

SENTENCING BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Sentencing Bill as introduced in the House of Commons on 14 November 2023 (Bill [Bill or Chapter Number]).

- These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Sentencing Bill contains measures in relation to:
 - Whole Life Orders (WLOs);
 - Serious Sexual Offences Sentencing and Release Arrangements;
 - A presumption to suspend custodial sentences of 12 months or less; and
 - Extending Home Detention Curfew (HDC) eligibility.
- 2 Clause 1 of the Bill will create a new duty for the court to impose a WLO for cases of murder which are currently normally subject to a WLO starting point, unless the court is of the opinion that there are exceptional circumstances which justify not making a WLO. It will also add the murder of a single victim involving sexual or sadistic conduct to the list of those offences that are subject to the new duty to impose a WLO. These measures are intended to ensure that those who commit the very worst crimes face the most severe punishment available.
- 3 Clauses 2-5 and 7 of the Bill will ensure rapists, and those convicted of the most serious sexual offences, will now serve the entirety of the custodial term in prison, with no referral to the Parole Board.
- 4 Clause 6 of the Bill will extend HDC eligibility to certain offenders serving sentences of four years or more, as well as those with non-recent recalls for curfew breaches on HDC.
- 5 Clause 8 of the Bill will introduce a presumption to suspend short custodial sentences. When passing a custodial sentence of 12 months or less, the courts should presume a Suspended Sentence Order (SSO) should be issued instead of a sentence of immediate custody unless there are exceptional circumstances.
- 6 The Bill makes these changes primarily by amending the Sentencing Code, which is contained in Parts 2 to 13 of the Sentencing Act 2020, and the Criminal Justice Act 2003 (the “CJA 2003”).

Policy background

- 7 The measures in this Bill have arisen out of the Government’s continuous review of the criminal sentencing framework and follow on, most recently, from the changes that were made in the Police, Crime, Sentencing and Courts Act 2022.

Whole life orders

- 8 All murder convictions result in a mandatory life sentence. When a life sentence is imposed, the court must determine the minimum period to be served for the purposes of punishment and deterrence. Only when this period has been served in full may the offender be considered for release by the Parole Board, which will only release an offender if it is satisfied that it is safe to do so. Many offenders remain in prison beyond their minimum term, and some may never be released. If, and when, the offender is released they will remain on licence for the rest of their life and be subject to strict licence conditions and recall to prison at any time.
- 9 WLOs are the most severe form of punishment that the courts can impose. They have no minimum term and no possibility of Parole Board release, and are reserved for the most heinous cases of murder.
- 10 Schedule 21 to the Sentencing Code sets out the general principles to which the court must

have regard when deciding whether to impose a minimum term order or WLO and, if imposing a minimum term order, the length of the minimum term.

- 11 Currently, if the court considers a case to be of exceptionally high seriousness, and the offender was aged 21 or over when the offence was committed, the appropriate starting point is a WLO. Schedule 21 states that the following category of cases would normally be cases of exceptionally high seriousness and therefore subject to a WLO starting point:
 - The murder of two or more persons, where each murder involves any of the following: a) a substantial degree of premeditation or planning, or b) the abduction of the victim, or c) sexual or sadistic conduct.
 - The murder of a child if involving a) the abduction of the child, b) sexual or sadistic motivation; c) a substantial degree of premeditation or planning.
 - The murder of a police or prison officer in the course of his or her duty.
 - A murder done for the purpose of advancing a political, religious, racial or ideological cause.
 - A murder by an offender previously convicted of murder.
- 12 In current legislation, it is possible for sentencing judges to not impose a WLO (and therefore impose a minimum term order instead) in one of these cases if they consider that the presence of mitigating factors means a WLO should not be imposed, but the current statutory expectation is that a WLO will be imposed in the cases listed above.
- 13 Currently, if the case does not fall within the category of cases where a WLO is the starting point, but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and the offender was aged 18 or over when the offence was committed, the appropriate starting point, in determining the minimum term, is 30 years. Schedule 21 then sets out further starting points (25 years and 15 years), and explains which cases fall within them, as well as a non-exhaustive list of aggravating and mitigating factors. Schedule 21 also provides a range of starting points for offenders under 18 depending on their age and the nature of the murder.
- 14 The Police, Crime, Sentencing and Courts Act 2022 expanded the range of circumstances for which a WLO will normally be an appropriate starting point for those who murder a child to include the premeditated murder of a child. The legislation also enabled judges to impose a WLO on offenders aged 18 to 20 years in exceptional cases where such a sentence would be warranted. It is still the case, however, that WLOs will not ordinarily be given to offenders under the age of 21 when the offence was committed, unless the seriousness of the offence is exceptionally high even by the standard of offences that would result in a WLO being given to an offender aged 21 or over when the offence was committed.
- 15 The Bill will create a new duty on the court, to impose a WLO in those cases for which a WLO is currently the starting point, unless there are exceptional circumstances which relate to the offence (or the combination of the offence and one or more offences associated with it) or the offender which justify not imposing a WLO.
- 16 Consistent with other mandatory or minimum sentence provisions, it will be for the court to consider the individual circumstances of a case in passing sentence to determine whether there are exceptional circumstances. The interpretation of exceptional circumstances is therefore left to judicial discretion.

- 17 Currently, a murder of one person where the murder involves sexual or sadistic conduct normally attracts a starting point of 30 years (paragraph 3(2)(e) of Schedule 21). The murder of two or more people where there is sexual or sadistic conduct normally attracts a starting point of a WLO (paragraph 2(2)(a)(iii) of Schedule 21).
- 18 The Bill will move the category of a single ‘murder involving sexual or sadistic conduct’ into the new framework for WLOs. As a result, the court will be required to impose a WLO for these murders, rather than them being subject to a 30-year starting point.
- 19 This change is being made following a number of high-profile murders, where women have been attacked and killed by male assailants and there has been a sexual or sadistic element to the murder.
- 20 These reforms will ensure that those who commit the very worst crimes are given the most severe punishment available.

