

Crime and Courts Bill [HL]

AMENDMENTS
TO BE MOVED
IN COMMITTEE

Before Clause 23

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 1 Insert the following new Clause –

“Dealing non-custodially with offenders

Schedule (*Dealing non-custodially with offenders*) (which makes provision about community orders, restorative justice, community requirements in suspended sentence orders, compensation orders and fines etc) has effect.”

Clause 23

LORD TAYLOR OF HOLBEACH
LORD McNALLY

The above-named Lords give notice of their intention to oppose the Question that Clause 23 stand part of the Bill.

After Clause 23

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 2 Insert the following new Clause –

“Deferred prosecution agreements

Schedule (*Deferred prosecution agreements*) makes provision about deferred prosecution agreements.”

Clause 28

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 3 Page 29, line 38, at end insert—
“() an order under paragraph 3(1)(c) or 31 of Schedule (*Deferred prosecution agreements*);”

Clause 28

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 4 Page 29, leave out line 39

Clause 28

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 5 Page 29, line 41, at end insert—
“() an order under section 31 bringing anything in Part 4 of Schedule (*Dealing non-custodially with offenders*) into force or bringing section (*Dealing non-custodially with offenders*) into force so far as relating to anything in that Part of that Schedule, other than an order which makes the provision permitted by section 31(4A) or (4B).”

Before Schedule 16

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 6 Insert the following new Schedule—

“DEALING NON-CUSTODIALLY WITH OFFENDERS

PART 1

COMMUNITY ORDERS: PUNITIVE ELEMENTS

- 1 The Criminal Justice Act 2003 is amended as follows.
2 In section 177 (community orders) after subsection (2) insert—
“(2A) Where the court makes a community order, the court must—
(a) include in the order at least one requirement imposed for the purpose of punishment, or
(b) impose a fine for the offence in respect of which the community order is made, or
(c) comply with both of paragraphs (a) and (b).
(2B) Subsection (2A) does not apply where there are exceptional circumstances which—

- (a) relate to the offence or to the offender,
 - (b) would make it unjust in all the circumstances for the court to comply with subsection (2A)(a) in the particular case, and
 - (c) would make it unjust in all the circumstances for the court to impose a fine for the offence concerned.”
- 3 In section 148(2A) (restrictions in subsection (2) on making community orders etc are subject to certain enactments) after “subject to” insert “section 177(2A) (community orders: punitive elements) and to”.
- 4 An amendment made by this Part of this Schedule does not affect orders in respect of offences committed before the amendment comes into force.

PART 2

DEFERRING THE PASSING OF SENTENCE TO ALLOW FOR RESTORATIVE JUSTICE

- 5 After section 1 of the Powers of Criminal Courts (Sentencing) Act 2000 (court’s power to defer passing of sentence) insert –
- “1ZA Undertakings to participate in restorative justice activities**
- (1) Without prejudice to the generality of paragraph (b) of section 1(3), the requirements that may be imposed under that paragraph include restorative justice requirements.
 - (2) Any reference in this section to a restorative justice requirement is to a requirement to participate in an activity –
 - (a) where the participants consist of, or include, the offender and one or more of the victims, and
 - (b) which aims to maximise the offender’s awareness of the impact of the offending concerned on the victims.
 - (3) Imposition under section 1(3)(b) of a restorative justice requirement requires, in addition to the offender’s consent and undertaking under section 1(3), the consent of every other person who would be a participant in the activity concerned.
 - (4) For the purposes of subsection (3), a supervisor appointed under section 1A(2) does not count as a proposed participant.
 - (5) Where a restorative justice requirement is imposed under section 1(3)(b), the duty under section 1(5) (to give copies of order) extends to every person who would be a participant in the activity concerned.
 - (6) In this section “victim” means a victim of, or other person affected by, the offending concerned.”
- 6 In section 1(8) of that Act (effect of sections 1 and 1A to 1D) for “1A” substitute “1ZA”.
- 7 The amendment made by paragraph 5 does not apply in respect of offences committed before the amendment comes into force.

PART 3

REMOVAL OF LIMITS ON COMPENSATION ORDERS MADE AGAINST ADULTS

- 8 (1) Section 131 of the Powers of Criminal Courts (Sentencing) Act 2000 (limit on amount payable under magistrates' court compensation order) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) This section applies if (but only if) a magistrates' court has convicted a person aged under 18 (“the offender”) of an offence or offences.”
- (3) In subsection (1) (compensation in respect of an offence not to exceed £5,000) for “a magistrates' court in respect of any offence of which the court has convicted the offender” substitute “the court in respect of the offence, or any one of the offences,”.
- (4) In subsection (2) (limit in respect of offences taken into consideration) for “a magistrates'” substitute “the”.
- (5) In the title, at the end insert “in case of young offender”.
- 9 In section 33B(5) of the Environmental Protection Act 1990 (limit on compensation in relation to conviction for certain environmental offences) after “payable” insert “in case of young offender”.
- 10 Nothing in this Part of this Schedule affects orders in respect of offences committed before this Part of this Schedule comes into force.

PART 4

ELECTRONIC MONITORING OF OFFENDERS

- 11 The Criminal Justice Act 2003 is amended as follows.
- 12 (1) Section 177 (community orders) is amended as follows.
- (2) In subsection (1) (requirements which may be included in a community order)—
- (a) omit the “and” after paragraph (k), and
- (b) after paragraph (l) insert “, and
- (m) an electronic monitoring requirement (as defined by section 215).”
- (3) In subsection (2) (provisions to which subsection (1) is subject)—
- (a) omit the “and” after paragraph (g), and
- (b) after paragraph (h) insert “, and
- (i) section 215(2) (electronic monitoring requirement).”
- (4) In subsection (3) (curfew or exclusion requirement must be accompanied by electronic monitoring requirement) for “(as defined by section 215)” substitute “within section 215(1)(a) for securing the electronic monitoring of the curfew or exclusion requirement”.

