

# **CORONERS AND JUSTICE BILL: MEMORANDUM BY THE MINISTRY OF JUSTICE TO THE HOUSE OF LORDS DELEGATED POWERS AND REGULATORY REFORM COMMITTEE**

## **Introduction**

This Memorandum identifies the provisions of the Coroners and Justice Bill which confer powers to make delegated legislation, and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

### **2. The Bill is in 9 Parts:**

- Part 1 reforms the law in relations to coroners and to the certification and registration of deaths.
- Part 2 contains amendments to the criminal law (the law of murder, manslaughter, infanticide and suicide, new offences relating to child pornography, provision about conspiracies to commit offences in other parts of the UK and an amendment to the offence of inciting hatred on grounds of sexual orientation).
- Part 3 contains amendments relating to criminal evidence, investigations and procedure: Chapter 1 contains provisions for investigation anonymity orders. Chapter 2 re-enacts the Criminal Evidence (Witness Anonymity) Act 2008 with some modifications. Chapter 3 contains provision about measures taken in court proceedings for vulnerable and intimidated witnesses. Chapter 4 contains provision about the use of live links in criminal proceedings. Chapter 5 contains other miscellaneous provisions.
- Part 4 relates to sentencing. Chapter 1 sets up a new Sentencing Council for England and Wales and makes provision about its functions and the duties of courts to follow its guidelines. Chapter 2 contains other provisions relating to sentencing. These provide for extended driving bans for persons also given custodial sentences and amend the law relating to extended sentences for dangerous offenders.
- Part 5 contains some further criminal justice provisions. It makes amendment relating to the Commissioner for Victims and Witnesses established under the Domestic Violence, Crime and Victims Act 2004; enables criminal offences created by regulations (under section 2(2) of the European Communities Act 1972) implementing the E-Commerce or the Services Directive to have penalties exceeding those permitted by the 1972 Act; amends a range of criminal procedure legislation to take account of the EU Framework Decision regarding the treatment in the UK of criminal offences committed elsewhere; and makes provision about the retention of knives confiscated from persons entering court and tribunal buildings.
- Part 6 contains provisions about civil and criminal legal aid, including provision for pilot schemes in relation to civil legal aid, and provisions

about the enforcement of contribution orders made in cases where criminal legal aid is granted.

- Part 7 introduces a new civil recovery scheme through which courts can order offenders to pay amounts in respect of assets or other benefits derived by them from the exploitation of accounts about their crimes, for example, by selling their memoirs, or receiving payments for public speaking or media interviews.
- Part 8 deals with a number of amendments to the Data Protection Act 1998, including extending the audit and inspection powers of the Information Commissioner.
- Part 9 sets out supplementary provisions about orders and regulations, commencement, extent, repeals and so forth.

3. Clause 159 sets out the level of parliamentary scrutiny in respect of the order and regulation-making powers created by the Bill.

## **PART 1: CORONERS ETC.**

### **Clause 18(1): Notification of deaths by medical practitioners**

*Powers conferred on:* Lord Chancellor

*Powers exercisable by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative resolution

4. Clause 18(1) enables the Lord Chancellor to make regulations requiring a registered medical practitioner, in prescribed cases or circumstances, to notify a coroner of a death of which he or she is aware. It is intended that the regulations will say that the duty falls on a doctor who attends a deceased person at or shortly after the time of death, or a doctor on whose list of patients the deceased person was; and that, once one medical practitioner has notified a death, there is no duty to notify on any other medical practitioner.

5. The cases or circumstances that will be prescribed will include deaths resulting from self harm and neglect, deaths that may have been caused or contributed to by neglect on the part of a public authority which has responsibility for the deceased, deaths which may have been caused or contributed to by the police, and deaths where a violent crime is suspected.

6. Delegated legislation is considered necessary so as to provide the flexibility to amend and update the list of cases or circumstances in the light of experience. Regulations under this clause will be subject to negative resolution which will provide the appropriate level of scrutiny. There is a duty on the Lord Chancellor to consult the Secretary of State for Health and the Chief Coroner before making regulations under this provision.

#### **Clause 19(4): Medical examiners**

*Powers conferred on:* Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales

*Powers exercisable by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative resolution

7. Clause 19(4) enables regulations to make provision in respect of the appointment, payment, training and functions of medical examiners. These regulations (along with those under clause 20) will be drafted during 2009 with input from a wide range of stakeholders. This process will be managed through a Death Certification Stakeholder Working Group that includes representatives from NHS organisations, the BMA, Royal College of Pathologists, Coroners' Society, the funeral industry, Ministry of Justice, General Register Office, Local Government Association and the devolved administrations. A full public consultation will be held on the regulations before they are made.

8. It is anticipated that regulations will provide for medical examiners to be appointed on a part-time basis, with each appointment lasting for up to three years with retired medical practitioners being allowed to continue in the role for up to five years after retirement. Payments for medical examiners would be in line with arrangements applying in the specific area in respect of remuneration and those applying nationally in respect of other payments.

9. It is anticipated that the provision in relation to training for medical examiners, and its associated assessment, will be based on a curriculum developed by an intercollegiate working group co-ordinated by the Royal College of Pathologists in collaboration with the Academy of Medical Royal Colleges. The curriculum specifies the knowledge, skills and attitudes necessary for medical examiners to provide independent scrutiny and to meet expected standards and levels of performance. A key aim of the curriculum is to enable all medical examiners in England and Wales to provide a consistent service.

10. It is expected that regulations will provide that medical examiners must undertake and successfully complete the training and any associated assessment as a pre-condition to taking up their appointment. Regulations are also expected to make further provision requiring medical examiner's officers appointed under subsection (2)(a) to receive appropriate training.

11. Provision will also be made conferring functions on medical examiners and the ability to do this in regulations gives flexibility to enable the functions of the medical examiner to be extended or changed to support future development of the service.

12. It is proposed that the regulations under this clause will be made under the negative procedure, as they are technical and non-controversial in nature. In so far as the powers relate to medical examiners appointed by Primary Care Trusts in England, the regulations will be made by the Secretary of State for Health and in so far as the powers relate to medical examiners appointed by Local Health Boards in Wales, the regulations will be made by the Welsh Ministers (subsection (6)).

