



# Judicial Review and Courts Act 2022

## 2022 CHAPTER 35

An Act to make provision about the provision that may be made by, and the effects of, quashing orders; to make provision restricting judicial review of certain decisions of the Upper Tribunal; to make provision about the use of written and electronic procedures in courts and tribunals; to make other provision about procedure in, and the organisation of, courts and tribunals; and for connected purposes. [28th April 2022]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### JUDICIAL REVIEW

#### 1 Quashing orders

(1) After section 29 of the Senior Courts Act 1981 insert—

##### **“29A Further provision in connection with quashing orders**

- (1) A quashing order may include provision—
  - (a) for the quashing not to take effect until a date specified in the order, or
  - (b) removing or limiting any retrospective effect of the quashing.
- (2) Provision included in a quashing order under subsection (1) may be made subject to conditions.
- (3) If a quashing order includes provision under subsection (1)(a), the impugned act is (subject to any conditions under subsection (2)) upheld until the quashing takes effect.

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- (4) If a quashing order includes provision under subsection (1)(b), the impugned act is (subject to any conditions under subsection (2)) upheld in any respect in which the provision under subsection (1)(b) prevents it from being quashed.
- (5) Where (and to the extent that) an impugned act is upheld by virtue of subsection (3) or (4), it is to be treated for all purposes as if its validity and force were, and always had been, unimpaired by the relevant defect.
- (6) Provision under subsection (1)(a) does not limit any retrospective effect of a quashing order once the quashing takes effect (including in relation to the period between the making of the order and the taking effect of the quashing); and subsections (3) and (5) are to be read accordingly.
- (7) Section 29(2) does not prevent the court from varying a date specified under subsection (1)(a).
- (8) In deciding whether to exercise a power in subsection (1), the court must have regard to—
  - (a) the nature and circumstances of the relevant defect;
  - (b) any detriment to good administration that would result from exercising or failing to exercise the power;
  - (c) the interests or expectations of persons who would benefit from the quashing of the impugned act;
  - (d) the interests or expectations of persons who have relied on the impugned act;
  - (e) so far as appears to the court to be relevant, any action taken or proposed to be taken, or undertaking given, by a person with responsibility in connection with the impugned act;
  - (f) any other matter that appears to the court to be relevant.
- (9) In this section—
  - “impugned act” means the thing (or purported thing) being quashed by the quashing order;
  - “relevant defect” means the defect, failure or other matter on the ground of which the court is making the quashing order.”
- (2) In section 31 of the Senior Courts Act 1981 (judicial review)—
  - (a) in subsection (5), for “quashes” substitute “makes a quashing order in respect of”;
  - (b) in subsection (5A)(b), for “decision is quashed” substitute “quashing order is made”.
- (3) In section 17 of the Tribunals, Courts and Enforcement Act 2007 (supplementary provision about quashing orders made by the Upper Tribunal)—
  - (a) before subsection (1) insert—
    - “(A1) In cases arising under the law of England and Wales, section 29A of the Senior Courts Act 1981 applies in relation to a quashing order under section 15(1)(c) of this Act as it applies in relation to a quashing order under section 29 of that Act.”;
  - (b) in subsection (2)(b), for “decision is quashed” substitute “quashing order is made”.

- (4) The amendments made by subsections (1) to (3) have effect only in relation to proceedings commenced on or after the day on which this section comes into force.

## **2 Exclusion of review of Upper Tribunal’s permission-to-appeal decisions**

- (1) In the Tribunals, Courts and Enforcement Act 2007, after section 11 insert—

### **“11A Finality of decisions by Upper Tribunal about permission to appeal**

- (1) Subsections (2) and (3) apply in relation to a decision by the Upper Tribunal to refuse permission (or leave) to appeal further to an application under section 11(4)(b).
- (2) The decision is final, and not liable to be questioned or set aside in any other court.
- (3) In particular—
- (a) the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;
  - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—
- (a) the Upper Tribunal has or had a valid application before it under section 11(4)(b),
  - (b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application, or
  - (c) the Upper Tribunal is acting or has acted—
    - (i) in bad faith, or
    - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.
- (5) Subsections (2) and (3) do not apply so far as provision giving the First-tier Tribunal jurisdiction to make the first-instance decision could (if the Tribunal did not already have that jurisdiction) be made by—
- (a) an Act of the Scottish Parliament, or
  - (b) an Act of the Northern Ireland Assembly the Bill for which would not require the consent of the Secretary of State.
- (6) The court of supervisory jurisdiction is not to entertain any application or petition for judicial review in respect of a decision of the First-tier Tribunal that it would not entertain (whether as a matter of law or discretion) in the absence of this section.
- (7) In this section—
- “decision” includes any purported decision;
  - “first-instance decision” means the decision in relation to which permission (or leave) to appeal is being sought under section 11(4)(b);
  - “the supervisory jurisdiction” means the supervisory jurisdiction of—

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- (a) the High Court, in England and Wales or Northern Ireland, or
  - (b) the Court of Session, in Scotland,
- and “the court of supervisory jurisdiction” is to be read accordingly.”

- (2) The amendment made by subsection (1) does not apply in relation to a decision (including any purported decision) of the Upper Tribunal made before the day on which this section comes into force.

## PART 2

### COURTS, TRIBUNALS AND CORONERS

#### CHAPTER 1

##### CRIMINAL PROCEDURE

###### *Written procedures for dealing with summary offences*

### 3 Automatic online conviction and penalty for certain summary offences

After section 16F of the Magistrates’ Courts Act 1980 insert—

#### *“Automatic online conviction and penalty for certain summary offences*

##### **16G The automatic online conviction option**

- (1) In this Act a reference to a person being offered the automatic online conviction option in respect of an offence is a reference to the person being given an electronic notification which explains that if the person intends to plead guilty the person may agree—
  - (a) to be convicted of the offence under section 16H, and
  - (b) to be penalised for the offence under section 16L.
- (2) In this Act a reference to a person accepting the automatic online conviction option in respect of an offence is a reference to the person giving an electronic notification which indicates that the person—
  - (a) pleads guilty to the offence,
  - (b) agrees to be convicted of the offence under section 16H, and
  - (c) agrees to be penalised for the offence under section 16L.
- (3) A notification purporting to be given by a person (or the person’s legal representative) is to be treated for the purposes of subsection (2) as a notification given by that person.
- (4) In this section “electronic notification” means a written notification given—
  - (a) by electronic means,
  - (b) under such arrangements as are put in place by the Lord Chancellor for the purposes of this section and sections 16H to 16L, and



- (c) in accordance with such provision as may be made by Criminal Procedure Rules.

### **16H Conviction**

- (1) Subsection (2) applies to a person accused of an offence if—
  - (a) the qualifying conditions are met, and
  - (b) the person is offered, and accepts, the automatic online conviction option in respect of the offence.
- (2) The accused is convicted of the offence by virtue of accepting the automatic online conviction option.
- (3) For the purposes of this section the qualifying conditions are met if—
  - (a) regulations made by the Lord Chancellor specify the offence as one for which the automatic online conviction option may be offered;
  - (b) the accused had attained the age of 18 years when charged, or is not an individual;
  - (c) the required documents have been served on the accused; and
  - (d) service of all of the required documents was effected in accordance with Criminal Procedure Rules.
- (4) An offence may not be specified in regulations under subsection (3)(a) unless it is a summary offence that is not punishable with imprisonment.
- (5) Regulations under subsection (3)(a) are to be made by statutory instrument; and a statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section, “required documents” means—
  - (a) a written charge,
  - (b) a single justice procedure notice that complies with subsection (2D) of section 29 of the Criminal Justice Act 2003, and
  - (c) such other documents as may be prescribed by Criminal Procedure Rules as described in subsection (3B) of that section.

### **16I Penalties and other liabilities**

- (1) This section applies if a person is convicted of an offence under section 16H.
- (2) The offender is liable to a fine of the amount specified for the offence.
- (3) The offender’s driving record is to be endorsed with the specified number of penalty points, and any other specified particulars, if the offence is specified as one to which such a penalty applies.
- (4) The offender is liable to pay compensation if the offence is specified as one in respect of which such a payment is to be made.
- (5) The amount of the compensation payable—
  - (a) is to be determined by the relevant prosecutor who instituted proceedings for the offence;

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- (b) must not exceed the maximum amount specified for the offence.
- (6) The offender is liable to pay prosecution costs.
- (7) The amount of the prosecution costs payable is to be determined by the relevant prosecutor who instituted proceedings for the offence.
- (8) The offender is liable to pay a surcharge of the amount specified for the offence.
- (9) In this section and section 16J—
  - “driving record” and “penalty points” have the same meanings as in the Road Traffic Offenders Act 1988;
  - “relevant prosecutor” has the same meaning as in section 29 of the Criminal Justice Act 2003;
  - “specified” means specified in regulations made by the Lord Chancellor.

#### **16J Regulations about penalties etc under section 16I**

- (1) Regulations under section 16I(2) may specify fines of different amounts—
  - (a) for different offences;
  - (b) for different circumstances in which a particular offence is committed.
- (2) Regulations under section 16I(3) may not specify an offence unless it is an offence that would or could result in the endorsement of the offender’s driving record with penalty points on conviction in a magistrates’ court.
- (3) Regulations under section 16I(5)(b) may specify different maximum amounts of compensation—
  - (a) for different offences;
  - (b) for different circumstances in which a particular offence is committed.
- (4) Regulations under section 16I(8) may specify different amounts of surcharge—
  - (a) for different offences;
  - (b) for different circumstances in which a particular offence is committed.
- (5) The power to make regulations under section 16I(8) includes power to specify the amount of the surcharge for a particular offence as a proportion of the amount of the fine specified for that offence.
- (6) Regulations under section 16I are to be made by statutory instrument; and a statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

#### **16K Timing and status of conviction and penalty**

- (1) The time when a conviction under section 16H takes effect is to be determined in accordance with Criminal Procedure Rules.
- (2) A conviction under section 16H is to be treated as a conviction by the specified magistrates’ court.

- (3) A fine to which a person is liable under section 16I is to be treated as if it had been imposed by the specified magistrates' court on conviction.
- (4) An endorsement of a person's driving record under section 16I is to be treated as if the specified magistrates' court had ordered the endorsement under section 44 of the Road Traffic Offenders Act 1988.
- (5) Compensation which a person is liable to pay under section 16I is to be treated as if the specified magistrates' court had ordered it to be paid under Chapter 2 of Part 7 of the Sentencing Code.
- (6) Prosecution costs which a person is liable to pay under section 16I are to be treated as if the specified magistrates' court had ordered them to be paid under section 18 of the Prosecution of Offences Act 1985.
- (7) A surcharge which a person is liable to pay under section 16I is to be treated as if the specified magistrates' court had ordered it to be paid under section 42 of the Sentencing Code.
- (8) In this section, "specified magistrates' court" means the magistrates' court specified in the notice of conviction and penalty (see section 16L(2)(b)).

#### **16L Notice of conviction and penalty**

- (1) The Lord Chancellor must secure that a person who is convicted of an offence under section 16H is given a notice of conviction and penalty.
- (2) A notice of conviction and penalty is an electronic notification which—
  - (a) sets out each penalty imposed on the offender under section 16I;
  - (b) specifies a magistrates' court for the purposes of section 16K;
  - (c) requires the offender to pay the sums that the offender is liable to pay under section 16I—
    - (i) within the relevant 28-day period, and
    - (ii) in the manner specified in the notice.
- (3) The relevant 28-day period is the period of 28 days beginning with the day on which the person's conviction took effect.
- (4) In this section—
  - "electronic notification" has the meaning given by section 16G(4);
  - "penalty" means—
    - (a) a fine,
    - (b) penalty points,
    - (c) compensation,
    - (d) prosecution costs, or
    - (e) a surcharge;
  - "penalty points" has the same meaning as in the Road Traffic Offenders Act 1988.

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### **16M Powers to set aside a conviction or replace a penalty etc**

- (1) A magistrates' court may set aside a conviction under section 16H if it appears to the court that the conviction is unjust.
- (2) Subsection (1) does not affect the validity of a written charge or a single justice procedure notice.
- (3) A magistrates' court carrying out functions under subsection (1) may be composed of a single justice.
- (4) But if a magistrates' court composed of a single justice is minded to refuse to set aside a conviction—
  - (a) the decision must instead be referred to a magistrates' court that is not so composed; and
  - (b) the parties must be given the opportunity to attend at, and make representations to, the magistrates' court making that decision.
- (5) A magistrates' court—
  - (a) may set aside any penalty imposed on a person under section 16I if it appears to the court that the amount of that penalty is unjust; and
  - (b) if it does so, may impose any sentence that it could have imposed for that offence if the person had pleaded guilty before it at the earliest opportunity.
- (6) The reference in subsection (5)(a) to the amount of a penalty is to be read, in relation to penalty points, as a reference to the number of penalty points imposed.
- (7) A magistrates' court may exercise a power conferred by this section—
  - (a) on an application by the person convicted,
  - (b) on an application by the relevant prosecutor who initiated the proceedings, or
  - (c) of its own motion.
- (8) In this section—
 

“penalty” and “penalty points” have the meanings given by section 16L(4);

“relevant prosecutor” has the same meaning as in section 29 of the Criminal Justice Act 2003.”

## **4 Guilty plea in writing: extension to proceedings following police charge**

- (1) Section 12 of the Magistrates' Courts Act 1980 (non-appearance of accused following indication of guilty plea) is amended as follows.
- (2) In subsection (1)(a), omit the words from “, not” to “instrument”.
- (3) After subsection (2) insert—
 

“(2A) This section shall also apply where—

  - (a) a person has been charged with a summary offence under Part 4 of the Police and Criminal Evidence Act 1984;

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- (b) the accused had attained the age of 16 when charged; and
  - (c) the designated officer for the court is notified by or on behalf of the prosecutor that the documents mentioned in subsection (3) below have been served upon the accused in accordance with rules of court.”
- (4) In subsection (3), after “(1)(b)” insert “and (2A)(c)”.
- (5) In subsection (5)—
  - (a) in paragraph (b), for “with the summons” substitute “as described in subsection (1)(b) or (2A)(c)”;
  - (b) in the words after paragraph (b), omit the words from “, subject” to “below,”.
- (6) After subsection (5) insert—
  - “(5A) Where subsection (5)(a) and (b) applies, the court also has power to discharge the accused from any duty to surrender to the custody of the court.
  - (5B) The function of the court under subsection (5A) may be discharged by a single justice.
  - (5C) The court’s powers under subsection (5) are subject to subsections (5D) to (8).
  - (5D) The court may not in the absence of the accused—
    - (a) impose a sentence of imprisonment or detention in a young offender institution,
    - (b) make a detention and training order, or
    - (c) make an order under paragraph 13(1)(a) or (b) of Schedule 16 to the Sentencing Code that a suspended sentence is to take effect.
  - (5E) The court may not in the absence of the accused impose any disqualification, except on resumption of the hearing after an adjournment under section 10(3).
  - (5F) Where a trial is adjourned with a view to its resumption for the purposes of subsection (5E), the notice required by section 10(2) must include notice of the reason for the adjournment.”
- (7) In subsection (7), in paragraphs (a) and (aa), for “with the summons” substitute “as described in subsection (1)(b) or (2A)(c)”.
- (8) Omit subsections (12) and (13).

## **5 Extension of single justice procedure to corporations**

In section 16A of the Magistrates’ Courts Act 1980 (trial by single justice on the papers), in subsection (1)(b), after “charged” insert “, or is not an individual”.

*Offences triable either way: determining the mode of trial*

## **6 Written procedure for indicating plea and determining mode of trial: adults**

- (1) The Magistrates’ Courts Act 1980 is amended as follows.
- (2) After section 17 insert—

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**“17ZA Option to indicate plea in writing**

- (1) Subsection (3) has effect where a person is charged with an offence triable either way and—
  - (a) has attained the age of 18 years when charged, or
  - (b) attains the age of 18 years after being charged without first having—
    - (i) appeared in court to answer the charge, or
    - (ii) given, or failed to give, a written indication of plea within the meaning given by section 24ZA(11).
- (2) But Criminal Procedure Rules may make provision about circumstances in which subsection (3) does not have effect.
- (3) A magistrates’ court must, in writing—
  - (a) provide the accused with the information referred to in subsection (4), and
  - (b) ask the accused—
    - (i) whether the accused wishes to give a written indication of plea, and
    - (ii) if the accused wishes to do so, whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty.
- (4) The information is—
  - (a) a statement of the charge against the accused;
  - (b) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
    - (i) why the accused is being asked the questions set out in subsection (3)(b), and
    - (ii) the consequences of giving or failing to give a written indication of plea;
  - (c) an explanation of the way in which, and the period of time within which, the accused may give a written indication of plea;
  - (d) any other information that—
    - (i) Criminal Procedure Rules require to be provided, or
    - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (5) If the accused gives a written indication of a guilty plea, the court is to proceed in accordance with section 17ZB.
- (6) If the accused gives a written indication of a not guilty plea, the court is to proceed in accordance with section 17ZC or (if neither subsection (3) nor subsection (5) of that section has effect) section 18(1A).
- (7) If the accused fails to give a written indication of plea, the court is to proceed by way of a hearing for the purposes of section 17A.
- (8) The following shall not for any purpose be taken to constitute the taking of a plea—
  - (a) asking the accused under this section whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty; or



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- (b) giving a written indication of plea.
- (9) If in respect of the offence the court receives a notice under section 51B or 51C of the Crime and Disorder Act 1998 (which relate to serious or complex fraud cases and to certain cases involving children respectively), the preceding provisions of this section do not apply, and the court must proceed in relation to the offence in accordance with section 51 or, as the case may be, section 51A of that Act.
- (10) Subsection (11) applies if—
  - (a) the accused gives a written indication of plea, and
  - (b) at any time before—
    - (i) the taking of a plea in the summary trial,
    - (ii) the hearing under section 18(1A), or
    - (iii) the sending of the accused to the Crown Court for trial,the court receives an indication from the accused that the accused wishes to withdraw the written indication of plea.
- (11) If this subsection applies—
  - (a) the designated officer for the court must inform the prosecutor of the withdrawal,
  - (b) the court is to cease to proceed in accordance with any of sections 17ZB, 17ZC and 18(1A) and (4A), and
  - (c) the court is to proceed by way of a hearing for the purposes of section 17A.
- (12) The reference in subsection (1) to a person charged with an offence is a reference to—
  - (a) a person in respect of whom a summons or warrant has been issued under section 1,
  - (b) a person who has been charged with an offence under Part 4 of the Police and Criminal Evidence Act 1984, or
  - (c) a person against whom a written charge and requisition have been issued under section 29 of the Criminal Justice Act 2003.
- (13) In this section and sections 17ZB to 18—
  - (a) “written indication of plea” means a written indication given—
    - (i) by a person who has been provided with the information and asked the questions required by subsection (3), and
    - (ii) in accordance with the explanation provided under subsection (4)(c),of whether (if the offence were to proceed to trial) that person would plead guilty or not guilty;
  - (b) “written indication of a guilty plea” and “written indication of a not guilty plea” are to be read accordingly;
  - (c) references to a person’s failing to give a written indication of plea are to a person’s—
    - (i) having been provided with the information and asked the questions required by subsection (3), and
    - (ii) not having given a written indication of plea within the period indicated under subsection (4)(c).

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### **17ZB Proceedings following written indication of guilty plea**

- (1) This section has effect (subject to section 17ZA(11)) in relation to a case where a person has given a written indication of a guilty plea (see section 17ZA(13)).
- (2) But Criminal Procedure Rules may make provision about circumstances in which subsections (3) to (8) do not have effect.
- (3) A magistrates' court may consider whether the condition set out in subsection (4) is met.
- (4) The condition is that the court can, on the material before it (without any hearing or representations), be satisfied that it is highly likely that, were the accused to plead guilty at a summary trial of the offence in question and be convicted, the court would commit the accused to the Crown Court for sentence under Chapter 2 of Part 2 of the Sentencing Code.
- (5) If the court decides that that condition is met, the court may, in writing—
  - (a) provide the accused with the information referred to in subsection (6), and
  - (b) ask the accused whether the accused objects to being sent to the Crown Court for trial for the offence.
- (6) The information is—
  - (a) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
    - (i) why the accused is being asked the question set out in subsection (5)(b), and
    - (ii) the consequences of objecting or failing to object to being sent to the Crown Court for trial;
  - (b) an explanation of the way in which, and the period of time within which, the accused may object to being so sent;
  - (c) any other information that—
    - (i) Criminal Procedure Rules require to be provided, or
    - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (7) If the court exercises the power in subsection (5) it must also, in writing—
  - (a) inform the prosecutor that the court has—
    - (i) decided that the condition set out in subsection (4) is met, and
    - (ii) exercised the power in subsection (5) in relation to the accused;
  - (b) explain the way in which, and the period of time within which, the prosecutor may object to the accused's being sent to the Crown Court for trial for the offence; and
  - (c) ask the prosecutor whether the prosecutor objects to the accused's being sent to the Crown Court for trial for the offence.
- (8) If—
  - (a) the court has exercised the power in subsection (5),
  - (b) subsection (7) has been complied with,

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- (c) the accused has not objected, in accordance with the explanation provided under subsection (6)(b), to being sent to the Crown Court for trial for the offence, and
  - (d) the prosecutor has not objected, in accordance with the explanation provided under subsection (7)(b), to the accused's being sent to the Crown Court for trial for the offence,
- the court is to proceed in relation to the offence in accordance with section 51 of the Crime and Disorder Act 1998.
- (9) If subsection (8) does not apply, the court is to proceed to try the offence summarily under section 9.
- (10) If, at a summary trial held in accordance with subsection (9), the accused pleads not guilty—
- (a) the trial and the plea are void, and
  - (b) the court is to proceed as if the hearing were for the purposes of section 17A and the accused had indicated that the accused would (if the offence were to proceed to trial) plead not guilty.

