

THE VICTIMS AND COURTS BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM

SUMMARY OF THE BILL

1. This memorandum addresses issues arising under the European Convention on Human Rights (“ECHR”) in relation to the Victims and Courts Bill (“the Bill”). It has been prepared by the Ministry of Justice. On introduction of the Bill in the House of Commons, the then Lord Chancellor and Secretary of State for Justice (the Rt. Hon. Shabana Mahmood MP) made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with Convention rights. On introduction of the Bill in the House of Lords, the Lords Minister for the Bill, Baroness Levitt, will also make a section 19(1)(a) statement.
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, the exercise of PR will be restricted for all children for whom the offender holds PR. 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; (**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”) of the relevant child for an offender convicted of rape 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 is

not satisfied to the Criminal standard that a child resulted from the rape, but consider that the child may have resulted from the rape, the Crown Court will refer the matter to the relevant local authority. The local authority will then be under an obligation to make an application to the family court to determine whether to make an 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) (underpinned 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 currently covered by the Victim Notification Scheme to include them within one single consistent scheme, 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)**
- 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)**

- 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)**

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)**
- b. In relation to private prosecutions, extend the Lord Chancellor's power in section 20(1A) of the POA, to enable regulations to be made which set out the amounts that can be paid to a private prosecutor under a costs order made under section 17 of the POA. 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)**
- 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 (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

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](#).

General has 14 days from the date of the request to consider referring a sentence; **(Reviews of sentencing: time limits)**

- 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)**

- 4. The final provisions of the Bill make the necessary provision for consequential amendments under the Bill, as well as the short title of the Bill, and commencement, extent and transitional provisions.
- 5. The Government considers that clauses or Schedules to the Bill which are not mentioned further in this memorandum do not give rise to any human rights issues. The Convention rights we have considered in respect of provisions in this Bill are:
 - a. Prohibition of inhuman or degrading treatment (Article 3)
 - b. the right to liberty and security (Article 5);
 - c. the right to a fair trial (Article 6);
 - d. the right to respect for private and family life (Article 8)
 - e. freedom of expression (Article 10); and
 - f. prohibition of discrimination (Article 14).

Where Articles are not referenced in relation to certain measures, that it is because we do not consider that the measure engages that Article.

CONVENTION ARTICLE ANALYSIS

Victims

Attendance at sentencing hearings

- 6. Clause 1 inserts two new sections into the Sentencing Act 2020: section 41A (*power to order offender to attend*) and section 41B (*attendance orders: prison sanctions for contempt*).

Section 41A (power to order offender to attend)

- 7. Section 41A provides that the Crown Court may order an offender remanded in custody awaiting sentencing to attend their sentencing hearing. If the offender fails without reasonable excuse to comply with such an order, the offender commits a criminal contempt. The provision applies to both adult and youth offenders but, in keeping with general penalties for contempt, a custodial penalty is not available for offenders aged under 18.

8. Ordering an offender to attend their sentencing hearing with a potential custodial penalty for non-compliance engages Article 5 and Article 6.
9. Article 5 is engaged because the measure may result in the further deprivation of an offender's liberty: as the measure is punishable as a contempt, it may attract a custodial penalty of up to two years.
10. Any additional deprivation of liberty for non-attendance will be in accordance with a procedure prescribed by law, namely the law of contempt (as amended by the measure) with its associated, well-established procedural safeguards. Any detention will fall within the authorised deprivation specified in Article 5(1)(a) because it will follow after a conviction by a competent court (in this case, a finding of contempt). Further or alternatively, it will fall within the authorised deprivation specified in Article 5(1)(b) because it will be for non-compliance with a lawful order of a court (in this case, an attendance order).
11. Article 6 is engaged because the offender is subject to criminal proceedings within the meaning of Article 6 in respect of the index offence and so entitled to its safeguards from the point of charge until the determination of any appeal. Further, the determination of the contempt (for non-attendance) is itself a further criminal charge for the purposes of Article 6, to which the criminal safeguards apply.
12. The use of the contempt jurisdiction to punish non-attendance will make use of the advanced procedural safeguards that have been developed, and which help ensure compatibility with Article 6. For this reason, the clause is compatible with Article 6.

Section 41A(5) (power to order delivery of offender)

13. Section 41A(5) states that where the court makes an attendance order, in relation to an offender who is aged 18 or over, operational prison and escort staff may use reasonable force to deliver the prisoner to the courtroom in these circumstances where the force is necessary, reasonable and proportionate.
14. Article 3 (prohibition of inhuman or degrading treatment) which is an absolute right, is relevant when considering the use of force on a prisoner. Article 8 (right to bodily integrity and respect for private life), which may only be interfered with in accordance with the law and where it is necessary under Article 8(2), is also engaged.

Article 3 and Article 8

15. The Government is satisfied that this provision is compatible with Article 3 and Article 8 because any use of force under this provision must be necessary, reasonable and proportionate. This is expressly stated in the clause.