- (5) Omit subsection (4) (power, in certain cases where subsection (3) does not apply, to impose requirement for electronic monitoring of another requirement included in the community order).
- (6) In consequence, omit section 72(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 13 (1) Section 190 (suspended sentence orders) is amended as follows.
- (2) In subsection (1) (requirements which may be included in a suspended sentence order) –
- (a) omit the “and” after paragraph (k), and
 - (b) after paragraph (l) insert “, and
 - (m) an electronic monitoring requirement (as defined by section 215).”
- (3) In subsection (2) (provisions to which subsection (1) is subject) –
- (a) omit the “and” after paragraph (g), and
 - (b) after paragraph (h) insert “, and
 - (i) section 215(2) (electronic monitoring requirement).”
- (4) In subsection (3) (curfew or exclusion requirement must be accompanied by electronic monitoring requirement) for “(as defined by section 215)” substitute “within section 215(1)(a) for securing the electronic monitoring of the curfew or exclusion requirement”.
- (5) Omit subsection (4) (power, in certain cases where subsection (3) does not apply, to impose requirement for electronic monitoring of another requirement included in the suspended sentence order).
- (6) In consequence, omit section 72(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 14 In section 192(3)(b) (reviews of suspended sentence order) –
- (a) after “electronic monitoring requirement” insert “within section 215(1)(a)”, and
 - (b) for “190(1)” substitute “190(1)(a) to (l)”.
- 15 In section 197(1)(a) (meaning of “the responsible officer” where curfew or exclusion requirement imposed) –
- (a) in sub-paragraph (i) –
 - (i) for “177(1)” substitute “177(1)(a) to (l)”, and
 - (ii) for “190(1)” substitute “190(1)(a) to (l)”, and
 - (b) in sub-paragraph (ii) after “requirement” insert “within section 215(1)(a)”.
- 16 (1) Section 215 (electronic monitoring requirement) is amended as follows.
- (2) In subsection (1) (“electronic monitoring requirement” is a requirement for securing the monitoring of compliance with other requirements) –
- (a) for “for securing the” substitute “to submit to either or both of the following –
 - (a) ”, and
 - (b) at the end insert “, and
 - (b) electronic monitoring of the offender’s whereabouts (otherwise than for the purpose of

monitoring the offender's compliance with any other requirements included in the order) during a period specified in the order."

(3) After subsection (4) insert –

“(4A) Where a relevant order imposes an electronic monitoring requirement, the offender must (in particular) –

- (a) submit, as required from time to time by the responsible officer or the person responsible for the monitoring, to –
 - (i) being fitted with, or installation of, any necessary apparatus, and
 - (ii) inspection or repair of any apparatus fitted or installed for the purposes of the monitoring,
- (b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring, and
- (c) take any steps required by the responsible officer, or the person responsible for the monitoring, for the purpose of keeping in working order any apparatus fitted or installed for the purposes of the monitoring.”

(4) In subsection (5) (electronic monitoring requirement not to be imposed for monitoring compliance with alcohol abstinence and monitoring requirement) after “electronic monitoring requirement” insert “within subsection (1)(a)”.

(5) In subsection (6) (subsection (5) does not prevent electronic monitoring of compliance with other requirements) for “this is” substitute “the electronic monitoring requirement is within subsection (1)(b) or is included”.

17 After section 215 insert –

“215A Data from electronic monitoring: code of practice

- (1) The Secretary of State must issue a code of practice relating to processing of data gathered in the course of electronic monitoring of offenders under electronic monitoring requirements imposed by relevant orders.
- (2) A failure to observe a code issued under this section does not of itself make a person liable to any criminal or civil proceedings.”

18 (1) Section 218 (availability of arrangements in local area) is amended as follows.

(2) In subsection (4) –

- (a) after “electronic monitoring requirement” insert “within section 215(1)(a)”, and
- (b) in paragraph (b), for “those arrangements” substitute “the arrangements currently available”.

(3) After subsection (8) insert –

“(9) A court may not include an electronic monitoring requirement within section 215(1)(b) in a relevant order in respect of an offender unless the court –

- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the local justice area proposed to be specified in the order,
 - (b) is satisfied that the offender can be fitted with any necessary apparatus under the arrangements currently available and that any other necessary provision can be made under those arrangements, and
 - (c) is satisfied that arrangements are generally operational throughout England and Wales (even if not always operational everywhere there) under which the offender's whereabouts can be electronically monitored."
- 19 In Schedule 8 (breach etc of community order) in paragraph 3(b) –
- (a) after “electronic monitoring requirement” insert “within section 215(1)(a)”, and
 - (b) for “177(1)” substitute “177(1)(a) to (l)”.
- 20 (1) Schedules 9 and 13 (transfer of community or suspended sentence order to Scotland or Northern Ireland) are amended as follows.
- (2) In paragraphs 1(2)(g) and 3(2)(h) of Schedule 9, and paragraphs 1(2)(g) and 6(2)(h) of Schedule 13, after “requirement” insert “within section 215(1)(a)”.
 - (3) In paragraphs 1(5) and 3(4A) of Schedule 9, and paragraphs 1(5) and 6(4A) of Schedule 13, before “to be complied with” insert “, or an electronic monitoring requirement within section 215(1)(b),”.
- 21 In Schedule 12 (breach or amendment of suspended sentence order and effect of further conviction) in paragraph 15(2)(b) –
- (a) after “electronic monitoring requirement” insert “within section 215(1)(a)”, and
 - (b) for “190(1)” substitute “190(1)(a) to (l)”.

