



Circular No. 2015/01

# Ministry of Justice

**TITLE** **CRIMINAL JUSTICE AND COURTS ACT 2015**

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This circular provides guidance about provisions in the Criminal Justice and Courts Act 2015 which are being commenced on 13 April 2015 and which have an operational impact that stakeholders need to be aware of.

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**Broad Subject** Criminal Law  
Civil Law  
Offender Management

**Sub Category** Criminal Justice and Courts Act 2015

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**This circular is  
addressed to**

Lord Chief Justice, Justices of the Supreme Court, President of the Queen's Bench Division, Master of the Rolls, Senior Presiding Judge, Lords Justices of Appeal, Chairman of the Judicial College, High Court Judges, Presiding Judges, Resident Judges, Crown Court Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Director of Public Prosecutions, HM Chief Inspector of Constabulary, Chief Officers of Police in England and Wales, Director General of the National Crime Agency, Police Service Scotland, Police Service of Northern Ireland, Director-General of HM Prison Service, Chief Executive of HM Courts and Tribunals Service, Chief Executive of the Youth Justice Board for England and Wales, Chief Crown Prosecutors, Heads of Division Revenue and Customs Prosecution Office, Chief Probation Officers, Director of Crime, Heads of Crime, Cluster Managers, Regional Support Units, Court Managers Crown Courts, Court Managers Magistrates' Courts, Clerks to the Justices, DVLA, DOENI, DVA Northern Ireland, Northern Ireland Courts Service.

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sent to**

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**Amendments**

<b>Reference</b>	<b>Detail</b>	<b>Date</b>
Page 22, para 119	Correction of error regarding the territorial extent of section 36.	02/04/2015
General	Formatting correction.	18/04/2015
Annex G	Contact details updated.	18/04/2015

**PART 1: CRIMINAL JUSTICE**

**Dangerous Offenders**

**Section 1: Maximum sentence for certain offences to be life imprisonment**

**Section 2: Specified Offences**

**Section 3: Schedule 15B Offences**

**Section 5: Minor Amendments**

1. Sections 1-3 of the Criminal Justice and Courts Act 2015 (“the Act”) add further serious terrorism and terrorism-related offences to Schedule 15B of the Criminal Justice Act 2003.
2. The current dangerous offenders sentencing scheme was introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which amended the scheme created by the Criminal Justice Act 2003. The new scheme created two tiers of offences within Schedule 15: new Schedule 15B to the 2003 Act sets out a list of violent and sexual offences deemed to be particularly serious, and which qualify the offender for enhanced public protection sentencing measures.
3. The offences concerned are:
  - making or possession of explosive under suspicious circumstances (section 4 of the Explosive Substances Act 1883);
  - weapons training for terrorism (section 54(6) of the Terrorism Act 2000); and;
  - training for terrorism (section 6(5) of the Terrorism Act 2006).
4. Where these offences do not already carry a life sentence, these provisions also increase the relevant maximum penalties to life.
5. The effects of an offence’s inclusion in Schedule 15B are:
  - offenders will qualify for an automatic life sentence where they have previously been convicted of an offence included in the scheme (and a sentence of at least 10 years was imposed/merited on both occasions) unless the court finds that it would be unjust to do so in all the circumstances;
  - offenders with previous convictions for these offences will satisfy one of the conditions for being made subject to an Extended Determinate Sentence.
6. Additionally these sections make some minor updates and corrections to Schedule 15 and to the dangerous offenders sentencing scheme.

**Commencement Arrangements**

7. Sections 1-3 and 5 will commence on 13 April 2015.
8. As regards the addition of offences to Schedule 15B:

- An automatic life sentence can only be given on account of one of these offences where the 'second strike' offence is committed on or after the date of the commencement of these provisions.
  - A previous conviction for one of these offences will satisfy the 'previous conviction' condition for the imposition of an extended determinate sentence for offenders sentenced on or after the date of the commencement of these provisions, regardless of when that prior offence was committed.
9. As regards the increased maximum penalties these only apply to offences committed on or after the date of commencement.

#### Armed Forces Act 2006

10. Equivalent provision is made for service offences.

#### Extent

11. The increase in maximum penalties and amendments of the Armed Forces Act 2006 (and other provisions applied by that Act) will extend to England and Wales, Scotland and Northern Ireland. Otherwise these provisions will extend to England and Wales only.

### **Extended Sentences** **Offenders of Particular Concern**

#### **Section 4: Parole Board release when serving extended sentences**

#### **Section 6 and Schedule 1: Sentence and Parole Board release for offenders of particular concern**

12. Section 4 of the Act makes changes to the release arrangements for offenders who receive an Extended Determinate Sentence under Sections 226A and 226B of the Criminal Justice Act 2003 (i.e. both adult and juvenile offenders).
13. Section 4 provides that, for all offenders sentenced to an Extended Determinate Sentence after commencement, the release arrangements currently applying to more serious offenders will apply – i.e. they may only be released before the end of the custodial term if the Parole Board so directs. Previously, where an offender received an Extended Determinate Sentence for a less serious offence (i.e. where the offence was not on Schedule 15B, or where the offending merited a custodial term of less than 10 years) he would be automatically released on licence at the two-thirds point of the custodial term.
14. Where an offender is convicted of an offence listed in Schedule 15 to the Criminal Justice Act 2003 (i.e. a specified sexual or violent offence), and found to be dangerous, the court may impose an Extended Determinate Sentence (EDS). These sentences comprise a custodial term, which the court sets having



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regard to the seriousness of the offending, and a subsequent extended licence period which the court sets for the purpose of protecting the public.

15. Where the offending is particularly serious, the offender is referred to the Parole Board at the two-thirds point of the custodial term, and faces the possibility that he will not be released until the end of the custodial term. Cases in this category are those where either:
  - a. the offender is convicted of an offence listed in Schedule 15B to the 2013 Act (which contains a subset of particularly serious sexual and violent offences); or
  - b. the offence merits a custodial term of 10 years or more.
16. Section 6 and Schedule 1 to the 2015 Act amend the default determinate custodial sentence for offenders who are convicted of an offence which is listed in Schedule 18A to the 2003 Act (**and were over 18 years of age when the offence was committed**).
17. As a result of section 6, a new sentence format must now be applied to offenders who have been convicted of an offence of particular concern in cases where the court decides to impose a sentence of imprisonment but does not impose an Extended Determinate Sentence for dangerous offenders, or a life sentence. (Nothing in these provisions affects the court's discretion to impose life sentences, Extended Determinate Sentences, non-custodial sentences or other disposals.)
18. Offences of particular concern are set out in new Schedule 18A to the Criminal Justice Act 2003. These constitute offences deemed the most serious child sex and terrorism-related offences.
19. The key characteristics of the new custodial sentence are:
  - It consists of a custodial term to be set by the court, followed by a fixed 1 year period of licence (in respect of which there is no discretion). The custodial term and the year's licence make up the appropriate sentence commensurate with the seriousness of the offence(s). (The purpose of this fixed licence period is to ensure that any offenders who are not released until the end of the custodial term receive a period of supervision after release.)
  - The offender must be referred to the Parole Board for consideration of release on licence, from the halfway point of the custodial term. The offender will be automatically released, if that has not already occurred, at the end of the custodial term.
20. The new arrangements apply only to offenders who were over 18 when the offence was committed.

#### Commencement Arrangements

21. Sections 4 and 6 will commence on 13 April 2015.

22. The new sentencing and release arrangements for offenders of particular concern (new Chapter 5A: new section 236A and Schedule 18A to the Criminal Justice Act 2003, as inserted by Schedule 1 to the 2015 Act) will apply to any offender who is sentenced after commencement of the new provisions on 13 April 2015, regardless of the date of the offence.
23. The new release arrangements for prisoners serving an Extended Determinate Sentence (Section 246A of the Criminal Justice Act 2003, as amended by Section 4 of the 2015 Act) will apply to any offender who is sentenced after commencement of these provisions on 13 April 2015, regardless of the date of the offence. Offenders who have already been sentenced to an Extended Determinate Sentence will remain subject to the release arrangements pertaining at the time their sentence was imposed.

#### Extent

24. In so far as provisions of the Armed Forces Act 2006 are concerned (and other provisions applied by that Act) they will extend to England and Wales, Scotland and Northern Ireland. Otherwise these provisions will extend to England and Wales only.

### **Release and recall of prisoners**

#### **Section 12: Offence of remaining unlawfully at large (UAL) after recall**

25. Section 12 of the Act amends the Criminal Justice Act 2003 and the Crime (Sentences) Act 1997 by creating a new offence of remaining unlawfully at large following a recall from licence for determinate and indeterminate sentence prisoners respectively.
26. The offence is committed once the offender has been notified of the recall and, without reasonable excuse, fails to take all necessary steps to surrender to custody. This is an either way offence which carries a maximum penalty of 2 years' imprisonment and/or a fine<sup>1</sup>.
27. An offender may be notified of the recall either orally or in writing. An offender is also deemed to have been notified of the recall if a condition of his licence is to keep in touch with a provider of probation services and he has not done so for at least 6 months.
28. There are existing offences which apply to those who escape from custody, who fail to surrender to custody whilst on bail or who fail to return from release on temporary licence (ROTL). By contrast, offenders who have been released from

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<sup>1</sup> Section 85 Legal Aid Sentencing Punishment of Offenders Act 2012 came into force on 12 March 2015; it removed the maximum fine limit of £5,000 or more for an offence which is punishable on summary conviction.

their sentence and abscond whilst on licence can only be required to serve whatever was outstanding of their original sentence at the time their licence was revoked (the recall period); they do not face any additional punishment for failing to surrender in the same way as those who abscond in other circumstances. This new offence captures these offenders.

#### Commencement Arrangements

29. Section 12 will be commenced on 13 April 2015.

30. The offence will apply to offenders who are already unlawfully at large after the revocation of their licences as well as to new cases where offenders fail to surrender to custody following recall.

31. The National Offender Management Service (NOMS) will issue guidance to its staff setting out in detail how offenders on licence will be notified of the new offence and the penalty should they fail to surrender following recall. NOMS is liaising with the police and CPS to agree the processes and criteria for identifying cases which may be referred to them to consider whether it would be in the public interest to prosecute.

#### Extent

32. These provisions will extend to England and Wales only.

### **Section 13: Offence of remaining unlawfully at large after temporary release (ROTL)**

33. Section 13 of the Act amends section 1 of the Prisoners (Return to Custody) Act 1995, increasing the maximum penalty for the offence of remaining unlawfully at large after a period of release on temporary licence (ROTL) to 2 years imprisonment and/or a fine<sup>2</sup>; and making it an either way offence.

#### Commencement Arrangements

34. Section 13 will be commenced on 13 April 2015.

#### Extent

35. This provision will extend to England and Wales only.

### **Section 14: Definition of requisite custodial period**

36. Section 14 of the Act inserts a definition of “requisite custodial period” into the interpretation provision in Chapter 6 of Part 12 of the Criminal Justice Act 2003. It does not make any substantive changes to the release provisions or to how

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<sup>2</sup> Section 85 Legal Aid Sentencing and Punishment of Offenders Act 2012 came into force on 12 March 2015; for offences committed after 13 April 2015, the maximum fine limit of £5,000 or more for an offence which is punishable on summary conviction is removed.

long offenders are required to serve but simply brings the definition of what the requisite custodial period is for different types of sentence into one place within the 2003 Act.

37. "Requisite custodial period" is the part of a determinate sentence that must be served in custody before a prisoner may be released (either automatically or at the discretion of the Parole Board). It has different meanings for different types of sentence:

- For standard determinate sentences it ends at the half-way point of sentence;
- For Extended Determinate Sentences (EDS) it ends at the two-thirds point of the custodial term;
- For extended sentences under the previous regime (EPPs) it ends at the half-way point of the custodial term;
- For the new sentence introduced by section 6 (for offenders of particular concern) it ends at the half way point.

38. The definition of what the requisite custodial period is in relation to an extended sentence when imposed concurrently or consecutively with other sentences is also clarified.

#### Commencement Arrangements

39. Section 14 will be commenced on 13 April 2015.

#### Extent

40. In so far as provisions of the Armed Forces Act 2006 are concerned (and other provisions applied by that Act) they will extend to England and Wales, Scotland and Northern Ireland. Otherwise these provisions will extend to England and Wales only.

#### **Section 15: Minor amendments and transitional cases**

41. Section 15 of the Act makes minor consequential amendments and provision to deal with transitional cases stemming from the changes made by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. It essentially 'tidies up' the legislation where further cross-referencing to the LASPO Act changes need to be made.

