given that this is a Henry VIII power. The application of the affirmative procedure also mirrors the position with the precursor power in section 35(5) of POCA.

Paragraph 26 of Schedule 16 – new section 41ZA of POCA: Power to specify required conditions for the purposes of section 41ZA(1) of POCA

Paragraph 23 of Schedule 17 – new section 190ZA of POCA: Power to specify required conditions for the purposes of section 190ZA(1) of POCA

Power conferred on:	Lord Chancellor and the Department of Justice in Northern Ireland
Power exercised by:	Regulations made by statutory instrument (in Northern Ireland, statutory rule)
Parliamentary Procedure:	Negative resolution procedure

Context and purpose

337. New section 41ZA(1) of POCA, as inserted by paragraph 26 of Schedule 16 to the Bill, provides for the release of restrained funds to allow a defendant to meet reasonable legal expenses, subject to judicial approval of a cost budget and a table of remuneration, and subject to conditions as set out in a statutory instrument. Permitting legal expenses to be released from restrained funds aligns the criminal confiscation regime with the civil asset recovery regime under Part 5 of POCA.

338. New section 41ZA(2) of POCA enables the Lord Chancellor to make regulations specifying the required conditions for the purposes of section 41ZA(1). New section 41ZA(3) provides that the required conditions may, in particular:

(a) restrict who may receive sums released in pursuance of the exception (by, for example, requiring released sums to be paid to professional legal advisers), or

(b) be made for the purposes of controlling the amount of any sum released in pursuance of the exception in respect of an item of expenditure.

339. New section 41ZA(4) and (5) sets out an example of the prescribed condition falling within new section 41ZA(3)(b), namely provision for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by the regulations in respect of that item and the sum is released for payment of the assessed amount.

340. New section 41ZA(6) provides that before making any regulations under new section 41ZA(2), the Lord Chancellor must consult any such persons as the Lord Chancellor considers appropriate and take into account any representations made.

341. New section 190ZA makes equivalent provision for Northern Ireland.

Justification for the power

342. Sections 286A and 286B of POCA (concerning freezing orders) permit the Lord Chancellor to make regulations for the purpose of controlling the amounts drawn to meet the legal and reasonable living expenses by those whose assets have been frozen. These amounts need to be controlled in order to avoid the risk of dissipation of the frozen assets. Those regulations deal with practical and procedural matters in order to establish the requisite level of control, as well as provide for matters that will potentially change over time such as the basis of remuneration and specific rates that may be changed by solicitors and counsel.

343. The issues raised in respect of legal and reasonable living expenses where funds have been restrained are very similar to those raised in respect of frozen assets. For example, there will be similar practical and procedural matters that will need to be addressed in regulations in order to control the risk of dissipation. Therefore, it is considered appropriate to reflect the existing delegated power for frozen assets in the new restraint provisions.

Justification for the procedure

344. By virtue of section 459(4) of POCA, regulations made under new section 41ZA(2) are subject to the negative resolution procedure. The amendments made by the Bill establish on the face of POCA the principle that restrained funds may be released to pay for reasonable legal expenses subject to conditions, that being the case, the Government considers that the negative procedure affords an appropriate level of parliamentary scrutiny for regulations specifying the details of the relevant conditions and reflects the existing procedure in sections 286A and 286B of POCA.

Clause 156(2) – new section 85(1A) to (1C) of the Police Act 1996: Power to make rules about appeals by chief officers of police, local policing bodies and the Director General of the Independent Office for Police Conduct ("IOPC") to a Police Appeals Tribunal

Clause 156(9) – new section 4A(1)(aa) to (ad) and (4A) of the Ministry of Defence Police Act 1987: Power to make regulations about appeals by the chief constable of the Ministry of Defence Police, the Secretary of State, Director General of the IOPC and the Police Ombudsman for Northern Ireland to a Police Appeals Tribunal

Power conferred on: *Secretary of State*

Power exercised by: *Rules/Regulations made by statutory instrument*

Parliamentary procedure: *Negative resolution procedure*

Context and purpose

345. Clause 156(2) of the Bill amends section 85 of the Police Act 1996 to provide for a new route of appeal to the Police Appeals Tribunal ("PAT"). The PAT is a specialist tribunal which hears appeals against the finding or outcome of internal disciplinary or performance proceedings brought against members of the police force. Currently, by virtue of section 85(1) of the Police Act 1996 and rules made thereunder, only those who are subject to these proceedings may appeal to the PAT. The current rules made under section 85 are the Police Appeals Tribunal Rules 2020 (SI 2020/1).

346. The Bill makes three substantive changes to the police appeals regime. First, it establishes a new route of appeal for chief officers where they disagree with the finding or outcome of a misconduct hearing. Second, it extends this right of appeal to local policing bodies (that is, Police and Crime Commissioners, the Mayor's Office for Policing and Crime (in relation to the metropolitan police district) and the Common Council of the City of London) to appeal against the finding or outcome of a misconduct or accelerated misconduct hearing in respect of a chief officer. Third, it also extends the right of appeal to the Director General of the IOPC to appeal against the finding or outcome of a misconduct or accelerated misconduct hearing in respect of an officer in cases where the IOPC has presented the case.

347. Section 50 of the 1996 Act gives the Secretary of State the power to make regulations as to the government, administration and conditions of service of police forces. Regulations under that section may make provision with respect to "the conduct, efficiency and effectiveness of members of police forces and the maintenance of discipline". The Police (Conduct) Regulations 2020 (SI 2020/4) set out the procedures for referring an officer to a misconduct hearing in circumstances where an officer has a case to answer for gross misconduct (or a case to answer for misconduct but a final written warning is in place at the time of the initial severity assessment or they have been reduced in rank in the previous two years). The regulations also set out the processes for referring an officer to an accelerated misconduct hearing in circumstances where there is sufficient evidence of gross

misconduct and it is the public interest for the individual to cease to be a member of the police force without delay. Separately, the Police (Performance) Regulations 2020 (SI 2020/3) set out the processes for the referring an officer to a third stage meeting where the officer's performance or attendance is unsatisfactory and they have failed to adhere to a final written improvement notice or where it is determine that their performance constitutes gross incompetence. It is the outcome or finding at these proceedings which can be appealed by the officer concerned to the Police Appeals Tribunal. In addition, senior officers (those above the rank of Chief Superintendent) can also appeal from a misconduct meeting – an internally-chaired meeting where the officer is assessed as having a case to answer for misconduct.

