

VICTIMS AND COURTS BILL

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This memorandum has been prepared by the Ministry of Justice for the Delegated Powers and Regulatory Reform Committee, to assist with its scrutiny of the Victims and Courts Bill ('the Bill'). The memorandum identifies the provisions of the Bill which confer new 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. In the 'Summary of the Bill' section below we provide a broad overview of the Bill, including measures which do not contain any delegated powers.

SUMMARY OF THE BILL

Victims

2. The victims-focused measures of the Bill are as follows:
 - a. Clarifying the existing law regarding the Crown Court's power to deal with offenders who refuse to attend their sentencing hearings by (i) giving judges an express statutory power to order an offender to attend their hearing and stating that non-compliance with such an attendance order, without reasonable excuse, is a criminal contempt of court; (ii) stating that, where the court has made an attendance order, prison officers may use reasonable force, where necessary and proportionate, to deliver an offender to the courtroom. In addition, the Bill confers a new power to impose prison sanctions on those subject to an attendance order who: (i) commit contempt by failing to attend; or (ii) attend but commit contempt by disrupting or misbehaving at their sentencing hearing and are removed because of their conduct (**Attendance at sentencing hearings**).
 - b. Require the Crown Court to make a prohibited steps order at sentencing restricting the exercise of parental responsibility ("PR") by an offender convicted of a serious child sexual abuse offence with an immediate custodial sentence of four years or more against any child. In these circumstances, PR will be restricted for all children for whom the offender holds PR. There will be an exception to this obligation when it would not be in the interests of justice to do so; (**Restricting the exercise of parental responsibility – serious child sex offences**)
 - c. Require the Crown Court to make a prohibited steps order at sentencing restricting the exercise of parental responsibility ("PR") by an offender convicted of rape for the relevant child if the Crown Court is satisfied that said child resulted from that rape. There will be an exception to this

obligation on the Crown Court to make such an order when it would not be in the interests of justice to do so. In cases where the Crown Court are not satisfied that a child resulted from the rape but they consider that the child may have resulted from the rape, the Crown Court will have to refer the matter to the relevant local authority. The relevant local authority will then be under an obligation to make an application to the family court to determine whether to make a s.8 Children Act 1989 order, provided the victim consents to this application being made; **(Restricting the exercise of parental responsibility – rape resulting in a child)**

- d. Voiding provisions in agreements (such as confidentiality clauses or those contained in non-disclosure agreements (“NDAs”)) in so far as they purport to prevent victims and direct witnesses of crime, or those who reasonably believe they fall in those categories, from making allegations of, or disclosing information relating to, relevant criminal conduct or the other party to the agreement’s response to such conduct or the making of such an allegation or disclosure of information; **(NDAs)**
- e. Update the Victim Contact Scheme (VCS) (which is established by sections 35-45 of the Domestic Violence, Crime and Victims Act 2004 (“the DVCVA”)) to provide a statutory basis to provide the full VCS service to victims who are covered by existing operational schemes, for example victims of stalking and harassment offences, provide parity, where possible, regardless of whether the offender is detained in prison or made subject to a hospital order and introduce a new service where victims can be provided with information about an offender’s release on request where they would be at risk of physical or psychological harm without it; **(Victims’ rights to make representations and receive information)**
- f. Amending the bar contained in section 51 of the DVCVA which prevents the Victims’ Commissioner (VC) from exercising their functions in relation to particular victims and witnesses. The amendment will create an exception to this, allowing the VC to exercise their functions in relation to a particular case where (a) it raises an issue or issues of public policy of relevance to other victims/witnesses and (b) the exercise of functions in relation to the case is likely to promote the interests of victims/witnesses in relation to the issue(s); **(VC: individual cases) – NB: this measure does not contain any delegated powers.**
- g. Insert into the DVCVA (as new section 51B) a new power for the VC to request that local authorities and social housing providers co-operate with them in any way that the VC considers necessary for the purposes of their functions, so far as those functions are exercisable in respect of victims and witnesses of antisocial behaviour (“ASB”); and a corresponding duty on those bodies to comply with such a request, so far as it is appropriate and reasonably practicable for them to do so. The new duty on local authorities and social housing providers will broadly mirror the existing duty to co-operate with the VC on bodies responsible for providing services under the

Code introduced by VAPA (see s.22(5)) and inserted into the DVCVA (as section 51A); **(Duty to co-operate with VC: ASB) – NB: this measure does not contain any delegated powers.**

- h. Introduce a new duty on the VC to produce an annual report on compliance with the Victims' Code¹ ("the Code"), to complement the Code compliance framework set out in the Victims and Prisoners Act 2024 ("VAPA"), in particular, the requirement on Ministers to produce their own Code compliance report (s.11(1)(b), VAPA). Ministers will now be under a duty to have regard to the VC's report on Code compliance when preparing their own. **(VC Code compliance report) – NB: this measure does not contain any delegated powers.**