Sentencing and release of serious sexual offenders

- 21 These provisions will add rape and the other most serious sexual offences to the Sentence for Offenders of Particular Concern (SOPC) regime, meaning if the court does not hand down a life sentence or an extended determinate sentence (EDS), it must impose a SOPC. A SOPC is made up of an appropriate prison term and an extended licence period of one year and is currently applicable to specified terrorist offences and the two most serious child sex offences. The provisions will also alter the release point of offenders who receive an EDS or SOPC so that they will now serve the entirety of the appropriate custodial term in custody, with no referral to the Parole Board at the two-thirds point of the term. Both measures will ensure these offenders will still have a licence period of 12 months for those serving a SOPC and up to 8 years, as determined by the court, for those serving an EDS.
- 22 The changes are primarily focused on the offence of rape and the other most serious sexual offences (with a maximum penalty of life imprisonment). Estimates suggest that in the year ending March 2020, 618,000 women and 155,000 men experienced sexual assault of some kind (*Sexual offences victim characteristics, England and Wales - Office for National Statistics (ons.gov.uk)*). Considering the impact beyond the victim, ‘for the estimated 122,000 rape offences in 2015/16, the Home Office estimated the total socio-economic cost to be £4.8 billion in 2015/16 (circa £5.5 billion in today’s prices)’ (*Violence against women and girls services: commissioning toolkit (accessible) - GOV.UK (www.gov.uk)*).
- 23 These amendments to EDS and SOPC sentences will also apply to offenders under the age of 18. While custody should always be a last resort for children, it is important that where a custodial sentence has been imposed for these serious offences, offenders are detained for the duration of their custodial term to keep the public protected for longer and to ensure rehabilitative interventions can be conducted to minimise the risks of recidivism. Applying the changes to EDS to children will mirror the change made for serious terrorist offences in the Counter-Terrorism and Sentencing Act 2021, which applied to both adults and children. The changes to SOPC will apply to children who are not assessed as dangerous but who have been convicted of the serious sex offences that are deemed inherently concerning.

Short sentences

- 24 The courts have a range of robust powers when a sentence is suspended. A suspended sentence can include one or more of the fourteen ‘requirements’ available for community orders, such as electronic monitoring and community payback. The courts have the flexibility to choose and balance requirements with the intention of punishing the offender, providing reparation to the community, and addressing any criminogenic or rehabilitative needs of the offender which may otherwise increase the likelihood of their reoffending.

- 25 The Bill, if enacted, will impose a duty to suspend custodial sentences of 12 months or less unless an exception within the clause applies. The presumption to suspend will apply to offences which pass the custody threshold and where the court considers it appropriate to impose a custodial sentence of 12 months or less.
- 26 The court need not suspend the sentence when dealing with an offender for breach of a court order, or when the offender is being sentenced for an offence committed while a relevant court order was in effect in respect of the offender. The court is also not under a duty to pass a suspended sentence order, where passing such an order would put a particular individual at a significant risk of harm.
- 27 In these cases, the court should continue to consider whether to suspend a custodial sentence of more than 12 months and up to two years in line with the current practice.
- 28 The court can also depart from the duty to suspend a short sentence, where there are exceptional circumstances relating to the offence or the offender, which would justify not passing a suspended sentence order.

Home detention curfew

- 29 HDC enables eligible, suitable offenders to be released early from prison, in order to have a transition period after leaving custody and beginning supervision in the community on licence. During this transition period, they are subject to restrictions that limit their movements and activity but can begin reintegrating into the community sooner.
- 30 Offenders must be subject to an electronically monitored curfew at their home address. They may also be subject to electronic monitoring of their location beyond the home address where this is considered necessary, and fitted with alcohol monitoring tags if this is something that played a role in their offending history.
- 31 Certain offenders are statutorily excluded from HDC, including registered sex offenders and terrorist offenders while others are, as a matter of policy, presumed to be unsuitable for the scheme in the absence of exceptional circumstances. Offenders presumed to be unsuitable for release on HDC include those serving a sentence for cruelty to children and homicide and certain offences often related to Domestic Abuse. The current list is set out in the HDC Policy Framework (Home Detention Curfew Guidance, MOJ, 28 March 2019, <https://www.gov.uk/government/publications/home-detention-curfew>).
- 32 When HDC was introduced, the sentencing framework provided for short- and long-term sentences under provisions set out in the Criminal Justice Act 1991 (“the 1991 Act”). Those serving less than four years were treated as short-term prisoners and were subject to automatic release at the halfway point of the sentence. Those serving four years, or more, were treated as long-term prisoners, subject to discretionary release from the halfway point and automatic release from the two-thirds point.
- 33 There is no longer a statutory distinction between short-term and long-term sentences, and it is no longer necessary to exclude individuals from being considered for HDC solely due to sentence length. The provisions of this Bill, if enacted, would extend HDC to offenders serving Standard Determinate Sentences of four years or over. Release on HDC will remain subject to risk assessment and certain violent or sexual offenders will remain excluded or presumed unsuitable due to the nature of the offence. Offenders who have not complied with the HDC curfew conditions in the past two years will be excluded from the scheme, replacing the previous lifetime ban on offenders who had previously failed to comply with their curfew.
- 34 Finally, the provisions if enacted, will repeal the ban on access to HDC for those individuals who have had an “at risk” return. An “at risk” return was where prisoners could be returned

to prison after committing a further imprisonable offence between release from custody and the end of their sentence. Prison sentences have not included an “at risk” period since the relevant provisions were repealed in 2012. Sentenced prisoners are now released on licence under probation supervision and liable to recall to prison right up to the sentence end date.

Application of various provisions to service offences

- 35 The service justice system – the disciplinary system that applies to UK service personnel – uses a modified form of the sentencing law of England and Wales which is set out in the Armed Forces Act 2006. Where changes are made to the England and Wales civilian sentencing and release framework, it is the policy position that, where appropriate, service offences and the sentences they attract should reflect those changes to keep the criminal justice system and the service justice system aligned. This legislation therefore contains minor amendments to existing law to ensure that this is the case.

Legal background

Sentencing and Release: England and Wales

- 36 The Sentencing Act 2020 consolidated the law governing sentencing procedure in England and Wales into a Sentencing Code. The Sentencing Code includes procedural provisions which sentencing courts need to rely on during the sentencing process, including the sentences which a court may impose. It re-enacted and consolidated law in force at the time but did not alter its substance or effect. It does not include the release provisions, which remain in Chapter 6 of Part 12 of the CJA 2003 and Part 2 of the Crime (Sentences) Act 1997 because judges do not need to consider these when imposing a sentence on an offender.