348. Clause 156(2) inserts new subsections (1A) to (1C) into section 85 of the 1996 Act. New section 85(1A) affords the Secretary of State the power to specify by rules circumstances where chief officers may bring appeals to the PAT. The provision is intended to establish a right for chief officers of police to appeal to the PAT in their capacity as the individuals responsible for the direction and control of a police force's officers, and therefore as the individuals ultimately responsible for the oversight of those officers' standards of professional behaviour. It is envisaged that the Secretary of State would amend the PATs Rules to enable chief officers to appeal findings of fact as to conduct, or decisions as to disciplinary sanctions for misconduct taken by disciplinary panels in disciplinary hearings.

349. New section 85(1B) enables the Secretary of State to make rules that would allow local policing bodies a right of appeal in cases where a chief officer is themselves the subject of a disciplinary decision.

350. New section 85(1C) enables the Secretary of State to make rules that would allow the Director General of the IOPC a right of appeal in cases where it presented the case at a disciplinary hearing.

351. Clause 156(9) makes analogous amendments to section 4A of the Ministry of Defence Police Act 1987 ("the 1987 Act") in respect of the Ministry of Defence Police. The regulations that set out the disciplinary and performance procedures as well as the police appeals tribunal procedures for the MDP are the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020 (S.I. 2020/1087). Section 4A of the 1987 Act requires the Secretary of State to make regulations which make provision specifying the cases in which a member, or former member, of the Ministry of Defence Police may appeal to a police appeals tribunal and provision equivalent, subject to such modifications, to that made (or authorised to be made) in relation to police appeals tribunals by any provision of Schedule 6 to the Police Act 1996 (or the Scottish equivalent). The amendments made to section 4A by clause 109 require the Secretary of State to make regulations enabling the chief constable for the Ministry of Defence Police to appeal to a PAT against a disciplinary decision relating to a member, or former member, of the Ministry of Defence Police other than a senior officer (that is officers above the rank of chief superintendent). Such regulations must also make provision enabling the Secretary of State to appeal to a PAT against a disciplinary decision in respect of a senior officer or former senior officer. Finally, such regulations must make provision enabling the Director General of the IOPC and the Police Ombudsman for Northern Ireland to appeal to a PAT against a decision in

proceedings where the Director General of the IOPC or Ombudsman, as the case may be, has presented the case. New section 4A(4A) of the 1987 Act permits the regulations to provide that decisions to be taken by the Secretary of State or chief constable for the Ministry of Defence Police are taken by the Ministry of Defence Police Committee or another person appointed in accordance with the regulations.

Justification for taking the power

352. Clause 156 does not create wholly new rule-making powers but augments the existing powers in section 85 of the 1996 Act. New subsections (1A) to (1C) of section 85 following the approach taken in subsection (1) whereby the detail of the circumstances in which an appeal may be brought is set out in secondary legislation – the Police Appeals Tribunals Rules 2020. Having established on the face of the 1996 Act the principle that chief officers of police, local policing bodies and the Director General of the IOPC may appeal to a PAT against a disciplinary decision of the kind set out in new section 85(1A) to (1C), it is considered appropriate to leave to secondary legislation detailed provision in respect of the bringing of such appeals having regard to disciplinary framework which is itself provided for in secondary legislation made under section 50 of the 1996 Act. For example, where the disciplinary decision is already one made solely by the chief officer, it would not be appropriate to provide that same chief officer with a right of appeal against their own decision.

353. Similar considerations apply to the amendments to section 4A of the 1987 Act which augment an existing regulation-making power.

Justification for the procedure

354. By virtue of section 85(5) of the 1996 Act, any rules made under the new section 85(1A) to (1C) will be subject to the negative procedure. Before making rules, the Secretary of State will have to consult the Police Advisory Board for England and Wales (by virtue of section 63(3)(a) of the 1996 Act) – and take into account any representations it makes. Given the statutory duty to consult the Police Advisory Board and the fact that the Bill itself establishes the principle that chief officers and local policing bodies may appeal to a PAT, the Government is satisfied that the negative procedure continues to afford an appropriate level of parliamentary scrutiny.

355. Similar considerations apply to regulations made under section 4A of the 1987 Act, as amended, which by virtue of section 4A(5) are also subject to the negative procedure.

Special police forces: barred persons lists and advisory lists

i) Clause 158(1)(k): Power to specify additional law enforcement employers.

ii) Schedule 19, paragraph 1(3): Duty to specify information to be included in barred persons list.

iii) Schedule 19, paragraph 5(1)(b): Power to specify appeal proceedings for the purposes of paragraph 5.

iv) Schedule 19, paragraph 6: Power to make provision in connection with the removal of persons from barred persons lists otherwise than under paragraph 4 or 5.

v) Schedule 19, paragraph 7(2) and (3): Power to require a relevant policing authority to publish information about persons included in the barred persons list maintained by the authority.

vi) Schedule 19, paragraph 9(2): Duty to specify information to be included in the advisory list.

vii) Schedule 19, paragraph 11(3): Power to make provision in connection with removals from an advisory list otherwise than under paragraph 11(1) or (2).

viii) Schedule 19, paragraph 13(e): Power to specify meaning of "disciplinary proceedings" in relation to civilian employees of British Transport Police Authority and Civil Nuclear Police Authority.

