

SENTENCING BILL 2025

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 Sentencing Bill 2025 ('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

Part 1: Sentencing

2. Part 1 (sentencing) of the Bill will:
 - a. introduce a presumption against short custodial sentences of 12 months or less unless there are exceptional circumstances, subject to certain exemptions;
 - b. extend the use of suspended sentences by allowing courts to suspend custodial sentences of up to three years, for three years (currently, courts may suspend sentences of up to two years, for two years);
 - c. introduce a new form of ancillary order which allows for a penalty to be imposed linked to an offender's income and create powers for the Secretary of State to make provision in regulations for various aspects of these orders;
 - d. amend the statutory purposes of sentencing to include an express reference to the protection of victims;
 - e. extend the period for which sentencing may be deferred from six months to twelve months;
 - f. introduce a requirement that courts make an express finding of domestic abuse in relevant cases;
 - g. require a special sentence for offenders of particular concern (SOPC) for certain national security offences;
 - h. rename the rehabilitation activity requirement that may be imposed as part of a community sentence to a "probation requirement" and remove the requirement that courts set a maximum number of days for which an offender may be required to participate in rehabilitative activities, in order to give greater flexibility to the probation service;
 - i. add to the community requirements available to a court when imposing a community order or suspended sentence order, to include a driving prohibition, public event attendance prohibition, hospitality venue entry prohibition, and restriction zone; and
 - j. introduce a new statutory requirement for the Sentencing Council to publish a business plan each financial year for approval by the Lord Chancellor and a new requirement that both the Lord Chancellor and Lord

Chief Justice approve sentencing guidelines before they are issued as definitive guidelines.

Part 2: Management of offenders after sentencing

3. Part 2 (management of offenders after sentencing) of the Bill will:
- a. amend the release periods for standard determinate sentences (SDS) under the “Progression Model”;
 - b. allow for restrictive licence conditions (including restriction zones, drinking establishment entry prohibitions, drug testing and driving prohibitions) for all determinate sentence offenders;
 - c. amend fixed term recall to 56 days and mandate it for SDS prisoners subject to limited exclusions and a backstop to keep some prisoners past that period only where a high threshold is met;
 - d. repeal post-sentence supervision;
 - e. amend provisions allowing removal of an offender from prison for the purposes of immediate deportation so that such removal can happen at any time after sentence;
 - f. remove the restriction for unpaid work to be completed within a period of 12 months of the sentence;
 - g. introduce earned reduction of the number of hours offenders can be required to undertake under an unpaid work requirement imposed as part of a community order or suspended sentence order;
 - h. insert provision to publish the name and photographs of offenders where an unpaid work requirement is imposed as part of a community order or suspended sentence order;
 - i. provide for termination of community orders and the supervision period of suspended sentence orders on completion of the sentence plan;
 - j. repeal section 73(2) of the Victims and Prisoners Act 2024 which allowed for Parole Board Rules to make provision about the number and type of Parole Board members required for cases and about timings for dealing with those cases.
 - k. revise the release point for offenders who have received a fixed-term sentence for murder overseas and are repatriated to serve that sentence in England and Wales;
 - l. correct an anomaly in the provisions for referrals to the High Court where the Parole Board has directed release unconditionally;
 - m. correct two omissions relating to the operation of release and licence conditions in respect of certain offenders convicted in the service justice system.

Part 3: Bail

4. Part 3 (bail) of the Bill will:
- a. amend the Bail Act 1976 so that fewer exceptions to the right to bail will apply to defendants if there is a real prospect that they will receive a suspended sentence but no real prospect that they will receive an immediate custodial sentence;

- b. amend the Bail Act 1976 so that the more limited exceptions to the right to bail that apply where there is 'no real prospect' of a custodial sentence will continue to apply once a defendant has been convicted;
- c. amend the test for electronic monitoring of bail conditions to be available for defendants for whom there is a real prospect that they will receive a suspended sentence but no real prospect they will receive a sentence of immediate custody;
- d. insert into the Bail Act 1976 that the fact that a defendant is pregnant, a primary caregiver or a victim of domestic violence should be taken into account where relevant to the decision to grant bail.

Part 4: Foreign criminals

5. Part 4 (foreign criminals) of the Bill will:

- a. amend the definition of a "foreign criminal" in section 32 of the UK Borders Act 2007 ("UKBA") so that the deportation of any foreign criminal who receives a period of imprisonment of 12 months or more (whether the sentence is served in prison or suspended) is automatically deemed to be "conducive to the public good" (section 32(4) UKBA); and
- b. amend section 117D of the Nationality, Immigration and Asylum Act 2002 ("NIAA") to be consistent with the amended automatic deportation regime (described in paragraph a above) by including persons who are sentenced to suspended sentences of 12 months or more within the definition of a "foreign criminal".