PART 5

STATEMENTS OF ASSETS AND OTHER FINANCIAL CIRCUMSTANCES OF OFFENDERS ETC

Financial circumstances orders

- 22 In section 162(3) of the Criminal Justice Act 2003 (a “financial circumstances order” is a pre-sentencing order requiring a statement of an offender's financial circumstances) after “statement of his” insert “assets and other”.

Further amendments

- 23 In section 84 of the Magistrates' Courts Act 1980 (court's power to require statement of means) –
- (a) in subsection (1) (court may require statement of means before or on inquiring into means under section 82) for “means”, in the second place, substitute “assets and other financial circumstances”, and
 - (b) in the title for “means” substitute “assets and other financial circumstances”.

- 24 In section 20A of the Criminal Justice Act 1991 (false statements as to financial circumstances) –
- (a) in subsection (1) (person charged with offence commits further offence if person responds to official request by making false statement etc as to financial circumstances) for “his financial circumstances” substitute “financial circumstances (whether a statement of assets, of other financial circumstances or of both)”, and
 - (b) in subsection (1A) (person charged with offence commits further offence if person fails to provide statement of financial circumstances in response to official request) for “his financial circumstances in response to” substitute “financial circumstances (whether a statement of assets, of other financial circumstances or of both) requested by”.
- 25 In section 13B of the Crime and Disorder Act 1998 (parental compensation orders: the compensation) –
- (a) in subsection (4) (provision by parent or guardian of statement of financial circumstances) after “statement of his” insert “assets and other”, and
 - (b) in subsection (6) (provision of false statement) omit “of his financial circumstances”.
- 26 (1) The Courts Act 2003 is amended as follows.
- (2) In paragraph 48 of Schedule 5 (offences relating to provision of information as to financial circumstances) –
- (a) in sub-paragraph (1) (person commits offence if person responds to relevant request by making false statement etc as to financial circumstances) for “his financial circumstances” substitute “financial circumstances (whether a statement of assets, of other financial circumstances or of both)”,
 - (b) in sub-paragraph (3) (person commits offence if person fails to provide statement of financial circumstances in response to relevant request) for “statement of his financial circumstances to a fines officer in response to” substitute “fines officer with a statement of financial circumstances (whether a statement of assets, of other financial circumstances or of both) requested by”, and
 - (c) in sub-paragraph (5) (meaning of “relevant request”), in the opening words, after “information about P’s financial circumstances” insert “(whether about P’s assets, P’s other financial circumstances or both)”.
- (3) In paragraph 2 of Schedule 6 (cases in which work order may be made) –
- (a) in sub-paragraph (3) (magistrates’ court considering making work order may order person to give statement of means) for “means” substitute “assets and other financial circumstances”, and
 - (b) in sub-paragraph (4) (application of section 84(2) and (4) of the Magistrates’ Courts Act 1980) for “means” substitute “assets and other financial circumstances”.

PART 6

INFORMATION TO ENABLE A COURT TO DEAL WITH AN OFFENDER

Power to disclose information

- 27 (1) The Secretary of State or a Northern Ireland Department, or a person providing services to the Secretary of State or a Northern Ireland Department, may disclose social security information to a relevant person.
- (2) Her Majesty's Revenue and Customs, or a person providing services to the Commissioners for Her Majesty's Revenue and Customs, may disclose finances information to a relevant person.
- (3) The disclosure authorised by sub-paragraph (1) or (2) is disclosure of the information concerned for use by a court that, in connection with dealing with a person ("the defendant") for an offence, is inquiring into or determining the defendant's financial circumstances.
- (4) Sub-paragraphs (1) and (2) do not authorise disclosure in a particular case at a time when the defendant is under 18.
- (5) Information disclosed to a relevant person under sub-paragraph (1) or (2) or paragraph (a)(ii) –
- (a) must not be further disclosed by the relevant person except –
 - (i) to a court that, in connection with dealing with the defendant for the offence, is inquiring into or determining the defendant's financial circumstances, or
 - (ii) to another relevant person who wants social security information or finances information in order that it can be put before a court that, in connection with dealing with the defendant for the offence, is inquiring into or determining the defendant's financial circumstances, and
 - (b) must not be used by the relevant person otherwise than for the purpose of disclosing it as mentioned in paragraph (a)(i) or (ii).
- (6) Sub-paragraphs (1), (2) and (5)(a) not only authorise disclosure after conviction of the defendant but also authorise disclosure at any time after the defendant is first charged with the offence.
- (7) Sub-paragraph (5) does not prohibit –
- (a) disclosure to the defendant, or to a person representing the defendant in any proceedings in connection with the offence;
 - (b) disclosure or use of information which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;
 - (c) disclosure or use of information which has previously been disclosed to the public with lawful authority;
 - (d) disclosure or use of information so far as necessary to comply with –
 - (i) an order of a court,
 - (ii) an order of a tribunal established by or under an Act, or
 - (iii) a duty imposed by or under an Act.

- (8) In sub-paragraph (7) “court” means any court, but elsewhere in this paragraph “court” means—
- (a) a magistrates’ court, or the Crown Court, in England and Wales,
 - (b) the Court Martial, the Service Civilian Court or the Summary Appeal Court, or
 - (c) any court hearing an appeal (including an appeal by case stated) from a court within paragraph (a) or (b).
- (9) In this paragraph—
- “finances information” means information which—
- (a) is about a person’s income, gains or capital, and
 - (b) is held—
 - (i) by Her Majesty’s Revenue and Customs, or
 - (ii) by a person providing services to the Commissioners for Her Majesty’s Revenue and Customs in connection with the provision of those services;
- “relevant person” means—
- (a) a person who is appointed by the Lord Chancellor under section 2(1) of the Courts Act 2003 or provided under a contract made by virtue of section 2(4) of that Act,
 - (b) a person who is a member of or on the staff of the Service Prosecuting Authority, or
 - (c) a person not within paragraph (b) who is, or who is assisting, a person engaged to represent the Service Prosecuting Authority in proceedings before a court;
- “Service Prosecuting Authority” means—
- (a) the Director of Service Prosecutions, and
 - (b) the persons appointed under section 365 of the Armed Forces Act 2006 (prosecuting officers);
- “social security information” means information which is held for the purposes of functions relating to social security—
- (a) by the Secretary of State or a Northern Ireland Department, or
 - (b) by a person providing services to the Secretary of State, or a Northern Ireland Department, in connection with the provision of those services,
- or information which is held with information so held.
- (10) The reference in sub-paragraph (9) to functions relating to social security includes a reference to functions relating to any of the matters listed in section 127(8) of the Welfare Reform Act 2012 (statutory payments and maternity allowances).