## **Clause 20: Medical certificate of cause of death**

*Powers conferred on:* Secretary of State except in respect of fees in subsection (5) where the relevant power is conferred on the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales

*Powers exercisable by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative resolution, save for regulations made under subsection (5) where the affirmative resolution procedure applies when setting a fee for the first time or increasing the fee by more than is necessary to reflect changes in the value of money

13. Clause 20(1) allows regulations to be made in relation to deaths required to be registered under the Births and Deaths Registration Act 1953. In particular, the regulations will relate to the process and procedures associated with the preparation, scrutiny and confirmation of medical certificates of cause of death and the way a confirmed certificate is notified and given to a registrar or a death referred to the coroner.

14. It is envisaged that a registered medical practitioner who attended the deceased prior to death (an “attending practitioner”) will be required to prepare a certificate within a prescribed period defined in regulations made under subsection (2) of this clause. Provision will be made for a copy of this certificate to be given to a medical examiner for scrutiny and allowing it to be given by electronic means.

15. If there is no attending practitioner or the attending practitioner is either not available or not able to prepare the certificate within the prescribed period, then the death will need to be referred to the coroner.

16. A coroner to whom a death is reported who decides that the death does not fall to be investigated under clause 1 of the Bill will be required to refer the death to a medical examiner. In these cases, provision will be made requiring the coroner to issue a form stating that he or she has no further interest in the death and for this form to be transmitted to the medical examiner’s office together with any relevant information about the death that

he or she has used in coming to his or her decision. Provision will be made that, if there is no attending practitioner or the attending practitioner is not available when a death is referred by the coroner, the medical examiner will be required to prepare a certificate.

17. It is expected that the regulations will require a medical examiner to whom an attending practitioner has given a certificate or to whom a death has been referred by a coroner, to make whatever inquiries appear to be necessary to confirm or establish the cause of death. Such inquiries may include, for example, inspecting the deceased person's medical records and, where necessary, seeing, identifying and externally examining the body. They may also include reviewing clinical governance data to identify relevant patterns and trends.

18. Provision will also be made for the medical examiner or someone acting on his behalf to discuss the confirmed cause of death with the informant or some other appropriate person and for confirmation to be given in writing that this has been done. This provision will form an important part of the new process because it increases the transparency of the system and addresses a key concern identified by the Shipman Inquiry (Third Report 'Death Certification and the Investigation of Deaths by Coroners', Cmnd 5854, July 2003).

19. Provision will be made for the confirmed attending practitioner's certificate or the medical examiner's certificate to be given to a registrar. The certificate is likely to be conveyed to the registrar, as in the current system, by the person giving information about the death; however, it is expected that the regulations will allow it to be conveyed in other ways.

20. Provisions in paragraph (m) for prescribing forms (including certificates) and making them available to those who require them will be exercised after consultation with Welsh Ministers, the Registrar General and the Statistics Board.

21. Provisions in paragraph (n) for the Chief Medical Officer of the Department of Health to issue guidance on the completion of these forms will be made after consultation with the Chief Medical Officer to the Welsh Assembly Government, the Registrar General and the Statistics Board.

22. It is anticipated that the power in subsection (2)(b) (to prescribe cases or circumstances in which a requirement in regulations does not apply) might be used during a period of emergency (as defined in clause 19), for example an influenza pandemic, to prescribe an abridged process of death certification. Further provision will be made under subsection (4) so that, during a period of emergency, registered medical practitioners who have not attended the deceased prior to death will be able to prepare and give a certificate that, in normal circumstances, would be given by an attending practitioner.

23. It is proposed that the regulations under this clause, with the exception of those under subsection (5), will be made under the negative procedure, as

they are technical and non-controversial in nature. These regulations will be made by the Secretary of State for Health.

24. Regulations under subsection (5) (which enable a fee to be payable in relation to the medical examiner's confirmation or issue of a certificate) will be subject to the affirmative procedure where they relate to setting a fee for the first time or to increasing the fee by more than is necessary to reflect changes in the value of money (see clause 159(5)(a)). In all other circumstances, they will be subject to the negative procedure. These regulations will be made by the Secretary of State for Health, in relation to England, and by Welsh Ministers in relation to Wales.

### **Schedule 2, Paragraph 1(3) and 2(1): Coroner areas**

*Powers conferred on:* Lord Chancellor

*Powers exercisable by:* Order made by statutory instrument

*Parliamentary Procedure:* Negative resolution

25. Clause 22 gives effect to Schedule 2 which makes provision for coroner areas.

26. Paragraph 1 of the Schedule places a duty on the Lord Chancellor to divide England and Wales into areas known as coroner areas and gives him or her the power to specify those areas by order. By paragraph 2 of the Schedule the Lord Chancellor may also make orders altering coroner areas, which replaces similar provision made by sections 4 and 4A of the Coroners Act 1988 (the 1988 Act).

27. There are currently 114 coroner districts in England and Wales (and there is also the office of coroner of the Queen's household, which exists independently of any district) and on implementation of the Act existing coroner districts will become coroner areas (by virtue of paragraph 1(1) of Schedule 20). The long-term aim is to reduce the number of coroner areas by altering the boundaries and increasing the size of coroner areas. It is intended that this will occur gradually through amalgamation, for example, on the retirement of a senior coroner. Delegated legislation is considered necessary, as the Lord Chancellor will wish to change boundaries in order to reduce the number of coroner areas. It would be inappropriate to provide for the new boundaries in the statute itself because it would allow no flexibility and no opportunity to conduct effective consultation with stakeholders.

28. An order specifying or altering coroner areas will be subject to negative resolution which will provide the appropriate level of scrutiny. Before making an order altering areas the Lord Chancellor has a duty to consult the local authorities that will be affected by the change and, if the coroner area involved is in Wales, the Welsh Ministers, and any other person the Lord Chancellor thinks it appropriate to consult.



regulations may prescribe the allowances that may be paid to witnesses, to persons who produce documents or things by virtue of paragraph 1(1) or (2) of Schedule 4, and to persons who provide evidence in the form of a written statement by virtue of paragraph 1(2)(a) of that Schedule. Paragraph 6 enables regulations to be made for fees and allowances to be paid to persons who make examinations under clause 16.

35. Paragraph 8 of the Schedule reproduces the existing power in section 24(2) of the 1988 Act and enables fees payable to coroners for supplying copies of documents to be prescribed.

36. Paragraph 9(1) of the Schedule replaces section 27 of the 1988 Act. It enables regulations to be made making provision for, or in connection with, the reimbursement of expenditure incurred by coroners in the conduct of an investigation.