**17ZC Option to decline summary trial, or for mode of trial to be decided on papers, following written indication of not guilty plea**

- (1) Subsection (3) or (5) has effect (subject to section 17ZA(11)) in relation to a case where a person has given a written indication of a not guilty plea (see section 17ZA(13)).
- (2) But Criminal Procedure Rules may make provision about circumstances in which neither subsection (3) nor subsection (5) has effect.
- (3) If the offence in question is not a scheduled offence (as defined in section 22(1)), a magistrates' court must, in writing—
- (a) provide the accused with the information referred to in subsection (4), and
  - (b) ask the accused—
    - (i) whether the accused wishes to give a written indication of non-consent to summary trial, and
    - (ii) if the accused does not wish to give that indication, whether the accused wishes to make an election for written allocation proceedings.
- (4) The information is—
- (a) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
    - (i) why the accused is being asked the questions set out in subsection (3)(b), and
    - (ii) the consequences of doing or failing to do the things referred to in subsection (3)(b);
  - (b) an explanation of the way in which, and the period of time within which, the accused may give a written indication of non-consent to summary trial or make an election for written allocation proceedings;
  - (c) any other information that—
    - (i) Criminal Procedure Rules require to be provided, or

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- (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (5) If the offence in question is a scheduled offence (as defined in section 22(1)), a magistrates' court must, in writing—
  - (a) provide the accused with the information referred to in subsection (6), and
  - (b) ask the accused—
    - (i) whether the accused wishes to make an election for written allocation proceedings and give a written indication of non-consent to summary trial, and
    - (ii) if the accused does not wish to make that election and give that indication, whether the accused wishes to make an election for written allocation proceedings.
- (6) The information is—
  - (a) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
    - (i) why the accused is being asked the questions set out in subsection (5)(b), and
    - (ii) the consequences of doing or failing to do the things described in subsection (5)(b)(i) or (ii);
  - (b) an explanation of the way in which, and the period of time within which, the person may do the things described in subsection (5)(b)(i) or (ii);
  - (c) any other information that—
    - (i) Criminal Procedure Rules require to be provided, or
    - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (7) If, where subsection (3) has been complied with, the accused gives a written indication of non-consent to summary trial, the court is to proceed in relation to the offence in accordance with section 51 of the Crime and Disorder Act 1998.
- (8) Otherwise, where subsection (3) or (5) has been complied with, the court is to proceed in accordance with section 18(1A) or (4A).
- (9) In this section and sections 18 and 22—
  - (a) “election for written allocation proceedings” means an election in writing made—
    - (i) by a person who has been provided with the information and asked the questions required by subsection (3) or (5), and
    - (ii) in accordance with the explanation provided under subsection (4)(b) or (6)(b),
 for the court to decide where the person's trial should take place by written proceedings without the person (or the person's legal representative) being present;
  - (b) “written indication of non-consent to summary trial” means a written indication given—

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- (i) by a person who has been provided with the information and asked the questions required by subsection (3) or (5), and
    - (ii) in accordance with the explanation provided under subsection (4)(b) or (6)(b),that the person would not (if the offence were to proceed to trial and, in the case of a scheduled offence (as defined in section 22(1)), if trial in the Crown Court were available) consent to be tried in a magistrates' court for the offence;
  - (c) references to a person's failing to make an election for written allocation proceedings, or failing to give a written indication of non-consent to summary trial, are to a person's—
    - (i) having been provided with the information and asked the questions required by subsection (3) or (5), and
    - (ii) not having, within the period indicated under subsection (4)(b) or (6)(b), made an election for written allocation proceedings or (as the case may be) given a written indication of non-consent to summary trial.”
- (3) In section 22A (low-value shoplifting to be summary offence subject to right to elect Crown Court trial)—
- (a) in subsection (1), at the end insert “, subject to subsections (1D) and (2)”;
  - (b) after subsection (1) insert—
- “(1A) Where a person accused of low-value shoplifting is aged 18 or over (and has not appeared before the court to answer the charge before attaining that age), a magistrates' court must, in writing—
- (a) provide the accused with the information referred to in subsection (1B), and
  - (b) ask the accused whether the accused wishes to—
    - (i) elect to be tried by the Crown Court for the offence, or
    - (ii) confirm that the accused does not so elect.
- (1B) The information is—
- (a) a statement of the charge against the accused;
  - (b) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
    - (i) why the accused is being asked the question set out in subsection (1A)(b), and
    - (ii) the consequences of electing to be tried by the Crown Court or confirming to the contrary;
  - (c) an explanation of the way in which, and the period of time within which, the accused would have to make that election or give that confirmation;
  - (d) any other information that—
    - (i) Criminal Procedure Rules require to be provided, or
    - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (1C) Criminal Procedure Rules may make provision about circumstances in which subsection (1A) does not apply.



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- (1D) If, having been provided with the information and asked the question required by subsection (1A), the accused elects, in accordance with the explanation provided under subsection (1B)(c), to be tried by the Crown Court for the offence, the court must proceed in relation to the offence in accordance with section 51 of the Crime and Disorder Act 1998 (and subsection (2) does not apply).
- (1E) If, having been provided with the information and asked the question required by subsection (1A), the accused confirms, in accordance with the explanation provided under subsection (1B)(c), that the accused does not elect to be tried by the Crown Court for the offence, subsection (2) does not apply.”;
- (c) in subsection (2)—
  - (i) for “But” substitute “Subject to subsections (1D) and (1E),”;
  - (ii) omit paragraph (a).

## **7 Initial option for adult accused to reject summary trial at hearing**

In the Magistrates’ Courts Act 1980, after section 17B insert—

### **“17BA Option to decline summary trial without allocation hearing following indication of not guilty plea in court**

- (1) This section has effect in the circumstances set out in sections 17A(7) (indication of not guilty plea by accused at hearing), 17B(2)(d) (indication of not guilty plea by accused’s representative at hearing) and 22(2B) (scheduled offence found at hearing to be triable either way after indication of not guilty plea).
- (2) If the accused is present, the court must explain to the accused that—
  - (a) the accused may choose to give an indication that the accused would not (if the offence were to proceed to trial) consent to be tried summarily for the offence;
  - (b) if the accused chooses to give such an indication, the accused will be sent to the Crown Court for trial without having the opportunity to make representations as to the suitable mode of trial under section 19(2) or to obtain an indication of sentence under section 20(3);
  - (c) if the accused chooses not to give such an indication, the court will proceed in accordance with section 18(1);
 and must then ask the accused whether the accused wishes to indicate that the accused would not (if the offence were to proceed to trial) consent to be tried summarily for the offence.
- (3) If the accused is not present, the court must ask the accused’s legal representative whether the accused would wish to indicate that the accused would not (if the offence were to proceed to trial) consent to be tried summarily for the offence.
- (4) If the accused, or the accused’s legal representative, gives an in-court indication of non-consent to summary trial, the court is to proceed in relation to the offence in accordance with section 51 of the Crime and Disorder Act 1998.



- (5) If the accused, or the accused’s legal representative, does not give an in-court indication of non-consent to summary trial, the court is to proceed in accordance with section 18(1).
- (6) In this section and section 18, “in-court indication of non-consent to summary trial” means an indication given by a person or a person’s legal representative, in response to the question asked under subsection (2) or (3), that the person would not (if the offence were to proceed to trial) consent to be tried in a magistrates’ court for the offence of which the person is accused.”

## **8 Written procedure for indicating plea and determining mode of trial: children**

In the Magistrates’ Courts Act 1980, after section 24 insert—

### **“24ZA Option for child or young person to indicate plea in writing where allocation decision otherwise required**

- (1) Subsection (3) has effect where—
  - (a) a person under the age of 18 years is charged with an offence other than one falling within section 51A(12) of the Crime and Disorder Act 1998 (“the 1998 Act”),
  - (b) the person has not since attained the age of 18 years, and
  - (c) a magistrates’ court would, but for this section and sections 24A and 24B, have to determine under section 51A of the 1998 Act—
    - (i) whether to send the accused to the Crown Court for trial, or
    - (ii) any matter the effect of which would be to determine whether the accused is sent to the Crown Court for trial.
- (2) But Criminal Procedure Rules may make provision about circumstances in which subsection (3) does not have effect.
- (3) A magistrates’ court must, in writing—
  - (a) provide the accused with the information referred to in subsection (4), and
  - (b) ask the accused—
    - (i) whether the accused chooses to give a written indication of plea, and
    - (ii) if the accused chooses to do so, whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty.
- (4) The information is—
  - (a) a statement of the charge against the accused;
  - (b) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
    - (i) why the accused is being asked the questions set out in subsection (3)(b), and
    - (ii) the consequences of giving or failing to give a written indication of plea;
  - (c) an explanation of the way in which, and the period of time within which, the accused may give a written indication of plea;
  - (d) any other information that—

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- (i) Criminal Procedure Rules require to be provided, or
  - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (5) If the accused gives a written indication of a guilty plea, the court is not to make the relevant determination but is to proceed to try the offence summarily under section 9.
- (6) If, at a summary trial held in accordance with subsection (5), the accused pleads not guilty—
  - (a) the trial and the plea are void, and
  - (b) the court is to proceed as if the hearing were for the purposes of section 24A and the accused had indicated that the accused would (if the offence were to proceed to trial) plead not guilty.
- (7) If the accused gives a written indication of a not guilty plea, the court is to—
  - (a) give the prosecutor and the accused an opportunity to make representations in writing about the matters referred to in subsection (1)(c)(i) or (ii), and
  - (b) proceed to make the relevant determination.
- (8) If the accused fails to give a written indication of plea, the court is to proceed by way of a hearing for the purposes of section 24A.
- (9) The following shall not for any purpose be taken to constitute the taking of a plea—
  - (a) asking the accused under this section whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty;
  - (b) a written indication of plea under this section.
- (10) In subsection (1), the reference to a person charged with an offence is a reference to—
  - (a) a person in respect of whom a summons or warrant has been issued under section 1,
  - (b) a person who has been charged with an offence under Part 4 of the Police and Criminal Evidence Act 1984, or
  - (c) a person against whom a written charge and requisition have been issued under section 29 of the Criminal Justice Act 2003.
- (11) In this section and sections 24ZB, 24A and 24BA—
  - (a) “written indication of plea” means a written indication given—
    - (i) by a person who has been provided with the information and asked the questions required by subsection (3),
    - (ii) in accordance with the explanation provided under subsection (4)(c),
 of whether (if the offence were to proceed to trial) that person would plead guilty or not guilty;
  - (b) “written indication of a guilty plea” and “written indication of a not guilty plea” are to be read accordingly;
  - (c) references to a person’s failing to give a written indication of plea are to a person’s—

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- (i) having been provided with the information and asked the questions required by subsection (3), and
  - (ii) not having given a written indication of plea within the period indicated under subsection (4)(c).
- (12) In this section and section 24ZB, “relevant determination” means the determination referred to in subsection (1)(c).

**24ZB Written indication of plea: accused turning 18 or withdrawing indication**

- (1) This section has effect where a magistrates’ court has complied with section 24ZA(3).
- (2) If the accused attains the age of 18 years before giving, or failing to give, a written indication of plea (see section 24ZA(11)), section 24ZA ceases to have effect (and the court is to proceed in accordance with section 17ZA or 17A).

The court may not exercise its powers under section 29 of the Children and Young Persons Act 1963 so as to produce a different result.

- (3) Subsection (4) applies if the accused attains the age of 18 years—
- (a) after giving a written indication of plea, but
  - (b) before the taking of a plea in the summary trial or, as the case may be, the making of the relevant determination (see section 24ZA(12)).
- (4) The court must consider whether to exercise its powers under section 29 of the Children and Young Persons Act 1963; but subject to any exercise of those powers—
- (a) section 24ZA(5) or (7) ceases to apply, and
  - (b) the court is to proceed as if the written indication of plea had been given under (and within the meaning of) section 17ZA.
- (5) Subsection (6) applies if the accused attains the age of 18 years—
- (a) having failed to give a written indication of plea, but
  - (b) before the hearing for the purposes of section 24A.
- (6) Section 24ZA(8) ceases to apply, and the court is to proceed as if the accused had failed to give a written indication of plea within the meaning of section 17ZA.

The court may not exercise its powers under section 29 of the Children and Young Persons Act 1963 so as to produce a different result.

- (7) Subsection (8) applies if—
- (a) the accused gives a written indication of plea,
  - (b) at any time before—
    - (i) the taking of a plea in the summary trial,
    - (ii) the hearing for the purposes of section 24A(2), or
    - (iii) the sending of the accused to the Crown Court for trial,
- the court receives an indication given by the accused that the accused wishes to withdraw the written indication of plea, and

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- (c) the written indication of plea is not at that time being treated by virtue of subsection (4) as having been given under section 17ZA.
- (8) If this subsection applies—
  - (a) the designated officer for the court must inform the prosecutor of the withdrawal;
  - (b) the court is to cease to proceed in accordance with section 24ZA(5) or (7); and
  - (c) the court is to proceed by way of—
    - (i) a hearing for the purposes of section 24A(2), or
    - (ii) if the accused attains the age of 18 before any hearing for the purposes of section 24A(2) (and subject to the court’s powers under section 29 of the Children and Young Persons Act 1963), a hearing for the purposes of section 17A (which is to apply as if the accused’s written indication of plea had been given and withdrawn as described in subsection (1A)(b) of that section).’’

## **9 Powers to proceed if accused absent from allocation hearing**

- (1) The Magistrates’ Courts Act 1980 is amended as follows.
- (2) In section 17B (power to proceed with indication of plea hearing in absence of disorderly but represented accused)—
  - (a) for the heading substitute “Power to proceed if accused does not appear to give indication as to plea”;
  - (b) for subsection (1) substitute—
    - “(1A) This section has effect where—
      - (a) a hearing is held for the purposes of section 17A,
      - (b) the accused does not appear at the hearing,
      - (c) any of the conditions in subsections (1B) to (1E) is met, and
      - (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.
    - (1B) This condition is that a legal representative of the accused is present at the hearing and signifies the accused’s consent to the court’s proceeding in the accused’s absence.
    - (1C) This condition is that—
      - (a) a legal representative of the accused is present at the hearing, and
      - (b) the court does not consider that there is an acceptable reason for the accused’s failure to attend.
    - (1D) This condition is that—
      - (a) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that notice of the hearing was served on the accused within what appears to the court to be a reasonable time before its date, and
      - (b) the court does not consider that there is an acceptable reason for the accused’s failure to attend.

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(1E) This condition is that—

- (a) the accused has appeared on a previous occasion to answer the charge, and
- (b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1F) This section also has effect where—

- (a) a hearing is held for the purposes of section 17A,
  - (b) the accused appears at the hearing,
  - (c) the court considers that by reason of the accused's disorderly conduct before the court it is not practicable for the hearing to be conducted in the accused's presence, and
  - (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.”;
- (c) in subsection (2), for the words before paragraph (a) substitute “If a legal representative of the accused is present at the hearing—”;
- (d) after subsection (4) insert—

“(5) If no legal representative of the accused is present at the hearing—

- (a) the court is to proceed in accordance with section 18(1), and
- (b) the accused is to be taken for the purposes of section 20 to have indicated that the accused would (if the offence were to proceed to trial) plead not guilty.”

(3) In section 18 (procedure for determining mode of trial), omit subsection (3).

(4) In section 23 (power to proceed with allocation hearing in absence of represented accused)—

- (a) for the heading substitute “Power to proceed if accused absent from allocation hearing”;
- (b) for subsection (1) substitute—

“(1A) This section has effect where—

- (a) a hearing is held in accordance with section 18(1) or (1A),
- (b) the accused does not appear at the hearing,
- (c) any of the conditions in subsections (1B) to (1E) is met, and
- (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.

(1B) This condition is that a legal representative of the accused is present at the hearing and signifies the accused's consent to the court's proceeding in the accused's absence.

(1C) This condition is that—

- (a) a legal representative of the accused is present at the hearing, and
- (b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1D) This condition is that—

- (a) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that notice of the hearing was



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served on the accused within what appears to the court to be a reasonable time before its date, and

- (b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1E) This condition is that—

- (a) the accused has appeared on a previous occasion to answer the charge, and
- (b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1F) This section also has effect where—

- (a) a hearing is held in accordance with section 18(1) or (1A),
- (b) the accused appears at the hearing,
- (c) the court considers that by reason of the accused's disorderly conduct before the court it is not practicable for the hearing to be conducted in the accused's presence, and
- (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.

(1G) This section also has effect where a magistrates' court determines that section 17B(5) applies and proceeds straight away to a hearing in accordance with section 18(1).";

- (c) in subsection (4), in the words before paragraph (a), after "If" insert "a legal representative of the accused is present at the hearing and";
- (d) after subsection (4) insert—

"(4A) If no legal representative of the accused is present at the hearing, and the court decides under section 19 above that the offence appears to it more suitable for summary trial, then section 20 above shall not apply, and the court shall proceed to the summary trial of the information.

(4B) In a case within subsection (4A)—

- (a) the accused may, at any time before the taking of a plea in the summary trial, apply to the court for the question of the mode of trial to be reopened;
- (b) the court may, if it considers it in the interests of justice to do so (having regard, in particular, to the reason given by the accused for not appearing at the earlier hearing), accede to the application and arrange a hearing under paragraph (c);
- (c) if a hearing takes place under this paragraph and the accused appears at it, the court is not to proceed to summary trial by virtue of subsection (4A), but is to proceed in accordance with subsections (2) to (9) of section 20 above."

(5) After section 24B insert—

**"24BA Power to proceed if child or young person absent from plea and allocation hearing**

(1) This section has effect where—

- (a) a hearing is held for the purposes of section 24A(2),



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- (b) the accused does not appear at the hearing,
  - (c) the accused has failed to give a written indication of plea (see section 24ZA(11)),
  - (d) either—
    - (i) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that notice of the hearing was served on the accused within what appears to the court to be a reasonable time before its date, or
    - (ii) the accused has appeared on a previous occasion to answer the charge,
  - (e) the court does not consider that there is an acceptable reason for the accused’s failure to attend, and
  - (f) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.
- (2) Section 24A ceases to apply.
- (3) If no legal representative of the accused is present at the hearing, the court is to proceed to make the relevant determination (within the meaning given by section 24A(2)) as if the accused had appeared at the hearing and indicated that the accused would plead not guilty.
- (4) If a legal representative of the accused is present at the hearing, the court is to proceed in accordance with subsection (2) of section 24B (and subsections (3) and (4) of that section are to apply accordingly).”

*Transfer of cases between courts*

**10 Sending cases to Crown Court for trial**

- (1) Section 51 of the Crime and Disorder Act 1998 (sending of adult defendants to Crown Court for trial) is amended as set out in subsections (2) to (5).
- (2) For subsection (1) substitute—
- “(1) Subsections (2A) and (2B) apply where—
- (a) a magistrates’ court (“the court”) determines that any of the conditions set out in subsection (2) is met in relation to an offence with which a person has been charged, and
  - (b) the accused is an adult.”
- (3) In subsection (2)(b)—
- (a) for the words from “section” to “25(2D)” substitute “any provision of Part 1”;
  - (b) for “subsection (1) above” substitute “this section”.
- (4) After subsection (2) insert—
- “(2A) If the determination referred to in subsection (1)(a) is made while the accused is present before the court, the court must—
- (a) explain that the court is required to send the accused to the Crown Court for trial for the offence; and
  - (b) so send the accused.

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- (2B) Otherwise, the court must serve on the accused one or more documents which—
- (a) state the charge against the accused;
  - (b) explain that the court is required to send the accused to the Crown Court for trial for the offence; and
  - (c) set out any other information—
    - (i) that is required by Criminal Procedure Rules, or
    - (ii) that is authorised by Criminal Procedure Rules and which the court decides to include.
- (2C) As soon as practicable after serving the documents required by subsection (2B), the court must send the accused to the Crown Court for trial for the offence (which need not be done in open court).
- (2D) Subsections (2A) to (2C) have effect subject to any provision in Criminal Procedure Rules of the sort described in subsection (2E) or (3A).
- (2E) Criminal Procedure Rules may make provision—
- (a) about circumstances in which the requirement under subsection (2A) or (2B) does not apply; and
  - (b) about the sending of the accused to the Crown Court under this section in those circumstances.”
- (5) For subsections (3) to (12) substitute—
- “(3A) Criminal Procedure Rules may make provision about situations where—
- (a) a condition in subsection (2) is met in relation to an alleged offence, and
  - (b) any other alleged offence is, or appears to be, related (in such a way as is specified in the Rules) to the alleged offence referred to in paragraph (a).
- (3B) The provision that may be made as described in subsection (3A) includes provision—
- (a) for a person to be sent to the Crown Court for trial for the other alleged offence—
    - (i) whether or not a condition in subsection (2) is met in relation to it;
    - (ii) whether or not it is alleged to have been committed by the same person as the offence referred to in paragraph (a) of that subsection;
    - (iii) even if it is a summary offence;
  - (b) applying any other provision made by or under an Act about the sending of a person to the Crown Court for trial;
  - (c) disapplying any other provision made by or under an Act about how a magistrates’ court is to deal with the other alleged offence.”
- (6) Section 51A of the Crime and Disorder Act 1998 (sending of children or young persons to Crown Court for trial) is amended as set out in subsections (7) to (10).
- (7) Before subsection (1) insert—
- “(A1) Subsections (3A) and (3B) apply where—

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- (a) a magistrates' court ("the court") determines that any of the conditions set out in subsection (3) is met in relation to an offence with which a person has been charged, and
- (b) the accused is a child or young person."