Part 5: Final provisions (e.g. commencement, extent, etc)

- 6. The final provisions of the Bill contain measures relating to consequential provision and powers to state the effect in the Sentencing Act 2020, as well as the short title of the Bill, commencement, extent and transitional provisions.
- 7. The Bill will also make equivalent provision for the service justice system, where appropriate, and provide a power in respect of territorial extent.

SUMMARY OF DELEGATED POWERS IN THE BILL

- 8. The measures in the Bill relating to sentencing contain a range of delegated powers:
 - a. various powers in relation to income reduction orders including powers to:
 - i. Specify the amount of the monthly income threshold, above which income constitutes "excess income";

- ii. Specify amounts, after the deduction of which monthly income is calculated; and
 - iii. Make further provision about how the court is to determine the offender's monthly income;
 - iv. Make provision about how the court is to determine the percentage of the offender's excess income payable under an IRO;
 - v. Specify a percentage that the percentage of income payable under an IRO cannot exceed;
 - vi. power to make such further provision about income reduction orders as the Secretary of State considers appropriate;
 - vii. power to make provision about circumstances in which a court may not make an income reduction order;
 - viii. power to amend the definition of "income" in section 161G(1).
 - b. power to add to, and amend, community requirements imposed as part of community orders or suspended sentence orders;
9. The measures relating to the management of offenders after sentencing contain a range of delegated powers. These are as follows:
- a. confirmation and clarification of the existing power for the Secretary of State to set licence conditions by secondary legislation, providing that a condition included in the order and in the licence itself may confer a discretion;
 - b. power to amend the circumstances or cases in which the Secretary of State can revoke a licence;
 - c. power to change the cohorts excluded from fixed term recall
 - d. power to amend the period of fixed term recall;
 - e. power to amend the test to detain a recalled offender after the end of the automatic release period;
 - f. power to amend the parameters of an earned unpaid work requirement;
 - g. power to prescribe orders that include an unpaid work requirement that is not subject to publication.
10. The measures in the Bill relating to bail do not contain any delegated powers.
11. The final provisions of the Bill contain powers:
- a. allowing for consequential, transitional, supplementary, incidental and saving provision;
 - b. to state the effect in the Sentencing Act 2020 of the commencement of amendments made by the Bill;
 - c. relating to the territorial extent and application of certain provisions to the service justice system;
 - d. allowing for commencement by way of regulations and related transitional and saving provision.
12. The Bill contains 12 Henry VIII powers subject to the affirmative resolution procedure.
13. In total, the Bill contains 18 delegated powers.

ANALYSIS OF DELEGATED POWERS BY CLAUSE

Part 1: Sentencing

Clause 3: new Chapter 5 of Part 7 of the Sentencing Code: Powers to make provision for various aspects of income reduction orders

<i>Powers conferred on:</i>	Secretary of State
<i>Powers exercisable by:</i>	Regulations made by statutory instrument
<i>Parliamentary procedure:</i>	Affirmative Resolution

Context and purpose of the overall measure

1. The Bill introduces a new form of ancillary order (an Income Reduction Order, or IRO) which will be available to be issued alongside suspended sentence orders. The order will require an offender to pay an amount which corresponds to a particular percentage of their income above a threshold. As a result of other measures in the Bill, some offenders will spend all or a greater proportion of their sentence in the community. These orders are seen as an additional punitive element that the court can choose to impose as part of an offender's sentence, to ensure that the sentence is proportionate to the offence or offences in question.
2. The key elements of the new order are set out in new Chapter 5 of Part 7 of the Sentencing Code. However, the measure also includes five powers to allow the Secretary of State to make provision in regulations for the practical operation of these orders.

New section 161A(2): power to make provision about monthly income

Context and purpose

3. Section 161A provides that an income reduction order means an order under which an offender is required to pay a percentage of their "excess monthly income". The section also contains a power to set a threshold, above which income constitutes "excess monthly income" and to set out further details about how monthly income is determined, including whether any amounts may be deducted from income before the threshold is applied.
4. The purpose of this power is to allow the Secretary of State to make provision in regulations, to specify the threshold for "excess monthly income" and to make provision for the technical details which will enable a court to be able to calculate an offender's excess monthly income.

Justification for taking the power

5. The current policy intent is for this order to be available in respect of offenders who receive a relatively high level of income. It is therefore proposed that the

threshold will be set at £41,700, which is the standard minimum annual salary requirement for most new Skilled Worker visa applicants in the UK, as set by the Immigration Rules. Were that figure to be amended (in line with inflation or otherwise) or abolished, having the monthly income threshold set by secondary legislation would provide the flexibility to allow this figure to be amended in line with it, or tied to another appropriate figure, without requiring amendments to primary legislation. This is considered appropriate so that the Department is able to act more quickly to ensure that the threshold remains consistent with the policy intent. Importantly, the measure significantly limits this power by setting out that the monthly income threshold must not be less than an amount that is equivalent to remuneration for 170 hours of work (i.e. a month of full-time work) paid at the national minimum wage.