Whole life orders

- 37 Section (1) of the Murder (Abolition of Death Penalty) Act 1965 provides that an offender convicted of murder must receive a mandatory life sentence. When a life sentence is imposed, the court is required to set a minimum term (historically, also known as the tariff), which specifies the time an offender must spend in prison for the purposes of punishment and deterrence, prior to being considered for release on licence by the Parole Board. Prior to commencement of the CJA 2003, the minimum term was set by the Home Secretary based on advice provided by the trial judge and Lord Chief Justice. In the most severe cases, the minimum term could be a whole life tariff, meaning that the offender would remain in prison for the remainder of their natural life, subject only to release on exceptional compassionate grounds by the Secretary of State under section 30 of the Crime (Sentences) Act 1997.
- 38 The CJA 2003 moved responsibility for setting the minimum term to the sentencing judge and enacted a new Schedule (Schedule 21) setting out the principles to which the court was required to have regard in setting the minimum term. Following the consolidation of sentencing procedure in the Sentencing Code, the relevant provisions for passing whole life orders are now contained in sections 321 and 322 of, and Schedule 21 to, the Sentencing Code.
- 39 Section 321 of the Sentencing Code provides that the court must make either a whole life order or minimum term order when passing the mandatory life sentence for murder. That order must be a whole life order if the offender was 21 or over when the offence was committed, and the court is of the opinion that, because of the seriousness of the offence or the combination of the offence and one or more offences associated with it, it should not make a minimum term order. Section 321(3B) and (3C) provide that the court may impose a whole life order on offenders aged 18 or over, but under 21, when the offence was committed but only if it considers that the seriousness of the offence, or combination of offences, is exceptionally

high even by the standard of offences which would normally result in a whole life order for offenders aged 21 or over.

- 40 When deciding whether to make a whole life order, or minimum term order, and the appropriate length of the minimum term, the court is required to have regard to the principles of Schedule 21 (section 322(3) of the Sentencing Code). Schedule 21 provides that in cases of exceptionally high seriousness, where the offender is aged 21 or over, the court should impose a whole life order. It also provides a list of cases which would “normally” be of exceptionally high seriousness and therefore subject to a whole life order. That list has been amended over time, most recently by the Police, Crime, Sentencing and Courts Act 2022 which added the premeditated murder of a child to the list of cases for which a whole life order is normally the starting point.
- 41 This Bill makes amendments to the existing framework for imposing whole life orders, contained in sections 321 and 322 of, and Schedule 21 to, the Sentencing Code, in order to achieve the policy goals set out 19 above.

Sentencing and release of serious sexual offenders

Sentencing and Release: England and Wales

- 42 Sentences of imprisonment are generally served part in prison and part in the community. Determinate sentenced prisoners in England and Wales are released in accordance with the provisions contained in Chapter 6 of Part 12 of the CJA 2003 which includes the legacy release provisions of the Criminal Justice Act 1991 (restated in Schedule 20B of the CJA 2003).

Extended Determinate Sentence (EDS)

- 43 The EDS, comprising a custodial term and an extension period to be served on licence in the community, is available to the courts for specified violent, sexual or terrorism offences, contained in sections 254, 266 and 279 of the Sentencing Code. Where the offender meets particular criteria, including committing a specified offence, and being deemed to pose a significant risk of harm, and where the court is not required to impose a life sentence, the court may impose an extended sentence.
- 44 The custodial term is the period of imprisonment commensurate with the seriousness of the offending. The combined length of the custodial term and the extended licence period must be within the maximum penalty for the offence committed. The maximum length of the extended licence period is eight years for specified sex offences. All offenders, including sex offenders, must be released at the end of their custodial term, but the Parole Board (in all cases except serious terrorism cases – see below) currently has the discretion to release from the two-thirds point of the term if satisfied that the offender’s detention is no longer necessary for the protection of the public.
- 45 The Counter-Terrorism and Sentencing Act 2021 (“CTSA”) changed the release arrangements for terrorist and terrorist connected offenders who committed specified serious offences which carry a maximum penalty of life imprisonment, who were sentenced to an EDS on or after the commencement date of 29 June 2021. The release position of those offenders was changed via section 247A(2A) of the CJA 2003, which meant they were not to be referred to the Parole Board for consideration for early release, but instead are released at the end of their custodial term. This is applicable to adult and child offenders.

Sentence for Offenders of Particular Concern (SOPC)

- 46 The SOPC was introduced in the Criminal Justice and Courts Act 2015 in England and Wales and must be imposed on offenders aged over 18 who have committed a terrorist or sexual

offence specified in Schedule 13 to the Sentencing Code, in circumstances where the court finds that neither the seriousness threshold for applying a life sentence, nor the dangerousness threshold for applying an EDS, have been met (section 278 of the Sentencing Code). SOPCs comprise the appropriate custodial term and a further 1 year for which the offender is to be subject to licence.

- 47 Originally, under section 244A of the CJA 2003, all SOPC offenders were considered for early release by the Parole Board at the halfway point of their custodial term. All SOPC offenders must be automatically released at the end of their appropriate custodial term if not released by the Board before this and are then subject to a fixed 1-year licence period.
- 48 SOPCs for terrorist and terrorist-connected offenders have been amended a number of times following the terrorist attacks at London Bridge and Streatham in 2019 and 2020. Release points were amended by the Terrorist Offenders (Restriction of Early Release) Act 2020 so they could not be considered for release before the two-thirds point of their custodial term. The CTSA added more additional terrorism-related offences to Schedule 13 to the Sentencing Code and introduced the special custodial sentence of detention for certain terrorist offenders aged under 18 years (section 252A of the Sentencing Code).
- 49 In 2022, the Police, Crime, Sentencing and Courts Act 2022” changed the remaining sex offences in Schedule 13 to the Sentencing Code from half-way to two-thirds discretionary release for those sentenced on or after its commencement on 28 June 2022, bringing all SOPC release provisions into line.

Short sentences

Suspended Sentence Orders

- 50 In accordance with section 277 of the Sentencing Code, when considering imposing a sentence of imprisonment of at least 14 days but no more than 2 years on an offender aged 21 or over, the courts may suspend that sentence by way of a suspended sentence order. The same power applies to adult offenders under 21 by virtue of section 264 of the Sentencing Code.
- 51 A suspended sentence is a custodial sentence that can only be imposed on an adult if the court is satisfied that the seriousness of the offence merits a custodial term but that other factors relating to the offence, or the offender mean that the sentence can be suspended. Currently, whether to suspend any qualifying custodial sentence is a matter of judicial discretion, taking into account the factors set out in the overarching sentencing guideline, Imposition of Community and Custodial Sentences. The court is obliged to expressly consider these factors when it is about to impose a custodial sentence which is within the range of sentences which can be suspended. The factors listed in the guideline are not an exhaustive list.
- 52 When sentencing and imposing a suspended sentence order, the court may also impose community requirements on the offender. If the offender breaches the order by failing to comply with any of the conditions or requirements, the offender will be given a warning in respect of the first breach and, if there is a second breach within the next 12 months, will be returned to court. Equally, if the offender commits a new offence during the suspension period, they will be returned to court. If the breach is proven to the court’s satisfaction, there is a presumption that the court will activate the suspended custodial sentence.