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*(i) Draft affirmative resolution procedure* *(ii)-(viii) Negative resolution procedure*

Context and purpose

356. The Police Barred and Advisory Lists Regulations 2017 (SI 1135/2017), established under Part 4A of the Police Act 1996 (as inserted by the Policing and Crime Act 2017), created the Police Barred List and the Police Advisory List. The Police Barred List holds details of individuals, from territorial forces in England and Wales, who have been dismissed from policing due to gross misconduct or performance and prevents them re-joining policing in the future. The Advisory List captures individuals who have either resigned or retired during an investigation or where someone has left the service before a misconduct allegation (that could have led to their dismissal) comes to light and an investigation is launched. Where disciplinary proceedings are yet to be concluded, the Police Advisory List acts as an interim safeguarding measure available to forces.

357. The purpose of this measure is to broadly replicate the Police Act 1996 provisions for the National Crime Agency ("NCA") British Transport Police ("BTP"),

Civil Nuclear Constabulary ("CNC") and Ministry of Defence Police ("MDP"). Creating barred and advisory lists for these law enforcement agencies will ensure all dismissed individuals are captured and in turn, strengthen police vetting and increase public confidence in policing.

358. Clause 157, together with clauses 158, 159 and 160, restrict employment, appointments and contracts in relation to people on a number of barred lists. It replaces and extends the existing provisions in sections 88C and 88E of the Police Act 1996, which applies to a more limited list of persons and the police barred list only.

359. In particular, clause 157 requires a "law enforcement employer" before employing or appointing any person to undertake pre-employment/pre-appointment checks against the barred lists specified in subsection (8) of the clause. Where a barred person is included in a barred list, the law enforcement employer must not employ or appoint that person. Subsections (3) to (7) of the clause makes similar provisions in respect of secondees, contractors and others so that a law enforcement employer must not second, enter into a contract etc with a person which would permit a barred person to carry out a role from which they would be barred if they were directly employed. Clause 161 imposes a similar requirement on law enforcement employers to undertake checks against the various advisory lists (as listed in subsection (6)), however this new clause does not extend the bar on a person from being employed or appointed.

360. Clause 158 defines the term "law enforcement employer". The term covers, amongst others, chief officers of police, local policing bodies, the Director General of the NCA, HM Chief Inspector of Constabulary, the Secretary of State when exercising functions relating to MDP, and the Independent Office for Police Conduct. Clause158(1)(k) enables the Secretary of State to add to the list of law enforcement employers by regulations, the effect of which would be to require any specified person to undertake the pre-employment/pre-appointment checks required by clause 157. This regulation-making power may only be used to add persons exercising law enforcement functions, that is functions of a public nature relating to policing or law enforcement (subsection (2) and (5)). Where a specified person has both law enforcement functions and other functions, the requirement to undertake pre-employment checks may be imposed only insofar as the person to be employed is to be engaged in undertaking relevant law enforcement functions (see subsection (3)). Regulations may specify the Secretary of State insofar as they exercise specified law enforcement functions other than those relating to MDP (subsection (4)). Regulations made under subsection (1)(k) may not contain provision that is within the legislative competence of the Scottish Parliament or Northern Ireland Assembly (subsections (6) and (7)).

361. Paragraphs 1 and 9 of Schedule 19 requires the British Transport Police Authority ("BTPA"), Civil Nuclear Police Authority ("CNPA"), Director General of the NCA and the Secretary of State to maintain a barred persons list and an advisory list (respectively). Paragraph 1(3) of the Schedule enables regulations to be made by the Secretary of State specifying the information relating to a barred individual which must be included in each barred persons list. Such information is expected

to mirror the Police Barred list including but not limited to name, date of birth, rank or grade and a brief description of the conduct that led to their dismissal. Paragraph 9(2) confers a similar power on the Secretary of State, by regulations, to specify the information relating to an individual which must be included in the advisory lists. This is expected to include details around the individual who resigns or retires from a force following an allegation about their conduct, efficiency or effectiveness but before the disciplinary process has concluded; or where an allegation is received within a specified period after the individual had left the force, which if proven, would have led to dismissal had they still been serving.

362. Paragraph 4 provides for the removal of NCA officers and constables from the barred persons list in certain circumstances. Paragraph 5 similarly provides for the removal of civilian employees of the CNPA or BTPA from barred persons lists in certain circumstances. Paragraph 5(1)(b) and (2) require the relevant policing authority to remove a person from the barred persons list where the finding that the person would have been dismissed is set aside at proceedings that are identified as appeal proceedings by regulations made by the Secretary of State.

363. Paragraph 6 of the Schedule confers a power for the Secretary of State to make further provision in connection with the removal of persons from barred persons lists for reasons other than those provided for in paragraphs 4 or 5.

364. Paragraph 7 provides for the publication of information in barred persons lists. Paragraph 7(2) confers on the Secretary of State a power to require a relevant policing authority (excluding the NCA) to publish information about persons included in the barred persons list maintained by the authority. Paragraph 7(3) sets out a non-exhaustive list of the matters that may be addressed in such regulations, including the information that is to be published, when it should be published, the length of time it should remain published and how it should be published.

365. Paragraph 11(1) and (2) sets out the circumstances in which a relevant policing authority must remove a person from the advisory list. Paragraph 11(3) confers on the Secretary of State a power to make provision relating to removals from the advisory list, on grounds otherwise than those set out in paragraph 11(1) and (2), of persons included in the advisory list by virtue of paragraphs 10(1) and (2).

366. Paragraph 13(e) confers power to define the terms “disciplinary proceedings” in relation to a civilian employee of the British Transport Police Authority or the Civil Nuclear Police Authority.

Justification for taking the power

367. Clauses 157 to 165 and Schedule 19 make provision for the BTPA, CNPA, NCA and MDP to establish and maintain barred persons lists and an advisory list, places a duty on law enforcement employers to undertake pre-employment/pre-appointment checks against those (and other similar) lists and prohibits a law enforcement employer from employing/appointing a person who is on a barred persons list. Having provided for these core elements of the scheme on the face of the Bill, the government considers appropriate to leave secondary detail to

delegated legislation. In adopting this approach, these new clauses and new Schedule adopt the same approach as provided for in Part 4A of the Police Act 1996 (as inserted by the Policing and Crime Act 2017). The delegated powers provided for here broadly mirror those contained in Part 4A of the Police Act 1996 and in exercising such powers the Secretary of State is expected to make provision similar to that contained in the Police Barred and Advisory Lists Regulations 2017.