42. For example, it ensures that the correct references are made, and account is taken of, section 240ZA of the 2003 Act (about crediting periods of remand time) in section 82A(3) of the Powers of Criminal Courts (Sentencing) Act 2000 which deals with how the court takes account of remand time when setting the appropriate tariff for an offender given an indeterminate sentence.

43. It deletes obsolete references to repealed provisions (e.g. section 65 of the Criminal Justice Act 1991 – about three months supervision for young offenders – which the LASPO Act replaced with sections 256B and 256C in the 2003 Act).

44. It also ensures the LASPO Act's consolidation of release and recall provisions is correctly applied across all cases. For example, offenders with a recall for breach of Home Detention Curfew (HDC) conditions under the previous 1991 Act regime (section 38A(1)(a)) are confirmed to be statutorily excluded from future releases on HDC in the same way as those recalled for a curfew breach under the current 2003 Act regime (section 255(1)(a)).

#### Commencement Arrangements

45. Section 15 will be commenced on 13 April 2015.
46. Where required, further guidance on these minor changes will be provided when the relevant Prison Service Instructions (PSIs) are updated – for example, on Sentence Calculation and on Home Detention Curfew (HDC).

#### Extent

47. In so far as provisions of the Armed Forces Act 2006 are concerned (and other provisions applied by that Act) they will extend to England and Wales, Scotland and Northern Ireland. Otherwise these provisions will extend to England and Wales only.

### **Cautions etc**

#### **Section 17: Restrictions on the use of cautions**

48. Section 17 of the Act places restrictions on the circumstances in which simple cautions may be used. In essence, the more serious the offence, the greater the restrictions. It also places restrictions on the use of simple cautions for repeat offending.
49. The police will not be able to give a simple caution for an indictable-only offence (i.e. one which, if committed by an adult, is triable only in the Crown Court) or an either-way offence (i.e. one which, if committed by an adult, is triable either in the Crown Court or a magistrates' court) specified by order by the Secretary of State unless there are exceptional circumstances relating to the offender or the offence. The Director of Public Prosecutions ("DPP") will also be required to consent to a caution being given for an indictable-only offence.
50. Furthermore, if in the last two years the offender has been convicted or cautioned for a similar offence, the police will not be able to give a simple caution for a non-specified either-way offence or a summary offence (the latter being an offence which, if committed by an adult, is triable only in a magistrates' court) unless there are exceptional circumstances relating to the offender, the offence or the previous offence. The Secretary of State may by order provide that a different time period be substituted for the two year period.
51. A police officer who determines whether there are exceptional circumstances or whether a previous offence was similar must not be below a rank specified by order by the Secretary of State. Such a determination must also be made in accordance with guidance issued by the Secretary of State.

Commencement Arrangements

52. Section 17 will be commenced on 13 April 2015. It will apply to all offences irrespective of whether they were committed before or after that date.

53. The orders and guidance referred to in paragraphs 49 - 51 will also come into force on 13 April 2015. The guidance will be published on the gov.uk domain and be made available via the College of Policing.

Extent

54. These provisions will extend to England and Wales only.

**Section 18: Restrictions on use of cautions: supplementary**

55. Section 18 sets out the different parliamentary procedures for the orders that the Secretary of State may make under section 17 and provides that an order must be made by statutory instrument.

56. This section also contains an amendment to section 37B(7) of the Police and Criminal Evidence Act 1984. Under section 37B(7) if the DPP decides that a person should be cautioned, but it proves not to be possible to give a caution, the person must be charged instead. The amendment makes it clear that section 17 must be taken into account in determining whether a caution is possible or not.

Commencement Arrangements

57. Section 18 will be commenced on 13 April 2015.

Extent

58. These provisions will extend to England and Wales only.

**Section 19: Alternatives to Prosecution: rehabilitation of offenders in Scotland**

59. Section 19 of the Act makes an amendment to the Rehabilitation of Offenders Act 1974 ("the 1974 Act") to address a legal competence problem identified by the Scottish Government in relation to the exercise of enabling powers in Schedule 3 to the 1974 Act. The desire behind this amendment is to remove an obstacle to implementation of Scottish Government policy in the predominantly devolved area of rehabilitation of offenders.

60. Schedule 3 to the 1974 Act was inserted by the Criminal Justice and Licensing (Scotland) Act 2010, and paragraphs 6 and 8 of Schedule 3 (which applies section 7(4) of the 1974 Act) contain order making powers which allow Scottish Ministers to set out exclusions and exceptions to the general rules in the 1974 Act concerning disclosure of spent alternatives to prosecution. However, as Schedule 3 was inserted by an Act of the Scottish Parliament, it does not extend to reserved matters.

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61. As a result, the order making powers in paragraph 6 of Schedule 3 to the 1974 Act and section 7(4) as applied by paragraph 8 of Schedule 3 to that same Act cannot be exercised to make exclusions or exceptions in relation to reserved subject matters (such as proceedings under the Firearms Act 1968 and certain other matters). It is the desire of the Scottish Ministers to exercise the powers in Schedule 3, but this cannot be done in respect of reserved matters until full executive competence is conferred on the Scottish Ministers in relation to the functions in paragraph 6 of Schedule 3 to, and section 7(4) as applied by paragraph 8 of Schedule 3 to, the 1974 Act.
62. This amendment will allow the Scottish Ministers to set out exclusions, modifications and exceptions to the general rules in the 1974 Act concerning spent alternatives to prosecution in relation to reserved matters, in the same way they currently do in relation to convictions (the power to do so having been transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003).
63. For clarity, alternatives to prosecution include fixed penalties, accepted compensation offers, restoration orders, police and fiscal warnings and any other thing offered by a procurator fiscal and accepted as an alternative to prosecution. Alternatives to prosecution will also include certain disposals of children's hearings.
64. This amendment to the 1974 Act does not make any provision relating to alternatives to prosecution. Rather, it confers executive competence on the Scottish Ministers so that, if they desire, they can make an order specifying occasions when the normal rules relating to the disclosure of spent alternatives to prosecution from a children's hearing should not apply. In particular, this amendment will also allow the Scottish Government to bring forward its full package of reforms in relation to child offenders in Scotland.
65. This package is on hold until Scottish Ministers are able to exercise the enabling powers in Schedule 3 to the 1974 Act in the way in which this amendment permits. Any legislation brought forward by the Scottish Government will be subject to all normal scrutiny.

Commencement Arrangements

66. Section 19 will be commenced on 13 April 2015. It will then be for the Scottish Ministers to decide when to exercise their new powers.

Extent

67. The changes made by section 19 apply to Scotland only.

**Offences involving ill-treatment or wilful neglect**

- Section 20: Ill-treatment or wilful neglect: care worker offence**  
**Section 21: Ill-treatment or wilful neglect: care provider offence**  
**Section 22: Care provider offence: excluded care providers**  
**Section 23: Care provider offence: penalties**  
**Section 24: Care provider offence: application to unincorporated associations**  
**Section 25: Care provider offence: liability for ancillary and other offences**  
**Schedule 4: Ill-treatment or wilful neglect: excluded health care**

68. Sections 20-25 of and Schedule 4 to the Act create two new criminal offences of ill-treatment or wilful neglect applying to individual care workers and care provider organisations. Prior to the introduction of these offences, prosecutions for a statutory offence of ill-treatment or wilful neglect can only occur in respect of persons receiving treatment for mental disorder, persons who lack mental capacity or, in certain circumstances, children.

69. Section 20 makes it an offence for an individual to ill-treat or wilfully neglect another individual of whom he has the care by virtue of being a care worker. A “care worker” is defined as anyone who, as paid work, provides social care for adults or health care for children or adults. The ‘wilful’ element of the neglect offence connotes that the perpetrator has acted deliberately or recklessly. Similarly, ‘ill-treatment’ is a deliberate act, where the individual recognised that he was inexcusably ill-treating a person, or else was being reckless as to whether he was doing so. Genuine errors or accidents by an individual would therefore not be caught within the scope of this offence.

70. Section 20 creates an either way offence which carries a maximum penalty of imprisonment of up to 5 years and/or a fine<sup>3</sup>.

71. There is a range of children’s settings and services that are excluded from the scope of the care worker offence in section 20. These are outlined at Schedule 4 and include:

- all schools, including Academies, free schools, boarding schools, public referral units and sixth form colleges;
- other premises while they, or a part of them, are being used entirely or mainly for an education or childcare purpose, including early years or later years provision, child-minding or day care; and
- children’s homes and residential family centres.

72. The second offence, in section 21, provides for a care provider to be guilty of an offence if:

- someone who is part of the care provider’s arrangements for the provision of care ill-treats or wilfully neglects an individual under the care provider’s care;

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<sup>3</sup> Section 85 Legal Aid Sentencing Punishment of Offenders Act 2012 came into force on 12 March 2015; it removed the maximum fine limit of £5,000 or more for an offence which is punishable on summary conviction.



- the way in which the care provider manages or organises its activities amounts to a gross breach of a relevant duty of care owed by it to the victim; and
- if that breach had not occurred the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.

73. A 'care provider' is defined as a body corporate or unincorporated association which provides or arranges for the provision of health care (other than excluded health care) or adult social care. A 'care provider' can also include an individual who provides these services and employs/makes arrangements for other people to assist in providing that care. The care provider offence can therefore be committed by both provider organisation such as hospitals and by partnerships or individuals providing care, for example GP practices.

74. Under section 23, a care provider guilty of an offence under section 21 is liable, on conviction on indictment or summary conviction, to a fine. The court may also impose a "remedial order" (requiring specified steps to be taken to remedy the breach) or a "publicity order" (requiring the fact of the conviction to be published), or both, on the convicted care provider.

#### Commencement Arrangements

75. Sections 20-25 and Schedule 4 will be commenced on 13 April 2015.

76. The offences can be committed on or after 13 April 2015.

#### Extent

77. These provisions will extend to England and Wales only.

### **Offences involving police or prison officers**

#### **Section 26: Corrupt or other improper exercise of police powers and privileges**

78. Section 26 of the Act makes it an offence for a police constable to exercise the powers and privileges of a constable improperly where the constable knows or ought to know that the exercise is improper. The exercise of a constable's powers and privileges is defined as being improper where it is for the purpose of achieving a benefit for the officer or another person or a detriment to another person, and a reasonable person would not expect the power or privilege to be exercised for the purpose of achieving that benefit or detriment.

79. The offence also covers the situation where a constable fails to exercise a power or privilege of a constable or threatens to exercise (or not exercise) such a power or privilege and the purpose of the failure or threat is to achieve such a benefit or detriment and a reasonable person would not expect a constable to so fail or threaten for such a purpose. Exercising or not exercising the powers or privileges of a constable includes performing or not performing the duties of a constable.

80. The offence is triable only on indictment and carries a maximum penalty of 14 years' imprisonment, an unlimited fine or both. The offence supplements rather than replaces the existing common law offence of misconduct in public office.

#### Commencement Arrangements

81. Sections 26 will be commenced on 13 April 2015.

82. The offence can be committed on or after 13 April 2015.

#### Extent

83. The offence applies to all constables (including special constables) of the 43 territorial police forces of England and Wales, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. It also applies to those officers of the National Crime Agency who have been designated in accordance with section 9 or 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable. The offence applies throughout the United Kingdom and its waters.

### **Section 27: Term of Imprisonment for murder of police or prison officer**

84. Section 27 amends Schedule 21 to the Criminal Justice Act 2003, which sets out the principles which a sentencing court must have regard to when assessing the seriousness of all cases of murder in order to determine the appropriate minimum term to be imposed in relation to mandatory life sentences. It provides for a starting point of whole life order for the murder of a police or prison officer in the course of his or her duty. Previously the starting point for this type of case was a 30 year minimum term.

#### Commencement Arrangements

85. Section 27 will be commenced on 13 April 2015.

86. The change in starting point will apply to those cases where the offence was committed on or after 13 April 2015.

#### Extent

87. These provisions will extend to England and Wales only.

### **Driving Offences**

#### **Section 29: Offences committed by disqualified drivers** **Schedule 6: Offences committed by disqualified drivers**

88. Section 29 of the Act creates two new offences of causing death by driving while disqualified and causing serious injury by driving while disqualified. The former is an indictable only offence and carries a maximum penalty of 10 years'

imprisonment and/or a fine. The latter is an either way offence and carries a maximum penalty of 4 years' imprisonment and/or a fine. **Annex A** explains the elements of the two offences in more detail.

#### Commencement Arrangements

89. Section 29 will be commenced on 13 April 2015.

90. The offences created by this section can be committed on or after 13 April 2015.

#### Extent

91. These provisions will extend to England, Wales and Scotland.

### **Section 30: Extension of disqualification from driving where custodial sentence also imposed**

92. Section 30 of the Act amends section 35A of the Road Traffic Offenders Act 1988 and section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 which require a court, when sentencing an offender to immediate custody and imposing a driving ban, to extend the driving ban to take account of the period the offender will spend in custody. The provisions were inserted by the Coroners and Justice Act 2009 Act and were designed to avoid a driving ban expiring, or being significantly diminished, during the period the offender is in custody.