Courts

3. The courts-focused measures of the Bill are as follows:

- a. Amend sections 1(3) and 5(1) of the Prosecution of Offences Act 1985 ('POA') to remove the requirement for Crown Prosecutors, and those who conduct prosecutions on behalf of the CPS, to hold a "general qualification," as defined in the Courts and Legal Services Act 1990; **(Appointment of Crown Prosecutors) – NB: this measure does not contain any delegated powers.**
- b. In relation to private prosecutions, extend the Lord Chancellor's power in section 20(1A) of POA, to enable regulations to be made which set out the amounts that can be paid to a private prosecutor. In order to extend the power under section 20(1A), amendments to section 17 are also required. Under the existing scheme, there are no prescribed amounts; rather, the amount which may be paid to a prosecutor is that which the court considers "reasonably sufficient to compensate the prosecutor for any expenses incurred". It is noted that the Lord Chancellor already has a power in section 20(1A) to make regulations to limit the amounts that may be paid to a defendant under a Defendant's Cost Order, as inserted by LASPO in 2012. This measure will enable the Lord Chancellor to make regulations to set rates for the amounts that may be paid to private prosecutors, but will not, of itself, change any element of the current arrangements. Regulations setting out the applicable rates will be introduced at a later date, once the Bill has come into force and after a full consultation with relevant stakeholders has taken place; **(Private prosecutions: power to determine costs payable out of central funds)**
- c. Amend the 28 day time limit that applies to the Attorney General for referring a sentence to the Court of Appeal on the grounds that it is unduly lenient

¹ The Code sets out what victims can expect to receive when engaging with the criminal justice system (such as, what information they should be given after reporting a crime, or when they should be referred to support services). The current version of the Code can be found here: [Code of Practice for Victims of Crime in England and Wales \(Victims' Code\) - GOV.UK](#).

(often referred to as the 'Unduly Lenient Sentencing Scheme'). The amendment extends that time limit so that where a request is made in the last 14 days of the 28 day period the Attorney General has 14 days from the date of the request to consider referring a sentence; **(Reviews of sentencing: time limits) – NB: this measure does not contain any delegated powers.**

- d. Make technical amendments to six either-way offences which currently specify the maximum penalty in the magistrates' court as "6 months". This should be stated as "the general limit in a magistrates' court" to align them with other either-way offences enacted after the Criminal Justice Act 2003 received Royal Assent. **(Magistrates' sentencing powers) – NB: this measure does not contain any delegated powers.**

Final provisions (e.g. commencement, extent, etc)

- 4. The final provisions of the Bill contain measures relating to consequential provision, as well as the short title of the Bill, commencement, extent and transitional provisions.

SUMMARY OF DELEGATED POWERS IN THE BILL

5. Victims:

- a. Restricting the exercise of parental responsibility in relation to serious child sex offences contains two delegated powers:
 - i. To allow the Secretary of State to amend the time limit local authorities have to make an application to the family court to have them reconsider the prohibited steps order made by the Crown Court when a person is acquitted or has their sentence reduced to below the threshold.
 - ii. To allow the Secretary of State to amend the list of offences within scope of the measure in Schedule 1.
- b. Restricting the exercise of parental responsibility in relation to rape resulting in a child contains four delegated powers:
 - i. To allow the Secretary of State to amend the time limit the Crown Court has to notify the local authority of the matter.
 - ii. To allow the Secretary of State to amend the time limit local authorities have to seek the consent of the victim to make an application to the family court or High Court.
 - iii. To allow the Secretary of State to amend the time limit local authorities have to make an application to the family court or High Court to have them determine whether to make an order.
 - iv. To allow the Secretary of State to amend the time limit local authorities have to make an application to the family court or the High Court to

review any orders made under this measure in cases where the person is acquitted of the relevant offence.

- c. The NDAs measure includes two regulation-making powers to allow the Secretary of State to specify:
 - i. the conditions of “excepted agreements” that will not be voided under the measure; and,
 - ii. the disclosures that will always be permitted under such excepted agreements.
- d. Victims’ Rights to make representations and receive information: this provision includes two delegated powers to amend by regulations made by statutory instrument the specified offences and the specified lengths of those sentences (either generally or in relation to particular offences) which entitle a victim to the Victim Contact Scheme or to receive specified information about an offender under the new helpline service.
- e. The prison sanctions order measure contains a delegated power to allow the Secretary of State to make regulations to specify the sanctions available. The power is restricted to sanctions which would be available to a governor under prison rules for an offence against discipline. There is also power to make provision as to the effect of sanctions including creating exceptions and conferring discretion on governors.

6. Courts:

- a. Private prosecutions: power to determine costs payable out of central funds, as set out at paragraph 3b.

7. The final provisions of the Bill contain powers:

- a. allowing for consequential, transitional, supplementary, incidental and saving provision;
- b. relating to the territorial extent and application of the provisions regarding non-attendance at sentencing hearings in the service justice system; and,
- c. allowing for commencement by way of regulations, and related transitional and saving provision.

8. The Bill contains nine Henry VIII powers subject to the affirmative resolution procedure.

9. In total, the Bill contains sixteen delegated powers.

ANALYSIS OF DELEGATED POWERS BY CLAUSE

Victims

Clause 1 (new section 41B) of the Victims and Courts Bill: Power for the Secretary of State to specify the prison sanctions available and confer a discretion on the governor of a prison

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

Context and Purpose

10. Clause 1 inserts new sections 41A and 41B into Part 3 of the Sentencing Code. Section 41B(2) provides for a court dealing with an offender for criminal contempt of court for breach of an attendance order to make a prison sanctions order against the offender (instead of or in addition to exercising any other power). 41B(4) defines a prisons sanction order as an order imposing one or more sanctions of a description specified by regulations. 41B(5) provides that the only sanctions that may be specified in regulations are sanctions that correspond to the punishments available to a governor under prison rules for an offence against discipline.

11. Section 41B enables the Secretary of State (by regulations) to:

- (i) Specify the prison sanctions and in relation to each sanction specify a maximum period;
- (ii) Make provision as to the effect of the sanctions including:
 - a. Creating exceptions;
 - b. Conferring a discretion on the governor of a prison.