6. In respect of how the court is to determine the offender's monthly income including specifying which amounts may be deducted when calculating monthly income, it is considered appropriate that this is set out in secondary legislation because this will require a level of technical detail which is not suitable for primary legislation.

Justification for the procedure

7. While aspects of this power are extremely technical, since the power will also be used to specify the threshold of monthly income above which an IRO may be given and since new section 161G(3) enables the regulations to amend primary legislation, the Department considers that it is right that Parliament is able to scrutinise and debate regulations made under this power. The power is therefore subject to the affirmative resolution procedure.

New section 161B(1): Power to determine the percentage of the offender's excess monthly income payable under an income reduction order

Context and purpose

8. When making an IRO, the court must set a percentage of the offender's excess monthly income which is to be payable. Section 161B contains a power for regulations to set out how a court is to determine that percentage and to include a ceiling on the percentage.
9. The purpose of this power is to allow the Secretary of State to make provision in order to guide how courts are to determine the percentage of the offender's excess income payable under an IRO, and to place an upper limit on that percentage.

Justification for taking the power

10. In respect of how the court is to determine the percentage of the offender's excess income payable under an IRO, it is considered appropriate that this is set out in secondary legislation because this will require a level of detail which is not suitable for primary legislation. It is expected this will be a multifactorial determination, potentially involving complex calculations taking into account the

amounts of fines and other financial orders. Furthermore, given that relevant factors may include *'the offence committed'* and *'how the offender is otherwise dealt with'*, putting this detail in secondary legislation would provide the flexibility to allow it to be updated in light of changes to offences or to other sentencing options, without requiring the complex consequential amendments to primary legislation which would otherwise be necessary.

11. In respect of specifying the percentage which the percentage of income payable under an IRO cannot exceed, it is considered appropriate that this figure is set in secondary legislation in order to allow it to be more quickly amended to ensure that the ceiling remains appropriate. For example, if income tax rates were changed, having the specified percentage set by secondary legislation would provide the flexibility to allow this figure to be amended to take into account such changes to income tax rates (or, indeed, to take into any other changes in economic circumstance, which may affect what an appropriate maximum percentage for an IRO is). Importantly, the measure significantly limits this power by setting out that the specified percentage must not be more than twenty per cent.

Justification for the procedure

12. While aspects of this power are extremely technical, since the power will also be used to specify the maximum percentage of an offender's excess monthly income which may be payable under an IRO and since new section 161G(3) enables the regulations to amend primary legislation, the Department considers that it is right that Parliament is able to scrutinise and debate regulations made under this power. The power is therefore subject to the affirmative resolution procedure.

New section 161C(1): Power to make further provision about income reduction orders

Context and purpose

13. Section 161C gives the power to make such further provision about income reduction orders as the Secretary of State considers appropriate. The section sets out examples of the types of provision that may be made under this power including provision about how, when and to whom payments are to be made as well as provision about monitoring compliance, enforcement and appeals.
14. The purpose of this power is to allow the Secretary of State to make detailed provision in regulations for the practical operation of these orders.

Justification for taking the power

15. In respect of provision about payments under an IRO, it is considered appropriate that this is set out in secondary legislation, because this will require a level of detail which is not suitable for primary legislation. Unlike fines or lump sum orders set out in the Sentencing Act 2020 (i.e. compensation orders, slavery and trafficking reparation orders etc) payments under an IRO (and

provision in respect of them) will be considerably more complex, for two reasons: firstly, rather than a single sum being due once the order is made, sums may fall due each month for the duration of the order (or may not, depending on the offender's income in a given month), and secondly, rather than that single sum being fixed, these monthly sums will vary, depending on the offender's income in a given month.

16. In respect of monitoring compliance with and enforcing IROs, it is considered appropriate that this is set out in secondary legislation because this will require a level of detail which is not suitable for primary legislation. The current policy intent is to enforce payments due under an IRO through similar mechanisms to those set out in Part 3 of the Magistrates' Court Act 1980 and Schedule 5 to the Courts Act 2003 (in particular, collection orders, attachment of earnings orders, further steps notices and replacement notices, and warrants of control, commitment and distress), or analogous mechanisms. However, each of these enforcement mechanisms is designed to deal with financial orders which function like fines: that is, a single sum, fixed at the point of the order, being required to be paid, rather than multiple, variable monthly sums being required to be paid. Therefore, it will not be possible to fit payments which fall due under an IRO straightforwardly into this pre-existing enforcement architecture. The level of detail which will be required in order to set out how such mechanisms are to be used in to enforce payment of variable (and potentially accumulating) monthly sums is likely to be more complex and more suited for secondary legislation. Furthermore - and as set out in the measure - additional provision, for a specified person or person of a specified description to require the provision of documents or information, or to require the offender to attend at a place and answer questions, may be necessary in order to monitor compliance with and enforce IROs, due to the need for the court to calculate each month the amount due, in order to monitor compliance with an IRO and enforce payment of such amounts. Again, the level of detail which will be required in order to set out how such mechanisms are to be used in to enforce payment of variable (and potentially accumulating) monthly sums is more suitably set out in secondary legislation.