Home detention curfew

- 53 Current release provisions, set out in Part 2 of the CJA 2003, require that most offenders serving standard determinate sentences of imprisonment (“SDS”), and all who are serving an SDS of less than four years in length, must be released at the halfway point of their sentence (the ‘conditional release date’).

54 The Home Detention Curfew (“HDC”) scheme, which became available in 1999 following the passing of the Crime and Disorder Act 1998, enables certain offenders to be released ahead of this halfway point. Section 246 of the CJA 2003 gives the Secretary of State a discretionary power to release offenders on licence where certain eligibility requirements are met and subject to an electronically monitored curfew. Those released on HDC must serve at least a quarter of their sentence and a minimum of 28 days before release and certain offenders are excluded from or presumed unsuitable for the scheme. The maximum period of HDC is currently 180 days.

Territorial extent and application

- 55 The substantive provisions in the Bill extend and apply to England and Wales only. Certain clauses concerned with the technical operation of the bill and regulation-making powers also extend to Northern Ireland and Scotland.
- 56 Sentencing and release of offenders is reserved for Wales, and devolved to Scotland and Northern Ireland.
- 57 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Whole Life Orders

Clause 1: Mandatory life sentences: whole life orders

- 58 Clause 1 makes amendments to the Sentencing Code.
- 59 Subsection (2) makes amendments to section 321 (life sentence: minimum term order or whole life order) of the Sentencing Code. Section 321 contains the court's duties when imposing a life sentence.
- 60 Subsection (2)(a) amends existing section 321(2) of the Sentencing Code to provide that the court must make a minimum term order unless it is required to impose a WLO by the new duty in subsection 321(2A) or the existing duty in subsection 321(3) to impose a WLO where the court is of the opinion that, because of the seriousness of the offence and one or more offences associated with it, it should not make a minimum term order.
- 61 Subsection (2)(b) inserts two new subsections into section 321 of the Sentencing Code: subsection 321(2A) and subsection 321(2B).
- 62 Section 321(2A) states that the court must impose a WLO in the circumstances specified in subsection 321(2B) and where the offender was aged 21 or over when the offence was committed, unless there are exceptional circumstances which relate to the offence (or the combination of the offence and one or more offences associated with it) or the offender, which justify not making a WLO. This formulation seeks to ensure that the courts are required to impose a WLO in the most heinous cases of murder while preserving judicial discretion not to impose a WLO where there are exceptional circumstances.
- 63 Section 321(2B) lists the cases for which the court is required to impose a WLO. The list comprises the cases for which a WLO was previously the starting point under paragraph 2(2) of Schedule 21 and, additionally, murder involving sexual or sadistic conduct (previously subject to a 30-year starting point under paragraph 3(2) of Schedule 21).
- 64 Section 321(2B) also provides that cases fall within it if the offender is sentenced after commencement of the provision. This is because the new framework created by new subsections 321(2A) and (2B) is intended to have the widest possible application, to ensure that all those who commit the most serious murders are subject to the new regime.
- 65 Subsection (2)(c) makes amendments to section 321(3C) to provide that where a court is considering whether to impose a WLO on an offender aged over 18 but under 21 when the offence was committed, they must consider that even by the standard of case for which a WLO would be given under where the offence was committed by an offender over 21, the seriousness of the offence is exceptionally high. This amendment is intended to maintain the position that has existed since the commencement of section 126 the Police, Crime, Sentencing and Courts Act 2022, which extended WLOs to young adult offenders in exceptional cases.
- 66 Subsection (2)(d) inserts a new provision, section 321(6), which provides that 'child' means a person aged under 18. This is the same meaning as in paragraph 1 of Schedule 21.
- 67 Subsection (3) makes amendments to section 322 (mandatory life sentences: further provision) of the Sentencing Code. Section 322 provides further details on the court's duty when imposing the mandatory life sentence for murder.
- 68 Subsection (3)(a) and (b) amend the court's existing duty in section 322(4) of the Sentencing Code to take into account the changes being made to the framework for imposing WLOs.

- Section 322(4) of the Sentencing Code requires the court, when making a minimum term order, to state which of the starting points it has chosen, its reasons, and its reasons for any departure from them.
- 69 Cases falling within the new framework will no longer be sentenced based on the starting points in Schedule 21. Instead, the court will be required to impose a WLO if the case falls within one of the categories listed in section 321(2B) unless it finds there are exceptional circumstances relating to the offence (or the combination of the offence and one or more offences associated with it) or the offender that justify not making a whole life order.
- 70 Subsection (3)(a) therefore amends section 322(4) of the Sentencing Code to exclude cases falling within the new framework created by section 321(2A). Subsection (3)(b) then creates an equivalent provision for the new framework by creating a new subsection 322(4A) of the Sentencing Code.
- 71 The effect of subsection (3) is that the court will be required by section 322(4A) of the Sentencing Code, where it does not make a WLO in a case falling within the new list of cases in section 321(2B) because it finds there are exceptional circumstances, to state its reasons for finding there are exceptional circumstances.
- 72 Subsection (4) makes consequential amendments to Schedule 21 to the Sentencing Code.
- 73 Subsection (4)(a) amends paragraph 2, which describes the cases for which a WLO will usually be the starting point, to reflect the fact that cases subject to the new duty to impose a WLO save in exceptional circumstances, will be considered under that regime and not with reference to the principles of Schedule 21. Accordingly, paragraph (2)(1)(a) states that the cases falling within section 321(2B) (cases where the court must make a WLO) do not fall within the WLO starting point.
- 74 Subsection (4)(a)(ii) omits paragraph 2(2) of Schedule 21, which (prior to this amendment) contained the list of cases for which a WLO would normally be the appropriate starting point. These types of cases now fall within the new duty to impose a whole life order under section 321(2B) and are therefore removed from paragraph 2(2) of Schedule 21.
- 75 The combined effect of subsection (4)(a)(i) and (4)(a)(ii) is to amend paragraph 2(1) of Schedule 21 to ensure that in cases of an exceptionally high seriousness, where the offender is aged 21 or over at the time the offence was committed, but which are not included in the list of cases in section 321(2B), a WLO remains the appropriate starting point. This is intended to ensure judges retain discretion to deal with cases which are of exceptional seriousness but fall outside of the list of cases. This is consistent with the previous position where the court was able to impose a WLO even if a case did not fall within the list of cases for which a WLO was the starting point. An example is the case of Wayne Couzens, who was given a WLO even though his case fell into the 30-year starting point based on the sentencing regime at the time (see *R v Stewart* [2022] EWCA Crim 1063).
- 76 Subsection (4)(b)(i) amends paragraph 3(1) of Schedule 21. Prior to amendment, paragraph 3(1) stated that if a case did not fall within the WLO starting point, but was considered of particularly high seriousness, the appropriate starting point would be 30 years. Subsection (4)(b)(i) inserts an additional reference to new section 321(2B) to clarify that a 30-year starting point will be appropriate for cases of particularly high seriousness that do not fall into the WLO starting point and that do not fall within the new duty to impose a WLO because they fall into the new list of cases in section 321(2B). Subsection (4)(b)(ii) makes an equivalent change to paragraph 3(2)(a) of Schedule 21.
- 77 Subsection (4)(b)(iii) removes murder involving sexual or sadistic conduct from the list of