37. Each of these powers has been left to delegated legislation as the level of fees and allowances is a matter of detail and may need to be varied from time to time. The provisions in respect of the reimbursement of expenditure incurred by coroners will be moved to secondary legislation rather than appearing in primary legislation as it is considered that the detail of the procedure for reimbursement is more suited to secondary legislation.

38. Each power will be subject to negative resolution, since a high level of parliamentary scrutiny is not considered necessary for the kind of detail involved.

### **Clause 30: Regulations about training**

*Powers conferred on:* Chief Coroner, with the agreement of the Lord Chancellor

*Powers exercisable by:* Order made by statutory instrument

*Parliamentary Procedure:* Negative resolution

39. Clause 30 enables the Chief Coroner to make regulations about the training of senior coroners, area coroners and assistant coroners as well as coroners' officers and other staff.

40. Delegated legislation is considered necessary so as to provide the flexibility to amend and update training requirements in the light of experience or if those requirements change over time. Regulations under this clause will be subject to the negative resolution procedure which will provide the appropriate level of scrutiny. There is a duty on the Chief Coroner to consult the Lord Chancellor before making regulations. The power to make regulations under this clause is vested in the Chief Coroner rather than in the Lord Chancellor given the role of the Chief Coroner in setting national standards for the operation of the coroner system.

### **Clause 32(5): Appeals to the Chief Coroner**

*Powers conferred on:* Lord Chancellor

*Powers exercisable by:* Order made by statutory instrument

*Parliamentary Procedure:* Affirmative resolution

41. Subsection (5) of clause 32 enables the Lord Chancellor to amend subsection (2) which contains a list of decisions of a coroner that can be appealed to the Chief Coroner.

42. The decisions that can be appealed include a decision whether to conduct or discontinue an investigation into a death, certain decisions relating to post-mortem examinations, a decision whether to resume a suspended investigation, a decision whether there should be a jury and decisions embodied in a determination or finding in accordance with clause 5.

43. Delegated legislation is considered necessary to give the Lord Chancellor the flexibility to add to the list by order if it is considered that other decisions made by a coroner ought to be appealable.

44. By virtue of subsection (5)(b) of clause 159 this power is subject to the affirmative resolution procedure which is considered appropriate since, if the power needs to be exercised, it would involve an amendment to primary legislation.

### **Clause 34(1): Guidance by the Lord Chancellor**

*Powers conferred on:* Lord Chancellor

*Powers exercisable by:* Statutory guidance

*Parliamentary Procedure:* None

45. By subsection (1) of clause 34 the Lord Chancellor has power to issue guidance about the way in which the coroner system is expected to operate in relation to certain interested persons. A coroner dealing with an investigation into a death and the Chief Coroner when dealing with any appeal, will be expected to ensure that interested persons receive the service that is set out in the guidance. Subsection (2) sets out the provisions that it is anticipated that such guidance may include.

46. Although some guidance is currently issued, it is non-statutory. The power in the Bill will enable future guidance to be placed on a statutory footing. The guidance will not directly impose any requirements on a coroner; however, it will enable interested persons to know what to expect from the investigation process. Since the guidance is not binding it is not considered that any form of parliamentary scrutiny is required. One element of guidance – an illustrative draft charter of services which bereaved people might expect to

receive from coroners in a reformed system – was published at the same time as the Bill (<http://www.justice.gov.uk/whatwedo/coroners.htm>).

### **Clause 35(1): Coroners regulations**

*Powers conferred on:* Lord Chancellor Justice with the agreement of the Lord Chief Justice

*Powers exercisable by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative resolution

47. Clause 35(1) gives power for the Lord Chancellor, with the agreement of the Lord Chief Justice, to make regulations for regulating the practice and procedure at or in connection with investigations into deaths, examinations under clause 16 and exhumations under paragraph 5 of Schedule 4. These regulations will not extend to the practice and procedure at or in connection with inquests as provision will be made in Coroners rules under clause 36.

48. Subsection (2) specifies certain matters that may be included in the regulations. These are intended to ensure that the scope of the power is sufficient to achieve its purpose, and that Parliament is aware, in general terms, of the kinds of matters the regulations will address and how they may operate.

49. This power is left to delegated legislation so as to give flexibility to enable the matters to be covered in the regulations to be changed if necessary. These regulations will be subject to the negative resolution procedure which will provide the appropriate level of scrutiny.

### **Clause 36(1): Coroners rules**

*Powers conferred on:* Lord Chief Justice with the agreement of the Lord Chancellor

*Powers exercisable by:* Rules made by statutory instrument

*Parliamentary Procedure:* Negative resolution

50. Clause 36(1) enables rules to be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 for regulating the practice and procedure at or in connection with inquests. There is also power to make rules regulating the practice and procedure at or in connection with appeals to the Chief Coroner and for rules as to the way in which, and the time within which, such appeals are brought.

51. By Part 1 of Schedule 1 to the 2005 Act it is the Lord Chief Justice (or a judicial office holder nominated by him) with the agreement of the Lord Chancellor who make rules. This power reflects the proper balance between

the roles of the judiciary and the executive in setting rules concerning practice and procedure in courts and tribunals.

52. For the reasons set out above, clause 36(2) specifies certain matters that may be included in the rules.

53. The use of delegated legislation subject to the negative resolution procedure as the appropriate vehicle for rules of court governing matters of practice and procedure is well precedented, reflecting the fact that primary legislation in this area would be cumbersome and insufficiently flexible. The power to make rules is cast in broad and flexible terms similar to other rule-making powers in other legislation, for example, the power to make Civil Procedure Rules in section 1 of the Civil Procedure Act 1997. It is also similar to the existing power to make rules in section 32 of the 1988 Act. The negative resolution procedure is considered appropriate, again following well-established precedent.

#### **Clause 36(8): Practice directions**

*Powers conferred on:* Lord Chief Justice with the agreement of the Lord Chancellor

*Powers exercisable by:* Directions

*Parliamentary Procedure:* None

54. Subsection (8) of clause 36 enables practice directions to be given on any matter that could otherwise be included in Coroners rules under subsection (1). The power to make practice directions is very wide and flexible and this power will be used when greater detail is required than could reasonably be set out in rules. It is similar to powers in other legislation, for example, section 74 of the Courts Act 2003 gives power to make practice direction in relation to criminal proceedings and section 81 of that Act makes the same provision for family proceedings. None of the existing powers to make practice directions is subject to any specific method of parliamentary scrutiny. Therefore, no such method is prescribed for practice directions under this clause.