368. In relation to the power in clause 158(1)(k), this may only be exercised to add persons exercising law enforcement functions. This power may be used to require law enforcement bodies such as Border Force or HM Prisons and Probation Service to undertake pre-employment checks against the barred lists. This regulation-making power recognises that there are potentially a wide range of bodies exercising law enforcement functions and, as such, it is appropriate to consider on a case-by-case basis whether to subject them to the duty imposed by clause 157. The ability to extend the duties imposed by this new clause will also ensure that persons dismissed from the NCA, BTP, CNC or MDP for misconduct cannot then be reemployed in another law enforcement capacity.

369. In relation to the regulation-making powers conferred by paragraphs 1(3) and 9(2) of Schedule 19, it is considered appropriate to leave the detail of the information to be contained in the barred persons lists and advisory lists to secondary legislation. This approach recognises that much of the disciplinary and performance frameworks governing the NCA, BTP, CNC and MDP is itself set out in secondary legislation and changes to these frameworks may necessitate changes to the categories of information to be included in the barred persons lists and advisory lists.

370. Paragraphs 5(1)(b), 6, 11(3) and 13(e) of Schedule 19 confers powers relating to making further provisions relating to removal of persons from the barred persons lists and advisory lists. As indicated above, the disciplinary and performance frameworks governing NCA, BTP, CNC and MDP officers is itself set out in secondary legislation and changes to these frameworks may necessitate additions to the circumstances in which an officer should be removed from the barred persons lists or advisory lists. In addition, the disciplinary system for civilian BTP and CNC police staff is set out in policy and guidance, rather than in primary or secondary legislation, as such it is not practicable to define in paragraph 13 the meaning of “disciplinary proceedings” in respect of such staff or to set out in primary legislation all the circumstances in which civilian employees should be removed from the barred persons lists. These delegated powers also afford the flexibility to specify other circumstances where it would be appropriate to remove a person from the barred persons lists or advisory lists, for example following the death of the person or a judicial review.

371. The regulatory-making power in paragraph 7(2) will enable the criteria for determining what should be published to be kept under review and to broaden (or narrow) such categories over time. This regulation-making power recognises that there may be circumstances where information about an individual should not be put into the public domain. The expectation is that the great majority of the names

included on this barred list (except the NCA) will be published. In allowing exceptions to be made, this regulation-making power recognises that there will be certain limited exceptions, for example where publication of the name of a dismissed individual, may result in a significant risk of harm to the individual or other affected person, such as vulnerable witnesses or victims.

Justification for the procedure

372. By virtue of clause 198(3)(a), as amended, regulations made under clause 158(1)(k) are subject to the draft affirmative procedure. This is considered appropriate as the effect of any such regulations would be place new duties on the specified person exercising law enforcement functions as well as further narrowing the opportunities for employment of persons included in a barred persons list. The application of the draft affirmative procedure mirrors the procedure applying to the equivalent power in section 88C(5)(e) of the Police Act 1996 as recommended by the Delegated Powers and Regulatory Reform Committee in its third report of session 2016/17.

373. By virtue of clause 198(4), all the other regulation-making powers specified above are subject to the negative resolution procedure. This is considered to provide an appropriate level of parliamentary scrutiny as the regulations deal with largely procedural matters that are secondary to the core elements of the scheme set out in primary legislation. The application of the negative procedure mirrors the approach for the equivalent powers in the Police Act 1996.

374. In commenting on the provisions in the Policing and Crime Bill which inserted Part 4A of the Police Act 1996, the Delegated Powers and Regulatory Reform Committee commented “In general, we do not find either the delegations or the negative procedure to be inappropriate, because the new sections themselves set out much of the detail of the new “barring” and “advisory” arrangements, and most of the delegated powers are not concerned with matters of substance” (third report of session 2016/17).

Clause 166 – new section 40D of the Police Act 1996: Power to give directions to critical police undertakings

Power conferred on: *Secretary of State*

Power exercisable by: *Written direction*

Parliamentary procedure: *Laying only*

Context and Purpose

375. To support delivery of the Government’s Safer Streets Mission, and other manifesto commitments, a Police Efficiency and Collaboration Programme (“PECP”) has been established by the Home Office to achieve cashable savings within policing. As a part of my programme of police reform, in November 2025 the

Home Secretary announced that she intended to establish a new National Centre of Policing ("NCoP"). Amongst other things, the NCoP will bring together the provision of critical support services that local police forces can draw upon, to raise standards and improve efficiency.

376. It is envisaged that two companies, namely BlueLight Commercial Limited and Police Digital Service, whose memberships are primarily Police and Crime Commissioners, will transition into the NCoP. BlueLight Commercial was established by the Home Office and policing sector in June 2020, to work in collaboration with blue light organisations (principally police and fire and rescue services) to deliver efficiency and effective commercial and procurement services. The Police Digital Service is the UK organisation responsible for coordinating, developing, delivering, and managing digital services and solutions for UK policing. Police Digital Service is funded by policing and the Home Office.

377. The Home Secretary will set out further details of the NCoP in a police reform white paper to be published later this year. Primary legislation will be required to establish the NCoP. Ahead of the establishment of the NCoP, the Home Office is seeking to maximise cashable efficiencies for policing and lay the groundwork for the smooth transition of BlueLight Commercial Limited and Police Digital Service into the NCoP. Clause 166 makes paving provision to facilitate these objectives, inserting new section 40D into the Police Act 1996.

378. New section 40D(1) of the Police Act 1996 enables the Secretary of State to give a notice to a "critical police undertaking", as defined in new section 40D(2). New section 40D(2) provides that an undertaking is a "critical police undertaking" if : (a) it provides facilities or services to two or more police forces, (b) the provision of facilities or services to police forces is its principal business activity, (c) it is wholly or partly funded by grants from the Secretary of State, and (d) the Secretary of State considers that the facilities or services it provides to police forces are calculated to promote the efficiency and effectiveness of the police.

