

**CRIMINAL JUSTICE BILL**  
**EUROPEAN CONVENTION ON HUMAN RIGHTS**

**Supplementary Memorandum by the Home Office and Ministry of Justice**

**Introduction**

1. This memorandum supplements memorandums dated November<sup>1</sup> and December<sup>2</sup> 2023 and January<sup>3</sup> 2024 prepared by the Home Office and Ministry of Justice, which addressed issues under the European Convention on Human Rights (“ECHR”) in relation to the Criminal Justice Bill.
2. This supplementary memorandum addresses the issues under the ECHR that arise in relation to Government amendments, tabled on 8 May 2024 for Commons Report stage, and one non-Government amendment, which the Government supports. This memorandum has been prepared by the Home Office and Ministry of Justice.
3. The amendments considered in this memorandum are:
  - a. New clause “*Cautions given to persons having limited leave to enter or remain in UK*”.
  - b. New clauses / Schedule:
    - i. “*Duty to report child sex offences*”,
    - ii. “*Reasons to suspect child sex offence may have been committed*”,
    - iii. “*Exception for certain consensual sexual activity among children*”,
    - iv. “*Exception relating to commission of offence under section 14 of the Sexual Offences Act 2003 by a child in certain circumstances*”,
    - v. “*Exception in respect of certain disclosures by children*”,
    - vi. “*Offence of preventing or deterring a person from complying with duty to report child sex offences*”,
    - vii. “*Duty to report child sex offences: modifications for constables*”,

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<sup>1</sup> Accessible here: [ECHR memo \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>2</sup> Accessible here: [4240 \(parliament.uk\)](https://parliament.uk)

<sup>3</sup> Accessible here: [ECHR \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- viii. *“Duty to report child sex offences: power to amend”, and*
  - ix. *new Schedule “Duty to report child sex offences: child sex offences and further relevant activities”.*
- c. New clauses:
- i. *“Sex offenders: notification of name change”,*
  - ii. *“Sex offenders: notification of absence from sole or main residence”,*
  - iii. *“Child sex offenders: requirement to notify if entering premises where children present”, and*
  - iv. *“Sex offenders: restriction on applying for replacement identity documents in new name”.*
- d. New clause *“Manslaughter: sexual conduct aggravating factor”.*
- e. New clause *“Sexual activity with a corpse”.*
- f. Amendment to Part 6 of Schedule 5 (confiscation orders: England and Wales) replacing new section 22A of the Proceeds of Crime Act 2002 with a modified new section 21A – *Order made: reconsideration of benefit on decrease in value and sale etc.*
4. It is not considered that any other Government amendments tabled on 8 May 2024 give rise to issues under the ECHR.

**New clause: “*Cautions given to persons having limited leave to enter or remain in UK*”**

5. This provision amends section 22 of the Criminal Justice Act 2003 (“CJA 2003”) to allow an offender with limited leave to enter or remain in the UK to be given a type of conditional caution that requires the offender to leave the UK and not return for a specified period. This type of conditional caution can currently only be attached to one given to an offender who has been or may be given removal directions under certain statutory provisions (section 10 of the Immigration and Asylum Act 1999 or Schedule 2 to the Immigration Act 1971 (“IA 1971”)) or who is subject to a deportation order.
6. Although the application of the measure may engage ECHR articles (e.g. Article 8), the provision that amends section 22 CJA 2003 in relation to this type of

conditional caution to be offered to foreign offenders with limited leave does not directly engage any articles of the ECHR and is capable of being applied in a way that is compatible with ECHR rights.

7. The amended section 22 of the CJA 2003 provides a power to attach foreign offender conditions to conditional cautions but not an obligation to do so. The authorised person has a discretion to not offer a conditional caution that requires the offender to leave the UK where doing so would be incompatible with the UK's obligations under ECHR. The authorised person may offer another type of conditional caution or offer a simple caution with no conditions attached. The offender has the right to decline the conditional caution, which may lead to criminal proceedings being instituted against the offender for the offence in question.