cases for which 30-years would normally be the appropriate starting point. This is because these cases will now be subject to the new duty under section 321(2B) to impose a WLO.

- 78 Subsection (4)(b)(iv) amends paragraph 3(2)(i). Prior to amendment, that paragraph provided that offenders aged 18 to 21 at the time of the offence who committed a murder that fell within the list of cases for which a WLO would normally be the starting point, would instead receive a starting point of 30 years. The list of cases for which a WLO is the starting point is omitted as a result of these amendments, and, in effect, moved from paragraph 2(2) of Schedule 21 to section 321(2B). Subsection 4(b)(iv) therefore changes the reference in paragraph 4(1)(a) from “paragraph 2(2)” of Schedule 21 to “section 321(2B)”.
- 79 Subsection (4)(c) amends sub-paragraph 4(1)(a) of Schedule 21 to clarify that cases which are not subject to the new duty to impose a WLO (section 321(B)), and are not cases of exceptionally or particularly high seriousness, will receive a 25-year starting point if the requirements for that starting point are met.
- 80 Subsection (4)(d) makes similar amendments to paragraph 5 of Schedule 21, clarifying that cases which do not fall within the new duty to impose a WLO, or any other higher starting point, will fall within the 15-year starting point.
- 81 When applying Schedule 21, the court is required, after deciding on a starting point, to take into account aggravating and mitigating factors. Aggravating factors are listed in paragraph 9. Subsection 4(e) amends paragraph 9 to make it clear that the aggravating factors listed are additional to those mentioned in the cases subject to the duty to impose a WLO (as well as those mentioned in the lists of cases attracting a 30-year or 25-year starting point).
- 82 Subsection (5) introduces consequential amendments that are set out on Schedule 1.

Schedule 1: Whole life orders: consequential amendments

- 83 Schedule 1 makes consequential provision for the amendments to the regime for imposing WLOs.
- 84 Paragraphs 1 and 2 makes amendment such that that references in other legislation to WLOs imposed under section 321(2) of the Sentencing Code also refer to WLOs imposed under the new section 321(2A) of the Sentencing Code.
- 85 Paragraph 3 amends the Armed Forces Act 2006 to provide that the amendments to the regime for imposing WLOs being made by section 1 of the Act apply similarly in the service justice system.

Special custodial sentences for certain sex offenders

Clause 2: Sexual offences attracting special custodial sentence for offenders of particular concerns

- 86 The application and operation of the SOPC sentence is explained above. Clause 2 amends the Sentencing Code by extending the SOPC to the following offences in the Sexual Offences Act 2003, including their abolished and inchoate versions:
 - a. Section 1 (rape)
 - b. Section 2 (assault by penetration)
 - c. Section 4 (causing a person to engage in sexual activity without consent) in circumstances involving penetration.
 - d. Section 8 (causing or inciting a child under 13 to engage in sexual activity) in cases

involving penetration.

- e. Section 30 (sexual activity with a person with a mental disorder impeding choice) in cases involving penetration.
- f. Section 31 (causing or inciting a person with a mental disorder impeding choice, to engage in sexual activity) in cases involving penetration.
- g. Section 34 (inducement, threat or deception to procure sexual activity with a person with a mental disorder) in cases involving penetration.
- h. Section 35 (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception) in cases involving penetration.
- i. Section 47,(paying for sexual services of a child) in cases involving penetration where the offence is committed against a person under 13)
- j. Section 62 (committing an offence with intent to commit a sexual offence) where the offence is committed by kidnapping / false imprisonment.

87 The offences all carry a maximum penalty of life imprisonment.

Clause 3: Special custodial sentence for sex offenders of particular concern aged under 18 at time of the offence

88 Clause 3 makes changes to the youth special sentence of detention for terrorist offenders of particular concern in section 252A of the Sentencing Code. Under 18s convicted of serious sex offences under Part 2 of Schedule 13 to the Sentencing Code will now receive a SOPC, if they do not receive a life or EDS sentence.

89 Clause 3(4)(c)(ii) ensures the changes will apply where the offence is committed on or after the day on which this Act comes into force.

Clause 4: Special custodial sentence for adult sex offenders of particular concern

90 Clause 4(2)(a) amends section 265 of the Sentencing Code which relates to the imposition of SOPCs for adult offenders aged between 18 and 21 who receive a sentence of detention in a young offenders' institution, rather than a sentence of imprisonment. The changes ensure, for those convicted after commencement, where the criteria for a life sentence or an extended determinate sentence are not met and a judge wishes to impose a custodial sentence, the offender must now receive a SOPC.

91 Clause 4(2)(b) ensures the SOPC is not applied to offenders who were under 18 at the time they committed the offence.

92 Clause 4(3)(a) amends section 278 of the Sentencing Code, which relates to the imposition of SOPCs for adult offenders aged over 21 who receive a sentence of imprisonment. The changes ensure, for those convicted after commencement, where the criteria for a life sentence or an extended determinate sentence are not met and a judge wishes to impose a custodial sentence, the offender must now receive a SOPC.