379. New section 40D(3) specifies that a critical police undertaking to which a notice has been given must comply with any directions given to it under new section 40D by the Secretary of State. New section 40D(4) provides that a direction given under new section 40D is a direction requiring the critical police undertaking to whom it is given to take, or not to take, action specified in the direction.

380. New section 40D(5) sets out a non-exhaustive list of actions that a direction may require a critical police undertaking to take. These include: (a) entering into agreements, including contracts of employment; (b) appointing officers; (c) exercising a function of management in a particular way; (d) providing information to the Secretary of State.

381. By virtue of new section 40D(6), the Home Secretary may only give such a notice or direction if it is calculated to promote the efficiency and effectiveness of the police.

382. New section 40D(7) requires the Secretary of State to consult a critical police undertaking before giving a notice or direction to the undertaking.

383. New section 40D(10) enables the Secretary of State to vary or revoke a notice or direction by issuing a further notice or direction.

Justification for the delegated power

384. This direction-making power is needed to enable the Secretary of State to maximise cashable savings from national level services (such as the commercial and procurement activities of police forces in England and Wales) in order to free up resources for frontline policing and improve the efficiency and effectiveness of police forces in tackling crime and anti-social behaviour and ensuring public safety. In addition, the direction-making power is needed to facilitate the smooth transition of services currently being delivered by BlueLight Commercial Limited and Police Digital Service into the NCoP later in this Parliament.

385. A direction-making power is appropriate here because it is not practicable to make specific provision on the face of the Bill for all the potential actions that a critical police undertaking may be required to take or not to take. Moreover, such actions may be detailed and technical in nature and, as such, not appropriate for setting out in primary legislation. A direction-making power also enables the Government to respond quickly and flexibly to changing circumstances.

Justification for the procedure

386. By virtue of new section 40D(9), the Secretary of State must publish and lay before Parliament any notice or directions given under new section 40D; such notices or directions are not otherwise subject to any parliamentary procedure. This approach is considered appropriate as it is not a power to make generally applicable delegated legislation, but rather to direct a specific critical police undertaking to act, or not to act, in a specific way.

387. Similar powers in other legislation are also not subject to any parliamentary procedure, and the Government considers the same approach is appropriate here. For example, the power conferred on the Treasury to give directions to the UK Infrastructure Bank of a specific or general nature about how it is to deliver its objectives is exercised administratively, but without any parliamentary procedure (see section 4 of the UK Infrastructure Bank Act 2023). Similarly, the Secretary of State may give Great British Nuclear directions or guidance; again, such directions or guidance are not subject to any parliamentary procedure beyond a laying requirement in respect of any directions (see section 321 of the Energy Act 2023). A similar approach was recently adopted in the Steel Industry (Special Measures) Act 2025.

Youth diversion orders – electronic monitoring

(i) Clause 171(3): Power to specify description of "responsible person"

(ii) Clause 173*:* Duty to issue code of practice relating to data from electronic monitoring

Power conferred on:	*Secretary of State*	
Power exercisable by:	*(i)*	*Regulations made by statutory instrument*
	(ii)	*Statutory guidance*
Parliamentary procedure:	*(ii)*	*None*
	(iii)	*None*

Context and purpose

388. Chapter 1 of Part 14 of the Bill provides for Youth Diversion Orders ("YDOs"), a new counter-terrorism risk management tool specifically designed for young people under the age of 22. YDOs will be made by the courts on application by the police and include prohibitions and requirements designed to divert the person from further involvement in the criminal justice system, prevent the person subject to an order engaging in terrorism and to address any underlying causes of their behaviour. Breach of an order will be a criminal offence (see clause 179).

389. Clause 171 provides that amongst the requirements that may be attached to a YDO in England and Wales is an electronic monitoring requirement. An electronic monitoring requirement may be imposed to support the monitoring of an individual's compliance with other requirements of the order (for example, where an exclusion/inclusion zone or a curfew are imposed). Electronic monitoring is undertaken using an electronic tag usually fitted to a subject's ankle.

390. The tag worn by the subject transmits data to a monitoring centre where it is processed and stored. The monitoring centre, operated by a "responsible person", reviews this data to see whether an individual being electronically monitored is complying with the conditions of the YDO. Where a subject has failed to comply, the responsible person provides information to the relevant authority, in this case the police, responsible for the enforcement of the order.

391. The clause sets out further provision about electronic monitoring requirements. Subsection (2) provides that a YDO which includes an electronic monitoring requirement must specify the person who is responsible for the monitoring ("the responsible person"). Subsection (3) provides that the responsible person must be of a description specified in regulations made by the Secretary of State. Similar enabling powers are contained in, for example, section 3AC(2) of the Bail Act 1976, section 215(3) of the Criminal Justice Act 2003 and section 37(7) of the Domestic Abuse Act 2021. The relevant statutory instrument made under the first two of those powers is the Criminal Justice (Electronic Monitoring) (Responsible Person) Order 2017 (SI 2017/235).

392. Clause 173 requires the Secretary of State to issue a code of practice on the processing of data gathered in the course of an electronic monitoring requirement of a YDO.

393. The processing of such data will be subject to the requirements in the UK General Data Protection Regulation and the Data Protection Act 2018. The code

of practice issued under clause 124 is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance with the data protection legislation. For example, the Government envisages that the code will set out the length of time for which data may be retained and the circumstances in which it may be permissible to share data. It is intended that the code will cover the storage, retention and sharing of personal data gathered under a requirement that is imposed for the purpose of monitoring compliance with another requirement.

394. Similar provision for a code of practice in respect of the processing of data from electronic monitoring is included in section 215A of the Criminal Justice Act 2003 (as inserted by the Crime and Courts Act 2013). The code is available here. Section 51 of the Domestic Abuse Act 2021 also makes similar provision in relation to Domestic Abuse Prevention Orders.

Justification for taking the power

395. Regulations made under clause 171(3) will provide a description of the person with whom the Secretary of State has made arrangements for providing the electronic monitoring services for the purposes of the YDO regime. Providing a description of the responsible person is properly an administrative procedure. For that reason, the designation of the responsible person is considered an appropriate matter for secondary legislation.