**New clauses: “Duty to report child sex offences”, “Reasons to suspect child sex offence may have been committed”, “Exception for certain consensual sexual activity among children”, “Exceptions relating to commission of offence under section 14 of the Sexual Offences Act 2003 by a child in certain circumstances”, “Exception in respect of certain disclosures by children”, “Offence of preventing or deterring a person from complying with duty to report child sex offences”, “Duty to report child sex offences: modifications for constables”, and “Duty to report child sex offences: power to amend” and new Schedule “Duty to report child sex offences: child sex offences and further relevant activities”**

8. Under the provisions, a person engaged in relevant activities in England will be required to notify local authority social services or the police if, in the course of those activities, they are given reason to suspect that a child sex offence has been committed.
9. The legislation will make provision for the circumstances in which a person is taken to have reason to suspect that a sex offence has been committed. This will cover: witnessed abuse, disclosures of abuse from the victim, or disclosures from another person (including confessions from the perpetrator). There will be an exception meaning that the person does not have to report consensual activity that takes place between children aged 13-17 (where there is no risk of abuse / exploitation etc.).

10. The duty will be to notify the abuse as soon as is reasonably practicable (the Secretary of State will have the power to specify a period within which the notification must be made). However, a person may delay making a report for so long as they reasonably believe that it is in the best interests of the victim to do so.
11. The legislation will not specify any direct consequences for failure to comply with the duty. However, it will be open to the Disclosure and Barring Service (DBS) to consider barring a person who has failed to comply with it (i.e. preventing them from engaging in future regulated activity involving children). In addition, where a person is subject to professional regulation, their regulator may decide to take action in response to a failure to comply with the duty.
12. There will be a criminal offence of preventing or deterring a person from complying with their duty.
13. The proposed duty engages Articles 8 and 9 and is assessed to be compatible with the ECHR rights of persons who will be subject to it or who will be affected by it (including victims and perpetrators of abuse).

#### Article 8 ECHR

14. There may be circumstances in which the application of the duty gives rise to an interference with the right to private life of the victim of abuse. It is also arguable that in some circumstances it may constitute an interference with the private life of a perpetrator of abuse.

#### *Victim*

15. The duty will require a person who is subject to it (“a relevant individual”) to reveal very private information about a victim to either the police or to social services. There may be circumstances where the victim of the abuse is an older teenager who is *Gillick* competent, or even an adult, and who does not want the abuse notified. However, in those circumstances the relevant individual will be obliged to make a notification. In such circumstances there is likely to be an interference with the victim’s private life.

#### *Perpetrator*

16. It is unlikely that a court would find that in general a confession made by a perpetrator to a relevant individual would enjoy a reasonable expectation of privacy

(applying the principles discussed in the Supreme Court judgment in *Sutherland v HM Advocate* [2020] UKSC 32). No person could have a reasonable expectation that a person will not disclose information of that nature to the police etc.

17. In addition, the duty will apply only to confessions that are made after commencement. Therefore, if a person chooses to confess to a relevant individual they will know that that person who will have a duty to take action in response.
18. However, there may be circumstances where the relationship between the perpetrator and the relevant individual falls within the scope of Article 8. For example, where the perpetrator has sought out the relevant individual, who is someone that they have a very close relationship with, to ask for their help in seeking treatment to combat their behaviour. In rare circumstances, the duty could arise in respect of a confession made to a priest or religious advisor (see below).
19. The duty is in accordance with the law. It will be provided for by primary legislation, and the legislation sets out who is subject to the duty and the circumstances in which it arises. Detailed guidance will be published alongside the legislation to assist relevant individuals in understanding their obligations.
20. There is a strong justification for imposing this duty. It is intended to combat child abuse, and is largely focussed on settings in which children are particularly vulnerable. The duty has been developed following a recommendation of the Independent Inquiry into Child Sexual Abuse. That recommendation was made after the inquiry received extensive evidence of past situations of in which persons with responsibility for children were made aware of abuse, or witnessed it, and did not take any action in response (with the consequence that the abuse was able to continue).
21. The duty constitutes a proportionate means of combatting child abuse. Parliament has a wide margin of appreciation to adopt appropriate measures to combat abuse. In reaching its assessment as to the proportionality of the duty, we would expect a court to place particular weight on the following factors:
  - a. the duty resulted from the recommendation of an independent inquiry that identified a serious problem with the protection of children and many past instances of failures to take action in response to abuse;

- b. the duty does not apply to the public at large, and applies to relevant individuals only while they are engaged in activities in which children are assessed to be at greater risk of abuse;
- c. the duty does not arise in relation to consensual activity between people aged 13-17 (where there is no risk of harm etc.);
- d. a relevant individual will be able to delay making a notification if they reasonably believe, taking into account all of the circumstances, that it is in the best interests of the victim for the notification to be delayed (e.g. where there is a risk of self-harm);
- e. the duty will not arise in respect of a confession that is made by a person under 18, to avoid creating any barriers to a young person seeking help to combat their behaviour; and
- f. if the duty is not met, there are no automatic consequences for the relevant individual and it will be for the DBS or for a professional regulator to determine whether the person should be able to continue engaging in activities involving children.