Offence where information wrongly used or disclosed

- 28 (1) It is an offence for a person to disclose or use information in contravention of paragraph 27(5).
- (2) It is a defence for a person charged with an offence under sub-paragraph (1) to prove that the person reasonably believed that the disclosure or use concerned was lawful.
- (3) A person guilty of an offence under sub-paragraph (1) is liable—

- (a) on conviction on indictment—
 - (i) to imprisonment for a term not exceeding 2 years, or
 - (ii) to a fine, or
 - (iii) to both;
 - (b) on summary conviction—
 - (i) to imprisonment for a period not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum, or
 - (iii) to both.
- (4) Sub-paragraph (3)(b) applies—
- (a) in England and Wales in relation to offences committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on power of magistrates’ courts to impose imprisonment), and
 - (b) in Northern Ireland,
- as if the reference to 12 months were a reference to 6 months.
- (5) A prosecution for an offence under sub-paragraph (1)—
- (a) may be instituted in England and Wales only by or with the consent of the Director of Public Prosecutions, and
 - (b) may be instituted in Northern Ireland only by or with the consent of the Director of Public Prosecutions for Northern Ireland.

PART 7

RELATED AMENDMENTS IN ARMED FORCES ACT 2006

Community orders: punitive elements

- 29 The Armed Forces Act 2006 is amended as follows.
- 30 In section 178 (service community orders), in subsection (3) (provisions of the 2003 Act in which “community order” includes a service community order) for “177(3)” substitute “177(2A)”.
- 31 (1) Section 182 (overseas community orders) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) In section 177(2A) and (2B) of the 2003 Act (community orders: punitive elements) “community order” includes an overseas community order if the offender is aged 18 or over when convicted of the offence in respect of which the overseas community order is made.”
- (3) In subsection (5) (provisions of the 2003 Act in which “court” includes a relevant service court) for “those provisions” substitute “the provisions of the 2003 Act mentioned in subsections (3A) and (4)”.
- 32 In section 270 (restrictions on community punishments) after subsection (2) insert—
- “(2A) Subsection (2) is subject to section 177(2A) of the 2003 Act (community orders: punitive elements) as applied by section 178(3) and section 182(3A).”

- 33 An amendment made by any of paragraphs 30 to 32 does not affect orders in respect of offences committed before the amendment comes into force.

Removal of limits on compensation orders made against adults

- 34 (1) Section 284 of the Armed Forces Act 2006 (Service Civilian Court compensation orders etc: maximum amounts) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) The following subsections apply if (but only if) the Service Civilian Court has convicted a person aged under 18 (“the offender”) of an offence or offences.”
- (3) In subsection (3) (compensation in respect of an offence not to exceed amount mentioned in section 131(1) of the Powers of Criminal Courts (Sentencing) Act 2000) for “any offence of which the court has convicted the offender” substitute “the offence, or any one of the offences,”.
- (4) Nothing in this paragraph affects orders in respect of offences committed before the day on which this paragraph comes into force.

Electronic monitoring of offenders

- 35 (1) The Armed Forces Act 2006 is amended as follows.
- (2) In section 182(1A) (requirements which may not be included in overseas community orders) at the end insert “or (m) (an electronic monitoring requirement)”.
- (3) In section 183(1) (provisions of Criminal Justice Act 2003 which do not apply to overseas community orders) for “section 215” substitute “sections 215 and 215A”.

Statements of assets and other financial circumstances of offenders etc

- 36 In section 266(2) of the Armed Forces Act 2006 (meaning of “financial statement order”) after “statement of his” insert “assets and other”.

Before Schedule 16

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 7 Insert the following new Schedule—

“DEFERRED PROSECUTION AGREEMENTS

PART 1

GENERAL

Characteristics of a deferred prosecution agreement

- 1 (1) A deferred prosecution agreement (a “DPA”) is an agreement between a designated prosecutor and a person (“P”) whom the prosecutor is

considering prosecuting for an offence specified in Part 2 (the “alleged offence”).

- (2) Under a DPA –
 - (a) P agrees to comply with the requirements imposed on P by the agreement;
 - (b) the prosecutor agrees that, upon approval of the DPA by the court (see paragraph 8), paragraph 2 is to apply in relation to the prosecution of P for the alleged offence.

Effect of DPA on court proceedings

- 2 (1) Proceedings in respect of the alleged offence are to be instituted by the prosecutor in the Crown Court by preferring a bill of indictment charging P with the alleged offence (see section 2(2)(ba) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (bill of indictment preferred with consent of Crown Court judge following DPA approval)).
- (2) As soon as proceedings are instituted under sub-paragraph (1) they are automatically suspended.
- (3) The suspension may only be lifted on an application to the Crown Court by the prosecutor; and no such application may be made at any time when the DPA is in force.
- (4) At a time when proceedings are suspended under sub-paragraph (2), no other person may prosecute P for the alleged offence.

