CRIMINAL JUSTICE BILL

DELEGATED POWERS MEMORANDUM

Introduction

1. This memorandum has been prepared by the Home Office and Ministry of Justice for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Criminal Justice Bill. The memorandum identifies the provisions of the Bill which confer new or modified powers to make delegated legislation. It explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

Overview and purposes of the Bill

2. The purpose of the Bill is to keep communities safe by:

    - Strengthening the law to protect the public from violence and intimidation;
    - Enabling law enforcement agencies to respond to changing technology deployed by criminals;
    - Tackling violence against women and girls
    - Introducing tougher sentencing;
    - Equipping law enforcement agencies to address emerging crime types and threats; and
    - Strengthening public confidence in policing.

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

    (i) Introduction of new offences relating to the possession and supply of articles for use in serious crime.
    (ii) Introduction of new offences relating to the possession and supply of “SIM farms” and a power to create a summary offence of possessing or supplying articles used to facilitate fraud by means of electronic communications.
    (iii) Extension of police powers to test persons in police detention for the presence of specified controlled drugs.
    (iv) New powers to suspend IP addresses and domain names used in serious crime.
    (v) Extension of the data-sharing arrangements in respect of driver licence records between the DVLA and the police and other law enforcement agencies.
    (vi) Transfer of prisoners to foreign prisons.
    (vii) Reform of the post-conviction confiscation regime in respect of the proceeds of crime.
    (viii) Establishment of a “Suspended Accounts Scheme” to enable funds suspected of being acquired through criminal activity and held by financial institutions in suspended accounts to be used in tackling economic crime.
    (ix) Strengthening the operation of Serious Crime Prevention Orders.
    (x) Introduction of new powers to tackle nuisance begging and rough sleeping where it causes damage, distress, harassment or disruption.

(xi) Strengthening the accountability of Community Safety Partnerships.
(xii) Placing a duty on the College of Policing to issue a code of practice for ethical policing and for that code to include a duty of candour on the police.
(xiii) Enabling chief officers of police to appeal to a Police Appeals Tribunal (PAT) in respect of disciplinary matters concerning officers and special constables in the chief officer's force and enabling local policing bodies to appeal to a PAT in respect of disciplinary matters concerning the chief officer of police of their force.
(xiv) A power to state the effect of amendments made by or under the Bill in the Sentencing Code and to make consequential, transitional or savings provision in other enactments.
(xv) Standard powers to amend legislation consequential upon the provisions of the Bill and in respect of commencement.

Analysis of delegated powers by clause

Clause 2(3): Power to amend meaning of "relevant article"

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument.

Parliamentary Procedure: Draft affirmative procedure

Context and Purpose

4. Clause 1 creates two new criminal offences:
    a. An offence of possessing a relevant article in circumstances which give rise to a reasonable suspicion that the relevant article will be used in connection with any serious offence; and
    b. An offence of importing, making, adapting, supplying or offering to supply a relevant article in circumstances which give rise to a reasonable suspicion that the relevant article will be used in connection with any serious offence.

5. It is a defence for a person charged with one of these offences to show that they did not intend or suspect that the relevant article would be used in connection with a serious offence.

6. Clause 2(1) and (2) defines a relevant article for the purpose of these new offences, namely:
    - templates for 3D-printed firearms components;
    - encapsulators or pill presses used in the manufacture of illegal drugs; and
    - a vehicle concealment used to hide persons or things (such as illegal drugs).

7. Manufacturers, modifiers, and suppliers profit from the supply of such articles that could then be used by criminals to commit serious crime. These articles will change over time as technology changes. Clause 2(3) will enable the Secretary of State,

by regulations, to amend clause 2 so as to add to or amend the list of relevant articles for the purposes of the offences in clause 1.

Justification for taking the power

8. The Bill provides on its face for new offences criminalising the possession, importation, making, modifying, supplying, offering to supply of a relevant article in circumstances which give rise to a reasonable suspicion that the relevant article will be used in connection with any serious offence. It further contains a list of relevant articles for the purpose of the offences. Given the dynamic and fast-paced nature of technological development and the readiness of criminals to exploit new opportunities to engage in crime, it is considered appropriate that the Secretary of State should have the ability to update the definition of a relevant article for the purposes of the offences through secondary legislation. This delegated power would ensure that the list of specific articles used in serious crime remains up to date. It will enable the Government to amend and add articles to the specified list in response to the actions of individuals who facilitate and commit serious crime and respond quickly to emerging threats and evolving criminal tactics.

9. Regular consultation will take place with all stakeholders including law enforcement agencies to identify tools or articles which enable serious crime to take place which are not captured under existing legislation. Each article will be considered carefully, examining the effects of listing new articles under this legislation and the impact it would have on the public, specifically exploring the effects on those with protected characteristics, ensuring law abiding individuals and/or legitimate organisations are not disproportionately affected.

Justification for the procedure

10. By virtue of clause 76(3)(a), the regulation-making power in clause 2 is subject to the draft affirmative procedure. This is considered appropriate as this power will amend the scope of a serious criminal offence; the draft affirmative procedure is also apt given that this is a Henry VIII power. Parliament should have the opportunity to debate and approve any new articles that would be added to this criminal offence before they take effect, given the impact that this could have on citizens.

Clause 7(4): Power to amend section 7 (Sections 5 and 6: meaning of "SIM farm" etc)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument.

Parliamentary Procedure: Draft affirmative procedure

Context and Purpose

11. Clauses 5 and 6 provide for two new offences relating to the possession and supply of a "SIM farm", subject in each case to a defence of good reason or lawful authority. Schedule 1 sets out the required entry and search powers to enable law

enforcement authorities to find evidence of such an offence along with the necessary conditions and procedures for exercising them.

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

13. Clause 7 provides a definition of SIM farms that reflects information the Government received during the consultation and further engagement with stakeholders. Clause 7(4) enables the Secretary of State to amend clause 7 (other than subsection (4)) for the purpose of modifying the definition of SIM farms it contains.

Justification for taking the power

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

Justification for the procedure

15. By virtue of clause 76(3)(a), regulations made under clause 7(4) are subject to the draft affirmative procedure. This is considered appropriate given that any such regulations could alter the ambit of the two offences. The draft affirmative procedure is also considered appropriate given that this is a Henry VIII power.

Clause 8(1): Power to create a summary offence of possessing or supplying other article used to facilitate fraud by electronic communications

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative procedure

Context and Purpose

16. Clause 8 enables the Secretary of State to extend the ban on SIM farms to other communications technologies when the Secretary of State considers that there is a significant risk of such an article being used for a purpose connected with telecommunications fraud. Specifically, the clause confers on the Secretary of State a power, by regulations, to create a new criminal offence of possessing or supplying an article specified in the regulations. An article may be specified only if the Secretary of State considers that there is a significant risk of the article being used for purposes connected with fraud perpetrated by means of (a) an electronic communications network, or (b) an electronic communications service. Any new offence would be summary only and subject to a maximum penalty, in England and Wales, of an unlimited fine (or £5,000 in Scotland or Northern Ireland). Regulations may contain exceptions or defences, in particular to include provision corresponding or similar to the "good reason" and "lawful authority" defences in clauses 5 and 6. They may also apply any provision set out in Schedule 1 to make provision corresponding or similar to paragraphs in that Schedule, so that searches for those articles can be carried out just as they can for SIM farms and corresponding safeguards applied.

17. Before making such regulations, the Secretary of State is required to consult such persons as the Secretary of State considers will be affected by the regulations.

Justification for taking the power

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

19. While we consulted with a wide range of stakeholders, the Government does not consider it is possible to compile an exhaustive list of items, beyond SIM farms, to list on the face of the Bill to ensure that the ban remains effective as technology develops. Fraudsters can be quick to adapt, and the Government wants to ensure that these provisions can be adjusted accordingly. The power will therefore enable the Secretary of State to create complementary new offences to those in clauses 5 and 6 to capture new communications technologies that can be used to facilitate fraud.