22. It is proportionate to require that a notification be made even where the victim does not want it to be made. The primary purpose of the duty is to ensure that the police and social services are made aware of abuse so that they can decide what action they take in order to secure the protection of children in the future (as well as the punishment of the offender). To create some form of exception for situations where the victim is opposed to notification might have the effect of frustrating that aim.

23. However, the legislation will allow a notification to be delayed where it is assessed to be in the victim's best interests. If the victim has good reasons why they do not want the abuse reported, it may be appropriate to delay the report for a reasonable period. Furthermore, if the police or social services are notified, it will be for them, following discussion with the victim and taking account of the victim's circumstances, to decide what action to take.

Confessions – Articles 8 and 9 ECHR

24. There are some circumstances where a relevant individual who is a religious or spiritual advisor may receive a confession of abuse from a perpetrator while engaging in relevant activity; although the circumstances in which such a scenario is likely to arise will be vanishingly rare.
25. The imposition of the duty in such circumstances may constitute an interference with the Article 8 rights of the perpetrator (there may be a reasonable expectation of privacy, particularly in a religious setting), a limitation of their Article 9 rights (they may be deterred from seeking out spiritual guidance) and a limitation of the Article 9 rights of the person who hears the confession (they may be subject to a conflict between their legal obligations and their religious convictions).
26. Although there will be a new criminal offence of preventing or deterring a relevant individual from complying with their duty, the offence should not interfere with the relationship between a religious or spiritual advisor and their religious institution. The offence will apply only in circumstances where a person knows that another person is required to make a notification and so will not apply to general guidance issued by a church etc. on religious matters such as the seal of the confession.
27. Such interference and limitations are justified and proportionate. The need to combat child abuse is sufficiently strong that a court is likely to accept that it is proportionate to apply the duty to confessions made in a religious context. A person who wishes to make such a confession will ordinarily be able to seek out a spiritual advisor outside of a context in which they are engaging in relevant activities involving children.
28. If a religious advisor fails to comply with their duty in these circumstances, any consideration by the DBS as to whether to bar the relevant individual for engaging in regulated activity involving children would have to take account of the reasons why the notification was not made.

**New clauses: “*Sex offenders: notification of name change*”, “*Sex offenders: notification of absence from sole or main residence*” and “*Child sex offenders: requirement to notify if entering premises where children present*”**

29. The provisions require registered sex offenders (“RSOs”) who are managed by a police force in England or Wales and are required to notify under Part 2 of the Sexual Offences Act 2003 (“2003 Act”), to give the police at least seven days

advanced notice of a change of their name. This replaces an existing requirement under section 84 of the 2003 Act is to notify any change of name within three days of that change. The change is necessary to ensure that the management of sex offenders is effective and that where a RSO seeks to change their name, the police and appropriate authorities have updated information which enables them to trace the RSO if necessary.

30. The provisions also require RSOs who have convictions for sexual offences against children, or who have been assessed by the police to be a sexual risk to children, and served with a notice, to notify the police at least 12 hours in advance of entering qualifying premises where children are present.
31. Under the provisions RSOs will also be required to notify the police in advance of any absence of more than five days from their sole or main residence.
32. The measures engage Articles 7 and 8 ECHR but are assessed to be compatible with the rights protected under those Articles.

#### Article 7 ECHR

33. These measures will apply to all RSOs who are required to notify under Part 2 of the SOA 2003 including those who were convicted before the commencement of this legislation and so Article 7 is engaged.
34. The Government considers that these measures are administrative measures that will enable the police to better protect members of the public and children from sexual harm from the RSO and are not punitive. The Government does not consider that these measures are a penalty. In *Gardel v France* (Application no: 16428/05 17 December 2009) the European Court of Human Rights (ECtHR) decided that notification requirements imposed after the applicant was convicted had the aim to prevent reoffending and they constituted a deterrent and facilitated police investigations. Any failure to comply with the requirements would result in another set of court proceedings at which the defendant will be able to offer any available defence.