Designated prosecutors

- 3 (1) The following are designated prosecutors –
 - (a) the Director of Public Prosecutions;
 - (b) the Director of the Serious Fraud Office;
 - (c) any prosecutor designated under this paragraph by an order made by the Secretary of State.
- (2) A designated prosecutor must exercise personally the power to enter into a DPA and, accordingly, any enactment that enables a function of a designated prosecutor to be exercised by a person other than the prosecutor concerned does not apply.
- (3) But if the designated prosecutor is unavailable, the power to enter into a DPA may be exercised personally by a person authorised in writing by the designated prosecutor.

Persons who may enter into a DPA with a prosecutor

- 4 (1) P may be a body corporate, a partnership or an unincorporated association, but may not be an individual.
- (2) In the case of a DPA between a prosecutor and a partnership –
 - (a) the DPA must be entered into in the name of the partnership (and not in that of any of the partners);
 - (b) any money payable under the DPA must be paid out of the funds of the partnership.

- (3) In the case of a DPA between a prosecutor and an unincorporated association—
 - (a) the DPA must be entered into in the name of the association (and not in that of any of its members);
 - (b) any money payable under the DPA must be paid out of the funds of the association.

Content of a DPA

- 5 (1) A DPA must contain a statement of facts relating to the alleged offence, which may include admissions made by P.
- (2) A DPA must specify an expiry date, which is the date on which the DPA ceases to have effect if it has not already been terminated under paragraph 9 (breach).
- (3) The requirements that a DPA may impose on P include, but are not limited to, the following requirements—
 - (a) to pay to the prosecutor a financial penalty;
 - (b) to compensate victims of the alleged offence;
 - (c) to donate money to a charity or other third party;
 - (d) to disgorge any profits made by P from the alleged offence;
 - (e) to implement a compliance programme or make changes to an existing compliance programme relating to P's policies or to the training of P's employees or both;
 - (f) to co-operate in any investigation related to the alleged offence;
 - (g) to pay any reasonable costs of the prosecutor in relation to the alleged offence or the DPA.

The DPA may impose time limits within which P must comply with the requirements imposed on P.

- (4) The amount of any financial penalty agreed between the prosecutor and P must be broadly comparable to the fine that a court would have imposed on P on conviction for the alleged offence following a guilty plea.
- (5) A DPA may include a term setting out the consequences of a failure by P to comply with any of its terms.

Code on DPAs

- 6 (1) The Director of Public Prosecutions and the Director of the Serious Fraud Office must jointly issue a Code for prosecutors giving guidance on—
 - (a) the general principles to be applied in determining whether a DPA is likely to be appropriate in a given case, and
 - (b) the disclosure of information by a prosecutor to P in the course of negotiations for a DPA and after a DPA has been agreed.
- (2) The Code may also give guidance on any other relevant matter, including—
 - (a) the use of information obtained by a prosecutor in the course of negotiations for a DPA;
 - (b) variation of a DPA;
 - (c) termination of a DPA and steps that may be taken by a prosecutor following termination;

- (d) steps that may be taken by a prosecutor when the prosecutor suspects a breach of a DPA.
- (3) The Code must be set out in the report made by the Director of Public Prosecutions to the Attorney General under section 9 of the Prosecution of Offences Act 1985 for the year in which the Code is issued.
- (4) The Code may from time to time be altered or replaced by agreement between—
 - (a) the Director of Public Prosecutions,
 - (b) the Director of the Serious Fraud Office, and
 - (c) any prosecutor who is for the time being designated by an order made under paragraph 3.
- (5) If the Code is altered or replaced, the new Code must be set out in the report made by the Director of Public Prosecutions to the Attorney General under section 9 of the Prosecution of Offences Act 1985 for the year in which the Code is altered or replaced.
- (6) A prosecutor must take account of the Code in exercising functions under this Schedule.

Court approval of DPA: preliminary hearing

- 7 (1) After the commencement of negotiations between a prosecutor and P in respect of a DPA but before the terms of the DPA are agreed, the prosecutor must apply to the Crown Court for a declaration that—
 - (a) entering into a DPA with P is likely to be in the interests of justice, and
 - (b) the proposed terms of the DPA are fair, reasonable and proportionate.
- (2) The court must give reasons for its decision on whether or not to make a declaration under sub-paragraph (1).
- (3) The prosecutor may make a further application to the court for a declaration under sub-paragraph (1) if, following the previous application, the court declined to make a declaration.
- (4) A hearing at which an application under this paragraph is determined must be held in private, any declaration under sub-paragraph (1) must be made in private, and reasons under sub-paragraph (2) must be given in private.

Court approval of DPA: final hearing

- 8 (1) When a prosecutor and P have agreed the terms of a DPA, the prosecutor must apply to the Crown Court for a declaration that—
 - (a) the DPA is in the interests of justice, and
 - (b) the terms of the DPA are fair, reasonable and proportionate.
- (2) But the prosecutor may not make an application under sub-paragraph (1) unless the court has made a declaration under paragraph 7(1) (declaration on preliminary hearing).
- (3) A DPA only comes into force when it is approved by the Crown Court making a declaration under sub-paragraph (1).