Section 41B (attendance orders: prison sanctions for contempt)

16. Section 41B provides that the Crown Court may make a prison sanctions order on those subject to an attendance order if the offender commits a contempt of court by failing to comply with the attendance order as mentioned in section 41A or interrupts the hearing or otherwise misbehaves and is removed from the hearing because of their conduct. The provision applies to offenders aged 18 or over who are detained in a prison or a Young Offender Institution.
17. Section 41B allows regulations to be made by the Secretary of State to specify the sanctions and the maximum period for which they apply. The only sanctions that may be specified are those that correspond to the punishments available to a governor under the prison rules for an offence against discipline. Regulations may also confer a discretion on the governor of the prison or Young Offender Institution and it is intended that this power will be used to override a prison sanctions order when necessary, for example for health, safety or operational reasons.

Article 3

18. One of the proposed sanctions that could be specified under the power is cellular confinement, subject to a maximum of 21 days. This falls far short of the high bar required to establish that restrictions on prisoners' interactions violates Article 3 (prohibition of inhuman or degrading treatment). In addition, the power to impose this sanction is only exercisable by a Crown Court judge who will have discretion whether or not to impose such an order and, if so, the nature and extent, subject to the maximum provided. The judge will be aware of the offender's background and, at all times, will be required under section 6 of the Human Rights Act 1998 to act compatibly with the Convention. Furthermore, the regulations will confer a discretion on the governor, with the intention that the governor will be able override the order for operational, health or safety reasons. This will include where the sanction is proving seriously detrimental to the offender's mental health. For these reasons, the government is satisfied that this provision is compatible with Article 3.

Article 6

19. The measure sets out the circumstances in which prison sanctions will be available as a disposal for contempt. The imposition of any prison sanctions under this measure will therefore be subject to the associated safeguards for contempt. The Government is accordingly satisfied that this provision is compatible with Article 6.

Article 8

20. A number of punishments that regulations could specify include sanctions that engage Article 8 (right to private life), for example cellular confinement and the forfeiture of privileges. This is a qualified right that can only be interfered with in accordance with the law and if necessary, justified and proportionate. The government is satisfied that making provision for these limited interferences in this context can be justified where necessary to protect the rights of victims and their families and in the interests of open justice, the administration of justice and upholding the authority of the court. The sanctions and maximum time limits available to a judge would be no more than is available to a governor in a prison for an offence against discipline; the Crown Court judge will be required to act compatibly with the offender's Convention rights and the regulations will confer a discretion on the governor. For these reasons, the government is satisfied that this provision is compatible with Article 8.

Attendance at sentencing hearings: armed forces

21. Clause 2 makes equivalent amendments to the service justice system in respect of non-attendance at sentencing hearings except that prison sanctions will only be available where the court sentences the offender to imprisonment, or detention in a young offender institution, in respect of the service offence(s) they have committed (and not to service detention). These amendments to the service justice system are compatible with the ECHR for the same reasons set out above in respect of the civilian justice system.

Restricting the Exercise of Parental Responsibility – Serious Child Sex Offences

22. Clause 3 imposes an obligation on the Crown Court ("CC") to make a prohibited steps order ("PSO") restricting the exercise of parental responsibility ("PR") when a person is sentenced for 4 years or more for a serious child sex offence against any child. In these circumstances, PR will be restricted for all children for whom the person holds PR. There is an exemption, however, when the CC believes it is in the interests of justice not to make such an order. Further, when a person is later acquitted of said offence or their sentence is reduced to below 4 years, a duty will be placed on the relevant local authority for the child to make an application to the family court to have the order restricting PR reconsidered.

Article 6

23. Article 6 provides a right to a fair trial in the determination of a civil right, which includes a decision of a court determining a key aspect of a parent's relationship with their child. Whilst the order restricting the exercise of PR in the CC, subject to the interests of justice discretion, will happen without the offender being able to make representations, the offender (and other affected persons) will have the right

to apply immediately to the family court to vary or discharge the PSO made in the CC. These applications are expected to be listed swiftly. The offender or other applicants will be able to provide evidence and make submissions on the continuation of the PSO made.