Justification for the procedure

20. By virtue of clause 76(3)(a), regulations made under clause 8(4) are subject to the draft affirmative procedure. It is considered that affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny, given that any such

regulations would be creating a new criminal offence. Consultation with those likely to be affected prior to introducing any amendments provides an additional level of scrutiny and checks to exercising this power.

Clause 15(4) – New section 63CA of the Police and Criminal Evidence Act 1984: Powers to specify controlled drugs and trigger offences for the purposes of section 63B and 63C of PACE

Power conferred on:	Secretary of State
Power exercised by:	Regulations made by statutory instrument
Parliamentary Procedure:	Negative procedure for regulations specifying controlled drugs; draft affirmative procedure for specifying trigger offences.

Context and Purpose

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

22. Clauses 15 and 16 of the Bill expand the drugs that can be tested for in police detention (on arrest for individuals aged 18 and over; after charge for individuals aged 14 and over), and the subsequent drug assessment regime for the misuse of

drugs, to “specified controlled drugs”, which includes Class A, Class B and Class C drugs.

23. Clause 15(2) and (3) substitutes “Class A” in each place it appears in section 63B of PACE, for “controlled”. Clause 15(3)(b)(ii) replaces the definitions of “specified” and “trigger offences” in section 63C of PACE with the following definitions:

- “specified controlled drug” means a controlled drug (within the meaning of the Misuse of Drugs Act 1971) specified in regulations under section 63CA;
- “trigger offence” means an offence specified in regulations under section 63CA.

24. Clause 15(4) in turn inserts new section 63CA into PACE after section 63C of PACE which confers the power on the Secretary of State to specify controlled drugs and trigger offences for the purposes of section 63B. New section 63CA(2) enables regulations made under new section 63CA(1) to make different provision for different purposes or different areas; and make transitional, transitory or saving provision. Amongst other things, this would enable regulations to specify different trigger offences for the testing of Class A, Class B or Class C drugs. Clause 15(6) repeals Schedule 6 to the 2000 Act and the associated power to amend that Schedule as there is now no drug testing or assessment provision in the 2000 Act which relies upon the definition of trigger offences.

Justification for taking the power

25. The amendments to PACE made by clause 15 will enshrine on the face of primary legislation the power to drug test in police detention for any specified controlled drug (that is, specified Class B and Class C drugs in addition to specified Class A drugs). It is appropriate to then provide a power to the Secretary of State to specify in secondary legislation the particular controlled drugs for which persons in police detention may be tested for as Parliament will have approved in principle the expansion of drug testing in police detention powers during the passage of the Bill. Further, specifying the relevant controlled drugs in regulations enables the list to be readily updated in response to emerging drug trends and threats to ensure the police have the appropriate power to divert individuals to drug treatment and support services, alongside, development in new technologies, that will allow testing of additional drugs in the future. The power for the Secretary of State to specify the drugs within scope of drug testing in police detention in respect of controlled drugs is in line with the existing legislative framework for Class A drugs, where the Secretary of State can specify the Class A drugs that can be tested for. This approach also recognises that the list of controlled drugs in Schedule 2 to the Misuse of Drugs Act 1971 is itself open to amendment by secondary legislation (see section 2(2) of that Act).

26. Similarly, primary legislation will be used to repeal Schedule 6 to the 2000 Act (which lists trigger offences) and the power to amend this Schedule conferred on the Secretary of State by section 70(2) of the 2000 Act, and replace this with a new power to specify trigger offences for the purposes of section 63B of PACE under new section 63CA of PACE. It is therefore necessary for the list of trigger offences to be specified in secondary legislation in order to tackle new and emerging drug-related criminality or the creation of a new offence. Again, this is analogous to the

existing power in section 70(1) of the 2000 Act, albeit that that is a power to modify the list of trigger offences set out in primary legislation. It is envisaged that the regulations made under new section 63CA(1)(b) of PACE will replicate the list of offences in Schedule 6 to the 2000 Act.

Justification for the procedure

27. By virtue of new section 63CA(4) and (5), the power to specify the controlled drugs within scope of drug testing in police detention is subject to the negative procedure while the power to specify trigger offences is subject to the draft affirmative procedure. This is in line with the existing powers in section 70(1) of the 2000 Act. The negative procedure for the power to specify controlled drugs is considered to afford an appropriate level of parliamentary scrutiny as there are existing processes for controlling substances under the Misuse of Drugs Act 1971, including the requirement to consult with the Advisory Council on the Misuse of Drugs and established Parliamentary processes prior to controlling a drug under the 1971 Act. The draft affirmative procedure is considered appropriate for the power to specify trigger offences as any regulations adding to the list of trigger offences would have the effect of bringing more persons within the drug testing regime without requiring a police officer at least the rank of inspector to authorise the drug test, where there are reasonable grounds to suspect the drug use caused or contributed to the offence.

Paragraph 10 of Schedule 3: Power to make provision as to the practice and procedure to be followed in connection with proceedings relating to suspension orders

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

Context and purpose

28. Clause 20 and Schedule 3 enable the police, National Crime Agency, HM Revenue and Customs, the Financial Conduct Authority or the Gambling Commission to obtain a court order for the suspension of an internet protocol (IP) address or domain name where it is being used for the purposes of serious crime. Suspension orders require a third-party provider to suspend access to an IP address or domain name. Schedule 3 makes provision for applications for suspension orders, the

conditions for making an order, the inclusion of non-disclosure requirements in an order, the discharge, variation and extension of orders and the service of orders.

29. Paragraph 10 of Schedule 3 enables rules of court to make provision relating to the practice and procedure to be followed in proceedings relating to suspension orders.

Justification for the power

30. Rules Committees exist in England and Wales, Scotland and Northern Ireland to make and maintain, or keep under review and comment on, rules governing the practice and procedure of the criminal courts. The committees are independent of government. The powers provided in paragraph 10 of Schedule 3 refer to powers that already exist in legislation to make criminal procedure rules. Rules of court may make provision at a level of detail that is not appropriate to be made in primary legislation. The point of allowing the Rules to provide the supplementary procedures is to keep criminal procedure consistent and easy to find, and to make it possible for procedures to be up to date and efficient in the light of experience. It is not considered that proceedings relating to suspension orders require a departure from the existing procedures for making rules for the relevant court.

Justification for the procedure

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

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

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

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

Clause 21(2) – New section 71(2) and (5) of the Criminal Justice and Court Services Act 2000: Duty to make driver information regulations

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Affirmative Resolution procedure for regulations made under section 71(5), otherwise negative resolution procedure*

Context and purpose

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

36. Clause 21(2) substitutes a replacement section 71 of the 2000 Act. New section 71(1) provides for the Secretary of State to make driver licensing records available for use by an "authorised person". An authorised person is defined in new section 71(3) as a person who is under the direction and control of the chief officer of a body listed in new section 71(4) and is authorised by that chief officer to receive information for the purpose of section 71.

37. New section 71(2) places a duty on the Secretary of State to make "driver information regulations" setting out the purposes for which, and the circumstances in which, driver records may be made available for the purposes of section 71. The prescribed purposes must be related to policing or law enforcement.

38. Clause 71(5) enables driver information regulations to amend section 71(4) to add a body to that subsection or to modify or remove a reference to a body listed in that subsection.

39. New section 71(6) allows driver information regulations to provide for (among other things) the purposes for which the data may be made available and subsequently disclosed (and those for which it may not be used on further disclosed) and the conditions that must be met by the person receiving the information.

40. Before making driver information regulations, the Secretary of State is required to consult the persons specified in new section 71(8).