93. The amendments made by section 30 do not substantially alter the duty on courts to extend a driving ban. Rather, they make some technical changes to the process that applies only in England and Wales for calculating the appropriate length of driving ban where an offender has been remanded in custody in order to allow for the commencement of the provisions inserted by the 2009 Act.

#### Commencement Arrangements

94. Section 30 will be commenced on 13 April 2015.

#### Extent

95. The provisions in this Act extend to England and Wales only.

### **Section 31: Mutual recognition of Driving Disqualifications between the UK and Republic of Ireland**

#### **Schedule 7: Mutual Recognition of Driving Disqualification in UK and Republic of Ireland**

96. Section 31 of and Schedule 7 to the Act give effect to a new bilateral treaty between the UK and Republic of Ireland (Ireland) currently being negotiated to allow the mutual recognition of driving disqualifications between the two countries. Similar arrangements applied from 28 January 2010 to 1 December

2014 under the framework of the European Convention on Driving Disqualifications 1998 (Convention), incorporated into UK law by the Crime (International Co-operation) Act 2003, but these ceased when the UK opted out of the Convention on 1 December 2014.

#### Commencement Arrangements

97. The new arrangements will come into force once Ireland has amended its legislation and the new treaty is ratified, which we expect to occur by the end of 2015. The treaty underpins the new arrangements and the amendments to the Crime (International Co-operation) Act 2003 reflect the terms of the new bilateral treaty. The main change will be the closure of a loophole in the Convention where drivers disqualified in one jurisdiction could falsely claim residence in the country of offence to avoid their disqualification being recognised in their home jurisdiction. The list of Northern Irish offences which are mutually recognised with Ireland will also be brought into line with those Great Britain mutually recognises with Ireland.
98. During the gap from 1 December 2014 until the new treaty is ratified the UK will not be able to notify Ireland about Irish residents who have been disqualified in the UK or to recognise disqualifications which have been imposed on UK residents in Ireland. Any disqualifications for which notifications were issued before the 1 December 2014 will remain in force for the duration of the disqualification, and the appeals mechanism for these disqualifications remains in force.
99. When the new treaty is ratified, there will be no retrospective application of the agreement – it will only apply to disqualifications that occur after the ratification.
100. A bulletin was sent to HM Courts Service and Scottish Courts Service by DVLA in November to inform them of these changes. A copy of the Bulletin is attached at **Annex B**.

#### Extent

101. These provisions apply to the United Kingdom.

### **Offences relating to causing distress etc**

#### **Section 32: Sending letters etc with intent to cause distress or anxiety**

102. Section 32 of the Act amends section 1 of the Malicious Communications Act 1988, which makes it an offence if a person, with the intention of causing distress or anxiety, sends certain items to another person which convey an indecent or grossly offensive message or are themselves of an indecent or

grossly offensive nature, or which convey a threat or information which is false and known or believed to be false by the sender.

103. This offence is currently a summary-only offence punishable by a maximum term of imprisonment of 6 months or a fine not exceeding level 5 on the standard scale, or both. Section 32 makes the offence an either-way offence and increases the maximum penalty to 2 years' imprisonment and/or a fine<sup>4</sup>. This allows more time for investigation, and makes a more serious penalty available in appropriate cases.

#### Commencement Arrangements

104. Section 32 will be commenced on 13 April 2015.
105. The changes made by section 32 only apply to offences committed on or after 13 April 2015.

#### Extent

106. These provisions will extend to England and Wales only.

### **Section 33: Disclosing private sexual photographs and films with intent to cause distress**

#### **Section 34: Meaning of “disclose” and “photograph or film”**

#### **Section 35: Meaning of “private” and “sexual”**

### **Schedule 8: Disclosing private sexual photographs or films: providers of information society services**

107. Sections 33-35 of, and Schedule 8 to, the Act create a new criminal offence of disclosing private sexual photographs and films without the consent of an individual who appears in them and with intent to cause that individual distress.
108. The offence is an either way offence which carries a maximum penalty of 2 years imprisonment and/or a fine<sup>5</sup>.
109. These changes will mean that the disclosure of private sexual photographs and films without the consent of the individual who appears in them and with intent to cause that individual distress will become a criminal offence.
110. More information about these provisions can be found at Annex C.

#### Commencement Arrangements

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<sup>4</sup> Section 85 Legal Aid Sentencing Punishment of Offenders Act 2012 came into force on 12 March 2015; it removed the maximum fine limit of £5,000 or more for an offence which is punishable on summary conviction.

<sup>5</sup> Section 85 Legal Aid Sentencing Punishment of Offenders Act 2012 came into force on 12 March 2015; it removed the maximum fine limit of £5,000 or more for an offence which is punishable on summary conviction.

111. Sections 33-35 and Schedule 8 will be commenced on 13 April 2015.
112. This offence can be committed only where the disclosure in question takes place on or after 13 April 2015.

Extent

113. These provisions will extend to England and Wales only.

**Section 36: Meeting a child following sexual grooming etc.**

114. Section 36 of the Act amends section 15 of the Sexual Offences Act 2003 (the offence of meeting a child following sexual grooming etc.) so that the number of initial occasions on which the defendant must meet or communicate with the child in question in order to commit the offence is reduced from two to one.
115. As now, following any initial communication or meeting, the defendant must intentionally meet, arrange to meet or travel with the intention of meeting the child, or the child must travel with the intention of meeting the defendant; and the defendant must intend to do something to or in respect of the child during or after any meeting which would, if done in England and Wales, amount to an offence under Part 1 of the Sexual Offences Act 2003.
116. The reform follows concerns raised by the cross-party inquiry supported by children's charity Barnardo's into the effectiveness of legislation for tackling child sexual exploitation and trafficking within the UK.

Commencement Arrangements

117. Section 36 will be commenced on 13 April 2015.
118. The offence can only be committed as amended (i.e. by proof of a single initial communication or meeting) if that communication or meeting took place on or after 13 April 2015

Extent

119. These provisions extend to England and Wales only.

**Section 37 - Possession of pornographic images of rape and assault by penetration**

120. Section 37 of the Act amends the offence of possession of extreme pornographic images in section 63 of the Criminal Justice and Immigration Act 2008 so that, in England and Wales, the offence can be committed by the possession of extreme pornographic images depicting non-consensual penetration and rape.
121. More information about these provisions can be found at **Annex D**.

Commencement Arrangements

122. Section 37 will be commenced on 13 April 2015.
123. The changes to this offence will apply only to possession of material which occurs on or after 13 April 2015.

Extent

124. The Criminal Justice and Immigration Act 2008 extends to England, Wales and Northern Ireland but the amendments made to it by this section will not affect the law as it applies in Northern Ireland.

**PART 2: YOUNG OFFENDERS**

**Detention of young offenders**

**Section 40: Powers of the Youth Justice Board in relation to provision of accommodation**

125. Section 40 amends section 41(5) of the Crime and Disorder Act 1998, which sets out the powers of the Youth Justice Board for England and Wales (the YJB), to provide that the YJB may enter into agreements for the provision of accommodation in relation to young offenders subject to a sentence of detention for public protection (under section 226 of the Criminal Justice Act 2003), an extended determinate sentence of detention (under section 226B of that Act), an extended sentence of detention for public protection (under section 228 of that Act), and the Armed Forces Act 2006 equivalents.

Commencement Arrangements

126. Section 40 will be commenced on 13 April 2015.
127. The changes made by this section will take effect from 13 April 2015.

Extent

128. These provisions will extend to England and Wales only.

**Other matters**

**Section 41: Youth cautions and conditional cautions: involvement of appropriate adults**

129. Section 41 amends the Crime and Disorder Act 1998 so that any youth caution or youth conditional caution given to a young person aged 17 must be given in the presence of an appropriate adult. That is already a requirement

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where a youth caution or youth conditional caution is given to a child or young person aged under 17.

Commencement Arrangements

130. Section 41 will be commenced on 13 April 2015.

131. The changes made by this section will take effect from 13 April 2015.

Extent

132. These provisions will extend to England and Wales only.

**Section 43: Referral orders: alternatives to revocation for breach of youth offender contract**

**Section 44: Referral orders: extension on further conviction**

**Section 45: Referral orders: revocation on further conviction**

133. Sections 43-45 of the Act amend the Powers of Criminal Courts (Sentencing) Act 2000 ("the 2000 Act"). Section 79(2) of the Legal Aid Sentencing and Punishment of Offenders Act 2012 removed the existing restrictions set out in section 17(2) of the 2000 Act on the repeated use of the referral order with the aim of promoting its use for the delivery of restorative justice conferencing. However, as a result of removing these restrictions, when a referral order contract is breached or further offences are committed, the court must revoke the order, which can result in important programmes under the youth offender contract being curtailed and the restorative justice process being undermined or left incomplete.

134. Section 43 of the Act amends Schedule 1 to the 2000 Act to provide for alternatives to revocation for a breach of a youth offender contract. This includes imposing a fine up to a maximum of £2500 or extending the youth offender contract up to a maximum of 12 months. Section 44 of the Act amends provisions in Part II of Schedule 1 to the 2000 Act to give the court the power to extend a second or subsequent referral order in respect of additional or further offences in the same way as is currently available for a first referral order. Section 45 of the Act amends provisions in paragraph 14 of Schedule 1 to the 2000 Act, providing the court with a discretionary power to be exercised in the interest of justice over whether to revoke an existing referral order for further or additional offences.

Commencement Arrangements

135. Sections 43-45 will be commenced on 13 April 2015.

136. The changes to breaches of referral order contracts in section 43 will apply to referral order contracts that were in place before 13 April 2015 but are only applicable in relation to a failure to comply with the referral order contract that occurs after 13th April 2015.



137. The changes to the extension or revocation of referral orders as a result of further convictions in sections 44 and 45 apply to offences that were committed before or after 13 April 2015.

138. The statutory guidance on referral orders will be revised to take into account the new legislation. It is available electronically through the Gov.uk website at <https://www.gov.uk/government/publications/young-offenders-referral-orders>.

Extent

139. These provisions will extend to England and Wales only.

**PART 3: COURTS AND TRIBUNALS**

***Trial by single justice on the papers***

**Section 46: Instituting proceedings by written charge**

**Section 47: Instituting proceedings: further provision**

**Section 48: Trial by single justice on the papers**

**Section 49: Trial by single justice on the papers: sentencing etc**

**Section 50: Further amendments**

**Schedule 11: Trial by single justice on the papers: further amendments**

140. Sections 46 – 50 of and Schedule 11 to the Act introduce the Single Justice Procedure which applies only to cases involving adults charged with summary-only non-imprisonable offences. It will enable such cases to be dealt with by a single magistrate sitting with a legal adviser on the papers without the attendance of either prosecutor or the defendant. The defendant will instead be able to engage with the court in writing and the case will not need to be heard in a traditional courtroom.

141. The purpose of this new procedure is to deal more proportionately with straightforward, uncontested cases currently administered under the written charge and requisition procedure, which almost exclusively result in a financial penalty. This includes cases such as TV licence evasion, failure to register a new vehicle keeper, driving without insurance and depositing litter.

142. In many of these cases the defendant chooses not to engage with the process and a hearing takes place in an empty courtroom with only magistrates, prosecutors and court staff present. This procedure offers an alternative form of proceedings which will enable these cases to be brought before the court at the earliest opportunity and dealt with more efficiently.

143. Dealing with the case in writing will enable any available court to hear cases and will introduce more flexibility in terms of the place, date and time at which cases can be heard.

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144. It will be for prosecutors to identify cases which might be suitable for the single justice procedure. These will be commenced by a written charge and a new type of document called a 'single justice procedure notice'.
145. The single justice procedure notice will be sent to the defendant explaining the offence which has given rise to the proceedings, the options available to the defendant, and the consequences of not responding to the notice. It will be accompanied by the evidence upon which the prosecutor will be relying to prove the case.
146. The notice will give the defendant a date to respond in writing to the allegation rather than a date to attend court. However the defendant will have the right to request a traditional hearing in open court at this point or indeed at any point before his case is considered by the single justice. If he wishes to plead not guilty, or otherwise wants to have a hearing in a traditional courtroom, the defendant can indicate these wishes in the response to the single justice procedure notice. In such circumstances the case will be referred to a traditional court and their case will be managed in the normal way.
147. In cases where a defendant pleads guilty and indicates that he would like to have the matter dealt with in his absence, or fails to respond to the notice at all, a single magistrate will be able to consider the case on the basis of the evidence submitted in writing by the prosecutor, and any written mitigation from the defendant. The single magistrate can convict and sentence, or dismiss the charge as appropriate.
148. If a single justice considers at any point that it would be inappropriate to conduct the case under the single justice procedure, the justice can refer it to a traditional magistrates' court at any time.