24. Whilst there is no automatic review when PSOs are made an automatic review process is proposed (so that local authorities are obliged to make an application to have the order restricting the exercise of PR reconsidered by the family court) when a person who was within scope of the measure is acquitted or has their sentence reduced to below 4 years. Given the length of time the PSO may have been in place, or the extent to which this may have already been varied or indeed discharged by the family court may not be known at the point of acquittal, a review is considered to be appropriate as opposed to restrictions being immediately discharged. We recognise that the order will remain in place until the family court considers this (and indeed elements may remain in force after if the court think it in the best interest of the child); such consideration is expected to take place swiftly.
25. When considering the application of the interests of justice test the Crown Court will be bound by section 6 of the Human Rights Act 1998 ("HRA 1998"). This, along with the PSO itself, will not be subject to appeal in the Crown Court. The offender, along with any other person listed in Section 10(4) of the Children Act 1989, will be able to make an application immediately to the family Court to have the PSO discharged (or varied or otherwise reviewed). Such applications are expected to be listed quickly so in any case where the offender or others wish to challenge the automatic restriction, they will have an effective way to do so.
26. We are satisfied that the provisions and the process as a whole meet the requirements of Article 6 and ensure that the persons affected by the automatic restriction on the exercise of parental responsibility of the offender in circumstances within the scope of the amendment have access to a decision-making process and a mechanism to challenge this restriction and provide evidence to the family court.

Article 8

27. Any proposal which results in a restriction on the exercise of parental responsibility is an interference with Article 8 rights. An interference with an Article 8 right can be justified if in accordance with the law, necessary in a democratic society and in pursuit of one of the legitimate aims set out in Article 8. In this case this legitimate aim is protecting the "rights and freedoms" of children and "for the protection of health or morals" of children who are already direct or indirect victims of sexual offences.

28. The ECtHR in *M.D. and Others v. Malta*² accepted that automatic removal of PR on conviction was an interference with Article 8, in pursuit of the legitimate aim of protecting the “rights and freedoms” of children. The ECtHR held that, unlike with blanket provisions applied to all offences (see *Sabou and Pircalab v. Romania*³), a measure of restriction of PR in circumstances where an offender is convicted of specific offences where the offender has “*authority or right over the child, victim of the criminal act*” is “*both reasonable and necessary*” and within this aspect “*it cannot be said that in legislating for such a measure the State exceeded its margin of appreciation*” (paragraph 77).
29. In Clause 3 and Schedule 1, offences have been limited to only serious child sex offences. Where the offence is against a child the offender has PR for, there is a clear connection between the offence being committed and the impact on the wellbeing of the child in question. The offender will have shown disregard for the psychological and physical wellbeing of their own child which demonstrates a future risk to both that child, but also other children of the family, should that offender retain PR for them.
30. Where the offence is committed against another child, the impact on a child for whom the offender has PR may be less clear. However, as the specific offences within scope of this measure are the most serious child sex offences where the offender has shown a blatant disregard for the child’s welfare and the emotional and physical wellbeing of a child, the offence is still related and relevant to the exercise of parental responsibility. There is also the potential psychological harm to a child that can be caused in knowing that your parent was convicted of a serious child sex offence when you yourself are a child. The legitimate aim in protecting the rights and freedoms of children remains and given this is limited to the most serious sexual offences against children it is considered proportionate and the automatic element of it justified.
31. The ECtHR in *Sabou and Pircalab v. Romania* also held that “*the examination of the best interests of the child is always a consideration of crucial importance, to the extent that the interests of the child must be before any other consideration, and only a particularly disgraceful behaviour may justify a restriction of parental rights in the best interests of the child*” (paragraph 47). With the limitation of the offences to only serious child sex offences and a further limitation to cases where an offender has been sentenced to four years or more, the measure is limited to cases that show “particularly disgraceful behaviour” so as to justify the automatic restriction of the exercise of PR in the best interests of the child.

² 64791/10, Judgment of 17.7.2012.

³ 46572/99, Judgment of 28.12.2004.

32. No automatic review of the PSO in the family court is being proposed save for in the context of successful conviction or sentence appeals. The ECtHR held in *Sabou and Pircalab v. Romania* that *“the restriction of the exercise of parental rights applies automatically and in an absolute manner as an accessory sentence for any offender serving a prison sentence, without any review by the courts and without any consideration of the type of offence and the interests of the children. Therefore, it constitutes more a moral blame aiming to punish the offender and not to protect the child”* (paragraph 48). The ECtHR took a similar approach in another case against Romania, *Iordache v. Romania*⁴ and in *M.D. and Others v. Malta*. In *M.D. and Others v. Malta*, the ECtHR held that *“the automatic application of the measure to the applicant without any weighing of the interests of justice and those of the children whose interests are paramount, is of itself problematic”* (paragraph 77). The ECtHR further held that *“it follows that the measure at issue, in so far as it was automatically applied, perpetual and not subject to any periodic revision or at least to subsequent assessments following a request in that regard, was not “necessary in a democratic society” for the aforesaid aim.”* (paragraph 79).
33. We are satisfied that the ability of the offender to immediately apply to the family court to vary or discharge the automatic restriction on the exercise of PR meets the requirement to further consider the individual best interests of a particular child by a “subsequent assessment following a request in that regard”. Consideration by the family court following such an application means that the nature of the order, and the welfare of the child will be considered in the particular circumstances of each case.
34. The inclusion of the interests of justice tests means that judges can decide not to make the PSO if, on the facts known to the judge in the course of criminal proceedings, it may be unjust to do so. Judges would be bound by section 6 Human Rights Act 1998 when deciding whether to exercise their discretion. The measure is compatible with Article 8.

