

COURTS AND TRIBUNALS BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Courts and Tribunals Bill as introduced in the House of Commons on 14 May 2026 (Bill 5).

These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	4
Policy background	5
Part 1 – Procedure in the Criminal Courts	5
Magistrates’ Courts Background	5
Determining Mode of trial	6
Magistrates’ courts procedure	6
Youth Courts	6
Appeals from magistrates’ courts to the Crown Court	7
Magistrates’ Courts Reform Measures	7
Removal of right to elect trial on indictment	7
Increase in maximum custodial sentence in magistrates’ courts	7
Reforming the appeals process from the magistrates’ courts to the Crown Court	8
Crown Court Background	9
Pre-trial Preparation Hearing	9
Current provision for jury trials	9
Current exceptions to jury trial	10
Appeals from Crown Court to Court of Appeal	10
Crown Court Reform measures	10
Trial on indictment without a jury	11
The Crown Court Bench Division	11
Introducing trials by judge alone for complex and lengthy cases	11
Trial on Indictment Without a Jury: Complex or Lengthy Cases	11
Reallocating cases in the Crown Court	12
Admissibility of evidence	13
Special measures directions	13
Part 2 – Other provisions about courts and tribunals	15
Decisions of courts under Children Act 1989	15
Tribunals	15
Lay Justices’ Allowances	16
The Crown Court in the City of London	17
Legal background	17
Part 1 – Procedure in the Criminal Courts	17
Magistrates’ Courts	17
Removal of right to elect trial on indictment	18
Increase in maximum custodial sentence in magistrates’ court	18
Reforming criminal court appeals from the magistrates’ courts to the Crown Court	19
Appeals from the magistrates’ court to the Crown Court	19
Crown Courts	20
Appeals from the Crown Court to the Court of Appeal (Criminal Division)	20

Introducing mode of trial by judge alone in the Crown Court (Crown Court Bench Division (CCBD) and technical and lengthy case measures)	21
Admissibility of evidence	22
Sexual Behaviour evidence:	22
Defendant bad character evidence and propensity:	22
Previous allegations:	23
Compensation claims evidence	23
Special measures	24
Part 2 – Other provision about courts and tribunals	24
Decisions of courts under Children Act 1989	24
Tribunals	25
Lay justices’ allowances	25
The Crown Court in the City of London	25
Territorial extent and application	26
Commentary on provisions of Bill	26
PART 1 - PROCEEDINGS IN THE CRIMINAL COURTS	26
Determining mode of trial	26
Clause 1: Removal of right to elect trial on indictment	26
Clause 2: Written indication of guilty plea: removal of right to object to venue	28
Trial on indictment without jury	28
Clause 3: Trial on indictment without a jury: general rule for allocation	28
Clause 4: Trial on indictment without a jury: complex or lengthy cases	32
Schedule 1: New Schedule 3ZA to the Criminal Justice Act 2003	35
Clause 5: Consequential amendments relating to sections 3 and 4	35
Sentencing powers of magistrates’ courts	36
Clause 6: Increase in maximum custodial sentence in magistrates’ courts	36
Appeals from magistrates’ courts	39
Clause 7: Appeals from magistrates’ courts	39
Schedule 2: Appeals from magistrates’ courts	39
<i>Part 1 – Amendments of Magistrates’ Courts Act 1980</i>	39
<i>Part 2 – Amendments of other legislation</i>	47
Admissibility of evidence	49
Clause 8: Restriction on evidence or questions about complainant’s sexual history	49
Clause 9: Compensation claims in proceedings for sexual offences	51
Clause 10: Evidence about previous false complaints relating to sexual offences	52
Clause 11: Evidence of propensity to commit offences involving domestic abuse	53
Special measures directions	54
Clause 12: Use of screens etc	54
Clause 13: Witness to be accompanied while giving evidence	54
Clause 14: Exclusion of persons from court	55
Clause 15: Editing of video recorded cross-examination and re-examination	55
Clause 16: Application of special measures to victim personal statements etc	56
PART 2 - OTHER PROVISION ABOUT COURTS AND TRIBUNALS	56
Decisions of courts under Children Act 1989	56
Clause 17: Welfare of the child: repeal of presumption of parental involvement	56
Tribunals	56
Clause 18: Leadership of tribunals	56
Schedule 3: Leadership of tribunals	57

These Explanatory Notes relate to the Courts and Tribunals Bill as introduced in the House of Commons on 14 May 2026 (Bill 5)

<i>Part 1 – Amendments of the Constitutional Reform Act 2005</i>	57
<i>Part 2 – Amendments of the Tribunals, Courts and Enforcement Act 2007</i>	57
<i>Part 3 – Amendments of the Employment Tribunals Act 1996</i>	58
<i>Part 4 – Amendments of other Acts</i>	58
Lay justices' allowances	65
Clause 19: Lay justices' allowances	65
The Crown Court in the City of London	66
Clause 20: Special provision when Crown Court sits in City of London	66
PART 3 - FINAL PROVISIONS	67
Clause 21: Power to make consequential amendments	67
Clause 22: Power to make transitional or saving provision	67
Clause 23: Power to state effect of provisions commencing Sentencing Code amendments	67
Clause 24: Regulations	67
Clause 25: Extent	67
Clause 26: Commencement	68
Clause 27: Short Title	68
Financial implications of the Bill	68
Parliamentary approval for financial costs or for charges imposed	68
Compatibility with the European Convention on Human Rights	69
Environment Act 2021 section 20 statement	69
European Union (Withdrawal) Act 2018 section 13C	69
Related documents	69
Annex A - Territorial extent and application in the United Kingdom	70

Overview of the Bill

- 1 The Bill introduces measures in line with recommendations made in Part One of Sir Brian Leveson's Independent Review of the Criminal Courts (link available in the "Related Documents" section below). These measures make structural changes to the operation of the criminal courts in England and Wales. The measures are designed to address the record and rising Crown Court open caseload, ensure timely and fair access to justice for victims, witnesses, and defendants, and enable a more proportionate allocation of resources across the criminal courts in line with the severity and complexity of the offending.
 - a. The Bill reforms the allocation and handling of criminal cases across the magistrates' courts and the Crown Court.
 - b. It removes the right of defendants to elect for Crown Court trial in triable-either-way cases and reforms the appeals process from the magistrates' courts to the Crown Court.
 - c. The Bill also introduces powers to extend magistrates' court sentencing powers, supporting the retention of suitable cases in the magistrates' courts, and freeing up Crown Court capacity for the most serious and complex cases.
 - d. In the Crown Court, the Bill introduces new modes of trial by judge alone in defined and limited circumstances. These include the establishment of a Crown Court Bench Division, as a new tier of the existing Crown Court, to hear certain lower-level cases, and provision for technical and lengthy fraud and financial cases to be tried without a jury where appropriate. These reforms are intended to enable eligible cases to be heard more efficiently, freeing up capacity for other, more serious cases to be tried by jury.
- 2 Second, the Bill implements reforms to the law on evidence and procedure in sexual offence prosecutions, drawing on recommendations from the Law Commission. These measures introduce clearer statutory thresholds governing the admissibility of certain types of evidence. In addition, the Bill strengthens and clarifies the framework for special measures to improve the experience and quality of evidence given by vulnerable and intimidated witnesses.
- 3 Third, the Bill repeals the presumption of parental involvement in the Children Act 1989. While the presumption is rebuttable and does not apply where there is a risk of harm, it has been criticised for contributing to a pro-contact culture that can undermine the welfare of individual children. The repeal ensures that decisions continue to be guided by the child's welfare as the paramount consideration, without reliance on a statutory presumption.
- 4 Fourth, the Bill modernises operational and leadership arrangements across courts and tribunals. It reforms the office of the Senior President of Tribunals, bringing it into closer alignment with the leadership of the courts under the Lady (or Lord) Chief Justice. This measure aims to promote consistency, flexibility, and effective judicial leadership.
- 5 Finally, the Bill also includes technical and administrative reforms. These include provisions relating to magistrates' expenses, and amendments clarifying the naming of the Central Criminal Court.

Policy background

Part 1 – Procedure in the Criminal Courts

- 6 The Bill introduces measures to reform the criminal courts in line with the recommendations made by Part One of the Independent Review of the Criminal Courts in July 2025 (please see a link available in the Related Documents section below).
- 7 His Majesty's Courts and Tribunal Service is an executive agency of the Ministry of Justice and is responsible for the administration of courts and tribunals in England and Wales. This includes the criminal court system, which is comprised of the magistrates' courts, the Crown Court, and the Court of Appeal (Criminal Division).
- 8 There have been two notable reviews of the efficiency of the criminal court system in England and Wales in recent decades - Sir Robin Auld in his Review of the Criminal Courts (2001) and Sir Brian Leveson's Review of Efficiency in Criminal Proceedings (2015). Both reviews identified improvements that could be made to the structure, processes, and efficiency of the criminal justice system.
- 9 Many of the measures recommended by these reviews have been agreed and implemented, but the Crown Court open caseload has risen substantially over the pandemic and an increase in the number and complexity of cases coming before the courts. As of September 2025, the open Crown Court caseload reached a new series peak of 79,619, compared to around 40,000 pre-pandemic. At its current rate of increase, it is anticipated that the open Crown Court caseload will go above 100,000 by 2028. Timeliness in the Crown Court is well above pre-pandemic levels – the median duration from offence to completion for defendants who were disposed of at the Crown Court was 350 days as of September 2025 (compared to 254 days in Q4 2019). Also, for the first time, the number of Crown Court cases open for a year or more exceeded 20,000 (reaching 20,155) as of September 2025.
- 10 In December 2024, the Government asked Sir Brian Leveson to re-examine the issues, considering current pressures on the Crown Court caseload and the changing nature of the criminal courts. Specifically, Sir Brian was asked to consider the merits of longer-term reform as well as the efficiency and timeliness of processes (including those of partner agencies) in criminal cases from charge to conviction/acquittal.
- 11 Sir Brian Leveson published part one of his report on 9 July 2025, which sets out forty-five recommendations, many of which relate to structural changes to the criminal courts. Sir Brian Leveson published part two of his report on 4 February 2026, which considered how the criminal courts can operate as efficiently as possible.

Magistrates' Courts Background

- 12 Magistrates' courts in England and Wales are the first tier of the criminal courts system and handle the majority of criminal cases. Virtually all criminal proceedings begin here, and over 90% are concluded at this level. The magistrates' courts primarily hear summary-only offences (lower level crimes such as motoring offences and common assault which are automatically retained in the magistrates' courts and carry a statutory maximum penalty of 6 months' imprisonment) and suitable triable-either-way offences (such as assault occasioning actual bodily harm,

possession with intent to supply controlled drugs, and theft) which can be tried either in a magistrates' court or the Crown Court, depending on the seriousness of the offence(s), application of magistrates' court sentencing powers and defendants' choice – defendants currently have a right to elect for Crown Court trial for triable-either-way offences. The most serious crimes, known as indictable-only (IO) offences (such as murder, manslaughter, rape, robbery) cannot be tried in a magistrates' court and are sent to the Crown Court at the first hearing in the magistrates' court.

Determining Mode of trial

- 13 There are no jury trials in the magistrates' court jurisdiction. In these courts, cases are heard by either a bench of two or three magistrates—lay volunteers from the community—or by a legally qualified District Judge. Magistrates are supported by legal advisers who provide independent legal advice relating to points of law and procedure.

Magistrates' courts procedure

- 14 At the start of the first hearing in a magistrates' court, the defendant will be invited to indicate a plea to the matters with which they have been charged. If the defendant enters a guilty plea, the magistrates' court will consider whether they have sufficient sentencing powers to sentence the defendant. If not, they will commit the defendant to the Crown Court for sentencing.
- 15 If the defendant enters a not guilty plea or does not enter a plea, the magistrates' court will determine whether the matter should remain in the magistrates' court and they can accept jurisdiction of the case, or whether it should instead be sent to the Crown Court for trial. To determine this, they consider the details of the case, representations by the prosecution and the defence, and any previous convictions recorded against the defendant.
- 16 Currently, if the magistrates conclude they have jurisdiction to hear a triable-either-way case, the defendant has the right to elect to be tried in the Crown Court without providing any explanation or justification for that choice.

Youth Courts

- 17 Youth courts in England and Wales are a specialist type of magistrates' court designed to hear criminal cases involving child defendants aged 10 to 17. They handle offences such as theft, burglary, anti-social behaviour, and drug offences.
- 18 Serious crimes (e.g. murder) where the defendant is a child start in a youth court but are always transferred to the Crown Court for trial because the custodial sentence required exceeds the youth court's powers. Other indictable only offences, such as rape, can be tried in a youth court, but if the adult maximum sentence is 14 years or more and the court considers its two-year maximum sentencing power inadequate, the case must be sent to the Crown Court under the "grave crimes" provisions in section 24 of the Magistrates' Courts Act 1980 and section 51A of the Crime and Disorder Act 1998.
- 19 Youth court trials do not involve a jury and are presided over by three specially trained magistrates or a District Judge. Proceedings are generally closed to the public.
- 20 Unlike adult defendants in magistrates' court proceedings, defendants in a youth court do not have a right to elect for a Crown Court trial.

Appeals from magistrates' courts to the Crown Court

- 21 Currently, defendants disposed of in the magistrates' courts have an automatic right to appeal against conviction (where convicted after trial) or against sentence to the Crown Court. This means their case does not need to pass any criteria before being re-heard. These appeal cases are usually heard in the Crown Court by a judge sitting with up to four magistrates. Magistrates' courts (including youth courts) are the only criminal court where this automatic right applies.
- 22 At the appeal hearing in the Crown Court, appellants currently have a full rehearing of their original case, which often requires victims and witnesses to give evidence again.

Magistrates' Courts Reform Measures

- 23 Sir Brian Leveson, in Part One of his Independent Review of Criminal Courts recommended several structural reforms to the magistrates' courts:
 - Recommendation 14: removing defendants' right to elect for certain low-level triable-either-way offences.
 - Recommendation 21: replacing the automatic right to appeal with a requirement for permission to appeal, with grounds to appeal similar to those from the Crown Court to the Court of Appeal.
 - Recommendation 22: replacing the requirement for a full re-hearing in the Crown Court with a hearing on the issues for which leave to appeal has been granted.
- 24 The Government is going further in some respects by taking measures which it believes will ensure a more proportionate use of overall resource in the criminal courts and, to enable the system to better serve the needs of victims and defendants, by hearing cases more quickly.

Removal of right to elect trial on indictment

- 25 The Bill will remove defendants' right to elect for trial in the Crown Court for all triable either-way offences. This means that a decision on jurisdiction will be made solely by the magistrates' courts.
- 26 This will prevent cases that magistrates determine are suitable for summary trial from escalating to the Crown Court ensuring they are heard in the most appropriate venue, according to the seriousness and complexity of the case.
- 27 Legislation relating to online plea and allocations will also be amended. Certain un-commenced provisions in the Magistrates' Courts Act 1980, inserted by the Judicial Review and Courts Act 2022, provide defendants with an opportunity to indicate their plea and preferred mode of trial online. Provisions relating to mode of trial will be amended or repealed to reflect that the decision rests with the magistrates' courts.
- 28 Crown Court judges are currently able to remit a case to the magistrates' courts where they determine it to be within a magistrates' court's jurisdiction. However, this is subject to defendant consent. Legislation will be amended to remove the consent requirement so a case can be remitted to the magistrates' court without the defendant's consent.

Increase in maximum custodial sentence in magistrates' courts

- 29 Currently, magistrates' courts' sentencing powers are set to a maximum of 12 months

imprisonment for single and multiple triable-either-way offences, and the Government can vary magistrates' courts' sentencing powers between 6 and 12 months via secondary legislation.

- 30 When deciding whether to retain a case involving triable-either-way offences for trial, magistrates' courts consider whether, in the event of a guilty verdict, the sentence likely to be imposed would be in excess of their sentencing powers.
- 31 If, after hearing a case, the magistrates' court considers that a penalty greater than their sentencing power is warranted - despite mitigation and credit for an early guilty plea - they will send the case to the Crown Court for sentencing.
- 32 Parliament has previously legislated to change magistrates' courts' sentencing powers. Until May 2022, magistrates' courts' sentencing powers were limited to 6 months for a single summary only or triable-either-way offence. Between May 2022 and November 2024, magistrates' courts' sentencing powers for a single triable-either-way offence were varied between 6 and 12 months (using the varying power in the Sentencing Act 2020) as part of efforts to reduce pressure on prison capacity.
- 33 The Government has decided to include a measure in this Bill to introduce the power to extend magistrates' courts' sentencing powers magistrates' courts' sentencing powers to up to 18 months' or 24 months' maximum imprisonment for single and multiple triable-either-way offences.
- 34 Regardless of the level at which magistrates' courts' general sentencing powers are set, a magistrates' court may not impose a sentence for a triable-either-way offence that exceeds the maximum custodial term available to the Crown Court for that offence. This measure will not alter the statutory maximum penalty for any offences. Once commenced, it will expand the range of cases magistrates' courts are able to hear and sentence. Increasing magistrates' courts' sentencing powers will enable a greater number of cases that would otherwise be sent to the Crown Court, to be retained in the magistrates' courts for both trial and sentencing. As a result, this will free up capacity in the Crown Court for more serious and complex cases, helping to address the open Crown Court caseload, and supporting a more proportionate allocation of resources across the criminal courts.
- 35 The Bill also makes an amendment which ensures that the maximum aggregate term a magistrates' court may impose when sentencing two or more summary only offences consecutively is 6 months. This aims to ensure that magistrates' courts can impose sentences that adequately reflect the overall offending behaviour, as consecutive sentences enable courts to proportionately reflect the overall criminality where multiple offences have been committed.

Reforming the appeals process from the magistrates' courts to the Crown Court

- 36 In line with Sir Brian's recommendation, the Government is legislating to replace the automatic right to appeal in the magistrates' court against conviction or sentence with a requirement for permission to appeal, and to replace the requirement for a full re-hearing in the Crown Court with a hearing on the issues for which permission to appeal has been granted.
- 37 This measure is intended to be consistent with other criminal appeals processes, to save time in the Crown Court, and to increase the efficiency of the appeals process. In addition, the measures are intended to improve victim and witness experience by sparing them the ordeal of a second hearing.

- 38 This policy will largely mirror the process from the Crown Court to Court of Appeal, including in relation to the powers of the Crown Court. For example, on appeals relating to sentence, the Crown Court judge will have the power to substitute a sentence for an equal or lesser sentence but cannot increase the sentence. This represents a departure from the current process in which the Crown Court can increase the sentence on appeal.
- 39 The Bill will also introduce the power for the Crown Court judge to order a retrial in a magistrates' court. This power is currently not available given a rehearing of the case in the Crown Court functions as a retrial.
- 40 There are aspects where measures in the Bill will depart from the process in the Court of Appeal, to better suit the appeals process from magistrates' courts to the Crown Court. For example, the appeal hearing will be heard by a single judge rather than a judge and up to four magistrates, as is currently the case in the Crown Court, or by a panel of judges as is the case in the Court of Appeal.
- 41 To support changes to the appeals process, the Bill also provides for the introduction of audio recording in magistrates' courts for trial and sentencing proceedings. This will ensure that there is an accurate record of proceedings which can be transcribed for the purposes of supporting an appeal, given the move away from a full rehearing of the case at appeal.
- 42 This amended appeals policy applies to all criminal proceedings heard in magistrates' courts that appeal to the Crown Court, including the youth court which is a form of magistrates' court. The requirement of permission will also apply in the limited circumstances where the prosecution can appeal against a sentence or acquittal to the Crown Court. The exception to these reforms is civil matters heard in magistrates' courts, which will continue to have an automatic right to a rehearing in the Crown Court, and interlocutory appeals from magistrates' courts in criminal proceedings.

Crown Court Background

- 43 The Crown Court in England and Wales is the higher criminal court. Indictable-only offences, the most serious criminal offences, can only be tried in the Crown Court. Currently, triable-either-way offences may be sent to the Crown Court where the defendant elects for a Crown Court trial, or if a magistrates' court declines jurisdiction. Unlike magistrates' courts, the Crown Court has unlimited sentencing powers, including the ability to impose a sentence of life imprisonment.

Pre-trial Preparation Hearing

- 44 Ordinarily, the first hearing in the Crown Court is the plea and trial preparation hearing. At this hearing, the formal list of charges (the indictment) is read, and the defendant enters a plea. If the defendant pleads not guilty, the judge sets a trial date and other case management directions. In particularly complex cases, a judge may order a specific preparatory hearing under section 7 of the Criminal Justice Act 1987 or section 29 of the Criminal Procedure and Investigations Act 1996. These are rare and used mainly for complex fraud or terrorism cases, to clarify issues or for extra case management.

Current provision for jury trials

- 45 Almost all Crown Court cases are currently heard by a judge and a jury of 12 randomly selected members of the public. The jury decides whether the defendant is guilty, and the judge is responsible for ensuring that the trial is conducted in

accordance with the law, managing court procedure and explaining the law to the jury.

- 46 Trial ordinarily begins with the selection and swearing-in of the jury, followed by opening statements from the prosecution and the defence. The prosecution and defence then present their case, which may include calling witnesses and introducing evidence. The trial concludes with closing speeches from both parties, followed by a summing up of the case from the judge.
- 47 The jury will then deliberate to try and reach a verdict. The verdict must be either unanimous or a majority, where at least 10 of the 12 jurors agree. Jury deliberations are confidential, and juries do not provide reasons for their decisions.
- 48 If the defendant is convicted, the judge will decide the sentence they receive – usually at a separate sentencing hearing, allowing time for any necessary reports or submissions.

Current exceptions to jury trial

- 49 There are currently two exceptions to jury trial in the Crown Court:
- cases may be heard by a judge alone where there is a risk of jury tampering (such as attempts to influence the jury through threats or bribery); and
 - where trying all charges before a jury would be impractical, selected representative charges (known as sample counts) may be tried by judge alone under the Domestic Violence, Crime and Victims Act 2004.
- 50 The measures in this Bill do not alter these exceptions.

Appeals from Crown Court to Court of Appeal

- 51 Defendants must request permission from the Court of Appeal (criminal division) to appeal their conviction or sentence. Permission will only be granted if specific grounds are met, and the appeal hearing will only address the grounds on which permission was granted.
- 52 The defence or prosecution can also appeal against a ruling made before trial at a preparatory hearing – for example, on admissibility of evidence or the interpretation of a procedural rule. This is called an interlocutory appeal and is an exception to the general rule that appeals only occur after a case concludes. Interlocutory appeals are very rarely pursued.