93 Clause 4(3)(b) ensures the SOPC is not applied to offenders who were under 18 at the time they committed the offence.

Clause 5: Special custodial sentences for sex offenders of particular concern: service law

94 Clause 5(2) amends section 224A of the Armed Forces Act 2006, which applies section 278 of the Sentencing Code to offenders who are convicted in the service justice system of an offence

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under section 42 (criminal conduct) of the Armed Forces Act where the corresponding offence under the law of England and Wales is one in respect of which section 278 of the Sentencing Code would apply in the civilian justice system. The changes ensure that the amendments made to the Sentencing Code by clause 4(3)(a) also have effect in the service justice system.

- 95 Clause 5(3) amends section 224B of the Armed Forces Act, which applies section 252A of the Sentencing Code to terrorist offenders of particular concern aged under 18 who are convicted in the service justice system of offences under section 42 (criminal conduct) of the Armed Forces Act where the corresponding offence under the law of England and Wales is one in respect of which section 252A of the Sentencing Code would apply in the civilian system. The changes ensure that the amendments made to the Sentencing Code by clause 3 will also have effect in the service justice system.

Suspension of custodial sentences

Clause 6: Duty to impose suspended sentences of 12 months or less

- 96 Clause 6(1) provides that amendments will be made to the Sentencing Code.
- 97 Clause 6(2) amends the Sentencing Code to insert a new section 264A after section 264 of the Sentencing Code. This subsection sets out the duty to impose a suspended sentence in respect of offenders aged 18 to 20.
- 98 Section 264A(1) sets out the criteria that must be met for this measure to apply. The offender must be aged 18 or over, but under 21, at the date of conviction for the offence. The offender must be convicted of the offence on or after the day that this legislation comes into force; a court must have determined that a custodial sentence of twelve months or less is the appropriate sentence to impose; and a suspended sentence order must be available to the court for that sentence. Section 264 of the Sentencing Code provides the sentences that can be suspended for an offender aged 18 or over but under 21. A sentence can lawfully be suspended because it is a sentence of detention in a young offender institution of not more than 2 years. A sentence cannot lawfully be suspended if the sentence of detention is one of two or more sentences imposed on the same occasion to be served consecutively and the terms of those sentences are in aggregate more than two years.
- 99 Section 264A(2) provides that the court must suspend the sentence unless there are exceptional circumstances relating to the offence or offender which justify not making a suspended sentence order. The intention behind the exemption is to preserve judicial discretion, where due to the circumstances of the case, the court does not consider that a sentence should be suspended. Section 264(3) provides circumstances in which the presumption to suspend short sentences will not apply.
- 100 Section 264A(3)(a) provides the presumption will not apply where the offender, on the date of the sentencing hearing, is in custody in accordance with a custodial sentence, is remanded in custody in different criminal proceedings, or has been committed to custody by court order. Where an offender is in custody at the time of sentence in respect of a matter other than the matter for which he falls to be sentenced, it may not be appropriate to impose a suspended sentence order. Accordingly, it would be inappropriate for the presumption in favour of suspending a short sentence to apply and the court maintains a discretion to consider suspending the sentence under the sentencing guidelines in the usual way.
- 101 Section 264A(3)(b) provides that the presumption does not apply where, as a result of the sentencing exercise taking into account the offence together with any associated offences, the offender is sentenced to a period of custody of more than 12 months. This will occur where the court imposes a custodial sentence of more than 12 months in respect of an associated

offence, even where that sentence is to run concurrently with the sentence imposed for the offence. It will also occur where the court imposes two or more sentences of less than twelve months' custody to run consecutively where the aggregate sentence is more than 12 months. This exemption is necessary as the presumption to suspend a short sentence should only apply where the court is considering imposing an overall sentence of 12 months' custody or less.

- 102 Section 264A(3)(c) provides that the presumption does not apply where, taking into account any associated offences, the overall sentence to be imposed is one of twelve months' custody or less but the offender's time on remand, either in custody or whilst subject to a qualifying curfew on bail, means that the custodial period of any custodial sentence is deemed served by virtue of s.240ZA of the Criminal Justice Act 2003 (time served remanded in custody to count as time served) or s.240A (time remanded on bail to count as time served). In *Maughan* [2011] EWCA Crim 787, the court concluded that it would be wrong in principle to impose a suspended sentence order on an offender whose time remanded in custody was in excess of the custodial period of the custodial sentence to be served; this was followed in *Williams (Gareth Brian)* [2018] EWCA Crim 2396 with respect to time spent on bail subject to a qualifying curfew. It follows that in such circumstances, it would be wrong in principle for the court's sentencing powers to be constrained by a duty to suspend a custodial sentence and therefore the presumption in favour of suspending short sentences does not apply.
- 103 Section 264A (3)(d) provides that the presumption does not apply where the offender is being resentenced for an offence or associated offence in respect of which the offender is or has been subject to a supervision order. A supervision order means a community order, a detention and training order, a referral order, a suspended sentence order or a youth rehabilitation order. Associated offence means that the offender is convicted of it in the same proceedings as another offence, was convicted of it in earlier proceedings but sentenced at the same time, or the offender admits to having committed it in proceedings and asks the court to take it into consideration when sentencing.
- 104 Section 264A (3)(e) provides the presumption does not apply where the offence was committed while the offender was on licence, or subject to post-sentence supervision (under Chapter 6 of Part 12 of the Criminal Justice Act 2003). Where an offender is subject to licence conditions or post-sentence supervision and goes on to commit a further offence whilst subject to that supervision, it would be inappropriate for the presumption to suspend short sentences to apply.
- 105 Section 264A (3)(f), provides the presumption does not apply where an offender falls to be sentenced for an offence which constitutes a breach of an order of a court or tribunal, or the breach of an order or award made anywhere in proceedings in respect of a service offence within the meaning of the Armed Forces Act 2006. This includes an offence which requires the breach of a civil order to be committed. Where a contempt of court is committed by breaching an order of the court, the presumption does not apply.
- 106 Section 264A(3)(g) provides that the presumption does not apply in respect of an offence of failing to surrender to custody without reasonable cause or where there is a reasonable cause for failing to surrender, failing to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable (section 6(1) or (2) of the Bail Act 1976). In such circumstances, it would be inappropriate for the presumption to apply.
- 107 Section 264A (3)(h) provides that the presumption in favour of suspending a sentence does not apply where the court considers that making the order would put a particular individual at a significant risk of harm. "Harm" means physical or psychological harm.
- 108 Where an exception applies under section 264(3), the court should go on to consider, in the

usual way, whether the custodial sentence should nevertheless be suspended by reference to the sentencing guidelines in force setting out the considerations to be taken into account when deciding whether to suspend a sentence.