Justification for the power

41. The new section 71 of the 2000 Act re-establishes on the face of primary legislation the principle that DVLA driver records can be shared with policing and other law enforcement agencies for policing and law enforcement purposes. Having established that principle on the face of the Bill, the Government considers it appropriate to lead the precise purposes, and the circumstances in which, driver records may be made available to an authorised person (subject to the limitation that such purposes must be policing or law enforcement purposes). Police forces and the other law enforcement bodies listed in section 71(4) carry out an array of functions and regulations will ensure that driver records can only be accessed for particular prescribed functions, such as the investigation of crime, and not more broadly. The replacement power in new section 71(2) is broadly analogous to the power in the existing section 71(2).

42. New section 71(4) sets out on the face of the 2000 Act a list of bodies the personnel of which may access driver licence records. The Government considers it appropriate that this list can be added to or otherwise amended by regulations. This would enable other bodies exercising law enforcement functions to be readily added to the list should an operational case be made to access driver licence records or for a body to be removed from the list or for an entry to be modified, for example, if a body is abolished or its functions transferred to another body or if it were to change its name.

Justification for the procedure

43. By virtue of new section 76(5A) of the 2000 Act, as inserted by clause 21(3), regulations made under new section 71(2) are subject to the negative procedure while those made under new section 71(5) are subject to the affirmative procedure. The negative procedure for the section 71(2) regulations is considered appropriate as the overall purposes for which driver licence records may be accessed by a listed body will be established in primary legislation and such regulations would necessarily then narrow the purposes for which such records may be made available. The existing power in the current section 71(2) is also subject to the negative procedure. The affirmative procedure is appropriate for regulations made under section 71(5) given that such regulations may expand the list of bodies to which driver licence records may be disclosed. The affirmative procedure is also apt as this is a Henry VIII power.

Clause 21(2) – New section 71A(1) of the Criminal Justice and Court Services Act 2000: Code of practice about access to driver licence records

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

Context and purpose

44. Clause 21(2) also inserts new section 71A into the 2000 Act. New section 71A(1) confers a power on the Secretary of State to issue a code of practice about the receipt and use of driver licence records accessed under new section 71. New section 71A(2) enables the code to make different provision for different purposes or different areas. New section 71A(3) sets out a requirement to consult listed bodies and persons before issuing a code. new section 71A(6) requires any persons to whom driver licence records are made available under section 71 to have regard to the code.

Justification for the power

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

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

Justification for the procedure

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

Clause 29(1): Power to amend domestic provisions to facilitate the detention of prisoners in a prison outside the UK in line with any international arrangement made between the UK and a foreign country

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Draft affirmative procedure where amending primary legislation, otherwise negative procedure*

Context and purpose

48. The Government is establishing new domestic powers that would allow it to transfer prisoners to prisons overseas, to be held on behalf of England and Wales in accordance with international agreements to rent a prison, or part of a prison in a foreign country. The Secretary of State will retain ultimate responsibility for the prisoner and in ensuring the conditions they are transferred to are compliant with the ECHR and comparable with prisons in England and Wales.

49. The Government will negotiate an agreement with a partner country for them to hold prisoners on behalf of England and Wales. Transfers in pursuant of that agreement will be facilitated by clauses 25 to 28. These will give the Secretary of State powers to transfer prisoners by way of a warrant and will set up a position for a controller to give oversight of the operation of the agreement and any transfers under it. The clauses set out the framework for such a policy to operate and can be applied for any number of such agreements without amendment. The exact details or any kind of model adopted in the agreement will be subject to negotiations with the receiving country, and ministerial decision. Following these negotiations, it is likely that the UK will need to introduce secondary legislation under this delegated power in clause 29 and the receiving country will need to introduce legislation of its own to give effect to these arrangements.

50. It is challenging to say with specificity what legislative changes (if any) a future partner may require following negotiation and subsequent agreement, but the UK would likely need to make amendments necessary via secondary legislation to ensure that the agreement can operate effectively and that the Secretary of State can comply with any future agreement.

51. As such, the Government is taking a power in clause 29 to amend primary and secondary legislation, as required, for the sole purposes of implementing and ensuring compliance with any international agreement made for the purpose of holding prisoners in another State.

Justification for the power

52. The power is required to amend legislation for the implementation of any negotiated agreement. This cannot be done until negotiations are completed. If there were no powers to facilitate implementation, the Government would have to wait for an appropriate vehicle each time a negotiated agreement was settled to be able to make use of that agreement. The reason for the agreement would be to increase prison capacity and that purpose would be defeated, and it would not be practicable, for there to be a delay whilst primary legislation was drawn up and Parliamentary time allocated for a further Bill to pass. Therefore, this power is necessary because, until those negotiations conclude, the Government cannot know what further legislative amendments may be required, and the timeframes in which the amendments will need to be made.

53. International agreements are inherently subject to change during negotiations. This means that the measures included within this Bill or wider measures in UK legislation may not wholly accommodate the final terms of any agreement and require extension or amendment in future, to ensure timely compliance with the

treaty as agreed and scrutinised by Parliament. The international agreements with other partner countries may also differ, so may require different amendments.

54. The specific terms of any future treaty on prison rental will be subject to further Parliamentary scrutiny when the treaty text is laid before Parliament as part of the Constitutional Reform and Governance Act 2010 ratification procedure. The power in clause 29 is strictly restricted and can only operate in connection with any arrangement made between the United Kingdom and a foreign country which provides for prisoners to be detained in a foreign country instead of England and Wales for part of all of their detention period.

55. It is not possible to anticipate the outcomes of the negotiations, and any anticipation would significantly bind any negotiating power. It is not yet clear which matters will remain the responsibility for the Government, and which will fall to the other jurisdiction.

56. However, we have considered some of the matters that such a power may be used for, but as set out above, others may be raised during negotiations. The following examples are illustrative of the fact that proposed amendments to primary legislation would be limited in scope to implementing the international agreement and ensuring that existing provisions in primary legislation relating to prisoners, are also applicable to those in rented prisons.

- Section 1 of the Coroners and Justice Act 2009 provides that a senior Coroner who is made aware that the body of a deceased person is within that coroner's area must as soon as practicable, conduct an investigation into the person's death if the deceased died while in custody or otherwise in state detention (section 1(2)(c)). Subject to negotiations, it may be that the Government (or the foreign country) would prefer a Coroner in England and Wales to also have jurisdiction over a death in custody of a prisoner being held on behalf of England and Wales. Ultimately the Secretary of State will retain responsibility for such prisoners and may consider that to fulfil his Article 2 obligations he requires such jurisdiction to be retained. Alternatively, it may be considered that the other country has comparable systems which fulfil such obligations. The Coroner already has responsibility for investigating deaths of prisoners in custody, and the deaths of service personnel aboard. Therefore, any proposed amendment would only be to ensure that those provisions apply to prisoners in the rented prison and that the Coroner can conduct the investigations so would not be dissimilar to existing arrangements in the Coroners and Justice Act 2009. So if negotiations left this responsibility to the Secretary of State then this would be a likely consequential amendment to the coroners powers to implement the international agreement.

- An offence will only be triable in the jurisdiction in which the offence took place, unless there is a specific provision to ground jurisdiction, for instance, where specific statutes enable the UK to exercise extra-territorial jurisdiction. It is anticipated that the receiving country may wish to prosecute any offences a prisoner is charged with that arose during their detention in an overseas prison but, amendments to primary legislation may be necessary should the UK wish

to exercise extra-territorial jurisdiction over any offences committed by prisoners in a rented prison.

- In England and Wales, prisoners can bring a claim for judicial review against the Secretary of State for matters in relation to prison facilities or treatment in prison. Part of negotiations would be where such challenges should be brought, if the holding jurisdiction are running the rented-out prison (similar to a contracted-out prison), but the Secretary of State retains responsibility for the welfare of the prisoner. It may dependant on what is being challenged as to where such a challenge falls, but it also may be dependant on whether any rights of a prisoner are curtailed by being held aboard, where in that jurisdiction they would not be able to exercise the same rights of challenge as if they were detained in England and Wales. Amendments to primary legislation may be necessary to ensure that prisoners in prisons overseas retain such right.