Crown Court Reform measures

- 53 Sir Brian Leveson recommended several structural reforms relating to the Crown Court. Trials without a jury should take less time to hear (Sir Brian estimates they are least 20% quicker than trials with juries), improving how quickly cases move through the Crown Court and freeing up Crown Court capacity to hear other cases by jury trial.
- 54 Sir Brian's recommendations were:
- Recommendations 30, 31, 32, 33, 39 and 40: introducing a Crown Court Bench Division (Bench Division) in the Crown Court. Triable either-way cases likely to receive a custodial sentence of 3 years or less to be tried by a judge alone or two magistrates (Sir Brian leaves the exact scope and final bench composition of the Bench Division for Government to decide).

- Recommendation 44: trying serious and complex fraud cases by a judge alone unless it is not in the public interest to do so.
 - Recommendation 45: judges being able to direct trial by judge alone in other cases of anticipated exceptional length or complexity unless it is not in the public interest to do so.
- 55 The Government has accepted these recommendations, and this Bill introduces two measures to enable the Crown Court to try cases by judge alone:
- the Crown Court Bench Division and;
 - trials by judge alone for certain technical and lengthy fraud and financial cases.
- 56 Sir Brian made a separate recommendation on jury waiver for defendants which is not being taken forward on the basis that these reforms are intended to ensure that it is only the court that can determine where cases are heard.

Trial on indictment without a jury

The Crown Court Bench Division

- 57 This Bill will introduce a Crown Court Bench Division where cases are tried by a judge alone.
- 58 To ensure that jury trials remain in place for the most serious crimes, only triable-either-way cases that are assessed as likely to receive a custodial sentence of three years or less will be allocated for trial in the Bench Division. Indictable-only offences cannot be tried there.
- 59 To determine whether a triable-either-way case should be allocated for trial in the Crown Court Bench Division, a Crown Court judge will assess whether the offence or offences to be tried are likely to attract a custodial sentence of three years or less. This decision will be taken at the first opportunity for the defendant to enter a plea in the Crown Court, usually the plea and trial preparation hearing.
- 60 If cases involve multiple defendants, judges must assess eligibility based on the highest likely sentence of any one defendant. Offences to which defendants have pleaded guilty are not included in the assessments of likely sentence. Youth defendants are not exempt from the Bench Division.
- 61 The Bench Division will operate as a lower tier in the existing Crown Court. The Bill will not create a separate jurisdiction or “Intermediate Court.” The usual Crown Court procedures will apply in the Bench Division, including the appeal route from the Crown Court to the Court of Appeal. Judges sitting in the Bench Division will also retain the full sentencing powers of the Crown Court and may impose sentences of more than three years where appropriate.
- 62 As above, no new appeal route is created for decisions to allocate a case to the Bench Division. When trying a case without a jury, the judge will give a reasoned judgment setting out the basis for conviction or acquittal, in contrast to jury verdicts.

Introducing trials by judge alone for complex and lengthy cases

Trial on Indictment Without a Jury: Complex or Lengthy Cases

- 63 The second measure will allow certain technical and lengthy fraud and financial offences to be tried by a judge alone in the Crown Court. The aim is to:
- reduce the time taken to hear particularly lengthy and complex cases by

permitting judge-alone trials, thereby freeing additional Crown Court capacity to hear cases requiring a jury trial; and

- remove the requirement for jurors to sit on trials that can last many months, which can significantly disrupt their personal and professional lives.

64 Cases will only be eligible for consideration where:

- a. a specific preparatory hearing has been ordered under s7 Criminal Justice Act 1987 or s29 Criminal Procedure and Investigations Act 1996 (as above, these are only ordered if a complex case requires additional case management);
- b. the case involves at least one fraud or related financial offence listed in new Schedule 3ZA to the Criminal Justice Act 2003 (e.g. fraud by false representation, cheating the public revenue, money laundering etc.); and
- c. the case does not involve an indictable-only homicide offence (e.g. murder and manslaughter, etc), or an indictable-only sexual offence (e.g. rape and assault by penetration, etc)—including attempts or conspiracies to commit such offences.

65 Offences to which the defendant has pleaded guilty are not included in the assessment of eligibility. The decision to direct trial by judge alone under this policy will likely be taken at the plea and trial preparation hearing or at the preparatory hearing itself but may otherwise be taken at any time following the order of a preparatory hearing.

66 The Secretary of State for Justice can modify the eligible offences listed in Schedule 3ZA via affirmative Statutory Instrument. This means that, in future, the Secretary of State could add offences which are not related to fraud or financial crime to the Schedule, or remove offences already listed in the schedule where appropriate.

67 If conditions (a) - (c) are met, the court must also be satisfied that the case is suitably technical and lengthy to make it appropriate to order trial by a judge-alone.

68 However, the court will retain full discretion. If the court considers that jury trial is in the public interest or if there is any other reason a jury trial is more appropriate, it cannot direct the case to be heard without a jury.

69 Judge-alone trials for technical and lengthy fraud/financial cases will operate within the existing Crown Court. This means that the procedures in the Crown Court will continue to apply, including the appeal route from the Crown Court to the Court of Appeal. There will be no new appeal route for mode of trial decisions. Decisions to order cases to be tried without a jury taken at a preparatory hearing will not be appealable. Youth defendants can be tried by judge alone under this policy.

Reallocating cases in the Crown Court

70 When the reforms are implemented, cases already in the open Crown Court caseload will be able to be changed from jury trial to trial by judge alone: either under the Crown Court Bench Division or on the grounds of technical complexity or anticipated length. However, any case that is already part-way through a jury trial at the point of implementation will continue as a jury trial.

71 Cases may also be reallocated between judge-alone and jury trial where there is a significant change of circumstances. If an indictable-only offence or an excluded offence is added to a case, it must always be reallocated to jury trial. In other scenarios, the court should also consider factors such as delay to the trial and the

interests of victims when deciding whether to reallocate.

Admissibility of evidence

- 72 In July 2025, the Law Commission published its report on the use of evidence in sexual offence prosecutions. This report explored ways to improve the understanding of consent and sexual harm, improve treatment of complainants, and ensure that defendants receive a fair trial. The report particularly aimed to address the risk that myths and misconceptions about sexual violence permeate the trial process and influence jurors' deliberations.
- 73 There are a large number of myths and misconceptions that jurors in sexual offence trials could impermissibly rely on. For example, the twin myths refer to two common misconceptions that have historically influenced legal proceedings:
- a. Myth of consent – the assumption that if a complainant did not physically resist or there was no visible injury, they must have consented.
 - b. Myth of fabrication – the belief that allegations of rape are often false or motivated by malice.
- 74 The Law Commission identified several areas where the current law is applied inconsistently and allows for the introduction of evidence that relies on myths and misconceptions in sexual offence trials, which leads to unfair questioning of victims.
- 75 The Bill will take forward changes to four areas that the Law Commission consulted on with regard to the admissibility of evidence in sexual offence prosecutions. These areas involve the admissibility of evidence in relation to allegations that a complainant has previously lied about being a victim of a sexual offence ('previous allegations'), compensation claim evidence, sexual behaviour evidence, and defendant bad character evidence.
- 76 In relation to sexual behaviour evidence, these measures aim to clarify the existing legislation. The measures will continue to provide that sexual behaviour evidence cannot be admitted unless it has substantial probative value or is important explanatory evidence. The clauses will ask the judge to consider various factors when deciding if evidence should be admitted, including the extent to which it relies on so-called rape myths and misconceptions – examples of which are given above.
- 77 In relation to previous allegations evidence, the measure will ensure that applications made by the defence for such evidence to be admitted are carefully considered by the court and that such evidence is only admitted where there is proper evidential basis for doing so.
- 78 In relation to compensation claim evidence, these measures will ensure that this evidence will only be admitted where it has substantial probative value, and not where its sole aim is to introduce or perpetuate myths and misconceptions.
- 79 In relation to defendant bad character evidence, these measures will provide explicitly in legislation that previous domestic abuse offences of any kind may demonstrate a propensity to commit offences of the kind charged, where the defendant is charged with an offence amounting to domestic abuse.

Special measures directions

- 80 As part of its Evidence in Sexual Offence Prosecutions consultation, the Law Commission also reviewed and invited feedback on the existing special measures

framework in the Youth Justice and Criminal Evidence Act 1999, citing concerns raised by stakeholders that access can be inconsistent and often depends on judicial discretion rather than the needs of victims. The Bill incorporates several of the Law Commission's recommendations by introducing five provisions aimed at improving access to special measures in appropriate cases and making related courtroom processes clearer and more consistent.

- 81 Although the Law Commission's report and recommendations focus specifically on complainants in sexual offence cases, the majority of the amendments relating to special measures will have broader applicability to all eligible victims and witnesses. This is because the changes relate to measures and processes that are not exclusive to sexual offence complainants and all eligible witnesses stand to benefit from their implementation.
- 82 The only exceptions are amendments that apply solely to certain categories of witnesses. These include changes to section 25 Youth Justice and Criminal Evidence Act 1999 which enables the public gallery to be cleared while a witness gives evidence – the use of which is limited to cases involving a sexual offence or where the court is satisfied that there has been, or is likely to be, an attempt to intimidate the witness. Another exception is the introduction of a rebuttable presumption in Clause 1, which would enable only intimidated witnesses under section 17 to use screens when giving evidence under sections 23 or 28 Youth Justice and Criminal Evidence Act 1999.
- 83 Amendments to section 25 of the Youth Justice and Criminal Evidence Act 1999 in this Bill, are designed to address judicial concerns about the measure's compatibility with open justice. Currently, section 25 allows courts to exclude the public from the courtroom while a complainant gives evidence in sexual offence cases, permitting only one journalist to remain in the public gallery. This has raised questions about whether the measure adequately supports the principle of open justice. The changes broaden the list of individuals permitted to remain when the measure is applied, allowing unlimited accredited members of the press, academics conducting approved research and one supporter of the complainant. The court will retain discretion to admit additional individuals on application.
- 84 A new statutory special measure will permit witnesses to be accompanied by a support companion while giving evidence. Although the Criminal Procedure Rules already provide a presumed entitlement to Independent Sexual Violence Advisers and Independent Domestic Violence Advisers, feedback indicates this is applied inconsistently. The Bill introduces a new special measure to enable witnesses to be accompanied by a professional companion where an application is made. Additionally, courts will be able to determine, on a case-by-case basis, whether allowing a non-professional companion would improve the quality of the witness' evidence, taking into account all the circumstances of the case, including the effect on effective testing of the evidence.
- 85 Existing practices will be formalised in legislation to provide greater clarity and certainty. Victims will be explicitly permitted to use any special measures they have been granted when delivering their Victim Personal Statement aloud. Courts will gain a clear statutory power to order edits to pre-recorded cross-examination under section 28. Amendments to section 23 will confirm that screens must prevent both the defendant from seeing the witness and the witness from seeing the complainant - bringing the legislation fully in line with current courtroom practice.

- 86 The Bill also introduces a presumption that, where requested, screens will be used where witnesses eligible for special measures under section 17 give evidence via live link or pre-record their evidence. Currently, screens are not consistently offered or granted alongside section 24 or section 28. This change aims to ensure this combination of measures is granted more consistently, helping to reduce re-traumatisation and enabling witnesses to give evidence with greater confidence and security, without fear of being seen by the defendant. The presumption is rebuttable, as there may be circumstances where it is necessary for the defendant to see the complainant to ensure a fair trial.

Part 2 – Other provisions about courts and tribunals

Decisions of courts under Children Act 1989

- 87 When determining certain matters relating to a child, such as where the child should live or who they should spend time with, the Children Act 1989 provides that the courts must presume that, unless the contrary is shown, the involvement of a parent in a child's life will further that child's welfare. This is known as the presumption of parental involvement ('the presumption').
- 88 In October 2025, the Ministry of Justice published a review focused on how courts apply the presumption, and the impact this has upon child welfare. One of the key findings of the review is that unsupervised and face-to-face involvement is the most likely outcome for child arrangements applications, including in cases which involve allegations or findings of domestic abuse or harm. Such decisions can be detrimental to child welfare. The presumption, whilst not the main driving force, was identified as one of a number of factors contributing to the pro-contact culture that drove these decisions.
- 89 Subsequently, the Government announced its intention to repeal the presumption from the Children Act 1989 when parliamentary time allowed. This Bill will therefore amend the Children Act 1989 to remove section 1 (2A) (2B) (6) and (7), which were inserted by the Children and Families Act 2014.
- 90 The repeal means courts will no longer have to start from the presumption that parental involvement will further the welfare of the child, albeit they may ultimately conclude that there should be such involvement. The child's welfare will remain the court's paramount consideration, and courts will continue to consider the ECHR rights of children and parents. They will continue to base their decisions on the remaining factors set out in section 1 of the Children Act 1989. For example, as required by section 1(3) of that Act, courts will continue to have particular regard to the "welfare checklist" - a list of seven factors, including "any harm which [the child] has suffered or is at risk of suffering" and how capable each parent is of meeting the child's needs.

Tribunals

- 91 These measures make provision to reform the existing office of Senior President of Tribunals so that it comes under the leadership of the Lady (or Lord) Chief Justice, alongside the Heads of Division. The office of Senior President of Tribunals will maintain its existing responsibilities in respect of the tribunals listed at section 2(4) of the Tribunals, Courts and Enforcement Act 2007 operating in Scotland and Northern Ireland, and these will be exercised independently of the England and Wales hierarchy, as now.

- 92 The Tribunals, Courts and Enforcement Act 2007 created the First-tier Tribunal and the Upper Tribunal to bring together most of the UK's tribunals under one statutory regime. The Act also created the office of Senior President of Tribunals.
- 93 The current office is a cross-UK role which sits outside the Lady Chief Justice's hierarchy and has statutory leadership functions for the First-tier Tribunal, the Upper Tribunal, and the Employment Tribunals of England, Wales and Scotland. The tribunals which fall into these categories generally either operate on the basis of the law of England and Wales, or are tribunals dealing with reserved or excepted matters which operate across the UK (e.g. immigration).
- 94 The role of Senior President of Tribunals closely mirrors that of the Lady (or Lord) Chief Justice, who leads the courts of England and Wales. In recent years, the two officeholders have aligned closely to make decisions in the interests of efficiency. The current statutory framework for leadership creates a split of leadership for courts and tribunals in England and Wales (where the bulk of tribunals business takes place). These reforms create a unified leadership for the courts and tribunals judiciary in England and Wales.
- 95 These measures will reform the current office of Senior President of Tribunals, so that, in respect of tribunals in England and Wales, it will operate as an office under the Lady (or Lord) Chief Justice, to sit alongside the Heads of Division (the Master of the Rolls, President of the King's Bench Division, President of the Family Division and Chancellor of the High Court). This will bring the office into structural alignment with the courts. Leadership functions will be conferred on the Lady (or Lord) Chief Justice, as regards England and Wales; most of these are expected to be delegated to the Senior President of Tribunals and business continuity will be maintained. These reforms do not make changes to chamber structure and the operation of tribunals on the ground. The reformed office of Senior President of Tribunals will retain its existing responsibilities in respect of Tribunals, Courts and Enforcement Act 2007 operating in Scotland and Northern Ireland.

Lay Justices' Allowances

- 96 Section 15 of the Courts Act 2003 provides the statutory framework for reimbursing expenses incurred by "lay justices", who are defined in Section 9 of the same Act as "justices of the peace who are not District Judges (Magistrates' Courts)." In practice, lay justices are more commonly known as magistrates. They are volunteer judicial office holders, without formal legal qualifications, who are appointed from the community to preside over a variety of cases in magistrates' courts.
- 97 Although unpaid, magistrates are entitled to claim reimbursement for certain out-of-pocket expenses incurred while performing their judicial duties. Currently, section 15 sets out three specific categories of reimbursable expenses: travel, subsistence, and financial loss. These statutory categories are now considered overly prescriptive and do not reflect the evolving nature of magistrates' work or the increasingly diverse profile of the magistracy.
- 98 In response to growing concerns, the Ministry of Justice made initial updates to the magistrates' expenses policy in 2021, following consultation with stakeholders across the magistracy. However, further reform is needed to ensure the framework reflects the realities of modern judicial work. Lord Ponsonby committed to a further review in 2025/26, with a formal consultation planned for early 2026 as part of a broader reform programme responding to the IRCC report.

- 99 Providing the Lord Chancellor with a delegated power to specify what types of expenses or financial losses can be reimbursed, will enable regular review, and allow for more responsive updates in line with changes to magistrates' responsibilities. It will also help address long-standing concerns raised by magistrates and stakeholders, support recruitment, and retention, and ensure the framework reflects the evolving profile of the magistracy and the communities it serves.
- 100 This measure will replace the current statutory categories with a delegated power that would allow the Lord Chancellor to make regulations providing for payments to magistrates in respect of any expenditure or financial loss incurred in the connection with the performance of their duties. This approach would provide greater flexibility to adapt the expense framework over time, without requiring primary legislation for each change.
- 101 These regulations would be subject to the negative resolution procedure in Parliament.

The Crown Court in the City of London

- 102 Section 8(3) of the Senior Courts Act 1981 provides that when the Crown Court sits in the City of London, it shall be known as the Central Criminal Court. At present, this applies only to the Old Bailey, which has held this designation since the nineteenth century and is widely recognised by that name. It is also the premises designated for this purpose in section 29(1) of the Courts Act 1971.
- 103 The City of London Law Courts, part of the Salisbury Square development led by the City of London Corporation, is scheduled to open in 2027 and will include eight Crown Court courtrooms within the City of London. Without legislative change, this would mean two Crown Court locations being referred to as the Central Criminal Court, creating potential confusion for operational processes such as listings, warrants, and custody transfers, and diminishing the historical and significance of the Old Bailey.
- 104 The policy intention is therefore to amend section 8(3) so that the designation "Central Criminal Court" applies only to the Old Bailey, while extending the existing historic sitting rights of the Lord Mayor and any Alderman of the City of London so that they apply at any Crown Court site within the City. In practice, and as a matter of convention, the Lord Mayor and Aldermen do not assert that entitlement in order to sit in hearings of criminal cases.

Legal background

Part 1 – Procedure in the Criminal Courts

Magistrates' Courts

- 105 Magistrates' decisions to accept or decline jurisdiction of a case in the magistrates' courts is primarily made on the basis of whether the magistrates' court sentencing powers would be adequate in light of any representations made by the parties and the Sentencing Council guidelines issued under section 122(2) of the Coroners and Justice Act 2009. Under section 59 of the Sentencing Code, every court must follow any guidelines unless satisfied that it would be contrary to the interests of justice to do so.

106 Where a case is more suitable to be tried in the Crown Court, magistrates will decline jurisdiction and send the defendant to the Crown Court for trial under section 51 of the Criminal Justice Act 1998. The defendant's consent is not required.

Removal of right to elect trial on indictment

107 Section 20 of the Magistrates' Courts Act 1980 gives defendants the right to elect Crown Court trial for triable either-way offences where the magistrates' court has determined that the case is suitable for summary trial and invites the defendant to consent to being tried summarily. The defendant does not need to give reasons for declining summary trial. This section will be amended so that defendants no longer have a right to elect trial on indictment in triable-either-way cases.

108 Section 46ZA of the Senior Courts Act (1981) will also be amended to remove the requirement on the court to obtain a defendant's consent before a case may be remitted from the Crown Court to the magistrates' courts.

109 Sections 17ZA, 17ZB and 17ZC of the Magistrates' Courts Act 1980, which were inserted by the Judicial Review and Courts Act 2022 and remain un-commenced, give defendants the option to indicate their plea and preferred mode of trial online before an allocation hearing takes place. These sections will be amended to prevent defendants from declining summary trials, so that mode of trial decisions is only made by the courts.

110 Section 17BA of the Magistrates' Courts Act 1980 which was also inserted by the Judicial Review and Courts Act 2022, created a provision allowing defendants to indicate their preferred mode of trial before an allocation hearing takes place. This section will be repealed so that when online allocation process provisions are commenced courts can assess cases and allocate to them appropriately because the provision is no longer compatible with a framework in which magistrates make the mode of trial decision exclusively.

Increase in maximum custodial sentence in magistrates' court

111 Section 224 of the Sentencing Code sets out the general limit on a magistrates' court's power to impose a sentence of imprisonment, or detention in a young offender institution, in respect of any one offence.

112 In May 2022, magistrates' courts' sentencing powers were increased from 6 months to 12 months by commencing section 282 of the Criminal Justice Act 2003.

113 In July 2022, various amendments were made by section 13 of the Judicial Review and Courts Act 2022. These included amendments to section 224(1A) of, and the insertion of paragraph 14A into Schedule 23 to, the Sentencing Act 2020. Paragraph 14A enables the general limit for a single triable either-way offence in section 224(1A)(b) to be varied by regulations.

114 In March 2023, magistrates' courts' sentencing powers were reduced from 12 months to 6 months by using the varying power in paragraph 14A(1) of Schedule 23 to the Sentencing Act 2020.

115 In November 2024, magistrates' courts' sentencing powers were increased from 6 months to 12 months using the same varying power in paragraph 14A(1).

116 Clause 6 of this Bill will amend paragraph 14A(1) of Schedule 23 to the Sentencing Act 2020 to allow regulations to increase the general limit on the custodial sentence that a magistrates' court may impose for a triable either-way offence. In addition to

the existing limits of 6- and 12-months' imprisonment or detention, the power will introduce new maximum terms of 18 months and 24 months.

- 117 This enables magistrates' courts' sentencing powers to be amended by the Secretary of State via a negative Statutory Instrument, where necessary, to respond to changing circumstances and manage any unsustainable impacts on the criminal justice system. This is the most appropriate mechanism of increasing magistrates' courts' sentencing powers from 12 months to 18- or 24-months' imprisonment. Any change to magistrates' courts' sentencing powers will apply to defendants convicted on or after the date on which the new limit comes into force. A triable-either-way offence awaiting trial in the Crown Court that, following an increase in magistrates' courts' sentencing powers, would now be suitable for summary trial, may be remitted to the magistrates' courts.
- 118 It will remain the case that regulations can be made under paragraph 14A(1) to vary magistrates' courts' sentencing powers for triable-either-way offences between 6, 12, 18, or 24-months' imprisonment.
- 119 Clause 6 will also amend section 133 of the Magistrates' Courts Act 1980 (consecutive terms of imprisonment) so that, where the general limit for triable-either-way offences under section 244(1A)(b) of the Sentencing Code is changed, the limit on the aggregate custodial sentence that a magistrates' court may impose for multiple offences will automatically align with that general limit. The only exception is that where the general limit under section 244A is set at 6 months, the maximum consecutive sentence for multiple triable-either-way offences will remain 12 months. It will also amend that section so that for summary only offences the maximum aggregate consecutive sentence may not exceed 6 months.