(8) Omit subsection (2).

(9) After subsection (3) insert—

"(3A) If the determination referred to in subsection (A1)(a) is made while the accused is present before the court, the court must—

- (a) explain that the court is required to send the accused to the Crown Court for trial for the offence; and
- (b) so send the accused.

(3B) Otherwise, the court must serve on the accused one or more documents which—

- (a) state the charge against the accused;
- (b) explain that the court is required to send the accused to the Crown Court for trial for the offence; and
- (c) set out any other information—
  - (i) that is required by Criminal Procedure Rules, or
  - (ii) that is authorised by Criminal Procedure Rules and which the court decides to include.

(3C) As soon as practicable after serving the documents required by subsection (3B), the court must send the accused to the Crown Court for trial for the offence (which need not be done in open court).

(3D) Subsections (3A) to (3C) have effect subject to any provision in Criminal Procedure Rules of the sort described in subsection (3E) or (4A).

(3E) Criminal Procedure Rules may make provision—

- (a) about circumstances in which the requirement under subsection (3A) or (3B) does not apply; and
- (b) about the sending of the accused to the Crown Court under this section in those circumstances."

(10) For subsections (4) to (10) substitute—

"(4A) Criminal Procedure Rules may make provision about situations where—

- (a) a condition in subsection (3) is met in relation to an alleged offence, and
- (b) any other alleged offence is, or appears to be, related (in such a way as is specified in the Rules) to the alleged offence referred to in paragraph (a).

(4B) The provision that may be made as described in subsection (4A) includes provision—

- (a) for a person to be sent to the Crown Court for trial for the other alleged offence—
  - (i) whether or not a condition in subsection (3) is met in relation to it;

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- (ii) whether or not it is alleged to have been committed by the same person as the offence referred to in paragraph (a) of that subsection;
    - (iii) even if it is a summary offence;
  - (b) applying any other provision made by or under an Act about the sending of a person to the Crown Court for trial;
  - (c) disapplying any other provision made by or under an Act about how a magistrates' court is to deal with the other alleged offence.”
- (11) In section 52 of the Crime and Disorder Act 1998 (provision supplementary to sections 51 and 51A), after subsection (2) insert—
- “(2A) If the court sends a person for trial under section 51 or 51A other than in open court—
- (a) it must do so on bail, and
  - (b) that bail is to be—
    - (i) unconditional, if the accused is not already on bail, or is on unconditional bail, in respect of the charge in question, or
    - (ii) if the accused is already on bail subject to conditions in respect of the charge in question, subject to the same conditions.”

## **11 Powers of Crown Court to remit cases to the magistrates' court**

- (1) After section 46 of the Senior Courts Act 1981 insert—

### **“46ZA Remitting proceedings to magistrates' courts for trial**

- (1) In a case where a person has been sent by a magistrates' court to the Crown Court for trial for an offence, the Crown Court may send the person back to a magistrates' court for trial.
- (2) The Crown Court may not exercise the power in subsection (1)—
  - (a) in respect of a person who has attained the age of 18, or is not an individual, if the offence in question is triable only on indictment;
  - (b) in respect of a person who has not attained the age of 18, if the offence in question falls within section 51A(12) of the Crime and Disorder Act 1998.
- (3) In the case of an offence that is triable either way, the Crown Court may not exercise the power in subsection (1)—
  - (a) unless the person appears in court or consents to the power being exercised in the person's absence, and
  - (b) in the case of a person who has attained the age of 18, or is not an individual, unless the person consents to the power being exercised.
- (4) If a person under the age of 18 appears before the Crown Court having been sent to it as mentioned in subsection (1), the Crown Court—
  - (a) must consider whether to send the person back to a magistrates' court under subsection (1), and
  - (b) if it decides not to send the person back, must give reasons for not doing so.

- (5) In deciding whether to exercise the power in subsection (1), the Crown Court must—
- (a) take into account any other offence before the Crown Court that appears to the court to be related to that offence (whether the same, or a different, person is accused or has been convicted of the other offence), and
  - (b) have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 122 of the Coroners and Justice Act 2009.
- (6) Where the Crown Court exercises the power in subsection (1) it may, subject to section 25 of the Criminal Justice and Public Order Act 1994 (restrictions on granting bail), give such directions as appear to be necessary—
- (a) with respect to the custody of the accused, or
  - (b) for the accused’s release on bail,
- until the accused can appear or be brought before the magistrates’ court.
- (7) There is no right of appeal against an order under subsection (1).”
- (2) In section 25 of the Sentencing Code (remission of offenders aged under 18 to youth court for sentence), after subsection (2) insert—
- “(2A) If—
- (a) the convicting court is a magistrates’ court, and
  - (b) that court commits the offender to the Crown Court for sentence,
- the Crown Court may remit the offender to a youth court acting for the place where the convicting court sat.”
- (3) After section 25 of the Sentencing Code insert—

**“25A Power to remit adult offenders to magistrates’ courts for sentence**

- (1) This section applies where a person aged 18 or over, or a person who is not an individual—
- (a) has been convicted of an offence by a magistrates’ court and committed to the Crown Court for sentence, or
  - (b) has been convicted of an offence (other than an offence triable only on indictment) by the Crown Court following a plea of guilty.
- (2) The Crown Court may remit the offender to a magistrates’ court for sentence.
- (3) In deciding whether to exercise the power in subsection (2), the Crown Court must—
- (a) take into account any other offence before the Crown Court that appears to the court to be related to that offence (whether the same, or a different, person is accused or has been convicted of the other offence), and
  - (b) have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 122 of the Coroners and Justice Act 2009.
- (4) There is no right of appeal against an order under subsection (2).”



## **12 Powers of youth court to transfer cases if accused turns 18**

(1) Section 47 of the Crime and Disorder Act 1998 (powers of youth courts) is amended as follows.

(2) Before subsection (1) insert—

“(A1) This section applies where a person who appears or is brought before a youth court charged with an offence attains the age of 18 before the start of the trial of the person for the offence.”

(3) For subsection (1) substitute—

“(1) In the case of a summary offence or an offence triable either way, the youth court may, at any time before the start of the trial, remit the person for trial to a magistrates’ court (other than a youth court).

(1A) In the case of an indictable offence, the youth court may, at any time before the start of the trial, send the person for trial to the Crown Court.

(1B) In subsections (A1) to (1A), “the start of the trial” is to be read in accordance with section 22(1B)(a) and (b) of the 1985 Act.

(1C) If the youth court is proposing to exercise the power under subsection (1) to remit a person to a magistrates’ court for trial for an offence triable either way, the youth court—

- (a) must give the person the opportunity of electing to be tried by the Crown Court for the offence, and
- (b) if the person elects to be so tried, must exercise the power under subsection (1A) to send the person for trial to the Crown Court.

(1D) A remission or sending under subsection (1) or (1A) does not have to be done in open court in the presence of the accused; but if it is not the youth court must first serve on the person one or more documents which—

- (a) state the charge against the accused;
- (b) explain that the court proposes to remit the accused for trial to a magistrates’ court (other than a youth court) or (as the case may be) to send the accused for trial to the Crown Court; and
- (c) set out any other information—
  - (i) that is required by Criminal Procedure Rules, or
  - (ii) that is authorised by Criminal Procedure Rules and which the court decides to include.

(1E) Criminal Procedure Rules may make provision about situations where—

- (a) a person is sent for trial under subsection (1A) in relation to an alleged offence, and
- (b) any other alleged offence is, or appears to be, related (in such a way as is specified in the Rules) to the alleged offence referred to in paragraph (a).

(1F) The provision that may be made as described in subsection (1E) includes provision—

- (a) for a person to be sent to the Crown Court for trial for the other alleged offence—
  - (i) whether or not this section applies in relation to it;



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- (ii) whether or not it is alleged to have been committed by the same person as the offence referred to in paragraph (a) of that subsection;
    - (iii) even if it is a summary offence;
  - (b) applying any other provision made by or under an Act about the sending of a person to the Crown Court for trial;
  - (c) disapplying any other provision made by or under an Act about how a magistrates' court is to deal with the other alleged offence.”
- (4) In subsection (2)—
- (a) in the words before paragraph (a), for “under subsection (1)” substitute “or sent under subsection (1) or (1A)”;
  - (b) in paragraph (a), for “of remission” substitute “for the remission or sending”;
  - (c) in paragraph (b), for “remitting” substitute “youth”.
- (5) In subsection (3)—
- (a) for “remitting” substitute “youth”;
  - (b) after “remitted” insert “or sent”.
- (6) In subsection (4)—
- (a) the words from “all” to the end become paragraph (a);
  - (b) in that paragraph, for “remitting” substitute “youth”;
  - (c) at the end of that paragraph insert “; and
    - (b) the person remitted or sent had attained the age of 18 before the start of those proceedings.”
- (7) After subsection (4) insert—
- “(4A) For the purposes of this section a person is to be taken to be the age which that person appears to the court to be after considering any available evidence.”

#### *Sentencing powers of magistrates' courts*

### **13 Maximum term of imprisonment on summary conviction for either-way offence**

- (1) In section 224 of the Sentencing Code (general limit on magistrates' court's power to impose custodial sentence)—
- (a) in subsection (1), for the words after paragraph (b) substitute “for a term exceeding the applicable limit in respect of any one offence”;
  - (b) after subsection (1) insert—

“(1A) The applicable limit is—

    - (a) 6 months in the case of a summary offence, or
    - (b) 12 months in the case of an offence triable either way.”
  - (c) in subsection (2), for the words from “more than” to the end substitute “a term exceeding the applicable limit”.
- (2) In Part 8 of Schedule 23 to the Sentencing Act 2020 (powers to amend the Sentencing Code in relation to custodial sentences), before paragraph 15 insert—

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*“General limit on magistrates’ court’s power to impose custodial sentence*

- 14A (1) The Secretary of State may by regulations amend section 224(1A)(b) (general limit on custodial sentence for either-way offence in magistrates’ court)—
- (a) if for the time being it refers to 12 months, to substitute a reference to 6 months for the reference to 12 months, or
  - (b) if for the time being it refers to 6 months, to substitute a reference to 12 months for the reference to 6 months.
- (2) An amendment under sub-paragraph (1) has effect only in relation to an offence for which a person is convicted on or after the day on which the amendment comes into force.
- (3) Regulations under sub-paragraph (1) are subject to the negative resolution procedure.””
- (3) In Schedule 1 to the Interpretation Act 1978, after the entry requiring the definitions relating to offences to be construed without regard to section 22 of the Magistrates’ Courts Act 1980 insert—
- “In relation to a term of imprisonment in respect of an offence triable either way under the law of England and Wales, “general limit in a magistrates’ court” means the limit laid down in respect of the offence by section 224(1) of the Sentencing Code (as it has effect from time to time).”
- (4) In section 32(1) of the Magistrates’ Courts Act 1980 (maximum penalty on summary conviction for certain either-way offences), for “12 months” substitute “the general limit in a magistrates’ court”.
- (5) In section 282(3) of the Criminal Justice Act 2003 (maximum custodial term on summary conviction for certain either-way offences)—
- (a) omit “maximum”;
  - (b) for “12 months” substitute “a term not exceeding the general limit in a magistrates’ court”.
- (6) Subsection (7) applies to relevant legislation—
- (a) which provides for a maximum term of imprisonment of 12 months on summary conviction for an offence triable either way, and
  - (b) in relation to which section 282(3) of the Criminal Justice Act 2003 does not apply.
- (7) Relevant legislation to which this subsection applies is to be read as providing for a term of imprisonment not exceeding the general limit in a magistrates’ court (in place of the term referred to in subsection (6)(a)).
- (8) Subsection (9) applies to relevant primary legislation that confers a power (in whatever terms) to make subordinate legislation providing for a maximum term of imprisonment, on summary conviction for an offence triable either way, of—
- (a) 6 months, in the case of an enactment contained in an Act passed on or before 20 November 2003, or
  - (b) 12 months, the case of any other relevant primary legislation.

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- (9) Relevant primary legislation to which this subsection applies is to be read as conferring a power to provide for a term of imprisonment not exceeding the general limit in a magistrates' court (in place of the term referred to in subsection (8)(a) or (b)).
- (10) The Secretary of State may by regulations—
- (a) amend relevant legislation in relation to which section 282(3) of the Criminal Justice Act 2003 applies, to spell out the effect of that provision (as amended by subsection (5));
  - (b) amend relevant legislation to which subsection (7) applies, to spell out the effect of that subsection;
  - (c) amend relevant primary legislation to which subsection (9) applies, to spell out the effect of that subsection;
  - (d) amend relevant legislation in consequence of an amendment under any of the preceding paragraphs.
- (11) In this section—
- “relevant legislation” means an enactment contained in—
    - (a) an Act passed before or in the same Session as this Act,
    - (b) an Act or Measure of Senedd Cymru enacted before the passing of this Act,
    - (c) subordinate legislation made before the passing of this Act, or
    - (d) retained direct EU legislation, not falling within the preceding paragraphs, made before the passing of this Act;
  - “relevant primary legislation” means an enactment falling within paragraph (a) or (b) of the definition of “relevant legislation”;
  - “subordinate legislation” means subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act) or any equivalent instrument made or to be made under an Act or Measure of Senedd Cymru.

*Miscellaneous and consequential provision*

**14 Involvement of parent or guardian in proceedings conducted in writing**

- (1) Section 34A of the Children and Young Persons Act 1933 (attendance at court of parent or guardian) is amended as follows.
- (2) In the heading, after “court” insert “or other involvement”.
- (3) After subsection (1) insert—
- “(1A) Where a child or young person (C) is charged with an offence, the court—
    - (a) may in any case; and
    - (b) must in a case where C is under the age of sixteen years,exercise the functions conferred by subsections (1B) and (1C) (insofar as they are applicable to the proceedings) unless and to the extent that the court is satisfied that it would be unreasonable to do so, having regard to the circumstances of the case.
  - (1B) Where any stage of the proceedings is conducted in writing, the court may or (as the case may be) must—

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- (a) ascertain whether a person who is a parent or guardian of C is aware that the written proceedings are taking place, and
- (b) if it appears to the court that no parent or guardian is aware of that, provide information about the written proceedings to at least one such person.

(1C) Where C gives a written indication of plea under section 24ZA of the Magistrates' Courts Act 1980, the court may or (as the case may be) must—

- (a) ascertain whether a person who is a parent or guardian of C is aware that the written indication of plea has been given, and
- (b) if it appears to the court that no parent or guardian is aware of that, bring the written indication of plea to the attention of at least one such person."

- (4) In subsection (2), for "the reference in subsection (1)" substitute "a reference in any of subsections (1) to (1C)".

## **15 Removal of certain requirements for hearings about procedural matters**

- (1) In section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (issue of witness summons on application to Crown Court), in subsection (8)(d), at the end insert "(if the application is determined at a hearing)".
- (2) In section 8C of the Magistrates' Courts Act 1980 (restrictions on reporting of certain pre-trial hearings in the magistrates' court), in subsections (4)(a) and (5)(a), for "hearing" substitute "considering".
- (3) In section 11 of the Criminal Justice Act 1987 (restrictions on reporting of certain preparatory hearings in the Crown Court), in subsections (7) and (8), for "hearing" substitute "considering".
- (4) In the Criminal Procedure and Investigations Act 1996—
  - (a) in section 37 (restrictions on reporting of certain preparatory hearings in the Crown Court), in subsections (6) and (7), for "hearing" substitute "considering";
  - (b) in section 41 (restrictions on reporting of certain pre-trial hearings in the Crown Court), in subsections (4) and (5), for "hearing" substitute "considering (in the case of proceedings in England and Wales) or hearing (in the case of proceedings in Northern Ireland)".
- (5) In the Crime and Disorder Act 1998—
  - (a) in section 52A (restrictions on reporting of certain initial proceedings in the magistrates' court), in subsections (3) and (4), for "hearing" substitute "considering";
  - (b) in paragraph 3 of Schedule 3 (restrictions on reporting of applications for dismissal of charge in the Crown Court), in sub-paragraph (3), for "hearing" substitute "considering".
- (6) In section 47 of the Youth Justice and Criminal Evidence Act 1999 (restrictions on reporting of certain matters to do with witnesses), in subsections (4) and (5), for "hearing" substitute "considering (in the case of proceedings in England and Wales) or hearing (in the case of other proceedings)".

- (7) In section 71 of the Criminal Justice Act 2003 (restrictions on reporting of prosecution appeals), in subsections (5)(a) and (6)(a), for “hearing” substitute “considering”.

**16 Documents to be served in accordance with Criminal Procedure Rules**

Schedule 1 amends various provisions to do with the service or delivery of documents so as to allow the same methods to be adopted as for service under Criminal Procedure Rules.

**17 Power to make consequential or supplementary provision**

- (1) The Lord Chancellor may, by regulations, make consequential or supplementary provision in relation to any provision of this Chapter.
- (2) The regulations may, in particular, amend, repeal or revoke—
- (a) any provision of an Act passed before this Act or in the same Session, or
  - (b) any provision contained in subordinate legislation within the meaning of the Interpretation Act 1978 (whenever the legislation was made or the Act under which it was made was passed).
- (3) Regulations under this section that amend or repeal any provision of an Act are subject to affirmative resolution procedure (see section 49(3)).
- (4) Any other regulations under this section are subject to negative resolution procedure (see section 49(4)).

**18 Consequential and related amendments**

Schedule 2 contains amendments that are consequential on, or related to, the preceding provisions of this Chapter.

## CHAPTER 2

### ONLINE PROCEDURE

**19 Rules for online procedure in courts and tribunals**

- (1) For proceedings of a specified kind, there are to be rules which—
- (a) must require that kind of proceedings, or one or more aspects of that kind of proceedings, to be initiated by electronic means;
  - (b) may authorise or require that kind of proceedings, or one or more aspects of that kind of proceedings, to be conducted, progressed or disposed of by electronic means;
  - (c) may authorise or require the parties to that kind of proceedings (and their representatives) to participate in hearings, including the hearing at which the proceedings are disposed of, by electronic means;
- and are otherwise to govern the practice and procedure to be followed in that kind of proceedings.
- (2) The rules are to be called “Online Procedure Rules”.



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- (3) Powers to make Online Procedure Rules (see sections 22(1) and 23) are to be exercised with a view to securing—
  - (a) that practice and procedure under the Rules are accessible and fair,
  - (b) that the Rules are both simple and simply expressed,
  - (c) that disputes may be resolved quickly and efficiently under the Rules, and
  - (d) that the Rules support the use of innovative methods of resolving disputes.
- (4) For the purposes of subsection (3)(a), regard must be had to the needs of persons who require online procedural assistance.
- (5) Different Online Procedure Rules may be made for different kinds of proceedings.
- (6) Where Online Procedure Rules require a person—
  - (a) to initiate, conduct or progress proceedings by electronic means, or
  - (b) to participate in proceedings, other than a hearing, by electronic means,
 Online Procedure Rules must also provide that, if the person is not legally represented, the person may instead choose to do so by non-electronic means.
- (7) Where Online Procedure Rules require a person to participate in a hearing by electronic means, Online Procedure Rules must also provide that a court or tribunal may, on an application or of its own initiative, order or otherwise direct that person, or any other person, to participate by non-electronic means.
- (8) The provision that may be made under subsection (1)(b) includes provision authorising or requiring—
  - (a) any question arising in proceedings, or
  - (b) the final determination of proceedings,
 to be disposed of by electronic means as a result of steps which the parties take, or fail to take, by electronic means.
- (9) Online Procedure Rules may provide—
  - (a) for circumstances in which proceedings of a specified kind—
    - (i) are not to be governed by the Rules, or
    - (ii) are to cease to be governed by the Rules, and
  - (b) for the proceedings to be governed by the applicable standard rules instead.
- (10) Online Procedure Rules may provide—
  - (a) for circumstances in which excluded proceedings—
    - (i) are to be governed by Online Procedure Rules, or
    - (ii) are to be governed again by Online Procedure Rules, and
  - (b) for the proceedings to cease to be governed by the applicable standard rules.
- (11) For the purposes of subsection (10)(a), proceedings are “excluded” if the proceedings are not governed, or cease to be governed, by Online Procedure Rules under provision of the kind referred to in subsection (9)(a).
- (12) Online Procedure Rules may provide—
  - (a) for proceedings of a specified kind to be taken in a court or tribunal which is not the court or tribunal in which they would be taken if governed by the applicable standard rules;
  - (b) for different proceedings (whether of the same specified kind or different specified kinds) to be taken together in a particular court or tribunal (which

need not be the court or tribunal in which any or all of those proceedings would be taken if governed by the applicable standard rules).