Justification for taking the power

12. The power has been taken to allow for the specification of the prison sanctions that will be available to judges to be drawn from those which are available to prison governors. These are currently provided for in the Prison Rules 1999. It has long been considered appropriate by Parliament for matters relating to the management of prisoners to be suitable for regulations given the relevance of operational expertise and the need to have flexibility available in response to a volatile and key area of public service delivery with significant and immediate impacts. The power will be limited to the sanctions available to governors, and to any associated

maximum time periods where these are provided for. This approach ensures coherence and will mean that over time should there be amendments to disciplinary punishments based on operational and policy assessments, any such changes can be tracked through for use by judges for non-attendance at sentencing hearings, as considered appropriate.

13. Not all the punishments available to governors will be considered suitable in the context of contempt of court for breach of an attendance order, so the power will allow for discretion to list only those sanctions (and associated maximums at no more than those set out in the rules) that are considered operationally workable and effective in providing a deterrent and punishment for non-attendance at sentencing hearings. In addition, the power will allow for future amendments to take into account whether that selection or the time periods made available is having the intended deterrent impact, and if there are unforeseen operational impacts or concerns that arise once the measure is implemented.
14. Making provision for regulations will also allow for the different lengths of maximum periods for different types of sanction to be able to be set out, and for differences in the available sanctions for those held under the Prison Rules and those held under the Young Offender Institution Rules 2000. This reflects existing differences in the Rules. For example, the maximum period for cellular confinement for those held under the YOI Rules is no more than ten days, whereas the maximum for those held under the Prison Rules is 21 days. The power also allows for regulations to make further provision as to the effect of the sanction, detailing more precisely what the effect on the offender will be.
15. The power allows the Secretary of State to create exceptions. For example, it may be that some sanctions would be considered inappropriate against some categories of offenders.
16. The power also allows for the regulations to confer governor discretion. This is an important safeguard, and it is expected this will be used to make provision for the governor to override the order where the governor considers it necessary for health, safety, or operational reasons. It is anticipated, for example, that this might be exercised in cases where the sanction could be or is proving seriously detrimental to the offender's mental health and where action needs to be taken swiftly as a result.
17. It is important to have the flexibility to be able to amend the legislation quickly if it is found that the wrong balance of sanctions or use of governor discretion is failing to deliver the policy aim or preventing good functioning of prisons. Sanctions greatly affect the way that prison staff and others can interact with a prisoner and have an impact on the good order and discipline in a prison. It maybe that, with time, different sanctions are needed or existing ones updated. Therefore, it is

considered that secondary legislation is the most appropriate and proportionate way to deliver the policy.

Justification for the procedure

18. The government considers it appropriate to use the affirmative resolution procedure which will allow Parliament to give due scrutiny to the proposed available prison sanctions. Given that this power is likely to engage an offender's ECHR rights, and that it is novel for a judge to impose a prison sanction, it is right that the detail, and any subsequent amendments are scrutinised and debated by Parliament.

Clause 3(1) (new section 10D(4) of the Children Act 1989): Power for the Secretary of State to vary the time limit for a local authority to make an application to review a prohibited steps order following the acquittal of an offender or the reduction of their sentence for the relevant offence to below 4 years.

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

Context and Purpose

19. Clause 3 requires the Crown Court to make a prohibited steps order (PSO) restricting the exercise of parental responsibility in cases where a person with parental responsibility for a child is convicted and sentenced to 4 years or more for a serious child sex offence against that child.

20. The Bill requires that if an offender is acquitted following an appeal or their sentence is reduced to below 4 years for the relevant offence, the relevant local authority must make an application to the family court or High Court to review any PSO that is in place. The requirement is to make the application as soon as is reasonably practicable and within 30 days of the day after the affected parent is acquitted or has their sentence reduced.

21. This clause enables the Secretary of State (by regulations) to amend the 30-day period for applications to be made.

Justification for taking the power

22. The new duty in these circumstances is still considered novel and therefore it is appropriate to set out the 30-day period in primary legislation to ensure such applications are made as quickly as possible. The 30-day period is estimated to be sufficient time to enable local authorities to collect the necessary information to make the application whilst also making sure that applications are made swiftly in these circumstances. It is also appropriate to allow for flexibility to amend that period without recourse to primary legislation should policy reasons arise, for example, it becomes clear that local authorities could make the application much sooner or if local authorities will be unable to make the application with necessary information within the 30-day period.

Justification for the procedure

23. As the power amends primary legislation, the Government considers it appropriate to use the affirmative resolution procedure which will allow Parliament to give due scrutiny to any variation to the time period.

Clause 3(1) (new section 10C(11) of the Children Act 1989): Power for the Secretary of State to amend the list of offences within scope of the measure as listed in Schedule 1

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

Context and Purpose

24. Clause 3 requires a PSO to be made by the Crown Court where a person is convicted of a serious child sex offence with an immediate custodial sentence of 4 years or more. The offences that are considered serious child sex offences for the purpose of the measure are set out in Schedule 1 to the Bill.