Article 14

35. Article 14 requires that all of the rights and freedoms set out in the Human Rights Act must be protected and applied without discrimination.
36. It is noted that this measure takes a different approach to section 18 of the Victim and Prisoners Act 2024 (restricting parental responsibility where one parent kills the other). Section 18 provides for the automatic review of the PSO in the family court following an application by a LA. There is no automatic review in this measure. This difference is not a difference in treatment on grounds prohibited by Article 14. The distinction is based on the nature and type of offence committed

⁴ 6817/02, Judgment of 14.01.2009.

and is not “other status” for Article 14 purposes. If it were a status, the difference is justified as in consequence of the offence, there will usually be no one left with PR save for the offender in cases within section 18 (and when this is automatically restricted there will be children who have no one who holds PR for them) such that the court should swiftly review.

Restricting the Exercise of Parental Responsibility – Rape Resulting in a Child

37. Clause 4 imposes an obligation on the Crown Court (“CC”) to make a prohibited steps order (“PSO”) restricting the exercise of parental responsibility (“PR”) when a person is sentenced for rape and the CC is satisfied during criminal proceedings that a child resulted from the rape. In these circumstances, PR will be restricted only for the child that resulted from the rape. There is an exemption, however, when the CC believes it is in the interests of justice not to make such an order (“strand 1”).
38. In cases where the CC are not satisfied that a child did result from the rape, but the court considers that the child may have resulted from the rape, Clause 4 imposes an obligation on the CC to refer the matter to the relevant local authority (“LA”) within 30 days starting from the day after sentencing. The LA then must seek the consent of the victim (within 6 months from the day after they are notified) to make an application to the family court or the High Court to determine whether an order should be made. If consent is given, the LA then must make that application (“strand 2”) within 30 days from the day after consent is given.
39. Further, when a person is later acquitted of said offence, a duty will be placed on the LA for the child to make an application to the family court or High Court to have any order made by the CC, or by the family court as a result of an application made by the LA, reviewed.

Article 6

40. Article 6 provides a right to a fair trial in the determination of a civil right, which includes a decision of a court determining a key aspect of a parent’s relationship with their child.
41. Whilst the order restricting the exercise of PR in the CC, subject to the interests of justice exemption, will happen without the offender being able to make representations, the offender (and other affected persons) will have the ability to apply immediately to the family court to vary or discharge the PSO made in the CC. These applications are expected to be listed swiftly. The offender or other applicants will be able to provide evidence and make submissions on the continuation of the PSO made.

42. Whilst there is no automatic review when PSOs are made, an automatic review process is proposed (under which local authorities are obliged to make an application to have the order restricting the exercise of PR reviewed by the family court) when a person who was within scope of the measure is acquitted. Given the length of time the PSO may have been in place, or the extent to which this may have already been varied or indeed discharged by the family court may not be known at the point of acquittal, a review is considered to be appropriate as opposed to restrictions being immediately discharged. We recognise that the PSO will remain in place until the family court considers this (and indeed elements may remain in force afterwards, if the court think it in the best interest of the child); such consideration is expected to take place swiftly.
43. When considering the application of the interests of justice test the CC will be bound by section 6 of the HRA 1998. This, along with the PSO itself, will not be subject to appeal in the CC. However, as stated above, the offender, along with any other person listed in Section 10(4) of the Children Act 1989, will be able to make an application immediately to the family court to have the PSO reviewed meaning they will have an effective mechanism for review.
44. We are satisfied that the provisions and the process as a whole for strand 1 meet the requirements of Article 6 and ensure that the persons affected by the automatic restriction on the exercise of PR of the offender in circumstances within the scope of the amendment have access to a decision-making process and a mechanism to challenge this restriction and provide evidence to the family court.
45. Strand 2 differs from strand 1 in that the CC must refer the matter to the local authority ("LA") to make an application (if the victim consents) to the family court when the offender is sentenced for the offence of rape, the CC is satisfied the offender has PR for the child, the CC is satisfied that the child may have resulted from the rape and strand 1 does not apply.
46. This is to provide discretion, so the court do not have to refer the case in cases where it is clear that the child did not result from the rape e.g., the rape was 3 years ago, and the child is 7. Equally, the court has the power to refer a case where there is, for example, some evidence before the court which suggests that the rape resulted in the birth of a child, but for whatever reason it was not established in the proceedings. The effect is merely a referral to the family court (rather than any punitive or restrictive measure), who will then consider the case as a whole with the best interests of the child in mind. In the family proceedings, the offender can make representations as they could in other family proceedings and the consequences of these proceedings would be the same as if the victim had made the application themselves.