(13) But Online Procedure Rules may not provide—

- (a) for proceedings to be taken in a court or tribunal that is not established under the law of the jurisdiction in which those proceedings are brought, or
- (b) for an appeal to be taken in the court or tribunal whose judgment or decision is being appealed against.

(14) This section is subject to section 21.

(15) Schedule 3 makes provision about practice directions in relation to proceedings governed by Online Procedure Rules.

## **20 “Specified kinds” of proceedings**

(1) Proceedings are of a “specified kind” for the purposes of section 19 if they are a kind of—

- (a) civil proceedings in England and Wales,
- (b) family proceedings in England and Wales,
- (c) proceedings in the First-tier Tribunal,
- (d) proceedings in the Upper Tribunal,
- (e) proceedings in employment tribunals, or
- (f) proceedings in the Employment Appeal Tribunal,

specified in regulations made by the Lord Chancellor.

(2) The matters by reference to which a kind of proceedings may be specified in regulations under subsection (1) include—

- (a) the legal basis of the proceedings;
- (b) the factual basis of the proceedings;
- (c) the value of the matter in issue in the proceedings;
- (d) the court or tribunal in which the proceedings are to be brought or continued.

(3) Regulations under this section are subject to the concurrence requirement (see section 32(1)).

(4) Regulations under this section are subject to affirmative resolution procedure (see section 49(3)).

## **21 Provision supplementing section 19**

(1) The Lord Chancellor may, by regulations, provide for circumstances in which—

- (a) a person initiating proceedings of a specified kind may choose whether the proceedings are to be governed by Online Procedure Rules or the applicable standard rules;
- (b) the person initiating any aspect of proceedings that are governed by Online Procedure Rules may choose for that aspect to be initiated, conducted, progressed or disposed of in accordance with the applicable standard rules instead of Online Procedure Rules.

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- (2) Directions under Schedule 3 do not apply to proceedings to the extent that the applicable standard rules apply to those proceedings by virtue of regulations under subsection (1)(b).
- (3) The Lord Chancellor may, by regulations, provide—
  - (a) for circumstances in which proceedings of a specified kind—
    - (i) are not to be governed by Online Procedure Rules, or
    - (ii) are to cease to be governed by Online Procedure Rules, and
  - (b) for the proceedings to be governed by the applicable standard rules instead.
- (4) The Lord Chancellor may, by regulations, provide—
  - (a) for circumstances in which excluded proceedings—
    - (i) are to be governed by Online Procedure Rules, or
    - (ii) are to be governed again by Online Procedure Rules, and
  - (b) for the proceedings to cease to be governed by the applicable standard rules.
- (5) For the purposes of subsection (4)(a), proceedings are “excluded” if the proceedings are not governed, or cease to be governed, by Online Procedure Rules because of—
  - (a) Online Procedure Rules of the kind referred to in section 19(9)(a), or
  - (b) regulations under subsection (1)(a) or (3)(a).
- (6) Regulations under this section are subject to the concurrence requirement (see section 32(1)).
- (7) Regulations under this section are subject to affirmative resolution procedure (see section 49(3)).

## **22 The Online Procedure Rule Committee**

- (1) Online Procedure Rules are to be made by a committee known as the Online Procedure Rule Committee.
- (2) The Committee is to consist of the persons appointed under subsections (3) and (4).
- (3) The Lord Chief Justice is to appoint—
  - (a) one person who is a judge of the Senior Courts of England and Wales, and
  - (b) two persons each of whom is either—
    - (i) a judge of the Senior Courts of England and Wales, a Circuit Judge or a district judge, or
    - (ii) a judge of the First-tier Tribunal, a judge of the Upper Tribunal, an Employment Judge, or a judge of the Employment Appeal Tribunal nominated as such by the Lord Chief Justice.
- (4) The Lord Chancellor is to appoint—
  - (a) one person who is a barrister in England and Wales, a solicitor of the Senior Courts of England and Wales, or a legal executive,
  - (b) one person who has experience in, and knowledge of, the lay advice sector, and
  - (c) one person who has experience in, and knowledge of, information technology relating to end-users’ experience of internet portals.

- (5) Before appointing a person under subsection (3)(a) the Lord Chief Justice must consult—
  - (a) the Lord Chancellor, and
  - (b) the Senior President of Tribunals.
- (6) Before appointing a person under subsection (3)(b) the Lord Chief Justice must—
  - (a) consult the Lord Chancellor and the Secretary of State, and
  - (b) obtain the agreement of the Senior President of Tribunals.
- (7) Before appointing a person under subsection (4)(a) the Lord Chancellor must consult—
  - (a) the Lord Chief Justice,
  - (b) the Senior President of Tribunals, and
  - (c) the relevant authorised body.
- (8) Before appointing a person under subsection (4)(b) or (c) the Lord Chancellor must consult—
  - (a) the Lord Chief Justice, and
  - (b) the Senior President of Tribunals.
- (9) The Lord Chief Justice may appoint one of the persons appointed under subsection (3)(a) or (b) to be the chair of the Online Procedure Rule Committee.
- (10) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any function of the Lord Chief Justice under this section.
- (11) The Lord Chancellor may reimburse the members of the Online Procedure Rule Committee their travelling and out-of-pocket expenses.
- (12) In this section—
  - “legal executive” means a person authorised by the Chartered Institute of Legal Executives to practise as a member of the profession of legal executives;
  - “relevant authorised body”, in relation to an appointment under subsection (4)(a), means—
    - (a) the General Council of the Bar of England and Wales, if the appointment is of a barrister;
    - (b) the Law Society of England and Wales, if the appointment is of a solicitor;
    - (c) the Chartered Institute of Legal Executives, if the appointment is of a legal executive.

## **23 General powers of the Online Procedure Rule Committee**

- (1) For making Online Procedure Rules for proceedings of a kind set out in an entry in the first column of the following table, the Online Procedure Rule Committee has the powers set out in the corresponding entry in the second column.

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<i>Kind of proceedings</i>	<i>Powers of the Online Procedure Rule Committee</i>
Civil proceedings in England and Wales	The same powers that the Civil Procedure Rule Committee has under the Civil Procedure Act 1997 or otherwise for making Civil Procedure Rules, except the powers under paragraphs 5 and 6 of Schedule 1 to that Act (powers to apply other rules and refer to practice directions).
Family proceedings in England and Wales	The same powers that the Family Procedure Rule Committee has under Part 7 of the Courts Act 2003 or otherwise for making Family Procedure Rules, except the powers under section 76(4) to (8) of that Act (powers to apply other rules and refer to practice directions).
Proceedings in the First-tier Tribunal	The same powers that the Tribunal Procedure Committee has under Part 1 of the Tribunals, Courts and Enforcement Act 2007 or otherwise for making Tribunal Procedure Rules for proceedings in the First-tier Tribunal, except the power under paragraph 17 of Schedule 5 to that Act (power to refer to practice directions).
Proceedings in the Upper Tribunal	The same powers that the Tribunal Procedure Committee has under Part 1 of the Tribunals, Courts and Enforcement Act 2007 or otherwise for making Tribunal Procedure Rules for proceedings in the Upper Tribunal, except the power under paragraph 17 of Schedule 5 to that Act (power to refer to practice directions).
Proceedings in employment tribunals	The same powers that the Tribunal Procedure Committee has under Parts 1 and 3 of the Employment Tribunals Act 1996 or otherwise for making Employment Tribunal Procedure Rules for proceedings before employment tribunals, except the power under paragraph 18 of Schedule A1 to that Act (power to refer to practice directions).
Proceedings in the Employment Appeal Tribunal	The same powers that the Tribunal Procedure Committee has under Parts 2 and 3 of the Employment Tribunals Act 1996 or otherwise for making



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<i>Kind of proceedings</i>	<i>Powers of the Online Procedure Rule Committee</i>
	Employment Tribunal Procedure Rules for proceedings before the Employment Appeal Tribunal, except the power under paragraph 18 of Schedule A1 to that Act (power to refer to practice directions).

- (2) Online Procedure Rules may apply other procedural provision.
- (3) The other procedural provision may be applied to proceedings of a particular kind even if the provision would not normally be applicable to that kind of proceedings.
- (4) The other procedural provision may be applied—
  - (a) to any extent;
  - (b) with or without modifications;
  - (c) as amended from time to time.
- (5) In subsections (2) to (4) “other procedural provision” means—
  - (a) Civil Procedure Rules,
  - (b) Family Procedure Rules,
  - (c) Tribunal Procedure Rules,
  - (d) Employment Tribunal Procedure Rules,
  - (e) other rules of court,
  - (f) directions under—
    - (i) section 7A or 29A of the Employment Tribunals Act 1996,
    - (ii) section 5 of the Civil Procedure Act 1997,
    - (iii) section 81 of the Courts Act 2003, or
    - (iv) section 23 of the Tribunals, Courts and Enforcement Act 2007, or
  - (g) any other provision governing the practice or procedure of a court or tribunal which is made by or under an enactment (whenever passed or made).
- (6) Online Procedure Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions under Schedule 3.

## **24 Power to make certain provision about dispute-resolution services**

- (1) This section applies to Online Procedure Rules which provide—
  - (a) for the transfer by electronic means of information held for the purposes of an online dispute-resolution service to a court or tribunal, or
  - (b) for a court or tribunal to take into account, for any purpose, steps that a party to proceedings has or has not taken in relation to an online dispute-resolution service.
- (2) The Rules may be expressed so that their application in relation to a particular service depends on things done by a particular person from time to time.
- (3) The Rules may, for example, refer to such services as—
  - (a) appear from time to time in a list published by a particular person, or
  - (b) are from time to time certified by a particular person as complying with particular standards.

(4) In this section—

“online dispute-resolution service” means a service accessible by electronic means for facilitating the resolution of disputes without legal proceedings;

“particular person” and “particular standards” include, respectively, a person of a particular description and standards of a particular description.

## **25 Power to change certain requirements relating to the Committee**

(1) The Lord Chancellor may by regulations—

- (a) amend section 22(2) to (9), and
- (b) make consequential amendments in any other provision of section 22 or in subsection (2) or (3) of this section.

(2) The Lord Chancellor may make regulations under this section only with the concurrence of—

- (a) the Lord Chief Justice, and
- (b) the Senior President of Tribunals.

(3) Before making regulations under this section, the Lord Chancellor must consult the following persons—

- (a) the Head of Civil Justice;
- (b) the Deputy Head of Civil Justice (if there is one);
- (c) the President of the Family Division.

(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the function of the Lord Chief Justice under subsection (2).

(5) Regulations under this section are subject to negative resolution procedure (see section 49(4)).

## **26 Process for making Online Procedure Rules**

(1) Before making Online Procedure Rules, the Online Procedure Rule Committee must—

- (a) consult such persons as they consider appropriate, and
- (b) hold a meeting (unless it is inexpedient to do so).

(2) Rules made by the Online Procedure Rule Committee must be—

- (a) signed by—
  - (i) at least half of the members of the Committee, where one of the signatories is the chair, or
  - (ii) a majority of the members of the Committee, in any other case, and
- (b) submitted to the Lord Chancellor.

(3) The Lord Chancellor may allow or disallow Online Procedure Rules made by the Committee.

(4) In deciding whether to allow or disallow rules, the Lord Chancellor must have regard to the needs of persons who require online procedural assistance.

(5) If the Lord Chancellor disallows rules, the Lord Chancellor must give the Committee written reasons for doing so.

- (6) Rules made by the Committee and allowed by the Lord Chancellor—
  - (a) come into force on such day as the Lord Chancellor directs, and
  - (b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 applies as if the instrument contained rules made by a Minister of the Crown.
- (7) A statutory instrument containing Online Procedure Rules is subject to annulment in pursuance of a resolution of either House of Parliament.

## **27 Power to require Online Procedure Rules to be made**

- (1) This section applies if the Lord Chancellor gives the Online Procedure Rule Committee written notice that the Lord Chancellor thinks it is expedient for Online Procedure Rules to include provision that would achieve a purpose specified in the notice.
- (2) The Committee must make such Online Procedure Rules as it considers necessary to achieve the specified purpose.
- (3) Those Rules must be—
  - (a) made within a reasonable period after the Lord Chancellor gives notice to the Committee;
  - (b) made in accordance with section 26.

## **28 Power to make amendments in relation to Online Procedure Rules**

- (1) The Lord Chancellor may by regulations amend, repeal or revoke any enactment to the extent that the Lord Chancellor considers necessary or desirable in consequence of, or in order to facilitate the making of, Online Procedure Rules.
- (2) In subsection (1), “enactment” means any enactment whenever passed or made, including an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.
- (3) The Lord Chancellor must consult the Lord Chief Justice and the Senior President of Tribunals before making regulations under this section.
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the function under subsection (3).
- (5) Regulations under this section that amend or repeal any provision of an Act are subject to affirmative resolution procedure (see section 49(3)).
- (6) Any other regulations under this section are subject to negative resolution procedure (see section 49(4)).

## **29 Duty to make support available for those who require it**

The Lord Chancellor must arrange for the provision of such support as the Lord Chancellor considers to be appropriate and proportionate for persons who require online procedural assistance.

### **30 Power to make consequential or supplementary provision**

- (1) The Lord Chancellor may, by regulations, make consequential or supplementary provision in relation to any provision of this Chapter.
- (2) The regulations may, in particular, amend, repeal or revoke—
  - (a) any provision of an Act passed before this Act or in the same Session, or
  - (b) any provision contained in subordinate legislation within the meaning of the Interpretation Act 1978 (whenever the legislation was made or the Act under which it was made was passed).
- (3) Regulations under this section that amend or repeal any provision of an Act are subject to affirmative resolution procedure (see section 49(3)).
- (4) Any other regulations under this section are subject to negative resolution procedure (see section 49(4)).

### **31 Amendments of other legislation**

Schedule 4 contains amendments in connection with the preceding provisions of this Chapter.

### **32 Judicial agreement to certain regulations**

- (1) Where regulations under this Chapter are subject to the “concurrence requirement”, the Lord Chancellor—
  - (a) must obtain the concurrence of the Lord Chief Justice before making the regulations if, or to the extent that, the regulations relate to—
    - (i) civil proceedings in England and Wales, or
    - (ii) family proceedings in England and Wales;
  - (b) must obtain the concurrence of the Senior President of Tribunals before making the regulations if, or to the extent that, the regulations relate to proceedings in—
    - (i) the First-tier Tribunal,
    - (ii) the Upper Tribunal,
    - (iii) employment tribunals, or
    - (iv) the Employment Appeal Tribunal.
- (2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the function of the Lord Chief Justice under subsection (1)(a).

### **33 Interpretation of this Chapter**

In this Chapter—

“applicable standard rules” means—

- (a) Civil Procedure Rules, in the case of civil proceedings in England and Wales;
- (b) Family Procedure Rules, in the case of family proceedings in England and Wales;
- (c) Tribunal Procedure Rules, in the case of proceedings in the First-tier Tribunal or the Upper Tribunal;

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- (d) Employment Tribunal Procedure Rules, in the case of proceedings in employment tribunals or the Employment Appeal Tribunal;
- “civil proceedings in England and Wales” means proceedings in relation to which Civil Procedure Rules may be made under the Civil Procedure Act 1997;
- “family proceedings in England and Wales” means family proceedings within the meaning given by section 75 of the Courts Act 2003;
- “Lord Chief Justice” means the Lord Chief Justice of England and Wales;
- “Online Procedure Rules” has the meaning given by section 19(2);
- “persons who require online procedural assistance” means persons who, because of difficulties in accessing or using electronic equipment, require assistance in order to initiate, conduct, progress or participate in proceedings by electronic means in accordance with Online Procedure Rules;
- “specified kind” (in relation to proceedings) is to be read in accordance with section 20(1).

## CHAPTER 3

### EMPLOYMENT TRIBUNALS AND THE EMPLOYMENT APPEAL TRIBUNAL

#### 34 Employment Tribunal Procedure Rules

- (1) The Employment Tribunals Act 1996 is amended as set out in subsections (2) to (4).
- (2) For section 7 substitute—

**“7 Practice and procedure: general**

Procedure Rules (see section 37QA) are to govern the practice and procedure to be followed in employment tribunals.”

- (3) For section 30 substitute—

**“30 Practice and procedure: general**

- (1) Procedure Rules (see section 37QA) are to govern the practice and procedure to be followed in the Appeal Tribunal.
- (2) The Appeal Tribunal has the power to regulate its own practice and procedure, subject to Procedure Rules, directions under section 29A(1), and any other provision made by or under an enactment.”

- (4) At the beginning of Part 3 insert—

*“Procedure Rules*

**37QA Procedure Rules**

- (1) There are to be rules made by the Tribunal Procedure Committee called “Employment Tribunal Procedure Rules”.
- (2) Those are the rules referred to as “Procedure Rules” in this Act.



- (3) Schedule A1 makes further provision about Procedure Rules.
- (4) The power of the Tribunal Procedure Committee to make Procedure Rules for the purposes set out in sections 7 and 30(1) is not limited by any other provision (including future provision) about what Procedure Rules may or must contain.”
- (5) Schedule 5 contains further provision in connection with the provision made by the preceding subsections.

### **35 Composition of tribunals**

- (1) The Employment Tribunals Act 1996 is amended as follows.
- (2) For section 4 substitute—

#### **“4 Composition of tribunals**

- (1) An employment tribunal is, for the purpose of deciding any given matter, to be composed of a member or members chosen by the Senior President of Tribunals.
- (2) The member, or each member, chosen must belong to a panel of members of employment tribunals appointed in accordance with regulations under section 1(1).
- (3) The Senior President of Tribunals (or any person to whom the function under subsection (1) is delegated)—
  - (a) must act in accordance with regulations under subsection (4);
  - (b) may choose themselves (if eligible in accordance with regulations under section 1(1)).
- (4) The Lord Chancellor must by regulations make provision, in relation to every matter that may fall to be decided by an employment tribunal, for determining the number of members who are to compose the tribunal.
- (5) Where regulations under subsection (4) provide for a tribunal to be composed of a single member, the regulations must provide for that member to be an Employment Judge.
- (6) Where regulations under subsection (4) provide for a tribunal to be composed of more than one member, the regulations—
  - (a) must provide for at least one of those members to be an Employment Judge,
  - (b) must make provision for determining how many (if any) of the other members are to be Employment Judges and how many (if any) are to be members who are not Employment Judges, and
  - (c) if the tribunal is to include one or more members who are not Employment Judges, may make provision for determining what qualifications (if any) that member or any of those members must have.
- (7) A duty under subsection (4) or (6) to provide for the determination of anything may be discharged by providing for the thing to be determined by

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the Senior President of Tribunals or the President of Employment Tribunals in accordance with any provision made under that subsection.

- (8) The power under subsection (6)(c) may be exercised by giving the Senior President of Tribunals or the President of Employment Tribunals power to determine what qualifications are required in accordance with any provision made by the regulations.
- (9) Where a tribunal is to be composed of more than one member, the tribunal may proceed in the absence of one or more of the members chosen to compose it if—
  - (a) the parties to the case agree, and
  - (b) at least one of the members who is present is an Employment Judge.
- (10) Where a person (other than an Employment Judge) is chosen as one of the members composing a tribunal but does not have a qualification required by virtue of subsection (6)(c), the tribunal may still proceed with that person as a member if the parties to the case agree.
- (11) Before making regulations under this section, the Lord Chancellor must consult the Senior President of Tribunals.
- (12) In this section—
  - “President of Employment Tribunals”—
    - (a) in relation to employment tribunals in England and Wales, means the President of Employment Tribunals (England and Wales), and
    - (b) in relation to employment tribunals in Scotland, means the President of Employment Tribunals (Scotland);
  - “qualification” includes experience.”