25. This power allows the Secretary of State to amend this list of offences included in Schedule 1.

Justification for taking the power

26. The power has been taken so the list of offences can be updated with new offences or to remove existing offences if required. New offences may be created that could be considered serious child sex offences and so should be considered for addition

to the Schedule. However, they may not be immediately added to the Schedule in the legislation creating the offence because longer time may be needed for detailed consideration to be given to confirm whether it is appropriate for the offence to be added to the Schedule. This power will therefore help future proof the measure and allow for changes to be made to the list as a result of technological or other developments etc that may lead to the need to create new child sex offences. This power would mean that a primary legislative vehicle would not need to be found every time a decision is made for a new offence to be added to the list, or for existing offences to be removed. The bar for the 'seriousness' of the offences within scope of the measure will not be changed by amending the list as the requirement for the offender to be sentenced to an immediate custodial sentence of four years or more remains. This therefore limits the scope of the power as, for example, offences with a maximum sentence of less than four years would not be able to be included in the Schedule.

Justification for the procedure

27. As the power enables the amendment of primary legislation, it is appropriate that the power to amend the list of offences should be subject to the affirmative procedure.

Clause 4 (new Section 10F(7) of the Children Act 1989): Power for the Secretary of State to vary the time limit in new section 10F(3) for the Crown Court to refer the case to the local authority in cases where it has not been proven in criminal proceedings that a child resulted from the rape, but the court considers that the child may have resulted from the rape.

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

Context and Purpose

28. Clause 4 requires the Crown Court to make a prohibited steps order (PSO) restricting the exercise of parental responsibility in cases where a person is convicted of rape and the Crown Court are satisfied that a child for whom that person has parental responsibility for resulted from that rape.

29. Where the court is not satisfied as above but consider that the child may have resulted from the rape, clause 4 makes it so the Crown Court must refer the case to the relevant local authority.

30. Clause 4 makes it so the Crown Court must make the application as soon as reasonably possible, and within 30-days of the day after the day the offender was sentenced.

31. This amendment enables the Secretary of State (by regulations) to amend the 30-day period for referrals to be made.

Justification for taking the power

32. The new duty is novel and whilst it is appropriate to set out the 30-day period in primary legislation to ensure such applications are made as quickly as possible, it is also appropriate to allow for flexibility to amend that period without recourse to primary legislation should policy reasons arise.

Justification for the procedure

33. The Government considers it appropriate to use the affirmative resolution procedure which will allow Parliament to give due scrutiny to any variation to the time period.

Clause 4 (new Section 10F(7) of the Children Act 1989): Power for the Secretary of State to vary the time limit in new section 10F(4) for the local authority to obtain consent from the victim to make the application to the family court or High Court to consider the case.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Context and Purpose

34. Clause 4 requires the Crown Court to make a prohibited steps order (PSO) restricting the exercise of parental responsibility in cases where a person is convicted of rape and the Crown Court is satisfied that a child for whom that person has parental responsibility for resulted from that rape.

35. Where the court is not satisfied as above but consider that the child may have resulted from the rape, clause 4 makes it so the Crown Court must refer the case to the relevant local authority within 30 days of sentencing.

36. In these cases, clause 4 requires the local authority to seek the consent of the victim (or other parental responsibility holder other than the offender if the victim is deceased) to make an application to the family court to determine whether to make any s.8 Children Act 1989 orders.

37. Clause 4 makes it so the local authority must seek this consent within 6 months from the day after the day the local authority is notified of the case by the Crown Court.

38. This amendment enables the Secretary of State (by regulations) to amend the 30-day period for referrals to be made.

Justification for taking the power

39. The new duty is novel and whilst it is appropriate to set out the 6 month period in primary legislation to ensure that the victim has enough time to consider whether they wish for the application to be made whilst also providing a hard stop date for any obligations being placed on local authorities, it is also appropriate to allow for flexibility to amend that period without recourse to primary legislation should policy reasons arise.

Justification for the procedure

40. The Government considers it appropriate to use the affirmative resolution procedure which will allow Parliament to give due scrutiny to any variation to the time period.

Clause 4 (new Section 10F(7) of the Children Act 1989): Power for the Secretary of State to vary the time limit in new section 10F(5) for local authority to make the application to the family court or High Court in cases where consent from the victim to do so is obtained.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Context and Purpose

41. Clause 4 requires the Crown Court to make a prohibited steps order (PSO) restricting the exercise of parental responsibility in cases where a person is

convicted of rape and the Crown Court is satisfied that a child for whom that person has parental responsibility for resulted from that rape.

42. Where the court is not satisfied as above but consider that the child may have resulted from the rape, Clause 4 makes it so the Crown Court must refer the case to the relevant local authority within 30 days of sentencing. It also places an obligation on local authorities to make enquiries as to whether the victim consents to an application being made to the family court or High Court for them to determine whether to make any s.8 Children Act 1989 orders.
43. In cases where consent is given, Clause 4 requires the relevant local authority to make an application to the family court or High Court for the court to determine whether to make any s.8 order if the victim (or another parental responsibility other than the offender in the case that the victim is deceased) consents to the application being made.
44. The requirement is to make the application as soon as is reasonably practicable and within 30 days of the day after the consent was obtained by the local authority.
45. This amendment enables the Secretary of State (by regulations) to amend the 30-day period for applications to be made.

Justification for taking the power

46. The new duty is novel and whilst it is appropriate to set out the 30-day period in primary legislation to ensure such applications are made as quickly as possible, it is also appropriate to allow for flexibility to amend that period without recourse to primary legislation should policy reasons arise.

Justification for the procedure

47. The Government considers it appropriate to use the affirmative resolution procedure which will allow Parliament to give due scrutiny to any variation to the time period.