Article 8

47. Any proposal which results in an automatic restriction on the exercise of PR is an interference with Article 8 rights. An interference with an Article 8 right can be justified if in accordance with the law, necessary in a democratic society and in pursuit of one of the legitimate aims set out in Article 8. In this case this legitimate aim is protecting the “rights and freedoms” of children and “for the protection of health or morals” of children due to the psychological harm caused to a child as a result of knowing they are a product of rape and having that person remain able to take active steps in their life.
48. The ECtHR in *M.D. and Others v. Malta*⁵ accepted that automatic removal of PR on conviction was an interference with Article 8, in pursuit of the legitimate aim of protecting the “rights and freedoms” of children. The ECtHR held that, unlike with blanket provisions applied to all offences (see *Sabou and Pircalab v. Romania*⁶), a measure of restriction of PR in circumstances where an offender is convicted of specific offences where the offender has “*authority or right over the child, victim of the criminal act*” is “*both reasonable and necessary*” and within this aspect “*it cannot be said that in legislating for such a measure the State exceeded its margin of appreciation*” (paragraph 77).
49. The ECtHR in *Sabou and Pircalab v. Romania* also held that “*the examination of the best interests of the child is always a consideration of crucial importance, to the extent that the interests of the child must be before any other consideration, and only a particularly disgraceful behaviour may justify a restriction of parental rights in the best interests of the child*” (paragraph 47).
50. This context here is of course different, given that the child is not the direct victim of the offence, as with the cases covered by section 18 Victims and Prisoners Act 2024. However, the children are indirect victims of the offence due to the high likelihood of psychological harm caused by the knowledge that they were conceived by rape and that that offender still has the capacity to take active steps to control their lives. There is extensive evidence showing the psychological impact caused in these cases that demonstrate harm to the child in these circumstances. This is why the measure has been strictly limited only to rape, and only to the child that was conceived by rape and not other children shared by the offender and the victim.
51. No automatic review of the PSO made by the CC under strand 1 in the family court is being proposed save for in the context of successful conviction appeals. The ECtHR held in *Sabou and Pircalab v. Romania* that “*the restriction of the exercise of parental rights applies automatically and in an absolute manner as an accessory*

⁵ 64791/10, Judgment of 17.7.2012.

⁶ 46572/99, Judgment of 28.12.2004.

sentence for any offender serving a prison sentence, without any review by the courts and without any consideration of the type of offence and the interests of the children. Therefore, it constitutes more a moral blame aiming to punish the offender and not to protect the child” (paragraph 48). The ECtHR took a similar approach in another case against Romania, *Iordache v. Romania*⁷ and in *M.D. and Others v. Malta*. In *M.D. and Others v. Malta*, the ECtHR held that *“the automatic application of the measure to the applicant without any weighing of the interests of justice and those of the children whose interests are paramount, is of itself problematic”* (paragraph 77). The ECtHR further held that *“it follows that the measure at issue, in so far as it was automatically applied, perpetual and not subject to any periodic revision or at least to subsequent assessments following a request in that regard, was not “necessary in a democratic society” for the aforesaid aim.”* (paragraph 79).

52. Much like with measures already within the Victims and Courts Bill in relation to serious child sex offences, we are satisfied that the ability of the offender to immediately apply to the family court to vary or discharge the PSO, even where that PSO is automatic, meets the requirement to further consider the individual best interests of a particular child by a *“subsequent assessment following a request in that regard”*. Consideration by the family court following such an application means that the nature of the order, and the welfare of the child will be considered in the particular circumstances of each case.
53. Importantly, these PSOs are not truly ‘automatic’ in any event given the inclusion of the interests of justice tests means that judges can decide not to make the PSO if, on the facts known to the judge in the course of criminal proceedings, it may be unjust to do so. Judges would be bound by section 6 Human Rights Act 1998 when deciding whether to exercise their discretion.
54. In light of the above, we are satisfied that the measure is compatible with Article 8.
55. In relation to strand 2, there is no automatic restriction and so no interference with an Article 8 right in this respect. The best interests of the child will be considered by the family court in every case where the LA makes the application to the family court. The offender will also be able to make representations in the same way as they would if the victim were to have made the application themselves. The court will then act within its existing powers, considering the facts of the case and the welfare of the child, and whether any orders are necessary in the case. Arguably the LA is only taking on the administrative burden from the victim and only in cases where the victim consents. The requirement of the victim's consent is also an additional element that prevents an infringement of their Article 8 rights, as it ensures that they are not forced to go through further proceedings without wanting to. As such, we are satisfied that this element of the measure is Article 8 compliant.

⁷ 6817/02, Judgment of 14.01.2009.