#### **Clause 39(1): Interpretation**

*Powers conferred on* Lord Chancellor

*Powers exercisable by:* Order made by statutory instrument

*Parliamentary Procedure:* Negative resolution

55. Clause 39 is an interpretation provision. It defines “prosecuting authority” to mean the Director of Public Prosecutions or any person prescribed by an order made by the Lord Chancellor. Prosecuting authorities





clause 63 is added by virtue of the power under that clause, then it may also be necessary to add an individual within that investigatory body to the list of those persons who may apply for an investigation anonymity order. A power is therefore provided in subsection (7) for the Secretary of State to amend subsection (1) by order.

62. By virtue of clause 159(5)(c) the affirmative resolution procedure applies; this procedure is considered appropriate because an order made under this power would amend primary legislation.

**Clause 66(10): Power to modify or repeal the conditions for making an investigation anonymity order.**

*Power conferred on:* *The Secretary of State*

*Power exercisable by:* *Order made by Statutory Instrument*

*Parliamentary Procedure:* *Affirmative Resolution*

63. Clause 66 sets out the conditions which must be fulfilled before a justice of the peace may make an investigation anonymity order. If clause 59 is modified so as to include additional qualifying offences then it may also be necessary to modify the conditions which must be fulfilled before the investigation anonymity order is made. In addition, subsections (4) to (6) and (9) attempt to capture the concept of a gang. This is a difficult concept to achieve in legislative terms and it may be necessary to modify or clarify the conditions so that the correct individuals and activity are targeted.

64. By virtue of clause 159(5)(c) the affirmative resolution procedure applies; this procedure is considered appropriate because an order made under this power would amend primary legislation.

**Clause 71(2) and (3): Power to make equivalent provision in relation to the armed forces**

*Power conferred on:* *The Secretary of State*

*Power exercisable by:* *Order made by Statutory Instrument*

*Parliamentary Procedure:* *Negative Resolution*

65. The policy at present is not to apply Chapter 1 of Part 3 to the armed forces and service offences. However, when or if it is deemed necessary or desirable to apply the provisions of the chapter to the armed forces the Secretary of State may by order make equivalent provision with any necessary modifications under subsections (2) and (3). Given the power is to apply provisions already considered by Parliament the negative resolution procedure is appropriate in this case.

**Clause 86(2) – new section 17(7) of the Youth Justice and Criminal Evidence Act 1999: Power to amend the list of relevant offences to add, modify or omit an entry**

*Power conferred on:* *The Secretary of State*

*Power exercisable by:* *Order made by Statutory Instrument*

*Parliamentary Procedure:* *Negative Resolution*

66. Clause 86(2) amends the Youth Justice and Criminal Evidence Act 1999 to insert provision into section 17 of that Act. It gives a witness in proceedings relating to certain relevant offences eligibility for assistance by special measures unless the witness does not want to be so eligible. A “relevant offence” is one that is listed in Schedule 1A to the 1999 Act (inserted by Schedule 12 to the Bill). The policy objective is to target offences involving knives and guns, where witnesses are likely to be intimidated and fear giving evidence. All the relevant offences involve guns or knives. By clause 86(2) the Secretary of State will be able to make an order to amend the list of these relevant offences, whether to add, modify or omit an entry. Such a list may need updating from time to time to add a new entry relating to gun or knife crime or to modify or delete entries as developments occur. It is desirable to give the Secretary of State power to deal with such primarily detailed matters and the negative resolution procedure will provide the appropriate level of scrutiny.

**Clause 100(7) – new section 75B of the Serious Organised Crime and Police Act 2005: Guidance about use of powers under sections 71 to 74 of the Serious Organised Crime and Police Act 2005**

*Power conferred on:* *The Attorney General*

*Power exercisable by:* *Statutory guidance*

*Parliamentary Procedure:* *None*

67. By subsection (7) of clause 100 the Attorney General has power to issue guidance about the exercise by “specified prosecutors” of their powers under sections 71 to 74 of the Serious Organised Crime and Police Act 2005, and to revise any such guidance.

68. These powers offer immunity and sentence reductions for those who co-operate in the investigation and prosecution of others who may have committed criminal offences. The Attorney General superintends the existing specified prosecutors. The Attorney General also has non-statutory oversight of the two new specified prosecutors added by the bill, and immunity can only be offered by them with the Attorney’s consent. In these circumstances, it is desirable to provide a statutory power for the Attorney General to provide guidance for all these prosecutors.

69. Since the guidance is not binding it is not considered that any form of parliamentary scrutiny is required.

## **PART 4: SENTENCING**

### **Sentencing Council for England and Wales**

#### **Schedule 13, paragraph 6: Sentencing Council for England and Wales - terms of appointment.**

*Power conferred on:* Lord Chancellor

*Power exercisable by:* Order made by Statutory Instrument

*Parliamentary Procedure:* Negative Resolution

70. Schedule 13 sets out the constitution of the Sentencing Council for England and Wales. It provides for the Council to comprise 8 judicial members (one of whom will chair the Council) and 6 non-judicial members. Paragraph 6 of the Schedule enables the Lord Chancellor to deal by order with the term of office, and resignation, re-appointment and removal of Council members. The Lord Chancellor must consult with the Lord Chief Justice if an order includes provision about the term of office, resignation or re-appointment of Council members and must secure the Lord Chief Justice's agreement to an order making provision dealing with the removal of judicial members.

71. This matter is appropriately one best left to delegated legislation given the level of detail likely to be required. A similar order-making power in respect of the terms of appointment of the members of the Sentencing Guidelines Council is contained in section 168 of the Criminal Justice Act 2003.

72. As the composition and functions of the Council are set out in the primary legislation and the order deals with subsidiary matters, the negative resolution procedure provides an appropriate level of parliamentary scrutiny.