Reforming criminal court appeals from the magistrates' courts to the Crown Court

Appeals from the magistrates' court to the Crown Court

- 120 The statutory basis for defendant appeals against conviction and sentence from magistrates' courts to the Crown Court is currently provided by section 108 of the Magistrates' Courts Act 1980. This provides that a defendant convicted by a magistrates' court may appeal to the Crown Court against conviction or sentence, if the defendant pleaded not guilty, or sentence, if the defendant pleaded guilty.
- 121 Section 108 provides the definition of what constitutes a conviction or sentence for the purposes of appeals to the Crown Court. For example, a conviction resulting in an absolute or conditional discharge can be appealed against as a conviction. Appeals against sentence include any order made on conviction by a magistrate's court with a few exceptions as outlined in section 108(3).
- 122 In the Crown Court, appeal against sentence or conviction proceeds by way of a rehearing. This is provided for by section 79(3) of the Senior Courts Act 1981, which preserves the same procedure on appeals to the Crown Court as previously applied in appeals to courts of quarter sessions, before those courts were abolished in 1971.
- 123 Once an appeal hearing has concluded, the Crown Court has the power to confirm, reverse or vary any part of the decision that is being appealed against. For a sentence, the Crown Court has the power to award any punishment that the magistrates' court could have given, including a more severe sentence than that the offender originally received. The powers that the Crown Court has in relation to an appeal from the magistrates' court are provided for in section 48 of the Senior Courts Act 1981.

- 124 The composition of the Crown Court for the purposes of hearing an appeal from the magistrates' court currently consists of a professional judge and no less than two (but no more than four) magistrates, and this is provided for in section 74(1) of the Senior Courts Act 1981.

Crown Courts

- 125 Originally established by the Courts Act 1971, the general jurisdiction and powers of the Crown Court are now found in the Senior Courts Act 1981. Section 46 of the Senior Courts Act 1981 affirms that all trials on indictment must be heard in the Crown Court, though it does not mandate that the mode of trial must be a jury trial. The Senior Courts Act 1981 does not provide that all trials on indictment must be such that a jury acts as the tribunal of fact, nor does any other piece of legislation.

Appeals from the Crown Court to the Court of Appeal (Criminal Division)

- 126 The legislation concerning the right to appeal to the Court of Appeal against a conviction or sentence in the Crown Court is provided at section 1 – 32 of the Criminal Appeal Act 1968.
- 127 Defendants can only appeal a conviction or sentence received in the Crown Court if the Court of Appeal gives leave to appeal, or if the trial court (the Crown Court) provides a certificate which states that the case is fit for appeal within 28 days of conviction, unless this time limit is extended.
- 128 An appeal against a conviction may only be allowed if the Court of Appeal thinks that the conviction is unsafe, in which case they must quash the conviction. They may then order a retrial if the interests of justice require it (section 7 of the Criminal Appeal Act 1968 or otherwise record an acquittal).
- 129 The Court of Appeal has the power to substitute a conviction for an alternative offence, and to re-sentence the offender if one or more of their convictions is quashed but they remain convicted of other offences (section 3 and 4 of the Criminal Appeal Act 1968).
- 130 The Criminal Appeal Act 1968 does not set out the circumstances in which an appeal against sentence may be allowed, and indeed provides a wide power for the Court of Appeal to substitute a different sentence for that imposed by the Crown Court where they consider the appellant should be sentenced differently, as long as that sentence is not more severe (section 11 of the Criminal Appeal Act 1968). However, the Court of Appeal has interpreted its role as a court of review as meaning that its power should only be exercised in limited circumstances, those being where the sentence imposed by the Crown Court is wrong in law or principle, is manifestly excessive or, more unusually, if the defendant was given a binding indication of a sentence that was then reneged on (*R v Watson* [2021] EWCA Crim 1248 (at [13] – [14])).
- 131 Section 9 to 11A of the Criminal Appeal Act 1968 provide further detail on the powers of the Court of Appeal when hearing an appeal by sentence. Unlike where the Crown Court in its appellate court capacity, the Court of Appeal cannot hand down a more severe sentence than the appellant could have received at their original trial (section 11 of the CAA).
- 132 The Court of Appeal also has the power to make a 'loss of time' order, which is something not currently available in the Crown Court, and is provided for in section 29 of the Criminal Appeal Act 1968. This discretionary order allows the court to direct that all or part of the time an appellant has spent in custody since the start of

the appeal application will not count toward their overall custodial sentence. Its use is reserved for appeals that are brought without merit. It is intended act as a deterrent to frivolous appeals.

Introducing mode of trial by judge alone in the Crown Court (Crown Court Bench Division (CCBD) and technical and lengthy case measures)

- 133 Currently in England and Wales, the Crown Court can order a trial to be heard, or to continue, by a judge alone if satisfied that there is a sufficiently substantial danger that jury tampering would take place (section 44 of the Criminal Justice Act 2003). The Crown Court can also order that a trial take place without a jury when there are so many counts that a full jury trial would be impractical and, a jury has convicted a defendant of a count or counts that can be regarded as sample counts and, it would be in the interests of justice for the judge alone to try the remaining counts on the indictment (section 17 of the Domestic Violence, Crime and Victims Act 2004).
- 134 Clause 3 inserts section 74A to 74D into the Senior Courts Act 1981. These provisions set out a general rule that triable-either-way offences assessed as likely to attract a custodial sentence of three years or less will be tried by a judge alone in the Crown Court. For ease of reference, this tier of the Crown Court business is referred to in these Notes as the “Crown Court Bench Division”, although this term does not appear in the legislation.
- 135 Clause 4 will also insert sections 42A to 42C into the Criminal Justice Act 2003, providing the court with discretion to direct an eligible case deemed suitably technical and lengthy to be tried without a jury in the Crown Court regardless of the likely custodial sentence, or to revoke the order.
- 136 Clause 4 inserts section 42A(1)(c) which excludes indictable-only homicide offences, indictable-only sexual offences and ancillary offences linked to these from eligibility and sets out the specific offences covered by these definitions.
- 137 Any Crown Court judge will be eligible to hear cases by judge-alone in the Crown Court Bench Division. The legislation governing judicial deployment in the Crown Court is the Senior Courts Act 1981. Section 8(1) of that Act provides that the jurisdiction of the Crown Court may be exercised by a High Court judge, a circuit judge, a recorder, a qualifying judge advocate, or a District Judge (Magistrates’ Courts). The allocation of an appropriate trial judge for Crown Court Bench Division cases will continue to be governed by section 75 of that Act and by the Criminal Practice Directions.
- 138 There will be no changes to the procedures applying to pre-trial or post-trial hearings (including sentencing). Nor will there be any change to the routes of appeal against conviction or sentence as a result of the introduction of trials by judge alone; the same procedures will continue to apply as if the defendant were tried by a judge and jury.
- 139 Preparatory hearings in the Crown Court can be ordered under section 7 of the Criminal Justice Act 1987 in cases involving serious or complex fraud, and section 29 of the Criminal Procedure and Investigations Act 1996 in other serious or complex cases. Section 16 of the Terrorism Act 2006 amended section 29 to make preparatory hearings mandatory in certain terrorism-related cases.
- 140 Ordinarily, rulings made during a preparatory hearing ordered under section 7 or section 29 may be subject to interlocutory appeal under section 9 of Criminal Justice Act 1987 or section 35 of Criminal Procedure and Investigations Act 1996. However,

section 42A(5) of this Bill will prevent any appeals from being made against a decision to order a trial to be heard by judge alone. This includes interlocutory appeal where the decision is taken at a preparatory hearing.

141 Any case in the existing caseload that meets the criteria may be tried in the Bench Division or by a judge alone on the grounds of technicality or likely length, provided that the trial is listed to begin after implementation of the reforms. The date of implementation will be specified in regulations.

142 Cases may also be reallocated trial where there has been a significant change of circumstances. This may include situations where a case no longer meets the tests in Clauses 3 and 4 and is therefore eligible for jury trial, or vice versa, and the case becomes eligible for the Crown Court Bench Division or judge-alone trial.

143 Where an indictable-only offence is added to a case in the Bench Division, or an excluded offence is added to a case ordered to be tried by a judge alone under section 42A of this Bill, it must always be reallocated to jury trial. Similarly, where a case has been ordered to be tried by a judge alone under section 42A of this Bill and the court considers it is now in the public interest for the trial to go before a jury, it must always be reallocated to jury trial. Finally, where a jury trial has started, the court cannot reallocate a case to the Crown Court Bench Division or to a judge-alone trial under section 42A as this would cause disproportionate operational disruption.

144 For all other cases assigned to the Crown Court Bench Division or a judge-alone trial under section 42A, where there is a relevant change of circumstances the court has discretion (defined in the Bill) as to whether to reallocate a case to jury trial. The court can use this discretion to reallocate a case unless both parties' consent to the case being tried without a jury. If a trial has started (defined in the Bill as after the opening of the prosecution's case), the court can reallocate the case to be heard by a jury at any time before the conclusion of the trial, subject to the same consideration of the appropriateness of reallocation and the parties' consenting to continuing the trial without a jury. Alternatively, before the start of a jury trial, the Bill defines where judges must reallocate relevant cases to the Crown Court Bench Division, subject to the same consideration of the appropriateness of reallocation and also defines how the court may make an order for the case to be tried by a judge-alone under Section 42A.

Admissibility of evidence

Sexual Behaviour evidence:

145 Currently, where the defence (and not the prosecution) seek to admit the sexual behaviour evidence of a complainant into evidence in sexual offence cases is governed by section 41 – 43 of the Youth Justice and Criminal Evidence Act 1999. The measure in this Bill will simplify the existing legislative threshold for sexual behaviour evidence, making it easier to interpret and to apply consistently. It will require the evidence to have substantial probative value and will ask the judge to consider a number of factors when deciding upon admissibility, such as the extent to which the evidence is necessary to rebut or explain evidence adduced by another party, or the risk that the evidence relies on myths and misconceptions. This new threshold will apply to trials of any offence type, where sexual behaviour evidence is adduced.

Defendant bad character evidence and propensity:

- 146 The regime for the admission of bad character evidence in criminal proceedings is found in chapter 1 of part 11 of the Criminal Justice Act 2003. Bad character evidence is defined in section 98 as evidence “of, or of a disposition towards, misconduct on his part, other than evidence which—
- a. “has to do with the alleged facts of the offence with which the defendant is charged, or
 - b. is evidence of misconduct in connection with the investigation or prosecution of that offence.”
- 147 Evidence of a defendant’s bad character may be admitted into evidence if it meets one of the ‘gateways’ for admission provided at section 101(1) Criminal Justice Act 2003. Gateway (d) provides that evidence may be admitted if it is relevant to an important matter in issue between the defendant and the prosecution. Matters in issue between the defendant and the prosecution include the defendant’s propensity to commit offences of the kind charged, unless that propensity makes it no more likely that the defendant is guilty of the offence (section 103(1)(a) Criminal Justice Act 2003. This measure will amend section 103 Criminal Justice Act 2003 so that it provides that, where a defendant is charged with an offence amounting to domestic abuse, the defendant’s propensity to commit offences of the kind charged may (without prejudice to any other way of doing so) be established by evidence that the defendant has, on another occasion, been convicted of an offence amounting to domestic abuse.

Previous allegations:

- 148 Per the Court of Appeal in AM [2009] EWCA Crim 618, evidence about previous complaints of sexual offences which are said to be false is not normally treated as being about any sexual behaviour of the complainant within the meaning of section 42(1)(c) Youth Justice and Criminal Evidence Act so as to fall within the ambit of section 41 Youth Justice and Criminal Evidence Act 1999. Instead, it is to be treated as bad character evidence against the complainant and so its admissibility is determined under section 100 Criminal Justice Act. If questions are asked of a complainant about a previous allegation of sexual violence without there being any basis for suggesting those allegations were false, then those questions would be about a complainant’s previous sexual behaviour (R v C and B [2003] EWCA Crim 29, at [27]). Where the purpose of such questions is to suggest that the complaint previously lied, they would be prohibited by current section 41(4) Youth Justice and Criminal Evidence Act, which prevents questions about sexual behaviour evidence intended to impugn the complainant’s credibility. The courts have concluded, accordingly, that there must be a ‘proper evidential basis’ that a previous allegation (a) has been made and (b) is untrue before evidence concerning it can be admitted (AM [2009] EWCA Crim 618, at [21]). The measure in this Bill will amend part 11 of the Criminal Justice Act so that primary legislation provides that, where the court is considering whether to admit evidence that the complainant had previously made a false complaint they were a victim of sexual offence, the court must be satisfied that there is a ‘proper evidential basis’ for the assertion that the complainant has (a) made a complaint; and (b) that the complaint was false.

Compensation claims evidence:

- 149 Evidence that a complainant has made a previous claim for compensation is currently admissible if it meets the normal test of being relevant to the issues in the trial. There is no elevated threshold that must be met in order for evidence of a

previous claim for compensation to admitted, nor any legislation in particular that relates to admissibility of compensation claim evidence. This measure will introduce an elevated admissibility threshold for compensation claim evidence. It will provide that the evidence must have substantial probative value in relation to a matter in issue that is of substantial importance in the context of the case as a whole. This clause only applies in sexual offence prosecutions.

Special measures

150 Chapter I of part II of the Youth Justice and Criminal Evidence Act 1999, provides a suite of measures that are designed to assist vulnerable and intimidated non-defendant witnesses in criminal proceedings to give evidence. These measures are known as ‘special measures’.

151 These measures include options such as giving evidence via live link, pre-recorded cross-examination, and the use of an intermediary to facilitate communication between the witness and the court. Other measures involve screens to shield the witness from the accused, the removal of wigs and gowns to create a less intimidating environment and the use of communication aids.

152 Witnesses may be eligible for special measures under section 16 or section 17 of the Youth Justice and Criminal Evidence Act. Section 16 applies to vulnerable witnesses, including those under 18 years of age or those whose evidence may be affected by a mental or physical disability. Section 17 applies to intimidated witnesses, where the quality of evidence may be diminished by fear or distress in connection with giving evidence.

153 While eligible witnesses can choose to apply for special measures, it remains for the court to direct the measures which, in its opinion, would maximise the quality of a witness’ evidence, taking into account the witness’s views and ensuring that their use does not prevent the effective testing of evidence. Section 20(2) provides that the court may discharge or vary a special measures direction if it appears in the interests of justice to do so.

154 This Bill amends several sections of the Youth Justice and Criminal Evidence Act, including sections 23, 25 and 28, to clarify how certain special measures operate. It also updates section 33 to confirm that special measures may be used to enable victims to read their victim personal statements during sentencing and introduces three new provisions relating to the use of screens for witnesses eligible under section 17, independent supporters and allowing a witness to be accompanied while giving evidence.

Part 2 – Other provision about courts and tribunals

Decisions of courts under Children Act 1989

155 Section 1(2A) inserted into the Children Act 1989 the presumption that, unless the contrary is shown, involvement of each parent in the life of the child will further the child’s welfare. This applies in specified proceedings concerning parental responsibility (as specified in section 1(7)) and applications under section 8 (for child arrangements orders, specific issue orders or prohibited steps orders).

156 Section 1(2B) clarified that the presumption does not require any particular division of the child’s time between parents, nor does it imply a right to direct or face-to-face contact.

- 157 Section 1(6) defined the scope of the presumption, specifying which parents it applied to and under what circumstances. It applied only to a parent who could be involved in the child's life in a way that did not put the child at risk of suffering harm.
- 158 This measure repeals section 1(2A), (2B), (6) and (7) from the Children Act 1989. The remaining provisions of section 1, including the paramount welfare principle (subsection (1)), the no delay principle (subsection (2)), and the no order principle (subsection (5)), remain unchanged and will continue to guide judicial decision-making.
- 159 Prior to the introduction of the statutory presumption, it was already well established in case law that the involvement of both parents in a child's life would usually further the child's welfare and that compelling reasons must be demonstrated for the court to suspend contact between a child and their parent.

Tribunals

- 160 The office of Senior President of Tribunals was established by the Tribunals, Courts and Enforcement Act 2007. Provisions relating to the Senior President of Tribunals are spread across the Senior Courts Act 1981, the Employment Tribunals Act 1996, and the Public Service Pensions and Judicial Offices Act 2022. This measure amends each of these Acts, as well as the Courts Act 2003 and the Constitutional Reform Act 2005, to make reforms to the office of Senior President of Tribunals in relation to the leadership of tribunals, and to give the Lady Chief Justice leadership functions in relation to England and Wales. The reform makes no change to the current territorial extent of the tribunals.

Lay justices' allowances

- 161 Section 15 of the Courts Act 2003 prescribes three categories of allowances for magistrates: travel, subsistence, and financial loss. These categories are fixed in primary legislation, with further information on what is covered by those categories in sections 15(3), (4) and (5) and with administrative detail provided in regulations made under the power in subsection (8), in particular the Justices' Allowances Regulations 2015 (SI 2015/1423), as amended (most recently by the Justices' Allowances (Amendment) Regulations 2023 (SI 2023/737)). The current framework does not allow the Lord Chancellor to alter or add to these categories without further primary legislation.
- 162 The measure replaces section 15 in its entirety, replacing it with a delegated power enabling the Lord Chancellor to make regulations for payments in respect of expenditure or financial loss incurred in connection with the performance of a magistrate's duties.
- 163 Regulations made under the new power in section 15 will be subject to the negative resolution procedure.

The Crown Court in the City of London

- 164 Section 8(3) of the Senior Courts Act 1981 currently provides when the Crown Court sits in the City of London it shall be known as the Central Criminal Court; and the Lord Mayor of the City and any Alderman of the City shall be entitled to sit as judges of the Central Criminal Court with any judge of the High Court, Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates' Courts).
- 165 The measure in the Bill preserves the title of the Central Criminal Court to the

premises designated for it, as provided in Section 29 of the Courts Act 1971, which governs the accommodation and naming of the Central Criminal Court and the Mayor's and City of London Court. It also preserves the entitlement of the Lord Mayor and Aldermen to sit with judges at the Central Criminal Court, and any other Crown Court location in the City of London.

Territorial extent and application

166 The substantive provisions in the Bill extend and apply to England and Wales only. The clauses concerned with the reform of the office of the Senior President of Tribunals also applies to Northern Ireland and Scotland.

167 Court reform is reserved for Wales and devolved to Scotland and Northern Ireland.

168 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

PART 1 - PROCEEDINGS IN THE CRIMINAL COURTS

Determining mode of trial

Clause 1: Removal of right to elect trial on indictment

169 Subsection (1) introduces a series of amendments to Part 1 of the Magistrates' Courts Act 1980 which removes the right of an adult defendant charged with a triable either-way offence to elect for Crown Court trial. The effect of the amendments made by subsections (2) to (8) is that the mode of trial will be determined solely by the magistrates' courts, including where written procedures apply.

170 Subsection (2) makes a consequential amendment to section 17ZA of the Magistrates' Courts Act 1980 to remove the cross-reference to subsection (5) of section 17ZC, which is repealed by this Clause. This ensures that section 17ZA(6) continues to operate correctly once the right to elect Crown Court trial is removed.

171 Subsection (3) makes a series of amendments to section 17ZC of the Magistrates' Courts Act 1980 to remove all provisions that previously allowed a defendant who had given a written indication of a not guilty plea to decline summary trial. The amendments also remove the related cross-references and procedural steps that supported that right.

172 Instead, section 17ZC is recast so that, following a written indication of a not guilty plea, a defendant may choose to proceed by way of written allocation proceedings. Where written allocation proceedings are not elected, or do not apply, the magistrates' court will determine the mode of trial in the usual way. These amendments are consequential on the removal of the defendant's right to elect Crown Court trial for either-way offences.

173 Subsection (4) makes a series of consequential amendments to section 18 of the Magistrates' Courts Act 1980 to remove all provisions referring to a defendant giving, or failing to give, an indication of non-consent to summary trial at the initial hearing.

These changes reflect the removal of the right to elect Crown Court trial for triable either-way offences.

- 174 Subsection (4) also updates section 18 so that it operates coherently with the revised allocation procedure. In particular, references to the former distinction between scheduled and non-scheduled offences are removed and section 18(1A) and (4A) are amended so that written allocation proceedings depend only on whether the defendant has given a written indication of a not guilty plea and has elected for written allocation proceedings. In all other cases, the magistrates' court will determine the mode of trial.
- 175 Subsection (5) makes consequential amendments to section 20 of the Magistrates' Courts Act 1980, which applies where the magistrates' court has decided that summary trial is the more suitable mode of trial. The amendments remove the requirement for the defendant's consent to be tried summarily and the associated procedural steps.
- 176 Section 20 is also amended so that, once the court has determined that summary trial is appropriate, the court must explain its decision to the defendant and then proceed to the summary trial. These changes ensure that section 20 functions coherently following the removal of the defendant's right to elect trial on indictment.
- 177 Subsection (6) amends section 22 of the Magistrates' Courts Act 1980, which sets out the special procedure for scheduled either-way offences where the court must consider the value involved. A new subsection (2A) is inserted to make clear that, where section 22(1) applies, if it appears to the court that the value exceeds the relevant sum, or if the court cannot clearly determine that the value does not exceed the relevant sum, the normal allocation procedures in sections 19 to 21 apply. This ensures that section 22 operates consistently by specifying the route to be taken in cases where the value involved is unclear or appears to exceed the £5,000 threshold.
- 178 Subsection (7) amends section 22A of the Magistrates' Courts Act 1980 by repealing subsection (2), removing an adult defendant's ability to elect Crown Court trial for low value shoplifting.
- 179 Subsection (8) amends section 23 of the Magistrates' Courts Act 1980, which allows the court to determine mode of trial in the absence of the accused where they are legally represented. The amendment removes the provisions requiring the defendant's consent to summary trial and the associated alternative of sending the case to the Crown Court. Where the court has decided that summary trial is the more suitable mode of trial, section 23(4) now requires the court to proceed to the summary trial of the information.
- 180 Subsection (9) amends section 46ZA of the Senior Courts Act 1981, which enables the Crown Court to remit an either-way case back to the magistrates' court for trial. The amendment removes the requirement, in the case of an adult defendant, for the defendant to consent before the Crown Court may exercise that power. This ensures that the remittal power operates consistently with the removal of the defendant's right to elect trial on indictment.
- 181 Subsection (10) amends section 47 of the Crime and Disorder Act 1998 to repeal subsection (1C), thereby removing the requirement for youth courts to offer a youth defendant the choice to elect Crown Court trial before remitting their case to a magistrates' court for trial of a triable either-way offence.