57. There are appropriate limitations on this delegated power, which is restricted to amending existing Acts of Parliament and other delegated legislation for the sole purpose of implementing any international agreement made in respect of this clause.

58. These powers will not be implementing a whole new policy, or making substantial changes. The policy itself to provide provisions to facilitate the transfer of the prisoners to the rented prisons will already have been agreed by Parliament. Clause 29 will only provide the power to facilitate the implementation of an agreement, so is appropriately limited in scope, and depending on the country and the agreement may not be used at all.

59. Without this power, further primary legislation would need to be taken through Parliament at the conclusion of individual negotiations to implement the international agreements. This will impact upon the Government's ability to act swiftly to give effect to these agreements. A delegated power is appropriate because it will enable the Government to implement the policy and the international agreements, whilst ensuring appropriate scrutiny by both houses of Parliament, without requirement a primary legislative vehicle.

<u>Justification for the procedure</u>

60. By virtue of clause 76(3)(b) and (4), any regulations made under this provision which amend primary legislation are subject to the affirmative procedure, while regulations amending statutory instruments will be subject to the negative procedure.

61. As set out above, Parliament will have an interest in the proposed amendments to primary legislation and affirmative statutory instruments made under this delegated power, so it is appropriate that they have the opportunity to debate and approve any such proposed regulations. The affirmative procedure is also considered appropriate for a Henry VIII power such as this.

Clause 34(2) – New section 5B(4) of the Serious Crime Act 2007: Power to specify description of "responsible person"

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

Context and purpose

62. Part 1 of the Serious Crime Act 2007 ("the 2007 Act") provides for Serious Crime Prevention Orders ("SCPOs"). SCPOs are civil preventative orders which can impose tailored prohibitions, restrictions, and requirements on a person for a period of up to five years to prevent or disrupt their involvement in serious crime. There is an indicative list of 'serious offences' in Schedule 1 to the 2007 Act to which an SCPO can be applied. A "person" includes bodies corporate, partnerships and unincorporated associations as well as individuals. The terms of an SCPO might relate to, for example: business and financial dealings, use of premises or items, provision of goods or services, employment of staff, association with individuals, means of communication or travel.

63. Clause 34 amends the provisions relating to SCPOs to allow for the court to expressly attach an electronic monitoring requirement to an order. An electronic monitoring requirement may be imposed to support the monitoring of an individual's compliance with other requirements of the order (for example, where an exclusion/inclusion zone or a curfew are imposed). Electronic monitoring is undertaken using an electronic tag usually fitted to a subject's ankle.

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

65. The 2007 Act, as amended by clause 35, sets out further provision about electronic monitoring requirements. New section 5B(3) of the 2007 Act provides that an SCPO which includes an electronic monitoring requirement must specify the person who is responsible for the monitoring ("the responsible person"). New section 5B(4) of the 2007 Act provide that the responsible person must be of a description specified in regulations made by the Secretary of State. Similar enabling powers are contained in, for example, section 3AC(2) of the Bail Act 1976, section 215(3) of the Criminal Justice Act 2003 and section 37(7) of the Domestic Abuse Act 2021. The relevant statutory instrument made under the first two of those powers is the Criminal Justice (Electronic Monitoring) (Responsible Person) Order 2017 (SI 2017/235).

Justification for the power

66. The regulations will provide a description of the person with whom the Secretary of State has made arrangements for providing the electronic monitoring services for the purposes of the SCPO regime. Providing a description of the responsible person is properly an administrative procedure. For that reason, the designation of the responsible person is considered an appropriate matter for secondary legislation.

Justification for the procedure

67. Regulations made under new section 5B(4) of the 2007 Act are not subject to any parliamentary procedure (see section 89 of the 2007 Act as amended by clause 34(6)). The primary purpose of these regulations is simply to put into the public domain the name of one or more persons contracted to provide electronic monitoring services for the purposes of SCPOs; as indicated above, the selection of the contractor(s) is properly an administrative matter for the executive. Given this, no form of parliamentary scrutiny is considered necessary. This mirrors the approach with the analogous delegated powers in section 3AC(2) of the Bail Act 1976, section 215(3) of the Criminal Justice Act 2003 and section 37(7) of the Domestic Abuse Act 2021.

Clause 34(2) – New section 5D of the Serious Crime Act 2007: Duty to issue code of practice relating to data from electronic monitoring

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

Context and purpose

68. As a result of the amendments to the 2007 Act made by clause 34(2), amongst the requirements which a court may attach to an SCPO is an electronic monitoring requirement. Clause 35(2) also inserts new section 5D into the 2007 Act which requires the Secretary of State to issue a code of practice on the processing of data gathered in the course of an electronic monitoring requirement of an SCPO.

69. The processing of such data will be subject to the requirements in the UK General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under new section 5D of the 2007 Act is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance with the data protection legislation. For example, the Government envisages that the code will set out the length of time for which data may be retained and the circumstances in which it may be permissible to share data with the police to assist with crime detection. It is intended that the code will cover the storage, retention and sharing of personal data gathered under a requirement that is imposed for the purpose of monitoring compliance with another requirement.

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

Justification for the power

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

Justification for the procedure

72. Given the likely content and nature of the code, and in particular the fact that it will not define or create new legal responsibilities and that the processing of data must be in accordance with the requirements of data protection legislation, the Government does not consider it is necessary for the code to be subject to any parliamentary procedure. This approach is consistent with the analogous code provided for in section 215A of the Criminal Justice Act 2003 and section 51 of the Domestic Abuse Act 2021.

Clause 36(2) - new section 15C(2)(i) of the Serious Crime Act 2007: Power to add to the list of notification requirements

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

Context and purpose

73. Clause 36(2) inserts new sections 15A to 15G into the Serious Crime Act 2007 which require a person subject to a Serious Crime Prevention Order (SCPO) to supply certain information to the police and keep such information up to date. Failure to do so without reasonable excuse, or knowingly supplying false information, is an offence (new section 15C(3)). The relevant information is the person's name (if the person uses one or more other names, each of those names); home address (and the address of any other premises in the United Kingdom at which the person regularly resides or stays); telephone numbers and email addresses; usernames for social media; identifying information of motor vehicles kept or routinely used by the person; specified financial information; specified information about identification documents; the name and address of each of the person's employers (new section 15C(2)(a) to (h)).

74. Such information will assist law enforcement agencies in monitoring the person's compliance with the provisions of the SCPO and assessing the risk they may pose to the public. Additionally, standardising notification requirements helps to ensure greater consistency in the way individuals are managed, including improving law enforcement agencies' ability to share information with each other and manage SCPO cases proactively. New section 15C(2)(i) enables the Secretary of State, by regulations, to specify further categories of information which persons subject to a SCPO must notify to the police.

Justification for the power

75. The consultation on improving law enforcement agencies response to serious and organised crime sought views on what personal details should be provided under the notification requirements for those subject to an SCPO, including most of those listed above. Current notification requirements can, but need not, include all the information listed above as part of the stipulations of an SCPO on a case-by-case basis.

76. Most consultation respondents agreed with the Government's proposal of providing that all SCPOs automatically include a prescribed set of notification requirements and agreed with all the suggested notifications requirements. Many respondents highlighted that standardising notification requirements will create consistency and enable effective monitoring by law enforcement agencies, whilst enabling the courts to retain the flexibility to impose additional notification requirements where necessary. Those respondents who disagreed with the proposal suggested that no prescribed notifications should be imposed, with all requirements to be selected on the basis that they were necessary and appropriate to the offending history of the subject in each case.