- (3) For section 28 substitute—

**“28 Composition of Appeal Tribunal**

- (1) The Appeal Tribunal is, for the purpose of deciding any given matter, to be composed of a member or members chosen by the Senior President of Tribunals.
- (2) The Senior President of Tribunals (or any person to whom the function under subsection (1) is delegated)—
  - (a) must act in accordance with regulations under subsection (3);
  - (b) may choose themselves (if otherwise eligible to sit).
- (3) The Lord Chancellor must by regulations make provision, in relation to every matter that may fall to be decided by the Appeal Tribunal, for determining the number of members who are to compose the Tribunal.
- (4) Where regulations under subsection (3) provide for the Appeal Tribunal to be composed of a single member, the regulations must provide for that member to be a judge.
- (5) Where regulations under subsection (3) provide for the Appeal Tribunal to be composed of more than one member, the regulations—

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- (a) must provide for at least one of those members to be a judge,
  - (b) must make provision for determining how many (if any) of the other members are to be judges and how many (if any) are to be appointed members, and
  - (c) if the Tribunal is to be composed of persons who include one or more appointed members, may make provision for determining what qualifications (if any) that member or any of those members must have.
- (6) A duty under subsection (3) or (5) to provide for the determination of anything may be discharged by providing for the thing to be determined by the Senior President of Tribunals or the President of the Appeal Tribunal in accordance with any provision made under that subsection.
- (7) The power under subsection (5)(c) may be exercised by giving the Senior President of Tribunals or the President of the Appeal Tribunal power to determine what qualifications are required in accordance with any provision made by the regulations.
- (8) Where the Appeal Tribunal is to be composed of more than one member, the Tribunal may proceed in the absence of one or more of the members chosen to compose it if—
  - (a) the parties to the case agree, and
  - (b) at least one of the members who is present is a judge.
- (9) Where a person (other than a judge) is chosen as one of the members composing the Appeal Tribunal but does not have a qualification required by virtue of subsection (5)(c), the Tribunal may still proceed with that person as a member if the parties to the case agree.
- (10) Before making regulations under this section, the Lord Chancellor must consult the Senior President of Tribunals.
- (11) In this section, “qualification” includes experience.”
- (4) In section 41(2) (orders, regulations and rules subject to affirmative procedure)—
  - (a) omit “, 4(4) or (6D)” and “, 28(5)”;
  - (b) before “37N” insert “4, 28,”.

### **36 Saving for existing procedural provisions**

No amendment or repeal made by section 34 or 35 or Schedule 5 affects the continued operation of—

- (a) the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (S.I. 2013/1237),
- (b) the Employment Appeal Tribunal Rules 1993 (S.I. 1993/2854), or
- (c) any practice direction made under section 7A of the Employment Tribunals Act 1996 or the regulations referred to in paragraph (a).

### **37 Exercise of tribunal functions by authorised persons**

- (1) Chapter 2A of Part 1 of the Tribunals, Courts and Enforcement Act 2007 (which makes provision in connection with the exercise of functions of tribunals by persons authorised under Tribunal Procedure Rules) is amended as follows.
- (2) In section 29A (meaning of certain terms)—
- (a) for the heading substitute “Interpretation of Chapter”;
  - (b) in the definition of “authorised person”—
    - (i) for “paragraph 3 of Schedule 5” substitute “a relevant Procedure Rule”;
    - (ii) for “the First-tier Tribunal or Upper Tribunal” substitute “a tribunal”;
  - (c) in the definition of “judicial office holder”—
    - (i) for “has” substitute “means—
      - “(a) a judicial office holder within”;
      - (ii) at the end insert “, or
    - (b) the President of Employment Tribunals (Scotland)”;
  - (d) at the end insert—
    - ““relevant Procedure Rule” means—
      - (a) a Tribunal Procedure Rule of a kind mentioned in paragraph 3 of Schedule 5 to this Act, or
      - (b) an Employment Tribunal Procedure Rule of a kind mentioned in paragraph 2 of Schedule A1 to the Employment Tribunals Act 1996;
    - “tribunal” means the First-tier Tribunal, the Upper Tribunal, an employment tribunal or the Employment Appeal Tribunal.”
- (3) In each of the following provisions, for “paragraph 3 of Schedule 5” substitute “a relevant Procedure Rule”—
- (a) section 29B(2) (authorised person not subject to directions not made under that section);
  - (b) section 29C(1)(a) and (2)(a) (protection against actions for authorised persons acting within or without jurisdiction);
  - (c) section 29D(1) (protection against costs for authorised persons).

### **38 Responsibility for remunerating tribunal members**

In the following provisions of the Employment Tribunals Act 1996, for “Secretary of State”, in each place it occurs, substitute “Lord Chancellor”—

- (a) section 5(1), (2) and (3) (remuneration of members of employment tribunals etc);
- (b) section 27(1), (3) and (4) (remuneration of members of Employment Appeal Tribunal etc).

## CHAPTER 4

### CORONERS

#### 39 Discontinuance of investigation where cause of death becomes clear

- (1) Section 4 of the Coroners and Justice Act 2009 (discontinuance of investigation where cause of death revealed by post-mortem examination) is amended as set out in subsections (2) and (3).
- (2) In the heading, for “revealed by post-mortem examination” substitute “becomes clear before inquest”.
- (3) In subsection (1), for paragraph (a) substitute—
  - “(a) the coroner is satisfied that the cause of death has become clear in the course of the investigation,
  - (aa) an inquest into the death has not yet begun, and”.
- (4) In the following provisions of the Births and Deaths Registration Act 1953, for “revealed by post-mortem examination” substitute “becoming clear before inquest”—
  - (a) in section 2(1), paragraph (ii) of the proviso;
  - (b) in section 16(3), paragraph (ii) of the proviso;
  - (c) in section 17(3), paragraph (ii) of the proviso;
  - (d) section 29(3B).
- (5) In section 273(2)(a) of the Merchant Shipping Act 1995, for “revealed by post-mortem examination” substitute “becoming clear before inquest”.
- (6) In Schedule 21 to the Coroners and Justice Act 2009 (which, among other things, makes amendments to the Births and Deaths Registration Act 1953 that have yet to come into force)—
  - (a) in paragraph 10(5), in the inserted subsection (2)(b), for “revealed by post-mortem examination” substitute “becoming clear before inquest”;
  - (b) in paragraph 11(2), in the substituted section (A1)(b), for “revealed by post-mortem examination” substitute “becoming clear before inquest”;
  - (c) in paragraph 16(2), in the substituted paragraph (a), for the words from “there has” to “the death,” substitute “—
    - (i) there has been no investigation under Part 1 of the 2009 Act into the death, or
    - (ii) such an investigation has been discontinued under section 4 of the 2009 Act (cause of death becoming clear before inquest) other than as mentioned in paragraph (b),”.

#### 40 Power to conduct non-contentious inquests in writing

- (1) The Coroners and Justice Act 2009 is amended as follows.
- (2) After section 9B insert—



**“9C Inquests without jury to be conducted at hearing or in writing**

- (1) Where an inquest into a death is to be held without a jury, the inquest is to be held—
  - (a) at a hearing, or
  - (b) if the senior coroner decides that a hearing is unnecessary, in writing.
- (2) The senior coroner is not to decide that a hearing is unnecessary unless—
  - (a) the coroner has invited representations from each interested person known to the coroner,
  - (b) no interested person has represented on reasonable grounds that a hearing should take place,
  - (c) it appears to the coroner that there is no real prospect of disagreement among interested persons as to the determinations or findings that the inquest could or should make, and
  - (d) it appears to the coroner that no public interest would be served by a hearing.”
- (3) In section 10(1) (determinations and findings required at inquest), for “hearing the evidence at” substitute “considering the evidence given to”.
- (4) In section 45(2) (provision that may be made in Coroners rules), in paragraph (e), for “at” substitute “in the course of”.
- (5) In section 47(2) (interested persons), in paragraph (1), after “attend” insert “or follow”.
- (6) In paragraph 11 of Schedule 1 (resumption of inquests after adjournment)—
  - (a) in sub-paragraph (2), for “The following provisions” substitute “Sub-paragraphs (3) and (4)”;
  - (b) after sub-paragraph (4) insert—

“(5) Where an inquest is resumed under this paragraph without a jury (whether or not it had one before the adjournment), the senior coroner must consider, in accordance with section 9C, whether the resumed inquest is to be held at a hearing or in writing.”

**41 Use of audio or video links at inquests**

- (1) Section 45 of the Coroners and Justice Act 2009 (Coroners rules) is amended as follows.
- (2) In subsection (2) (examples of provision that may be contained in Coroners rules), after paragraph (e) insert—

“(ea) provision for or in connection with the conduct of hearings wholly or partly by way of electronic transmission of sounds or images;”.
- (3) After subsection (2) insert—

“(2A) Coroners rules that provide for members of a jury to take part in a hearing by way of electronic transmission of sounds or images must provide for all members of the jury to take part in that way while present at the same place.”

## **42 Suspension of requirement for jury at inquest where coronavirus suspected**

- (1) In section 7 of the Coroners and Justice Act 2009 (whether inquest to be held with jury), after subsection (4) insert—

“(5) But COVID-19 is not a notifiable disease for the purposes of subsection (2) (c).”

- (2) The amendment made by subsection (1) has effect in relation to any inquest opened on or after the day on which this section comes into force (regardless of the date of death).
- (3) The inserted subsection expires at the end of the period of two years beginning with the day on which this section comes into force, subject to regulations under subsection (6).
- (4) Before the expiry day, the Lord Chancellor must assess the likely effects of the expiry of the inserted subsection on the coronial system.
- (5) Subsection (6) applies if, having carried out that assessment, the Lord Chancellor considers that it would be expedient for the inserted subsection to continue in force beyond the expiry day.
- (6) The Lord Chancellor may, at any time before the inserted subsection expires, make regulations providing for the inserted subsection—
- (a) not to expire when it would otherwise expire, but
  - (b) to expire at the end of such later day as is specified in the regulations.
- (7) The day specified under subsection (6)(b) may not be later than two years after the expiry day as it stands immediately before the making of the regulations.
- (8) Regulations under subsection (6) are subject to affirmative resolution procedure (see section 49(3)).
- (9) Subsection (2) expires when the inserted subsection expires.

But the expiry of the inserted subsection does not affect any inquest opened while the inserted subsection was in force.

- (10) In this section—

“the inserted subsection” means subsection (5) of section 7 of the Coroners and Justice Act 2009, as inserted by subsection (1);

“the expiry day” means the day at the end of which the inserted subsection is for the time being due to expire (whether by virtue of subsection (3) or regulations under subsection (6)).

- (11) In the Coronavirus Act 2020, omit section 30 (suspension of requirement for jury at inquest where coronavirus suspected).
- (12) The repeal made by subsection (11) does not affect any inquest opened while the repealed section was in force.

## **43 Phased transition to new coroner areas**

In Schedule 22 to the Coroners and Justice Act 2009 (transitional provision etc), after paragraph 1 insert—

“1A An order under paragraph 2 of Schedule 2 (alteration of coroner areas) may combine two or more coroner areas each of which—

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- (a) is wholly within the area of the same local authority, and
- (b) is specified in either—
  - (i) the transitional order, or
  - (ii) an earlier order made by virtue of this paragraph,without the resulting coroner area having to satisfy paragraph 1(2) of that Schedule.”

#### **44 Provision of information to registrar when investigation discontinued**

In section 23 of the Births and Deaths Registration Act 1953 (furnishing of information by coroner in connection with registration of death), after subsection (3) insert—

- “(4) Where a senior coroner—
- (a) discontinues an investigation under section 4 of the 2009 Act,
  - (b) authorises the disposal of the body, and
  - (c) sends to the registrar, on request by the registrar, a certificate stating any particulars required by this Act to be registered concerning the death (so far as they have been ascertained at the date of the certificate),
- the registrar shall in the prescribed form and manner register the death and those particulars, so far as they are not already registered.”

### **CHAPTER 5**

#### **OTHER PROVISIONS ABOUT COURTS AND TRIBUNALS**

##### *Local justice areas*

#### **45 Abolition of local justice areas**

- (1) Local justice areas are abolished.
- (2) Accordingly, omit section 8 of the Courts Act 2003 (local justice areas).
- (3) The Lord Chancellor may, by regulations, make consequential or supplementary provision in relation to the abolition of local justice areas.
- (4) Regulations under this section may include provision amending, repealing or revoking provision made by or under an Act (whenever passed or made).
- (5) Regulations under this section that amend or repeal any provision made by an Act are subject to affirmative resolution procedure (see section 49(3)).
- (6) Any other regulations under this section are subject to negative resolution procedure (see section 49(4)).

##### *Courthouses in the City of London*

#### **46 The Mayor’s and City of London Court: removal of duty to provide premises**

- (1) Section 29 of the Courts Act 1971 (court accommodation in the City of London) is amended as follows.

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- (2) In subsection (1)—
  - (a) omit “respectively”;
  - (b) omit “and the Mayor’s and City of London Court”;
  - (c) for “those names” substitute “that name”;
  - (d) for “those courts respectively” substitute “that court”.
- (3) In subsection (2), for “courts” substitute “court”.

#### **47 The City of London Magistrates’ Court: removal of duty to provide premises**

- (1) Omit paragraph 16 of Schedule 2 to the Courts Act 2003 (power to impose an obligation to provide premises for the City of London Magistrates’ Court).
- (2) In consequence of the repeal made by subsection (1), omit paragraph 35 of Schedule 14 to the Access to Justice Act 1999 (continuing provision of court-houses, accommodation etc).

#### *Pro bono representation in courts and tribunals*

#### **48 Payments in respect of pro bono representation**

- (1) In section 194 of the Legal Services Act 2007 (payments in respect of pro bono representation in civil proceedings in England and Wales)—
  - (a) in the heading, at the end insert “: civil courts in England and Wales”;
  - (b) in subsection (8), for “by order made by the Lord Chancellor” substitute “under section 194C”;
  - (c) omit subsection (9);
  - (d) in subsection (10)—
    - (i) in the definition of “civil court”, omit paragraph (a);
    - (ii) omit the definition of “relevant civil appeal”.
- (2) After section 194 of the Legal Services Act 2007 insert—

##### **“194A Payments in respect of pro bono representation: tribunals**

- (1) This section applies to relevant tribunal proceedings in which—
  - (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
  - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
- (3) The tribunal may make an order under this section against a person if the condition in subsection (5) is met in respect of that person (and if subsection (7) does not apply).
- (4) An order under this section is an order for the person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).

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- (5) The condition is that, had R’s representation of P not been provided free of charge, the tribunal would have had the power to order the person to make a payment to P in respect of sums payable to R by P in respect of that representation.
- (6) In considering whether to make an order under this section against a person, and the terms of such an order, the tribunal must have regard to—
  - (a) whether, had R’s representation of P not been provided free of charge, it would have made an order against that person as described in subsection (5), and
  - (b) if it would, what the terms of the order would have been.
- (7) The tribunal may not make an order under this section against a person represented in the proceedings if the person’s representation was at all times within subsection (8).
- (8) Representation is within this subsection if it is provided—
  - (a) by a legal representative acting free of charge, or
  - (b) by way of legal aid.
- (9) For the purposes of subsection (8)(b), representation is provided by way of legal aid if it is—
  - (a) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,
  - (b) made available under Part 2 or 3 of the Legal Aid (Scotland) Act 1986, or
  - (c) funded under Part 2 of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)).
- (10) Procedure rules may make further provision as to the making of orders under this section, and may in particular—
  - (a) provide that such orders may not be made in proceedings of a description specified in the rules;
  - (b) make provision about the procedure to be followed in relation to such orders;
  - (c) specify matters (in addition to those mentioned in subsection (6)) to which the tribunal must have regard in deciding whether to make such an order, and the terms of any order.
- (11) In this section “relevant tribunal proceedings” means proceedings in—
  - (a) the First-tier Tribunal,
  - (b) the Upper Tribunal,
  - (c) an employment tribunal,
  - (d) the Employment Appeal Tribunal, or
  - (e) the Competition Appeal Tribunal,but does not include proceedings within devolved competence.
- (12) For the purposes of subsection (11), proceedings are within devolved competence if provision regulating the procedure to be followed in those proceedings could be made by—
  - (a) an Act of the Scottish Parliament,



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- (b) an Act of Senedd Cymru (including one passed with the consent of a Minister of the Crown within the meaning of section 158(1) of the Government of Wales Act 2006), or
  - (c) an Act of the Northern Ireland Assembly the Bill for which would not require the consent of the Secretary of State.
- (13) The Lord Chancellor may by regulations—
  - (a) amend subsection (11) so as to add a tribunal to the list in that subsection, and
  - (b) make consequential amendments of the definition of “procedure rules” in subsection (14).
- (14) In this section—
  - “free of charge” means otherwise than for or in expectation of fee, gain or reward;
  - “legal representative” means a person who is—
    - (a) entitled in accordance with section 13 to carry on the activity of exercising a right of audience or conducting litigation,
    - (b) a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980,
    - (c) a member of the Faculty of Advocates in Scotland,
    - (d) a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
    - (e) a member of the Bar of Northern Ireland, or
    - (f) a solicitor of the Court of Judicature of Northern Ireland,
 irrespective of the capacity in which the person is acting in the proceedings concerned;
  - “prescribed charity” means the charity prescribed under section 194C;
  - “procedure rules” means—
    - (a) Tribunal Procedure Rules, in relation to proceedings in the First-tier Tribunal or the Upper Tribunal,
    - (b) Employment Tribunal Procedure Rules, in relation to proceedings in an employment tribunal or the Employment Appeal Tribunal, or
    - (c) rules under section 15 of the Enterprise Act 2002, in relation to proceedings in the Competition Appeal Tribunal;
 “tribunal” does not include an ordinary court of law.
- (15) An order under this section may not be made in respect of representation if (or to the extent that) it was provided before section 48 of the Judicial Review and Courts Act 2022 came into force.”
- (3) After section 194A of the Legal Services Act 2007 (as inserted by subsection (2)) insert—

**“194B Payments in respect of pro bono representation: Supreme Court**

- (1) This section applies to proceedings in a relevant civil appeal to the Supreme Court in which—

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- (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
  - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
- (3) The Court may make an order under this section against a person if the condition in subsection (5) is met in respect of that person (and if subsection (7) does not apply).
- (4) An order under this section is an order for the person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).
- (5) The condition is that, had R’s representation of P not been provided free of charge, the Court would have had the power to order the person to make a payment to P in respect of sums payable to R by P in respect of that representation.
- (6) In considering whether to make an order under this section against a person, and the terms of such an order, the Court must have regard to—
  - (a) whether, had R’s representation of P not been provided free of charge, it would have made an order against that person as described in subsection (5), and
  - (b) if it would, what the terms of the order would have been.
- (7) The Court may not make an order under this section against a person represented in the proceedings if the person’s representation was at all times within subsection (8).
- (8) Representation is within this subsection if it is—
  - (a) provided by a legal representative acting free of charge, or
  - (b) provided by way of legal aid.
- (9) For the purposes of subsection (8)(b), representation is provided by way of legal aid if it is—
  - (a) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
  - (b) funded under Part 2 of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)).
- (10) Supreme Court Rules may make further provision as to the making of orders under this section, and may in particular—
  - (a) provide that such orders may not be made in proceedings of a description specified in the Rules;
  - (b) make provision about the procedure to be followed in relation to such orders;
  - (c) specify matters (in addition to those mentioned in subsection (6)) to which the Court must have regard in deciding whether to make such an order, and the terms of any order.
- (11) In this section—

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“free of charge” means otherwise than for or in expectation of fee, gain or reward;

“legal representative”, in relation to a party to proceedings, means—

- (a) a person exercising a right of audience, or conducting litigation, on the party’s behalf pursuant to an entitlement under section 13, or
- (b) a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, practising or acting as such on the party’s behalf;

“prescribed charity” means the charity prescribed under section 194C;

“relevant civil appeal” means an appeal—

- (a) from the High Court under Part 2 of the Administration of Justice Act 1969,
- (b) from the Upper Tribunal under section 14B(4) of the Tribunals, Courts and Enforcement Act 2007,
- (c) from the Court of Appeal under section 40(2) of the Constitutional Reform Act 2005 or section 42 of the Judicature (Northern Ireland) Act 1978, or
- (d) under section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), other than an appeal from an order or decision made in the exercise of jurisdiction to punish for criminal contempt of court.

(12) An order under this section may not be made in respect of representation in proceedings in a relevant civil appeal—

- (a) from a court in Northern Ireland, or
- (b) from the Upper Tribunal under section 14B(4) of the Tribunals, Courts and Enforcement Act 2007,

if (or to the extent that) the representation was provided before section 48 of the Judicial Review and Courts Act 2022 came into force.”

(4) After section 194B of the Legal Services Act 2007 (as inserted by subsection (3)) insert—

**“194C Sections 194 to 194B: the prescribed charity**

(1) The Lord Chancellor may by order prescribe a registered charity for the purposes of sections 194 to 194B.

(2) The charity must be one which provides financial support to persons who provide, or organise or facilitate the provision of, legal advice or assistance (by way of representation or otherwise) which is free of charge.

(3) In this section—

“free of charge” means otherwise than for or in expectation of fee, gain or reward;

“registered charity” means a charity registered in accordance with—

- (a) section 30 of the Charities Act 2011,

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- (b) section 3 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10), or
  - (c) section 16 of the Charities Act (Northern Ireland) 2008 (c. 12 (N.I.)).
- (4) An order under section 194(8) that was in force immediately before section 48 of the Judicial Review and Courts Act 2022 came into force—
  - (a) remains in force despite the amendment by that section of section 194(8),
  - (b) has effect as if its prescription of a charity for the purposes of section 194 were the prescription of that charity under this section for the purposes of sections 194 to 194B, and
  - (c) may be amended or revoked by an order under this section.”
- (5) For the purposes of sections 194A and 194C of the Legal Services Act 2007 (as inserted by subsections (2) and (4)), sections 204 and 206 of that Act extend to Scotland and Northern Ireland as well as England and Wales.
- (6) In paragraph 17(1) of Schedule 4 to the Enterprise Act 2002 (rules that may be made about procedure of Competition Appeal Tribunal), omit paragraph (ha).
- (7) In paragraph 32 of Schedule 8 to the Consumer Rights Act 2015 (amendments of paragraph 17 of Schedule 4 to the Enterprise Act 2002), omit sub-paragraph (a).