Clause 4 (new Section 10G(4) of the Children Act 1989): Power for the Secretary of State to vary the time limit in new section 10G(3) for a local authority to make an application to review a PSO following the acquittal of an offender.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure:

Affirmative resolution

Context and Purpose

48. requires the Crown Court to make a prohibited steps order (PSO) restricting the exercise of parental responsibility in cases where a person is convicted of rape and the Crown Court is satisfied that a child for whom that person has parental responsibility for resulted from that rape.
49. Where the court is not satisfied as above but consider that the child may have resulted from the rape, the local authority is to be notified of the matter and they must make an application to the family court or High Court to determine whether any s.8 Children Act 1989 order should be made (if the victim or other parental responsibility holder, bar the offender, if the victim is deceased, consents to the application being made). The family court or High Court then may, using their existing powers, make any order that would be open to them if a section 8 application was made by the victim themselves.
50. The Bill requires that if an offender is acquitted following an appeal of the relevant offence, the relevant local authority at the time of the acquittal must make an application to the family court or High Court to review any order that is in place as a result of the above provisions. The requirement is to make the application as soon as is reasonably practicable and within 30 days of the day after the affected parent is acquitted.
51. This amendment enables the Secretary of State (by regulations) to amend the 30-day period for applications to be made.

Justification for taking the power

52. The new duty is novel and whilst it is appropriate to set out the 30-day period in primary legislation ensure such applications are made as quickly as possible, it is also appropriate to allow for flexibility to amend that period without recourse to primary legislation should policy reasons arise.

Justification for the procedure

53. The Government considers it appropriate to use the affirmative resolution procedure which will allow Parliament to give due scrutiny to any variation to the time period.

Clause 6 (new section 17(2) of the VAPA): Power for Secretary of State to set out the criteria for ‘excepted agreements’ which would not be voided under the NDAs measure

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Context and purpose

54. Clause 6 substitutes section 17 of the VAPA with a new measure which provides that provisions in agreements are void in so far as they purport to preclude a victim of crime, or a person who reasonably believes they are a victim of crime, from making allegations of, or disclosures of information relating to, relevant criminal conduct. Clause 6 also provides that provisions in agreements are void in so far as they purport to preclude such individuals from making allegations, or disclosures of information, relating to the response of the other party to the agreement to relevant criminal conduct or the making of such an allegation or disclosure.

55. The definition of a victim of crime for the purposes of this measure is as set out in section 1 of VAPA and includes certain direct witnesses of crime. “Relevant criminal conduct” means conduct by virtue of which the person making the disclosure is or reasonably believes they are a victim of crime under that definition.

56. Clause 6 includes two delegated powers. The first provides that the measure does not apply to provisions in agreements (“excepted agreements”) that satisfy such conditions as the Secretary of State may specify by regulations (new section 17(2) of the VAPA).

57. The [Employment Rights Bill](#) (“ERB”), which is undergoing ping-pong, includes a similar measure to Clause 6 at clause 24 of the ERB. The Department for Business and Trade (“DBT”) developed the ERB measure, which was tabled at Lords Report Stage. Clause 24 of the ERB inserts a new section 202A into the Employment Rights Act 1996 (“ERA”) which provides that provisions in agreements between an employer and a worker of the employer are void in so far as they purport to preclude the worker from making allegations of, or disclosures of information relating to, relevant harassment or discrimination. Clause 24 of the ERB also provides that provisions in such agreements are void in so far as they purport to preclude workers from making allegations, or disclosures of information, relating to the response of their employer to relevant harassment or discrimination or the making of such an allegation or disclosure. New section 202A(3) of the ERA 1996 includes a similar delegated power to that included in new section 17(2) of the VAPA.

Justification for taking the power

58. The power has been taken in recognition that there may be situations where a victim of crime wants to have the protection afforded by a confidentiality agreement in relation to criminal conduct and therefore that such agreements should be carved out of the measure. This could include where the victim requests a confidentiality agreement to help them to move on from a potentially distressing incident. The minimum criteria expected for an excepted agreement is that it must have been entered into at the request of the victim and that they have received independent advice on its terms and effect. It is envisaged that these criteria will serve to mitigate against the risk of an individual being pressured into signing an excepted agreement, and address the power imbalance between the two parties. The power would allow the Secretary of State to amend or update criteria for excepted agreements if the criteria have unintended consequences or there are changes in practices as a result of Clause 6.
59. Clause 6 aims to ensure parity as well as consistency and clarity between the protections available for victims of crime who have signed a confidentiality agreement, no matter what the crime type is or whether they have signed a confidentiality agreement within or outside of the workplace, with those that will be available in relation to workplace harassment and discrimination under clause 24 of the ERB. This includes the disclosures that victims of crime can make notwithstanding the terms of their confidentiality agreement, but also the exceptions that apply for victims who want to have the protection afforded by such an agreement. Therefore the Government considers that it is appropriate for Clause 6 to include a similar delegated power to that provided for in clause 24 of the ERB.
60. DBT intend to consult on the criteria for excepted agreements in relation to clause 24 of the ERB. The Ministry of Justice intends to work closely with DBT on this, to inform the work on the criteria for excepted agreements to be set out in regulations in relation to Clause 6.

Justification for the procedure

61. As regulations made in exercise of this power could materially affect the types of agreements in scope, the Government considers that the affirmative procedure is appropriate, which will allow Parliament to give due scrutiny to the criteria for excepted agreements.