#### **Clause 107(11): Power to prescribe other circumstances in respect of which sentencing guidelines may make different provision**

*Power conferred on:* The Lord Chancellor

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Negative Resolution

73. Clause 103 details what must be contained in offence specific sentencing guidelines, such as the different sentencing ranges and starting points appropriate for offences of varying levels of seriousness. Different guidelines might be appropriate where the offence is committed by, for

example, a young offender. But it is not possible to anticipate changes to the assessment of seriousness of a particular offence that may result from future sentencing legislation. As considerations of seriousness are central to the structure of offence specific guidelines it is appropriate to give the Lord Chancellor power to prescribe other circumstances in which the guidelines might need to make different provision. As any order made under this provision would be essentially technical in nature the negative resolution procedure is considered to provide an adequate level of parliamentary scrutiny.

### **Driving disqualification**

**Schedule 14, paragraphs 1(2) and 4 – New section 35A(8) of the Road Traffic Offenders Act 1988 and new section 147A(8) of the Powers of the Criminal Courts (Sentencing) Act 2000: Power to amend subsections (4)(e), (f) and (h) of new section 35A of the 1988 Act and of new section 147A of the 2000 Act respectively. Also paragraph 34 of Schedule 20 (transitory provision).**

**Schedule 14, paragraphs 1(3) and 2 – New section 35B(7) of the Road Traffic Offenders Act 1988 and new section 248D(7) of the Criminal Procedure (Scotland) Act 1995: Power to amend subsections (4)(b) and (c) of new section 35B of the 1988 Act and of new section 248D of the 1995 Act respectively. Also paragraph 35 of Schedule 20 (transitory provision).**

**Schedule 14, paragraphs 3 and 5 – New Article 40A(8) of the Road Traffic Offenders (Northern Ireland) Order 1996 and new Article 91A(8) of the Criminal Justice (Northern Ireland) Order 2008: Power to amend paragraph (4)(e) and (f) of new Article 40A of the 1996 Order and of new Article 91A of the 2008 Order respectively.**

*Power conferred on:* *The Secretary of State*

*Power exercisable by:* *Order made by statutory instrument*

*Parliamentary procedure:* *Negative Resolution in the case of an order under Article 91A(8) of the Criminal Justice (Northern Ireland) Order 2008; Affirmative Resolution in all other cases*

74. Clause 123 and paragraphs 1(2) and 4 of Schedule 14 introduce two new provisions: section 35A of the Road Traffic Offenders Act 1988 and section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 (the 2000 Act).

75. These new sections apply where an offender is sentenced to both a custodial sentence and a disqualification from driving order under sections 34 or 35 of the Road Traffic Offenders Act, or sections 146 or 147 of the 2000 Act. An 'appropriate extension period' must be added to the length of an order for disqualification from driving in these circumstances. The intention is that the offender should feel the effect of both elements of the court's sentence,

minimising the circumstances in which the driving ban may have expired before the offender is released back into the community.

76. Subsections (4)(e) and (f) of new section 35A of the Road Traffic Offenders Act and of new section 147A of the 2000 Act determine the length of the extension period to be added to a driving disqualification when a dangerous offender is sentenced to an extended sentence of imprisonment for public protection under section 227 or 228 of the Criminal Justice Act 2003 (the 2003 Act). The extension period is currently equal to half the custodial term element of the sentence imposed under those provisions.

77. This proportion is designed to accord with section 247(2) of the 2003 Act which sets the requisite part of the custodial term that must be served by such an offender at 'one half of the appropriate custodial term'. As this proportion could be amended by order of the Secretary of State, it is necessary to have a power to amend the proportions stated in the Road Traffic Offenders Act and the 2000 Act so that the extension period to continue to mirror the section 247(2) period.

78. This amending power is contained in subsection (8)(b) of the new sections to be inserted into the Road Traffic Offenders Act and the 2000 Act. When an amending order is made in respect of section 247(2) of the 2003 Act, subsection (8) allows for the making of an order to alter subsection (4)(e) and (f) accordingly.

79. Subsection (4)(h) of new section 35A of the Road Traffic Offenders Act and of new section 147A of the 2000 Act determines the length of extension period to be added in any case not covered by the other paragraphs (a)-(g) of subsection (4). In those cases, a period equal to 'half the custodial sentence' is imposed.

80. This proportion reflects, for example, section 244(3)(a) of the 2003 Act which sets the proportion to be served of any sentence of more than twelve months at one half. This too may be amended by order of the Secretary of State under section 267 of the 2003 Act. As a result, an amending power must also be available in the Road Traffic Offenders Act and the 2000 Act to alter the period under subsection (4)(h) accordingly.

81. Subsection (8)(a) of both new section 35A of the Road Traffic Offences Act and new section 147A of the 2000 Act provides for the proportion of sentence in subsection (4)(h) to be amended by order of the Secretary of State whenever the powers under section 267 of the 2003 Act are exercised.

82. By virtue of new section 35A(9) of the Road Traffic Offences Act and the amendment made to section 160(3) of the 2000 Act by paragraph 4(2) of Schedule 14 both these order-making powers will be subject to the affirmative resolution procedure which is considered appropriate given that they confer powers to modify primary legislation.

83. The provisions in paragraph 1(2) and 4 of Schedule 14 extend only to England and Wales. Paragraph 1(3) and 2 of Schedule 14 make similar provision for Scotland, while paragraphs 3 and 5 of Schedule 14 make similar provision for Northern Ireland. In both cases similar order-making powers to those described above are included; as with the England and Wales provisions, the order-making powers are, with one exception, subject to the affirmative resolution procedure. The exception relates to the power in new Article 91A(8) of the Criminal Justice (Northern Ireland) Order 2008 which is subject to the negative resolution procedure which is in line with the other delegated powers in that order.

84. Paragraph 34 of Schedule 20 to the Bill (transitory provisions) creates an order making power applicable to offenders sentenced to a driving ban plus a custodial sentence of less than 12 months until section 33A(1)(a) of the Criminal Justice Act 1991 is repealed. The Secretary of State still has a delegated power under the 1991 Act to amend the proportion of a sentence that such an offender must serve before being entitled to release. In the event that the Secretary of State exercises his 1991 Act power, paragraph 29 provides him with power also to amend subsections (4)(h) of each of new sections 35A of the Road Traffic Offences Act and new section 147A of the 2000 Act to mirror that alteration. By virtue of clause 155(4)(g) this order-making power is similarly subject to the affirmative procedure. Paragraph 35 of Schedule 20 introduces a parallel order making power in respect of Scotland.