109 Section 264A(4) sets out the definition of remand for the purposes of subsection 2(3)(a)(ii).

110 Section 264A(5) provides that a court must comply with pre-sentence report requirements in section 30 of the Sentencing Code. The court must obtain and consider a pre-sentence report when deciding whether to impose a suspended sentence order under section 264A unless in the circumstances of the case, the court considers that it is unnecessary to obtain a pre-sentence report.

111 Section 264A(6) provides that nothing in section 264A affects the court's power to impose a suspended sentence order in a case where section 264A does not apply. This refers both to a situation where a court is considering imposing a suspended sentence order in respect of a sentence of custody of more than one year or where, a sentence of one year or less falls outside of the scope of section 264A.

112 Section 264A(7) provides definitions.

113 Subsection(3) inserts new section 277A into the Sentencing Code.

114 Section 277A(1) outlines circumstances which must be met for the presumption to suspend a sentence of short custody to apply to an offender aged 21 or over. The offender must be aged 21 or over when convicted of the offence; must be convicted after the date on which section 6 of the Sentencing Act 2024 came into force; the offence must be one for which the custodial sentence being imposed is not more than 12 months; and a suspended sentence order must be available to the court for that sentence. Section 277A (2) to (7) mirror section 264A(2) to (7) for offenders aged 21 or over.

115 Clause 6(4) introduces Schedule 2 that makes consequential amendments.

Schedule 2: Duty to impose suspended sentence order: consequential amendments

116 Schedule 2 makes amendments consequential on the new provision for the presumption in favour of suspending custodial sentences of 12 months or less.

117 Paragraphs 1 and 2 amend references to the power to suspend a custodial sentence in the Firearms Act 1968 and Proceeds of Crime Act 2002 so that they explicitly include reference to new sections 264A and 277A of the Sentencing Code, which set out the presumption in favour of suspending short sentences of 12 months or less.

118 Paragraph 3 amends the Armed Forces Act 2006 to provide that the presumption in favour of suspending custodial sentences applies similarly in the service justice system. The duty applies only to sentences of imprisonment, which are served in the civilian prison system. It does not apply to sentences of service detention.

119 Paragraph 4 inserts a new paragraph 54A into Schedule 22 to the Sentencing Code which contains amendments to be made to the Sentencing Code. This is so that, in the event that the relevant aspects of Schedule 22 are commenced so as to remove references to 'young offender institution' from the Sentencing Code, section 277A will apply to all offenders aged 18 or over.

Release of offenders

Clause 7: Removal of early release for certain sex offenders

120 Clause 7 creates a new release provision for those convicted of serious sexual offences serving an EDS or SOPC for the serious sexual offences listed in Part 2 of Schedule 13 to the

Sentencing Code, and their service equivalents.

121 New section 247B provides that these offenders will now serve the whole of their custodial term before being automatically released on licence.

122 Clause 7(1)-(6) carves out these offenders from other release provisions in Part 12 of Chapter 6 of the CJA 2003.

123 Clause 7(8) creates Schedule 3 which makes consequential provision.

Schedule 3: Removal of early release provisions for certain sex offenders: consequential amendments

124 Schedule 3 makes consequential provision for the new release arrangements for serious sexual offenders.

125 Paragraph 1(2) excludes the new cohort of serious sexual offenders from the post-sentence supervision regime.

126 Paragraph 1(3) ensures that prisoners serving consecutive sentences who are subject to the new provision are not eligible for early release or Parole Board referral where relevant until they have served the entirety of the custodial term.

127 Paragraph 2 amends the Armed Forces Act 2006 to provide that the new release arrangements for serious sexual offenders apply similarly in the service justice system.

128 Paragraph 3 carves out this cohort of offenders from the power to change the Parole Board release test in section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, as these offenders will no longer be eligible for Parole Board release.

129 Paragraph 4 ensures that, where a relevant offender receives a driving disqualification alongside their custodial sentence, the disqualification is extended by the correct extension period matching the whole custodial term, so that the disqualification can be served in full after release.

Clause 8: Extension of home detention curfew

130 Clause 8 provides for an extension of which offenders are eligible for home detention curfews.

131 Subsection (1) introduces that amendments will be made to section 246 (release of prisoners on licence before required to do so) of the CJA 2003.

132 Subsection (2) amends existing section 246(1), which sets out that prisoners eligible for HDC must be serving a fixed term sentence (i.e., one that has an automatic release date). The amendment provides that prisoners serving certain fixed term sentences are excluded from HDC. This is so HDC will only apply to those sentences with automatic half-way release. Those subject to the following release provisions are excluded:

- a. sentences for specified serious sexual or violent offences subject to the release provisions of section 244ZA of the CJA 2003 (automatic release at the two thirds point of the sentences, rather than at halfway);
- b. sentences for offenders of particular concern imposed under section 236A of the CJA 2003 (or section 265 or 278 of the Sentencing Code) subject to release under section 244A of the CJA 2003;
- c. extended sentences imposed under section 226A or 226B of the CJA 2003 (or section 254, 266 or 279 of the Sentencing Code) subject to release under section 246A of the CJA;

- d. extended sentences imposed under section 227 or 228 of the CJA 2003 subject to release under section 247 of the CJA;
- e. sentences for an offence described in section 247A(2) of the CJA 2003 (specified terrorist or terrorist connected offences) subject to the release provisions of that section;
- f. sentences of four years or more subject to the release provisions under paragraph 4 of Schedule 20B of the CJA 2003 (previously Criminal Justice Act 1991); and
- g. sentences of 12 months or more subject to the release provisions under paragraph 24 of Schedule 20B of the CJA 2003 (imposed under the Criminal Justice Act 1967).

133 Subsection (3)(a) amends existing subsection section 246(4) to remove the exclusion from HDC of prisoners serving sentences of 4 years or more and removes existing sentence types that are now excluded from HDC by virtue of subsection (2) of this Clause.

134 Subsection (3)(b) amends section 246(4) in order to exclude from HDC prisoners serving sentences for specified serious sexual or violent offences that would have been subject to the release provisions of section 244ZA of the CJA 2003 (automatic release at the two thirds point of the sentences, rather than at halfway) if they had been imposed after those provisions came into effect. Those subject to these release provisions (not otherwise excluded, for instance those subject to notification for sexual offences) became eligible by the removal of the four-year exclusion. This amendment provides parity with the exclusion of those offenders now subject to the release provisions of section 244ZA.