Commencement Arrangements

149. Sections 46 – 50 and Schedule 11 will be commenced on 13 April 2015.
150. The single justice procedure will take effect from 13 April 2015; the Criminal Procedure Rules will be amended to take account of the new process.
151. This will include a new rule 37.9 (Single justice procedure: special rules), associated amendments to rules 37.1, 37.2, 37.3 and 37.8, and renumbering and amendments in what will be rules 37.10 to 37.18.

Extent

152. These provisions will extend to England and Wales only.

**Time limit for bringing certain criminal proceedings**

**Section 51: Offence of improper use of public electronic communications network**

153. Section 51 amends section 127 of the Communications Act 2003 (improper use of public electronic communications network) to increase the time limit for bringing prosecutions for offences under section 127 from six months to three years from the date of the offence, provided this is also within six months of the day on which evidence which the prosecutor considers sufficient to justify proceedings comes to the prosecutor's knowledge. This allows more time for investigation.

**Commencement Arrangements**

154. Section 51 will be commenced on 13 April 2015.

155. The changes made by this section will have effect only in relation to offences committed on or after 13 April 2015.

**Extent**

156. These provisions apply to the entire United Kingdom.

***Committal to Crown Court***

**Section 52: Low-value shoplifting: mode of trial**

157. Section 52 of the Act clarifies section 22A of the Magistrates' Courts Act 1980, inserted by section 176 of the Anti-Social Behaviour, Crime and Policing Act 2014, which made theft from a shop of property valued at £200 or less a summary offence but retained the defendant's right to elect Crown Court trial. Section 52 makes clear that a low-value shoplifting case in which the defendant elects is to be treated in the same manner as an either-way offence in which the defendant has elected.

**Commencement Arrangements:**

158. Section 52 will come into force on 12 April 2015 (by virtue of section 95 of the Act).

**Extent**

159. Section 52 will apply to England and Wales only.

**Section 53: Committal of young offenders convicted of certain serious offences**

160. Section 53 of the Act amends section 3B(1) of the Powers of Criminal Courts (Sentencing) Act (the 2000 Act), which provides for the committal for sentence to the Crown Court of children and young people convicted on summary trial of certain serious offences.

161. The effect of the amendment is to make the power to commit to the Crown Court for sentence available to the Youth Court whenever a child or young person is convicted on summary trial of an offence mentioned in section 91(1) of the 2000 Act, and the court is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, is such that the Crown Court should have the power to sentence the child or young person to long-term detention under section 91 of the 2000 Act.

162. Hitherto the power to commit for sentence under section 3B(1) has been available only where the child or young person was convicted of such an offence following a guilty plea at the outset; it was not available if the defendant pleaded not guilty, even though it might subsequently transpire that the offending was more serious than it first appeared when the Youth Court accepted the case. The purpose of extending the power to commit for sentence is to encourage the Youth Court to deal with cases involving serious crimes committed by children and young people wherever appropriate.

#### Commencement Arrangements

163. Section 53 will be commenced on 13 April 2015.

164. The amendments made by section 53 apply only if the child or young person convicted of the offence first appeared in court in respect of that offence on or after 13 April 2015.

#### Extent

165. Section 53 will extend to England and Wales only.

#### **Costs of criminal courts** **Collection of fines etc**

#### **Section 54: Criminal courts charge**

#### **Section 55: Duty to review criminal court charge**

#### **Section 56: Variation of collection orders**

#### **Schedule 12: Further provisions about criminal courts charge**

166. Section 54 of the Act inserts section 21A to 21F into the Prosecution of Offences Act 1985. Section 21A and section 21B creates a new power for the court to impose a charge on all adult offenders convicted of an offence. The charge is intended to offset some of the cost of running the criminal courts. The criminal courts charge will also be imposed where an offender has been unsuccessful in an appeal against conviction or sentence, including an application for leave to appeal to the Court of Appeal, or certain breaches of a community or suspended sentence order or a supervision requirement.

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Imposition of the charge is subject to exemptions prescribed by the Lord Chancellor by regulations.

167. Section 21C requires that the charge levels are prescribed in secondary legislation and must not exceed the costs reasonably attributable to a case of the class in question. The Act does not allow the court any discretion regarding whether or not to impose the charge or the amount to impose. Section 21A(4) also prevents the court from taking the charge into account when it decides on an appropriate sentence.
168. Section 21E provides the magistrates' courts with the power to remit the charge after a specified period where the offender has taken all reasonable steps to pay the charge, having regard to the offender's personal circumstances. The aim is to incentivise rehabilitation through rewarding those offenders who do not reoffend and also encourage compliance with payment terms. The charge can also be remitted where the court is satisfied that collection and enforcement of the charge is impracticable. The specified period will be prescribed in secondary legislation and commences on the day an order to pay the charge is imposed, or a person was last convicted or released from prison.
169. In terms of all the financial impositions offenders are liable to pay, section 56 amends Schedule 5 to the Courts Act 2003 giving fines officers the power to vary payment terms after an offender has defaulted. This is in addition to existing powers to vary pre-default. The amendments also enable payment terms to require an offender to pay increased sums, with the offender's consent.

Commencement Arrangements

170. Sections 54-56 and Schedule 12 will be commenced on 13 April 2015.
171. The Prosecution of Offences Act 1985 (criminal courts charge) Regulations 2015 (the Regulations) will specify the charge levels to be imposed, exempts classes of case and sets the period of time that must have passed before the charge may be remitted. The Regulations will commence on 13 April 2015.
172. Imposition of the criminal courts charge will have effect in relation to offences committed after 13 April 2015.

Extent

173. Imposition of the criminal court charge will have effect in relation to offences committed after the powers come into force and will apply to England and Wales only.

**Civil proceedings relating to personal injury claims**

**Section 57: Personal injury claims: cases of fundamental dishonesty**

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174. Section 57 of the Act provides that in any personal injury claim where the court finds that the claimant is entitled to damages, but is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the claim, it must dismiss the entirety of the claim unless it is satisfied that the claimant would suffer substantial injustice as a result. It is for the defendant to apply for the claim to be dismissed, and the court is not required to consider the issue of its own motion.
175. This provision applies where the claimant has been fundamentally dishonest either in “primary” claims (for example where the claimant grossly exaggerates his own claim) or in “related” claims (where the claimant colludes in a fraudulent claim brought by another person in connection with the same incident or series of incidents in connection with which the primary claim is made – for example, a claim by a “phantom passenger” in a road traffic accident), or in both. Previously the court’s discretion to dismiss a claim entirely in such circumstances was limited by case law to “exceptional circumstances”, with the result that the claimant was generally still awarded compensation in relation to the “genuine” element of the claim. This section strengthens the law so that dismissal of the claim in its entirety becomes the norm in such cases, subject only to the court’s assessment regarding whether the claimant will suffer substantial injustice by such dismissal.
176. The section contains a number of supplementary provisions. Subsection (4) requires the court to record in the order dismissing the claim the amount of damages that it would otherwise have awarded. This will assist if the order is appealed; in relation to working out what the claimant should pay the defendant in costs where the court is minded to impose a costs order against the claimant; and is also relevant in the event of any subsequent proceedings being brought against the claimant for contempt of court or a criminal prosecution regarding the same behaviour, as described below.
177. Subsection (5) provides that when assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in the order under subsection (4) from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant. For example, if the amount of damages which the court records that it would have awarded but for the dismissal of the claim were £50,000, and the amount that the court would otherwise order the claimant to pay in respect of the defendant’s costs was £100,000, the claimant could not be ordered to pay the defendant more than £50,000 in respect of those costs.
178. Subsections (6) and (7) provide for the order for dismissal to be taken into account in relation to the disposal of any proceedings relating to the same dishonest conduct against the claimant for contempt of court or criminal prosecution. This will enable the court to ensure that any punishment imposed in those proceedings is proportionate.

Commencement Arrangements

179. Section 57 will come into force on 13 April 2015.

180. The section applies to proceedings which are started by the issue of a claim form on or after 13 April 2015.

Extent

181. These provisions will extend to England and Wales only.

**Section 58: Rules against inducements to make personal injury claims**

**Section 59: Effects of rules to make personal injury claims**

**Section 60: Inducements: interpretation**

**Section 61: Inducements: regulations**

182. Sections 58 – 61 of the Act prohibit legal services providers from offering monetary and non-monetary benefits (commonly referred to as “inducements”) to potential clients as an incentive to make a personal injury claim. The ban will apply to the offer of a benefit which is intended to encourage - or is likely to have the effect of encouraging - a person to make a claim or seek advice about making a claim. This includes welcome payments, free gifts and cash advances.

183. At present, the prohibition applies to solicitors, legal executives, barristers and alternative business structures but there is provision in the Act for it to be extended. Enforcement of the prohibition will fall to the relevant regulators.

184. This complements significant reforms that the Government has introduced over recent years to control the costs in civil litigation and, in particular, to help discourage unmeritorious, fraudulent and exaggerated personal injury claims. The offering of inducements encourages an additional volume of weaker claims which would not otherwise be made, ultimately increasing costs for motor insurers and hence leading to higher motor insurance premiums than otherwise. Many inducements which appear to be offered do not materialise in practice, thereby misleading claimants.

185. The Government seeks to ban claimant lawyers from offering inducements or similar rewards, either directly or through a third party. It is anticipated that the main effects of the reform will be to reduce the volume of weaker claims and to protect claimants from inducement advertising which is misleading.

Commencement Arrangements

186. Sections 58-61 will be commenced on 13 April 2015; the ban will come into force from 13 April 2015.

Extent

187. These provisions will extend to England and Wales only.

**Appeals in civil proceedings**

**Section 62: Appeals from the Court of Protection**

188. Section 62 of the Act amends section 53 of the Mental Capacity Act 2005, rectifying an omission in relation to appeals from decisions at lower levels in the Court of Protection which was not addressed when the range of judicial office holders able to sit as judges of the Court of Protection was expanded in the Crime and Courts Act 2013. The need for the amendment does not arise from, but has been starkly highlighted by, the decision of the Supreme Court in what has become known as the ‘Cheshire West’ case. That decision required a radical reassessment of cases in which it may now be considered that a person who lacks mental capacity to consent to care arrangements is deprived of liberty as a result of those arrangements, so that the authorisation of the court is required.
189. As a result, it is predicted that there will be a significant increase in the number of cases coming before the Court of Protection for declarations authorising deprivation of liberty.
190. To deal with the anticipated increase in workload, deputy district judges and judges from other jurisdictions are being deployed to the Court of Protection. However, the route of appeal in such cases would be directly to the Court of Appeal, thereby increasing workload in the appeal court also.
191. The section therefore harmonises the appeals process, enabling appeals from decisions of judges of equivalent level to district judges to go to a higher tier of judge within the Court of Protection and for the detailed arrangements to be set out in Court of Protection Rules. The approach prevents the Court of Appeal from being unnecessarily burdened by a significant increase in cases and allows the Court of Protection the flexibility to deal with resources efficiently. This, in turn, will reduce delays and the need for cases to be transferred to a different court, also providing greater consistency with how appeals are managed across other jurisdictions.

**Commencement Arrangements**

192. Section 62 came into force on 12 February 2015 (by virtue of section 95 of the Act).

**Extent**

193. These provisions will extend to England and Wales only.



### **Section 63: Appeals from the High Court to the Supreme Court**

194. Section 63 of the Act extends the scope of the process where appeals can proceed directly to the Supreme Court, bypassing the Court of Appeal, known as 'leapfrog' appeals. The powers and procedures governing leapfrog appeals are set out at sections 12 to 16 of the Administration of Justice Act 1969.
195. The intention is for certain cases, which seem likely ultimately to be heard in the Supreme Court, to be resolved more quickly without needing to move step by step through the court hierarchy.
196. Prior to the implementation of this section, a leapfrog appeal can only take place where a case involves a point of law that is of general public importance and which either relates to statutory interpretation and has been fully argued in the case or is one where the High Court would be bound by a superior court which has considered that point of law fully. Both parties must consent and first the High Court and subsequently the Supreme Court have to agree before the leapfrog appeal can take place.
197. Section 63 amends sections 12 and 16 of the Administration of Justice Act 1969 in order to widen the scope of appeals that can leapfrog. Under the revised approach, a leapfrog may also be granted where the appeal involves a point of law of general public importance and one or more of three conditions is met: that the appeal raises issues of national importance, that the result is of particular significance or that the benefit of earlier consideration by the Supreme Court outweighs the benefit of consideration by the Court of Appeal. Under the revised approach, the requirement for all parties to consent to the leapfrog is removed, although the agreement of both the High Court and the Supreme Court is still required.