## **PART 5: MISCELLANEOUS CRIMINAL JUSTICE PROVISIONS**

### **Clause 127: Disapplication of the restriction in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972**

*Power conferred on:* Her Majesty/The Secretary of State

*Power exercisable by:* Statutory Instrument

*Parliamentary Procedure:* Affirmative or negative

85. Section 2(2) of the European Communities Act 1972 (the 1972 Act) includes a power to implement Community obligations by regulations. Further provision in respect of the regulation-making power is contained in Schedule 2 to the 1972 Act; paragraph 1(1)(d) of the Schedule imposes a limitation on the penalties which can be imposed for criminal offences created through such regulations. Clause 127 disapplies paragraph 1(1)(d) of Schedule 2 to the 1972 Act in relation to the exercise of powers conferred by section 2(2) of that Act for the purposes of implementing the Services and E-Commerce Directives (Directive 2006/123/EC and Directive 2000/31/EC). This will enable the penalty regime here to be extended to include offences committed in other Member States where the implementation of the Directives requires it. The Services Directive requires regulatory bodies to take enforcement action against UK service providers operating temporarily in another Member State. The E-Commerce Directive requires Member States to take action

against UK service providers who commit an offence in another Member State. At the moment the penalties for certain offences in the UK exceed the limits in the 1972 Act and without the disapplication of the limitation on penalties the implementing regulations could not provide for extra territorial enforcement on the same terms.

**Clause 130(3) – New section 55A(5) of the Courts Act 2003: Power to make regulations in respect of knives surrendered to or seized by a court security officer**

**Clause 131(3) – New paragraph 5A(5) of Schedule 3 to the Justice (Northern Ireland) Act 2004: Power to make regulations in respect of knives surrendered to or seized by a court security officer**

*Power conferred on:* The Lord Chancellor

*Power exercisable by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative Resolution

86. Subsection (3) of clauses 130 and 131 insert new section 55A into the Courts Act 2003 and new paragraph 5A(4) of Schedule 3 into the Justice (Northern Ireland) Act 2004 respectively. New section 55A(5) of the Courts Act and new paragraph 5A(5) of Schedule 3 to the Justice (Northern Ireland) Act require the Lord Chancellor to make regulations to make provision as to: (a) the procedure to be followed when a knife is retained under section 55A of the Courts Act 2003 or paragraph 5A of the Justice (Northern Ireland) Act 2004; the making of requests by eligible persons for the return of knives so retained; and the procedure to be followed when returning a knife pursuant to a request made in accordance with the regulations.

87. Each of these powers has been left to delegated legislation as it is considered that the detail of the procedures to follow is more suited to secondary legislation; this will also provide the flexibility to change and update the procedures.

88. Each power will be subject to negative resolution since a high level of parliamentary scrutiny is not considered necessary for the kind of detail involved.

**Clause 132(1): Security in tribunal buildings**

*Power conferred on:* The Lord Chancellor

*Power exercisable by:* Order made by Statutory Instrument

*Parliamentary Procedure:* Affirmative Resolution

89. Subsection (1) of clause 132 enables the Lord Chancellor to: (a) authorise or require the Lord Chancellor, or such other person as may be



or locality, type of court or tribunal, description of service that may be provided as part of the Community Legal Service, class of person, or persons selected on the basis of specified criteria or on a sampling basis.

95. Clause 133(4) amends section 9(5) of the 1999 Act to provide that except in cases of particular urgency, any pilot provisions shall not come into force until the revised version of the code that contains them has been approved by a resolution of each House of Parliament. This is the same procedure as currently applies to revised version of the code that contains changes to funding code criteria, under section 9(6) to (8). It is possible that certain funding code pilot provisions will not affect criteria, and so would not usually be subject to parliamentary approval (see section 9(5) of the 1999 Act). However as even non-criteria changes could impose differing burdens on individual applicants for the duration of the pilot, it is considered that parliamentary approval of any such provisions is appropriate.

**Clause 133(5) – new section 11A of the Access to Justice Act 1999:  
Power to make regulations and orders as to pilot schemes**

*Power conferred on:* *The Lord Chancellor*

*Power exercisable by:* *Regulations or Orders made by Statutory Instrument*

*Parliamentary Procedure:* *Either Affirmative or Negative Resolution*

96. Clause 133(5) inserts new section 11A into the 1999 Act to provide for a power to pilot schemes under secondary legislation about the Community Legal Service. This clause does not itself confer any new powers to make delegated legislation, but does set out how existing powers to do so are to be exercised.

97. New section 11A of the 1999 Act applies to any orders under sections 6(4) and 8(9), and any regulations under sections 6(7), 7, 10, 11 and 22(5), and provides that they may have effect only for a specified period not exceeding 3 years. The Lord Chancellor may extend this period in order to cover any gap between the end of the pilot and wider rollout. Any pilot scheme may apply in relation to one or more area or locality, type of court or tribunal, description of service that may be provided as part of the Community Legal Service, class of person, or persons selected on the basis of specified criteria or on a sampling basis.

98. Clause 133(6) amends section 25 of the 1999 Act. The effect is that any order made under section 6(4) on a pilot basis will be subject to the negative resolution procedure. Any other pilot scheme or order will be subject to the affirmative resolution procedure. The reason for this distinction is that any regulations or orders made under sections 6(7), 7, 10, 11 and 22(5) will directly affect applicants for public funding of legal services and could result in different treatment between individual applicants, thereby affecting access to justice. It is considered that such pilot schemes should be subject to the

affirmative resolution procedure. By contrast, orders made by the Lord Chancellor under section 6(4) deal only with the way in which such services are paid for, and do not directly affect the circumstances in which individual applicants will be able to access public funding. The broad discretion of the Legal Services Commission in this field could already result in different funding arrangements in many circumstances. It is considered that this justifies the use of the negative resolution procedure.

99. A scheme of delegated legislation currently operates in relation to the pilot schemes that may be carried out in relation to the Criminal Defence Service in section 18A of the 1999 Act. Section 25(9B) provides that any instrument under section 18A will be subject to the affirmative resolution procedure.