135 Subsection (3)(c) amends existing subsection (4)(g) of Section 246, to limit the exclusion from HDC of any prisoner who has previously been recalled to custody under section 255(1)(a) of the CJA 2003 for having breached the curfew conditions of HDC during their current sentence.

136 Subsection (3)(d) substitutes section 246 (4)(ga), which excludes from HDC any prisoner who has “at any time” previously been recalled to custody under section 38A(1)(a) of the Criminal Justice Act 1991 for having breached the curfew conditions of HDC. In its place are inserted new subsections (4)(ga) and (gb). The combined effect of these new subsections is to replace the current exclusion which applies to those recalled for HDC curfew breach at any time previously, i.e., back to 1999 when HDC was first introduced, with an exclusion that applies only where they were still serving the recall at any point during the two years immediately prior to the start of the current sentence.

137 Subsection (3)(e) removes existing section 246(4)(ha), which excludes from HDC anyone who has ever been returned to custody by the court under section 40 of the Criminal Justice Act 1991 or section 116 of the Powers of Criminal Courts (Sentencing) 2000. Under these provisions, which only applied to sentences governed by the release provisions of the Criminal Justice Act 1991 and were repealed in 2012, if a person committed a further imprisonable offence between the end of their release licence and the end of the sentence (known as the “at risk period”), the courts could return them to prison to serve a term of imprisonment that was equal to the period between the date of the new offence and the end of the sentence.

138 Subsection (4) removes section 246(4)(ZA), which sets out how to treat consecutive or concurrent sentences in determining whether the prisoner was serving a term of 4 years or more and would therefore be excluded from HDC by virtue of existing section 246(4)(aa). This will now be redundant as subsection (4)(aa) has been removed by subsection (2) of this Clause, those serving sentences of 4 years or more will now be eligible for HDC.

General

Clause 9: Consequential provision

139 Clause 9 gives the Secretary of State the power to make consequential provision by regulations in relation to any provision in the Act, by statutory instrument. Where the power is exercised to amend, repeal, or revoke primary legislation it will be subject to the affirmative resolution procedure and when it is exercised to amend repeal or revoke secondary legislation it will be subject to the negative resolution procedure. This provision covers legislation made in by Parliament, by the Scottish Parliament, by Senedd Cymru, or through Northern Ireland legislation. The power can also be exercised to make different provision for different cases and can make transitional, transitory or saving provision.

Clause 10: Power to state effect in Sentencing Act 2020 of commencement of amendments made by this Act

140 Clause 10 extends existing power in section 419(1) of the Sentencing Act 2020. That power enables the Secretary of State to state the effect, on the face of the Sentencing Code, of the commencement of amendments to the Sentencing Code listed in Schedule 22 to the Sentencing Code. Clause 10 extends that power so that it also applies to amendments to the Sentencing Code made by this Act. The aim is to clarify the position on commencement in the actual provision to make it easier to interpret the legislation.

Clause 11: Extent, commencement and short title

141 Clause 11 explains the territorial extent of the provisions of the Act.

142 Subsection (1) provides that subject to certain exceptions the Act extends to England and Wales only. Subsection (2) provides that the exceptions are Clause 9 and Clause 10, which extend to England, Wales, Scotland and Northern Ireland. Subsection (3) provides that consequential amendments in the Schedules to the Bill have the same extent as the underlying provisions.

143 Subsection (4) provides that the extent of the Bill provisions that are applied by or under the Armed Forces Act 2006 is not limited within the UK. This ensures that the changes made by this Act to the sentencing system that applies under the Armed Forces Act 2006 have the same extent within the United Kingdom as the rest of that Act.

144 Subsections (5) to (7) relate to when the provisions of the Act come into force. Subsections (9) to (11), which concern the technical operation of the Act and provide for certain regulation-making powers, come into force on the day on which the Act is passed. The remainder of the Act comes in to for on a date to be specified in regulations by the Secretary of State.

145 Subsections (8) and (9) provide that the Secretary of State may make regulations for transitional, transitory or saving provision in connection with the coming into force of the any provision of the Act. This is to ensure a smooth transition between existing law and new law made by the Act.

146 Subsection (10) gives the shortened title by which the Act can be referred to.

Commencement

147 Clause 11(5) and 11(6) state when each provision in this Bill comes into force. With the exceptions of clause 9 (*consequential provision*), clause 10 (*power to state effect in Sentencing Act 2020 of commencement of amendments by this Act*) and clause 11 (*extent, commencement and short title*), all provisions of the Bill come into force on a day the Secretary of State appoints by regulation.

Financial implications of the Bill

148 There are no provisions in the Bill that gives rise to or create powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking public expenditure), therefore this Bill does not require a money resolution. Nor does this Bill create or confer power to create new charges on the people (broadly speaking, new taxation or similar charges. Therefore, this Bill does not require a ways and means resolution.

149 Further details of the costs and benefits of provisions are set out in the impact assessment published alongside the Bill.

Environment Act 2021

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

Compatibility with the European Convention on Human Rights

151 The government considers that the Bill is compatible with the European Convention on Human Rights. Accordingly, a statement under section 19(1)(a) of the Human Rights Act 1998 has been made to this effect.

152 Issues arising as to the compatibility of the Bill with the Convention rights are dealt with in a separate memorandum published alongside the Bill.

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1: Mandatory life sentences: whole life orders	Yes	Yes	No	No	No	No	No
Clause 2: sexual offences attracting special custodial sentence for offenders of particular concern	Yes	Yes	No	No	No	No	No
Clause 3: Special custodial sentence for sex offenders of particular concern aged under 18 at time of offence	Yes	Yes	No	No	No	No	No
Clause 4: Special custodial sentence for adult sex offenders of particular concern	Yes	Yes	No	No	No	No	No
Clause 5: Special	Yes	Yes	No	Yes	No	Yes	No

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custodial sentences for sex offenders of particular concern: service law							
Clause 6: Duty to impose suspended sentences of 12 months or less	Yes	Yes	No	No	No	No	No
Clause 7: Removal of early release for certain sex offenders	Yes	Yes	No	No	No	No	No
Clause 8: Extension of home detention curfew	Yes	Yes	No	No	No	No	No
Clause 9: Consequential provision	Yes	Yes	No	Yes	No	Yes	No
Clause 10: Power to state effect in Sentencing Act 2020 of commencement of amendments made by this Act	Yes	Yes	No	Yes	No	Yes	No
Clause 11: Extent, commencement and short title	Yes	Yes	No	Yes	No	Yes	No

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SENTENCING BILL

EXPLANATORY NOTES

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