Clause 6 (new section 17(3) of the VAPA): Power for the Secretary of State to provide that disclosures to certain persons, for certain purposes or in certain circumstances will always be permissible, even when an ‘excepted agreement’ has been entered into

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Context and purpose

62. The second delegated power in Clause 6 provides that the Secretary of State may by regulations provide that any provision in an excepted agreement is void in so far as it purports to preclude a victim of crime from making an allegation or disclosure about relevant criminal conduct that falls within the scope of Clause 6 to specified persons, for specified purposes or in specified circumstances (new section 17(3) of the VAPA). New section 202A(4) of the ERA 1996 includes a similar delegated power to that included in new section 17(3) of the VAPA and DBT intend to consult on the disclosures that workers will always be permitted to make under the ERB measure, even when they have signed an excepted agreement.

Justification for taking the power

63. The power has been taken to ensure that disclosures to certain persons, for certain purposes or in certain circumstances will always be permissible for victims of crime to make, even when an excepted agreement has been entered into. It is known that being unable to discuss the criminal conduct at all can be damaging to the health and wellbeing of victims of crime and the intention is to ensure that victims of crime are always able to make disclosures in order to access support to cope and recover from the impact of crime, for example from medical professionals.

64. It is also the intention to ensure that the circumstances in which victims of crime can always make disclosures, even when they have signed an excepted agreement, are clear. For example, to the police to report a crime, which is permitted under the common law. Regulations in exercise of this power would meet this intention. There will likely be some overlap between the detail of these regulations and the permitted disclosures set out in section 17(2) of the VAPA, which Clause 6 substitutes. However, there may be some differences and the Ministry of Justice intends to work closely with DBT on their consultation, to inform the work on the types of disclosures that victims of crime will always be able to make, even when they have signed an excepted agreement.

65. The Government also considers that it is appropriate for Clause 6 to include a similar delegated power to that provided for in clause 24 of the ERB, for the reasons set out in paragraph 59 above.

66. The power would also allow the Secretary of State to add to or amend the list of disclosures that are permitted under an excepted agreement in the future, to keep pace with any further evidence which may come to light on the use of confidentiality agreements and the support required for victims of crime.

Justification for the procedure

67. As regulations made in exercise of this power would affect the protections afforded by an excepted agreement, the Government considers that the affirmative procedure is appropriate, which will allow Parliament to give due scrutiny to the types of disclosures that will be permitted under such agreements.

Clause 7 + Schedule 2, Paragraph 31 (new section 45A): Power to amend specified offences by regulation

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Context and purpose

68. The Victim Contact Scheme (VCS) is established under sections 35-45 of the DVCVA. Victims of a specified sexual, violent or terrorism offence, where the sentence is 12 months or more imprisonment, have a statutory right to make representations on licence conditions and supervision requirements and be provided with information as is appropriate in all circumstances of the case. The specified offences are murder; the sexual, violence and terrorism offences in Schedule 18 to the Sentencing Act 2020; offences against the child within the meaning of Part 2 of the Criminal Justice and Courts Services Act 2000; and related inchoate offences. The Victim Notification Scheme is a non-statutory scheme which provides information about an offender's release and victim related licence conditions to eligible victims of stalking and harassment offences.

69. This measure will update the existing Victim Contact Scheme (VCS) to provide this service to a broader cohort of victims, i.e. those victims of stalking and harassment offences who are currently covered by existing operational schemes, and provide other victims with a new route to request information about their offender's release.

70. Victim eligibility for either service will be determined by reference to a new statutory definition of 'victim' for the purpose of the scheme, the offence the offender was convicted of and the sentence of imprisonment received.

- a. Victim Contact Scheme – For victims of specified offences where the offender received a sentence of imprisonment for over 12 months, and victims of certain specified offences irrespective of sentence length, Probation will proactively offer the VCS service. This will entitle the victims to information about when the offender will be eligible for release/discharge, information about any victim related licence conditions or supervision requirements they will be subject to on their release or discharge, and any other information as is appropriate in all circumstances of the case. This information can be provided on an ongoing basis until the offender's sentence in respect of the victim has finished. These victims will also have a statutory right to make representations about any victim related licence conditions or supervision requirements that the offender may be subject to in the event of their release or discharge.
- b. Victim Helpline – If a victim contacts Probation seeking information about an offender, if they are a victim of a specified offence, they will have a statutory right to information about when the offender will be eligible for release/discharge, any victim related licence conditions or supervision requirements they will be subject to in the event of their release or discharge and any other information as is appropriate in all the circumstances of the case. If someone who contacts the helpline is not a victim of a specified offence, Probation will have a power to provide the same information if they consider that the victim is at risk of physical or psychological harm if they did not have the information about the offender. Victims eligible for this service (either those who are victims of specified offences or those Probation consider to be at risk if they did not have access to the information) will not have the right to make representations on licence conditions or a victim personal statement. Probation will not have an ongoing obligation to provide further information. They will only provide the information on request.

71. This measure also includes a regulation-making power for the Secretary of State to amend the list of specified offences and the specified sentence lengths attached to those offences (either generally or in relation to particular offences) which would make a victim automatically eligible for either service level by regulation.

72. This measure also allows discretionary provision of information to victims outside of the specified offences if Probation consider that the victim is at risk of physical or psychological harm if they did not have that information, including the discretionary provision of information to witnesses who have directly experienced the effects of criminal conduct at the time it occurred and suffered harm as a result. Probation will also have a discretion to treat victims who receive information in accordance with these measures as if they were otherwise eligible for the Victim Contact Scheme by offering them the opportunity to give a victim impact statement

to the First-tier Tribunal or the Mental Health Review Tribunal for Wales, where it is appropriate to do so.