17. In respect of appeals against IROs, it is also considered appropriate that this is set out in secondary legislation. We expect that due to the complexity of the monthly payments, provisions as to appeal may also be more complex, since, for example, offenders will need to be able to appeal not only the IRO itself, but each month's findings as to their monthly income.

Justification for the procedure

18. While aspects of this power are extremely technical, since the power will also be used to make provision about enforcement and appeals, and since new section 161G(3) enables the regulations to amend primary legislation, the Department considers that it is right that Parliament is able to scrutinise and

debate regulations made under this power. The power is therefore subject to the affirmative resolution procedure.

Section 161D(2): Power to make provision about circumstances in which a court may not make an income reduction order

Context and purpose

19. Section 161D sets out the circumstances in which an IRO is available to the court. The section also gives the power to make provision about circumstances in which a court may not make an income reduction order.
20. The purpose of the power is to allow the Secretary of State to make provision in regulations in order to exempt offenders in certain circumstances from receiving IROs.

Justification for taking the power

21. New legislation (e.g. in respect of benefits) may give rise to new circumstances in which it is not appropriate for a court to make an IRO. Being able to add such circumstances by secondary legislation ensures that the Department is able to more quickly make provision to limit the availability of IROs to circumstances where they are appropriate than would be possible if amendments to primary legislation were required. The Department considers that this is appropriate to ensure that the IRO regime remains fit for purpose.

Justification for taking the power

22. Since this power limits the availability of IROs and since new section 161G(3) enables the regulations to amend primary legislation, the Department considers that the affirmative resolution procedure is necessary to ensure the appropriate level of Parliamentary scrutiny.

New section 161G(3): power in respect of the definition of income

Context and purpose

23. Section 161G(1) defines “income” by reference to the Income Tax Acts. The power in section 161G(3) contains a power to amend this definition. The purpose of this power is to enable the Department to ensure that the definition remains fit for purpose in the context of IROs.

Justification for taking the power

24. Given that income has been defined as income chargeable to income tax within the meaning of the Income Tax Acts, were those Acts to be amended to broaden or narrow the meaning of income in a way which was not appropriate for the purposes of this measure, being able to amend this definition by secondary legislation would enable the Department to act quickly to ensure that the definition of “income” remains fit for purpose in the context of IROs. The

Department considers that this is appropriate to ensure the continued effectiveness of the order for use by the courts.

Justification for the procedure

25. Since this power enables the amendment of primary legislation, the Department considers that the affirmative resolution procedure is necessary to ensure the appropriate level of Parliamentary scrutiny.

Clause 17: Power to add to, and amend, community requirements imposed as part of community orders or suspended sentence orders

Powers conferred on: Lord Chancellor

Powers exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative Resolution

Context and Purpose

14. The Bill introduces new community requirements that may be imposed as part of a community order or suspended sentence order. This will give courts the power to impose tough community punishment in appropriate circumstances and is intended to provide the court with further flexibility to tailor sentences to individual offenders. The measures are intended to offer courts a wider range of options to impose tough community punishment and restrictions on offenders. The purpose of this power is to enable the Lord Chancellor to add new requirements, or amend existing ones, in the future.

Justification for taking the power

15. The power will enable the Lord Chancellor to ensure the community sentencing framework remains up-to-date and fit for purpose, in the context of the evolving needs of the criminal justice system. The power is intended to grant sentencers greater flexibility; the sentence imposed in an individual case will always be a matter for the court taking into account all the relevant circumstances.

What circumstances do we envisage using this power?

16. It is envisaged it will be used where the Lord Chancellor considers sentencers would be assisted by having additional, or amended, community requirements available as part of the sentencing exercise.

Justification for the procedure

17. This power will enable the amendment of primary legislation and Parliament will have an interest in the terms and impact of any new, or amended, community

requirements, so the order is subject to the affirmative resolution procedure. Parliament will have an interest in any amendment because of the impact on public protection and prison capacity. It is right that any changes are scrutinised and debated by Parliament.

Part 2: Management of Offenders after Sentencing

Clause 24(3)(b) (new section 250(8A) of the Criminal Justice Act): Amendment to the power to set licence conditions to confirm that conditions set by order and in a licence may confer a discretion on an officer of a provider of probation services)

<i>Powers conferred on:</i>	Secretary of State
<i>Powers exercisable by:</i>	Order by statutory instrument
<i>Parliamentary procedure:</i>	Negative Resolution