#### Commencement Arrangements

198. Section 63 will be commenced on 13 April 2015.
199. The changes made by section 63 will apply to leapfrog appeals of judgments or orders made on or after 13 April 2015.

#### Extent

200. Section 63 will apply to England and Wales only.

**Costs in civil proceedings**

**Section 67: Wasted costs in certain civil proceedings**

201. Section 67 of the Act amends section 51 of the Senior Courts Act 1981 to require a court which makes a Wasted Costs Order to consider whether to notify a legal representative's regulatory body and/or the Director of Legal Aid Casework.
202. A Wasted Costs Order makes a litigant's legal or other representative liable to pay costs of litigation which were caused unnecessarily by the representative's improper, unreasonable or negligent conduct.
203. Section 67 does not affect the present arrangements for the making of a Wasted Costs Order, and nor does it require the court that makes the order to notify the regulatory body or the Director of Legal Aid Casework that an order has been made.
204. Where the court does make a notification, on receipt of it the regulatory body or the Director of Legal Aid Casework would normally be expected to consider this information, although this is not an actual requirement under section 67.

**Commencement Arrangements**

205. Section 67 will be commenced on 13 April 2015.

**Extent**

206. Section 67 will extend to England and Wales only.

**Juries and Members of the Court Martial**

**Section 69: Jurors and electronic communications devices**

**Section 70: Jurors and electronic communications devices: powers of search etc**

**Section 71: Research by jurors**

**Section 72: Sharing research with jurors**

**Section 73: Jurors engaging in other prohibited content**

**Section 74: Disclosing jury's deliberations**

**Section 75: Juries at inquests**

**Section 77: Supplementary provision**

**Schedule 13: Juries at inquests**

207. Section 69 of the Act inserts a new section 15A into the Juries Act 1974 and provides for a discretionary power for a judge to order jurors to surrender their electronic communications device for a period of time while on jury service. Section 70 inserts a new section 54A into the Courts Act 2003 which provides the court with powers to enforce an order made under section 15A of the Juries Act 1974.

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208. Section 71 of the Act inserts a new section 20A into the Juries Act 1974 which makes it an offence for a member of a jury to research information relevant to the case he or she is trying. Subsections (3) to (5) of new section 20A set out more detail about the circumstances in which the offence will apply. The offence is indictable only and the maximum penalty is 2 years imprisonment and/or a fine.
209. Section 72 of the Act inserts a new section 20B into the Juries Act 1974 which makes it an offence for a member of a jury intentionally to disclose information to another member of the jury that had been obtained by research in contravention of the new section 20A, and the information has not been provided by the court. The offence is indictable only and the maximum penalty is 2 years imprisonment and/or a fine.
210. Section 73 of the Act inserts a new section 20C into the Juries Act 1974 which makes it an offence for a member of a jury, trying an issue before a court, intentionally to engage in conduct from which it may be reasonably concluded that the person intends to try the issue otherwise than on the basis of the evidence presented in the proceedings on the issue. The offence is indictable only and the maximum penalty is 2 years imprisonment and/or a fine.
211. Section 74 of the Act introduces new sections 20D, 20E, 20F and 20G to the Juries Act 1974 which makes it an offence for a person intentionally to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in proceedings before a court, or to solicit or obtain such information. This covers the same conduct as section 8 of the Contempt of Court Act 1981, which is no longer to have effect in England and Wales. However, there will be occasions when disclosure may be in the interests of justice. The provisions therefore create exceptions so that a juror with real concerns about specific issues affecting the fairness of the deliberation process, such as the commission of offences or contempt, can make disclosure in certain situations. The offence is indictable only and the maximum penalty is 2 years imprisonment and/or a fine.
212. Section 75 of the Act refers to Schedule 13 which amends the Coroners and Justice Act 2009 to make similar provision for juries at inquests during their deliberations, including provision for surrender of electronic devices by jurors and provision creating offences of juror misconduct.
213. Section 77 of the Act amends Schedule 1 to the Juries Act 1974 and adds conviction for a juror misconduct offence to the list of criteria for disqualification of a person from jury service. The period of disqualification would be for ten years. Section 77 also makes clear that creation of the new offences, as detailed, does not affect what constitutes contempt of court at common law. We envisage that the new offences will be used to prosecute jurors where their misconduct falls within the proscribed behaviour previously outlined. However, as the law of contempt will remain extant, it could be used to deal with juror misconduct where this arises.

Commencement Arrangements

214. Sections 69-75 and Schedule 13 will be commenced on 13 April 2015.
215. The offences created by these provisions can be committed on or after 13 April 2015. However, the new offences in section 71-73 will not apply to a juror during a trial where that juror was sworn in before 13 April. These offences can only be committed during a trial.
216. The new offence in section 74 can be committed both during a trial and after the conclusion of a trial. This offence will not apply to a juror during a trial where the juror was sworn in before 13 April, but will apply to such a person after discharge. A non-juror can commit the new section 74 offence at any time after 13 April.

Extent

217. These provisions will extend to England and Wales only.

**Section 76: Members of the Court Martial**

**Schedule 14: Members of the Court Martial**

218. Section 76 of and Schedule 14 to the Act make provision for the service justice system, equivalent to those addressing jury misconduct. There is no jury in the Court Martial and the finders of fact (who may be service personnel or civilians, depending on the status of the defendant) are called lay members. These provisions are intended to mirror the developments in the civilian justice system with necessary adjustments for the service courts.
219. Section 76 gives effect to Schedule 14 which amends the Armed Forces Act 2006 ("the 2006 Act"), to make provision (in new section 163A of and new Schedule 2A to the 2006 Act) about offences relating to members of the Court Martial and their deliberations. A new service offence is created in respect of each of the four new civilian juror offences and for one of the offences (disclosing information about members' deliberations) there is a further new civilian offence created.
220. Further guidance will be issued by the Ministry of Defence to the relevant service justice system agencies in due course.

Commencement Arrangements

221. Section 76 and Schedule 14 will be commenced on 13 April 2015.
222. The offences created by these provisions will take effect on the date of commencement (13 April 2015). However, the service offences will not be capable of being committed by lay members during the trial period where they were sworn to try the case before 13 April 2015.

Extent

223. These provisions have UK-wide extent and the service offences will apply to all lay members of the Court Martial and wherever the Court Martial sits.
224. The offence of disclosing information about members' deliberations can be tried by the Crown Court if it is committed in England and Wales by a person who is not a lay member, person subject to service law or civilian subject to service discipline.

**Reporting Restrictions**

**Section 78: Lifetime reporting restrictions in criminal proceedings for witnesses and victims under 18**

**Section 79: Reporting restrictions in proceedings other than criminal proceedings**

**Section 80: Reporting restrictions: information society services**

**Schedule 15: Reporting restrictions: providers of information society services**

225. Section 78 of the Act gives courts the ability to impose lifetime reporting restrictions for victims and witnesses under the age of 18 involved in criminal proceedings or proceedings before a service court, by adding a section 45A to the Youth Justice and Criminal Evidence (YJCE) Act 1999.
226. Section 79 of the Act amends section 39 of the Children and Young Persons Act (CYPA) 1933 so that reporting restrictions under that section will now only apply to non-criminal proceedings. Section 79 expands the scope of reporting restrictions made under section 39 beyond newspapers and sound and television broadcasts to cover any communication to the public at large or any section of the public, thereby including online content and social media. Section 80 of and Schedule 15 to the Act insert a Schedule 1A into the CYPA 1933 and Schedule 2A into the YJCE Act 1999.
227. The Schedules set out specific provisions applicable to providers of information society services<sup>6</sup> where a breach of a reporting restriction order made under section 39 of the CYPA 1933, or where an offence under section 49 of the YJCE Act 1999, has occurred<sup>7</sup>. We intend to publish a further circular describing sections 78 to 80 and Schedule 15 prior to their coming into force.

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<sup>6</sup> "Information society services" are defined in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of the Technical Standards Directive 98/34/EC, as amended by Directive 98/48/EC) - "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service". [[http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX\\_SESSIONID=whY9JkcYTL1BmThtZ3lwLqYxbLJ5hTvhHJSJDcskkWy3hccyTYNz!134760967?uri=CELEX:32000L0031](http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=whY9JkcYTL1BmThtZ3lwLqYxbLJ5hTvhHJSJDcskkWy3hccyTYNz!134760967?uri=CELEX:32000L0031)].

<sup>7</sup> Please note that the Electronics Commerce (EC Directive) Regulations 2002 (SI 2002/2013) already applied to section 49 of the CYPA 1933 as amended by Schedule 2 of the YJCE 1999. Therefore the new Schedule 1A of the CYPA 1933, which addresses the position of providers of information society services, applies only to section 39 of the CYPA 1933 because it has been amended by the CJC Act 2015. The Electronics Commerce (EC Directive) Regulations 2002 (SI 2002/2013) as applicable to

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228. Section 45 of the YJCE Act 1999 provides a general power for a reporting restriction applying to under-18s involved in criminal proceedings to be imposed in any court (apart from proceedings in and on appeal from the Youth Court, which are covered by s.49 of the CYPA 1933). Similar to section 39 of the CYPA 1933, reporting restrictions made under section 45 will expire when the subject of the order turns 18 (or, where the subject turns 18 during proceedings, at the end of proceedings).

229. Reporting restrictions made under section 45 of the YJCE Act 1999 apply beyond newspapers and sound and television broadcasts to cover any communication to the public at large or any section of the public, thereby including online content and social media. The commenced provisions within Schedule 2 of the YJCE Act 1999 expand the scope of reporting restrictions in the Youth Court and on appeal from it (under section 49 of the CYPA 1933) beyond newspapers and sound and television broadcasts to include online content.

Commencement Arrangements

230. Section 78 – 80 and Schedule 15 will be commenced on 13 April 2015.

231. Section 45 and certain provisions within Schedule 2 of the YJCE Act 1999 will also be commenced on 13 April 2015 through a separate commencement order.

232. A lifetime reporting restriction may be made in respect of a victim or witness under section 45A of the YJCE Act 1999 in criminal proceedings that began on or before (and are still ongoing) 13 April 2015. Individuals involved in criminal proceedings that were instituted before 13 April 2015 can still access reporting restrictions (including the broader definition of ‘publication’) via section 39 of the CYPA 1933 by virtue of the saving provision in section 79(12) of the Act.

Extent

233. Section 78 makes provisions in respect of lifetime reporting restrictions for victims and witnesses under the age of 18 involved in criminal proceedings in England and Wales, and before any service court in the United Kingdom or elsewhere.

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section 49 of the CYPA 1933 contain similar provisions to those in the new Schedule 1A of the CYPA 1933 and Schedule 2A of the YJCE 1999.

**Other Matters**

**Section 81: Representation to Parliament by the President of the Supreme Court**

**Section 82: The supplementary panel of the Supreme Court**

**Section 83: Minor amendments**

234. Section 81 of the Act introduces in section 5 of the Constitutional Reform Act 2005 the ability for the President of the UK Supreme Court to have the power to make written representations to Parliament in relation to the Supreme Court and the jurisdiction it exercises. This mirrors the existing power of the Lord Chief Justice, the Lord Chief Justice of Northern Ireland and the Lord President of the Court of Session to make representations on matters of importance relating to the judiciary, or otherwise to the administration of justice.

235. Section 82 of the Act amends section 39 of the Constitutional Reform Act 2005 and enables senior judges from England and Wales, Scotland and Northern Ireland who are under 75 to be added to the Supplementary Panel within two years of their retirement. This gives the UK Supreme Court greater scope and flexibility to appoint recently retired judges to the Supplementary Panel.

**Commencement Arrangements**

236. Sections 81-83 will be commenced on 13 April 2015.

**Extent**

237. Section 81 and section 82 apply to the United Kingdom.

**PART 4: JUDICIAL REVIEW**

**Judicial Review in the High Court and Upper Tribunal**

**Section 84: Likelihood of substantially different outcome for applicant**

238. Section 84 of the Act amends section 31 of the Senior Courts Act 1981 to build on the existing position under case law, where in judicial reviews the court has discretion over whether to refuse permission to proceed or to provide a remedy on the basis that it is inevitable that a complained of flaw would not have made a difference.

239. Section 84 requires the court to refuse permission or a remedy where it considers that it is highly likely that the outcome for the applicant would not have been substantially different if the conduct complained about (the alleged failure giving rise to the judicial review) had not occurred, unless the court considers it appropriate to grant permission or a remedy for reasons of exceptional public interest and certifies that this is the case.