### PART 3

#### FINAL PROVISIONS

#### 49 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) A power to make regulations under this Act includes power to make—
  - (a) incidental, transitional or saving provision;
  - (b) different provision for different purposes or for different areas.

This subsection does not apply in relation to section 51 (but see subsections (5) and (6) of that section).

- (3) Where regulations under this Act are subject to “affirmative resolution procedure”, a statutory instrument containing the regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (4) Where regulations under this Act are subject to “negative resolution procedure”, a statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) But regulations under this Act are not subject to negative resolution procedure (notwithstanding any other provision of this Act) if a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.

## **50 Extent**

- (1) An amendment or repeal made by this Act has the same extent as the provision amended or repealed, subject to subsections (3) to (6).
- (2) Sections 1(4), 2(2), and 36 have the same extent as the amendments or repeals to which they relate.
- (3) The following provisions extend only to England and Wales—
  - (a) section 13(6) to (11);
  - (b) section 42;
  - (c) section 45(1);
  - (d) paragraph 3(2) of Schedule 2;
  - (e) Part 1 of Schedule 3.
- (4) Section 48(3) extends to England and Wales and Northern Ireland.
- (5) Section 48(2) and (4) extends to England and Wales, Scotland and Northern Ireland.
- (6) Paragraph 3(5) of Schedule 2 extends to England and Wales, Scotland and Northern Ireland.
- (7) Part 3 of Schedule 3 extends only to England and Wales and Scotland.
- (8) Except as otherwise provided above, this Act extends to England and Wales, Scotland and Northern Ireland.

## **51 Commencement and transitional provision**

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
  - (a) section 11;
  - (b) section 13(3);
  - (c) paragraphs 12 to 14 of Schedule 2, and section 18 so far as relating to those paragraphs;
  - (d) this Part.
- (2) If paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (as it was enacted) has been brought in force in relation to either-way offences before the passing of this Act, the following provisions come into force on the day after the day on which this Act is passed—
  - (a) section 13 (except subsection (3));
  - (b) paragraphs 16 to 21 of Schedule 2, and section 18 so far as relating to those paragraphs.
- (3) The following provisions of this Act come into force at the end of the period of two months beginning with the day on which this Act is passed—
  - (a) section 15;
  - (b) section 16 (and Schedule 1);
  - (c) Chapter 4 of Part 2, except section 44;
  - (d) section 48.
- (4) Except as provided above, this Act comes into force on such day as the Lord Chancellor may by regulations appoint.



- (5) Different days may be appointed for different purposes.
- (6) The Lord Chancellor may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.
- (7) The coming into force of paragraph 21(b) of Schedule 2 results in the provision it inserts becoming subject to section 417(1) of the Sentencing Act 2020 (power to commence Schedule 22 to that Act).
- (8) The power in section 419(1) of the Sentencing Act 2020 (power to state effect of commencement provisions) applies in relation to any amendment or repeal made by or under this Act of that Act as it applies in relation to an amendment or repeal made by Schedule 22 to that Act.

## **52 Short title**

This Act may be cited as the Judicial Review and Courts Act 2022.

## SCHEDULES

### SCHEDULE 1

Section 16

#### DOCUMENTS TO BE SERVED IN ACCORDANCE WITH CRIMINAL PROCEDURE RULES

##### *Road Traffic Act 1960*

- 1 In section 243 of the Road Traffic Act 1960 (proof, in summary proceedings under section 232 of that Act, of identity of driver of vehicle), in paragraph (a), for “by post” substitute “in accordance with Criminal Procedure Rules”.

##### *Misuse of Drugs Act 1971*

- 2 In section 29 of the Misuse of Drugs Act 1971 (service of documents), before subsection (1) insert—
- “(A1) In the application of this Act to criminal proceedings in England and Wales, any notice or other document required or authorised by any provision of this Act to be served on any person may be served on the person in accordance with Criminal Procedure Rules.
- (A2) In any other application of this Act, subsections (1) to (4) apply.”

##### *Prices Act 1974*

- 3 In paragraph 8 of the Schedule to the Prices Act 1974 (institution of proceedings)—
- (a) in sub-paragraph (3), after “person” insert “—
- (a) if the proceedings are to be instituted in England and Wales, in accordance with Criminal Procedure Rules; or
- (b) otherwise.”;
- (b) after that sub-paragraph insert—
- “(3A) For the purposes of sub-paragraph (3)(a)—
- (a) Criminal Procedure Rules (as they have effect from time to time) apply to the notice as if it were a document to be served in criminal proceedings before a magistrates’ court, and
- (b) any magistrates’ court may discharge functions conferred on a court by those Rules in relation to such service.”

##### *Salmon and Freshwater Fisheries Act 1975*

- 4 In paragraph 10 of Schedule 4 to the Salmon and Freshwater Fisheries Act 1975 (delivery up of licence by defendant)—

- (a) in sub-paragraph (a), for “cause it to be delivered to the proper officer of the court” substitute “serve it on the proper officer of the court in accordance with Criminal Procedure Rules”;
- (b) omit paragraph (b);
- (c) in the words after paragraph (c), for the words from “posted” to “delivered” substitute “served the licence or authorisation under section 27A above”.

*Isle of Man Act 1979*

- 5 In section 5(1) of the Isle of Man Act 1979 (summonses etc for offences relating to common duties etc)—
- (a) omit “in the United Kingdom”;
  - (b) after “may” insert “, if the court is in England and Wales, be served in accordance with Criminal Procedure Rules or, if the court is in Scotland or Northern Ireland,”.

*Magistrates’ Courts Act 1980*

- 6 In section 82 of the Magistrates’ Courts Act 1980 (restriction on power to impose imprisonment for default), in subsection (5F), for the words from “by registered post” to the end substitute “in accordance with Criminal Procedure Rules”.

*Public Passenger Vehicles Act 1981*

- 7 In section 72 of the Public Passenger Vehicles Act 1981 (proof in summary proceedings of identity of driver of vehicle), in paragraph (a)—
- (a) for “rules made under section 15 of the Justices of the Peace Act 1949” substitute “Criminal Procedure Rules”;
  - (b) for “by post” substitute “in accordance with Criminal Procedure Rules”.

*Video Recordings Act 1984*

- 8 In section 19 of the Video Recordings Act 1984 (evidence by certificate)—
- (a) after subsection (4) insert—

“(4A) This section does not make a certificate admissible as evidence in proceedings in England and Wales for an offence unless a copy of the certificate has, not less than seven days before the hearing, been served on the person charged with the offence in accordance with Criminal Procedure Rules.”;
  - (b) in subsection (5), after “proceedings” insert “in Northern Ireland”.

*Weights and Measures Act 1985*

- 9 In section 83 of the Weights and Measures Act 1985 (prosecution of offences)—
- (a) in subsection (4), after “person” insert “—
    - (a) if the proceedings are to be instituted in England and Wales, in accordance with Criminal Procedure Rules; or
    - (b) if the proceedings are to be instituted in Scotland,”;
  - (b) after that subsection insert—

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“(4A) For the purposes of subsection (4)(a)—

- (a) Criminal Procedure Rules (as they have effect from time to time) apply to the notice as if it were a document to be served in criminal proceedings before a magistrates’ court, and
- (b) any magistrates’ court may discharge functions conferred on a court by those Rules in relation to such service.”

*Road Traffic Act 1988*

10 (1) The Road Traffic Act 1988 is amended as follows.

(2) In section 164 (powers to require driving licence or date of birth)—

(a) in subsection (10)—

(i) after “him” (in the first place it occurs) insert “—

(a) if the statement to the constable was made in England and Wales, in accordance with Criminal Procedure Rules, or

(b) if that statement was made elsewhere,”;

(ii) for “this subsection” (in both places it occurs) substitute “this paragraph”;

(b) after subsection (10) insert—

“(10A) For the purposes of subsection (10)(a)—

(a) Criminal Procedure Rules (as they have effect from time to time) apply to the notice as if it were a document to be served in criminal proceedings before a magistrates’ court, and

(b) any magistrates’ court may discharge functions conferred on a court by those Rules in relation to such service.”

(3) In section 172 (duty to identify driver where offence alleged)—

(a) in subsection (7), for “by post” substitute “in accordance with Criminal Procedure Rules, if the alleged offence took place in England and Wales, or by post otherwise”;

(b) after that subsection insert—

“(7A) For the purposes of subsection (7) (as it applies in relation to an alleged offence in England and Wales)—

(a) Criminal Procedure Rules (as they have effect from time to time) apply to the notice as if it were a document to be served in criminal proceedings before a magistrates’ court, and

(b) any magistrates’ court may discharge functions conferred on a court by those Rules in relation to such service.”

*Road Traffic Offenders Act 1988*

11 (1) The Road Traffic Offenders Act 1988 is amended as follows.

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- (2) In section 1 (requirement for warning etc before certain prosecutions), after subsection (1) insert—
- “(1ZA) In the case of an offence to be prosecuted in England and Wales, a notice required by this section to be served on any person may be served on that person in accordance with Criminal Procedure Rules.
- (1ZB) For the purposes of subsection (1ZA)—
- (a) Criminal Procedure Rules (as they have effect from time to time) apply to the notice as if it were a document to be served in criminal proceedings before a magistrates’ court, and
  - (b) any magistrates’ court may discharge functions conferred on a court by those Rules in relation to such service.
- (1ZC) In the case of an offence to be prosecuted elsewhere, subsections (1A) and (2) apply.”
- (3) In section 12 (proof of identify of driver in summary proceedings), in subsections (1)(a) and (3)(a), for “by post” substitute “in accordance with Criminal Procedure Rules”.
- (4) In section 16 (documentary evidence as to specimens of breath, blood or urine), in subsection (6), after “may” insert “—
- (a) if the proceedings mentioned in section 15(1) take place in England and Wales, be served in accordance with Criminal Procedure Rules, or
  - (b) if the proceedings take place elsewhere,”.
- (5) In section 25 (requirement to inform court of date of birth and sex following conviction), in subsection (7)—
- (a) after “him” (in the first place it occurs) insert “—
    - “(a) if the conviction was in England and Wales, in accordance with Criminal Procedure Rules, or
    - (b) if the conviction was elsewhere,”;
  - (b) for “this subsection” (in both places it occurs) substitute “this paragraph”.
- (6) In section 85 (service of certain documents in connection with alleged offences), before subsection (1) insert—
- “(A1) Subsections (A2) to (A4) apply in relation to an offence alleged to have taken place in England and Wales.
- (A2) Subject to any requirement of this Part of this Act with respect to the manner in which a person may be provided with any such document, the person may be provided with the following documents in accordance with Criminal Procedure Rules (but without prejudice to any other method of providing them), that is to say—
- (a) any of the statutory statements mentioned in Schedule 4 to this Act, and
  - (b) any of the documents mentioned in section 66(2) of this Act.
- (A3) A notice to owner may be served on any person in accordance with Criminal Procedure Rules.



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(A4) For the purposes of subsections (A2) and (A3)—

- (a) Criminal Procedure Rules (as they have effect from time to time) apply to the document to be provided or (as the case may be) the notice to be served as if it were a document to be served in criminal proceedings before a magistrates' court, and
- (b) any magistrates' court may discharge functions conferred on a court by those Rules in relation to such service.

(A5) Subsections (1) to (5) apply in relation to an offence alleged to have taken place outside England and Wales."

*Transport and Works Act 1992*

- 12 In section 35 of the Transport and Works Act 1992 (documentary evidence as to specimens of breath, blood or urine), in subsection (7), after "means" insert "; in relation to proceedings in England and Wales, served in accordance with Criminal Procedure Rules or, otherwise,".

*Powers of Criminal Courts (Sentencing) Act 2000*

- 13 (1) The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- (2) In section 60 (attendance centre orders), in subsection (11)(b), for the words from "send" to the end substitute "serve a copy on that person in accordance with Criminal Procedure Rules".
- (3) In Schedule 5 (breach, revocation and amendment of attendance centre orders)—
- (a) in paragraph 4(5)(a), for the words from "send" to "abode" substitute "serve a copy on the offender in accordance with Criminal Procedure Rules";
  - (b) in paragraph 5(3)(a), for the words from "send" to "abode" substitute "serve a copy on the offender in accordance with Criminal Procedure Rules".

*Criminal Justice and Police Act 2001*

- 14 In section 27 of the Criminal Justice and Police Act 2001 (service of notices to do with closure of unlicensed premises)—
- (a) in subsection (1), for the words from "served" (in the second place it occurs) to the end of paragraph (d) substitute "served in accordance with Criminal Procedure Rules.";
  - (b) after that subsection insert—
 

“(1A) For the purposes of subsection (1)—

    - (a) Criminal Procedure Rules (as they have effect from time to time) apply to the document to be served as if it were a document to be served in criminal proceedings before a magistrates' court, and
    - (b) any magistrates' court may discharge functions conferred on a court by those Rules in relation to such service.”;
  - (c) omit subsections (2) to (8).

## SCHEDULE 2

Section 18

### CRIMINAL PROCEDURE: CONSEQUENTIAL AND RELATED AMENDMENTS

#### *Amendments in connection with section 3*

- 1 (1) The Magistrates' Courts Act 1980 is amended as follows.
  - (2) In section 16A(1) (availability of trial by single justice on the papers)—
    - (a) in paragraph (c), omit the final “and”;
    - (b) after paragraph (d) insert “, and
    - (e) the accused has not accepted the automatic online conviction option in respect of the offence.”
  - (3) In section 89 (transfer of fines within England and Wales), after subsection (4) insert—

“(5) When this section applies to a sum payable by virtue of a conviction under section 16H—

    - (a) a reference to a sum that is the subject of a collection order has effect as a reference to a sum set out in the notice of conviction and penalty (within the meaning of section 16L), and
    - (b) the power in subsection (1) may be exercised by any fines officer.”
  - (4) In section 90 (transfer of fines to Scotland or Northern Ireland), after subsection (3A) insert—

“(4) When this section applies to a sum payable by virtue of a conviction under section 16H—

    - (a) a reference to a sum that is the subject of a collection order has effect as a reference to a sum set out in the notice of conviction and penalty (within the meaning of section 16L), and
    - (b) the power in subsection (1) may be exercised by any fines officer.”
  - (5) In section 108 (right of appeal to the Crown Court), after subsection (2) insert—

“(2A) A person convicted under section 16H may not appeal under this section against the conviction or sentence, except a sentence imposed under section 16M(5)(b).”
  - (6) In section 150(1) (interpretation), in the definition of “fine”, after “purposes of” insert “sections 16G to 16M and of”.
- 2 In section 8 of the Road Traffic Offenders Act 1988 (duty to include date of birth and sex in written plea of guilty), after paragraph (aa) (but before the final “or”) insert—

“(ab) gives a notification amounting to acceptance of the automatic online conviction option (within the meaning of section 16G of the Magistrates' Courts Act 1980),”.
- 3 (1) Schedule 5 to the Courts Act 2003 (collection of fines and other sums imposed on conviction) is amended as set out in sub-paragraphs (2) to (10).
  - (2) In paragraph 1 (application of Schedule)—
    - (a) the existing provision becomes sub-paragraph (1);
    - (b) after that sub-paragraph insert—

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- “(2) A sum payable under a notice of conviction and penalty (within the meaning of section 16L of the Magistrates’ Courts Act 1980) is not to be regarded as a sum within sub-paragraph (1); but this Schedule applies in relation to such sums as provided in paragraphs 10A, 21(2), 25(2), 29(2) and 37(1A).
- (3) For the purposes of this Schedule as it applies as mentioned in paragraph 1(2), “the fines officer” means any fines officer.”
- (3) In paragraph 2(1) (meaning of “the sum due”), for “1” substitute “1(1), or (in a case where this Schedule applies as mentioned in paragraph 1(2)) the sum payable under a notice of conviction and penalty”.
- (4) In paragraph 3(1) (meaning of “existing defaulter”)—
- (a) in paragraph (c), for “1, or” substitute “1(1),”;
  - (b) in paragraph (d), for “1” substitute “1(1)”;
  - (c) at the end insert “, or
  - (e) the person is in default on a notice of conviction and penalty (within the meaning of section 16L of the Magistrates’ Courts Act 1980).”
- (5) After paragraph 10 insert—
- “Application of this Part to person with automatic online conviction*
- 10A This Part of this Schedule applies to a person who has been given a notice of conviction and penalty (within the meaning of section 16L of the Magistrates’ Courts Act 1980) as it applies to P.”
- (6) In paragraph 13 (contents of collection orders: general), in sub-paragraph (2), after “P” insert “and a collection order”.
- (7) In paragraph 21 (application of Part 6)—
- (a) the existing provision becomes sub-paragraph (1);
  - (b) after that sub-paragraph insert—
- “(2) This Part also applies if a person (“P”) has been given a notice of conviction and penalty (within the meaning of section 16L of the Magistrates’ Courts Act 1980).
- (3) In the application of this Part in such a case—
- (a) “collection order” means the notice of conviction and penalty;
  - (b) a reference to the collection order being made is a reference to the notice of conviction and penalty being given;
  - (c) “payment terms” means the requirements as to the time and manner of payment imposed under section 16L(2)(c) of the Magistrates’ Courts Act 1980.”
- (8) In paragraph 25 (application of Part 7)—
- (a) the existing provision becomes sub-paragraph (1);
  - (b) after that sub-paragraph insert—

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“(2) This Part also applies on the first occasion on which a person (“P”) is in default on a notice of conviction and penalty (within the meaning of section 16L of the Magistrates’ Courts Act 1980).”

(9) In paragraph 29 (application of Part 8)—

- (a) the existing provision becomes sub-paragraph (1);
- (b) after that sub-paragraph insert—

“(2) This Part also applies if (through the application of Part 6 by virtue of paragraph 21(2))—

- (a) a notice of conviction and penalty (within the meaning of section 16L of the Magistrates’ Courts Act 1980) contains reserve terms, and
- (b) the attachment of earnings order or application for benefit deductions made under Part 6 fails.”

(10) In paragraph 37 (functions of fines officer in relation to defaulters: referral or further steps notice), after sub-paragraph (1) insert—

“(1A) This paragraph also applies if—

- (a) a person (“P”) is in default on a notice of conviction and penalty (within the meaning of section 16L of the Magistrates’ Courts Act 1980), and
- (b) paragraph 26 does not apply.”

(11) In Schedule 6 to the Courts Act 2003 (discharge of fines by unpaid work), in paragraph 2 (cases where work order may be made), in sub-paragraph (1)(a)(vi), after “Schedule 5” insert “(including a notice of conviction and penalty (within the meaning of section 16L of the Magistrates’ Courts Act 1980) in a case where, by virtue of paragraph 21(3) of Schedule 5, that notice is treated as a collection order)”.

4 (1) The Criminal Justice Act 2003 is amended as follows.

(2) In section 29 (institution of proceedings by written charge)—

- (a) for the heading substitute “Instituting proceedings by written charge”;
- (b) after subsection (2) insert—

“(2AA) A single justice procedure notice may be issued only if—

- (a) the offence is a summary offence not punishable with imprisonment, and
- (b) the person being charged has attained the age of 18, or is not an individual.”;

(c) after subsection (2B) insert—

“(2C) Subsection (2D) applies if—

- (a) the offence is specified in regulations under section 16H(3)(a) of the Magistrates’ Courts Act 1980, and
- (b) the relevant prosecutor decides that it would be appropriate for the automatic online conviction option to be offered (see section 16G(1) of the Magistrates’ Courts Act 1980).

(2D) The single justice procedure notice must also explain—

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- (a) the steps that the person on whom the notice is served can take if the person wants to be offered the automatic online conviction option, and
- (b) that if the person is offered, and accepts, that option, the requirements referred to in subsection (2B) will no longer apply.

(2E) The Lord Chancellor may by order make provision about the matters that are to be taken into account by a relevant prosecutor before deciding as mentioned in subsection (2C)(b)."

- (3) In section 30 (further provision about institution of proceedings by written charge), in the heading, for "new method" substitute "written charges".
- (4) In section 330 (orders and rules), in subsection (1)(c), after "sections" insert "29(2E),".

*Amendment in connection with section 4*

- 5 In section 11(5) of the Magistrates' Courts Act 1980 (proceedings to which section 11(3) and (4) of that Act applies), after "apply" insert "(except where the court is proceeding under section 12(5))".

*Amendments in connection with sections 6 to 8*

- 6 (1) The Magistrates' Courts Act 1980 is amended as follows.
  - (2) In section 17A (initial indication of plea at hearing)—
    - (a) in the heading, for "procedure" substitute "hearing";
    - (b) after subsection (1) insert—
 

“(1A) But in a case where section 17ZA(3) has effect, this section does not have effect unless—

      - (a) the accused has failed to give a written indication of guilty plea (see subsection (13) of that section), or
      - (b) the accused has given such an indication but later withdrawn it as described in subsection (10) of that section.”;
    - (c) in subsection (7), for "section 18(1) below shall apply" substitute "the court is to proceed in accordance with section 17BA".
  - (3) In section 17B (power to proceed with hearing for initial indication of plea in absence of disruptive accused)—
    - (a) in subsection (2)(d), for "section 18(1) below shall apply" substitute "the court is to proceed in accordance with section 17BA";
    - (b) in subsection (3), for "and section 18(1) below" substitute "section 18(1) and section 20".
  - (4) In section 17C (power to adjourn hearing for initial indication of plea), for "or 17B" substitute "17B or 17BA".
  - (5) In section 17D (maximum penalty following indication of guilty plea for certain low-value offences)—
    - (a) in the heading, after "section" insert "17ZB(9),";
    - (b) in subsection (1)(b), after "section" insert "17ZB(9),".