Context and Purpose

18. The Secretary of State has the power to set standard licence conditions or types of licence conditions by secondary legislation under section 250 of the Criminal Justice Act 2003, and under section 330 of that Act such secondary legislation can provide for the standard conditions to be applied to different cohorts of offender (for example based on offence type). Whilst any standard conditions then apply directly to any offender on licence captured by the order, such conditions are set out in the order on the permission of the supervising officer or can be disapplied at the discretion of the probation officer, to enable adjustments based on an offender's medical vulnerabilities, work requirements etc. For example, a standard condition might read that the offender must not drive without the permission of their supervising officer. The Bill provides for a number of new standard licence conditions which are more restrictive than many of the current standard conditions, including a driving prohibition, ban on attending public events, a ban on entering drinking establishments, and restriction zones.
19. The purpose of amendment to this existing power is to confirm that an order setting licence conditions or a condition included in a licence may confer a discretion on the Probation Service, to enable them to grant exemptions to standard conditions for specific purposes or more generally (for example, to allow an offender to drive for the purposes of work, or to allow an offender to travel outside a restriction zone for medical reasons).

Justification for taking the power

20. Rather than taking a new power, this clause provides clarification of the existing a power to set licence conditions. It is important to provide confirmation that standard licence conditions set by order may be included subject to the permission of the offender's supervising officer, and that likewise conditions in the offender's licence can be made subject to such permission. This means that the order can provide for discretion on the part of Probation to make allowances for an offender's specific vulnerabilities or needs while still enforcing the conditions for the protection of the public. It is particularly important to have this confirmation in the context of the additional, more restrictive, licence conditions imposed by the Bill, so that adjustments can be made if needed. The power to set conditions is strictly limited in scope and these amendments will not change this, or the overall operation of the legislation.

What circumstances do we envisage using this power?

21. The power will be used as it has been in past, to set licence conditions for determinate sentence offenders. It is envisaged that it will be used at the same time or shortly after the provisions including the new restrictive conditions come into force.

Justification for the procedure

22. The existing power to set licence conditions by order is subject to negative resolution procedure, and as these provisions clarify the scope of that power, negative procedure remains appropriate.

Clause 26 (new section 254(6A) of the Criminal Justice Act: Power to amend the circumstances or cases in which the Secretary of State can revoke a licence

<i>Powers conferred on:</i>	Secretary of State
<i>Powers exercisable by:</i>	Order by statutory instrument
<i>Parliamentary procedure:</i>	Affirmative Resolution

Context and Purpose

23. Following release of a determinate sentence offender into the community, the Secretary of State has the power to revoke their licence at any time and recall them to prison. The power is exercised by Public Protection Casework Section (PPCS)

on behalf of the Secretary of State following a recommendation by Probation. Although a wide statutory discretion, in practice a licence will be revoked where the offender breaches licence conditions or their risk becomes otherwise unmanageable in the community.

24. The purpose of the power to make provision about the circumstances or cases in which the Secretary of State may or may not revoke a licence is to provide for the possibility that in the future it may be desirable to set out in legislation the threshold for recall, e.g. to raise it for prison capacity reasons or as part of a wider policy to keep offenders in the community rather than return them to prison, and to be able to further amend that test. Statutory change may be needed to ensure sufficient legislative support for those making operational decision around recall, and to support behavioural change.

Justification for taking the power

25. Having a power to make this provision is important to enable the Department to be responsive in relation to prison capacity pressures. For example, if it was found that the current broad provision was not suitable to give effect to the policy, then it would be important to be able to alter the legislation to impose a more appropriate test without having recourse to primary legislation and waiting for a suitable primary legislative vehicle. This also applies if any test inserted does have undesired consequences and needs to be quickly altered. The delegated power therefore, enables the Department to act quickly to address the need for this test to be revised. The power is suitable for secondary legislation as the primary legislation provides the widest possible discretion and any alteration or insertion of a test cannot expand that originally envisaged by Parliament. Therefore, this delegated power is strictly limited in scope to the test for revocation of licence. Amending the test will not change the overall operation of the legislation.

What circumstances do we envisage using this power?

26. It is envisaged it will be used where the current wide discretion is found to no longer be appropriate and used too widely and a higher threshold for recall is required.

Justification for the procedure

27. This power will enable the amendment of primary legislation and Parliament will have an interest in the terms and impact of any amended test, so the order is subject to the affirmative resolution procedure. Parliament will have an interest in any amendment because of the impact on public protection and prison capacity. It is right that any changes are scrutinised and debated by Parliament.

Clause 27(2) (new section 255A(10) of the Criminal Justice Act 2003: Power to change the cohorts excluded from fixed term recall

<i>Powers conferred on:</i>	Secretary of State
<i>Powers exercisable by:</i>	Order by statutory instrument
<i>Parliamentary procedure:</i>	Affirmative Resolution

Context and Purpose

28. As noted above, the Bill excludes certain cohorts of offender from fixed term recall, meaning they must receive a standard recall. These include extended sentence offenders, terrorism and terrorism-connected offenders and those who pose a terrorist risk, state threats offenders and those at risk of involvement in foreign power threat activity, those managed at MAPPA levels 2 and 3 and those recalled in connection with being charged with a further offence.
29. The purpose of this power is to ensure that the Department can respond quickly if it becomes clear following commencement of the measure that there are public protection concerns which need to be addressed by excluding certain cohorts of offender from fixed term recall, or that the exclusion of a particular cohort is no longer necessary. In the future it may be considered necessary to exclude further cohorts from fixed term recall, or to remove certain cohorts.