396. The Government considers that a code of practice is the most appropriate vehicle to set out expectations and broad responsibilities in relation to the processing of data gathered under the electronic monitoring requirement. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with operational good practice.

Justification for the procedure

397. By virtue of clause 198(5), regulations made under clause 171 are not subject to any parliamentary procedure. The primary purpose of these regulations is simply to put into the public domain the name of one or more persons contracted to provide electronic monitoring services for the purposes of YDOs; as indicated above, the selection of the contractor(s) is properly an administrative matter for the executive. Given this, no form of parliamentary scrutiny is considered necessary. This mirrors the approach with the analogous delegated powers in section 3AC(2) of the Bail Act 1976, section 215(3) of the Criminal Justice Act 2003 and section 37(7) of the Domestic Abuse Act 2021.

398. As regards the code of practice relating to data from electronic monitoring, given the likely content and nature of the code, and in particular the fact that it will not define or create new legal responsibilities and that the processing of data must be in accordance with the requirements of data protection legislation, the Government does not consider it is necessary for the code to be subject to any parliamentary procedure. This approach is consistent with the analogous code

provided for in section 215A of the Criminal Justice Act 2003 and section 51 of the Domestic Abuse Act 2021.

Clause 180(1): Power to issue guidance about functions of chief officers of police in respect of youth diversion orders

Power conferred on:	*Secretary of State*
Power exercisable by:	*Statutory guidance*
Parliamentary procedure:	*Negative resolution procedure*

Context and purpose

399. Clause 180 confers a power on the Secretary of State to issue guidance to chief officers of police about the exercise of their functions under Chapter 1 of Part 14 of the Bill. Before issuing the guidance the Secretary of State is required to consult the police, the Director of Public Prosecutions (and Scottish and Northern Ireland equivalents), the Independent Reviewer of Terrorism Legislation, persons representing Youth Offending Teams (and Scottish and Northern Ireland equivalents), the Independent Reviewer of Terrorism Legislation and such other persons as the Secretary of State considers appropriate. Chief officers of police will be required to have regard to the guidance when exercising functions under Part 1 of Chapter 14.

400. Any such guidance or revisions (other than insubstantial revisions) come into force on a day specified in regulations by the Secretary of State (clause 180(5) and (6)).

Justification for taking the power

401. The purpose of any guidance under clause 180 is to support the police in how they discharge their functions under Chapter 1 of Part 14. The guidance under clause 180 is expected to cover such issues as the test for applying for a YDO, the appropriate prohibitions and requirements to seek to attach to an Order, and the process for applying for an Order or for its variation or discharge, and the process that should be followed in relation to breaches of the Order.

402. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with operational good practice.

Justification for the procedure

403. By virtue of clause 198(4), any regulations bring guidance issued under clause 180 into force will be subject to the negative resolution procedure (other than insubstantial revisions). This is, exceptionally, considered appropriate given the sensitive nature of YDOs and their application to young people.

Clause 192(1): Power to implement international agreements on sharing information for law enforcement purposes

Power conferred on:	*Secretary of State, Scottish Ministers, Welsh Ministers and Department of Justice*
Power exercised by:	*Regulations made by statutory instrument or statutory rule*
Parliamentary Procedure:	*Negative resolution procedure*

Context and Purpose

404. The Secretary of State has prerogative powers to enter into international agreements (whether by way of treaties or memoranda of understanding) with third party nations governing the sharing of data for law enforcement purposes.

405. It is envisaged that under future agreements law enforcement data will be shared between UK law enforcement agencies, particularly, police forces, the National Crime Agency and Border Force and equivalent organisations in the third countries. The data will likely be shared using a new IT platform.

406. Clause 192 provides the appropriate national authority with the power to make regulations to implement the technical, and, where appropriate operational detail, of any such international agreements. Such regulations may also provide that the sharing of information in accordance with the regulations does not breach any restriction on the sharing of information (but may not authorise the sharing of data in contravention of data protection legislation or specified provisions of the Investigatory Powers Act 2016).

407. The "appropriate national authority", is defined in clause 192 as, the Secretary of State, and the Scottish Ministers, Welsh Ministers and Northern Ireland Department of Justice, as the case may be, insofar as the regulations to be made under clause 191 would be within the legislative competence of the Scottish Parliament, Senedd Cymru or Northern Ireland Assembly, respectively. Whilst international relations are a reserved or excepted matter, the domestic implementation of such agreements is devolved, and law enforcement is a devolved matter to varying extents in each devolved administration.

408. This measure was previously contained in last session's Data Protection and Digital Information Bill (clauses 126 and 127 of the Bill as brought forward from the House of Commons); the DPRRC did not comment on the power in its report on the Bill (10th report of session 2023/24).

Justification for taking the power

409. UK police forces, the National Crime Agency and Border Force already have the ability to share law enforcement data with international partners, using their existing statutory or common law powers.

410. Regulations made under this power will set out the technical details needed to implement an international law enforcement data sharing agreement (for example, the IT software to be used, the timescales by which data should be provided, etc). Such regulations may also include operational details. Regulations are desirable to provide clarity for frontline officers and international partners. Such technical and operational details are appropriate matters to be addressed in secondary legislation.

411. This regulation-making power will enable the swifter implementation of international law enforcement information sharing agreements than if Parliament was required to utilise primary legislation to enact such implementing provisions. This is particularly important to ensure that the UK can appropriately respond to regular functional, operational and technological developments of such agreements and systems.

Justification for the procedure

412. By virtue of clause 198(4) and 199(2), (6) and (8) regulations made under clause 192(1) are subject to the negative procedure. The negative procedure is considered appropriate given that the regulations will deal with technical and operational matters, including IT specification, required to give effect to an international law enforcement data sharing agreement. The regulations will mostly be for the benefit of frontline officers and the relevant international partners, providing them with clarity and a framework to follow when sharing data. Moreover, any international agreement would be made by way of a treaty, thereby trigging the parliamentary scrutiny procedure provided for in Part 2 of the Constitutional Reform and Governance Act 2010.