- (6) In section 17E (functions under sections 17A to 17D capable of exercise by single justice)—
- (a) in the heading, for “17A” substitute “17ZA”;
  - (b) in subsection (1), for “17A” substitute “17ZA”.
- (7) In section 18 (procedure for determining mode of trial)—
- (a) for subsection (1) substitute—

“(1) A magistrates’ court must proceed by way of a hearing in accordance with such of sections 19 to 22 as are applicable where—

    - (a) a person before the court as mentioned in section 17A(1)—
      - (i) indicates under that section that (if the offence in question were to proceed to trial) the person would plead not guilty, and
      - (ii) does not give an in-court indication of non-consent to summary trial (see section 17BA(6));
    - (b) the legal representative of a person who has been before the court as mentioned in section 17A(1)—
      - (i) indicates under section 17B that (if the offence in question were to proceed to trial) the person would plead not guilty, and
      - (ii) does not give an in-court indication of non-consent to summary trial; or
    - (c) section 17B has effect and no legal representative of the accused is present at the hearing referred to in that section.
- (1A) A magistrates’ court must also proceed in that way (subject to section 17ZA(11)) where—
- (a) a person charged with an offence that is not a scheduled offence—
    - (i) has given a written indication of a not guilty plea (see section 17ZA(13)),
    - (ii) has failed to give a written indication of non-consent to summary trial (see section 17ZC(9)), and
    - (iii) has failed to make an election for written allocation proceedings (see section 17ZC(9));
  - (b) a person charged with a scheduled offence—
    - (i) has given a written indication of a not guilty plea, and
    - (ii) has failed to make an election for written allocation proceedings; or
  - (c) a person has given a written indication of a not guilty plea and neither subsection (3) nor subsection (5) of section 17ZC has effect in relation to the case.
- (1B) Subsections (2) and (4) apply in respect of a hearing under subsection (1) or (1A).”;
- (b) after subsection (4) insert—

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*Status: This is the original version (as it was originally enacted).*

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“(4A) A magistrates’ court must (subject to section 17ZA(11)) proceed in writing in accordance with such of sections 19 to 22 as are applicable where—

- (a) a person charged with an offence that is not a scheduled offence—
  - (i) has given a written indication of a not guilty plea,
  - (ii) has failed to give a written indication of non-consent to summary trial, and
  - (iii) has made an election for written allocation proceedings (see section 17ZC(9)); or
- (b) a person charged with a scheduled offence—
  - (i) has given a written indication of a not guilty plea, and
  - (ii) has made an election for written allocation proceedings.

(4B) Everything that the court is required to do under any of sections 19 to 22, when proceeding by virtue of subsection (4A), must be done before any evidence is called; but it is not to be done in open court or in the presence of the accused (or the accused’s legal representative).”;

(c) after subsection (5) insert—

“(6) In this section, “scheduled offence” has the meaning given by section 22(1).”

(8) In section 20 (procedure at allocation hearing where summary trial deemed suitable)

—

- (a) in subsections (5), (6) and (8)(b), after “section” insert “17ZA,”;
- (b) in subsection (7), after “If” insert “the court is proceeding by way of a hearing and”;
- (c) after subsection (7) insert—

“(7A) If the court is proceeding in writing and the accused indicates that he would plead guilty the court shall proceed (at a hearing rather than in writing) to try the offence summarily under section 9.

(7B) If, at a summary trial held in accordance with subsection (7A), the accused pleads not guilty—

- (a) the trial and the plea are void, and
- (b) subsection (9) below applies.”

(9) In section 22 (certain low-value either-way offences to be tried summarily)—

(a) after subsection (2) insert—

“(2A) If, where subsection (1) above applies, it does not appear to the court clear that, for the offence charged, the value involved does not exceed the relevant sum, the court shall proceed in accordance with subsections (2B) to (2E).

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- (2B) If the court is proceeding by way of a hearing and the accused, or a legal representative of the accused, is present, the court shall proceed in accordance with section 17BA.
- (2C) For the purposes of subsection (2B), the references in subsections (2) and (5) of section 17BA to proceeding in accordance with section 18(1) are to be read as references to proceeding in accordance with sections 19 to 21.
- (2D) If the court is proceeding in writing, and the accused has given a written indication of non-consent to summary trial (see section 17ZC(9)), the court shall proceed in relation to the offence in accordance with section 51 of the Crime and Disorder Act 1998.
- (2E) If neither subsection (2B) nor subsection (2D) applies, the court shall proceed in accordance with sections 19 to 21.”;
- (b) omit subsections (3) to (6).
- (10) In section 23 (power to proceed with allocation hearing in absence of represented accused), omit subsection (3).
- (11) In section 24A (child or young person to indicate intention as to plea in certain cases) —
- (a) for the heading substitute “Child or young person to indicate plea at hearing where allocation decision otherwise required”;
- (b) after subsection (1) insert—
- “(1A) But in a case where section 24ZA(3) has effect, this section does not apply unless—
- (a) the accused has failed to give a written indication of a guilty plea (see section 24ZA(11)), or
- (b) the accused has given such an indication but later withdrawn it as described in section 24ZB(7).”
- (12) In section 27A (power to transfer criminal proceedings), for subsections (1) and (2) substitute—
- “(1) A magistrates’ court may at any time, whether before or after beginning to hear the trial of any person for an offence, transfer the matter to another magistrates’ court.”
- 7 In section 47 of the Police and Criminal Evidence Act 1984 (bail after arrest), for subsection (3A) substitute—
- “(3A) Where a custody officer grants bail to a person subject to a duty to appear before a magistrates’ court, the custody officer shall appoint for the appearance the time and date, and place, which is notified to the custody officer by the designated officer for the court.”
- 8 (1) The Crime and Disorder Act 1998 is amended as follows.
- (2) In section 50A (order of consideration where person accused of either-way offence appears before magistrates’ court)—
- (a) in subsection (4), for “subsections (2) or (6)(a)” substitute “subsection (2)”;
- (b) after subsection (5) insert—

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*Status: This is the original version (as it was originally enacted).*

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“(6) This section does not apply where a person appears before a magistrates’ court for summary trial in accordance with section 17ZB(9), 20(7A) or 24ZA(5) of the Magistrates’ Courts Act 1980.”

- (3) In section 51B(4) (court to which notices under that section to be given), at the end insert “, or which is conducting any written proceedings in relation to the offence”.

*Amendments in connection with section 9*

- 9 (1) The Magistrates’ Courts Act 1980 is amended as follows.
- (2) In section 18(2) (requirement for allocation proceedings to take place in presence of accused), omit “subsection (3) below and”.
- (3) In section 24(1) (child or young person generally to be tried summarily), for “and 24B” substitute “to 24BA”.
- (4) In section 24A(2) (procedure where child or young person to indicate intention as to plea), after “applies” insert “(and subject to section 24BA)”.
- (5) In section 24C(1) (power to adjourn plea and allocation hearing), for “or 24B” substitute “, 24B or 24BA”.

*Amendments in connection with section 10*

- 10 (1) The Magistrates’ Courts Act 1980 is amended as follows.
- (2) In sections 19(6), 20(9)(b), 21, 22A(2)(b), 23(4)(b) and (5) and 25(2D) (which provide for the application of section 51 of the Crime and Disorder Act 1998 in various cases), for “51(1)” substitute “51”.
- (3) In section 24A (child or young person to indicate intention as to plea in certain cases), in subsection (1), for paragraph (b) substitute—
- “(b) a magistrates’ court would, but for this section and section 24B, have to determine under section 51A of the 1998 Act—
- (i) whether to send the accused to the Crown Court for trial, or
- (ii) any matter the effect of which would be to determine whether the accused is sent to the Crown Court for trial.”
- 11 (1) The Crime and Disorder Act 1998 is amended as follows.
- (2) In section 50A (order of consideration where person accused of either-way offence appears before magistrates’ court), in subsection (3)(a)—
- (a) in the words before sub-paragraph (i), for “under section 51(2)(a) or 51(2)(c) below” substitute “in relation to which the condition set out in subsection (2) (a) or (c) of section 51 is met”;
- (b) for sub-paragraph (i) substitute—
- “(i) the court shall first consider whether provision in Criminal Procedure Rules of the sort described in section 51(3A) applies and, if it does, shall deal with the relevant offence accordingly;”.
- (3) In section 51E (interpretation of sections 50A to 51D), omit paragraphs (c) and (d).

*Amendments in connection with section 11*

- 12 (1) Schedule 3 to the Crime and Disorder Act 1998 (procedure where accused sent to the Crown Court for trial) is amended as follows.
- (2) Omit paragraphs 7 to 13.
- (3) In paragraph 15—
- (a) in sub-paragraph (1), for “paragraphs 9 to” substitute “paragraph”;
- (b) omit sub-paragraphs (3) and (4).
- 13 In section 122(1) of the Coroners and Justice Act 2009 (“allocation guidelines”)—
- (a) the words from “decisions” to the end become paragraph (a);
- (b) in that paragraph, omit the words from “, or the” to “(c. 37),”;
- (c) after that paragraph insert—
- “(b) decisions by the Crown Court as to whether to exercise the power in section 46ZA(1) of the Senior Courts Act 1981 or section 25A(2) of the Sentencing Code.”
- 14 In section 26 of the Sentencing Code (provision about remission by Crown Court)—
- (a) in the heading, after “youth court” insert “or other magistrates’ court”;
- (b) in subsection (1), at the end insert “or a magistrates’ court under section 25A”;
- (c) in subsection (2), after “youth court” insert “or magistrates’ court”;
- (d) in subsection (3)(b), after “youth court” insert “or magistrates’ court”.

*Amendments in connection with section 12*

- 15 (1) The Crime and Disorder Act 1998 is amended as follows.
- (2) In section 51D (notice to be given on sending to the Crown Court for trial), in subsections (1)(a) and (3), after “section” insert “47(1A),”.
- (3) In section 52 (supplementary provision about sending to the Crown Court for trial), in each of the following places, before “51” insert “47(1A),”—
- (a) the heading;
- (b) subsections (1), (3) and (6).
- (4) In Schedule 3 (procedure where accused sent to the Crown Court for trial)—
- (a) in the heading, for “51” substitute “47(1A), 51 or 51A”;
- (b) in each the following places, before “51” insert “47(1A),”—
- (i) paragraph 1;
- (ii) paragraph 2(1);
- (iii) paragraph 4(1)(a);
- (iv) paragraph 5(2);
- (v) paragraph 6(1).

*Amendments in connection with section 13*

- 16 In section 133 of the Magistrates’ Courts Act 1980 (consecutive terms of imprisonment)—



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- (a) in subsection (1), for “6 months” substitute “the longest term that could be imposed in respect of any one of the offences for which a term of imprisonment is being imposed”;
  - (b) in subsection (2), for “6 months” substitute “the longest term otherwise permitted by subsection (1) (if less than 12 months)”.
- 17 In section 141(5A) of the Environmental Protection Act 1990 (maximum terms for offences under regulations about waste imports and exports), in paragraph (b), for “twelve months” substitute “the general limit in a magistrates’ court”.
- 18 In section 113(10A) of the Scotland Act 1998 (maximum terms for offences under subordinate legislation under that Act), in paragraph (b), for “twelve months” substitute “the general limit in a magistrates’ court”.
- 19 (1) The Criminal Justice Act 2003 is amended as follows.
  - (2) In section 155(2) (amendment of section 133(1) of the Magistrates’ Courts Act 1980), for ““6 months”” substitute “the words from “the longest” to “being imposed””.
  - (3) In section 283 (power to amend powers to make offences punishable with imprisonment)—
    - (a) in subsection (1)—
      - (i) omit “or (3)”;
      - (ii) omit paragraph (b);
    - (b) omit subsection (3).
- 20 In section 42 of the Gambling Act 2005 (offence of cheating at gambling)—
  - (a) in subsection (4)(b), for “51 weeks” substitute “the general limit in a magistrates’ court”;
  - (b) in subsection (5), for “51 weeks” substitute “the general limit in a magistrates’ court”.
- 21 In Part 5 of Schedule 22 to the Sentencing Act 2020 (prospective amendments of the Sentencing Code in relation to custodial sentences)—
  - (a) omit paragraph 24;
  - (b) before paragraph 25 insert—
    - “24A In section 224(1A)(a) (general limit on custodial sentence for summary offence in magistrates’ court), for “6 months” substitute “12 months”.”

## SCHEDULE 3

Section 19

### PRACTICE DIRECTIONS FOR ONLINE PROCEEDINGS

## PART 1

### CIVIL PROCEEDINGS AND FAMILY PROCEEDINGS IN ENGLAND AND WALES

#### *Power to give practice directions*

- 1 Practice directions may be given in relation to—

- (a) civil proceedings in England and Wales that are governed by Online Procedure Rules;
- (b) family proceedings in England and Wales that are governed by Online Procedure Rules.

*Contents of practice directions*

- 2
- (1) Practice directions under paragraph 1(a) may provide for any matter which may be provided for in Online Procedure Rules for civil proceedings in England and Wales.
  - (2) Practice directions under paragraph 1(b) may provide for any matter which may be provided for in Online Procedure Rules for family proceedings in England and Wales.

*Giving practice directions*

- 3
- (1) Practice directions under paragraph 1 may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005.
  - (2) Practice directions under paragraph 1 may be given otherwise than in accordance with that Part of that Schedule; but, in this case, the directions may not be given without the approval of—
    - (a) the Lord Chancellor, and
    - (b) the Lord Chief Justice.
  - (3) Sub-paragraph (2)(a) does not require the approval of the Lord Chancellor for practice directions to the extent that they consist of guidance about—
    - (a) the application or interpretation of the law;
    - (b) the making of judicial decisions.
  - (4) Sub-paragraph (2)(a) does not require the approval of the Lord Chancellor for practice directions to the extent that they consist of criteria for determining which judges may be allocated to hear particular categories of case; but the directions may, to that extent, be given only after consultation with the Lord Chancellor (as well as with the approval of the Lord Chief Justice required by sub-paragraph (2)(b)).

*Particular provision in practice directions*

- 4
- The power under paragraph 1 to give practice directions includes power—
- (a) to vary or revoke directions given under paragraph 1 by any person;
  - (b) to give directions containing different provision for different cases (including different areas);
  - (c) to give directions containing provision for a specific court, for specific proceedings or for a specific jurisdiction.

## **PART 2**

### **PROCEEDINGS IN THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL**

*Power to give practice directions*

- 5
- Practice directions may be given in relation to—

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*Status: This is the original version (as it was originally enacted).*

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- (a) proceedings in the First-tier Tribunal that are governed by Online Procedure Rules;
- (b) proceedings in the Upper Tribunal that are governed by Online Procedure Rules.

*Contents of practice directions*

- 6 (1) Practice directions under paragraph 5(a) may provide for any matter which may be provided for in Online Procedure Rules for proceedings in the First-tier Tribunal.
- (2) Practice directions under paragraph 5(b) may provide for any matter which may be provided for in Online Procedure Rules for proceedings in the Upper Tribunal.

*Giving practice directions*

- 7 (1) The Senior President of Tribunals may give practice directions under paragraph 5 in relation to any proceedings.
- (2) The Senior President may not give practice directions without the approval of the Lord Chancellor.
- (3) A Chamber President may give practice directions under paragraph 5 in relation to proceedings in the Chamber of the First-tier Tribunal or Upper Tribunal over which the President presides.
- (4) A Chamber President may not give practice directions without the approval of—
  - (a) the Lord Chancellor, and
  - (b) the Senior President of Tribunals.
- (5) Neither sub-paragraph (2) nor sub-paragraph (4)(a) requires the approval of the Lord Chancellor for practice directions to the extent that they consist of guidance about—
  - (a) the application or interpretation of the law;
  - (b) the making of decisions by members of the First-tier Tribunal or Upper Tribunal.
- (6) Neither sub-paragraph (2) nor sub-paragraph (4)(a) requires the approval of the Lord Chancellor for practice directions to the extent that they consist of criteria for determining which members of the First-tier Tribunal or Upper Tribunal may be chosen to hear particular categories of case; but the directions may, to that extent, be given only after consultation with the Lord Chancellor (as well as with the approval of the Senior President of Tribunals if required by sub-paragraph (4)(b)).

*Particular provision in practice directions*

- 8 The power under paragraph 5 to give practice directions includes power—
  - (a) to vary or revoke directions made in exercise of the power;
  - (b) to make different provision for different purposes (including different provision for different areas).

### PART 3

#### PROCEEDINGS IN EMPLOYMENT TRIBUNALS AND THE EMPLOYMENT APPEAL TRIBUNAL

##### *Power to give practice directions*

- 9 Practice directions may be given in relation to—
- (a) proceedings in employment tribunals that are governed by Online Procedure Rules;
  - (b) proceedings in the Employment Appeal Tribunal that are governed by Online Procedure Rules.

##### *Contents of practice directions*

- 10 (1) Practice directions under paragraph 9(a) may provide for any matter which may be provided for in Online Procedure Rules for proceedings in employment tribunals.
- (2) Practice directions under paragraph 9(b) may provide for any matter which may be provided for in Online Procedure Rules for proceedings in the Employment Appeal Tribunal.

##### *Giving practice directions*

- 11 (1) The Senior President of Tribunals may give practice directions under paragraph 9 in relation to any proceedings.
- (2) The Senior President may not give practice directions without the approval of the Lord Chancellor.
- (3) The President of the Employment Appeal Tribunal may give practice directions under paragraph 9 in relation to proceedings in that Tribunal.
- (4) A territorial president may give practice directions under paragraph 9 in relation to proceedings in the employment tribunals for which the president is responsible.
- (5) The President of the Employment Appeal Tribunal or a territorial president may not give practice directions without the approval of—
- (a) the Lord Chancellor, and
  - (b) the Senior President of Tribunals.
- (6) Neither sub-paragraph (2) nor sub-paragraph (5)(a) requires the approval of the Lord Chancellor for practice directions to the extent that they consist of guidance about—
- (a) the application or interpretation of the law;
  - (b) the making of decisions by members of the employment tribunals or of the Employment Appeal Tribunal.
- (7) Neither sub-paragraph (2) nor sub-paragraph (5)(a) requires the approval of the Lord Chancellor for practice directions to the extent that they consist of criteria for determining which members of the employment tribunals or the Employment Appeal Tribunal may be chosen to hear particular categories of case; but the directions may, to that extent, be given only after consultation with the Lord Chancellor (as well as with the approval of the Senior President of Tribunals if required by sub-paragraph (5)(b)).

- (8) In this paragraph “territorial president” means a person appointed in accordance with regulations under section 1(1) of the Employment Tribunals Act 1996 as—
- (a) President of Employment Tribunals (England and Wales), or
  - (b) President of Employment Tribunals (Scotland).

*Particular provision in practice directions*

- 12 The power under paragraph 9 to give practice directions includes power—
- (a) to vary or revoke directions made in exercise of the power;
  - (b) to make different provision for different purposes (including different provision for different areas).

*Practice directions relating to mediation*

- 13 (1) A person exercising the power under paragraph 9 must, when making provision in relation to mediation, have regard to the following principles—
- (a) mediation of matters in dispute between parties to proceedings is to take place only by agreement between those parties;
  - (b) where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings.
- (2) Practice directions under paragraph 9 may provide for members to act as mediators in relation to disputed matters in a case that is the subject of proceedings.
- (3) The provision that may be made by virtue of sub-paragraph (2) includes provision for a member to act as a mediator in relation to disputed matters in a case even though the member has been chosen to decide matters in the case.
- (4) Before making a practice direction under paragraph 9 that makes provision in relation to mediation, the person making the direction must consult ACAS.
- (5) Once a member has begun to act, in accordance with a practice direction under paragraph 9, as mediator in relation to a disputed matter in a case that is the subject of proceedings, the member may decide matters in the case only with the consent of the parties.
- (6) Staff appointed under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (staff for employment and other tribunals) may, subject to their terms of appointment, act in accordance with practice directions under paragraph 9 as mediators in relation to disputed matters in a case that is the subject of proceedings.
- (7) In this paragraph—
- “ACAS” means the Advisory, Conciliation and Arbitration Service;
  - “member” means a member of a panel of members of employment tribunals (whether or not a panel of Employment Judges);
  - “proceedings” means proceedings before an employment tribunal.