Justification for taking the power

30. Including this delegated power will mean that should changes need to be made in the future to the excluded cohorts, this could be achieved without requiring a suitable primary legislative vehicle. It also means that these changes can be implemented more speedily to respond to future developments. For example, a cohort of offenders may become identifiable as a risk and there may be urgency in requiring that cohort to be excluded from automatic release following recall. This delegated power is strictly limited in scope. Amendments to the specified cohorts will not change the overall operation of the legislation or the policy behind the provision. There is a similar power in section 256AZB (power to change test for release following recall) of the Criminal Justice Act 2003. That power allows for the alteration of the test in section 255A(4) which determines whether a prisoner is to serve a fixed period in recall or to be liable to be detained for longer. The new proposed power in the Bill will add to or remove a list of types of offenders excluded from a fixed term recall rather than amend the test as to which type of recall offenders fall into but the effect is similar.

What circumstances do we envisage using this power?

31. The power will be used to update the list of excluded cohorts of offenders from fixed term recall if it is determined following operationalisation or in the future that the exclusions are too restricted or too wide.

Justification for the procedure

32. Any amendments made using this delegated power will amend primary legislation, so it is appropriate that they be subject to the affirmative procedure. Parliament will have an interest in any amendment to the excluded cohorts because of the potential impact on public protection. It is right that any changes are scrutinised and debated by Parliament.

Clause 29(2) (new section 255BA(10) of the Criminal Justice Act 2003: Power to amend the period of fixed term recall

<i>Powers conferred on:</i>	Secretary of State
<i>Powers exercisable by:</i>	Order by statutory instrument
<i>Parliamentary procedure:</i>	Affirmative Resolution

Context and Purpose

33. Following recall to prison, the majority of SDS offenders will spend a fixed period of 56 days in custody before being re-released automatically into the community. Certain cohorts are excluded from this and following recall may be detained until the end of their sentence unless re-released by the Parole Board or Secretary of State. This new fixed period replaces the current fixed term recall scheme, under which suitable offenders may be recalled for a fixed period of 28 days (14 days for those serving sentences under 12 months), or detained until sentence end if unsuitable.
34. The purpose of the power to amend the period of fixed term recall is to allow the Department to respond to prison capacity pressures and changes to policy which may require a change to the number of days a prisoner spends in custody following recall. For example, it may be decided that the period is longer than needed to reset a prisoner ready for re-release, or that prison capacity does not provide for a lengthier recall. Equally it may be that longer is needed for prisoners to carry out risk reduction work.

Justification for taking the power

35. Taking this power is sensible to ensure that we are able to monitor how the provision (which doubles the current period of fixed term recall) operates in practice, and change the period of fixed term recall if necessary. If a period of 56 days proves not to be suitable from an operational or public protection perspective, any amendments to increase or decrease it would need to be made speedily to ensure that public protection is ensured, or guard against potential unfairness. Similar power is provided for in relation to time to serve on a sentence before the exercise of a discretionary release in section 246(5) (power to release prisoners on licence before required to do so) and time to serve before removal from prison for deportation in section 260(6) (early removal of prisoners liable to removal from United Kingdom). This delegated power is strictly limited in scope. Amending the period of fixed term recall will not change the overall operation of the legislation or the policy behind the provision.

What are the circumstances we envisage using this power?

36. Where it is considered that 56 days is not a suitable period for an automatic release from a recall. The power may be used to increase or decrease such days.

Justification for the procedure

37. Any amendments made using this delegated power will amend primary legislation, so it is appropriate that they be subject to the affirmative procedure. Parliament will have an interest in any amendment because of the impact on public protection and prison capacity. It is right that any changes are scrutinised and debated by Parliament.

Clause 30(9) (new sub-section 256AZB(1)(ba) of the Criminal Justice Act 2003): Power to amend the test to detain a recalled offender after the end of the automatic release period

<i>Powers conferred on:</i>	Secretary of State
<i>Powers exercisable by:</i>	Order by statutory instrument
<i>Parliamentary procedure:</i>	Affirmative Resolution

Context and Purpose

38. The majority of SDS offenders will spend a fixed period of 56 days in custody after recall. However, there may be circumstances in which it is necessary to continue to detain an offender past the automatic release period. The new test in legislation

states that an offender can be detained past this period where the Secretary of State believes on reasonable grounds that the prisoner would, if released, pose a significant risk to members of the public of serious harm occasioned by the commission of murder or another specified offence.

39. The purpose of the power to amend the test for detaining an offender after the end of the 56 day automatic release period is to ensure that the Department can respond quickly to public protection concerns which may arise after commencement, or to operational experience which suggests the test is not working as intended. Legislative change will be needed so that the parameters of the test are clear, particularly since it will impact the length of detention for certain offenders.