Clause 197(1), (3) and (4): Power to make consequential amendments

Power conferred on:	*Secretary of State, Scottish Ministers and Department of Justice in Northern Ireland*
Power exercisable by:	*Regulations made by statutory instrument, regulations, regulations made by statutory rule*
Parliamentary procedure:	*Negative resolution procedure (if it does not amend primary legislation), otherwise affirmative resolution procedure*

Context and purpose

413. Clause 197(1) confers a power on the Secretary of State to make consequential provision for the purposes of the Bill. Clause 197(3) confers a power on the Scottish Ministers to make consequential provision, to the extent it is within devolved competence, for the purposes of Chapter 2 of Part 4 (cuckooing), Chapter 5 of Part 5 (management of sex offenders), Clause 106 (dangerous, careless and

inconsiderate cycling) and clause 145(3) and Schedule 18 (confiscation). Clause 197(4) confers a power on the Department of Justice in Northern Ireland to make consequential provision, to the extent it is transferred provision, for the purposes of Chapter 2 of Part 4 (cuckooing), Chapter 5 of Part 5 (management of sex offenders); clauses 101 to 103 (administering etc. harmful substances (including spiking); encouraging or assisting serious self-harm) and clause 145(2) and Schedule 17 (confiscation).

414. Regulations that make consequential provision may amend, repeal or revoke any legislation passed before, or later in the same session of Parliament as this Bill (subsection (6)).

Justification for taking the power

415. The powers conferred by this clause are wide, but they are limited by the fact that any amendments made under the regulation-making power must be genuinely consequential on provisions made by or under the Bill. The Bill already includes some changes to other enactments as a consequence of the substantive provisions in the Bill, but it is possible that not all of the necessary consequential amendments have been identified in the Bill's preparation. The Bill covers a wide range of legislative topics, which increases the complexity. Therefore, there is a possibility that further consequential amendments may be required to give effect to the Bill. There could be an impact on the public perception of the criminal justice system if a provision is missed. This could undermine the administration of justice and would need immediate rectification. Requirements to amend secondary legislation may not become apparent until the provisions are implemented. The Government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation. There are various precedents for such provisions, including section 205(1) of the Police, Crime, Sentencing and Courts Act 2022.

416. The powers conferred on the Scottish Ministers (subsection (3)) and Department of Justice in Northern Ireland (subsection (4)) are limited in that the provision must be *consequential on* a provision of the Bill which falls within devolved or transferred competence (respectively), as listed in subsection (3) and (4), and must be provision which is within devolved competence (as defined in subsection (3)) or be transferred provision (as defined in subsection (5) respectively).

Justification for the procedure

417. If regulations made under this power do not amend or repeal primary legislation, they will be subject to the negative resolution procedure (by virtue of clause 198(4) in respect of the Secretary of State, clause 199(2) in respect of Scottish Ministers and clause 199(6) in respect of the Department of Justice in Northern Ireland). The affirmative procedure is not considered necessary or suitable for any applicable amendments which might be made to secondary legislation by virtue of this clause as any applicable orders and regulations will have no impact or very little impact on rights and will be administrative or procedural in nature.

418. If regulations made under this power do amend or repeal provision in primary legislation, they will be subject to the affirmative resolution procedure (by virtue of clause 198(3)(b) in respect of the Secretary of State, clause 199(1)(b) in respect of Scottish Ministers, and clause 199(5)(b) in respect of the Department of Justice in Northern Ireland) as befitting a Henry VIII power of this type. This ensures any change to primary legislation will be debated and approved by both Houses of Parliament. It is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

Clause 197(2): Power to state the effect of amendments to the Sentencing Code

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*None*

Context and purpose

419. Clause 55 and Schedule 5 and clause 98 of the Bill provide for child criminal exploitation prevention orders and stalking protection orders to be made on conviction. It will do so through amendments to the Sentencing Code (the "Code") as the consolidated form of sentencing procedural law. Other provisions of the Bill also amend the Sentencing Code, including clause 38(1) (the duty to make a criminal behaviour order for assault of a retail worker), clause 70(1) (child sex offences: grooming aggravating factor), and paragraphs 47 to 52 of Schedule 16 (consequential amendments relating to confiscation orders).

420. The Code is a comprehensive statement of the law that applies when sentencing a person convicted of an offence, regardless of when the offence was committed. In order to preserve the comprehensive nature of the Code it is necessary to set out where certain provisions do not apply to all such convictions. The intention is that this should be made clear on the face of the Code. This will save users of the Code from needing to look at commencement regulations in order to establish that a provision that appears on its face to apply to all cases actually has a more limited application. It is a key aim of simplifying the procedural law of sentencing in the Code. Clause 197(2) provides that the power in section 419(1) of the Code to state the effect of commencement provisions applies to any amendment or repeal made by or under the Bill.

421. By way of brief explanation of section 419 of the Code, it relates to two Schedules to the Code (Schedules 22 and 23) which consolidate existing but uncommenced provisions and powers to make amendments to relevant law respectively. Section 419(1) allows regulations to make provision in connection with the coming into force of the uncommenced provisions and of provision made under those powers so that their effect is stated in the Code. The regulations also will be able to make provision to secure that provisions that are to continue to have effect only for particular purposes or in particular cases remain in primary

legislation instead of having effect only by virtue of transitional, transitory or saving provision (section 419(1)(b)). This allows regulations to provide for both the existing provision and the new provision to be included in the Code, with each stating the cases to which it applies. This will allow for parallel provisions to exist in the legislation making its application to all cases clear on its face.

422. Section 419(2) allows consequential amendments to be made to other legislation. Such amendments may be necessary, for example, to correct existing cross-references to provisions of the Code where parallel provisions have been added to the Code as a result of exercising the power conferred by section 419(1)(b).

423. The extension of this section 419 power to any amendments or repeals made by or under the Bill will mean it is then possible to amend the Code in the same manner as section 419 allows it to be amended for Schedules 22 and 23 to the Code, so as to specify the cases in which, or the purposes for which, the provision in question will have effect.