- (4) The court must give reasons for its decision on whether or not to make a declaration under sub-paragraph (1).
- (5) A hearing at which an application under this paragraph is determined may be held in private.
- (6) But if the court decides to approve the DPA and make a declaration under sub-paragraph (1) it must do so, and give its reasons, in open court.
- (7) Upon approval of the DPA by the court, the prosecutor must publish—
 - (a) the DPA,
 - (b) the declaration of the court under paragraph 7 and the reasons for its decision to make the declaration,
 - (c) in a case where the court initially declined to make a declaration under paragraph 7, the court’s reason for that decision, and
 - (d) the court’s declaration under this paragraph and the reasons for its decision to make the declaration,
 unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

Breach of DPA

- 9 (1) At any time when a DPA is in force, if the prosecutor believes that P has failed to comply with the terms of the DPA, the prosecutor may make an application to the Crown Court under this paragraph.
- (2) On an application under sub-paragraph (1) the court must decide whether, on the balance of probabilities, P has failed to comply with the terms of the DPA.
- (3) If the court finds that P has failed to comply with the terms of the DPA, it may—
 - (a) invite the prosecutor and P to agree proposals to remedy P’s failure to comply, or
 - (b) terminate the DPA.
- (4) The court must give reasons for its decisions under sub-paragraphs (2) and (3).
- (5) Where the court decides that P has not failed to comply with the terms of the DPA, the prosecutor must publish the court’s decision and its reasons for that decision, unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).
- (6) Where the court invites the prosecutor and P to agree proposals to remedy P’s failure to comply, the prosecutor must publish the court’s decisions under sub-paragraphs (2) and (3) and the reasons for those decisions, unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).
- (7) Where the court terminates a DPA under sub-paragraph (3)(b), the prosecutor must publish—
 - (a) the fact that the DPA has been terminated by the court following a failure by P to comply with the terms of the DPA, and

- (b) the court's reasons for its decisions under sub-paragraphs (2) and (3),
unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).
- (8) If the prosecutor believes that P has failed to comply with the terms of the DPA but decides not to make an application to the Crown Court under this paragraph, the prosecutor must publish details relating to that decision, including—
 - (a) the reasons for the prosecutor's belief that P has failed to comply, and
 - (b) the reasons for the prosecutor's decision not to make an application to the court,unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

Variation of DPA

- 10 (1) At any time when a DPA is in force, the prosecutor and P may agree to vary its terms if—
 - (a) the court has invited the parties to vary the DPA under paragraph 9(3)(a), or
 - (b) variation of the DPA is necessary to avoid a failure by P to comply with its terms in circumstances that were not, and could not have been, foreseen by the prosecutor or P at the time that the DPA was agreed.
- (2) When the prosecutor and P have agreed to vary the terms of a DPA, the prosecutor must apply to the Crown Court for a declaration that—
 - (a) the variation is in the interests of justice, and
 - (b) the terms of the DPA as varied are fair, reasonable and proportionate.
- (3) A variation of a DPA only takes effect when it is approved by the Crown Court making a declaration under sub-paragraph (2).
- (4) The court must give reasons for its decision on whether or not to make a declaration under sub-paragraph (2).
- (5) A hearing at which an application under this paragraph is determined may be held in private.
- (6) But if the court decides to approve the variation and make a declaration under sub-paragraph (2) it must do so, and give its reasons, in open court.
- (7) Where the court decides not to approve the variation, the prosecutor must publish the court's decision and the reasons for it, unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).
- (8) Where the court decides to approve the variation the prosecutor must publish—
 - (a) the DPA as varied, and

- (b) the court's declaration under this paragraph and the reasons for its decision to make the declaration, unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

Discontinuance of proceedings on expiry of DPA

- 11 (1) If a DPA remains in force until its expiry date, then after the expiry of the DPA the proceedings instituted under paragraph 2(1) are to be discontinued by the prosecutor giving notice to the Crown Court that the prosecutor does not want the proceedings to continue.
- (2) Where proceedings are discontinued under sub-paragraph (1), fresh criminal proceedings may not be instituted against P for the alleged offence.
- (3) But sub-paragraph (2) does not prevent fresh proceedings from being instituted against P in a case where, after a DPA has expired, the prosecutor finds that, during the course of the negotiations for the DPA –
 - (a) P provided inaccurate, misleading or incomplete information to the prosecutor, and
 - (b) P knew or ought to have known that the information was inaccurate, misleading or incomplete.
- (4) A DPA is not to be treated as having expired for the purposes of sub-paragraph (1) if, on the expiry date specified in the DPA –
 - (a) an application made by the prosecutor under paragraph 9 (breach) has not yet been decided by the court,
 - (b) following an application under paragraph 9 the court has invited the parties to agree proposals to remedy P's failure to comply, but the parties have not yet reached an agreement, or
 - (c) the parties have agreed proposals to remedy P's failure to comply following an invitation of the court under paragraph 9(3)(a) but P has not yet complied with the agreement.
- (5) In the case mentioned in sub-paragraph (4)(a) –
 - (a) if the court decides that P has not failed to comply with the terms of the DPA, or that P has failed to comply but does not take action under paragraph 9(3), the DPA is to be treated as expiring when the application is decided;
 - (b) if the court terminates the DPA, the DPA is to be treated as not having remained in force until its expiry date (and sub-paragraph (1) therefore does not apply);
 - (c) if the court invites the parties to agree proposals to remedy P's failure to comply, the DPA is to be treated as expiring when the parties have reached such an agreement and P has complied with it.
- (6) In the case mentioned in sub-paragraph (4)(b), the DPA is to be treated as expiring when the parties have reached an agreement and P has complied with it.
- (7) In the case mentioned in sub-paragraph (4)(c), the DPA is to be treated as expiring when P complies with the agreement.

- (8) Where proceedings are discontinued under sub-paragraph (1), the prosecutor must publish—
- (a) the fact that the proceedings have been discontinued, and
 - (b) details of P's compliance with the DPA,
- unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

Court order postponing publication of information by prosecutor

- 12 The court may order that the publication of information by the prosecutor under paragraph 8(7), 9(5), (6), (7) or (8), 10(7) or (8) or 11(8) be postponed for such period as the court considers necessary if it appears to the court that postponement is necessary for avoiding a substantial risk of prejudice to the administration of justice in any legal proceedings.