Article 14

56. Article 14 requires that all of the rights and freedoms set out in the HRA 1998 must be protected and applied without discrimination. This right must be attached to another ECHR right. The below analysis in relation to Article 14 read in conjunction with Article 8.
57. It is noted that strand 1 of this measure takes a different approach to section 18 of the Victims and Prisoners Act 2024 (restricting PR where one parent kills the other) but the same approach as existing PR measures in Victims and Courts Bill (restricting PR of serious child sex offenders). Section 18 provides for the automatic review of the PSO in the family court following an application by a local authority. There is no automatic review in this measure, as with the existing Victims and Courts Bill measures. This difference is not a difference in treatment on grounds prohibited by Article 14. The distinction is based on the nature and type of offence committed, which is not an “other status” for Article 14 purposes. If it were a status, the difference is justified as, for cases within section 18 Victims and Prisoners 2024, the nature of the offence at issue means there will usually be no one left with PR save for the offender, and if the offenders PR were automatically restricted there will be children who have no one who holds PR for them. A swift court review is therefore necessary.
58. It is also noted that the measure applies only to an offence that can be committed by a male perpetrator and not the equivalent offences for female perpetrators. This is justifiable as whilst there is clear evidence about the negative long-term psychological impacts on children born of a female victim of rape, there is no equivalent evidence that could be identified of the negative impacts on children conceived by a male victim who has been caused to engage in sexual activity without consent. Moreover, mothers of children born as a result of rape will always have PR for their children, whereas fathers of children born following the female equivalent offence are less likely to have PR. This means that if a mother has her PR automatically restricted following conviction for this offence, there may be no one with PR for the child, potentially resulting in negative impacts for the child. As such, we are satisfied that the difference in treatment is justifiable.

NDAs

Article 8

59. Article 8 of the ECHR protects the right to respect for private, family life, and correspondence. We consider that this measure potentially engages the Article 8 rights of those whose information could lawfully be disclosed by victims of crime by

virtue of this measure's protections. That is, there is an argument that the privacy of the perpetrator, and of other witnesses, may be infringed by a disclosure of the type this measure is designed to facilitate.

60. In any event, we consider that any interference with Article 8 is clearly justified on the basis that it is proportionate to the legitimate aims of the prevention of disorder or crime (by allowing victims of crime to make disclosures about criminal conduct) and the protection of the rights and freedoms of others (the person making the disclosure's Article 10 rights).

Article 10

61. Article 10 of the ECHR protects the right to freedom of expression. We consider that this measure strengthens the Article 10 rights of victims of crime, by limiting the extent to which contracts can restrict their ability to disclose information about criminal conduct they have suffered or witnessed. The measure will prevent such individuals from being bound by confidentiality agreements in relation to making certain disclosures about criminal conduct.

Victims' Rights to make representations and receive information

62. 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 of 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.
63. This measure will update the existing VCS to provide this service to a broader cohort of victims, i.e. those who are currently covered by existing operational schemes, and to provide other victims with a new route to request information about their offender's release.
64. 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.

65. 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.

66. 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.

67. 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.
68. Article 8 ECHR is engaged in relation to the rights of offenders, but the new victim contact scheme framework is a justified interference with those rights.
69. Article 8 provides that everyone has the right to respect for his private and family life, his home and his correspondence. This provision engages and interferes with the Article 8 rights of offenders whose personal data may be lawfully provided to eligible victims in accordance with these provisions.
70. The rights guaranteed under the ECHR do not stop at the prison gate (*Khodorkovskiy and Lebedev v. Russia*, 2013, § 836; *Klibisz v. Poland*, 2016, § 354) and prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 (right to liberty and security). The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], § 133). Domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of Article 8 (*Z v. Finland*, § 95). The domestic law should notably ensure that such data protections are relevant and are efficiently protected from misuse and abuse (*Gardel v. France*, § 62).
71. While offenders serving sentences of imprisonment retain their rights under Article 8 to protection of their personal data, providing certain personal information relating to the sentence the offender is serving to eligible victims is a justified interference. The interference is necessary in the interests of protection of rights and freedoms of the victims as: the release of an offender may have an impact on the victim, and having information about the release will enable victims to take steps to manage this impact. Such disclosure is justified under Article 8 where the information relates to the serving of the sentence and not the personal information of the offender in other respects. Under this legislation, eligible victims can only receive information while an offender is serving a sentence for the offence committed against them and while they are subject to lawful restrictions on their liberty. The information provided to the victim is specific to the sentence they are serving for the offence committed against the victim. The disclosure of information is proportionate as it is limited to when the offender is serving their sentence and there will be no ongoing entitlement to information once the sentence has ended.

Therefore, the Department is satisfied that this policy balances the rights of victims and offenders.