240. The section requires the court to consider this type of argument at permission if raised by the defendant. The court may also consider these types of arguments of its own volition.

#### Commencement Arrangements

241. Section 84 will be partially commenced on 13 April 2015.
242. Section 84 will come in to effect in the High Court for proceedings which are started by the issue of a claim form on or after 13 April 2015. The changes will not apply to existing cases. Section 84 will not be commenced in tribunals at present.
243. Changes to the Civil Procedure Rules have been made and will come into force on 13 April 2015. The Rules provide for oral permission hearings where required to consider arguments under section 84.

#### Extent

244. These provisions will extend to England and Wales only.

#### **Section 87: Interveners and costs**

245. Section 87 of the Act amends the costs position of those who voluntarily apply for permission to intervene (an intervener) in a judicial review in the High Court or Court of Appeal. It does not apply where a court of its own volition invites an intervener to intervene in the proceedings.
246. The courts can make costs orders against or in favour of interveners under their general discretion in relation to costs. Section 87 establishes two presumptions that the court must follow unless there are exceptional circumstances.
247. The first presumption is that interveners should bear their own costs and a party to the judicial review cannot be required to pay an intervener's costs unless exceptional circumstances make this appropriate.
248. The second presumption is that, where a party applies to the court, asking the court to order an intervener to pay that party's costs arising from the intervention, unless there are exceptional circumstances the court must make such an order if one or more of four conditions are met. The conditions are that:
- a. the intervener has acted, in substance as the sole or principal applicant, defendant, appellant or respondent;
  - b. the intervener's evidence and representations, taken as a whole, have not been of significant assistance to the court;
  - c. a significant part of the intervener's evidence and representations relates to matters that it is not necessary for the court to consider in order to



- resolve the issues that are the subject of the stage in the proceedings;  
and  
d. the intervener has behaved unreasonably.

Commencement Arrangements

249. Section 87 will be commenced on 13 April 2015.

250. The Civil Procedure Rules may set out matters to which the court must have regard when determining whether there are exceptional circumstances for the purposes of either of the two presumptions.

251. These provisions will take effect for proceedings which are started by the issue of a claim form on or after 13 April 2015. The changes will not apply to existing cases.

Extent

252. These provisions will extend to England and Wales only.

**Section 92: Periods of time for certain legal challenges**

253. Section 92 harmonises the start date from which various planning-related challenges may be brought by providing for the start of the challenge period to commence from the day after the relevant decision has been made in each case. It applies in respect of statutory reviews brought under sections 61N and 106C of the Town and Country Planning Act 1990; and sections 13 and 118 of the Planning Act 2008.

Commencement Arrangements

254. Section 92 will be commenced on 13 April 2015.

Extent

255. Section 92 extends to England and Wales only.

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**Annex A: Section 29**  
**(OFFENCES COMMITTED BY DISQUALIFIED DRIVERS)**

**Introduction**

1. Section 29 of the Criminal Justice and Courts Act (CJC Act)<sup>8</sup> creates two new offences of causing death by driving while disqualified and causing serious injury by driving while disqualified. The former is an indictable only offence punishable by a maximum custodial sentence of 10 years' imprisonment. The latter is an either way offence punishable by a maximum sentence on indictment of 4 years' imprisonment. The elements of the offences and penalties are described in more detail below. The aim of these offences is to ensure that the courts have sufficient powers to impose sentences which, in Parliament's view, more appropriately reflect the offender's level of culpability.
2. The purpose of this circular is to explain the elements of the two offences, their territorial extent and the Government's plans for commencement. It is for guidance only and should not be regarded as providing legal advice. Guidance for prosecutors on the offences will be made available on the CPS website<sup>9</sup>. Section 37A PACE 1984 is applicable with regard to the responsibility on charging<sup>10</sup>.

**Elements of the offences**

3. Section 29(1) adds two new sections to the Road Traffic Act 1988. New section 3ZC creates an offence of causing death by driving while disqualified which is committed when:
  - a person (P) causes the death of another person (V) by driving a motor vehicle on a road, and
  - at the time of causing this death, P is committing an offence under section 103(1)(b) of the Road Traffic Act 1988 (driving while disqualified).
4. Causing death by driving while disqualified was already a criminal offence under section 3ZB of the Road Traffic Act 1998, but these changes mean that disqualified drivers who cause death will now be dealt with separately from uninsured and unlicensed drivers. The maximum penalty for unlicensed and uninsured drivers who cause death under section 3ZB will remain at 2 years' imprisonment and that offence remains either-way, but the maximum penalty for disqualified drivers who cause death under new section 3ZC will be increased to 10 years' imprisonment and the new offence is indictable only.
5. New subsection 3ZD creates a new offence of causing serious injury by driving while disqualified which is committed when:
  - a person (P) causes serious injury to another person (V) by driving a motor vehicle on a road, and

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<sup>8</sup> <http://services.parliament.uk/bills/2014-15/criminaljusticeandcourts/documents.html> (HL Bill 49 - 29/10/2014)

<sup>9</sup> [http://www.cps.gov.uk/publications/directors\\_guidance/index.html](http://www.cps.gov.uk/publications/directors_guidance/index.html).

<sup>10</sup> [www.legislation.gov.uk/ukpga/1984/60/contents](http://www.legislation.gov.uk/ukpga/1984/60/contents)

- at the time of causing this serious injury, P is committing an offence under section 103(1)(b) of the Road Traffic Act 1988 (driving while disqualified).
6. For the purposes of this offence “serious injury” means:
    - in England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861, and
    - In Scotland, severe physical injury.”
  7. This is consistent with the definition of serious injury in existing offence of ‘causing serious injury by dangerous driving’ at section 1A of the Road Traffic Act 1988.
  8. The changes which have been made to the Road Traffic Act 1988 can be viewed at **Annex A1**.

### **Causation**

9. Both new offences in sections 3ZC and 3ZD of the Road Traffic Act 1988 are committed when a driver ‘causes death/serious injury... by driving while disqualified’. This means that for a person to be convicted of these offences a causative link between the driving and the death must be proved. The Supreme Court has held that causation can be proved if there is something open to proper criticism in the way the offender was driving which contributed more than minimally to the death. This need not amount to an error which was grave enough to constitute ‘careless’ or ‘dangerous’ driving and it need not be the principal cause of death. It could include relatively minor indiscretions such as driving with a tyre that has fallen below the prescribed tread limit if this caused the driver not to stop in time and therefore contributed more than minimally to the death (see *R v Hughes* [2013] UKSC 5)<sup>11</sup>.
10. If causation cannot be proved (e.g. where a disqualified driver (D) was driving without other fault when another dangerous driver (S) crashed into D and S died), D should not be prosecuted or convicted for causing death by driving while disqualified (or indeed, for any other ‘causing death by driving’ offence). D could of course still be prosecuted for other offences such as driving while disqualified<sup>12</sup>.
11. While there might be some cases where it is difficult to prove causation, the new offences should provide prosecutors with additional charging options, particularly where carelessness *can* be proved. Currently the maximum penalty for causing death by careless driving is five years’ imprisonment, but if in such a case it turns out that D was banned from driving, D could be prosecuted for causing death by disqualified driving under the new offence at 3ZC and become liable to a maximum penalty of 10 years’ imprisonment.

### **Penalties**

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<sup>11</sup> The full judgement of *R v Hughes* can be seen at: [https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2011\\_0240\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2011_0240_Judgment.pdf)

<sup>12</sup> *R v Hughes* [2013] UKSC at [https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2011\\_0240\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2011_0240_Judgment.pdf)

12. Section 29(2) sets out the penalties for these two offences, which are to be inserted into Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988. This specifies how offences in the Road Traffic Act 1988 will be tried, what the maximum penalties will be upon conviction and whether the offence requires disqualification and endorsements on the license.
13. The changes which have to the Road Traffic Offenders Act 1988 can be viewed at **Annex A2**.
14. As mentioned above, the offence under section 3ZC is triable on indictment only and carries a maximum custodial penalty of 10 years' imprisonment or an unlimited fine or both. The offence under section 3ZD may either be triable summarily or on indictment. If tried summarily the maximum penalty is 6 months' imprisonment or a fine or both. If tried on indictment, the maximum penalty is 4 years' imprisonment or an unlimited fine or both.
15. A conviction for an offence under section 3ZC or 3ZD will also lead to a mandatory period of two years' disqualification (unless the court for special reasons thinks it should be less) and the driver would be required to sit an extended retest before his licence could be reinstated.
16. Section 29(4) introduces a new schedule which contains further amendments relating to the offences under section 3ZC and 3ZD. For example, this adds provisions on alternative verdicts to the Road Traffic Offenders Act 1988 to ensure that a driver can still be convicted of disqualified driving if the new offences of causing death or serious injury by driving while disqualified cannot be proved.
17. It also adds the offence of causing death by driving while disqualified under section 3ZC to Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences for the purposes of sentencing dangerous offenders).

### **Territorial Extent**

18. The offences will apply throughout England, Wales and Scotland, but not to Northern Ireland where there is a separate framework of road traffic offences.

### **Commencement**

19. The offences will be commenced on 13 April 2015.
20. Section 29(5) of the Criminal Justice and Courts Act provides that the new offences in section 3ZC and 3ZD will only apply to driving which occurs on or after the date of commencement.

### **Useful links**

Criminal Justice and Courts Act 2015 (CJC Act):

<http://services.parliament.uk/bills/2014-15/criminaljusticeandcourts/documents.html>

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Explanatory notes on the Criminal Justice and Courts Act 2015:  
<http://www.legislation.gov.uk/ukpga/2015/2/contents/enacted>

**Annex A1: Section 29**

**Changes to section 3ZB of the Road Traffic Act 1988 made by section 29 of the Criminal Justice and Courts Act 2015**

**“3ZB Causing death by driving: unlicensed, ~~disqualified~~ or uninsured drivers**

A person is guilty of an offence under this section if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under—

- (a) section 87(1) of this Act (driving otherwise than in accordance with a licence),
- ~~(b) section 103(1)(b) of this Act (driving while disqualified), or with a licence),~~ or
- (c) section 143 of this Act (using motor vehicle while uninsured or unsecured against third party risks).

**3ZC Causing death by driving: ~~disqualified~~ drivers**

A person is guilty of an offence under this section if he or she—

- (a) causes the death of another person by driving a motor vehicle on a road, and
- (b) at that time, is committing an offence under section 103(1)(b) of this Act (~~driving while disqualified~~).

**3ZD Causing serious injury by driving: ~~disqualified~~ drivers**

(1) A person is guilty of an offence under this section if he or she—

- (a) causes serious injury to another person by driving a motor vehicle on a road, and
- (b) at that time, is committing an offence under section 103(1)(b) of this Act (~~driving while disqualified~~) –

(2) In this section “serious injury” means—

- (a) in England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861, and
- (b) in Scotland, severe physical injury.”

**Annex A2: Section 29**

**Changes to Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (prosecution and punishment of offences under the Traffic Acts) made by section 29 of the Criminal Justice and Courts Act 2015**

"RTA Section 3ZB	Causing death by driving: unlicensed, disqualified or uninsured drivers	(a) Summarily  (b) On indictment	(a) 12 months (in England and Wales) or 6 months (in Scotland) or the statutory maximum or both.  (b) 2 years or a fine or both.	Obligatory	Obligatory	3-11
RTA Section 3ZC	Causing death by driving: disqualified drivers	On indictment	10 years or a fine or both	Obligatory	Obligatory	3-11
RTA section 3ZD	Causing serious injury by driving: disqualified drivers	(a) Summarily	(a) On Conviction in England and Wales: 12 months <sup>13</sup> or a fine <sup>14</sup> or both. On conviction in Scotland: 12 months	Obligatory	Obligatory	3-11"

<sup>13</sup>In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in column 4 to 12 months on summary conviction in England and Wales is to be read as a reference to 6 months.

<sup>14</sup>In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in column 4 to a fine on summary conviction in England and Wales is to be read as a reference to the statutory maximum.



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		<b>(b) On indictment</b>	<b>or the statutory maximum or both.</b>		
			<b>(b) 4 years or a fine or both</b>		

Schedule 6 to the Criminal Justice and Courts Act 2015 (CJC Act) contains further amendments relating to the offences under sections 3ZC and 3ZD of the Road Traffic Act 1988.

The amendments made by section 29 and Schedule 6 of the CJC Act have effect only in relation to driving which occurs after they come into force.