182 Subsection (11) makes a number of consequential amendments to related legislation to reflect the removal of the defendant's right to elect Crown Court trial for either-way offences. These amendments update or repeal references to provisions that allowed defendants to withhold consent to summary trial, to elect Crown Court trial, or that relied on the previous allocation framework.

183 In particular, subsection (11) amends section 51 of the Crime and Disorder Act 1998 to remove references to provisions in the Magistrates' Courts Act 1980 that are repealed by the Clause; repeals section 52 of the Criminal Justice and Courts Act 2015, which related to election for low-value shoplifting; and removes the various un-commenced provisions in the Judicial Review and Courts Act 2022 concerning written election or non-consent. It also updates cross-references in Schedule 2 to that Act and in section 39 of the Crime and Policing Act 2026 to ensure consistency with the revised allocation procedure.

Clause 2: Written indication of guilty plea: removal of right to object to venue

184 Clause 2 amends section 17ZB of the Magistrates' Courts Act 1980, which sets out the procedure that applies where a defendant has given a written indication of a guilty plea. The amendments remove the ability of the defendant or the prosecutor to object to the case being sent to the Crown Court for sentence and instead provide a process for each to make representations about whether the magistrates' court's sentencing powers would be adequate.

185 Subsection (2) amends section 17ZB(5) so that, where the court has decided it is highly likely that its sentencing powers would be insufficient if the defendant pleaded guilty and were convicted at a summary trial, the court must invite the defendant to make representations on that issue. This replaces the previous mechanism under which the defendant could object to the case being sent to the Crown Court for trial.

186 Subsections (3) and (4) make consequential amendments to subsections (6) and (7) of section 17ZB. They remove references to the defendant or prosecutor objecting to the venue of trial and instead substitute references to making representations about the adequacy of the magistrates' court's sentencing powers.

187 Subsection (4) also amends section 17ZB(7)(c) to require the court to invite the prosecutor to make representations on whether, in the event of a guilty plea and conviction at a summary trial, the magistrates' court's sentencing powers would be adequate.

188 Subsection (5) amends section 17ZB(8) so that, after considering any representations from the defendant or the prosecutor, the court must determine whether it would commit the defendant to the Crown Court for sentencing. If the court is satisfied that its sentencing powers would be inadequate, it is required to proceed in accordance with section 51 of the Crime and Disorder Act 1998.

Trial on indictment without jury

Clause 3: Trial on indictment without a jury: general rule for allocation

189 Clause 3(1) inserts new sections 74A, 74B, 74C and 74D into Part 3 of the Senior Courts Act 1981. It sets out when and how the Crown Court should allocate (or reallocate) a case for trial without a jury and the procedure for making determinations.

74A Allocation of cases without a jury

- 190 Subsection (1) confirms that section 74A applies wherever one or more defendants are to be tried on indictment for one or more offences.
- 191 Subsection (2) places a duty on the court to determine whether the trial should proceed with or without a jury, at a time or times prescribed in Criminal Procedure Rules.
- 192 Subsections (3) and (4) set out the circumstances in which a trial must be heard with or without a jury. Subsection (3) provides that a jury is required if any of the offences to be tried are indictable-only, or – after applying the sentencing test in subsection (5) – the defendant is likely to receive a sentence of more than three years’ imprisonment or detention if convicted of the offence(s) to be tried. Subsection (4) confirms that in all other situations, the trial must take place without a jury.
- 193 Subsection (5) establishes the test for determining whether cases that do not involve indictable-only offences are eligible for a judge-alone trial under section 74A. A jury must be used if the court considers that, should the defendant be convicted, they would likely receive a sentence of more than three years imprisonment or detention for the offence(s) for which the defendant is to be tried.
- 194 Subsection (6) signposts to related provisions. Paragraph (a) refers to section 74B, which sets out when the court must make a fresh determination following a change of circumstances. Paragraph (b) refers to sections 74C and 74D, which make further provision about how determinations under this section and section 74B are to be made, including the assessment of likely sentence and the procedural requirements associated with such determinations.

74B Reallocation of cases following changes to the indictment, etc

- 195 Subsection (1) requires the court to reallocate to a jury any trial that was previously allocated to the Bench Division if, following a relevant change of circumstances an indictable-only offence is added to the indictment (see section 74A(3)(a)). This applies at any time before the conclusion of the trial.
- 196 Subsection (2) deals with other cases in which a trial has initially been determined to be conducted without a jury and a relevant change of circumstances occurs, but the mandatory reallocation required by subsection (1) does not arise. In such cases, the court is required to reconsider the mode of trial in accordance with the criteria set out in subsections (3) and (4), which apply at any time before the conclusion of the trial.
- 197 Subsections (3) and (4) set out the framework for reconsidering mode of trial. Under subsection (3), the trial must be reallocated and conducted by a jury unless one or more of the following conditions applies:
- the court considers that the defendant, or defendants, would be likely to receive a sentence of three years or less if convicted of the offence(s) to be tried (i.e., the condition in section 74A(3)(b) is still not met);
 - the court considers that it would not be appropriate to reallocate the trial (see section 74C(6) and (7)); or
 - the prosecution and the defendant consent to the trial being conducted without a jury.
- Subsection (4) provides that where any of these conditions applies, the trial must

not be reallocated and is to be conducted without a jury.

198 Subsection (5) addresses cases where a court has initially determined that a trial is to be conducted with a jury, but a relevant change of circumstances occurs before the beginning of the trial. In such cases, the court must reconsider whether the trial should be conducted with or without a jury in accordance with subsections (6) and (7).

199 Subsection (6) provides that, in these circumstances, the trial is to be reallocated and conducted without a jury unless one of three conditions applies. These are:

200 An indictable-only offence is still to be tried (sections 74A(3)(a));

- The court considers that the defendant, or defendants, would still be likely to receive a sentence of more than three years' imprisonment or detention if convicted (section 74A(3)(b)); or
- The court considers that it would not be appropriate to reallocate the trial (see section 74C(6) and (7)).

201 Subsection (7) provides that, where any of these conditions applies, the trial is to be conducted with a jury.

202 Subsection (8) defines what constitutes a "relevant change of circumstances" in relation to a trial on indictment for the purposes of the clause.

203 Paragraph (a) covers situations where the defendants to be tried, or the offences on the indictment, have changed since the last determination. This includes, for example, cases where additional offences are added to the indictment, where counts are severed, or where indictments are joined. These situations constitute a relevant change of circumstances if, following the initial determination of mode of trial, the trial either now meets, or no longer meets, the tests in 74A(3), i.e., the tests for whether a case should be heard in the Bench Division.

204 Paragraph (b) concerns cases where new evidence comes to light which would, or might, affect whether the likely sentence condition in section 74A(5) is met, i.e., whether the sentence is likely to be three years' or more, or not. This is intended to capture significant new material indicating that the offending is more serious, or less serious, than originally understood. It is not intended to require the court to redo the full allocation exercise each time new evidence emerges, but simply to note where new material might alter the earlier likely-sentence assessment so as to justify reconsideration under section 74B.

205 Subsection (9) makes supplementary provision for the purposes of the clause. Paragraph (a) provides that a trial is to be treated as beginning with the opening of the prosecution case. Paragraph (b) clarifies that references to a trial being conducted with or without a jury include, where the trial has already begun, references the trial being continued on that basis. Paragraph (c) defines what is meant by "reallocating" a trial and paragraph (d) defines "determination" as a determination made under section 74A or 74B.

74C Procedure for making determinations under 74A or 74B

206 Subsection (1) confirms that the rules in this section apply whenever the court is making a determination under either section 74A or 74B.

207 Subsection (2) requires the court to have regard to the Sentencing Council's allocation

guidelines when making a determination under section 74A or 74B.

- 208 Subsection (3) sets out procedural requirements before the court assesses the likely sentence under section 74A or 74B. The prosecution, the defendant, and any co-defendants must be given an opportunity to make representations before a mode of trial decision is reached. The prosecution must also be given the opportunity to inform the court of any previous convictions, since these may affect the likely sentence.
- 209 Subsection (4) sets out how the court should determine the sentence that a defendant would be likely to receive for the offence or offences to be tried. The court must consider any representations made by the parties under subsection (3) and must have regard to any relevant sentencing guidelines to the extent prescribed in Criminal Procedure Rules. It must also disregard any offences to which the defendant has pleaded guilty. Where the defendant is under a disability within the meaning of section 4(5) of the Criminal Procedure (Insanity) Act 1964 the court must disregard that disability for the purpose of assessing the likely sentence
- 210 Subsection (5) requires the court, before determining under section 74B whether it would be appropriate to reallocate the trial, to give the prosecution and the defendant (or defendants) an opportunity to make representations about the matters relevant to reallocation (that is, the matters listed in subsection (7)).
- 211 Subsection (6) provides that, in deciding whether it would be appropriate to reallocate the trial, the court must have regard only to the factors listed in subsection (7) and to any representations made under subsection (5). The court may not have regard to any other matters.
- 212 Subsection (7) lists the matters that are relevant to the reallocation decision. These include: the extent to which any likely sentence determined under section 74A(5) as applied by 74B differs from the threshold sentence of three years; the interests of any victim; the desirability of avoiding the need for witnesses to give evidence again; any delay or wasted costs that reallocation would or might cause; and any effect on other Crown Court business. Criminal Procedure Rules may prescribe additional relevant matters.
- 213 Subsection (8) provides that, when having regard to any of the matters listed in subsection (7) for the purposes of deciding whether it would be appropriate to reallocate the trial, the court must also have regard to any additional provision relating to those matters that may be prescribed in Criminal Procedure Rules.
- 214 Subsection (9) defines several terms used in this section. “Co-defendant” refers to any other person charged on the same indictment. “Previous conviction” includes convictions in the United Kingdom and convictions of service offences within the meaning of the Armed Forces Act 2006. “Sentencing guidelines” means the definitive guidelines issued by the Sentencing Council under section 120 of the Coroners and Justice Act 2009, including any subsequent revisions. The “threshold sentence” means a sentence of imprisonment or detention of three years.
- 215 Subsection (10) provides that references in this section to reallocating a trial are to be read in accordance with section 74B(9)(c), which defines reallocation by reference to the last determination made under section 74A or 74B.

74D Further provision about determinations under section 74A or 74B

- 216 Subsection (1) provides that there is no right of appeal against the court’s

determination of the mode of trial under sections 74A and 74B.

217 Subsection (2) allows the court to make reallocation decisions under section 74B without a hearing. This allows reallocation decisions, including those required under subsections (1), (2) and (5), to be made on the papers where appropriate.

218 Subsection (3) provides that the allocation rules in sections 74A(3) and 74B(3) and (7) are subject to any other statutory provisions that enable trial on indictment to be conducted without a jury. This ensures that the requirements in those sections do not prevent a judge-only trial from taking place where another enactment applies, such as where there is a danger of jury tampering or where a trial may be conducted without a jury under the new provisions relating to complex or lengthy cases.

219 Subsection (4) makes clear that nothing in sections 74A to 74C limits the sentencing powers of the Crown Court. A judge sitting without a jury may impose any sentence that could be imposed in an ordinary Crown Court trial, including a sentence of more than three years' imprisonment or detention.

220 Subsection (5) provides that, for the purposes of determining the likely sentence under sections 74A to 74C and section 74D, two or more consecutive sentences are to be treated as a single sentence. This ensures that where several shorter sentences are likely to be imposed consecutively, they are assessed together when determining whether the threshold sentence of three years would be exceeded.

Clause 3: Commencement and transitional provisions

221 Subsections (2) and (3) set out when the amendments made by subsection (1) take effect. Subsection (2) provides that the new allocation regime applies to any trial on indictment that begins on or after a "specified day". Subsection (3)(a) confirms that a trial is treated as beginning with the opening of the prosecution case. Subsection (3)(b) provides that the specified day must fall at least three months after the coming into force of subsection (1) and is to be fixed by regulations made by the Lord Chancellor. This minimum period allows courts and practitioners sufficient time to identify cases listed to begin on or after the specified day and to determine whether they should proceed with or without a jury.

222 Subsection (4) makes transitional provisions for cases in which the defendant was arraigned before section 74A of the Senior Courts Act 1981 comes into force. Where section 74A applies to such a case, the court must determine the appropriate mode of trial as soon as reasonably practicable and may do so without a hearing. This ensures that all Crown Court trials listed to begin on or after the specified day can be reviewed in advance and allocated to the appropriate mode of trial in accordance with the new regime.

Clause 4: Trial on indictment without a jury: complex or lengthy cases

223 Clause 4(1) and (2) amends the Criminal Justice Act 2003 to insert new 'Part 6A' and sections 42A, 42B and 42C, which make provision for trials on indictment without a jury to be directed for cases considered to be suitably technical and lengthy in England and Wales.

42A Power to order certain complex or lengthy cases to be tried without a jury in England and Wales

224 Subsection (1) sets out the conditions that must be met before the court may consider directing that a trial be conducted without a jury under section 42A. At least one of the offences on the indictment must include a Scheduled offence listed in Part 1 of Schedule 3ZA. No excluded offence (defined in section 42B and including homicide

and indictable-only sexual offences) may be tried alongside the Scheduled offence. In addition, a preparatory hearing must have been ordered under section 7 of the Criminal Justice Act 1987 or section 29 of the Criminal Procedure and Investigations Act 1996.

225 Subsection (2) provides that any order for judge-alone trial under this section must be made before the beginning of the trial, which is treated as beginning with the opening of the prosecution case.

226 Subsection (3) sets out that the court must be satisfied that the case is suitably technical and lengthy before making an order under this section. The court must be satisfied that the likely complexity or length of the trial (or both) makes it appropriate for the trial to be conducted without a jury. The court must also be satisfied that it is not in the public interest for the trial to be conducted with a jury, and that there are no other reasons why a jury trial would be more appropriate.

227 Subsection (4) provides that, before making an order for judge-alone trial under this section, the court must give the prosecution and defendant (or defendants) an opportunity to make representations on whether such an order should be made and must consider representations received.

228 Subsection (5) provides that there is no right of appeal against the decision to make, or not to make, an order under section 42A.

229 Subsection (6) states that, for the purposes of this section, a trial begins with the opening of the prosecution case.

230 Subsection (7) signposts to section 42C, which sets out the circumstances in which an order made under this section may be revoked.

231 Subsection (8) refers to section 79A of the Senior Courts Act 1981, which contains further provisions about the practice and procedure applicable to trials conducted without a jury by virtue of section 42A.

42B Excluded offences for purposes of section 42A

232 Subsections (1) and (2) define which offences are excluded from the scope of section 42A. A case cannot be directed for a judge-alone trial under section 42A if the indictment includes any “homicide offence”, any “sexual offence” that is triable only on indictment, or any ancillary offence relating to those categories.

233 Subsection (3) lists the homicide offences that fall within this exclusion. The effect is that all forms of homicide, including murder, manslaughter and offences causing death, cannot be tried without a jury under this Part, even if charged alongside a Scheduled offence.

234 Subsection (4) provides that the exclusion also applies to sexual offences that are triable only on indictment, ensuring that the most serious sexual offences always require a jury trial.

235 Subsection (5) makes clear that the exclusion extends to ancillary offences connected to homicide or indictable-only sexual offences, including attempts, conspiracies, inchoate offences under Part 2 of the Serious Crime Act 2007, and aiding or abetting such offences.

42C Revocation of orders made under section 42A

236 Subsection (1) provides that this section applies where the court has made an order

for a judge-alone trial under section 42A.

237 Subsection (2) confers a general power on the court to revoke such an order at any time before the conclusion of the trial, whether or not any of the specific duties to revoke set out in subsections (3) and (4) apply.

238 Subsection (3) requires the court to revoke the order, if at any time before the conclusion of the trial, the condition in section 42A(1)(c) (no excluded offence) ceases to be met, or if the court considers that it is in the public interest for the trial to be conducted with a jury. These revocation duties are not subject to consent of the parties or to any discretion.

239 Subsection (4) provides further circumstances in which the court must revoke the order. Mandatory revocation is required if the condition in section 42A(1)(b) ceases to be met (the indictment no longer includes a Scheduled offence), or if the court is no longer satisfied that the likely complexity or likely length of the trial (or both) makes it appropriate for the trial to be conducted without a jury.

240 However, subsection (5) qualifies that duty to revoke under subsection (4). An order may not be revoked in those circumstances if the court considers that it would not be appropriate to do so, or if the prosecution and all defendants consent to the trial being conducted (or continued) without a jury. These qualifications do not apply to the mandatory revocation duties set out in subsection (3).

241 Subsection (6) requires the court, before revoking an order under subsection (2) or (4) to give the prosecution and the defendant (or defendants) an opportunity to make representations on that question.

242 Subsection (7) sets out the matters the court must or may take into account when deciding whether to revoke an order under subsections (2) or (4). The court must consider any representations made under subsection (6). It may also have regard to any other matters it considers relevant. Where the court is considering revocation under subsection (4), it must also have regard to the matters relevant to revocation listed in subsection (8).

243 Subsection (8) lists the matters that are relevant to revocation for the purposes of subsection (7)(c). These include the interests of any victim, the desirability of avoiding the need for witnesses to give evidence again, the extent of any delay or wasted costs that revocation might cause, and any effect on other Crown Court business. Criminal Procedure Rules may specify additional relevant matters.

244 Subsection (9) provides that, when having regard to any of the matters listed in subsection (8), the court must also have regard to any further provision relating to those matters that is specified in Criminal Procedure Rules.

245 Subsection (10) provides that there is no right of appeal against a decision made under section 42C to revoke an order made under section 42A.

246 Subsection (11) provides that the court may determine whether to revoke an order under section 42A without a hearing. This allows revocation decisions, including those required by subsections (3) and (4) or arising under subsection (5), to be made on the papers where appropriate.

247 Subsection (12) makes clear that revoking an order under this section does not prevent the court from making a fresh order under section 42A in relation to the same trial.

Clause 4: Commencement and further provisions

- 248 Subsection (3) amends the heading of Part 7 of the Criminal Justice Act 2003 to add the words “: jury tampering”, to clarify that the existing Part 7 provisions concern trials on indictment without a jury on grounds of jury tampering only.
- 249 Subsection (4) makes a consequential amendment to section 330(5)(a) of the Criminal Justice Act 2003, which lists provisions for which procedural matters may be governed by rules or orders. The amendment adds a reference to paragraph 20 of new Schedule 3ZA.
- 250 Subsection (5) inserts new Schedule 3ZA into the Criminal Justice Act 2003, as set out in Schedule 1 to this Bill. Schedule 3ZA lists the offences that may be considered for a judge-alone trial under section 42A.
- 251 Subsection (6) provides that the amendments made by subsections (2) to (5) apply to any trial on indictment listed to begin on or after a “specified day”, regardless of when the preparatory hearing was ordered. The specified day must be at least three months after these provisions come into force, allowing courts and practitioners sufficient time to identify affected cases and to prepare for the possibility of an application for a judge-alone order.
- 252 Subsection (7) applies where section 42A is relevant to a trial for which a preparatory hearing was ordered before subsections (2) to (5) come into force. In such cases, an order under section 42A may be made without a hearing.
- 253 Subsection (8) defines key terms for the purposes of subsections (6) and (7). Paragraph (a) confirms that a trial is to be treated as beginning with the opening of the prosecution case. Subsection 8(b) defines “the specified day” as a day appointed by regulations made by the Lord Chancellor, which must fall at least three months after commencement. Subsection 8(c) defines “preparatory hearing” by reference to section 7 of the Criminal Justice Act 1987 and section 29 of the Criminal Procedure and Investigations Act 1996.

Schedule 1: New Schedule 3ZA to the Criminal Justice Act 2003

- 254 Schedule 1 inserts new Schedule 3ZA into the Criminal Justice Act 2003. Part 1 of that Schedule lists the offences which may be considered for a judge-alone trial under section 42A. These offences comprise a range of fraud and financial crime offences, together with related ancillary offences.
- 255 Part 2 of Schedule 3ZA permits the Secretary of State, by order to amend the list of offences in Part 1 by adding or removing offences, including offences under enactments that are no longer in force.

Clause 5: Consequential amendments relating to sections 3 and 4

- 256 Subsections (1) and (2) make a series of consequential amendments to existing legislation to ensure that trials on indictment conducted without a jury under the new section 74A of the Senior Courts Act 1981 and under section 42A of the Criminal Justice Act 2003 operate consistently with other statutory provisions.
- 257 Subsection (1) amends section 4A of the Criminal Procedure (Insanity) Act 1964 by inserting a new subsection (6). Where a trial is, or is to be, conducted without a jury by virtue of section 74A or 74B of the Senior Courts Act 1981 or section 42A of the Criminal Justice Act 2003, the determination under section 4A(2) (as to whether the defendant did the act or made the omission charged) is to be made by the court

without a jury, and references in that section to a jury are to be read accordingly.

258 Subsection (3) makes a minor amendment to section 79(2)(a) of the Senior Courts Act 1981 by removing the words “by jury”. This ensures that the provision applies to trials generally, whether they are heard with a jury or by judge-alone.

259 Subsection (4) inserts a new section 79A into the Senior Courts Act 1981. New section 79A makes supplementary provision for trials on indictment that are conducted without a jury by virtue of sections 74A or 74B of that Act, or section 42A of the Criminal Justice Act 2003.

260 Section 79A(1) confirms that the section applies to any trials conducted, or continued, without a jury under those provisions.

261 Section 79A(2) confirms that the court retains all the powers associated with the Crown Court which it would have had in a jury trial.

262 Section 79A(3) ensures that, unless the context requires otherwise, any reference in legislation or subordinate legislation to a jury, the verdict of a jury, or the findings of a jury is to be read as a reference to the court when trying a case without a jury. This avoids procedural difficulties where statutes expressly refer to jury functions.

263 Section 79A(4) requires the court, when convicting or acquitting a defendant in a trial conducted without a jury, to give a judgment stating the reasons for its decision.

264 Section 79A(5) provides that such a judgment must be delivered at the time of conviction or acquittal or as soon as reasonably practicable thereafter.

265 Section 79A(6) amends the operation of section 18(2) of the Criminal Appeal Act 1968 in relation to judge-alone trials. It provides that the 28-day period for giving notice to appeal or applying for leave to appeal runs from the date on which the court gives its reasoned judgment under subsection (4).