77. There are notification regimes in Part 2 of the Sexual Offences Act 2003 in respect of sex offenders and Part 4 of the Counter-Terrorism Act 2008 (as amended by the Counter-Terrorism and Border Security Act 2019) in respect of terrorism offenders. Both these regimes require a wide range of information to be provided by those subject to the notification requirements. There is also a notification regime in Part 3 of the Domestic Abuse Act 2021, in respect to persons who have been abusive to a person aged 16 or over to whom they are personally connected. The differing notification requirements reflect the different nature of these crimes, and the Government has selected the notification requirements that are most appropriate for individuals subject to SCPOs, reflecting the breadth in the nature of serious and organised criminal activity.

78. The Government will continue to work with law enforcement and criminal justice partners to carefully consider additional notification requirements. Conferring a power to add to the notification requirement by regulations will enable the list to be augmented from time to time as may become necessary in the light of subsequent operational experience and as technology and criminal gangs' modus operandi change.

79. This approach is precedented. There are comparable powers in section 83(5)(h) of the Sexual Offences Act 2003 and section 47(2)(h) of the Counter-Terrorism Act 2008.

Justification for the procedure

80. By virtue of section 89(3) of the 2007 Act, as substituted by clause 36(5), regulations made under new section 15C(2)(i) are subject to the affirmative procedure. The affirmative procedure is considered appropriate given that such regulations would enable the Secretary of State to add to the notification requirements on persons subject to an SCPO, which would not have previously been considered by Parliament and which might be applied to individuals who have not been convicted of any offence. Moreover, a failure to comply with any notification requirement, including any additional notification requirement, would constitute a criminal offence. The analogous powers under the Sexual Offences Act 2003 and the Counter-Terrorism Act 2008 are also subject to the affirmative procedure.

Paragraph 17 of Schedule 4 – new section 35A(5) of the Proceeds of Crime Act ("POCA") 2002: Power to amend section 35A(3) of POCA (default term of imprisonment or detention)

Power conferred on: Secretary of State

Power exercised by: Order made by statutory instrument

Parliamentary Procedure: Draft affirmative resolution procedure

Context and Purpose

81. Schedule 4 to the Bill amends the confiscation regime in England and Wales as provided for in Part 2 of the Proceeds of Crime Act 2002 ("POCA"). Amongst other things, the amendments to Part 2 extend the enforcement powers available to a magistrates' court to the Crown Court, to enable the flexible transfer of proceedings and allow the courts to tailor enforcement to the facts of each case.

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

Justification for the power

83. The new section 35A(3) of POCA will, as now, set out in primary legislation the maximum default sentences where a person fails to discharge the terms of a confiscation order. It is considered appropriate that there should be a power to amend the table in new section 35A(3) by regulations, including to adjust the various monetary thresholds to take account of changes in the value of money or to change the maximum default sentences in the light of experience with the operation of the reforms to the confiscation regime provided for in the Bill and, in particular, its effectiveness in encouraging compliance with compensation orders. The power in new section 35A(5) is equivalent to the existing power in section 35(2C) of POCA which is repealed by the Bill.

Justification for the procedure

84. By virtue of section 459(6)(a) of POCA, as amended by paragraph 17(4) of Schedule 2, regulations made under new section 35A(5) are subject to the draft affirmative procedure. This is considered appropriate given that the power can amend imprisonment or detention terms in default of payment of a confiscation order. Parliament will debate and vote on any amendments. The draft affirmative procedure is also considered appropriate given that this is a Henry VIII power. The application of the affirmative procedure also mirrors the position with the precursor power in section 35(5) of POCA.

Paragraph 17 of Schedule 4 – new section 35D(3) of the Proceeds of Crime Act ("POCA") 2002: Power to confer enforcement powers on the Crown Court that correspond to the powers exercisable by the magistrates' courts.

Power conferred on: Secretary of State

Power exercised by: Regulation made by statutory instrument

Parliamentary Procedure: Draft affirmative procedure

Context and Purpose

85. Schedule 4 to the Bill amends the confiscation regime in England and Wales as provided for in Part 2 of the Proceeds of Crime Act 2002 ("POCA"). Amongst other things, the amendments to Part 2 extend the enforcement powers available to a magistrates' court to the Crown Court, to enable the flexible transfer of proceedings and allow the courts to tailor enforcement to the facts of each case.

86. New section 35D provides that the Crown Court, when it is the court responsible for enforcing the confiscation order (new section 35D(1)), may exercise its enforcement functions (new section 35D(2)). New section 35D(3) provides that the enforcement functions are those conferred on the Crown Court by regulations made by the Secretary of State. The purpose of those regulations is to ensure that the Crown Court can exercise any enforcement power that could currently be exercised by a magistrates' court.

Justification for the power

87. The current suite of enforcement mechanisms available to the magistrates' courts exist in a number of statutes and apply to enforcement of various orders and sums payable upon conviction. To achieve parity of enforcement power, it is important that the Crown Court can exercise those powers in a way that works in the context of confiscation proceedings in the Crown Court and, in particular, in the context of its own procedures. The magistrates' court uses the powers available to it to enforce fines to recover outstanding confiscation order debt. The powers to recover fines may well be amended in the future – independent of any reforms to the confiscation order regime – and it would be desirable to able to amend the confiscation order regime, to ensure the Crown Court has the same powers to ensure that parity remains in the context of enforcement of confiscation orders.

Justification for the procedure

88. By virtue of section 459(4)(aza) of POCA, as amended by paragraph 17(4) of Schedule 4, regulations made under new section 35D(3) are subject to the draft affirmative resolution procedure. This will allow both Houses of Parliament to debate and vote on any changes. The Government considers that the affirmative procedure is appropriate for the use of this power, given the enforcement of confiscation orders and the means by which that is achieved will result in the permanent deprivation of property.

Paragraph 26 of Schedule 4 – new section 41ZA of POCA: Power to specify required conditions for the purposes of section 41ZA(1) of POCA

Power conferred on: Lord Chancellor

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

89. New section 41ZA(1) of POCA, as inserted by paragraph 26 of Schedule 4 to the Bill, provides for the release of restrained funds to allow a defendant to meet reasonable legal expenses, subject to judicial approval of a cost budget and a table of remuneration, and subject to conditions as set out in a statutory instrument. Permitting legal expenses to be released from restrained funds aligns the criminal confiscation regime with the civil asset recovery regime under Part 5 of POCA.

90. New section 41ZA(2) of POCA enables the Lord Chancellor to make regulations specifying the required conditions for the purposes of section 41ZA(1). New section 41ZA(3) provides that the required conditions may, in particular:
    (a) restrict who may receive sums released in pursuance of the exception (by, for example, requiring released sums to be paid to professional legal advisers), or
    (b) be made for the purposes of controlling the amount of any sum released in pursuance of the exception in respect of an item of expenditure.

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

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

Justification for the power

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

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

Justification for the procedure

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

Paragraph 1 of Schedule 5: Power to establish suspended accounts scheme

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative resolution procedure

Context and Purpose

96. Paragraph 1 of Schedule 5 confers a power on the Secretary of State, by regulations, to establish the "suspended accounts scheme" ("the scheme") under which financial institutions may voluntarily transfer to the scheme administrator funds held in suspended accounts in order to fund projects to tackle economic crime. These funds are derived from accounts that have been suspended based on a financial institution's suspicions of criminality, under their own terms and conditions, where they have either chosen not to release those funds to account holders, or are unable to return them. If a claim is made by an account holder, or third party with rights in respect of the suspended account, financial institutions will assess the validity of the claim, and if assessed to be valid and that the account is no longer subject to suspension, will pay out to that account holder or third party. The scheme will cover the cost of such claims, up to a cap determined by Government.