#### Article 8 ECHR

35. The measures impose requirements that will require notification in advance of certain activity and engage the RSO's rights under Article 8.



36. The provisions are 'in accordance with the law' as required by Article 8(2). They are clearly set out in legislation.
37. These measures pursue a legitimate aim: the prevention of sexual crime - against children in particular - and the protection of rights and freedoms of others by providing information to the police to enable effective risk assessments to be carried out and RSOs to be appropriately managed.
38. These measures are necessary in a democratic society in the interests of public safety, for the prevention of crime and for the protection of the rights and freedoms of others.
39. The provisions that provide a new notification requirement for RSO's that pose a particular risk to children to notify the police before entering certain premises where children are present will increase the ability of police to safeguard children as well as enabling the police to share information with a person with parental responsibility for the child, if this is appropriate in the circumstances.
40. Name changes will be permitted where a specified condition is met and there is no risk to the public as a result of the change.
41. Noting the considerable risk that RSOs can pose to others and that this risk may be mitigated if the police have sufficient information to make an informed assessment of the risks which a RSO poses of causing sexual harm to others, these measures are proportionate.
42. The Government considers that these measures are proportionate because they do not directly prevent any activity from taking place and do not provide a more onerous requirement than necessary to achieve the operational aim.

***New clause: "Sex offenders: restriction on applying for replacement identity documents in new name"***

43. The provisions enable the police to give a notice to a RSO to prevent that offender from changing their name on any document listed in section 7 of the Identity Documents Act 2010 without prior authorisation from police to do so. The police may only give the notice where the chief officer of the police for the local police area is satisfied that it is necessary to do so to protect members of the public or

particular members of the public from sexual harm from that offender or to protect vulnerable adults or children or particular vulnerable adults or children.

44. The police may only authorise the name change if one of the conditions specified in regulations are met and it is not necessary to refuse authorisation to protect the public or particular members of the public from sexual harm from the offender.

#### Article 7 ECHR

45. The provisions are likely to engage rights of the RSO under Article 7 ECHR. However, the prohibition is only to apply to those RSOs who the police have decided that the prohibition is necessary: to protect the public or particular members of the public from sexual harm from the RSO; to protect children or vulnerable adults generally; or any particular children or vulnerable adults outside the United Kingdom from sexual harm from that RSO. This is intended to protect the public by preventing reoffending and to facilitate police investigations so its purpose is not punitive. The case of *Gardel v France* (referenced above) is also relevant to these provisions.

#### Article 8 ECHR

46. These provisions are likely to interfere in the private life of the RSO as was decided in *Adamson v United Kingdom* (App. No. 42293/98). However, they will be in accordance with the law, being clearly set out in these provisions. The provisions are designed to protect the public from further sexual offending by an RSO who has successfully changed their name on an identity document and so could evade detection by the police. They pursue a legitimate aim (public safety, the prevention of disorder or crime, the protection of the rights and freedoms of others).
47. The provisions are proportionate as the police will only give a notice where they consider that the RSO is likely to commit a further sexual offence which the change of name might facilitate. Furthermore, the police are also required to approve a name change where one of the specified conditions set out in legislation is satisfied unless the police assess that the offender is likely to commit further sexual offences and the change of name may facilitate that. The conditions will apply to a change of name in consequence of marrying, following a religious conversion in accordance with legitimate practice, changing gender, where the RSO has been victim of certain interpersonal offences (e.g. stalking or offences in consequence

of domestic abuse) and a name change is required to protect them from the harm caused by that offending or where the RSO has received an Osman warning. There is a further specified condition that may apply where the police consider that there are exceptional circumstances as a result of which the authorisation should be granted. These conditions take account of the RSO's Convention rights.

48. There will be a right for the RSO to appeal to a magistrates' court against the issue of a notice or the refusal of authorisation of the change of name.

**New clause: "*Manslaughter: sexual conduct aggravating factor*"**

49. New clause "*Manslaughter: sexual conduct aggravating factor*" makes the fact that an offence of manslaughter involves sexual conduct an aggravating factor. When assessing the seriousness of manslaughter, the court will be required to consider sexual conduct an aggravating factor. It is therefore expected to result in longer sentences for relevant offenders.

50. This new aggravating factor will apply to all offenders convicted after commencement.

51. The measure potentially engages Articles 5, 7 and 14 ECHR but is assessed to be compatible with the rights protected under those Articles.