266 Subsection (5) amends section 48 of the Criminal Justice Act 2003 which makes further provision for trials without a jury in cases involving a danger of jury tampering. The amendment requires the court, where it acquits a defendant in such a trial, to give a judgment setting out the reasons for the acquittal. This aligns the reasoning requirements in jury-tampering cases with those in judge-alone trials under the new section 79A of the Senior Courts Act 1981.

267 Subsection (6) makes equivalent provision in relation to trials conducted without a jury under section 17 of the Domestic Violence, Crime and Victims Act 2004 (sample-count trials). It inserts a new subsection requiring the court to give a reasoned judgment when acquitting a defendant in such a trial, ensuring consistency across all regimes under which trials may proceed without a jury.

268 Subsection (7) amends section 122 of the Coroners and Justice Act 2009, which governs the Sentencing Council’s power to issue allocation guidelines. The amendment extends that power to include decisions by the Crown Court under sections 74A or 74B of the Senior Courts Act 1981 about whether a trial is to be conducted with or without a jury.

Sentencing powers of magistrates’ courts

Clause 6: Increase in maximum custodial sentence in magistrates’ courts

269 Subsection (1) amends paragraph 14A(1) of Schedule 23 to the Sentencing Act 2020 to expand the Secretary of State’s regulation-making power to vary the general limit on

the custodial sentence that a magistrates' court may impose for an either-way offence.

- 270 The substituted text replaces the current list of possible maximum terms (6 or 12 months) with a new list in sub-paragraph (1A), which now includes 6, 12, 18, and 24 months. This will enable the Secretary of State, by regulations, to substitute any of the specified periods for any other, thereby allowing the general limit to be increased (or reduced) within that statutory range. Sub-section (1) does not itself increase the current limit. It extends the scope of the regulation-making power to do so.
- 271 Subsection (2) amends section 133 of the Magistrates' Courts Act 1980 so that the maximum aggregate term a magistrates' court may impose when sentencing for multiple either-way offences tracks the general limit in section 224(1A)(b) of the Sentencing Code. It also amends section 133 to provide that the maximum aggregate term a magistrates' court may impose, when sentencing multiple summary only offences consecutively, is 6 months.
- 272 A new subsection (2ZA) defines the "relevant limit" as:
- a. the general limit for a single either-way offence;
 - b. except where the general limit is set at 6 months, in which case the aggregate limit remains 12 months.
- 273 This means that if regulations made under amended paragraph 14A of Schedule 23 increase the general limit to 18 or 24 months, the aggregate limit for multiple either-way offences will track that increase. The only fixed rule retained is that where the general limit for a single either-way offence is 6 months, the aggregate limit is 12 months.
- 274 Subsection (3) repeals section 155 of the Criminal Justice Act 2003 and paragraphs 16(a) and 19(2) in Schedule 2 to the Judicial Review and Courts Act 2022.
- 275 These provisions made historic amendments to section 133 of the Magistrates' Courts Act 1980 concerning the aggregate maximum term for consecutive sentences. As subsection (2) substitutes a new structure for determining the aggregate limit, including by linking it to the "general limit" set under section 224(1A)(b) of the Sentencing Code, those earlier amending provisions are now redundant and are therefore repealed.
- 276 Subsection (4) inserts a new section 224A into the Sentencing Code to ensure that the magistrates' court may not impose a custodial sentence for an either-way offence which exceeds the maximum term available on conviction on indictment for that offence.
- 277 New section 224A applies where the magistrates' general limit under section 224(1A)(b) is higher than the statutory maximum for the particular offence when tried in the Crown Court. In such cases, the magistrates' courts' powers are capped at the offence's "relevant maximum," even if the general limit is set at 18 or 24 months.
- 278 This prevents the general limit from overriding Parliament's specific maximum penalty for an offence. For example, if the general limit were increased to 24 months but an either-way offence carried a maximum sentence of 12 months on indictment, the magistrates' court could not impose more than 12 months' imprisonment.
- 279 Subsections (4) to (7) introduce and cross reference a new rule that the magistrates' court may not impose a custodial sentence for an either-way offence which exceeds

the maximum term available for that offence on conviction on indictment. Subsection (4) inserts the operative limitation in new section 224A of the Sentencing Code, and subsections (5), (6), and (7) insert signposts to that limitation into section 32 of the Magistrates' Courts Act 1980, section 282 of the Criminal Justice Act 2003, and section 13 of the Judicial Review and Courts Act 2022, respectively.

- 280 Subsection (5) inserts a new subsection (1A) into section 32 of the Magistrates' Courts Act 1980 to signpost the new limitation in section 224A of the Sentencing Code. Section 32(1) sets out the penalties available on summary conviction for either way offences by reference to the "general limit" in a magistrates' court. The new subsection (1A) makes clear that, where the general limit is higher than the maximum custodial penalty available for the offence on conviction on indictment, the lower statutory maximum continues to apply.
- 281 This ensures consistency between the Magistrates' Courts Act and the Sentencing Code: even if the magistrates' general limit is increased to 18 or 24 months, a magistrates' court may not exceed the maximum penalty prescribed for the specific offence. The new subsection therefore directs readers to section 224A, which contains the operative cap.
- 282 Subsection (6) inserts a new subsection (3A) into section 282 of the Criminal Justice Act 2003. Section 282 applies the magistrates' "general limit" to certain either-way offences that are not listed in Schedule 1 to the Magistrates' Courts Act 1980. The new subsection (3A) signposts the limitation in section 224A of the Sentencing Code, ensuring that magistrates' court powers for such offences cannot exceed the maximum custodial term available on conviction on indictment.
- 283 This amendment provides consistency across the statutory framework: where the general limit is increased to 18 or 24 months, section 224A will cap magistrates' court powers at the offence specific maximum, and subsection (3A) directs users of the 2003 Act to that cap.
- 284 Subsection (7) inserts a new subsection (7A) into section 13 of the Judicial Review and Courts Act 2022. Section 13 created the concept of the "general limit" for magistrates' courts and inserted the relevant provisions into the Sentencing Code. The new subsection (7A) signposts the limitation in section 224A of the Sentencing Code, making clear that where the general limit exceeds the maximum custodial sentence available for the particular either-way offence on conviction on indictment, the lower offence-specific maximum continues to apply.
- 285 This amendment complements the gloss already contained in section 13(7), which provides that relevant legislation is to be read as referring to the general limit. The new subsection (7A) ensures that this reading is subject to section 224A, so that the magistrates' court sentencing powers cannot exceed the statutory maximum for the offence, even if the general limit is set at 18 or 24 months.
- 286 Subsection (8) makes a consequential amendment to section 224A(2) of the Sentencing Act 2020 that is triggered on commencement of section 61 of the Criminal Justice and Courts Services Act 2000.
- 287 Section 61 of the Criminal Justice and Courts Services Act 2000 abolishes the sentence of detention in a young offender institution, once commenced, any statutory reference to that sentence would become obsolete upon its commencement. Accordingly, subsection (8) provides that, on the coming into force of section 61, the words "or detention in a young offender institution" are to be omitted from section

224A(2) of the Sentencing Act 2020, thereby ensuring that the Sentencing Code reflects the sentencing framework as it will then stand. The change is prospective and conditional: the textual amendment takes effect only when section 61 is brought into force; until that point, section 224A(2) remains unaltered.

Appeals from magistrates' courts

Clause 7: Appeals from magistrates' courts

288 Clause 7 introduces Schedule 2.

Schedule 2: Appeals from magistrates' courts

Part 1 – Amendments of Magistrates' Courts Act 1980

289 Part 1 of Schedule 2 sets out the amendments to be made to Part 5 of the Magistrates Court Act 1980. These amendments amend the existing appeals procedure in Part 5 of the 1980 Act concerning defendant appeals against conviction or sentence to the Crown Court from the magistrates' court.

290 Paragraph 2 of the Schedule amends Part 5 of the Magistrates' Courts Act 1980 by substituting the words 'Right of appeal' for 'appeal' in the italic heading before section 108.

291 Paragraph 3 amends section 108 of the Magistrates' Courts Act 1980 by inserting a new subsection 2B (following subsection 2A), which provides that an appeal under section 108 may only be brought with permission of the Crown Court.

292 Paragraph 4 of the Schedule inserts sections 108A - 108S into the Magistrates' Courts Act 1980.

293 Section 108 A provides the circumstances in which the Crown Court may grant permission to appeal.

294 Subsection 1 provides that permission will only be granted if the Crown Court considers that it is reasonably arguable that there are one or more grounds for allowing the appeal. The grounds for allowing an appeal against conviction and sentence are provided in sections 108B(2) and 108M (1) respectively.

295 Section 108A (2) and (3) provide that the decision to grant permission will be made without a hearing unless the Crown Court decides to hold a hearing. The Crown Court can decide to hold a hearing if there is a reason why permission needs to be determined quickly, and a hearing is required to bring about that result, or where the court considers that a hearing is necessary for any other reason. This could include where a hearing is necessary in order for the Crown Court to determine whether to grant permission.

296 Section 108B provides the grounds for which an appeal against a conviction will be allowed.

297 Section 108B (2) provides that the Crown Court must allow an appeal if the conviction is considered unsafe, and otherwise the appeal will be dismissed. This reflects the test for allowing an appeal against conviction in the Court of Appeal (Criminal Division) in an appeal from the Crown Court (see section 2(1) of the Criminal Appeal Act 1968). However, the Crown Court can decide to substitute a conviction for an alternative offence when quashing the conviction for the original

offence instead of allowing or dismissing the appeal (see section 108C). Additionally, section 108J provides an alternative test concerning allowing or dismissing an appeal (other than whether the conviction is unsafe) in cases following a referral from the Criminal Cases Review Commission (see section 108J). Certain provisions in legislation also require the Crown Court to allow an appeal against conviction (for example, section 7 of the Terrorism Act 2000), and these are addressed by section 108B(3)(c).

298 Section 108B (4) – (7) provide that if an appeal is allowed, the Crown Court must quash the conviction. Where a conviction is quashed, the record of conviction should be replaced with a record of dismissal of the original charge unless the Crown Court makes a hospital order or guardianship order (see section 108E(2)) or a retrial is ordered (see section 108F).

299 Section 108C provides the power to substitute a conviction with conviction for an alternative offence.

300 Section 108C (1) provides that the power to substitute a conviction for an alternative offence is available where the magistrates' court could have found the appellant guilty of the alternative offence at the original trial and it appears to the Crown Court that the magistrates' court was satisfied of the facts that showed the appellant was guilty of the alternative offence.

301 Section 108C (2) – (4) provide that, in these circumstances, the Crown Court can substitute the conviction of the original offence with an alternative offence. This may be appropriate where, as a result of the appeal, the original conviction is no longer safe, but the Crown Court considers that it remains the case that the magistrates' court could have convicted the appellant of the alternative offence.

302 When imposing an alternative conviction, the Crown Court can impose any appropriate sentence for the alternative offence, as long as it is a sentence that the sentencing court could have imposed when sentencing, including imposing any order that the sentencing court could have imposed, subject to the proviso that the appellant cannot be dealt with more severely for the alternative offence than for the original offence.

303 Section 108D provides the power to resentence where an appellant remains convicted of connected offences.

304 Section 108 D (1) provides for the circumstances in which this power applies. If the Crown Court quashes a conviction on appeal, but the appellant remains convicted of one or more connected offences, the court may resentence the offender for the connected offences. This may be appropriate where the court had imposed lesser penalties for the remaining offences, taking into account the sentence imposed for the quashed conviction so that, where the sentence for the quashed conviction no longer stands, the court can adjust the remaining sentence or sentences accordingly.

305 Section 108D (2) provides that the Crown Court may pass any sentence that the original sentencing court could have given for the offence when resentencing.

306 Section 108D (3) provides that the overall sentence, following resentencing, cannot be more severe than the overall sentence given for the connected offences, including the sentence for the quashed conviction, in the court that originally sentenced the person.

307 Section 108D (4) and (5) provide the circumstances in which offences are deemed to be connected offences.

- 308 Section 108D (6) provides that ‘the sentencing court’ means the court that sentenced the person for the connected offences. This could be the Crown Court where, in the original proceedings, the person was committed for sentence to the Crown Court. This subsection also provides that ‘sentence’ in section 108D also refers to the making of any order that can be made by magistrates’ courts when dealing with a person for an offence. This means that, when resentencing a person under section 108D, the court may also impose orders that could have been made by the magistrates’ court as part of the sentence.
- 309 Section 108E provides the power to make a hospital or guardianship order where an appeal is allowed.
- 310 Section 108E (1) – (3) provides that, where the Crown Court quashes a conviction on appeal, the court may make a hospital order or guardianship order under section 37(3) of the Mental Health Act 1983 without convicting the appellant for the offence for which the conviction was quashed. This disposal is only available when the conditions to impose the relevant order in section 37 of the 1983 Act are satisfied at the time of allowing the appeal.
- 311 Section 108E (4) provides definitions for the purposes of section 108E.
- 312 Section 108E(5) provides that the requirements as to medical evidence in subsections (2) to (3) of the Mental Health Act 1983 apply for the purposes of this section as they apply for the purposes of section 37(2)(a) of the 1983 Act.
- 313 Section 108F provides the power to order retrial where the Crown Court allows an appeal against conviction.
- 314 Section 108F (2) provides that the Crown Court can order a retrial if it considers it the interests of justice to do so. The trial can be ordered for the offence for which the conviction was quashed on appeal, or any other offence that the convicting court could have found the appellant guilty of at the original trial.
- 315 Section 108F (3) provides that the retrial will proceed on the same information or written charge on which the person was tried in the original trial. Where the retrial concerns an offence other than that for which the conviction was quashed, the Crown Court should amend the information or written charge accordingly. Other offences which the magistrates’ court could have convicted the appellant of in the initial trial include alternative offences which the initial trial concerned, or alternative offences which the court could have found the appellant guilty of by virtue of section 24 of the Road Traffic Offenders Act 1988.
- 316 Section 108F (4) provides detail on retrials if the court which heard the original conviction was the youth court. If a retrial is ordered for a conviction or sentence received in the youth court, the youth court can conduct the retrial even if the appellant has turned 18 since the original trial. However, they are also able to remit the case for retrial at the adult magistrates’ court under section 47 (1) of the Crime and Disorder Act 1998 or to send the appellant to the Crown Court for retrial under section 47 (1A) of that Act (once subsection (1A) is commenced).
- 317 These provisions mean that, where the appellant has turned 18 during or since initial proceedings, the court has flexibility to determine the appropriate court for the retrial, in light of the appellant’s age.
- 318 Section 108F (5) provides that the Crown Court may, when ordering a retrial by a magistrates’ court, provide its opinion on the matter to the magistrates’ court.

- 319 Section 108F(6) clarifies that the magistrates' court may exercise its powers to stay proceedings in respect of retrial proceedings. offences which the magistrates' court could have convicted the appellant of in the initial trial include alternative offences which the initial trial concerned, or alternative offences which the court could have found the appellant guilty of by virtue of section 24 of the Road Traffic Offenders Act 1988.
- 320 Section 108G provides a supplementary provision for how retrials should proceed including making provision concerning bail and remand of the appellant.
- 321 Section 108G (2) – (3) provides that the Crown Court can make an order for the person to be detained in custody or given bail whilst they await retrial, or for any property or money to be retained until the retrial if that was required by the original conviction. The power to grant bail is subject to section 25 of the Criminal Justice and Public Order Act 1994, which limits the grant of bail to a defendant with a previous conviction for homicide or a serious sexual offence so that it can only be granted in exceptional circumstances where proceedings also concern a homicide or serious sexual offence.
- 322 Section 108G (4) provides that, where an appellant was liable to detention under Part 3 of the Mental Health Act 1983 prior to the appeal being allowed, they remain liable to detention despite the appeal being allowed.
- 323 Section 108G(5) – (6) provides a power to the Crown Court to order that a person who was detained in a hospital or mental nursing home under an interim hospital order prior to the appeal being determined may continue to be detained there.
- 324 Section 108G (7) concerns the position where an appellant was liable to be detained due to an order or direction under Part 3 of the Mental Health Act 1983, and was then made subject to a community treatment order before the appeal was determined. The order or direction and any subsequent community treatment order should remain in force until the retrial has completed, as if the appeal had not been allowed. Any order by the Crown Court for the person to be released on bail also takes effect subject to the community treatment order, as per section 108G (8).
- 325 Section 108G(9) provides definitions for the purposes of section 108G.
- 326 Section 108H provides rules on evidence given at retrials.
- 327 Section 108H (1) provides that evidence must be given orally if it was given orally at the original trial. This is subject to the exceptions outlined in section 108H (2).
- 328 Section 108H (3) provides that paragraph 5 of Schedule 3 to the Crime and Disorder Act 1998 does not apply to a retrial so that, where a deposition was read under that paragraph at the original trial as evidence, that does not mean that it may also be read as evidence at the retrial.
- 329 Section 108I provides for the sentence that can be given if an appellant is convicted at the retrial (by virtue of an order under section 108F).
- 330 Section 108I (2) – (4) provide that the sentencing court (which includes the Crown Court, where a matter is committed for sentence following retrial) may not impose a more severe offence on a person than the sentence imposed on the original conviction. A sentencing court may pass any sentence which could have been passed in the original proceedings, despite the fact that the person being sentenced has passed an age threshold so that the sentence could otherwise no longer be passed.

This means that youth sentences will be available for those who were originally convicted as youths but have turned 18 prior to being convicted at the retrial, where the court considers that such a sentence remains appropriate. A sentence includes any order that may be made by a magistrates' court upon conviction (section 108I (5)).

331 Section 108I (5) – (7) provide that the sentence given at a retrial begins to run from the time when the sentence given at the original trial would have begun. This means that time spent detained in custody whilst awaiting retrial can be deducted from the time the defendant is required to serve in respect of any custodial sentence imposed. However, any time for which the defendant was released on bail by virtue of the order of the Crown Court following retrial, or any other time which would be disregarded when calculating the time served under the original sentence should be disregarded when calculated the time to be served under the new sentence. Sections 240ZA and 240A of the Criminal Justice Act 2003, which provide for discounts from a custodial sentence for time spent remanded in custody and on bail subject to a qualifying curfew condition respectively, apply to the sentence passed at the retrial as if the sentence had been passed for the original conviction.

332 Section 108J provides a power to dismiss an appeal following reference by the Criminal Cases Review Commission (CCRC).

333 The CCRC can refer a case for appeal from the magistrates' court directly to the Crown Court as per section 11 (1)(a) of the Criminal Appeal Act. The CCRC is not required to seek permission from the Crown Court to appeal.

334 Section 108J (2) – (3) provides that the Crown Court can dismiss the appeal by CCRC if the only grounds for allowing an appeal is if there has been a development in law since the conviction was given, and, had a reference not be made by the CCRC, the court would not have considered it appropriate to grant an extension of time in respect of an application for an extension of time to appeal against the conviction.

Appeals against finding of mental disorder etc.

335 Section 108K relates to appeals under section 45 (1) of Mental Health Act 1983 against a finding of mental disorder etc.

336 This section concerns appeals brought under section 45(1) of the Mental Health Act 1983 against a magistrates' court finding required for the court to make a hospital or guardianship order under section 37(3) of the Mental Health Act 1983 without convicting the person.

337 The same provisions under section 108(2B) and 108A apply to appeals of this kind.

338 As with appeals against conviction, subsection 108K (3) outlines that the Crown Court must allow the appeal if it considers the finding is unsafe or otherwise must dismiss the appeal.

339 Section 108L provides a power to make a hospital or guardianship order where an appeal under section 45(1) of the Mental Health Act 1983 is allowed.

340 This means that if the court allows an appeal against a finding that led to a hospital order or guardianship order being imposed under section 37(3) of the Mental Health Act 1983, the court may substitute the other order (either a guardianship order or a hospital order) without convicting the appellant if they are satisfied that the conditions for making such an order are met.

- 341 Section 108M concerns the power to order a trial where an appeal under section 45(1) of the Mental Health Act 1983 is allowed.
- 342 Where such an appeal is allowed, the court may order a trial if the interests of justice require it. The trial can concern either the offence for which the order was made under section 37(3) of the Mental Health Act 1983 or an alternative offence which the court in the original proceedings could have made an order under section 37(3) of the 1983 Act.
- 343 Section 108M(4) provides the position where the original court was a youth court. If a trial is ordered in respect of an offence dealt with by the youth court, the youth court can conduct the retrial even if the appellant has turned 18 since the original proceedings. However, they are also able to remit the case for trial at the magistrates' court under section 47 (1) of the Crime and Disorder Act 1998 or to send the appellant to the Crown Court for trial under section 47 (1A) of that Act (once that subsection is commenced).
- 344 Section 108M(5) provides that the sentencing court may pass any sentence which could have been passed in the original proceedings, despite the fact that the person being sentenced has passed an age threshold so that the sentence could otherwise no longer be passed. This means that youth sentences will be available for those who were youths when the original proceedings took place but have turned 18 prior to being convicted at the retrial, where the court considers that such a sentence remains appropriate.
- 345 Section 108N concerns the power to remit a matter to the magistrates' court where an appeal under section 45(1) of the Mental Health Act 1983 is allowed.
- 346 Where the court allows an appeal against a finding that the person in respect of whom an order under section 37(3) of the Mental Health Act 1983 has been allowed on the basis that the finding that the person did the act or omission charged is unsafe, they may remit the matter to the magistrates' court to determine afresh whether the person did the act or omission charged, and, when remitting the matter, may provide their opinion to the magistrates' court.
- 347 Section 108N (5) provides that section 108H regarding evidence at retrials applies to a rehearing to determine whether the person did the act or omission charged. In these circumstances, section 108H is to be read as if a reference to the retrial was a reference to the rehearing, and a reference to the original trial is a reference to the original hearing to determine whether the person did the act or omission charged.
- 348 Section 108O provides supplementary provisions for appeals against a finding of mental disorder, etc.
- 349 Section 108O(1) provides that, when the Crown Court orders that a person is to be tried under section 108M, or that the matter should be remitted to the magistrates' court for that court to determine whether the person did the act or omission charged under section 108N(2)(b), the Crown Court can make any order it considers necessary or expedient to detain a person in custody, release on bail, or detain under the Mental Health Act 1983 whilst awaiting the trial or rehearing.

Appeals against sentence

- 350 Section 108P provides grounds for allowing an appeal against a sentence.
- 351 The grounds are the same as those grounds on which the Court of Appeal can allow

an appeal against sentence in appeals from the Crown Court to the Court of Appeal.