**Clause 135 - Revised paragraphs 6 and 8 of Schedule 3 to the Access to Justice Act 1999: Criminal Defence Service - information requests**

|                                 |   |
|---------------------------------|---|
| <i>Power conferred on:</i>      | <i>Lord Chancellor</i>  |
| <i>Power exercisable by:</i>    | <i>Regulations made by statutory instrument</i>                                 |
| <i>Parliamentary procedure:</i> | <i>Affirmative or negative, according to the procedure currently prescribed</i> |

100. Paragraphs 6 to 8 of Schedule 3 to the 1999 Act, which were inserted by section 57 of the Criminal Justice and Immigration Act 2008, enable the relevant authority to send requests to Her Majesty's Revenue and Customs (HMRC) and the Department for Work and Pensions to obtain information about matters such as a person's employment, national insurance number and benefit status, for the purpose of determining the person's financial eligibility for publicly funded representation. Under paragraph 6 regulations may specify additional information which may be sought from HMRC. By virtue of paragraph 8 regulations may provide what are the relevant benefits and when the authority may seek information about the amount of benefit received.

101. Clause 135 extends paragraphs 6 to 8 so as to cover information requests for the purposes of making contribution orders. It also extends those paragraphs to allow requests for information about a person's assets (which term may be defined in the regulations), about their benefit status at a time other than that at the date of the request, and about any previous names and addresses.

102. It is considered to be appropriate for the provisions on information requests in clause 135 to be dealt with by delegated legislation because they relate to matters of operational detail and extend existing regulation-making powers rather than being new powers.

103. Similarly, it is considered appropriate for the same parliamentary procedure to apply to regulations made under or by virtue of the provisions

amended by clause 135 as applies to regulations made under or by virtue of those provisions as they currently stand. Regulations under paragraph 6 of Schedule 3 are subject to the affirmative resolution procedure (section 25(9)) and regulations made by virtue of paragraph 8 of Schedule 3 are subject to the negative resolution procedure (section 25(10)).

**Clause 136(2) and (3): New section 17(4) of the Access to Justice Act 1999 - Criminal Defence Service: enforcement of order to pay cost of representation and new section 17A(2A)(d) and new Schedule 3A of the Access to Justice Act 1999: motor vehicle orders**

*Power conferred on:* Lord Chancellor

*Power exercisable by:* Regulations made by statutory instrument

*Parliamentary procedure:* Affirmative or negative, according to the procedure currently prescribed

104. The 1999 Act contains two provisions under which defendants may be required to pay towards the costs of their publicly funded representation in criminal cases. Section 17 of the 1999 Act empowers certain criminal courts to make a recovery of defence costs order (an RDCO) against a defendant who has had publicly funded representation. Subsection (3) confers a power on the Lord Chancellor to make regulations about RDCOs and paragraph (g) of that subsection refers to regulations about the enforcement of RDCOs. Section 17A confers a power on the Lord Chancellor to make regulations which provide that where a defendant has publicly funded representation, the relevant authority is to make an order (a contribution order) to pay some or all of the costs of his representation, if he is liable financially to do so. Subsection (2) states what such regulations may include, paragraph (e) being provision about the enforcement of liability under a contribution order.

105. Clause 136 amends sections 17 and 17A to make it clear that regulations may provide that an RDCO or a contribution order may be enforced in a magistrates' court, a county court or the High Court, and that this may be done without the body to which the amount is due having to begin a fresh civil claim in respect of the debt. The costs of enforcement may be added to the outstanding liability.

106. The clause also provides (in new section 17A(2A)(d) of the 1999 Act) that in the case of contribution orders a court may make motor vehicle orders, which are orders that a vehicle may be clamped and then sold in order to meet the defendant's liability under the contribution order. New Schedule 3A to the 1999 Act (inserted by Schedule 16 to the Bill) then enables regulations to be made about the operation of motor vehicle orders. There is a requirement to make such regulations on a number of matters: (1) that only the body to which the overdue sum is paid may apply for a motor vehicle order; (2) that only a vehicle belonging to the defendant may be the subject of an order; (3) that the court must be satisfied that the failure to pay is the result of wilful refusal or culpable neglect and that the amount raised by a sale







## **Clause 156 – New section 41B of the Data Protection Act 1998: Code of practice about assessment notices**

*Power conferred on:* *The Information Commissioner*

*Power exercisable by:* *Statutory code*

*Parliamentary Procedure:* *None*

119. New section 41B of the 1998 Act requires the Information Commissioner to prepare and issue a code of practice on the manner in which he intends to exercise his new powers to issue assessment notices under new section 41A of the 1998 Act. New section 41B(2) provides that the code must cover certain matters. Sub-paragraph (a) requires the code to make provision about how the Information Commissioner will decide whether to issue a notice. Sub-paragraph (b) requires the code to make provision about those documents and information to which access is to be restricted either by not being examined or inspected at all or only being examined or inspected by certain persons. Section 41B(3) provides that under this sub-paragraph the code must include provision on health information and social care information. Sub-paragraph (c) requires the code to cover the nature of examinations and inspections under a notice. Sub-paragraph (d) requires the code to make provision about interviews, interviews with those who process personal data for a data controller are envisaged by section 41A(3)(h). Sub-paragraph (e) requires the code to deal with the report that will be produced with the outcome of the assessment under a notice.

120. Under section 41B(7) the code must be approved by the Secretary of State before it can be issued. Once the code has been approved the Commissioner must arrange for it to be published. Section 41B(5) and (6) enable the Commissioner to alter or replace the code and to issue such an altered or replacement code.

121. The matters that will be dealt with in the code will be the detail of how these powers are to be exercised. It will enable the Commissioner to explain to those who may be the subject of the powers what to expect from the process of being given an assessment notice. It is implicit that the Commissioner must comply with the code and so the code will also provide those who are given an assessment notice a mechanism for judging whether the Commissioner is behaving reasonably and fairly. This level of detailed guidance is more appropriate in a code of practice than on the face of the legislation. The powers to give assessment notices will only be available against public sector bodies and approval of the code by the Secretary of State will give him the opportunity to check that the burdens being imposed on the public sector by the Commissioner are reasonable. There is no direct sanction for failing to comply with the code and so it is not considered necessary for it to be the subject of Parliamentary approval.



**Schedule 18, paragraph 1 – new section 16(1)(h) of the Data Protection Act 1998: Power for notification regulations to prescribe information about a data controller that is required for the purpose of verifying a fee**

*Power conferred on:* *The Secretary of State*

*Power exercisable by:* *Regulations made by Statutory Instrument*

*Parliamentary Procedure:* *Negative resolution*

127. Section 18(1) of the 1998 Act requires a data controller make a notification to the Information Commissioner before processing personal data. Section 16 provides the information that must be given to the Information Commissioner as part of a notification. This information is known as registrable particulars. Section 18(5) of the Act requires a notification to be accompanied by the appropriate fee. At the moment fees regulations under the 1998 Act have prescribed a flat annual fee of £35. However, the intention is that the current fee structure of the Information Commissioner will be altered using the existing powers in the 1998 Act to introduce a tiered fee structure. The amount of the fee will vary depending on the size and turnover or budget of the data controller.