Justification for taking the power

40. Having a power to amend this test is important to enable the Department to be responsive where it is found that the current test is not suitable to give effect to the policy, or if additional public protection considerations lead to a need to lower the threshold for detention beyond the 56 day period. It is important to be able to alter the legislation to impose a more appropriate test without having recourse to primary legislation and waiting for a suitable primary legislative vehicle. The delegated power therefore, enables the Department to act quickly to address the need for this test to be revised. This delegated power is strictly limited in scope to the test for detaining an offender after the end of the 56-day automatic release period. Amending the test will not change the overall operation of the legislation. There is precedent for such a power, currently in section 256AZB(1)(a) (power to change test for release following recall) of the Criminal Justice Act 2003. That power allows for the alteration of the test in section 255A(4) which determines whether a prisoner is suitable for a fixed period in recall or to be liable to be detained for longer.

What circumstances do we envisage using this power?

41. If it is considered that the test as drafted is not capturing the right cohort of individuals able to be detained beyond the fixed term period.

Justification for the procedure

42. This power will enable the amendment of primary legislation and Parliament will have an interest in the terms and impact of any amended test, so the order is subject to the affirmative resolution procedure. Parliament will have an interest in any amendment because of the impact on public protection. It is right that any changes are scrutinised and debated by Parliament.

Clause 34(3) (new paragraph 3A(7) and (8) in Part 1 of Schedule 9 to the Sentencing Code: Power to the Secretary of State to amend the circumstances in which the number of unpaid work hours an offender is required to earn requirement before a reduction under this provision can be applied

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative Resolution Procedure

Context and Purpose

43. Clause 34(3) of the Bill amends Part 1 of Schedule 9 to the Sentencing Act 2020 to make provision for the introduction for an automatic reduction of unpaid work hours imposed by the court as part of community orders or suspended sentence orders to encourage compliance. The measure will enable offenders to receive a reduction to the number of hours specified to work under the order where they have demonstrated sustained compliance with the unpaid work requirement, subject to completion of a qualifying period. The maximum discount an offender may receive is 25% of the original number of hours sentenced. The reduction will be automatically applied to offenders who are eligible under the scheme, subject to a qualifying period, and will be required to have demonstrated sustained compliance throughout the requirement. A failure to do so will result in offenders being unable to earn further discount.

44. The clause makes substantive changes to Schedule 9 to the Sentencing Act. It establishes a new provision to offer an automatic reduction to the total number of unpaid work hours specified in a community order or suspended sentence order with unpaid work requirements offenders are required to perform if the demonstrate sustained compliance with the requirement, following the completion of a specified percentage of the number of hours specified in the order.

45. New section 3A(7) confers a regulation-making power on the Secretary of State to amend aspects of the application of the scheme. In particular, amendments can be made to the percentage of qualifying hours, the formula for calculating the reduction, removal of exclusions from the scheme (such failure to attend), the addition and variation of restrictions, conditions or exclusions. Subsection (8) allows for consequential amendments to be made in light of using the subsection (7) power.

Justification for taking the power

46. Taking this power allows the Department to adapt specified details of the way in which the scheme works, following operational roll-out to ensure effectiveness of

the provision in encouraging compliance with unpaid work requirements in line with the overall intention of the clause and to take account of policy changes in the future which may have an impact on these provisions.

Justification for the procedure

47. Any amendments made using this power will amend primary legislation, so it is appropriate that it is subject to the affirmative resolution procedure. Parliament will have an interest in any amendment because of the impact on public protection and Probation capacity. It is right that any changes are scrutinised and debated by Parliament.

Clause 35 – Unpaid work requirement: publication of name and photograph of offender

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

48. This clause inserts a new power into Part 1 of Schedule 9 to the Sentencing Code, which enables responsible officers of providers of probation services to publish the name and photograph of an offender where unpaid work requirements are imposed as part of community orders and suspended sentence orders. It specifies that the measure does not apply to cases prescribed by the Secretary of State.

Justification for taking the power

49. The clause does not specify on the face of the Bill those cases that are exempt from a responsible officers' power to publish the name and photograph of offenders where an unpaid work requirement is imposed as part of their sentence. Instead, it is expected that exemptions will be prescribed which can include by reference to the opinion of the responsible officer. The Government recognises that a list of exemptions that may be applied is central to the scope and effect of this clause and will identify those cases to which the power should not apply to in a list; and considers that secondary legislation is an appropriate mechanism to identify those cases to include in the list to be exempt from publication.

50. The regulation-making power will enable the regulations to vary the description of the prescribed cases listed as it may be that it is necessary to change the description or category of prescribed cases specified.