352 Section 108Q provides provisions for appeals against more than one sentence.

353 Section 108Q (2) provides that if a magistrates' court has sentenced a person for two or more connected offences, an appeal against any one of the sentences acts as an appeal against all of them. This is because if one sentence is amended on appeal, it might follow that the sentences for the connected offences should also be amended to appropriately reflect the totality of the offending. The exception to this is if an appeal is referred to the Crown Court by the CCRC, as per section 108Q (3).

354 Section 108Q (4)-(5) provide the definition of connected offences.

355 Section 108R provides for the powers of the Crown Court on an appeal of sentence given by a magistrates' court.

356 Section 108R (2) details the actions the Crown Court can take for an appeal against a single sentence, when that appeal is allowed, which is to quash the sentence and in place of it pass any other sentence that the magistrates' court could have passed at the original trial. This is subject to section 108R (3), which provides that the sentence cannot be more severe than the original sentence.

357 Section 108R (4) and (5) provide that, where the Crown Court allows an appeal against the sentences passed for two or more connected offences, the court may quash the sentence passed for any of those offences, and may pass in its place any sentence that the magistrates' court could have passed when dealing with the offence, subject to the proviso that the overall sentence cannot be more severe than that imposed by the magistrates' court for the connected offences.

358 Section 108R (6) provides that a sentence also includes reference to any order that may be made by a magistrates' court when sentencing an offender.

Appeals: supplementary provision

359 Section 108S provides for transcripts to be made in magistrates' courts.

360 Section 108S (1) provides that rules of court must provide for the making of audio recordings for criminal trials and sentencing hearings in magistrates courts and may provide for any other record of those proceedings to be made. In addition, rules may provide for the making of any other kind of record of any other magistrates' court hearings or proceedings.

361 Section 108S (2) provides that rules may provide for the making and verification of a transcript of any recording of proceedings as outlined in subsection 1. Rules may also provide detail on who can be supplied with a transcript or recording. In particular, the rules can provide that the Secretary of State can direct the provision of a transcript to persons, or persons of a prescribed description.

362 Section 108S (3) provides that rules can set out that transcripts can be provided subject to payment of a fee.

363 Section 108S (5) provides that nothing in section 108S affects any other requirement that the magistrates' court has to keep records.

364 Section 108T provides the powers of the Crown Court to obtain evidence for the purposes of an appeal.

365 This section reflects, in a modified form, the provisions in section 23 of the Criminal

Appeal Act 1968, which governs powers to obtain evidence in appeals from the Crown Court to Court of Appeal.

366 Section 108T(1) provides that section 108T applies to appeals under section 108 of the Magistrates' Courts Act 1980, to an appeal under section 45 (1) of the Mental Health Act 1983, and to applications for permission to appeal under either section 108 of the 1980 Act or section 45(1) of the 1983 Act.

367 Section 108T (2) details that, for the purposes of an appeal hearing or a review of a permission to appeal application, the Crown Court can order the production of any document or exhibit connected to the proceedings, that any witness be examined by the Crown Court, and can receive any evidence not admitted in the initial proceedings. The Crown Court can exercise this power where it considers it necessary or expedient in the interests of justice to do so.

368 Section 108T (3) provides that this power can be used to require that the document, exhibit, or other evidence, can be provided to the Crown Court, the appellant, or the respondent in the appeal.

369 Section 108T (4) specifies the factors that the Crown Court must take into account when considering whether they need to receive evidence. The Crown Court may also consider any other relevant factor when deciding whether to receive evidence.

370 Section 108T (6) provides that for the purposes of an appeal or application for permission to appeal, the Crown Court may order the examination of a witness to make provide a deposition to be taken as evidence. This power may be exercised where the Crown Court considers it necessary or expedient in the interests of justice to proceed in this manner.

371 Section 108U provides for the effect of an appeal on sentence.

372 Section 108U (1) provides that the time spent in custody whilst awaiting an appeal should count towards any sentence they are serving. The time served towards a sentence would therefore continue from the time when the original sentence began, regardless of an appeal proceeding.

373 Section 108U (2) provides however that the Crown Court has the power to direct that time spent in custody whilst awaiting an appeal is not to count towards an overall sentence. This is known as a "loss of time order" and such a direction should only be made in respect of unmeritorious appeals. Accordingly, such a direction is only available where permission to appeal is not granted. Per section 108U(4), the court must state its reasons for making such a direction.

374 Section 108V concerns interim hospital orders made under section 38 of the Mental Health Act 1983.

375 Section 108V (1) provides that a magistrates' court is still able to renew or terminate an interim hospital order made by that court even whilst an appeal to the Crown Court is pending against the interim hospital order.

376 Section 108V (2) provides that, where the court has quashed an interim hospital order but does not pass another sentence or order in its place, so that the matter of the final sentence to impose remains to be determined in the magistrates' court, the Crown Court may direct that the appellant should be remanded in custody or on bail until dealt with by the magistrates' court.

377 Section 108V (4) provides that, where a Crown Court makes an interim hospital order

on an appeal from a magistrates' court, the power for renewing or terminating the interim hospital order lies with the magistrates' court not the Crown Court and the order should be treated as if it had been made by the magistrates' court

Part 2 – Amendments of other legislation

378 Part 2 of Schedule 2 to the Bill amends other legislation to align with the changes made by Part 1 of the Schedule to the Magistrates' Court Act 1980, and to change the composition of the Crown Court when it hears appeals so that all appeals are heard by a single Crown Court judge.

Customs and Excise Management Act 1979

379 Section 147 (3) of the Customs and Excise Management Act 1979 (CEMA) provides a route for the prosecution to appeal magistrates' courts decisions to the Crown Court for an offence under CEMA. The prosecution does not have a general right of appeal against magistrates' courts decisions to the Crown Court. This unique provision for prosecution appeals does not currently include a permission stage. Paragraph 5 of Schedule 2 inserts new subsections (3A) - (3C) into section 147 of CEMA to provide that, where the prosecution appeal against a sentence or the dismissal of the written charge or information in the magistrates' court, the appeal will now be subject to a permission stage, and to provide the test to be applied by the court when considering whether to grant permission.

380 Subsection (3A) provides that these appeals may only be brought with the Crown Court's permission.

381 Subsection (3B) provides the test to be met before permission to appeal is to be granted.

382 Subsection (3C) applies subsections 2 and 3 of section 108A of the Magistrates' Courts Act 1980 (permission to appeal) to these appeals, so that the question of whether to grant permission may be decided without a hearing, but that the Crown Court may hold a hearing where they consider that one is necessary to determine the appeal, or to determine the appeal more quickly.

Senior Courts Act 1981

383 Paragraphs 7 – 11 of Schedule 2 set out amendments to be made to the Senior Courts Act 1981.

384 Paragraph 7 amends section 8(1)(c) to reflect the fact that justices of the peace may now only sit together with a judge of the Crown Court pursuant to directions given under section 75(2) of the Senior Courts Act 1981.

385 Paragraph 8 makes amendments to section 48 (appeals to Crown Court) to separate the Crown Court's powers on appeals other than an appeal under section 108 Magistrates' Courts Act 1980 or section 45(1) of the Mental Health Act 1983 from the powers it may exercise in respect of those appeals, which are now provided in the new sections inserted after section 108 of the 1980 Act. Subsection (2) inserts new subsection (1A) to clarify that section 48(2) applies only to appeals other than those brought under section 108 MCA 1980 and section 45(1) Mental Health Act 1983. Subsection (3) rephrases subsection (2) so that it applies only to the appeals covered by it. Subparagraph (4) removes subsections (4), (6), (7) and (8), which are now no longer required since the powers in section 48 will no longer be used to determine appeals in which they could apply.

386 Paragraph 9 amends section 73 of the 1981 Act to remove reference to section 74 in section 73(1) of the Act.

387 Paragraph 10 repeals section 74 of the 1981 Act. This is because it will no longer be the case that appeals in the Crown Court are heard by a judge of the Crown Court sitting together with justices of the peace. Instead, appeals will be determined by a single judge of the Crown Court.

388 Paragraph 11 amends section 75 to reflect the repeal of section 74 of the 1981 Act.

Contempt of Court Act 1981

389 Paragraph 12 amends section 12(5) of the Contempt of Court Act 1981 so that references to appeal rights for appeals against orders imposed for contempt of court offences in the magistrates' court set out in section 12 of the 1981 Act now include the new relevant sections of the MCA 1980.

Mental Health Act 1983

390 Paragraph 13 amends section 45(1) of the Mental Health Act 1983 to provide that a person can appeal against a hospital order or guardianship order made pursuant to section 37(3) of the 1983 Act as if it were a sentence imposed upon conviction, and to provide that a person can appeal against any finding upon which that order was made.

Prosecution of Offences Act 1985

391 Paragraph 14 amends the Prosecution of Offences Act 1985 to ensure that the availability of costs orders in appeals to the Crown Court reflects the changes in the appeals procedure made by the Bill.

392 Paragraph 14 (2) amends section 16 (3) of the Prosecution of Offences Act 1985 to ensure that defendant's costs orders are available where an appeal under section 108 MCA 1980 is successful in the Crown Court.

393 New subsection 3A is also inserted into section 16 of the Prosecution of Offences Act 1985. This clarifies that if an appeal is allowed under section 45 (1) of the Mental Health Act 1983 against a finding that led to a hospital order or guardianship order being made under section 37(3) of the 1983 Act, then the Crown Court can also make a defendant's cost order.

394 Section 16A (3) of the 1985 Act is amended so that legal costs can be paid out of central funds as an aspect of a defendant's costs order pursuant to section 16A of the Prosecution of Offences Act 1985 for successful appeals under section 45(1) of the Mental Health Act 1983 in the same circumstances that they can be paid for successful appeals to the Crown Court under section 108 MCA 1980.

395 Section 18 (1) (b) of the 1985 Act is amended to provide that the court may order costs to be paid by the accused to the prosecutor where an application for permission to appeal to the Crown Court is refused.

Football Spectators Act 1989

396 Paragraph 15 amends section 14A of the Football Spectators Act 1989 by inserting new subsections after the existing subsection 5A. The prosecution has a right to appeal against a refusal by the magistrates' court to make a football banning order upon conviction under section 14A(5A) of the 1989 Act.

397 New subsection 5AA provides that appeals against refusal to make a football banning order may only be brought if the Crown Court gives permission for the appeal to be brought. Subsection 5AB provides the test that the Crown Court should apply when considering whether to grant permission to appeal. Subsection 5AC applies subsections 2 and 3 of section 108A of the MCA 1980 (permission to appeal) to these appeals, so that the question of whether to grant permission may be decided without a hearing, but that the Crown Court may hold a hearing where they consider that one is necessary to determine the appeal, or to determine the appeal more quickly.

Criminal Appeal Act 1995

398 Paragraph 16(2) amends section 11 of the Criminal Appeal Act 1995 to insert new subsection (3A) which provides that when the Criminal Cases Review Commission refers a summary case back to the Crown Court, the permission requirement in section 108(2B) MCA 1980 does not apply. Subparagraph (3) repeals the previous subsection (6) which is now without effect, since for all appeals made or treated as being) under section 108 MCA 1980, the Crown Court will be limited to imposing a sentence which is not more severe than the sentence imposed by the magistrates' court.

Terrorism Act 2000, Terrorism Prevention and Investigation Measures Act 2011, and Counter-terrorism and Security Act 2015

399 Paragraphs 17, 18, and 19 amend section 7 of the Terrorism Act 2000, Schedule 3 to the Terrorism Prevention and Investigation Measures Act 2011, and Schedule 4 to the Counter-Terrorism and Security Act 2015 to provide that, where an appeal is treated as having been made under section 108 Magistrates' Courts Act 1980 for the purposes of the procedure set out in the relevant section or Schedule, permission to bring an appeal is not required.

Sentencing Act 2020

400 Paragraphs 20 to 25 of Schedule 2 to the Sentencing Act 2020 to clarify that appeals made under specified provisions in the Sentencing Code should be treated as appeals under section 108 MCA 1980.

National Security Act 2023

401 Paragraph 26 amends Schedule 9 to the National Security Act 2023 to provide that, where an appeal is treated as having been made under section 108 Magistrates' Courts Act 1980 for the purposes of the procedure set out in the Schedule, permission to bring an appeal is not required.

Consequential Repeals

402 Paragraph 27 makes consequential amendment to Schedule 3 to the Mental Health (Amendment) Act 1982, Schedule 4 to the Mental Health Act 1983, Schedule 2 to the Criminal Appeal Act 1995, and Schedule 2 to the Armed Forces Act 2011 to remove provisions which are no longer required following changes made in Schedule 2 to the Bill.

Admissibility of evidence

Clause 8: Restriction on evidence or questions about complainant's sexual history

403 Clause 8 amends Part 2 of the Youth Justice and Criminal Evidence Act 1999 to

amend the conditions which must be met before a defendant can adduce sexual behaviour evidence, or ask questions intended to elicit evidence of sexual behaviour, in criminal proceedings. It updates section 41 and related provisions to ensure that such evidence may only be admitted if it has substantial probative value in relation to a matter of substantial importance in the case as a whole, or it is important explanatory evidence.

404 The legislation will continue to provide that, except with leave of the court, no evidence may be adduced, and no question may be asked in cross-examination, by or on behalf of any accused at trial, about the sexual behaviour of the complainant.

405 Subsection 2 amends the heading of Chapter 3 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 so that it now reads 'Protection of Complainants: restriction on certain evidence or questions'. This reflects the fact that the admissibility criteria in section 41 Youth Justice and Criminal Evidence Act 1999 will apply in all trials, rather than in sexual offence trials only.

406 Subsection 4 provides the new test the court must apply before allowing evidence or questions about sexual behaviour evidence to be adduced in criminal proceedings. There are two gateways under which sexual behaviour evidence may be admitted: either the court must be satisfied that the evidence has substantial probative value in relation to a matter of substantial importance in the case as a whole, or that it is important explanatory evidence. 'Substantial probative value' has previously been defined by the courts, when considering section 100(1)(b) of the Criminal Justice Act 2003, as meaning 'enhanced' probative value (Phillips [2011] EWCA Crim 2935). Important explanatory evidence is defined at new section 41(2B) of the Youth Justice and Criminal Evidence Act 1999. It is clear that a complainant should not be viewed as less credible solely by virtue of the fact that they have engaged in sexual behaviour on one or more previous occasions (see e.g. *Re A* [2001] UKHL 25, at [27] for a statement of this principle). Accordingly, sexual behaviour evidence should never be admitted on the basis that it has substantial probative value where it seeks solely to support an inference that, by reason of the sexual nature of that activity, the complainant is less worthy of belief.

407 Subsection 4 also amends the existing section 41 to set out factors the court must consider when deciding whether the evidence has substantial probative value. The court must consider:

- a. the number and nature of the events relied on;
- b. when they are said to have occurred;
- c. where similarity is relied on, the similarities and differences between the alleged sexual behaviours and any other sexual behaviour of the complainant;
- d. the extent to which the evidence is necessary to rebut or explain other evidence;
- e. whether its relevance depends on disputed issues that are not of substantial importance to the case as a whole. This means that the court should consider whether, were the evidence to be admitted, it would lead to a proliferation of satellite issues that might distract from the main issues in the case, in considering the probative value of the evidence; and
- f. whether its value depends on inferences that the court considers cannot properly be drawn from the evidence. This means the court must consider whether or not the probative value of the evidence relies on so-called rape myths and

misconceptions, since the truth of such myths and misconceptions cannot properly be inferred from sexual behaviour evidence. Examples of myths and misconceptions are set out in the policy background of this document.

- 408 Subsection 4 also inserts new subsection (2B) which sets out that evidence can be considered important explanatory evidence if without it, the court or jury would find it impossible or difficult to understand the case, and if its value for understanding the case as a whole is substantial.
- 409 Subsection 5 amends the definition of ‘sexual behaviour’ to provide, at section 42(1) and (1A) of the Youth Justice and Criminal Evidence Act 1999, that ‘sexual behaviour’ means any sexual behaviour or other sexual experience, regardless of whether the accused was involved. It excludes anything alleged to have taken place as part of the event which is the subject matter of the trial.
- 410 Subsection 7 amends the definition of a sexual offence for the purposes of Part 2 of the Youth Justice and Criminal Evidence Act 1999 so that it now includes offences committed under Part 2 of the Serious Crime Act 2007 where the substantive offence the person intended or believed would be committed is a sexual offence within the meaning of section 62(1) of the Youth Justice and Criminal Evidence Act 1999.
- 411 The procedural provisions that apply to applications to admit sexual behaviour evidence by virtue of subsection 43(1)-(2) will continue to apply: the application to admit sexual behaviour evidence should be heard in private, in the absence of the complainant, and then the court must give reasons in open court (but in the absence of the jury) for granting or refusing leave.

Clause 9: Compensation claims in proceedings for sexual offences

- 412 Clause 9 amends chapter 3, part 2 of the Youth Justice and Criminal Evidence Act 1999 to introduce a restriction on the use of evidence about compensation claims made by complainants in trials for sexual offences. The purpose is to prevent irrelevant or prejudicial material from being used to undermine the credibility of complainants.
- 413 Subsection 2 amends section 43 of the Youth Justice and Criminal Evidence Act 1999 and inserts a new Section 43A.
- 414 Section 43A, subsection 1 sets out that in a trial where a person is charged with a sexual offence, neither the defence nor the prosecution can admit evidence or ask questions in cross-examination about a compensation claim made by the complainant – except by leave of court.
- 415 Section 43A, subsection 2 clarifies that the requirement that leave of the court be obtained to introduce a compensation claim applies to any claim or application for damages or compensation resulting from the sexual offence that is the subject of the trial.
- 416 Section 43 subsection 4 provides that if the court does want to admit evidence relating to a compensation claim, they must be satisfied that it has both substantial probative value in relation to a matter in issue in the proceedings, and that the matter in issue of which it is probative is one of substantial importance to the case as a whole.
- 417 Section 43, subsection 5 sets out that the court must consider whether the probative value of the evidence relies on an inference that the court considers cannot properly be made from the evidence. An ‘inference that cannot be properly made from the

evidence' includes myths or misconceptions – such as the examples given in the policy background section of this document - since these are inference which cannot properly be supported by the evidence.

418 Subsection 6 states that the above provisions cease to apply if the sexual offence charge is dropped but continue to apply where there is a guilty plea or conviction.

419 Subsection 7 provides that nothing in this section allows evidence to be admitted that would not otherwise be permitted under the law. This means that, where a different test for admissibility must also be met for evidence to be admitted, and that test is not met, the fact that evidence meets the test for admission as compensation claim evidence does not render it admissible.

420 This clause also introduces new section 43B to the Youth Justice and Criminal Evidence Act 1999. This extends the restrictions beyond just the trial to certain other proceedings, including preliminary hearings, applications to dismiss the charges, and hearings between conviction and sentencing, reflecting the position under section 42(3) which applies to sexual behaviour evidence.

421 Section 43B also states the Criminal Procedure Rules may set out how applications for permission under section 43A are made. They may require applicants to explain why permission should be granted for each item of evidence or question, allow the court to ask for further information, and provide rules on how confidential or sensitive information is handled, including whether it is disclosed to other parties.

422 New Section 43C provides that, when assessing the probative value of evidence, courts should assume the evidence is true, unless it appears that no court or jury could reasonably find it to be true.

Clause 10: Evidence about previous false complaints relating to sexual offences

423 Clause 10 amends Part 11 of the Criminal Justice Act 2003, Chapter 1.

424 Clause 10 inserts new section 100A into the 2003 Act. This section provides that an allegation that a complainant has made a previous false complaint that they were a victim of a sexual offence is not admissible unless there is a proper evidential basis for asserting that the allegation was (a) made and (b) untrue. This test must be met in addition to the test for the admission of this evidence as non-defendant bad character evidence at section 100(1) of the 2003 Act.

425 For the purposes of the clause, evidence is “previous false complaint evidence” if it relates to an allegation that the complainant had made a complaint that they were the victim of a sexual offence (other than the offence currently before the court), and that that complaint was false (see new section 100A(3) of the Criminal Justice Act 2003).

426 Subsection 2 amends section 100(4) Criminal Justice Act 2003 to provide that previous false complaints evidence cannot be admitted without leave of the court.

427 Subsection 3 inserts new section 100A into the Criminal Justice Act 2003.

428 Section 100A, subsection 1, provides that previous false complaints evidence is not admissible unless the proper evidential basis condition at section 100A(4) is met.

429 Section 100A, subsection 3, defines previous false complaints evidence.

430 Section 100A, subsection 4, sets out the proper evidential basis condition. In order for there to be a proper evidential basis, there must be material before the court on the basis of which the jury, or court, could properly conclude that the previous false

complaint alleged to have been made was in fact made, and that that complaint was in fact false.

431 Subsection 4 clarifies that amendments to section 100 of the Criminal Justice Act 2003 made by clause 10, and inserted section 100A, have effect in service justice proceedings as they have effect in civilian criminal proceedings by virtue of Schedule 6(1) to the 2003 Act.

432 Section 100A, subsections 5 and 6 provide that the following facts, even if established, cannot by themselves justify the conclusion that a court of jury could properly conclude that the previous complaint was false:

433 that the previous alleged offence was not reported to the police or another investigating authority, either at all, or as soon as reasonably practicable after its commission;

434 that the complainant did not for any reason or at any point support prosecution by, for example, failing to provide a witness statement or to give evidence in court; or

435 because the person alleged to have committed the previous alleged offence denies that they committed the offence, was not charged, or was not convicted.

436 Section 100A, subsection 7 defines “the previously alleged offence” and “the alleged perpetrator” for the purposes of section 100A.

437 Subsection 8 provides that these measures apply to allegations that the complainant made a complaint that they were a victim of sexual offence if the offence is a sexual offence listed in subsection 9, as well as acts that constitute a corresponding sexual offence under section 42 of the Armed Forces Act 2006. If the complaint concerned an act alleged to have taken place outside of England and Wales, which would constitute an offence listed in subsection 9 if done in England or Wales, and is also an offence in the country in which the offence is alleged to have taken place, section 100A applies to the complaint.

438 Subsection 9 defines ‘complainant’ and “England and Wales sexual offence” for the purposes of section 100A.

Clause 11: Evidence of propensity to commit offences involving domestic abuse

439 Clause 11 amends section 103 of the Criminal Justice Act 2003 to clarify that a defendant’s convictions for domestic abuse offences can show a propensity to commit further offences involving domestic abuse. The amendment aligns the treatment of domestic abuse offences with offences of the same type which are categorised by order by exercise of the power to do so at section 103(4)(b) of the 2003 Act. Currently, the Criminal Justice Act 2003 (Categories of Offences) Order 2004 categorises theft offences and sexual offences committed against someone under the age of 16 as offences of the same category for the purposes of section 103 of the 2003 Act.