**Annex B: Section 31**  
**MUTUAL RECOGNITION OF DRIVING OFFENCES**

**Mutual recognition bulletin for Her Majesty's Courts and Tribunal Services (HMCTS) and Scottish Courts Service (SCS)**

1. Arrangements for mutual recognition of driving disqualifications currently exist between the UK (Great Britain and Northern Ireland) and Ireland. A driver resident in the UK but disqualified in Ireland will also be disqualified in the UK. Likewise, a driver resident in Ireland but disqualified in the UK will also be disqualified in Ireland.
2. This is currently carried out under the framework of the European Convention on Driving Disqualifications 1998 (EU Convention) which was incorporated into UK primary legislation by the Crime (International Co-operation) Act 2003. Since 28 January 2010 the UK and Ireland have been mutually able to recognise driving disqualifications imposed on their residents in the other jurisdiction.

**What is changing?**

1. The UK is opting out of the EU Convention which means that the mutual recognition of driving disqualifications between the UK and Ireland **will no longer apply from 1 December 2014**. Court guidelines regarding mutual recognition of driving disqualified should be disregarded from this date.
2. In order to permit mutual recognition of driving disqualifications a new international agreement must be put in place.
3. The UK and Ireland are currently negotiating a new bilateral treaty in order to permit mutual recognition of driving disqualifications. Once agreed we will move towards signature and ratification. The Treaty underpins the new arrangements and the UK has introduced amendments through the Criminal Justice and Courts Act 2015 to the Crime (International Co-operation) Act 2003 to reflect the terms of the proposed new bilateral treaty. However, the treaty will not be in force on 1 December 2014, and so there will be a gap between the two systems.
4. During this gap it will not be possible for the UK to notify Ireland about Irish residents who have been disqualified in the UK or for the UK to recognise disqualifications which have been imposed on UK residents in Ireland.
5. Any disqualifications for which notifications have been issued before the 1 December 2014 will remain in force for the duration of the disqualification, and the appeals mechanism for these disqualifications will remain in force.
6. A further update will be provided when the legislative provisions relating to the proposed new bilateral treaty come into force.

**Annex C: Sections 33 - 35**

**DISCLOSURE OF PRIVATE SEXUAL PHOTOGRAPHS AND FILMS WITH INTENT TO CAUSE DISTRESS**

1. This Annex provides information on the new offence. The purpose is to provide guidance and this should not be regarded as providing legal advice. Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.
  
2. This Annex is set out under the following headings;
  - Annex C1: Background and change in legislation
  - Annex C2: FAQ

**Annex C1: Sections 33 - 35**  
**BACKGROUND AND CHANGE IN LEGISLATION**

**Background and change in legislation**

3. The Government has looked into the concerns raised by campaigners and Parliamentarians about behaviour known as “Revenge Porn”, a broad term used to describe a range of actions. Usually it involves an individual (often an adult ex-partner) uploading onto the internet intimate sexual images of the victim, to cause the victim humiliation or embarrassment.
4. The Government has engaged with the public and a range of stakeholder groups about this issue and has created a new criminal offence to ensure that this behaviour is fully captured by the criminal law.
5. Various defences will be available, for example, where the defendant reasonably believes that the material was previously disclosed for reward and had no reason to believe that the victim did not consent (such as commercial pornography) or where the disclosure was necessary for the investigation, prevention or detection of crime. It will also be a defence if the disclosure was made in the course of, or with a view to, the publication of journalistic material where the defendant reasonably believes that the publication of that journalistic material was or would be in the public interest.
6. The offence, which will extend to England and Wales, will be triable either way and punishable with a maximum sentence of 2 years’ imprisonment.

**The new offence**

7. Section 33 of the Criminal Justice and Courts Act 2015 creates the new criminal offence, with the associated definitions set out at sections 34 and 35.

**Annex C2: Sections 33 - 35**  
**FREQUENTLY ASKED QUESTIONS**

**Frequently Asked Questions**

**1. Where can I find the full terms of the new offence?**

The new offence, including defences and definitions, is at sections 33 to 35 of the Criminal Justice and Courts Act 2015.

**2. What will the penalty be?**

The offence is triable either way and punishable with a maximum sentence of 2 years' imprisonment.

**3. Does the offence only apply to images posted on the internet?**

No. The offence will apply to any kind of disclosure of private sexual photographs or films (assuming that the other criteria in the offence are satisfied). This could include uploading images on the internet, sharing by text or e-mail, or showing someone a physical image. The offence applies equally online and offline and to images which are shared by electronic means or in a more traditional way.

**4. Typically, what would have to be in an image to constitute revenge pornography?**

To fall within the offence, a photograph or film would have to be private and sexual. This could include an image that depicted an individual's exposed genitals, or a picture of someone who is engaged in sexual behaviour or posing in a sexually provocative way, if what is shown is not of a kind ordinarily seen in public.

**5. Why is a photograph or film which portrays someone's genitals caught by the offence but not other kinds of naked photographs/films?**

The offence only makes specific reference to one part of the body – exposed genitals or pubic area – because this part of the body is considered to be so intimate that an image showing it should automatically be regarded as sexual for the purposes of the offence. Photographs or films depicting other types of nakedness would be caught by the offence if they meet the definition of private and sexual.

**6. Does the offence apply to material which does not appear photographic?**

The offence is drafted so that it only applies to material which looks photographic and which originates from an original photograph or film recording. This is because the harm intended to be tackled by the offence is the misuse of intimate photographs or films.

**7. Does the offence cover digitally manipulated photographs?**

The offence will still apply in principle to an image which appears photographic and originated from a photograph or film even if the original has been altered in some way or where two or more photographed or filmed images are combined.

But the offence does not apply if it is only because of the alteration or combination that the film or photograph has become private and sexual or if the intended victim is only depicted in a sexual way as a result of the alteration or combination.

So, for example, a person who has non-consensually disclosed a private and sexual photograph of his or her former partner in order to cause that person distress will not be able to avoid liability for the offence by digitally changing the colour of the intended victim's hair. However, a person who simply transposes the head of a former partner onto a sexual photograph of another person will not commit the offence.

**8. Would the offence cover photographs or films which are completely computer generated but made to look like a photograph?**

No. While we accept that it would be distressing for such a photograph or film to be disclosed, we do not believe that such images have the potential to cause as much harm as private and sexual images that record real private events and are then disclosed.

**9. Will everyone who re-tweets or forwards without consent, a private sexual photograph or film become liable for the offence?**

Not unless the purpose in doing so is to cause distress to the individual depicted in the photograph or film who has not consented to the disclosure.

**10. Will anyone who sends the message simply because he or she thinks it is funny, or because of a wish to make money out of the disclosure, become liable for the offence?**

A person will only be guilty of the offence if the reason for disclosing the photograph, or one of reasons, is to cause distress to a person depicted in the photograph or film.

**11. Why does the offence provide a defence for disclosures relating to journalistic activity?**

The offence is not committed where a person discloses material in the course of or with a view to the publication of journalistic material so long as the person concerned reasonably believes that the publication in question would be in the public interest.

Whilst we are determined to tackle the misuse of this kind of private sexual material we recognise that there will, occasionally, be circumstances where such pictures will evidence a story of genuine public interest. It is not our intention to fetter the freedom of the press to publish such stories and we have therefore made sure that the offence would not apply in such cases.

**12. What does 'public interest' mean in the defence relating to disclosures for journalistic activity?**

'Public interest' is a term that is used in a number of other pieces of legislation. In this case a defence will be established where it can be shown that the photograph or film was disclosed in the course of or with a view to the publication of journalistic material (for example by the journalist or by a journalist's source). If that is the case, the defendant must also show that he or she had a reasonable belief, in the particular circumstances, that there was a legitimate need for the public to have access to the journalistic material.

**13. What is the purpose of the defence where the material had previously been disclosed for reward?**

However unpleasant it may be, we do not think it would be right to criminalise people who pass on images which have previously been commercially published, for example in a pornographic magazine, whatever their motives, unless the person passing them on has some reason to believe that the person in the image had not consented when the material was published for reward.

**14. What are you doing to see that any revenge pornography images which have been uploaded to the internet are removed?**

This would be the responsibility of the website or social media provider e.g. Facebook although we hope that the creation of a specific offence of revenge porn will send out a clear message that this kind of behaviour is illegal and that this in turn could help social media providers to be more robust in their response to it.

**15. Does the offence apply if the material is posted on a website hosted abroad?**

The offence will extend to England and Wales. To be convicted of the offence the court would need to consider that it was in substance an offence committed within the jurisdiction. Where perpetrator and victim were physically located in England or Wales it would be possible for the offence to be committed even if the offence was committed using a website hosted abroad.

**16. Does the new offence mean that website operators will have to remove revenge pornography from their sites?**

Creating a new offence does not itself force website operators to take action in relation to this kind of material. But it sends a clear message that the dissemination of this kind of material is illegal and we expect reputable operators to take that message seriously.

Where a forum is specifically provided for the dissemination of this kind of material then the provider of the website could, depending on all the circumstances, be guilty of encouraging or assisting the commission of the new offence even if are based abroad. There may of course be practical difficulties about prosecuting foreign companies.

**17. What does the new Schedule on information society providers mean?  
Does this mean that website operators can get off?**

The Schedule reflects the requirement in the e-commerce directive that information services providers based in the EEA should usually be prosecuted for any offences which might be committed by providing services in the country where they are established.

In rare cases, where all the requirements of the offence are satisfied including the intention to cause distress to the victim, the Schedule does not stop an operator being guilty of the offence if it actively participates in the disclosure in question or fails to remove the material once it is aware of the criminal nature of its content. But it is right that websites that are simply used by others to post the material and which have no control over that posting should not be caught automatically.



**Annex D: Sections 37**  
**POSSESSION OF PORNOGRAPHIC IMAGES OF RAPE AND ASSAULT BY**  
**PENETRATION**

Section 37 - Possession of pornographic images of rape and assault by penetration

1. This Annex provides information on the amendments to the existing offence of possession of an extreme pornographic image. The purpose is to provide guidance and this should not be regarded as providing legal advice. Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.
  
2. This Annex is set out under the following headings;
  - Annex D1: Background and changes in legislation
  - Annex D2: FAQ
  - Annex D3: Statutory provisions as amended by the Criminal Justice and Courts Act 2015

**Annex D1: Sections 37**  
**BACKGROUND AND CHANGES IN LEGISLATION**

**Background and changes in legislation**

The Government has legislated to amend the existing extreme pornography offence at section 63 of the Criminal Justice and Immigration Act 2008 to criminalise the possession of extreme pornographic images that depict rape and other non-consensual sexual penetration. Possession of such material will be subject to a three year maximum prison sentence.

The existing offence applies to pornographic images - images which can reasonably be assumed to have been “produced solely or principally for the purpose of sexual arousal” – which are grossly offensive, disgusting or otherwise obscene and which explicitly and realistically depict necrophilia, bestiality, an act which threatens the life of a person or an act which results or is likely to result in serious injury to a person’s anus, breasts or genitals. Depending on the content of the image, the offence is subject to a maximum sentence of either 2 or 3 years’ imprisonment.

The offence, which was designed to stop the proliferation of extreme material, applies equally online and offline, and to moving and still images, however produced. The offence is deliberately targeted at material at the extreme end of the scale.

On 7<sup>th</sup> June 2013 Rape Crisis South London (“RASASC”) wrote an open letter to the Prime Minister proposing that the existing extreme pornography offence be extended to cover depictions of rape, along the lines of the Scottish equivalent offence. The campaign was well supported, including by many respected women’s welfare groups, Parliamentarians and members of the public.

The campaigners suggested that websites depicting real or staged rapes glorified sexual violence against women. In addition there was a concern that viewing such images may have an effect on young people’s attitudes to sexual and violent behaviour.

The Government accepted the concerns expressed by campaigners and believes that these images are both unacceptable and could lead to harmful attitudes towards sexual activity. In addition to this the Government believes that most people would find these images deeply disturbing and that extreme material depicting sexual abuse as a form of pornography is unacceptable.

The Prime Minister announced, in July 2013, that the existing extreme pornography offence would be extended to cover images depicting non-consensual penetration and rape.

The reform will bring the extreme pornography offence in England and Wales more closely in line with the equivalent offence in Scotland.

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The extended offence is intended only to apply to material which it is already illegal to publish in England and Wales under the Obscene Publications Act 1959.

The provisions of the offence, as amended, can be seen in section D3 of this Annex.

**Annex D2: Sections 37**  
**FREQUENTLY ASKED QUESTIONS**

**Frequently Asked Questions**

**1. Where can I find the terms of the extended offence?**

The offence, as amended, is set out in section C of this Annex. The amendments to the existing offence are set out in section 37 of the Criminal Justice and Courts Act 2015.