51. Once operating it may become clear that certain cohorts or persons with certain vulnerabilities will be impacted in an unforeseen way and the list would need to be updated. Equally it could operate the other way around and it would become clear that something on the exclusion list should be removed. Such changes may be needed and made operational before any primary legislation is available and is essentially the detail of the scheme and so suitable for secondary legislation.

Justification for the procedure

52. The regulation-making power is subject to the negative procedure. Having established on the face of the Bill the principle that the power to publish the names and photographs of offenders does not apply in cases that may be prescribed, and that the determination may among other things be subject to the opinion of the responsible officer, the Government considers that the negative procedure affords an appropriate level of parliamentary scrutiny of the details of the relevant exemptions and procedure.

Part 5: Final Provisions

Clause 43: Power for the Secretary of State to make consequential provision

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

Context and Purpose

53. 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

54. Whilst considerable efforts have been made to identify relevant amendments that will be required to primary legislation as a result of this Bill, the Department 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.

55. The Department 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

56. Whilst the Department 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 44: Power to state the effect of amendments to the Sentencing Code

<i>Power conferred on:</i>	Secretary of State.
<i>Power exercised by:</i>	Regulations made by statutory instrument.
<i>Parliamentary procedure:</i>	No procedure.
<i>Includes the ability to amend primary legislation:</i>	Yes

Context and Purpose

57. The Bill makes amendments to sentencing procedure in England and Wales. Those amendments will be made to the Sentencing Code (the “Code”) which contains the consolidated form of sentencing procedural law. The Code is intended to be a comprehensive statement of the law that applies when sentencing a person convicted of an offence, regardless of when the offence was committed. In order to preserve the Code’s comprehensiveness, it is necessary that, where the Code is amended, the effect of commencement of those amendments is stated on its face. This saves users from needing to look at commencement regulations in order

to establish where a provision applies and therefore makes it easier to interpret the Code.

58. Clause 44 provides that the power in section 419(1) of the Code to state the effect of commencement provisions applies to any amendment or repeal made under the Bill. Section 419(1) provides a power for the Secretary of State to make regulations that amend the Code to state the position in relation to the coming into force of an amendment or repeal made by Schedule 22¹, or under Schedule 23², to the Code.
59. The Code can be amended by regulations made under section 419(1) in order to specify the cases in which, or the purposes for which, the amendment or repeal will have effect (section 419(1)(a)). Regulations made under this section can also secure that any provision of the Code which, as a result of the amendment or repeal, is to continue to have effect only for particular purposes or in particular cases, remain in the Code instead of having effect by virtue of transitional, transitory or saving provision (section 419(1)(b)). This makes it easier to navigate the position on commencement as it will be clear from the Code what class of persons an amendment applies to without the need to look at commencement regulations.
60. The extension of the section 419(1) power to any amendments or repeals made by the Bill will mean it is possible to amend the Code, in the same manner as section 419(1) allows it to be amended with reference to Schedule 22 and Schedule 23 of the Code, so as to specify clearly in primary legislation the cases in which, or the purposes for which, the provision in question has effect.

Justification for taking the power

61. In order to ensure that the Code continues to take a consistent approach where uncommenced provisions are brought into force, or amendments are made that are subject to savings or transitional provisions, it is necessary to have a power to state the effect of those savings or transitional provisions in the Code.
62. To ensure the continuing usefulness of the Code as a consolidation of sentencing procedure law, the same clarificatory regulations are required for amending legislation such as the provisions contained in this Bill.

Justification for the procedure

63. The power is subject to no parliamentary procedure. This is because the power will not be used to make any substantive changes to the law: it will be used only to state the effect of commencement provisions. Commencement powers are not

¹ Schedule 22 contains a list of uncommenced amendments to the Sentencing Code.

² Schedule 23 contains a list of powers to amend the Sentencing Code.

generally subject to parliamentary procedure. Section 419 of the Code is not subject to any procedure. These powers are similar in nature to the following provisions:

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

64. None of these powers is subject to parliamentary procedure. The power in section 7(2)(a) of the 2014 Act was welcomed by the Committee in its 1st Report of the 2013–14 session.

65. It is standard practice to include this power when amendments are made to the Code: see, for example, section 47 of the Counter-Terrorism and Sentencing Act 2021 and section 206 of the Police, Crime, Sentencing and Courts Act 2022.

Clause 45(5): Channel Islands, Isle of Man and British Overseas Territories

<i>Power conferred on:</i>	His Majesty
<i>Power exercisable by:</i>	Order in Council
<i>Parliamentary procedure:</i>	None

Context and purpose

66. 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.

67. 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.

68. Clause 14(2) provides that these two powers apply to the armed forces provisions of the Bill, 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

69. 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

70. As with the original powers in the AFA, the power as extended by this clause 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 46(1): Commencement powers

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: None

Context and purpose

71. Clause 46 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 (3) and (4).

Justification for the power

72. 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

73. As is usual with commencement powers, regulations made under clause 46 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 46(5): 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

74. Clause 46(5) 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

75. 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

76. 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

30 October 2025