Justification for the power

424. In order to ensure that the Code continues to take a consistent approach where uncommenced provisions are brought into force subject to savings or transitional provisions, or amendments are made that are subject to savings or transitional provisions, it is necessary to have a power to state the effect of those savings or transitional provisions in the Code.

425. To ensure the continuing usefulness of the Code as a consolidation, the same clarificatory regulations are required for amending legislation such as this Bill.

Justification for the procedure

426. The power is not subject to any Parliamentary procedure. This is because the power will not be used to make any substantive changes to the law: it will be used only to state the effect of commencement provisions. Commencement powers are not generally subject to Parliamentary procedure. Section 419 of the Code is subject to no procedure. These powers are similar in nature to the following provisions:

- section 7(2)(a) of the Offender Rehabilitation Act 2014 (which gives power to amend two sentencing Acts so as to replace a reference to a date on which a provision of the Offender Rehabilitation Act 2014 comes into force with the actual date, and insert provisions explaining this effect)
- section 104 of the Deregulation Act 2015 (confers a power on Ministers to amend legislation —primary and secondary —by statutory instrument in order to spell out dates described in it.)

427. Neither of these powers is subject to Parliamentary procedure. The power in section 7(2)(a) of the 2014 Act was welcomed by the Committee in its 1st Report of the 2013-14 session.

Clause 200(10): Channel Islands, Isle of Man and British overseas territories.

Power conferred on: *His Majesty*

Power exercisable by: *Order in Council*

Parliamentary procedure: *None*

Context and purpose

428. Section 384 of the Armed Forces Act 2006 ("the 2006 Act") contain standard powers to allow some or all of the provisions of that Act to be extended to one or more of the Channel Islands. It also contains a power to enable modifications to be made to how the 2006 Act extends to the Isle of Man and British overseas territories (except Gibraltar).

429. There are various provisions in the Bill which amend the 2006 Act (for example, clauses 30 (power to seize bladed articles etc: armed forces) and 129 (electronically tracked stolen goods: search without warrant (armed forces)) to make equivalent provision for the service police and the service justice system to that contained in the Bill in respect of the civilian police and criminal justice system.

430. Clause 200(10) provides that the powers in section 384 of the 2006 Act may also be exercised in relation to any amendments to that Act made by or under the Bill.

Justification for the power

431. It is appropriate that primary legislation is not required to extend the amendments made to the 2006 Act by this Bill to the Channel Islands, or to modify how they extend in the Isle of Man and British overseas territories (except Gibraltar). The extension of the provisions to these territories would occur only with the agreement of those jurisdictions' authorities, and would be the means by which the amendments to the 2006 Act made by the Bill could be extended without those jurisdictions being required to legislate for themselves. A similar extension of the section 384 of the Armed Forces Act 2006 power was included in section 21 of the Armed Forces Act 2016 and section 207(11) of the Police, Crime, Sentencing and Courts Act 2022.

Justification for procedure

432. As with the original powers in the 2006 Act, the power as extended by clause 200(10) is not subject to any parliamentary procedure. This reflects the customary position for Orders in Council extending provisions of an Act to the Crown Dependencies or British overseas territories.

Clause 201(1), (7), (8) and (9): Commencement powers

Power conferred on:	*Secretary of State, Scottish Ministers, Northern Ireland Department of Justice*
Power exercisable by:	*Regulations / orders made by statutory instrument*
Parliamentary procedure:	*None*

Context and purpose

433. Clause 201(1), (7), (8) and (9) contain standard powers for the Secretary of State, Scottish Ministers and the Northern Ireland Department of Justice to bring certain provisions of the Bill into force by commencement regulations or commencement orders, as the case may be. Commencement regulations made by the Secretary of State may make different provision for different purposes or areas (subsection (5)); it is intended that Respect Orders are piloted before being rolled out nationally. Commencement orders made by the Scottish Ministers or Northern Ireland Department of Justice may make different provision for different purposes (subsection (10)).

Justification for the power

434. Leaving provisions in the Bill to be brought into force by regulations (or, as the case may be, orders) will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be.

Justification for the procedure

435. As is usual with commencement powers, regulations made under clause 201(1) and orders made under clause 201(7), (8) and (9) are not subject to any parliamentary procedure by virtue of clause 198(5), in relation to the Secretary of State, and absence of specified procedure in relation to Scottish Ministers and the Department of Justice in clause 201. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations or orders enables the provisions to be brought into force at a convenient time.

Clause 201(4) and (10)(a): Power to make transitional, transitory or saving provision

Power conferred on:	*Secretary of State, Scottish Ministers, and Northern Ireland Department of Justice*
Power exercisable by:	

	Regulations / orders made by statutory instrument
Parliamentary procedure:	*None*

Context and purpose

436. Clause 201(4) confers on the Secretary of State power to make such transitional, transitory or saving provisions as they consider appropriate in connection with the coming into force of the provisions in the Bill. Clause 201(10)(a) confers on the Scottish Ministers and Northern Ireland Department of Justice power to make transitional or saving provisions in an order under subsection (7) to (9).

Justification for the power

437. These standard powers ensures that the Secretary of State, the Scottish Ministers and the Northern Ireland Department of Justice can provide a smooth commencement of new legislation and transition between existing legislation and the Bill, without creating any undue difficulty or unfairness in making these changes. There are numerous precedents for such a power, for example, section 208(6) of the Police, Crime, Sentencing and Courts Act 2022.

Justification for the procedure

438. As indicated above, this power is only intended to ensure a smooth transition between existing law and the coming into force of the provisions of the Bill. Such powers are often included as part of the power to make commencement regulations and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them. Although subsection (4) and (10)(a) are drafted as free-standing powers, the same principle applies and accordingly the power is not subject to any parliamentary procedure (by virtue of clause 198(5), in relation to the Secretary of State, and absence of specified procedure in relation to Scottish Ministers and the Department of Justice in clause 201).

Home Office / Ministry of Justice / Ministry of Defence / Department for Environment, Food and Rural Affairs
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