128. Paragraph 1 of Schedule 18 to the Bill amends section 16 of the 1998 Act to provide a new registrable particular, which is such information about the data controller as is prescribed under new section 18(5A) of the 1998 Act. Section 18(5A) is inserted by paragraph 2 of that Schedule and provides that notification regulations may prescribe that the data controller must provide such information as may be required for the purpose of verifying the fee that a data controller must pay under section 18(5). The overall effect of these amendments is to provide a mechanism for ensuring that the proper fee is paid under the new tiered fee structure. The reason for this is that a person will be required to provide information that can be used to verify the fee. This will mean that the Information Commissioner can check that the data controller has correctly assessed which tier it falls into. Furthermore, the provision of false registrable particulars about the fee is an offence under section 5 of the Perjury Act 1911, Article 10 of the Perjury (Northern Ireland) Order 1979 (SI 1979/1714 (NI 19)) or section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995.

129. It is appropriate to leave to regulations the exact information required for verifying the fee to allow for the possibility that the way that the fee is to be calculated will be altered in the future. The current policy is that the fee will be based on turnover or budget and the number of employees but this may not always be the case. It would be overly burdensome to need primary legislation each time. The power to make notification regulations is subject to the negative resolution procedure (see section 67(5)(e) of the 1998 Act), it is not considered necessary to alter this position on account of this addition to the power.

## **PART 9: GENERAL**

### **Schedule 20, paragraph 4: Transitional provision – certified investigations and inquests**

*Powers conferred on:* Lord Chancellor

*Powers exercisable by:* Order made by statutory instrument

*Parliamentary Procedure:* Affirmative resolution

130. Paragraph 4 of Schedule 20 provides that in relation to (a) any time before the commencement of the repeal by this Bill of the 1988 Act, or (b) any inquest under the 1988 Act that has begun, but has not been concluded, before the commencement of clause 11, an order made by the Lord Chancellor may provide for the 1988 Act to have effect subject to provisions set out in the order which correspond with those contained in clause 11, and with any consequential modifications set out in the order.

131. Clause 11 enables the Secretary of State to certify an investigation into a person's death if of the opinion that the investigation will concern or involve a matter that should not be made public for any of the reasons set out in subsection (1)(c) and no other measures would be adequate to prevent the matter being made public. The reasons in subsection (1)(c) are in order to protect the interests of national security, the relationship between the UK and another country, or preventing or detecting crime; or in order to protect the safety of a witness or other person.

132. Where such a certification has effect the investigation must be conducted by a judge of the High Court nominated by the Lord Chief Justice and the inquest must be held (or continued) without a jury. The order under paragraph 4 of Schedule 20 which will be made will apply before the repeal of the 1988 Act or to any inquest under the 1988 Act that has begun, but has not been concluded, before the commencement of clause 11.

133. Delegated legislation is considered suitable since the amendments to the 1988 will reflect those made in clause 11 in relation to investigations into deaths under the Act and because the order will only exist for a transitional period only.

134. By virtue of clause 159(5)(g) this power is subject to the affirmative resolution procedure which is considered appropriate since, if the power needs to be exercised, it would involve an amendment to primary legislation.

**Clause 160(3): Power to make consequential etc. amendments and transitional and saving provisions**

*Power conferred on:* Secretary of State and Lord Chancellor

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Affirmative resolution where primary legislation is amended or repealed; otherwise negative resolution

135. Clause 160(3) confers power on the Secretary of State or the Lord Chancellor to make such supplementary, incidental, consequential, transitory, transitional or saving provision as he considers appropriate for the purposes of the Bill. The power includes a power to amend, repeal or revoke provisions of an Act, Northern Ireland legislation or subordinate legislation (subsection (4)(b)).

136. The powers conferred by this clause are wide. But there are numerous precedents for such provisions including section 333 of the Criminal Justice Act 2003, section 173 of the Serious Organised Crime and Police Act 2005, section 51 of the Police and Justice Act 2006 and section 148 of the Criminal Justice and Immigration Act 2008. There are significant changes made by the Bill to existing primary legislation and it is possible that not all of the consequences of them have been identified in the Bill's preparation. To the extent that an order under this clause amends or repeals primary legislation, it will be subject to the affirmative resolution procedure (see clause 159(5)(f)). Otherwise, the order will be subject to the negative resolution procedure. It is submitted that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

**Clause 160(7): Power to extend amendments, repeals or revocations made to primary legislation by virtue of an order made under clause 160(4)(b) to the Isle of Man or any British overseas territory**

*Power conferred on* Her Majesty

*Power exercisable by:* Order in Council

*Parliamentary Procedure:* None

137. Clause 160(4) enables the Secretary of State or Lord Chancellor by order to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of the Bill. Subsection (4)(b) of the clause enables such an order to amend, repeal or revoke primary or secondary legislation. Subsection (7) provides a power to extend by Order in Council any amendments so made to primary or secondary legislation to the Isle of Man or any British overseas territory. Clause 164(7) and (8) already provides for the amendments made by the Bill to the Acts specified in those subsections to extend beyond the UK. It may be that further consequential

amendments to these, or other, enactments extending outside the UK are identified as part of the process of implementing the Bill and it would therefore be necessary to be able to extend any such consequential amendments to the Isle of Man or any of the British overseas territory as appropriate. A similar power is contained in section 338 of the Criminal Justice act 2003 and section 148(8) of the Criminal Justice and Immigration Act 2008. Powers of this kind to extend legislation outside the UK are normally exercisable by Order in Council with no parliamentary procedure.

**Clause 165(4) and (5): Commencement power**

*Power conferred on:* Lord Chancellor and Secretary of State

*Power exercisable by:* Order made by statutory instrument

*Parliamentary Procedure:* None

138. Subsections (4) and (5) of clause 165 contain standard powers to bring provisions of the Bill into force by commencement order. They are conferred on the Lord Chancellor (subsection (4)) and the Secretary of State (subsection (5)). As usual with the commencement orders, they are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by order enables the provisions to be brought into force at a convenient time.

**Ministry of Justice  
25 March 2009**