97. Other provisions of Schedule 5 set out specific matters that must or may be addressed in the regulations, namely:

    (a) The description of financial institutions that may transfer to a scheme administrator funds held by the financial institution which represent the balances (or part of the balances) of suspended accounts (paragraph 1(1)(a));
    (b) The meaning of a "financial institution" (paragraph 2(1)(d));
    (c) The conditions that must be met for an account to constitute a "suspended account" for the purposes of the scheme (paragraph 3(1)(b));
    (d) The meaning of suspending, or partially suspending, the operation of an account, and how the balance of a suspended account is to be determined (paragraph 3(4));
    (e) The conditions that must be met when appointing the "scheme administrator" to administer the scheme (paragraph 4(2));
    (f) Provisions that the Secretary of State may only appoint as the scheme administrator a person who meets conditions specified in the regulations under paragraph 1 (paragraph 4(2));
    (g) Provision for the transfer of funds representing the balance (or part of the balance) of a suspended account to the scheme administrator not to affect any rights of the account holder or third parties against the transferring financial institution in respect of the account (paragraph 5(1)(a));
    (h) Provision for the scheme administrator not to be liable to the account holder who holds the suspended account or to third parties with rights in respect of the suspended account (paragraph 5(1)(b));
    (i) Provision for the scheme administrator to compensate the transferring financial institution, to such extent as may be provided by the regulations, for payments made by the institution pursuant to the rights of account holders and third parties in respect of the suspended account after the transfer (paragraph 5(1)(c));
    (j) Provision for capping the amount of compensation payable by the scheme administrator to a financial institution in any period (paragraph 5(1)(d));

(k) Provision setting out the purposes for which transferred funds are to be managed and used by the scheme administrator (paragraph 6(1));
(l) The uses to which transferred funds may be put by the scheme administrator (paragraph 6(2)); and
(m) Provision requiring the scheme administrator to comply with directions given by the Secretary of State as to the kinds of expenditure for which the scheme administrator is to use transferred funds under paragraph 6(2) (paragraph 6(3)).

Justification for taking the power

98. The Bill itself will establish the principle that the Secretary of State may, in turn, establish the suspended accounts scheme and that such a scheme may provide for the transfer to the scheme administrator of funds held in accounts suspended by a financial institution on suspicion that the account is connected with criminal activity, and for such transferred funds to be used solely for purposes connected with tackling economic crime. The scheme itself is properly a matter to be left to secondary legislation on the basis that it will contain detailed technical provision, such as the financial institutions to be within scope of the scheme or the level of the cap on the amount of compensation payable by the scheme administrator to a financial institution. Such matters are also liable to change in the light of experience with the operation of the scheme. Leaving the details of the scheme to secondary legislation will also enable the precise form of the scheme to be assessed in light of engagement with industry representatives.

Justification for the procedure

99. By virtue of clause 76(3)(c) of the Bill, regulations made under paragraph 1 of Schedule 5 are subject to the draft affirmative procedure. This is considered appropriate given the scheme will allow for the transfer of significant sums of funds, equivalent to those that institutions have held equivalent sums, on suspicion that those funds are the proceeds of crime, and which are not expected to be paid to account holders/third parties to be used for (economic) crime prevention purposes. The affirmative procedure will ensure that the scheme is debated and approved by both Houses and MPs and peers can therefore be satisfied that the scheme contains adequate safeguards to maintain protections for account holders and third parties who may have a legitimate claim for the recovery of suspended funds.

Clause 49(5): Power to amend meaning of "nuisance begging"

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative procedure

Context and Purpose

100. Clauses 38 to 65 make provision for new powers to tackle nuisance begging and rough sleeping, replacing provision in the Vagrancy Act 1824. Amongst other things, these provisions enable an "authorised person" (including a constable or a local authority) to:

- Issue a direction to move on to a person in a public place who is (in the opinion of the authorised person) engaging in, or likely to engage in, nuisance begging (clause 38).
- Give a nuisance begging prevention notice to a person appearing to be aged 18 or over if satisfied on reasonable grounds that the person is engaging, or has engaged in, nuisance begging (clause 39).
- Apply to a magistrates' court for a nuisance begging prevention order in respect of a person aged 18 or over. A court may grant such an order if satisfied that the person has engaged in nuisance begging, has failed to comply with a move on direction or has failed to comply with a nuisance begging prevention order (clause 43).

A nuisance begging prevention notice or nuisance begging prevention order may require the subject of a notice to do specified things or prohibit them from doing specified things for the purpose of preventing the person from engaging in nuisance begging. Failure to comply with the terms of a move on direction, prevention notice or prevention order is a criminal offence subject to a maximum penalty of one month imprisonment or a level 4 fine.

101. Clause 48 provides for an offence of engaging in nuisance begging, again subject to a maximum penalty of one month imprisonment or a level 4 fine.

102. Clause 49 defines "nuisance begging" for the purposes of clauses 38 to 48. A person engages in "nuisance begging" if subsections (2) or (3) applies. Clause 49(2) lists locations where begging at those locations would constitute "nuisance begging", for example on public transport. Clause 49(3) lists actions by a person which, if undertaken in connection with begging, would constitute "nuisance begging", for example approaching a person in a vehicle. Clause 49(4) defines terms used in subsections (2) and (3).

103. Clause 49(5) confers power on the Secretary of State to amend subsections (2) or (4) by regulations.

<u>Justification for the power</u>

104. Nuisance begging can take many forms, hence the detailed categories of cases as set out in clause 49(2) and (3) that constitute such begging. Persons who engage in nuisance begging, as defined in clause 49, may change their behaviour as a result of this legislation and changing patterns of work and leisure may afford new opportunities and new locations for persons to engage in nuisance begging. Developing case law may also impact on the definitions in this clause. For these reasons, the Government considers it appropriate to take a power to amend, by regulations, the meaning of "nuisance begging" in clause 49(2) and (4).

<u>Justification for the procedure</u>

105. By virtue of clause 76(3)(a), regulations made under clause 49(5) are subject to the draft affirmative procedure. This is considered appropriate given that regulations could broaden the definition of nuisance begging such as to bring further incidents of begging within the ambit of the civil and criminal sanctions provided for in the Bill. The affirmative procedure also recognises that this is a Henry VIII power.

Clause 71(5)(d) – new paragraph 11 of Schedule 4 to the Anti-social Behaviour, Crime and Policing Act 2014: Duty to have regard to guidance about anti-social behaviour case reviews to relevant bodies

Schedule 8 - paragraph 10 of new Schedule 4A to the Anti-social Behaviour, Crime and Policing Act 2014: Duty to have regard to guidance about local policing bodies' anti-social behaviour case reviews

Power conferred on: Secretary of State

Power exercised by: Statutory guidance

Parliamentary Procedure: None

Context and Purpose

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

107. Clause 71(3) inserts new section 104A into the 2014 Act which provides for an oversight role for local policing bodies in respect of ASB Case Reviews. In particular, new section 104A confers on local policing bodies powers to undertake a review of an ASB Case Review (an "LPB case review") in response to an application by a victim of ASB or someone acting on their behalf. Clause 71(5)(d) inserts new paragraph 10 into Schedule 4 to the 2014 Act which places a further duty on local policing bodies to promote awareness of ASB Case Reviews. New Schedule 4A to the 2014 Act makes further provision in respect of LPB case reviews, including provision in respect of the making and revising of LPB case review procedures, the conduct of LPB case reviews and a duty to promote awareness of LPB case reviews. Paragraph 10 of new Schedule 4A to the 2014 Act requires local policing bodies to have regard to any guidance issued by the Secretary of State when carrying out its functions under section 104A of or Schedules 4 or 4A to the 2014 Act.

108. Clause 71(5)(d) also inserts new paragraph 11 into Schedule 4 to the 2014 Act which requires relevant bodies to have regard to any guidance issued by the Secretary of State when carrying out their functions under section 104A of or Schedules 4 to the 2014 Act.