440 Subsection 2 amends section 103(2) of the 2003 Act to provide that a ‘domestic abuse offence’ is capable of demonstrating a defendant’s propensity to commit offences of the kind charged for the purposes of its admission as bad character evidence, if it is alleged that the offence with which the defendant is charged amounted to domestic abuse. This is without prejudice to any other means by which propensity can be demonstrated.

441 Subsection 3 amends section 103(4) of the 2003 Act to define a ‘domestic abuse

offence’ as an offence involving behaviour by the defendant amounting to domestic abuse.

442 Subsections 4 and 5 amend section 103(7) and section 103(8) respectively so that, where a defendant has been convicted of an offence in any country other than England and Wales, that offence is a ‘domestic abuse offence’ if it involves behaviour by the defendant amounting to domestic abuse.

443 Subsection 6 amends section 103(10) to provide that a service justice offence is a ‘domestic abuse offence’ if it involves behaviour by the defendant amounting to domestic abuse.

444 Subsection 7 amends section 103(11) to provide that ‘domestic abuse’, as it is used in section 103, has the same meaning as in the Domestic Abuse Act 2021.

445 Clause 11, subsection 8, clarifies that amendments to section 103 of the Criminal Justice Act 2003 made by clause 11 have effect in service justice proceedings as they have effect in civilian criminal proceedings by virtue of Schedule 6(1) to the 2003 Act.

Special measures directions

Clause 12: Use of screens etc

446 Clause 12 amends Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 to set out provisions on the use of screens at court.

447 This clause inserts a new section, 22B, into the Youth Justice and Criminal Evidence Act 1999 which applies where an application is made for a special measure’s direction, the applicant requests provision for the use of screens or similar arrangements under section 23, and the court determines that the witness is eligible for assistance under section 17.

448 Where a direction allows evidence by live link or pre-recorded cross-examination, screens must also be provided unless this would be contrary to the interests of justice. In deciding this, the court must consider, in particular, whether screens would improve evidence quality, and whether screens would prevent the effective testing of evidence. These factors are not an exhaustive list: the court may also consider any other matter relevant to the interests of justice.

449 Subsection 3 of the clause amends section 23 of the Youth Justice and Criminal Evidence Act 1999 to update the section heading to “Use of screens etc”. It also clarifies that a special measures direction may prevent either the witness from seeing the accused or the accused from seeing the witness and it makes clear that a screen or other arrangement may be used to prevent the accused from seeing the witness give evidence when evidence is given evidence in court, by live link or during pre-recorded cross-examination or re-examination under section 28(2) of the 1999 Act.

Clause 13: Witness to be accompanied while giving evidence

450 Clause 13 amends Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 to make provisions enabling a witness in criminal proceedings to be accompanied by a supporter while giving evidence.

451 This clause inserts a new section, 22C, into the Youth Justice and Criminal Evidence Act 1999. Subsections (1) – (4) of section 22C provide that, where a party to proceedings applies for an eligible witness to be accompanied by an independent

supporter, the court must make the special measures direction applied for, unless it would be contrary to the interests of justice to do so.

452 Subsections 5 and 6 of section 22C define “independent supporter”. This definition is, aligned with the terminology used in Part 1 of the Victims and Prisoners Act 2024.

453 Subsection 2 of clause 13 inserts a new section 24A into the Youth Justice and Criminal Evidence Act 1999, which confers a general power on the court to make a special measures direction permitting a witness to be accompanied while giving evidence. A direction under section 24A may specify either a particular person, or a description of a person by whom the witness will be accompanied, and in deciding whether to make the direction, the court must have regard to the wishes of the witness.

454 Section 24A(3) clarifies that accompanying a witness while giving evidence includes accompanying the witness while giving evidence in court, by live link and during any pre-recorded cross-examination or re-examination.

455 Section 24A(4) makes consequential amendments to sections 24 and 27 of the Youth Justice and Criminal Evidence Act 1999.

Clause 14: Exclusion of persons from court

456 Clause 14 amends section 25 of the Youth Justice and Criminal Evidence Act 1999, to amend which persons may be excluded from the courtroom while a witness gives evidence by virtue of a special measures direction made pursuant to section 25.

457 This clause updates the heading of section 25 of the Youth Justice and Criminal Evidence Act 1999 to “Exclusion of persons from court”. It amends subsection 1 so that subsection is clear that a special measures direction may be made to exclude any person as well as persons of any description. In the interests of open justice, it expands the categories of people who may not be excluded from the courtroom when a direction excluding persons from court is made. Those who may not be excluded now include a supporter accompanying the witness under new section 24A, or one other person nominated by the witness if no direction has been made under section 24A, representatives of news-gathering or reporting organisations, and individuals conducting approved research under the oversight of a recognised research ethics body. It is no longer the case that, under a section 25 special measures direction, all representatives of news gathering or reporting organisations can be excluded other than one nominated person.

458 Clause 14 also inserts a definition of “research ethics body” into section 25 of the 1999 Act as an entity appointed by a research institution to assess the ethics of research involving individuals, with ‘research institution’ having the same meaning as in Chapter 4A of Part 7 of the Income Tax (Earnings and Pensions) Act 2003.

459 The clause also confirms that these amendments do not limit the court’s inherent jurisdiction, or any other power of the court, to exclude individuals from court where it considers it appropriate to do so.

Clause 15: Editing of video recorded cross-examination and re-examination

460 Clause 15 amends section 28 of the Youth Justice and Criminal Evidence Act 1999 to clarify when a video recording of pre-recorded cross-examination or re-examination may be edited before being admitted as evidence.

461 The clause confirms that the court may exclude a recording, or parts of it, where it is

not satisfied that the requirements of section 28(2) of the Youth Justice and Criminal Evidence Act 1999, the Criminal Procedure Rules or the special measures direction directing pre-recorded cross-examination or re-examination have been complied with.

462 Clause 15 also allows editing where the court concludes that admitting the recording, or part of it would not be in the interests of justice. In applying the interests of justice test when considering whether any part of the recording should not be admitted, the court is required to weigh any potential prejudice to the accused against the desirability of presenting the whole, or substantially the whole, of the recorded examination to the court.

Clause 16: Application of special measures to victim personal statements etc

463 Clause 16 amends section 33 of the Youth Justice and Criminal Evidence Act 1999 to clarify that special measures under Chapter 1 of Part 2 are available when a victim or other person eligible for special measures reads out an impact statement aloud in court for the purposes of sentencing.

464 An impact statement is defined as a written statement that sets out the effect of the offence on the individual concerned, or on others, including that individual. For the purposes of Chapter 1 of Part 2 of the 1999 Act, references to a witness giving evidence or to testimony by a witness are to be understood as including the reading aloud of an impact statement by its author, together with any cross-examination or re-examination relating to that statement. Related expressions throughout the Chapter are to be interpreted consistently with this meaning.

PART 2 - OTHER PROVISION ABOUT COURTS AND TRIBUNALS

Decisions of courts under Children Act 1989

Clause 17: Welfare of the child: repeal of presumption of parental involvement

465 Clause 17(1) repeals subsections (2A), (2B), (6), and (7) of section 1 of the Children Act 1989. These subsections were inserted by section 11 of the Children and Families Act 2014: that section is repealed by clause 17(2).

Tribunals

Clause 18: Leadership of tribunals

466 Clause 18 reforms the office of the Senior President of Tribunals. It extends the Lady Chief Justice's title from President of the Courts of England and Wales to President of the Courts and Tribunals of England and Wales; extends the Lady Chief Justice's existing responsibilities to the courts judiciary of England and Wales to include the tribunals judiciary; re-allocates the Senior President of Tribunals' responsibilities regarding tribunals in relation to England and Wales, to the Lady Chief Justice; and creates a new statutory title of Head of Tribunals Justice for the Senior President of Tribunals, alongside a new statutory post of Deputy Head of Tribunals Justice. It makes no change to the territorial extent of the tribunals.

467 The Constitutional Reform Act 2005 gives effect to the agreement between the Lady Chief Justice of England and Wales and the Lord Chancellor on the transfer of the Lord Chancellor's judiciary-related functions. Subsection (1) amends the Act in

accordance with subsections (2) to (4).

- 468 Subsection (2) amends section 7 of the Constitutional Reform Act 2005 to extend the Lady Chief Justice's title from President of the Courts of England and Wales to President of the Courts and Tribunals of England and Wales.
- 469 Subsection (3) extends the definition of the judiciary to clarify that tribunals judiciary, as regards England and Wales, are covered by the Lady Chief Justice's leadership. It also provides for the Lady Chief Justice to have residual deployment responsibilities for the tribunals judiciary in England and Wales.
- 470 Subsection (4) signposts to amendments to section 3 of the Tribunals, Courts and Enforcement Act 2007 which provide that the Lady Chief Justice presides over the First-tier Tribunal and Upper Tribunal in England and Wales. It also allocates, as regards England and Wales, the Senior President of Tribunals' existing duties in relation to tribunals under section 2 of the Tribunals, Courts, and Enforcement Act 2007 to the Lady Chief Justice.
- 471 Subsection (5) inserts a new section 9A into the Constitutional Reform Act 2005, which provides a new, additional, statutory title of Head of Tribunals Justice for the Senior President of Tribunals. This section also creates a new statutory post of Deputy Head of Tribunals Justice and provides that the Lady Chief Justice may appoint this judicial office-holder and may delegate that power of appointment.
- 472 Subsection (6) amends section 3 of the Tribunals Courts and Enforcement Act 2007 to set out the respective presiding roles of the Lady Chief Justice and the Senior President of Tribunals, over tribunals in England and Wales, and Scotland and Northern Ireland, respectively.
- 473 Subsection (7) introduces Schedule 3, which (a) re-allocates the current statutory functions of the Senior President of Tribunals, so as to give effect to the transfer of functions to the Lady Chief Justice; (b) makes provision for the terms and appointment of the reformed office of Senior President of Tribunals; (c) makes other consequential amendments as required.

Schedule 3: Leadership of tribunals

Part 1 – Amendments of the Constitutional Reform Act 2005

- 474 Part 1 of the Schedule sets out amendments to the Constitutional Reform Act 2005. These include: extending the Lady Chief Justice's title as President of the Courts of England and Wales to become President of the Courts and Tribunals of England and Wales; extending the Lady Chief Justice's existing responsibilities to the courts judiciary to include the tribunals judiciary; re-allocating the Senior President of Tribunals' responsibilities regarding tribunals to the Lady Chief Justice; and creating a new statutory title of Head of Tribunals Justice for the Senior President of Tribunals, alongside a new statutory post of Deputy Head of Tribunals Justice; consequential changes relating to appointment provisions.

Part 2 – Amendments of the Tribunals, Courts and Enforcement Act 2007

- 475 Part 2 of the Schedule sets out amendments to the Tribunals Courts and Enforcement Act 2007. These include setting out how territorial splits will work, and the Lady Chief Justice's additional functions, in respect of the First tier Tribunal and the Upper Tribunal and provides for incapacity or vacancy of the office of Senior President of Tribunals.

Part 3 – Amendments of the Employment Tribunals Act 1996

476 Part 3 of the Schedule sets out amendments to the Employment Tribunals Act 1996. These make similar provision where relevant for the Employment Tribunals.

Part 4 – Amendments of other Acts

477 Part 4 of the Schedule sets out amendments to other Acts, including the Senior Courts Act 1981, which cover the position of the new Senior President of Tribunals as regards a role as an ex officio judge of the Court of Appeal, the precedence of the new role, provision for approving sitting in retirement for tribunal judges.

PART 1

478 Paragraph 1 provides for amendments to the Constitutional Reform Act 2005.

479 Paragraph 2 amends section 5 of that Act so that the Lady Chief Justice may make written representations to Parliament on matters relating to tribunals judiciary exercising their functions wholly or mainly in England and Wales (as is the case currently with the courts judiciary).

480 Paragraph 3 amends the heading of section 7 of that Act to be consistent with the inclusion of the tribunals of England and Wales within the Lady Chief Justice's remit.

481 Paragraph 4 consequentially amends section 7 of that Act to make express provision about the responsibility of the Lady Chief Justice for the allocation of work within those courts, while retaining her entitlement to sit in them..

482 Paragraph 5 amends section 16 of that Act to include the Senior President of Tribunals as an office holder who may deputise for the Lady Chief Justice in the event of incapacity or vacancy (provided that the incumbent is an ex-officio judge of the Court of Appeal).

483 Paragraph 6 amends section 75B of that Act to provide that: the judicial members of the selection panel must include the senior judge of the Supreme Court and at least one panel member with knowledge or experience of the relevant tribunals; and that the panel must consult the Lord Chancellor. These provisions are intended to recognise the cross-UK nature of the role, and the importance of tribunals expertise.

484 Paragraph 7 amends section 85 of that Act so that overarching judicial appointment processes include revised appointment provisions for tribunal judges and other members which are set out in amendments to Schedules 2, 3 and 4 of the Tribunals Courts and Enforcement Act 2007.

485 Paragraph 8 amends section 86 of that Act so that the provision for the Lord Chancellor's duty to fill vacancies corresponds to revised appointment provisions for tribunal judges and other members which are set out in amendments to Schedules 2, 3 and 4 of the Tribunals Courts and Enforcement Act 2007.

486 Paragraph 9 amends section 94C of that Act so that the Lord Chancellor's power to make regulations in relation to judicial appointment processes corresponds to revised appointment provisions for tribunal judges and other members which are set out in amendments to Schedules 2, 3 and 4 of the Tribunals Courts and Enforcement Act 2007.

487 Paragraph 10 amends section 99 of that Act so that the complaints process in respect of a judicial appointment makes provision for a complaint made in the case of an appointment which has been made by the Lady Chief Justice and the Senior

President of Tribunals acting jointly (as a consequence of revised appointment provisions which are set out in amendments to Schedule 4 of the Tribunals Courts and Enforcement Act 2007).

488 Paragraph 11 amends section 102 of that Act so that where a complaint is made in the case of an appointment which has been made by the Lady Chief Justice and the Senior President of Tribunals acting jointly, the Ombudsman may recommend actions to be taken by them acting jointly.

489 Paragraph 12 amends section 103 of that Act so that, where a complaint is made in the case of an appointment made by the Lady Chief Justice and the Senior President of Tribunals acting jointly, the Ombudsman must send the report to the Lord Chancellor, the Lady Chief Justice and the Senior President of Tribunals.

490 Paragraph 13 amends Schedule 14 to that Act so that tables of the appointments which are relevant to various appointment provisions in the Act, are updated to correspond to revised appointment provisions for tribunal judges and other members which are set out in amendments to section 7 and Schedules 2, 3 and 4 of the Tribunals Courts and Enforcement Act 2007.

PART 2

491 Paragraph 14 provides for amendments to the Tribunals Courts and Enforcement Act 2007.

492 Paragraph 15 amends section 2 of that Act to signpost to new section 9A of the Constitutional Reform Act 2005 which provides that the reformed post of Senior President of Tribunals has the title of Head of Tribunals Justice.

493 Paragraph 16 amends section 7 of that Act to: provide that the Lady Chief Justice must also concur (alongside the Senior President of Tribunals) to a Lord Chancellor's order under section 7(1) to organise the First Tier Tribunal or the Upper Tribunal into chambers; to provide that the Lady Chief Justice shall appoint Chamber Presidents whose work is restricted to England and Wales, and the Lady Chief Justice and the Senior President of Tribunals shall act jointly to appoint Chamber Presidents of cross-UK chambers; and to provide that the current power in section 7(9) for the Lord Chancellor and the Senior President to allocate work to chambers in the First Tier Tribunal and the Upper Tribunal, shall be extended to the Lady Chief Justice insofar as tribunals in England and Wales are affected.

494 Paragraph 17 inserts new sections 7A and 7B into that Act, which set out how delegation will operate between the Lady Chief Justice, the Senior President of Tribunals, and other judicial office holders and staff. The Lady Chief Justice will be able to delegate relevant tribunal functions acquired in this Bill (i.e. the current statutory functions which pertain to the Senior President of Tribunals) to the Senior President of Tribunals or to another senior judge (or Chamber President), or directly to other judicial office holders, or tribunals or court staff. The Senior President of Tribunals or other senior judges will be able to delegate onward any delegated functions, subject to the restrictions set out in section 8 of the Act which ensure that certain functions are restricted to senior judges (e.g. appointments); or judicial office holders (where they are inappropriate for staff). The current statute also restricts the Senior President of Tribunals from delegating certain functions at all, and this has now been amended so that these functions can be delegated to the Deputy Head of Tribunals Justice or to a Chamber President of the Upper Tribunal. The provision also excludes the Lady Chief Justice from delegating to judges in Scotland or

Northern Ireland who are judges of the First-tier Tribunal and Upper Tribunal only by virtue of section 6 of the Act, but do not otherwise hold posts in these tribunals.

495 Paragraph 18 amends section 8 of that Act to: enable the Senior President of Tribunals to delegate certain functions which cannot currently be delegated under that section, to either the Deputy Head of Tribunals Justice, or to a Chamber President of the Upper Tribunal; and to delegate those functions that can only be delegated to a Chamber President of the Upper Tribunal, also to the Deputy Head of Tribunals Justice. Section 8 is also amended to clarify that the Lady Chief Justice's current functions in relation to the tribunals in that Act (section 46 – disciplinary functions) are excluded from the delegation scheme as delegation is already separately provided for.

496 Paragraph 19 inserts new section 8A into that Act to provide that in the event the Lady Chief Justice and the Senior President of Tribunals are carrying out a function jointly, each may delegate their role as provided for; the Lady Chief Justice may delegate her role to the Senior President of Tribunals; but the Senior President of Tribunals may not delegate his role to the Lady Chief Justice.

497 Paragraph 20 amends section 23 of that Act so that the Lady Chief Justice and the Senior President of Tribunals will be jointly responsible for issuing Practice Directions for the First Tier Tribunal and the Upper Tribunal, and approving Directions issued by Chamber Presidents. This is so that Directions do not give rise to opportunities for litigants to argue that they were not properly authorised in a particular case. Where the Practice Directions concern proceedings under England and Wales law only, the Lady Chief Justice may issue; where the Practice Directions concern proceedings under Scottish and Northern Ireland law only, the Senior President of Tribunals may issue. The Lord Chancellor retains the function of final approval of Directions on practice and procedure (as opposed to interpretation of law).

498 Paragraph 21 amends section 29B of that Act to provide for the Lady Chief Justice also to be able to provide directions to persons authorised to carry out tribunal functions, as the Senior President of Tribunals can now. The amendments also provide for the Lady Chief Justice to be able to delegate functions around such directions, as the Senior President of Tribunals can now. Such directions will be issued by either the Lady Chief Justice or the Senior President of Tribunals dependent on the region in which the authorised person wholly or mostly carries out the relevant functions.

499 Paragraph 22 amends section 29D of that Act to provide for the Lord Chancellor to also consult the Lady Chief Justice where he is making an order in relation to payments to litigants who have been prejudiced by the actions of a person who has been authorised to carry out tribunal functions. The amendments also provide for the Lady Chief Justice to delegate the consultee function, as the Senior President of Tribunals can now.

500 Paragraph 23 amends section 40 of that Act to provide for the Lord Chancellor to consult the Lady Chief Justice as well as the Senior President of Tribunals when he makes an order enabling himself to enter into contracts for the provision of staff and/or services to tribunals.

501 Paragraph 24 amends section 42 of that Act to provide that the Lord Chancellor must also consult the Lady Chief Justice (alongside the Senior President of Tribunals) when he is making an order relating to fees that will impact on proceedings which

are heard in England and Wales.

- 502 Paragraph 25 amends section 43 of that Act so that the Senior President of Tribunals' duty to report to the Lord Chancellor annually on tribunals matters, is restricted to Scotland and Northern Ireland.
- 503 Paragraph 26 amends section 46 of that Act to provide that delegation from the Lady Chief Justice and onward is consistent with the other provision in these reforms.
- 504 Paragraph 27 amends section 47 of that Act to provide that the Lady Chief Justice, in addition to the Senior President of Tribunals and the President of Welsh Tribunals, must have regard to the duty to co-operate across territories as regards training, welfare or guidance for tribunals judiciary.
- 505 Paragraph 28 amends section 49 of that Act to provide that where order-making powers will in future include the Lady Chief Justice, that is reflected in provisions around how orders are to be made.
- 506 Paragraph 29 makes a number of amendments to Schedule 1 of that Act to reflect changes to the appointment process and terms for the Senior President of Tribunals. These include: giving effect to the removal of the existing route to appointment based on the agreement of the regional Chief Justices of the United Kingdom, so that going forward appointments must be made by a selection panel; giving effect to the removal of the option for the Senior President of the Tribunals to be appointed for a fixed term, so that in future the post may be held until retirement, as with Head of Division roles; making new provision for the incapacity or vacancy of the office, so that the Lord Chief Justice may appoint a judicial office holder to deputise, with the agreement of the Lord President of the Court of Session, and the Lord Chief Justice of Northern Ireland; setting out which tribunal members the Senior President of Tribunals represents, after the representation functions of the role have been split by territory.
- 507 Paragraph 30 makes a number of amendments to Schedule 2 of that Act to reflect changes to the authority for appointing judges and other members in the First Tier Tribunal, and for requesting courts judges to be deployed to a tribunal. These provide for the Lady Chief Justice to appoint relevant tribunal judges if they are expected to work wholly or mainly in England and Wales; and for the Senior President of Tribunals to do so if they are expected to work wholly or mainly in Scotland and Northern Ireland; and for training, guidance and welfare; and the taking of oaths, also to be split in this way.
- 508 Paragraph 31 makes a number of amendments to Schedule 3 of that Act to reflect changes to the authority for appointing judges and other tribunal members in the Upper Tribunal, and for requesting courts judges to be deployed to a tribunal. These provide for the Lady Chief Justice to appoint relevant tribunal judges if they are expected to work wholly or mainly in England and Wales; and for the Senior President of Tribunals to do so if they are expected to work wholly or mainly in Scotland and Northern Ireland; and for training, guidance and welfare; and the taking of oaths, also to be split in this way.
- 509 Paragraph 32 makes a number of amendments to Schedule 4 of that Act to reflect changes to the authority for appointing Chamber Presidents, Deputy Chamber Presidents and Acting Chamber Presidents (where a chamber carries out only England and Wales work, the Lady Chief Justice appoints; where the chamber carries out only Scotland or Northern Ireland work, the Senior President appoints; for

chambers carrying out cross-UK work, the Lady Chief Justice and Senior President acting jointly, appoint); and for other chamber related functions such as assignment to chambers, selection of judges for cases, and determining composition of panels.