73. For victims eligible for the VCS where the offender is detained in a hospital as an unrestricted patient, the 2004 Act provides that hospital managers have an obligation to provide the information the victim is entitled to. This measure will also include a power for hospital managers to provide Probation with the information that victims are statutorily entitled to receive about unrestricted patients so they can provide it to the victim.

Justification for the power to amend specified offences by regulation

74. Any offences which would be added are those where victims would be in scope of the overarching policy intention, i.e. they are likely to be at risk of physical or psychological harm if they did not receive certain information about an offender. The 2004 Act which establishes the VCS does not currently contain a power to amend the specified offences which determine eligibility for the scheme. This has presented operational challenges where Probation have not been able to offer the VCS to certain cohorts of victims. Including this delegated power will mean that should changes need to be made in the future to amend the list of specified offences for either service, this could be achieved without requiring a suitable primary legislative vehicle. This would also ensure that the service could be delivered more speedily to eligible victims.

75. We envisage the circumstances where offences may need to be added could include where new offences within scope of the policy are created but not added to the Schedule, or affordability or deliverability of the scheme changes and the service can be delivered to a broader cohort. It will also enable offences to be moved from the specified offences from the Helpline to the VCS, and vice versa if the policy or operational requirements change.

76. The delegated power is strictly limited in scope to only amending the offences eligible for the schemes, and not considerable changes to the operation of the schemes themselves. Amendments to the specified offences will not change the overall operation of the legislation or the policy behind the provision.

Justification for the procedure

77. The delegated power is a power to amend primary legislation so it is appropriate that it is subject to the affirmative procedure. If the power is used to add more offences to the list of qualifying offences, more victims will have a statutory right to receive personal information of an offender, which engages an offender's Article 8 rights. If offences are removed, this would be removing an entitlement to

information from a cohort of victims. Given the significance of such changes, it is right that any changes are scrutinised and debated by Parliament.

Clause 7 + Schedule 2, Paragraph 31 (new section 45B) - Power to amend the specified sentence lengths (either generally or in relation to particular offences) which entitle an eligible victim to the VCS or to receive information by way of the helpline

Power Conferred On:	Secretary of State
Power exercisable by:	Regulations made by statutory instrument
Parliamentary procedure:	Affirmative resolution

Justification for the power

78. There are certain offences where an eligible victim can be offered the VCS or receive information on request via the helpline irrespective of the sentence length. However, there are some offences where eligibility for the VCS is determined on the basis of the length of sentence of imprisonment the offender received. For those who receive a determinate sentence, the minimum sentence length is 12 months or more to be eligible for the VCS. Otherwise, a victim of these offences is eligible to receive information on request by way of the helpline. This power will enable the Secretary of State to amend the length of the specified sentence which determines eligibility to the VCS for victims of specified offences, either generally or in relation to particular offences.
79. The 2004 Act which establishes the VCS does not currently contain a power or make provision for the Secretary of State to set a different specified sentence length for different offences which determine eligibility for the scheme. Including this power is to allow for flexibility should there be changes in the future which mean that it is right to make changes to the specified sentence lengths. Including this delegated power provides flexibility and will mean that if there are changes to the deliverability of the VCS, or there are changes to the sentencing regime which necessitate further amendments to these schemes to provide for victims, they can be achieved without requiring a suitable primary legislative vehicle.
80. The delegated power is strictly limited in scope to only amending the specified lengths of those sentences where a victim is automatically eligible for either the VCS or to receive information under the Helpline, either generally or for particular offences. The Secretary of State will not have the power to impose a minimum sentence length on any of the other offences listed in the Schedule, ie those which do not already have a specified sentence length criteria.

Amendments to the specified offences will not change the overall operation of the legislation or the policy behind the provision.

Justification for the procedure

81. The delegated power is a power to amend primary legislation, so it is appropriate that regulations made under the power be subject to the affirmative procedure. If the power is used to reduce the specified sentence, more victims will have a statutory right to receive personal information of an offender, which engages an offender's Article 8 rights. If the specified sentence was increased, it would be removing a statutory entitlement to make representations about licence conditions from a cohort of victims. It is therefore right that any changes are scrutinised and debated by Parliament.

Courts

Clause 12: Setting rates for legal expenses in private prosecutions

Power conferred on:	Lord Chancellor
Power exercisable by:	Regulations made by statutory instrument
Parliamentary procedure:	Negative procedure

Context and purpose

82. This clause will give the Lord Chancellor the power to make regulations which will set rates for the expenses which private prosecutors can claim from the state for bringing private prosecutions. The clause will amend the regulation making power in section 20(1A) of the Prosecution of Offences Act 1985 ('POA') which the Lord Chancellor already has, and which allows for regulations to be made to set rates for costs claimable from the state in relation to defence costs.

83. Regulations made by the Lord Chancellor under this power will prescribe the rates payable to private prosecutors. Existing provisions in the POA will provide for a discretion to allow enhancements to such rates, for example where a case is particularly complex, or with consideration to the care, speed, or novelty of the case.

Justification for taking the power

84. The justification for taking this power is:

- a) to provide flexibility, so that the Government can ensure that over time, the rates claimable by private prosecutors remain appropriate. Rates for private prosecutors may need to be adjusted periodically in response to changes in the legal landscape, inflation, or evolving practices within the criminal justice

system. It would be disproportionate to require such changes to be made through primary legislation;

- b) because the level of detail required in setting rates would be more appropriate within secondary legislation than within primary legislation (and this is consistent with the approach taken for setting analogous fees such as for Defence Costs orders or legal aid); and,
- c) to enable consultation to take place on the detailed implementation of the policy, including consultation on the appropriate level of fees for private prosecutors.