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

Justification for taking the powers

110. Section 104 of and Schedule 4 to the 2014 Act set out on the fact of that Act certain functions of "relevant bodies" in respect of ASB case reviews. Similarly, clause 62 of and Schedule 8 to the Bill set out on the face of the 2014 Act certain functions of local policing bodies in respect of LPB case reviews. Guidance will assist in ensuring that relevant bodies and local policing bodies carry out their functions in relation to ASB case reviews and LPB case reviews consistency across England and Wales. The guidance is intended to assist and not direct relevant bodies and local policing bodies by providing practical advice on how they may effectively discharge these functions. There is a vast range of statutory and non-statutory guidance issued each year and it is important that guidance can be readily updated to keep pace with events and operational good practice.

Justification for the procedure

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

Clause 72(4) and (5) – amendments to section 6(3) and (4A) of the Crime and Disorder Act 1998: Power to make regulations about the formulation and implementation of crime and disorder strategies

Power conferred on: Secretary of State and the Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution procedure.

Context and Purpose

112. Section 6 of the Crime and Disorder Act 1998 ("the 1998 Act") includes a wide regulation-making power regarding the formulation and implementation of crime and disorder strategies. A number of regulations have been made under this power.

113. Clause 72(4) and (5) amends section 6(3)(ca) and (g) and (4A) to provide that regulations made under section 6(2) currently may in particular make provision for or in connection with the conferring of functions on a police and crime commissioner ("PCC"). This may include:

- for a PCC to arrange for meetings to be held for the purpose of assisting in the formulation and implementation of any strategy (or strategies) that the commissioner may specify that relate to any part of the police area of the commissioner,
- for the PCC to chair the meetings, and
- for such descriptions and numbers of persons to attend the meetings as the commissioner may specify (including, in particular, representatives of the responsible authorities in relation to the strategies to be discussed at the meetings).

114. The amendments to section 6(3)(ca) and (4A) substitutes "relevant local policing body" for PCC. A "relevant local police body" is wider than just a PCC. It also includes the Mayor's Office for Policing and Crime and the Common Council of the City of London.

115. These are very minor amendments which provide a consistent approach to this proposal to include all forces in England and Wales, and the forces outside of this definition including the Common Council of the City of London and the Mayor's Office for Policing and Crime.

116. Clause 72 also makes another small amendment to the regulation-making power at section 6 of the 1998 Act. Currently section 6(3)(g) provides that regulations may in particular make provision for or in connection with the publication and dissemination of a strategy. The amendments widen this to include other material relating a strategy or to its formulation or implementation.

<u>Justification for taking the powers</u>

117. These are amendments to an existing power. They provide that regulations made under section 6(2) apply to all local policing bodies, and not just PCCs, ensuring consistency across England and Wales and clarify the power in section 6(3)(g) to make it clear on the face of the 1998 Act that regulations can make provision about the publication and dissemination of other documents.

<u>Justification for the procedure</u>

118. Regulations made under section 6(2) of the 1998 Act are subject to the negative procedure (see section 114(2) of the 1998 Act). The modification of the regulation-making power does not change the essential nature of the power; accordingly, the

negative procedure is considered to continue to provide the appropriate level of parliamentary scrutiny.

Clause 73 – New section 39B of the Police Act 1996: Duty to issue code of practice about ethical policing

Power conferred on: College of Policing

Power exercised by: Statutory code of practice

Parliamentary Procedure: Laying only

Context and Purpose

119. Clause 73 inserts new section 39B into the Police Act 1996 ("the 1996 Act") which places a duty on the College of Policing to issue a code of practice for ethical policing and for that code to include a duty of candour on the police. One of the key motivations behind this is the Government's response to the experiences of the families bereaved by the disaster at Hillsborough football stadium in 1989 ("the Hillsborough families") and specifically the report of Bishop James Jones, published in 2017, which addressed those experiences and any lessons which could be learned.

120. Under the terms of the Police (Conduct) Regulations 2020 (SI 2020/4) individual police officers are already subject to a duty to cooperate. Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness. A failure to cooperate is a breach of the statutory standards of professional behaviour, by which all officers must abide, and could therefore result in disciplinary sanctions. The code of practice on ethical policing will complement this existing requirement by introducing an organisational duty of candour aimed at chief officers of police and through them the organisations as a whole.

121. The Government considers that the most appropriate way of imposing an organisational duty of candour on the police is to do so by way of a code of practice, as part of a wider code for ethical policing, rather than a standalone duty in legislation. Currently, whilst the College of Policing may issue Codes of Practice, they are not subject to any requirement to do so. New section 39B of the 1996 Act imposes such a duty on the College.

122. The duty of candour within the code of practice will apply to officers' engagement in approaching public scrutiny, particularly that of inquiries, inquests, court proceedings and investigations. This relates to the need to be candid except where prohibited from doing so by existing law.

123. The legislation will require chief officers to have regard to the Code when discharging any functions to which the Code relates.

124. In addition to consulting with the National Crime Agency (in accordance with existing section 39A(4) of the 1996 Act, new section 39B(4) requires the College to consult with various other bodies before issuing a new or revised Code. In accordance with existing section 39A(5) and (6), the Home Secretary must lay any code of practice issued by the College of Policing, and any revision of any such code, before parliament, unless this would be against the interests of national security, could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders or could jeopardise the safety of any person. The College must review the Code at least every five years following the last revision/issue to assess whether it considers there to be a need to revise it. A report on the conclusions of the review must be laid before Parliament (new section 39B(5) to (7)).

Justification for taking the power

125. Given the multi-layered structure of police governance, the Home Office considers that the most suitable way of ensuring that all within a police force adhere to a duty of candour is to issue statutory guidance to chief officers by way of a code of practice, and particularly a code of practice for ethical policing, rather than a standalone duty in legislation. As the police are operationally independent, the most appropriate body to issue the statutory guidance (through a code of practice) is the College of Policing. The College of Policing is the professional body for policing in England and Wales. Conferring a function on the College to issue a code on ethical policing is consistent with its existing remit of providing those working in policing with the skills and knowledge necessary to prevent crime, protect the public and secure public trust.

126. There is a vast range of statutory guidance issued each year by the College and it is important that guidance can be updated rapidly to keep pace with events and operational good practice. The Code will need to be reviewed at least every five years, but the requirement of a duty of candour for chief officers and their forces will be maintained in these revisions as per the legislation.

Justification for the procedure

127. Any code of practice issued pursuant to this new duty and any future revisions of the document, must be laid before Parliament (section 39A(5) of the 1996 Act), but will not otherwise be subject to any parliamentary procedure. This is consistent with the existing legislation. Codes issued by the College under the existing power in section 39A of the 1996 Act are not subject to any parliamentary procedure given that they constitute professional guidance to chief officers rather than absolute legal requirements. In addition, the code and any revisions will be prepared in consultation with the police. The same justification applies to this new statutory code.

Clause 74(3) – new section 85(1A) and (1B) of the Police Act 1996: Power to make rules about appeals by chief officers of police and local policing bodies to a Police Appeals Tribunal

Clause 74(11) – new section 4A(1)(aa) and (ab) and (4A) of the Ministry of Defence Police Act 1987: Power to make regulations about appeals by the chief constable of the Ministry of Defence Police and the Secretary of State to a Police Appeals Tribunal

Power conferred on: Secretary of State

Power exercised by: Rules/Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

128. Clause 74(3) of the Bill amends section 85 of the Police Act 1996 to provide for a new route of appeal to the Police Appeals Tribunal (PAT). The PAT is a specialist body which hears appeals against the finding or outcome of internal disciplinary or performance proceedings brought against members of the police force. Currently, by virtue of section 85(1) of the Police Act 1996 and rules made thereunder, only those who are subject to these proceedings may appeal to the PAT. The current rules made under section 85 are the Police Appeals Tribunal Rules 2020 (SI 2020/1).