72. Some victims will have an automatic right to specified information depending on the offence the offender was convicted of, and/or the length of sentence of imprisonment they received. The policy is that victims of the specified offences should have an automatic right to a level of service (either the VCS service or through the Helpline) based on the seriousness and nature of the offending imposed on them. The specified offences for automatic access to both the VCS and the Helpline have been specifically chosen as offences where the offender's release is very likely to have an impact the victim creating a legitimate aim for automatic disclosure. This is where a victim has suffered serious harm or particular types of harm, for example specified violent and sexual offences and associated breach offences. Victims also have to elect to access these services, either by opting in to the VCS or requesting the information. The legislation will specify that information should not be disclosed if the disclosure would put the offender or victim at risk, so there are appropriate safeguards built in.
73. In relation to the power for probation to provide information to victims on a discretionary basis where the victim is at risk of physical and psychological harm without this information, the legitimate aim is to enable probation to help ensure such victims have the information they need to get the support they may need. This includes information about when an offender might be released/discharged or temporarily released and any victim related licence conditions or supervision requirements. The information is relevant to these victims so they know when the offender may be released into the community, which may reduce their risk of harm.
74. There is also a discretion to provide the VCS service to a victim who would not otherwise be eligible where probation consider it is appropriate in the circumstances. The VCS is distinct from the Helpline as information can be provided proactively rather than on request, and victims have a right to make representations on licence conditions. In exercising this discretion, probation will consider the risk of physical and psychological harm to the victim were they not to receive the VCS service. This is a proportionate balance of the rights of a victim to information about an offender to reduce their risk of harm, and the offender's Article 8 rights.
75. Any information provided to eligible victims under the VCS or through the Helpline must be compliant with the Data Protection Act 2018 (DPA), i.e. only provided where it is necessary and proportionate. This could include information about when an offender moves to open conditions, if they are unlawfully at large or subject to a recall. Sensitive personal data about an offender's health or where they will reside on release or discharge will not be provided under these measures.

VC: individual cases

76. This measure will involve the VC exercising their functions in relation to individual cases that raise issues of public policy relevance to other victims and witnesses. This could involve, for example, discussing the details of a particular case with a police force. Although at times this measure may therefore lead to personal information being shared, this would only ever be done with the consent of the relevant victim or witness. As such, this measure may engage, but does not interfere with, the Article 8 rights of relevant victims and witnesses, and is therefore compatible with the ECHR.

Duty to co-operate with the VC: ASB

77. This measure makes clear that the VC can make requests to local authorities and social housing providers for co-operation in any way that the VC considers necessary for the purposes of their functions relating to victims and witnesses of ASB. The VC may use this power to request information or data from local authorities and social housing providers engaged with victims of ASB at a local government level. This measure is intended to ensure the VC can access information which will assist them to identify systemic issues, make informed recommendations and scrutinise how the system as a whole responds to ASB through a victims' lens, in line with the VC's functions.

78. The measure will also introduce a duty for local authorities and social housing providers to comply with a request for co-operation from the VC, provided it is appropriate and reasonably practicable for them to do so. It is not expected that the VC will request information or data in such a way that requires these bodies to share personal data (section 51 of the DVCVA generally prevents the VC from exercising their functions in relation to a particular victim or witness). However, it is possible that these bodies may respond to a request for information or data from VC in such a way that involves the sharing of personal data. This measure therefore potentially engages Article 8.

79. Where personal data is shared by local authorities or social housing providers as a consequence of this measure and engages Article 8, those bodies must, in accordance with section 6 of the Human Rights Act 1998 ("the HRA"), ensure that the sharing of the data is not incompatible with Convention rights. Therefore, any personal data which is shared will need to be dealt with in a way that is: (a) in accordance with data protection law; and (b) compatible with Article 8 (due to section 6 of the HRA), i.e. in accordance with the law, in pursuit of a legitimate aim and proportionate.

80. In addition, the measure may provide a lawful basis for the sharing of personal data and that activity may be capable of interfering with Article 8. However, the measure

itself does not compel local authorities and social housing providers to carry out this activity in a way that interferes with Article 8 and therefore is itself compatible with Article 8 because it is capable of being operated in a way that is compatible with Convention rights.

VC Code compliance report

81. Measure V1a will make amendments to the Code compliance framework set out in sections 6-12 of the 2024 Act. This framework involves criminal justice bodies sharing information about Code compliance between each other, and with Government. Although it is not expected that this will regularly involve the exchange of personal data, some elements of the framework, such as that requiring the collection of victim feedback, are more likely to involve the exchange of such data. As such, the framework potentially engages Article 8 ECHR.

82. Detailed ECHR analysis of the Code compliance framework was undertaken during passage of the 2024 Act and that can be found in the [ECHR Memorandum that was prepared for the Act during Bill passage](#). In short, any processing or sharing of personal data carried out as part of the Code compliance framework would only take place where consent has been sought and/or where the data will be anonymised. Therefore, sharing would not interfere with a person's Article 8 rights. Further, any processing or sharing that did occur when bodies were complying with their statutory duties is justified on the basis that such processing is proportionate and limited to that which is necessary. As such, the Code compliance framework is compatible with Article 8.