510 Paragraph 33 makes a number of amendments to Schedule 5 to that Act, which deals with rules and procedure. These amend provision for authorisation of staff to carry out functions of the tribunals: so that both the Lady Chief Justice and the Senior President of Tribunals may authorise staff of the First tier Tribunal or the Upper Tribunal to exercise functions of the tribunal (the authorising principal will depend on where authorised persons will wholly or mainly exercise their functions). Authorisations will apply across the tribunal to ensure that authorisations cover proceedings fully, so that they do not give rise to opportunities for litigants to argue that e.g. directions were not properly authorised. This paragraph also provides for the principals to be able to delegate as currently. This paragraph also deals with changes to membership of the Tribunals Procedure Committee; the Lady Chief Justice will have membership of the Committee in addition to the Senior President of Tribunals; she will be able to nominate a representative. She will also acquire the ability to request that members with particular expertise should be appointed, alongside the Senior President of Tribunals who will retain the same ability.

511 Paragraph 34 amends Schedule 8 of that Act to omit provisions that insert into the Employment Tribunals Act 1996 provision that is repealed by this Bill.

PART 3

512 Paragraph 35 provides for amendments to the Employment Tribunals Act 1996.

513 Paragraph 36 amends section 4 of that Act so that the Lady Chief Justice will be responsible for the specified functions relating to composition of panels for Employment Tribunals in England and Wales, and the Senior President of Tribunals for Employment Tribunals in Scotland.

514 Paragraph 37 amends section 5A of that Act so that the Lady Chief Justice will be responsible for the specified functions relating to training for Employment Tribunal panels established in England and Wales, and the Senior President of Tribunals for Employment Tribunals panels established in Scotland.

515 Paragraph 38 amends section 5C of that Act so that the Lady Chief Justice, or their nominee, will receive oaths for Employment Tribunal panel members established in England and Wales, and the Senior President of Tribunals for Employment Tribunals panel members established in Scotland.

516 Paragraph 39 amends section 5D of that Act so that the Lady Chief Justice will be responsible for nominating judges to sit as part of Employment Tribunal panels established in England and Wales, and the Senior President of Tribunals for Employment Tribunals panels established in Scotland.

517 Paragraph 40 amends section 7A of that Act so that the Lady Chief Justice will be responsible for issuing Practice Directions for the Employment Tribunals in England and Wales, and for approving the Practice Directions, where appropriate, of the President of those tribunals; and the Senior President of Tribunals for Employment Tribunals in Scotland, and for approving the Practice Directions, where appropriate, of the President of those tribunals.

518 Paragraph 41 omits section 24A of that Act which has the effect that the Lady Chief Justice will be responsible for training for members of the Employment Appeal

Tribunal exercising functions wholly or mainly in England and Wales, and the Senior President of Tribunals for members of the Employment Appeal Tribunal exercising functions wholly or mainly in Scotland.

519 Paragraph 42 amends section 24B of that Act so that the Lady Chief Justice, or a judicial office holder nominated by her, will receive oaths for members of the Employment Appeal Tribunal exercising functions wholly or mainly in England and Wales, and the Senior President of Tribunals or a judicial office holder nominated by him, for members of the Employment Appeal Tribunal exercising functions wholly or mainly in Scotland.

520 Paragraph 43 amends section 28 of that Act so that the Lady Chief Justice will be responsible for the specified functions relating to composition of the Employment Appeal Tribunal for the purpose of deciding a matter relating to England and Wales, and the Senior President of Tribunals for the Employment Appeal Tribunal for the purpose of deciding a matter relating to Scotland.

521 Paragraph 44 amends section 29A of that Act so that the Lady Chief Justice will be responsible for issuing Practice Directions for the Employment Appeal Tribunal for the purpose of deciding a matter relating to England and Wales; and the Senior President of Tribunals for the Employment Appeal Tribunal for the purpose of deciding a matter relating to Scotland. (The President of the EAT retains the ability to issue Practice Directions in either case.) To ensure a consistent approach, the Senior President of Tribunals, and the Lady Chief Justice, where not the issuer, must approve a Direction. The Lord Chancellor retains the function of final approval of Directions on practice and procedure (as opposed to interpretation of law).

522 Paragraph 45 amends paragraph 2, Schedule A1, so that the Lord Chief Justice and the Senior President of Tribunals may authorise staff of the Employment Tribunals or the Employment Appeal Tribunal to exercise functions of the tribunals (the authorising principal will depend on where authorised persons will wholly or mainly exercise their functions). This paragraph also provides for the principals to be able to delegate as currently.

PART 4

523 Paragraph 46 amends Schedule 9 to the Agriculture Act 1947 so that where a member of the First-tier Tribunal is requested to sit in the Agricultural Land Tribunal, the request will be authorised by the Lady Chief Justice where the member wholly or mainly exercises functions in England and Wales; and otherwise by the Senior President of Tribunals.

524 Paragraph 47 amends the Land Tribunal Act 1949 so that where a surveyor is to be selected to determine compensation to be paid in accordance with section 58 or 106 of the Lands Clauses Consolidation Act 1845, this falls to the Lady Chief Justice if the land is in England or Wales, and to the Senior President of Tribunals otherwise.

525 Paragraph 48 amends Schedule 10 of the Rent Act 1977 so that where a member of the First-tier Tribunal is requested to sit on a rent assessment committee in Wales, the request will be authorised by the Lady Chief Justice where the member wholly or mainly exercises functions in England and Wales; and otherwise by the Senior President of Tribunals.

526 Paragraph 49 provides for amendments to the Senior Courts Act 1981.

527 Paragraph 50 amends Section 2 of that Act so that the Senior President of Tribunals is

an ex-officio judge of the Court of Appeal (provided that he/she is qualified to be appointed as an ordinary judge of the Court of Appeal, which entails having England and Wales qualification).

528 Paragraph 51 amends Section 9 of that Act so that where the Senior President of Tribunals is an ex-officio judge of the Court of Appeal, he need not be requested to hear cases there.

529 Paragraph 52 amends Section 11 of that Act so that in future the Senior President of Tribunals will be appointed on a lifetime basis (on good behaviour/until the age of 75) rather than being appointable for a fixed term as now.

530 Paragraph 53 amends Section 13 of that Act so that the Senior President of Tribunals will have precedence as a judge of the senior courts, next after the Chancellor of the High Court (provided that he/she is qualified to be appointed as an ordinary judge of the Court of Appeal, which entails having England and Wales qualification).

531 Paragraph 54 amends Schedule 2 of the Mental Health Act 1983 so that where a member of the First-tier Tribunal is requested to sit in the Mental Health Review Tribunal for Wales, the request will be authorised by the Lady Chief Justice where the member wholly or mainly exercises functions in England and Wales; and otherwise by the Senior President of Tribunals.

532 Paragraph 55 amends the Landlord and Tenant Act 1987 so that the Lady Chief Justice (rather than the Senior President of Tribunals) is responsible for the function of selecting surveyors in regard of acquisition orders where the landlord cannot be found, as this function relates only to England and Wales. The paragraph also allows for the Lady Chief Justice to delegate this function.

533 Paragraph 56 amends Schedule 11 to the Local Government Finance Act 1988 so that where a member of the First-tier Tribunal is requested to sit in the Valuation Tribunal for England, the request will be authorised by the Lady Chief Justice where the member wholly or mainly exercises functions in England and Wales; and otherwise by the Senior President of Tribunals.

534 Paragraph 57 amends Section 15A of the Social Security Act 1998 so that the duty of securing confidentiality in the First-tier Tribunal for prescribed materials falls on the Lady Chief Justice regarding tribunals in England and Wales, and to the Senior President of Tribunals in Scotland or Northern Ireland.

535 Paragraph 58 amends section 64 of the Courts Act 2003 to add the new terms “Head of Tribunals Justice” and “Deputy Head of Tribunals Justice” to the titles that the Lord Chancellor may amend by Order; it also provides for the Senior President of Tribunals to become a consultee in respect of such orders.

536 Paragraph 59 provides for amendments to the Crime and Courts Act 2013.

537 Paragraph 60 amends section 21 of the Crime and Courts Act 2013 to delete references to the Lady Chief Justice’s residual responsibility for deployment of tribunal judiciary, as this is superseded by the reform provisions of this Bill.

538 Paragraph 61 amends Schedule 13 of that Act to omit provisions which insert into the Tribunals, Courts and Enforcement Act 2007 provision repealed by this Bill.

539 Paragraph 62 amends Schedule 14 of that Act to omit provision which inserts into the Employment Tribunals Act 1996 provision repealed by this Bill.

- 540 Paragraph 63 amends the Wales Act 2017 so that, where a judge of the First-tier Tribunal is requested to sit in a Welsh tribunal, or a judge of a Welsh tribunal is requested to sit in the First-tier Tribunal, the authorising or requesting authority will be the Senior President of Tribunals (where the judge exercises functions wholly or mainly in Scotland or Northern Ireland, or the destination tribunal is in Scotland or Northern Ireland), and the Lady Chief Justice (where the judge exercises functions wholly or mainly in England and Wales, or the destination tribunal is in England or Wales).
- 541 Paragraph 64 amends the Schedule to the Courts and Tribunals (Judiciary and functions of Staff) Act 2018 to omit provision which inserts provision into the Tribunals Courts and Enforcement Act 2007 that is repealed by this Bill.
- 542 Paragraph 65 provides for amendments to the Public Service Pensions and Judicial Offices Act 2022.
- 543 Paragraph 66 amends section 124 of that Act to provide for the Lady Chief Justice to appoint relevant tribunal judges to sitting in retirement offices if they intend to work wholly or mainly in England and Wales; and for the Senior President of Tribunals to do so if they intend to work wholly or mainly in Scotland and Northern Ireland.
- 544 Paragraph 67 amends Schedule 3 to that Act to set out the judicial offices which fall under this provision.
- 545 Paragraph 68 provides for amendments to the Judicial Review and Courts Act 2022.
- 546 Paragraph 69 amends section 32 of that Act to provide for the Lady Chief Justice to concur to regulations relating to online tribunal proceedings in England and Wales, and the Senior President of Tribunals to retain that role in regard to Scotland and Northern Ireland.
- 547 Paragraph 70 amends Schedule 3 of that Act to provide that the Lady Chief Justice and the Senior President of Tribunals give and approve tribunals Practice Directions as to online proceedings in the same way as they do for tribunals Practice Directions generally.
- 548 Paragraph 71 amends Schedule 5 of that Act, to omit provisions which insert provisions repealed by this Bill.

Lay justices' allowances

Clause 19: Lay justices' allowances

- 549 Clause 19 replaces section 15 of the Courts Act 2003 with a new statutory framework, governing payments to lay justices (magistrates). Under the previous provision, the categories of expenses that could be claimed (travelling, subsistence and financial loss) were set out in primary legislation. The new clause removes those fixed categories and instead enables the Lord Chancellor to specify, by regulations, the types of expenditure or financial loss in respect of which a magistrate may receive payment.
- 550 This approach provides greater flexibility to adapt the expense framework over time, whilst retaining important parliamentary oversight through the negative resolution procedure but avoids the need for primary legislation to make what are essentially administrative changes.

551 Clause 19(1) sets out the new framework for section 15. New section 15(1) provides a delegated power, exercisable by the Lord Chancellor, to specify in regulations the expenditure incurred in connection with the performance of a lay justice's duties, the financial losses suffered as a result of performing those duties, and any other specified expenditure incurred by the lay justice, in respect of which the lay justice is entitled to receive payments.

552 New section 15(2) sets out non-exhaustive matters on which provision may be made by regulations. It allows the Lord Chancellor to include in the regulations provision as to what matters are, or are not, to be treated as duties of a lay justice, as well as provision about when expenditure is, or is not, to be regarded as incurred in connection with the performance of any duties, and when financial losses are, or are not, to be regarded as suffered as a result of the performance of any duties. It also allows provision to be made about the administration of the scheme, including the process for making a claim for a payment under the regulations, any exceptions to entitlement, and safeguards to avoid duplication where expenditure may be incurred for more than one purpose.

553 New section 15(3) confirms that any amounts to which a lay justice is entitled by virtue of the section are to be paid by the Lord Chancellor and may be paid at a rate determined by the Lord Chancellor.

554 New section 15(4) clarifies that "specified" means specified in the regulations.

555 Clause 19(2) makes a consequential amendment to the Constitutional Reform Act 2005.

The Crown Court in the City of London

Clause 20: Special provision when Crown Court sits in City of London

556 Subsection (1) provides that section 8 of the Senior Courts Act 1981 (which concerns the constitution and sittings of the Crown Court) is amended in accordance with subsections (2) and (3).

557 Subsection (2) amends section 8(3), which currently provides that when the Crown Court sits in the City of London is to be known as the Central Criminal Court. The amendment clarifies that the title "Central Criminal Court" applies only when the Crown Court sits at the premises made available under section 29(1) of the Courts Act 1971 (that is, the Old Bailey). This preserves the long-standing position that the title "Central Criminal Court" is reserved for the Old Bailey.

558 This amendment is necessary because of the new City of London Law Courts, due to open in 2027, which will provide additional Crown Court courtrooms within the City. Without this amendment, sittings of the Crown Court at those other premises would also fall within section 8(3) and therefore be designated as the Central Criminal Court, potentially causing operational confusion and diminishing the historical status of the Old Bailey.

559 Subsection (3) inserts a new subsection (3A). This extends the existing entitlement of the Lord Mayor of the City of London and any Alderman of the City to sit as judges of the Central Criminal Court so that it continues to apply when the Crown Court sits at other premises within the City of London. Under the current wording of section 8(3), that entitlement attaches to any sitting of the Crown Court in the City. Subsection (3A) preserves that effect following the narrowing of the naming provision in subsection (2). In practice, and as a matter of convention, the Lord

Mayor and Aldermen do not assert that entitlement in order to sit in hearings in criminal cases.

PART 3 - FINAL PROVISIONS

Clause 21: Power to make consequential amendments

560 Clause 21 creates a power for the Secretary of State to make any consequential amendment that may be required to existing law to ensure a consistency in the statute book and operability of the provisions of this Bill. Consequential amendments which amend primary legislation are subject to the affirmative resolution procedure, whereas consequential amendments which do not amend primary legislation are subject to the negative resolution procedure.

Clause 22: Power to make transitional or saving provision

561 Clause 22 provides a power to the Secretary of State to make transitional or saving provisions in connection with the coming into force of this Bill.

Clause 23: Power to state effect of provisions commencing Sentencing Code amendments

562 Clause 23 of the Bill applies the power in section 419(1) of the Sentencing Act 2020 to any amendment or repeal made under this Bill to the 2020 Act. Section 419(1) of the 2020 Act sets out that, where amending the 2020 Act by exercise of any power in Schedule 22 or 23 to the 2020 Act, the Secretary of State may by regulations amend the Sentencing Act 2020 so as to specify the cases or purposes for which the amendment or repeal has effect (section 419(1)(a)). Regulations made under this section can also secure that any provision of the 2020 Act 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 2020 Act which class of persons an amendment applies to without the need to look at commencement regulations. This clause gives the Secretary of State the same powers in respect of amendments being made to the Sentencing Act 2020 by or under this Bill as with any amendments made to the 2020 Act by Schedule 22 or 23 to the 2020 Act.

Clause 24: Regulations

563 This section outlines the procedures for making regulations under the Bill. Subsection (1) outlines that regulations are exercisable by statutory instrument.

564 Subsection (2) allows regulations made under this Act to include consequential, supplementary, incidental, transitional, or saving provisions and provides for regulations to make different provision for different purposes. Subsection (2) does not apply to regulations made under clause 26.

Clause 25: Extent

565 Subsection (1) provides that Part 1 and 2 of this Bill, other than clause 7, 18(6) and 18(7), extend to England and Wales only.

566 Subsection (2) confirms clause 7, 18(6) and 18(7) and part 3 extend to England, Wales, Scotland and Northern Ireland.

567 Subsection (3) provides that an amendment or repeal made by Schedule 2 or 3 has the

same extent within the United Kingdom as the provision amended or repealed.

568 Subsection (4) provides that clauses 10(4) and 11(8) of the Bill have the same extent as Schedule 6 to the Criminal Justice Act 2003. This means that the subsections have the same extent as the Armed Forces Act 2006, so that they have UK-wide extent, and also extend to the Isle of Man and the British Overseas Territories except Gibraltar. They may be extended to any Channel Island by Order in Council.

569 Subsection (5) provides that the power conferred by section 338 of the Criminal Justice Act 2003 is exercisable in relation to any amendment made to that Act that is made by or under this Bill.

Clause 26: Commencement

570 Subsection (1) provides that clauses 21 to 25 and clause 27 of the Bill come into force on the day on which the Act is passed, as does any power to make regulations or rules by virtue of this Bill

571 Subsection (2) provides that section 6 and section 20 come into force at the end of the period of two months beginning with the day on which the Bill is passed.

572 Subsection (3) provides that the other provisions of this Bill come into force in accordance with regulations made by the Secretary of State. Subsection (4) provides that regulations made under subsection (3) may make different provisions for different purposes or different areas.

Clause 27: Short Title

573 Clause 28 provides that the short title of the Bill will be Courts and Tribunals Act 2026, once the Bill becomes an Act.

Financial implications of the Bill

574 An overarching Impact Assessment has been prepared that includes each part of the Bill and covers the implications for bodies and organisations which derive from this Bill.

575 The costs below are best estimates of the monetised costs of the Bill as outlined in the Impact Assessment.

576 The monetised costs of the IRCC measures will primarily arise from increased average annual prison running costs (£1m), probation (£17m), legal aid costs (£9m) and total implementation costs (£123m) (which includes transition costs). Prison services will face changing demand due to faster court resolution leading to earlier entry to the sentenced population, only partially offset by shorter time on remand over a 10-year horizon. Faster case resolution also speeds up when cases fall under probation services, resulting in additional costs. Finally, implementation will require upfront investment in IT system changes, recording equipment, and training for judicial staff. Legal aid costs to Government will see a pull-forward due to the faster resolution of cases alongside additional operational costs from higher case volumes.

577 There are no monetised costs associated with the non-IRCC measures in the Bill.

Parliamentary approval for financial costs or for charges imposed

578 A money resolution will be needed in respect of the Bill. A money resolution is

required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. There is potential government expenditure in respect of clause 19 and Schedule 2. The House of Commons will be asked to agree that such expenditure is to be paid out of money provided by Parliament. (There is also potential government expenditure arising from clauses 1 to 6, but this does not require the cover of a money resolution, as it falls within the administration of justice exemption (Erskine May 2021, paragraph 35.15).)

579 Clause 19 enables the Lord Chancellor to make regulations entitling lay justices to payments in respect of expenditure incurred by them in connection with the performance of their duties or financial losses suffered by them as a result of performing those duties. Any amounts to which lay justices are entitled under those regulations are to be paid by the Lord Chancellor.

580 New section 108S of the Magistrates' Courts Act 1980, inserted by Schedule 2, makes provision for the audio recording of trials and sentencing hearings in magistrates' courts. There will be significant new expenditure in respect of the new technology required to give effect to this.

581 No ways and means resolution is required as the Bill does not authorise any new taxation or similar charges. However, the money resolution authorises the paying in of money to the Consolidated Fund that may arise as a result of the amendments made to section 18 of the Prosecution of Offences Act 1985 by paragraph 14(4) of Schedule 2

Compatibility with the European Convention on Human Rights

582 The Rt Hon David Lammy MP, Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice has made the following statement under section 19(1)(a) of the Human Rights Act 1998: "In my view the provisions of the Courts and Tribunals Bill are compatible with the Convention Rights".

Environment Act 2021 section 20 statement

583 The Rt Hon David Lammy MP, Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

European Union (Withdrawal) Act 2018 section 13C

584 The Rt Hon David Lammy MP, Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice, is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

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

- a. Independent Review of the Criminal Courts: Part 1 - GOV.UK, available online here:
<https://www.gov.uk/government/publications/independent-review-of-the-criminal-courts-part-1>
- b. 2001, Review of Criminal Courts by The Rt Hon Lord Justice Auld, available online here: <https://www.criminal-courts-review.org.uk/auldconts.html>
- c. 2016, Review of Efficiency in Criminal Proceedings by The Rt Hon Sir Brian Leveson available online here:
<https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>

Annex A - Territorial extent and application in the United Kingdom

Provision	England and Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England and Wales?	Legislative Consent Motion process engaged for Wales?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
<i>Part 1 Proceedings in Criminal Courts</i>						
Clause 1	Yes	No	No	No	No	No
Clause 2	Yes	No	No	No	No	No
Clause 3	Yes	No	No	No	No	No
Clause 4 (and schedule 1)	Yes	No	No	No	No	No
Clause 5	Yes	No	No	No	No	No
Clause 6	Yes	No	No	No	No	No
Clause 7 (and Schedule 2)	Yes	No	No	No	No	No
Clause 8	Yes	No	No	No	No	No
Clause 9	Yes	No	No	No	No	No
Clause 10	Yes	No	In part (where it applies in service justice system)	No	In part (where it applies in service justice system)	No
Clause 11	Yes	No	In part (where it applies in service justice system)	No	In part (where it applies in service justice system)	No

Provision	England and Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England and Wales?	Legislative Consent Motion process engaged for Wales?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
			system)			
Clause 12	Yes	No	No	No	No	No
Clause 13	Yes	No	No	No	No	No
Clause 14	Yes	No	No	No	No	No
Clause 15	Yes	No	No	No	No	No
Clause 16	Yes	No	No	No	No	No
<i>Part 2 – Other Provisions about Courts and Tribunals</i>						
Clause 17	Yes	No	No	No	No	No
Clause 18 (and Schedule 3)	Yes	No	Yes (in part)	No	Yes (in part)	No
Clause 19	Yes	No	No	No	No	No
Clause 20	Yes	No	No	No	No	No
<i>Part 3 – Final Provisions</i>						
Clause 21	Yes	No	Yes	No	Yes	No
Clause 22	Yes	No	Yes	No	Yes	No
Clause 23	Yes	No	Yes	No	Yes	No
Clause 24	Yes	No	Yes	No	Yes	No
Clause 25	Yes	No	Yes	No	Yes	No
Clause 26	Yes	No	Yes	No	Yes	No
Clause 27	Yes	No	Yes	No	Yes	No

COURTS AND TRIBUNALS BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Courts and Tribunals Bill as introduced in the House of Commons on 14 May 2026 (Bill 5).

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