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

130. Section 50 of the 1996 Act gives the Secretary of State the power to make regulations as to the government, administration and conditions of service of police forces. Regulations under that section may make provision with respect to "the conduct, efficiency and effectiveness of members of police forces and the maintenance of discipline". The Police (Conduct) Regulations 2020 (SI 2020/4) set out the procedures for referring an officer to a misconduct hearing in circumstances where an officer has a case to answer for gross misconduct (or a case to answer for misconduct but a final written warning is in place at the time of the initial severity assessment or they have been reduced in rank in the previous two years). The regulations also set out the processes for referring an officer to an accelerated misconduct hearing in circumstances where there is sufficient evidence of gross misconduct and it is the public interest for the individual to cease to be a member of the police force without delay. Separately, the Police (Performance) Regulations 2020 (SI 2020/3) set out the processes for the referring an officer to a third stage meeting where the officer's performance or attendance is unsatisfactory and they have failed to adhere to a final written improvement notice or where it is determine that their performance constitutes gross incompetence. It is the outcome or finding at these proceedings which can be appealed by the officer concerned to the Police Appeals Tribunal. In addition, senior officers (those above the rank of Chief

Superintendent) can also appeal from a misconduct meeting – an internally-chaired meeting where the officer is assessed as having a case to answer for misconduct.

131. Clause 74(3) inserts new subsections (1A) and (1B) into section 85 of the Police Act 1996. New section 85(1A) affords the Secretary of State the power to specify by rules circumstances where chief officers may bring appeals to the PAT. The provision is intended to establish a right for chief officers to appeal to the PAT in their capacity as the individuals responsible for the direction and control of a police force's officers, and therefore as the individuals ultimately responsible for the oversight of those officers' standards of professional behaviour. It is envisaged that, in practice, the Secretary of State would amend the PATs Rules to enable chief officers to appeal findings of fact as to conduct, or decisions as to disciplinary sanctions for misconduct taken by disciplinary panels in disciplinary hearings.

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

133. Clause 74(10) to (14) make analogous amendments to section 4A of the Ministry of Defence Police Act 1987 ("the 1987 Act") in respect of the Ministry of Defence Police. Section 4A of the 1987 Act requires the Secretary of State to make regulations which make provision specifying the cases in which a member, or former member, of the Ministry of Defence Police may appeal to a police appeals tribunal and provision equivalent, subject to such modifications, to that made (or authorised to be made) in relation to police appeals tribunals by any provision of Schedule 6 to the Police Act 1996 (or the Scottish equivalent). The amendments made to section 4A by clause 65 require the Secretary of State to make regulations making provision enabling the chief constable for the Ministry of Defence Police to appeal to a PAT against a disciplinary decision relating to a member, or former member, of the Ministry of Defence Police other than a senior officer (that is officers above the rank of chief superintendent). Such regulations must also make provision enabling the Secretary of State to appeal to a PAT against a disciplinary decision in respect of a senior officer or former senior officer, or chief constable or former chief constable. Clause 74(13) permits the regulations to provide that decisions to be taken by the Secretary of State or chief constable for the Ministry of Defence Police are taken by the Ministry of Defence Police Committee or another person appointed in accordance with the regulations.

<u>Justification for taking the power</u>

134. Clause 74 does not create wholly new rule-making powers but augments the existing powers in section 85 of the Police Act 1996. New subsections (1A) and (1B) of section 85 following the approach taken in subsection (1) whereby the detail of the circumstances in which an appeal may be brought is set out in secondary legislation – the Police Appeals Tribunals Rules 2020. Having established on the face of the Police Act 1996 the principle that chief officers of police and local policing bodies may appeal to a PAT against a disciplinary decision of the kind set out in new section 85(1A) and (1B), it is considered appropriate to leave to secondary legislation detailed provision in respect of the bringing of such appeals having regard to disciplinary framework which is itself provided for in secondary

legislation made under section 50 of the Police Act 1996. For example, where the disciplinary decision is already one made solely by the chief officer, it would not be appropriate to provide that same chief officer with a right of appeal against their own decision.

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

Justification for the procedure

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

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

Clause 75(1): Power to make consequential amendments

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

Context and purpose

138. Clause 75(1) confers a power on the Secretary of State to make consequential provision for the purposes of the Bill. Such provision may include repealing, revoking or otherwise amending primary and secondary legislation.

Justification for taking the power

139. The powers conferred by this clause are wide, but they are limited by the fact that any amendments made under the regulation-making power must be genuinely consequential on provisions made by or under the Bill. But there are various precedents for such provisions, including section 205(1) of the Police, Crime, Sentencing and Courts Act 2022. The Bill already includes some changes to other enactments as a consequence of the substantive provisions in the Bill, but it is possible that not all of the necessary consequential amendments have been

identified in the Bill's preparation. There could be an impact on the public perception of the criminal justice system if a provision is missed. This could undermine the administration of justice and would need immediate rectification. The Government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation.

Justification for the procedure

140. If regulations made under this power do not amend or repeal primary legislation, they will be subject to the negative resolution procedure (by virtue of clause 76(4)). The affirmative procedure is not considered necessary or suitable for any applicable amendments which might be made to secondary legislation by virtue of this clause as any applicable orders and regulations will have no impact or very little impact on rights and will be administrative or procedural in nature. If regulations made under this power do amend or repeal provision in primary legislation, they will be subject to the affirmative resolution procedure (by virtue of clause 76(3)(b)) as befitting a Henry VIII power of this type. It is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

Clause 75(3): Power to state the effect of amendments to the Sentencing Code

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

Context and purpose

141. Clauses 23 and 24 of the Bill create new statutory aggravating factors in relation to grooming and end of relationship murders. It will do so through amendments to the Sentencing Code (the "Code") as the consolidated form of sentencing procedural law. The Code is a comprehensive statement of the law that applies when sentencing a person convicted of an offence, regardless of when the offence was committed. In order to preserve the comprehensive nature of the Code it is necessary to set out where certain provisions do not apply to all such convictions. The intention is that this should be made clear on the face of the Code. This will save users of the Code from needing to look at commencement orders and regulations in order to establish that a provision that appears on its face to apply to all cases actually has a more limited application. It is a key aim of simplifying the procedural law of sentencing in the Code. Clause 66(3) provides that the power in section 419(1) of the Code to state effect of commencement provisions applies to any amendment or repeal made under the Bill.

142. By way of brief explanation of section 419 of the Code, it relates to two Schedules to the Code (Schedules 22 and 23) which consolidate existing but uncommenced provisions and powers to make amendments to relevant law respectively. Section 419(1) allows regulations to make provision in connection

with the coming into force of the uncommenced provisions and of provision made under those powers so that their effect is stated in the Code. The regulations also will be able to make provision to secure that provisions that are to continue to have effect only for particular purposes or in particular cases remain in primary legislation instead of having effect only by virtue of transitional, transitory or saving provision (section 419(1)(b)). This allows regulations to provide for both the existing provision and the new provision to be included in the Code, with each stating the cases to which it applies. This will allow for parallel provisions to exist in the legislation making its application to all cases clear on its face.

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

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

Justification for the power

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

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

Justification for the procedure

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

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

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

Clause 78(1): Commencement powers

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

Context and purpose

149. Clause 78(1) contains a standard power for the Secretary of State to bring certain provisions of the Bill into force by commencement regulations.

Justification for the power

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

Justification for the procedure

151. As is usual with commencement powers, regulations made under clause 78(1) are not subject to any parliamentary procedure (by virtue of clause 76(5)). Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

Clause 78(4): Power to make transitional, transitory or saving provision

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

Context and purpose

152. Clause 78(4) confers on the Secretary of State power to make such transitional, transitory or saving provisions as they consider appropriate in connection with the coming into force of the provisions in the Bill.

Justification for the power

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

Justification for the procedure

154. As indicated above, this power is only intended to ensure a smooth transition between existing law and the coming into force of the provisions of the Bill. Such powers are often included as part of the power to make commencement regulations and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them. Although drafted as a free-standing power on this occasion, the same principle applies and accordingly the power is not subject to any parliamentary procedure (by virtue of clause 76(5)).

Home Office / Ministry of Justice
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