Article 5 ECHR

52. Since the measure is expected to result in longer sentences for certain offenders convicted of manslaughter, Article 5 is engaged. Any additional deprivation of the liberty, however, falls within Article 5(1)(a) (deprivation of liberty following conviction by a competent court) and is therefore permitted. Furthermore, the court retains ultimate discretion regarding the weighting of aggravating factors and in setting the appropriate sentence based on the individual circumstances of the case. Accordingly, this provision does not give rise to a risk of arbitrary deprivation of liberty. Sections 3 and 6 of the Human Rights Act 1998 will also always apply to discretionary sentencing exercises carried out by judge, which provides a further safeguard to help ensure sentencing exercises are undertaken compatibly with the ECHR.

53. For these reasons, the clause is considered to be compatible with Article 5.

Article 7 ECHR

54. This measure has retrospective effect as the changes are to apply to those persons who may have committed offences before commencement but who have not yet been charged, convicted or sentenced. Article 7 is, however, not breached as the maximum penalty for manslaughter, i.e., life imprisonment, will be the same before and after commencement (see further *Coeme and Others v Belgium* (2000) Application Nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96 and *R v Uttley* [2004] UKHL 38).

55. For these reasons, the Government considers this measure to be compatible with Article 7.

#### Article 14 ECHR

56. Article 14 is engaged as, read with Article 5, it may give rise to a situation where:

- men are treated less favourably than women; and
- those sentenced under the new provision are treated less favourably than those sentenced previously.

57. Regarding (a): men are more likely to be impacted by the new aggravating factor because they are overrepresented among offenders convicted of manslaughter generally, and, although the Government does not collect specific data on this, anecdotal evidence indicates that men are more likely to be convicted of manslaughter that involves sexual conduct specifically. Any resulting discrimination, however, is justified as a proportionate means of achieving the legitimate aim of appropriate punishment of those who commit manslaughter involving sexual conduct (see *R (A and Others) v Secretary of State for the Home Department and another* [2020] EWCA Civ 130 at [21] to [29] and [51]).

58. Regarding (b): offenders cannot compare themselves to those sentenced under a different sentencing regime. This is because the application of different sentencing regimes as a consequence of legislative change does not give rise to a 'status' under Article 14 (*Minter v UK* [2017] 5 WLUK 8) and, in any event, any resulting discrimination would be justified (*R v Docherty (Shaun)* [2016] UKSC 62 at [53]).

59. For these reasons, the new clause is considered to be to be compatible with Article 14 ECHR.

**New clause: “Sexual activity with a corpse”**

60. Currently, section 70 of the Sexual Offences Act 2003 (“SOA 2003”) criminalises the sexual penetration of a corpse. The new clause will replace section 70 of the SOA 2003, with a revised section 70, creating a new overarching offence of sexual activity with a corpse which criminalises both penetrative and non-penetrative sexual touching of a corpse. Where the sexual touching involves penetration, the maximum penalty for the offence will be 7 years’ imprisonment. This is an increase from the current maximum penalty of 2 years’ imprisonment for the section 70 offence. Where the sexual touching does not involve penetration, the offence will carry a maximum penalty of 5 years’ imprisonment.
61. The offence as revised will remain in Schedule 3 to the SOA 2003, so that an offender convicted of the offence will be subject to notification requirements under Part 2 SOA 2003 where the relevant criteria are met. Notification requirements require an offender to notify the police of various personal details annually and whenever they change, including their name, address, date of birth, passport and national insurance number.
62. The Government considers the amendment to engage Articles 5, 7 and 8 of the ECHR.

Article 5 ECHR

63. The creation of a new criminal offence punishable by imprisonment engages Article 5 ECHR, as does the increase in the maximum penalty for the sexual penetration of a corpse. Article 5 ECHR sets out that no one shall be deprived of their liberty other than in accordance with the law, and in certain specific scenarios. The offence and maximum penalties will be set out in primary legislation and as such are in accordance with a procedure prescribed by law and would fall within the permissible grounds in Article 5(1).
64. In principle, matters of appropriate sentencing fall outside the scope of the Convention; it is for member states, not the Court, to decide what the appropriate sentence for any given offence is. However, for detention to be lawful there must not only be a basis in domestic law, but it also must not be arbitrary.
65. It is the Government’s view that the proposed penalties are not arbitrary and that they are proportionate to the nature and severity of the offending. The offence is capable of causing significant harm to the families and friends of the dead person

whose body has been violated, at a time that they are likely to still be grieving their loved one. It is right that, in setting the maximum penalty for these offences, the particular dignity that is afforded to a dead person within our society is taken into account, together with the fact that this offending behaviour inevitably detracts from that dignity in a way which may be irrecoverable in the eyes of family and friends.