Use of material in criminal proceedings

- 13 (1) Sub-paragraph (2) applies where a DPA between a prosecutor and P has been approved by the Crown Court under paragraph 8.
- (2) The statement of facts contained in the DPA is, in any criminal proceedings brought against P for the alleged offence, to be treated as an admission by P under section 10 of the Criminal Justice Act 1967 (proof by formal admission).
- (3) Sub-paragraph (4) applies where a prosecutor and P have entered into negotiations for a DPA but the DPA has not been approved by the Crown Court under paragraph 8.
- (4) Material described in sub-paragraph (6) may only be used in evidence against P—
- (a) on a prosecution for an offence consisting of the provision of inaccurate, misleading or incomplete information, or
 - (b) on a prosecution for some other offence where in giving evidence P makes a statement inconsistent with the material.
- (5) However, material may not be used against P by virtue of sub-paragraph (4)(b) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of P in the proceedings arising out of the prosecution.
- (6) The material is—
- (a) material that shows that P entered into negotiations for a DPA, including in particular—
 - (i) any draft of the DPA;
 - (ii) any draft of a statement of facts intended to be included within the DPA;
 - (iii) any statement indicating that P entered into such negotiations;
 - (b) material that was created solely for the purpose of preparing the DPA or statement of facts.

Money received by prosecutor under a DPA

- 14 Any money received by a prosecutor under a term of a DPA that provides for P to pay a financial penalty to the prosecutor or to disgorge profits made from the alleged offence is to be paid into the Consolidated Fund.

PART 2

OFFENCES IN RELATION TO WHICH A DPA MAY BE ENTERED INTO

Common law offences

- 15 Conspiracy to defraud.
16 Cheating the public revenue.

Statutory offences

- 17 An offence under any of the following sections of the Theft Act 1968 –
 (a) section 1 (theft);
 (b) section 17 (false accounting);
 (c) section 20 (suppression etc of documents);
 (d) section 24A (dishonestly retaining a wrongful credit).
- 18 An offence under any of the following sections of the Customs and Excise Management Act 1979 –
 (a) section 68 (offences in relation to exportation of prohibited or restricted goods);
 (b) section 167 (untrue declarations etc);
 (c) section 170 (fraudulent evasion of duty etc).
- 19 An offence under any of the following sections of the Forgery and Counterfeiting Act 1981 –
 (a) section 1 (forgery);
 (b) section 2 (copying a false instrument);
 (c) section 3 (using a false instrument);
 (d) section 4 (using a copy of a false instrument);
 (e) section 5 (offences relating to money orders, share certificates, passports etc).
- 20 An offence under section 450 of the Companies Act 1985 (destroying, mutilating etc company documents).
- 21 An offence under section 72 of the Value Added Tax Act 1994 (fraudulent evasion of VAT).
- 22 An offence under any of the following sections of the Financial Services and Markets Act 2000 –
 (a) section 23 (contravention of prohibition of carrying on regulated activity unless authorised or exempt);
 (b) section 25 (contravention of restrictions on financial promotion);
 (c) section 85 (prohibition of dealing etc in transferable securities without approved prospectus);

- (d) section 346 (provision of false or misleading statements to auditor or actuary);
 - (e) section 397 (misleading statements and practices);
 - (f) section 398 (misleading the FSA).
- 23 An offence under any of the following sections of the Proceeds of Crime Act 2002—
- (a) section 327 (concealing etc criminal property);
 - (b) section 328 (arrangements facilitating acquisition etc of criminal property);
 - (c) section 329 (acquisition, use and possession of criminal property);
 - (d) section 330 (failing to disclose knowledge or suspicion of money laundering);
 - (e) section 333A (tipping off).
- 24 An offence under any of the following sections of the Companies Act 2006—
- (a) section 658 (general rule against limited company acquiring its own shares);
 - (b) section 680 (prohibited financial assistance);
 - (c) section 993 (fraudulent trading).
- 25 An offence under any of the following sections of the Fraud Act 2006—
- (a) section 1 (fraud);
 - (b) section 6 (possession etc of articles for use in frauds);
 - (c) section 7 (making or supplying articles for use in frauds);
 - (d) section 11 (obtaining services dishonestly).
- 26 An offence under any of the following sections of the Bribery Act 2010—
- (a) section 1 (bribing another person);
 - (b) section 2 (being bribed);
 - (c) section 6 (bribery of foreign public officials);
 - (d) section 7 (failure of commercial organisations to prevent bribery).
- 27 An offence under regulation 45 of the Money Laundering Regulations 2007 (S.I. 2007/2157).

Ancillary offences

- 28 Any ancillary offence relating to an offence specified in this Part.

Interpretation of this Part

- 29 “Ancillary offence”, in relation to an offence, means—
- (a) aiding, abetting, counselling or procuring the commission of the offence;
 - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
 - (c) attempting or conspiring to commit the offence.
- 30 This Schedule applies in relation to conduct occurring before the commencement of this Schedule as if an offence specified in this Part included any corresponding offence under the law in force at the time of

the conduct (and for the purposes of this paragraph, the common law offence of inciting the commission of another offence is to be treated as an offence corresponding to an offence under Part 2 of the Serious Crime Act 2007).

Power to amend this Part

- 31 The Secretary of State may by order amend this Part by –
- (a) adding an offence of financial or economic crime;
 - (b) removing an offence.