**2. What is the current law on possession of pornography that depicts rape?  
What is the law on extreme pornography?**

It is already an offence under **section 63 of the Criminal Justice & Immigration Act 2008** to possess an extreme pornographic image. Depending on the content of the image, the offence is subject to either a maximum sentence of 2 or 3 years' imprisonment.

Material covered includes pornographic images (i.e. images which can reasonably be assumed to have been "produced solely or principally for the purpose of sexual arousal") which are grossly offensive, disgusting or otherwise obscene and which explicitly and realistically depict necrophilia, bestiality or violence that is life threatening or likely to result in serious injury to the anus, breasts or genitals. Although the current extreme pornography offence does not apply specifically to possession of depictions of rape, possession of an image of rape, if it fits the parameters of the existing offence, would still be a criminal offence.

Alongside this, the publication or distribution of obscene material, such as that to which the extreme pornography offence would apply, is prohibited by the Obscene Publications Act 1959.

**3. What is being changed and what will the current law include following this change?**

We are extending the extreme pornography offence at section 63 of the Criminal Justice and Immigration Act 2008 to cover the possession of pornographic material which is obscene and which realistically and explicitly depicts non-consensual penetrative sexual activity.

**4. Why are these changes being made now?**

The Government has listened to the concerns raised by campaigners, and others, about these depictions and has taken their concerns about the possible effects of this material seriously.

The Government believes there is some evidence that viewing these images may have a negative effect on people's attitudes, particularly the young, to sexual and violent behaviour. Further, that some men can exhibit heightened aggression towards women after exposure to violent pornography. The Ministry of Justice's rapid evidence

assessment into the effects of exposure to extreme pornography (September 2007) highlighted these concerns. Similarly the report, "Basically ...porn is everywhere", by the Children's Commissioner echoed concerns about how exposure to sexualised or violent imagery could affect children and young people.

Extending the current extreme pornography offence in this way sends out a clear message that extreme pornographic visual depictions of rape are unacceptable.

**5. In relation to this type of offence, will the changes mean the law in England & Wales mirrors the law in Scotland?**

Although not identical in wording the extreme pornography offence, as it will apply in England and Wales, is intended to criminalise possession of the same kind of material as the Scottish offence

**6. Does the offence only apply to images of women?**

No. The offence is not gender specific and the extension will apply to depictions involving either male or female participants. The extension will cover any obscene pornographic material which realistically and explicitly depicts non-consensual penetrative sexual activity whether what is shown is a real assault or not.

**7. What will the penalty be?**

The maximum penalty for possession of images which fall within the addition limb of the offence will be 3 years' imprisonment.

**8. Are there any defences to the extended offence?**

Alongside the other existing defences and safeguards which will continue to apply to the offence as amended the Government has amended the defence in section 66 of the Criminal Justice Act 2008 of participation in consensual acts. This means that the possession of these newly targeted images by those who participate in the acts portrayed will not be an offence if they can prove that what was portrayed was in fact consensual rather than non-consensual and that the acts did not involve the infliction of any non-consensual harm.

**9. What does the legitimate reason defence cover?**

It will be for the jury to decide whether the reason for the possession of these images is legitimate. But it would, for example cover the possession of extreme pornographic material by the police and prosecuting authorities where they are in possession of it for the purpose of carrying out their official functions.

**10. What if someone accidentally views this material?**

The extreme pornography offence is not intended to penalise people who stumble across this material accidentally.

Alongside the defence available where there is a legitimate reason for possession of these images, it is a defence for a person in possession of any extreme pornographic image to prove either that he or she had not seen it and did not know or have cause to suspect it to be an extreme pornographic image, or that he or she had received the image unsolicited and did not keep it for an unreasonable time.

**11. Is this an Internet specific offence?**

No. The offence will apply equally offline as online.

**Annex D3: Sections 37**

**STATUTORY PROVISIONS AMENDED BY THE CRIMINAL JUSTICE AND COURTS ACT 2015**

**63 Possession of extreme pornographic images**

(1) It is an offence for a person to be in possession of an extreme pornographic image.

(2) An "extreme pornographic image" is an image which is both--

- (a) pornographic, and
- (b) an extreme image.

(3) An image is "pornographic" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to--

- (a) the image itself, and
- (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, where--

- (a) an image forms an integral part of a narrative constituted by a series of images, and
- (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(5A) In relation to possession of an image in England and Wales, an "extreme image" is an image which-

- (a) falls within subsection (7) or (7A), and
- (b) is grossly offensive, disgusting or otherwise of an obscene character.

(6) ~~An~~In relation to possession of an image in Northern Ireland, an "extreme image" is an image which--

- (a) falls within subsection (7), and

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(b) is grossly offensive, disgusting or otherwise of an obscene character.

(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following--

- (a) an act which threatens a person's life,
- (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,
- (c) an act which involves sexual interference with a human corpse, or
- (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(7A) An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following—

- (a) an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another with the other person's penis, or
- (b) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another with a part of the other person's body or anything else.

and a reasonable person looking at the image would think that the persons were real.

(7B) For the purposes of subsection (7A)—

- (a) penetration is a continuing act from entry to withdrawal;
- (b) "vagina" includes vulva.

(8) In this section "image" means--

- (a) a moving or still image (produced by any means); or
- (b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(9) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

(10) Proceedings for an offence under this section may not be instituted--



- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

#### **64 Exclusion of classified films etc**

- (1) Section 63 does not apply to excluded images.
- (2) An "excluded image" is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.
- (3) But such an image is not an "excluded image" if--
  - (a) it is contained in a recording of an extract from a classified work, and
  - (b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.
- (4) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to--
  - (a) the image itself, and
  - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images;

and section 63(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.

- (5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to--
  - (a) a defect caused for technical reasons or by inadvertence on the part of any person, or
  - (b) the inclusion in the recording of any extraneous material (such as advertisements),

is to be disregarded.

- (6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 63 (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.

- (7) In this section--

"classified work" means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);

"classification certificate" and "video work" have the same meanings as in the Video Recordings Act 1984 (c 39);

"designated authority" means an authority which has been designated by the Secretary of State under section 4 of that Act;

"extract" includes an extract consisting of a single image;

"image" and "pornographic" have the same meanings as in section 63;

"recording" means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

(8) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

## **65 Defences: general**

(1) Where a person is charged with an offence under section 63, it is a defence for the person to prove any of the matters mentioned in subsection (2).

(2) The matters are--

(a) that the person had a legitimate reason for being in possession of the image concerned;

(b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;

(c) that the person--

(i) was sent the image concerned without any prior request having been made by or on behalf of the person, and

(ii) did not keep it for an unreasonable time.

(3) In this section "extreme pornographic image" and "image" have the same meanings as in section 63.

## **66 Defence: participation in consensual acts**

(A1) Subsection (A2) applies where in England and Wales—

(a) a person ("D") is charged with an offence under section 63, and

(b) the offence relates to an image that portrays an act or acts within subsection

(7)(a) to (c) or (7A) of that section (but does not portray an act within subsection

(7)(d) of that section).

(A2) It is a defence for D to prove—

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- (a) that D directly participated in the act or any of the acts portrayed, and
- (b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and
- (c) if the image portrays an act within section 63(7)(c), that what is portrayed as a human corpse was not in fact a corpse, and
- (d) if the image portrays an act within section 63(7A), that what is portrayed as non-consensual penetration was in fact consensual.

- (1) ~~This section~~ Subsection (2) applies where in Northern Ireland--
  - (a) a person ("D") is charged with an offence under section 63, and
  - (b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but none within paragraph (d)) of subsection (7) of that section.
- (2) It is a defence for D to prove--
  - (a) that D directly participated in the act or any of the acts portrayed, and
  - (b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and
  - (c) if the image portrays an act within section 63(7)(c), that what is portrayed as a human corpse was not in fact a corpse.
- (3) For the purposes of this section harm inflicted on a person is "non-consensual" harm if--
  - (a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or
  - (b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.

## **67 Penalties etc for possession of extreme pornographic images**

(1) This section has effect where a person is guilty of an offence under section 63.

(2) ~~Except where subsection (3) applies to the offence,~~ If the offence relates to an image that portrays any relevant act (with or without other acts) the offender is liable--

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine or both.

(3) ~~If the offence relates to an image that does not portray any relevant act within section 63(7)(a) or (b),~~ the offender is liable--

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(4) In subsection (2)(a) or (3)(a) "the relevant period" means--

(a) in relation to England and Wales, 12 months;

(b) in relation to Northern Ireland, 6 months.

(5) In this section "relevant act" means--

(a) in relation to England and Wales, an act within section 63(7)(a) or (b) or (7A)(a) or (b);

(b) in relation to Northern Ireland, an act within section 63(7)(a) or (b).

## **68 Special rules relating to providers of information society services**

Schedule 14 makes special provision in connection with the operation of section 63 in relation to persons providing information society services within the meaning of that Schedule.

### **SCHEDULE 14**

#### **SPECIAL RULES RELATING TO PROVIDERS OF INFORMATION SOCIETY SERVICES**

#### **Section 68**

***Domestic service providers: extension of liability***

**1**

- (1) This paragraph applies where a service provider is established in England and Wales or Northern Ireland (a "domestic service provider").
- (2) Section 63(1) applies to a domestic service provider who--
- (a) is in possession of an extreme pornographic image in an EEA state other than the United Kingdom, and
  - (b) is in possession of it there in the course of providing information society services,

as well as to persons (of any description) who are in possession of such images in England and Wales or Northern Ireland.

- (3) In the case of an offence under section 63, as it applies to a domestic service provider by virtue of sub-paragraph (2)--
- (a) proceedings for the offence may be taken at any place in England and Wales or Northern Ireland, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.

(3A) For the purposes of sub-paragraph (2), "extreme pornographic image" has the meaning given by section 63(2) and in determining whether a domestic service provider is in possession of such an image—

(a) where the service provider is established in England and Wales, "extreme image" has the meaning given by section 63(5A);

(b) where the service provider is established in Northern Ireland, "extreme image" has the meaning given by section 63(6).

- (4) Nothing in this paragraph is to be read as affecting the operation of any of paragraphs 3 to 5.

***Non-UK service providers: restriction on institution of proceedings***

**2**

- (1) This paragraph applies where a service provider is established in an EEA state other than the United Kingdom (a "non-UK service provider").
- (2) Proceedings for an offence under section 63 may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is satisfied.

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- (3) The derogation condition is satisfied where the institution of proceedings--
- (a) is necessary for the purposes of the public interest objective;
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective; and
  - (c) is proportionate to that objective.
- (4) "The public interest objective" means the pursuit of public policy.

***Exceptions for mere conduits***

**3**

- (1) A service provider is not capable of being guilty of an offence under section 63 in respect of anything done in the course of providing so much of an information society service as consists in--
- (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service,

if the condition in sub-paragraph (2) is satisfied.

- (2) The condition is that the service provider does not--
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1)--
- (a) the provision of access to a communication network, and
  - (b) the transmission of information in a communication network,

includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

***Exception for caching***

**4**

- (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider is not capable of being guilty of an offence under section 63 in respect of the automatic, intermediate and temporary storage of information so provided, if--
  - (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service provider--
  - (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that--
  - (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

***Exception for hosting***

**5**

- (1) A service provider is not capable of being guilty of an offence under section 63 in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if--
  - (a) the service provider had no actual knowledge when the information was provided that it contained offending material, or
  - (b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.

- (2) "Offending material" means material the possession of which constitutes an offence under section 63.
- (3) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

***Interpretation***

**6**

- (1) This paragraph applies for the purposes of this Schedule.
- ~~(2) "Extreme pornographic image" has the same meaning as in section 63.~~
- (3) "Information society services"--
- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service";

and "the E-Commerce Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

- (4) "Recipient", in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.
- (5) "Service provider" means a person providing an information society service.
- (6) For the purpose of construing references in this Schedule to a service provider who is established in a part of the United Kingdom or in some other EEA state--
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider--
- (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
- (ii) is a national of an EEA state or a company or firm mentioned in [Article 54 of the Treaty on the Functioning of the European Union];



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- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.

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**Annex F: Useful Links**

The Criminal Justice and Courts Act 2015 is available at:

- <http://www.legislation.gov.uk/ukpga/2015/2/contents/enacted>

Fact Sheets for provisions in the Criminal Justice and Courts Act 2015 can be found at:

- <https://www.gov.uk/government/publications/criminal-justice-and-courts-bill-fact-sheets>

Explanatory Notes for the Criminal Justice and Courts Act can be found at:

- <http://www.legislation.gov.uk/ukpga/2015/2/contents/enacted>

A copy of this Circular can be found at:

- <https://www.gov.uk/government/collections/criminal-justice-and-courts-bill>

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**Annex G: Contact Details**

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