66. The maximum penalty for an act of penetration is higher than that for other sorts of sexual touching to reflect the fact that offending that involves penetration is generally considered more serious within the framework of the SOA 2003. The higher penalty therefore reflects the more serious nature of the offending and the harm that can flow from it, thus maintaining the causal connection between the conviction and the deprivation of liberty.

67. Finally, the court will retain the ability to take account of all the relevant circumstances when arriving at an appropriate sentence. This provides an important safeguard.

#### Article 7 ECHR

68. In order to comply with Article 7, the offence and corresponding penalty must be clearly defined in law.

69. The elements of the offence and the maximum penalties are set out clearly in the proposed clause in a way in which a member of the public could understand. The offence will not have any retrospective effect. The clause is therefore compatible with Article 7.

#### Article 8 ECHR

70. The new clause engages Article 8, which protects an individual's right to respect for their family and private life, as offenders who are convicted of the offence will be subject to notification requirements where the relevant criteria are met.

71. Any interference is justified within the meaning of Article 8(2) ECHR. Paragraph 150 of the explanatory notes to the SOA 2003 refers to the offences in Schedule 3 to the SOA 2003 (those in relation to which a person becomes subject to notification requirements upon conviction) as being "exclusively sexual offences". There is therefore a clear and rational connection between the offence itself and the objectives of the notification requirements so that the imposition of notification

requirements in these circumstances would be a proportionate means of achieving a legitimate aim.

**Amendment to Schedule 5 (Confiscation orders: England and Wales): new section 21A of the Proceeds of Crime Act 2002 (reconsideration of benefit on decrease in value and sale etc)**

72. Current provisions in the Proceeds of Crime Act 2002 (“POCA”) allow confiscation orders, imposed on conviction for a criminal offence, to be varied in certain circumstances. In particular, section 21 allows the prosecutor to apply to the court for reconsideration of the “benefit” figure that the court had assessed to represent the defendant’s gain from their criminal conduct, which can result in the defendant having to pay more under the order. Section 23 of POCA allows the defendant, the prosecutor or the receiver to apply to the court to recalculate the amount assessed to be available to the defendant, and in effect the upper limit on what the order may require them to pay.

73. New section 21A of POCA, as inserted by the Bill, allows a person enforcing a confiscation order (e.g. a prosecutor) to apply for the benefit figure to be reduced if criminally-acquired property was sold at a lower value than expected when the benefit figure was set.

Article 6 ECHR

74. Decisions by courts concerning property rights are subject to the right to a fair hearing and access to the court (Article 6(1)).<sup>4</sup> Further, Article 6(1) has been held to be applicable when the court is assessing the amount at which a confiscation order should be set (*Phillips v UK*<sup>5</sup>).

75. Applications under new section 21A will only be capable of being brought by those enforcing the order (prosecution, receivers, or designated officers of the magistrates’ court) and (unlike section 23 applications) not by the defendant.

76. A successful application under section 21A will benefit the defendant as it allows for a disparity in the anticipated and actual value of an asset to be rectified. Although there is no explicit duty for an enforcing party to bring an application under

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<sup>4</sup> *Raimondo v Italy* App No 12954/87.

<sup>5</sup> *Phillips v UK* App No 41087/97.

section 21A any time it believes that the test for reducing the benefit figure is met, each of the enforcing parties is a public authority for the purposes of section 6(1) of the Human Rights Act 1998 and must act in a way that is compatible with the defendant's Convention rights. This will include considering (and sharing between them, if necessary) any relevant new information that comes to light about the defendant's assets. Such actions may be needed if one of the enforcing parties receives new information but does not know whether the tests for making a section 21A application are met, or believes that a different enforcing party is better placed to bring the application.

77. Further, the insertion of new section 21A does not limit or replace the defendant's existing right to bring an appeal against the original order where the initially assessed benefit figure was inaccurate, nor to bring an application under existing section 23 of POCA where the amount assessed to be available to the defendant (the effective upper limit of what the order may require them to pay) has decreased.
78. The Government considers that new section 21A is compatible with Article 6 ECHR.

**Home Office and Ministry of Justice**

**8 May 2024**