PART 3

DEFERRED PROSECUTION AGREEMENTS: CONSEQUENTIAL AND TRANSITIONAL PROVISION

Consequential amendments

- 32 In section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (procedure for indictment of offenders), in subsection (2) after paragraph (b) insert –
- “(ba) the bill is preferred with the consent of a judge of the Crown Court following a declaration by the court under paragraph 8(1) of Schedule (*Deferred prosecution agreements*) to the Crime and Courts Act 2013 (court approval of deferred prosecution agreement); or”.
- 33 In section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (issue of witness summons on application to the Crown Court), after subsection (6) insert –
- “(6A) Where the proceedings concerned relate to an offence that is the subject of a deferred prosecution agreement within the meaning of Schedule (*Deferred prosecution agreements*) to the Crime and Courts Act 2013, an application must be made as soon as is reasonably practicable after the suspension of the proceedings is lifted under paragraph 2(3) of that Schedule.”
- 34 In Schedule 1 to the Contempt of Court Act 1981 (times when proceedings are active for purposes of strict liability rule for contempt of court), in paragraph 7, after paragraph (aa) insert –
- “(ab) in England and Wales, if they are discontinued by virtue of paragraph 11 of Schedule (*Deferred prosecution agreements*) to the Crime and Courts Act 2013 (deferred prosecution agreements);”.
- 35 In section 15 of the Prosecution of Offences Act 1985 (interpretation), in subsection (2)(d) after “(b)” insert “or (ba)”.
- 36 In section 51 of the Criminal Justice and Public Order Act 1994 (intimidation etc of witnesses, jurors and others), in subsection 10(a)(iii) after “2(2)(b)” insert “or (ba)”.
- 37 (1) The Criminal Procedure and Investigations Act 1996 is amended as follows.

- (2) In section 1 (application of Part 1: disclosure), in subsection (2), after paragraph (f) insert “, or
- (g) following the preferment of a bill of indictment charging a person with an indictable offence under the authority of section 2(2)(ba) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (bill of indictment preferred with consent of Crown Court judge following approval of deferred prosecution agreement), the suspension of the proceedings against the person under paragraph 2(2) of Schedule (*Deferred prosecution agreements*) to the Crime and Courts Act 2013 is lifted under paragraph 2(3) of that Schedule.”
- (3) In section 28 (application of Part 3: preparatory hearings), in subsection (1)(c) after “2(2)(b)” insert “or (ba)”.
- (4) In section 39 (meaning of pre-trial hearing), in subsection (2)(a) after “2(2)(b)” insert “or (ba)”.
- (5) In Schedule 3 (fraud), in paragraph 8(1)(c) after “2(2)(b)” insert “or (ba)”.
- 38 In section 85 of the Proceeds of Crime Act 2002 (proceedings), in subsection (1)(c) at the end insert “or subsection (2)(ba) of that section (preferment by Crown Court judge following approval of deferred prosecution agreement)”.

Transitional provision

- 39 (1) Conduct constituting an alleged offence that occurred before the relevant commencement day may be taken into account for the purposes of this Schedule.
- (2) In this paragraph, the “relevant commencement day” means –
- (a) in a case where the alleged offence is an offence that is specified in Part 2 when this Schedule comes into force, the day on which this Schedule comes into force;
- (b) in a case where the alleged offence is an offence that is subsequently added to Part 2 (whether by order under paragraph 31 or otherwise), the day when the enactment adding that offence to Part 2 comes into force.”

Clause 30

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 8 Page 31, line 18, at end insert “, or
- (b) where Part 4 of Schedule (*Dealing non-custodially with offenders*) and section (*Dealing non-custodially with offenders*) so far as relating to that Part of that Schedule are brought into force in relation to a specified area for a specified period, in connection with those provisions ceasing to be in force at the end of that period or at the end of that period as continued under section 31(4B).”

Clause 31

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 9 Page 31, line 23, at end insert “and, in the case of Part 4 of Schedule (*Dealing non-custodially with offenders*) and section (*Dealing non-custodially with offenders*) so far as relating to that Part of that Schedule, for different areas.”

Clause 31

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 10 Page 31, line 28, at end insert –
- “(4A) An order which brings the monitoring provisions into force only in relation to a specified area may provide that they are to be in force in relation to that area for a specified period; and in this subsection and subsection (4B) “the monitoring provisions” means Part 4 of Schedule (*Dealing non-custodially with offenders*), and section (*Dealing non-custodially with offenders*) so far as relating to that Part of that Schedule.
- (4B) An order containing the provision permitted by subsection (4A) may be amended by a subsequent order under subsection (2) so as to continue the monitoring provisions in force in relation to the area concerned for a further period.”

Clause 31

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 11 Page 31, line 33, leave out “Sections 22 and 23, and” and insert “The following extend to England and Wales only –
- (a) section 22;
 - (b) paragraph 28 of Schedule (*Dealing non-custodially with offenders*) and section (*Dealing non-custodially with offenders*) so far as relating to that paragraph, but only so far as relating to disclosure or use of information by a person appointed under section 2(1) of the Courts Act 2003 or provided under a contract made by virtue of section 2(4) of that Act;
 - (c) ”

Clause 31

LORD TAYLOR OF HOLBEACH
LORD McNALLY

- 12 Page 31, line 36, leave out “extend to England and Wales only” and insert –
- “(d) paragraphs 1 to 31 and 39 of Schedule (*Deferred prosecution agreements*), and section (*Deferred prosecution agreements*) so far as relating to those paragraphs.”

Clause 31

LORD TAYLOR OF HOLBEACH
LORD McNALLY

13 Page 32, line 1, at end insert—

- “() Her Majesty may by Order in Council provide for provisions of Part 7 of Schedule (*Dealing non-custodially with offenders*) (amendments of Armed Forces Act 2006) to extend, with or without modifications, to—
- (a) any of the Channel Islands,
 - (b) the Isle of Man, or
 - (c) any of the British overseas territories.
- () The power conferred by section 338 of the Criminal Justice Act 2003 (power to extend to Channel Islands and Isle of Man) is exercisable in relation to any amendment of that Act that is made by or under this Act.”

In the Title

LORD TAYLOR OF HOLBEACH
LORD McNALLY

14 Line 4, after “tribunals;” insert “to make provision about deferred prosecution agreements;”