Justification for the procedure

85. Regulations made under POA are already subject to the negative procedure by virtue of section 29(1A) of POA. Therefore, regulations in relation to expenses in private prosecutions will also be subject to the negative procedure to ensure consistency with existing practice. Rates will be set in regulations following a full consultation, and we do not consider it appropriate for them to be subject to the more rigorous affirmative procedure.

Final provisions

Clause 15: Power for the Secretary of State to make consequential provision

Power conferred on:	Secretary of State
Power exercisable by:	Regulations made by statutory instrument
Parliamentary procedure:	Negative resolution (if it does not amend primary legislation), otherwise affirmative resolution

Context and Purpose

86. This power enables the Secretary of State by regulations to amend, repeal or revoke provision made by or under an Act of Parliament, which has passed into force prior to the Bill receiving Royal Assent, in consequence of provisions of the Bill. It also allows such regulations to make supplementary, incidental, transitional or saving provision.

Justification for taking the power

87. Whilst considerable efforts have been made to identify relevant amendments that will be required to primary legislation as a result of this Bill, the Government considers that a delegated power to amend legislation for this purpose remains necessary due to the complexity of legislation in this area and the novel provision

being introduced to capture further consequential provision that may only become apparent at a future point.

88. In particular, the measure relating to Restricting parental responsibility may have consequential implications for a complex area over a range of the statute book and it is considered necessary to take such a power to avoid any implementation difficulties or legislative inconsistencies that may otherwise arise. Whilst the Government acknowledges that precedents cannot be relied upon for justification, it notes that similar power is found, for example, in the Marriage and Civil Partnership (Minimum Age) Act 2022 and section 18 of the Victims and Prisoners Act 2024.

89. The Government considers it necessary to include this power so that full effect can be given to these clauses. Use of this power will be limited to that which is necessary to implement the clauses of the Bill. Where it is used to amend primary legislation, such powers, although seemingly wide, are limited by virtue of such amendments being necessarily consequential on these clauses (or supplementary, incidental, transitional or saving to consequential provision under this clause). The power does not extend to amending provisions of this Bill, or future legislation.

Justification for the procedure

90. Whilst the Government considers that a delegated power to make consequential, supplementary, incidental, transitional or saving amendments to primary legislation is necessary for the reasons set out above, it considers that it would be appropriate that such amendments be subject to the affirmative resolution procedure so that Parliament may give them due scrutiny. Where only secondary legislation is being amended, the negative resolution procedure will apply as we consider this is the appropriate procedure here.

Clause 16(2): 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

91. Section 384(1) of the Armed Forces Act 2006 (the “AFA”) allows for the extension of any of the AFA’s provisions to the Channel Islands by Order in Council. If such an Order is made, it can modify the AFA in its application to the territory in question.

92. Section 384(2) provides that the AFA extends directly to the Isle of Man and the British Overseas Territories (except Gibraltar) (i.e., without the need for an Order in Council). It allows an Order in Council to be made in order to modify the AFA in its application to any of those territories.

93. Clause 16(2) provides that these two powers apply to clause 2 (*Power to compel attendance at sentencing hearing: armed forces*) , which means that this clause extends to the Isle of Man and the British Overseas Territories (except Gibraltar), and that an Order in Council may be made to extend it to the Channel Islands and to make modification to its operation in the Channel Islands, the Isle of Man, or the British Overseas Territories (except Gibraltar).

Justification for taking the power

94. These are powers that are commonly included in armed forces legislation and reflect the UK's continuing defence responsibilities for the Channel Islands, the Isle of Man and the British Overseas Territories. A similar extension of the section 384 power in the AFA was included in section 207(11) and (12) of the Police, Crime, Sentencing and Courts Act 2022.

Justification for procedure

95. As with the original powers in the AFA, the power as extended by clause 14(5) is not subject to any parliamentary procedure. Providing that the making of such Orders is not subject to Parliamentary procedure reflects the constitutional status of the Channel Islands, the Isle of Man and the British Overseas Territories and is consistent with the approach taken for these powers in other recent criminal justice legislation, such as section 207(11) and (12) of the Police, Crime, Sentencing and Courts Act 2022.

Clause 17(1): Commencement powers

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: None

Context and purpose

96. Clause 17(1) contains a standard power for the Secretary of State to bring certain provisions of the Bill into force by commencement regulations, apart from those provisions listed in subsections (2) and (3).

Justification for the power

97. Leaving provisions in the Bill to be brought into force by regulations will afford the necessary operational 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

98. As is usual with commencement powers, regulations made under clause 15(1) are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

Clause 17(4): Power to make transitional or saving provision on commencement

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: None

Context and purpose

99. Clause 17(4) confers on the Secretary of State the power to make such transitional or saving provisions as they consider appropriate in connection with the coming into force of the provisions in the Bill.

Justification for the power

100. This standard power ensures that the Secretary of State can provide a smooth commencement of new legislation and transition between existing legislation without creating any undue difficulty or unfairness in making these changes. There are numerous precedents for such a power, for example, section 183(9) of the Policing and Crime Act 2017.

Justification for the procedure

101. 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 drafted as a free-standing power on this occasion, the same principle applies and accordingly the power is not subject to any parliamentary procedure.

Ministry of Justice

28 October 2025