83. Measure V1a will add an additional element to the Code compliance framework by requiring the VC to produce a report for Ministers about Code compliance. As this report will be based on data and information collected and published as part of the Code compliance framework, it does not raise any additional or different Article 8 implications. As such, this measure is compatible with Article 8.

Courts

Appointment of Crown Prosecutors

84. Article 6 of the ECHR provides that in the determination of any criminal charge, everyone is entitled to a fair hearing. However, this measure will not impact the delivery of prosecutions in a way that could feasibly affect or engage a person's Article 6 rights. The wider legal services regulatory framework will continue to underpin the quality and competence of prosecutors, and the necessity for prosecutors to comply with Article 6 protections is entirely unaltered.

Private prosecutions: Power to determine costs payable out of central funds

85. In respect of the measure to extend the Lord Chancellor's regulation making power in section 20(1A) of POA and the associated amendments to section 17 POA, we do not consider that any ECHR Rights are engaged, and therefore, there are no compatibility issues.

Reviews of sentencing: time limits

86. The unduly lenient sentencing scheme in sections 35 and 36 of, and Schedule 3 to, the Criminal Justice Act 1988 allows the Attorney General 28 days from the date of sentencing to apply for permission to refer a sentence to the Court of Appeal for review on the grounds that it appears unduly lenient. Upon review, the Court of Appeal may quash the original sentence and impose a harsher one.
87. This measure will amend the time limit in paragraph 1 of Schedule 3 to the Criminal Justice Act 1988, ensuring the Attorney General has 14 days to consider requests made in the last 14 days of the 28 day period. Victims and others must still submit any request to the Attorney General to refer a sentence within 28 days from the date of sentencing. This measure will alleviate existing pressures on the Attorney General's office, allowing for thorough consideration of a sentence, even when a request is made to the Attorney General very close to, or on the 28th day after the sentencing hearing.
88. Article 5 (the right to liberty and security) provides that no one shall be deprived of their liberty except in specific authorised circumstances outlined in Article 5(1). Article 5 is potentially engaged when an individual, having been convicted and sentenced by a competent court, is the subject of a reference by the Attorney General under the Unduly Lenient Sentencing Scheme, which can result in the Court of Appeal imposing a harsher sentence. However, this measure which simply gives more time for the Attorney General to make the application, where a request is made in the last 14 days of the 28 day period, which in itself does not in itself engage Article 5.

Magistrates' sentencing powers

89. On 2 May 2022, the sentencing powers of magistrates' courts were increased to 12 months for a single triable either-way offence, when section 282 of the Criminal Justice Act 2003 ("CJA 2003") was commenced. However, six specific triable either-way offences were not included in this change. This is because the laws creating or amending those offences were made in Parliamentary sessions after the CJA 2003 was passed and specified a maximum penalty of "6 months" for summary convictions. Many offences created after the CJA 2003 used a wording that allowed for a maximum sentence of "6 months, or 12 months on or after the date when section 282 of the Criminal Justice Act 2003 is commenced." Offences

using that wording could be amended by regulations made under section 13 of the Judicial Review and Courts Act 2022 which replaced the maximum sentence with, “the general limit in a magistrates’ court”. However, these six offences could not be amended in the same way because those regulations did not allow for substantive amendment to a maximum sentence that could be given by the magistrates’ court.

90. As a result, this amendment replaces “6 months” with “the general limit in a magistrates’ court” (which has been 12 months’ imprisonment since 18 November 2024) in six specific triable either-way offences.
91. While this is a technical amendment, it has the potential to engage Article 5 of the ECHR. Article 5 (right to liberty and security) provides that no one shall be deprived of their liberty except in specific authorised circumstances set out in Article 5(1).
92. The measure provides that magistrates’ courts dealing with offenders convicted of one of these six offences will now be able to impose sentences of more than 6 months and up to 12 months. The maximum sentences for these offences range from 2 years to 5 years. Any sentence of more than 6 months and up to 12 months will be within the maximum sentence that the offence carries and will be lawful detention after conviction by a competent court. Additionally, an offender who considers their sentence is too harsh has an automatic right of appeal to the Crown Court. The measure is therefore compatible with Article 5.

UNCRC

93. The UK is signatory to the UN Convention on the Rights of the Child 1990 (“UNCRC”) which it ratified in 1991. The Convention has not been implemented directly into legislation, but the UK is bound by it and must under international law perform its obligations in good faith. As such, regard is to be given to the UNCRC when developing any new legislation or policy.
94. To the extent that the restriction on the exercise of parental responsibility of serious child sex offenders protects the safety and welfare of children, it enhances rights under the Convention. This measure engages Article 18 of the UNCRC and is compatible with it for the same reasons it is compatible with Article 8 of the ECHR. The measure aims to protect children where there has already been demonstrable harm to a child for whom the offender holds PR; this supports the commitment under Article 39 to promote the physical and psychological recovery of a child victim.

Ministry of Justice

28 October 2025