## SCHEDULE 4

Section 31

### ONLINE PROCEDURE: AMENDMENTS

#### *Employment Tribunals Act 1996*

- 1 (1) The Employment Tribunals Act 1996 is amended as follows.
- (2) In section 7A (practice directions), after subsection (2E) insert—
  - “(2F) Directions under this section do not apply to proceedings that are governed by Online Procedure Rules except—
    - (a) to such extent as may be provided by—
      - (i) Online Procedure Rules, or
      - (ii) directions under paragraph 9 of Schedule 3 to the Judicial Review and Courts Act 2022, or
    - (b) to such extent as Procedure Rules apply to the proceedings by virtue of regulations under section 21(1)(b) of that Act.”
- (3) In section 29A (practice directions), after subsection (10) insert—
  - “(11) Directions under this section do not apply to proceedings that are governed by Online Procedure Rules except—
    - (a) to such extent as may be provided by—
      - (i) Online Procedure Rules, or
      - (ii) directions under paragraph 9 of Schedule 3 to the Judicial Review and Courts Act 2022, or
    - (b) to such extent as Procedure Rules apply to the proceedings by virtue of regulations under section 21(1)(b) of that Act.”
- (4) In Schedule A1 (inserted by Schedule 5 to this Act), after paragraph 21 insert—
  - “21A Procedure Rules must be framed so as not to apply to proceedings that are governed by Online Procedure Rules except to such extent as may be provided by—
    - (a) Online Procedure Rules,
    - (b) directions under paragraph 9 of Schedule 3 to the Judicial Review and Courts Act 2022, or
    - (c) regulations under section 21(1)(b) of that Act.”

#### *Civil Procedure Act 1997*

- 2 (1) The Civil Procedure Act 1997 is amended as follows.
- (2) In section 1 (Civil Procedure Rules), after subsection (3) insert—
  - “(4) Civil Procedure Rules must be framed so as not to apply to proceedings that are governed by Online Procedure Rules except to such extent as may be provided by—
    - (a) Online Procedure Rules,
    - (b) directions under paragraph 1 of Schedule 3 to the Judicial Review and Courts Act 2022, or
    - (c) regulations under section 21(1)(b) of that Act.”

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*Status: This is the original version (as it was originally enacted).*

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(3) In section 5 (practice directions), after subsection (6) insert—

- “(7) Practice directions under this section do not apply to proceedings that are governed by Online Procedure Rules except—
- (a) to such extent as may be provided by—
    - (i) Online Procedure Rules, or
    - (ii) directions under paragraph 1 of Schedule 3 to the Judicial Review and Courts Act 2022, or
  - (b) to such extent as Civil Procedure Rules apply to the proceedings by virtue of regulations under section 21(1)(b) of that Act.”

#### *Courts Act 2003*

3 (1) The Courts Act 2003 is amended as follows.

(2) In section 75 (Family Procedure Rules), after subsection (5) insert—

- “(6) Family Procedure Rules must be framed so as not to apply to proceedings that are governed by Online Procedure Rules except to such extent as may be provided by—
- (a) Online Procedure Rules,
  - (b) directions under paragraph 1 of Schedule 3 to the Judicial Review and Courts Act 2022, or
  - (c) regulations under section 21(1)(b) of that Act.”

(3) In section 81 (practice directions relating to family proceedings), at the end insert—

- “(6) Directions under this section do not apply to proceedings that are governed by Online Procedure Rules except—
- (a) to such extent as may be provided by—
    - (i) Online Procedure Rules, or
    - (ii) directions under paragraph 1 of Schedule 3 to the Judicial Review and Courts Act 2022, or
  - (b) to such extent as Family Procedure Rules apply to the proceedings by virtue of regulations under section 21(1)(b) of that Act.”

#### *Tribunals, Courts and Enforcement Act 2007*

4 (1) The Tribunals, Courts and Enforcement Act 2007 is amended as follows.

(2) In section 22 (Tribunal Procedure Rules), after subsection (5) insert—

- “(6) Tribunal Procedure Rules must be framed so as not to apply to proceedings that are governed by Online Procedure Rules except to such extent as may be provided by—
- (a) Online Procedure Rules,
  - (b) directions under paragraph 5 of Schedule 3 to the Judicial Review and Courts Act 2022, or
  - (c) regulations under section 21(1)(b) of that Act.”

(3) In section 23 (practice directions), after subsection (7) insert—

“(8) Directions under this section do not apply to proceedings that are governed by Online Procedure Rules except—

- (a) to such extent as may be provided by—
  - (i) Online Procedure Rules, or
  - (ii) directions under paragraph 5 of Schedule 3 to the Judicial Review and Courts Act 2022, or
- (b) to such extent as Tribunal Procedure Rules apply to the proceedings by virtue of regulations under section 21(1)(b) of that Act.”

## SCHEDULE 5

Section 34

### EMPLOYMENT TRIBUNAL PROCEDURE RULES: FURTHER PROVISION

#### PART 1

#### MAKING AND CONTENT OF EMPLOYMENT TRIBUNAL PROCEDURE RULES

1 In the Employment Tribunals Act 1996, before Schedule 1 insert—

#### “SCHEDULE A1

Section 37QA

#### PROCEDURE RULES

#### PART 1

#### OBJECTIVES

- 1 (1) The Tribunal Procedure Committee must exercise its power to make Procedure Rules with a view to securing—
- (a) that justice is done in proceedings before the tribunal,
  - (b) that the tribunal system is accessible and fair,
  - (c) that proceedings are handled quickly and efficiently,
  - (d) that Procedure Rules are both simple and simply expressed, and
  - (e) that Procedure Rules, where appropriate, confer responsibility on members of the tribunal for ensuring that proceedings before the tribunal are handled quickly and efficiently.
- (2) In sub-paragraph (1)(b), “the tribunal system” means the system for deciding matters within the jurisdiction of the tribunal.

## PART 2

### CONTENT OF PROCEDURE RULES

#### Delegation of functions to staff

- 2 (1) Procedure Rules may provide for functions of the tribunal to be exercised by staff appointed under section 2(1) of the Courts Act 2003 (court staff) or section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (tribunal staff).
- (2) In making provision of the kind mentioned in sub-paragraph (1) in relation to a function, Procedure Rules may (in particular)—
  - (a) provide for the function to be exercisable by a member of staff only if the member of staff is, or is of a description, specified in exercise of a discretion conferred by Procedure Rules;
  - (b) provide for the function to be exercisable by a member of staff only if the member of staff is approved, or is of a description approved, for the purpose by a person specified in Procedure Rules.
- (3) A person may exercise functions by virtue of this paragraph only if authorised to do so by the Senior President of Tribunals.
- (4) An authorisation under this paragraph—
  - (a) may be subject to conditions, and
  - (b) may be varied or revoked by the Senior President of Tribunals at any time.
- (5) The Senior President of Tribunals may delegate to one or more of the following the Senior President of Tribunals' functions under the preceding provisions of this paragraph—
  - (a) a judicial office holder;
  - (b) a person appointed under section 2(1) of the Courts Act 2003 or section 40(1) of the Tribunals, Courts and Enforcement Act 2007.
- (6) A person to whom functions of the Senior President of Tribunals are delegated under sub-paragraph (5)(b) is not subject to the direction of any person other than—
  - (a) the Senior President of Tribunals, or
  - (b) a judicial office holder nominated by the Senior President of Tribunals,
 when exercising the functions.
- (7) Subsections (3) to (5) of section 8 of the Tribunals, Courts and Enforcement Act 2007 apply to a delegation under sub-paragraph (5) as they apply to a delegation under subsection (1) of that section.
- (8) In this paragraph, “judicial office holder” means—

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- (a) a judicial office holder within the meaning given by section 109(4) of the Constitutional Reform Act 2005, or
- (b) the President of Employment Tribunals (Scotland).

#### **Time limits**

- 3 Procedure Rules may make provision for time limits as respects initiating, or taking any step in, proceedings before the tribunal.

#### **Determining where to start proceedings**

- 4 Procedure Rules may include provision for determining whether proceedings before the tribunal are to be brought in England and Wales or in Scotland.

#### **Repeat applications**

- 5 Procedure Rules may make provision restricting the making of fresh applications where a previous application in relation to the same matter has been made.

#### **Tribunal acting of its own initiative**

- 6 Procedure Rules may make provision about the circumstances in which the tribunal may exercise its powers of its own initiative.

#### **Hearings**

- 7 Procedure Rules may—
- (a) make provision for dealing with matters without a hearing;
  - (b) make provision as respects allowing or requiring a hearing to be in private or as respects allowing or requiring a hearing to be in public.

#### **Proceedings without notice**

- 8 Procedure Rules may make provision for proceedings to take place, in circumstances described in Procedure Rules, at the request of one party even though the other, or another, party has had no notice.

#### **Representation**

- 9 Procedure Rules may make provision conferring additional rights of audience before the tribunal.

#### **Intervention by Secretary of State**

- 10 Procedure Rules may make provision—
- (a) for the Secretary of State to be treated (either generally or in circumstances prescribed by the Rules) as a party to any proceedings, and



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- (b) for the Secretary of State to be entitled to appear and to be heard accordingly.

#### **Evidence, witnesses and attendance**

- 11 (1) Procedure Rules may make provision about evidence (including evidence on oath and administration of oaths).
- (2) Procedure Rules may modify any rules of evidence provided for elsewhere, so far as they would apply to proceedings before the tribunal.
- (3) Procedure Rules may make provision, where an employment tribunal has required a person—
  - (a) to attend at any place for the purpose of giving evidence,
  - (b) otherwise to be available to give evidence,
  - (c) to swear an oath in connection with the giving of evidence,
  - (d) to give evidence as a witness,
  - (e) to produce a document, or
  - (f) to facilitate the inspection of a document or any other thing (including any premises),for the Appeal Tribunal to deal with non-compliance with the requirement as though the requirement had been imposed by the Appeal Tribunal.
- (4) Procedure Rules may make provision for the payment of expenses and allowances to persons giving evidence, producing documents, attending proceedings or required to attend proceedings.

#### **Use of information**

- 12 (1) Procedure Rules may make provision for the disclosure or non-disclosure of information received during the course of proceedings before the tribunal.
- (2) Procedure Rules may make provision for imposing reporting restrictions in circumstances described in Procedure Rules.

#### **Set-off**

- 13 Procedure Rules may make provision for a party to proceedings to deduct, from amounts payable by the party, amounts payable to the party.

#### **Reconsideration or review of decisions**

- 14 Procedure Rules may confer power on the tribunal to reconsider or review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with Procedure Rules.

#### **Correction of errors and setting aside of decisions on procedural grounds**

- 15 (1) Procedure Rules may make provision for the correction of accidental errors in a decision or record of a decision.

- (2) Procedure Rules may make provision for the setting aside of a decision in proceedings before the tribunal—
- (a) where a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party's representative,
  - (b) where a document relating to the proceedings was not sent to the tribunal at an appropriate time,
  - (c) where a party to the proceedings, or a party's representative, was not present at a hearing related to the proceedings, or
  - (d) where there has been any other procedural irregularity in the proceedings.
- (3) Sub-paragraphs (1) and (2) do not affect, and are not affected by, any power to correct errors or set aside decisions that is exercisable apart from rules made by virtue of those sub-paragraphs.

#### **Registration and proof of decisions**

- 16 Procedure Rules may make provision for the registration and proof of decisions, orders and awards of the tribunal.

#### **Ancillary powers**

- 17 Procedure Rules may confer on the tribunal such ancillary powers as are necessary for the proper discharge of its functions.

#### **Rules may refer to practice directions**

- 18 Procedure Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions under section 7A or 29A.

#### **Presumptions**

- 19 Procedure Rules may make provision in the form of presumptions (including, in particular, presumptions as to service or notification).

#### **Differential provision**

- 20 Procedure Rules may make different provision for different purposes or different areas.

### **PART 3**

#### **SUPPLEMENTARY PROVISION**

#### **Procedure for making Procedure Rules**

- 21 (1) Part 3 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 (which makes provision about how Tribunal Procedure Rules are to be made) applies to the making of Procedure Rules under this Act as it

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applies to the making of Tribunal Procedure Rules under section 22 of that Act, with the following modifications.

- (2) In paragraph 28(1)(a) of that Schedule, the reference to the Chamber Presidents is to be read as a reference to the President of the Employment Tribunals (England and Wales) and the President of the Employment Tribunals (Scotland).
- (3) In paragraph 28A(1) of that Schedule—
  - (a) the reference to the First-tier Tribunal or Upper Tribunal is to be read as a reference to an employment tribunal or the Employment Appeal Tribunal, and
  - (b) the reference to paragraph 3 of that Schedule is to be read as a reference to paragraph 2 of this Schedule.

### **Interpretation**

- 22 In this Schedule, “the tribunal” means—
- (a) an employment tribunal, in relation to Procedure Rules in respect of employment tribunals;
  - (b) the Appeal Tribunal, in relation to Procedure Rules in respect of the Appeal Tribunal.”

## **PART 2**

### OTHER AMENDMENTS OF THE EMPLOYMENT TRIBUNALS ACT 1996

#### *Introduction*

- 2 The Employment Tribunals Act 1996 is amended as follows.

#### *Employment tribunals*

- 3 (1) Section 7A (practice directions) is amended as follows.
- (2) In subsection (A1), after “about the” insert “practice and”.
  - (3) For subsection (1) substitute—
 

“(1) The territorial President may make directions about the practice and procedure of employment tribunals.”
  - (4) Omit subsection (2).
  - (5) In subsection (2A), for “power under subsection (A1) includes” substitute “powers under subsections (A1) and (1) include”.
  - (6) In subsection (2C), for “(1)(a)” substitute “(1)”.
- 4 (1) Section 7B (mediation) is amended as follows.
- (2) Before subsection (1) insert—

- “(A1) A person exercising power to make Procedure Rules or give practice directions must, when making provision in relation to mediation, have regard to the following principles—
- (a) mediation of matters in dispute between parties to proceedings is to take place only by agreement between those parties;
  - (b) where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings.”
- (3) In subsection (1), for the words from “Employment” to “directions to” substitute “Practice directions under section 7A may”.
- (4) In subsection (2)—
- (a) for “included in employment tribunal procedure regulations” substitute “made”;
  - (b) omit “enabling practice directions to provide for”.
- 5 (1) Section 9 (pre-hearing reviews) is amended as follows.
- (2) For the heading substitute “Preliminary hearings”.
- (3) For subsection (1) substitute—
- “(1) If Procedure Rules authorise an employment tribunal to carry out a preliminary hearing, Procedure Rules may make provision for enabling such powers as may be prescribed by the Rules to be exercised in connection with the hearing.”
- (4) In subsection (2)—
- (a) in the words before paragraph (a), for “regulations” substitute “Rules”;
  - (b) in paragraph (a)—
    - (i) for “pre-hearing review” substitute “preliminary hearing”;
    - (ii) omit “under the regulations”;
    - (iii) for “regulations” (in the remaining place it occurs) substitute “Rules”;
    - (iv) omit “of an amount not exceeding £1,000”.
- (5) After subsection (2) insert—
- “(2ZA) Procedure Rules of the kind mentioned in subsection (2)(a) may not provide for a deposit of an amount exceeding £1,000.”
- (6) For subsection (2A) substitute—
- “(2A) Procedure Rules may not enable a power of striking out to be exercised in a preliminary hearing on a ground which does not apply outside a preliminary hearing.”
- (7) In subsection (3)—
- (a) for “Secretary of State” substitute “Lord Chancellor”;
  - (b) for “(2)(a)” substitute “(2ZA)”.
- (8) Omit subsection (4).
- (9) At the end insert—

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“(5) In this section “preliminary hearing” means a hearing in any proceedings before an employment tribunal which takes place at a time before a hearing held for the purpose of determining them.”

6 (1) Section 10 (national security) is amended as follows.

(2) In subsections (2), (5) and (6), omit “Employment tribunal procedure”.

(3) In subsections (6) and (7), omit “employment tribunal procedure”.

(4) After subsection (9) insert—

“(10) Regulations under this section are to be made by the Lord Chancellor.”

7 Omit section 10A (confidential information).

8 In section 11 (restriction of publicity in cases involving sexual misconduct)—

(a) in subsection (1), for “Employment tribunal procedure regulations” substitute “Procedure Rules”;

(b) in subsection (6), in paragraph (a) of the definition of “restricted reporting order”, for “regulations made by virtue of this section” substitute “Procedure Rules of the kind mentioned in subsection (1)(b)”.

9 In section 12 (restriction of publicity in disability cases)—

(a) in subsection (2), for “Employment tribunal procedure regulations” substitute “Procedure Rules”;

(b) in subsection (7)—

(i) in the definition of “promulgation”, for “regulations made by virtue” substitute “Procedure Rules made for the purposes”;

(ii) in paragraph (a) of the definition of “restricted reporting order”, for “regulations made by virtue of this section” substitute “Procedure Rules of the kind mentioned in subsection (2)(a)”.

10 In section 12A(9) (subsequent award of compensation not to necessitate review of financial penalties), in the words before paragraph (a), after “be” insert “reconsidered or”.

11 (1) Section 13 (costs and expenses) is amended as follows.

(2) For subsection (1) substitute—

“(1) Procedure Rules may make provision for regulating matters relating to—

(a) costs or expenses;

(b) allowances payable under section 5(2)(c) or (3).”

(3) In subsection (1A)—

(a) for “Regulations under subsection (1) may” substitute “Procedure Rules may, in particular,”;

(b) omit “under such regulations”.

(4) In subsection (1B), for “Employment tribunal procedure regulations may” substitute “Procedure Rules may, in particular,”.

(5) In subsection (1C), for “Employment tribunal procedure regulations may also” substitute “Procedure Rules may, in particular,”.



- (6) In subsection (2), for “employment tribunal procedure regulations shall” substitute “Procedure Rules must”.
  - (7) In subsection (3)—
    - (a) for the words from “Provision” to “must” substitute “If Procedure Rules make provision of the kind mentioned in subsection (1)(a), Procedure Rules must also”;
    - (b) for “regulations” (in the remaining place it occurs) substitute “Rules”.
  - (8) In subsection (4)(a), for “the regulations” substitute “Procedure Rules”.
- 12 (1) Section 13A (payments in respect of preparation time) is amended as follows.
- (2) In subsection (1), for “Employment tribunal procedure regulations” substitute “Procedure Rules”.
  - (3) In subsection (2)—
    - (a) for “Regulations under subsection (1) may” substitute “Procedure Rules may, in particular,”;
    - (b) for “under such regulations” substitute “as described in subsection (1)”.
  - (4) In subsection (2A)—
    - (a) for the words from “Provision” to “must” substitute “If Procedure Rules include provision of the kind mentioned in subsection (1), Procedure Rules must also”;
    - (b) for “regulations” (in the remaining place it occurs) substitute “Rules”.
  - (5) In subsection (2B)(a), for “the regulations” substitute “Procedure Rules”.
  - (6) In subsection (3)—
    - (a) in the words before paragraph (a), for “employment tribunal procedure regulations” substitute “Procedure Rules”;
    - (b) in paragraph (b), for “of the kind mentioned in section 13(1)(a)” substitute “for the award of costs or expenses”.
  - (7) In subsection (4)—
    - (a) in the words before paragraph (a), for “the regulations” substitute “Procedure Rules”;
    - (b) in paragraph (b), for “of the kind mentioned in section 13(1)(a)” substitute “of costs or expenses”.
- 13 In section 14 (interest), in subsections (1) and (3)(f), for “Secretary of State” substitute “Lord Chancellor”.
- 14 In section 15 (enforcement)—
  - (a) in subsection (1), for “employment tribunal procedure regulations” substitute “Procedure Rules”;
  - (b) in subsection (3), in paragraphs (a) and (b), after “being” insert “reconsidered or”.
- 15 (1) Section 18A (requirement to contact ACAS before instituting proceedings) is amended as follows.
- (2) In subsection (10), for “employment tribunal procedure regulations” substitute “regulations made by the Secretary of State”.

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(3) In subsection (11), omit “employment tribunal procedure”.

(4) In subsection (12)—

- (a) in the words before paragraph (a), for “Employment tribunal procedure regulations” substitute “The regulations”;
- (b) in paragraph (a), for “such regulations” substitute “the regulations”.

16 In section 19(1) (conciliation procedure), for “Employment tribunal procedure regulations shall” substitute “Procedure Rules must”.

17 In section 19A(9) (power to provide time limits for certain applications about settlement sums), for “Employment tribunal procedure regulations” substitute “Procedure Rules”.

### *Employment Appeal Tribunal*

18 In section 29A (practice directions)—

- (a) in subsection (1), after “about the” insert “practice and”;
- (b) in subsection (5), after “about the” insert “practice or”.

19 After section 30 insert—

#### **“30A National security**

- (1) The Lord Chancellor may by regulations make provision about the composition of the Appeal Tribunal (including provision disapplying or modifying section 28) for the purposes of proceedings in relation to which—
  - (a) a direction is given under subsection (2), or
  - (b) an order is made under subsection (3).

(2) A direction may be given under this subsection by a Minister of the Crown if—

- (a) it relates to particular Crown employment proceedings, and
- (b) the Minister considers it expedient in the interests of national security.

“Crown employment proceedings” is to be read in accordance with section 10(8).

(3) An order may be made under this subsection by a judge of the Appeal Tribunal in relation to particular proceedings if the judge considers it expedient in the interests of national security.

(4) The Lord Chancellor may by regulations make, in relation to the Appeal Tribunal, provision of a kind which may be made in relation to employment tribunals under section 10(5), (6) or (7).

(5) For the purposes of subsection (4), references in section 10(6) and (7) to things enabled or done by virtue of any provision in section 10(5) or (6) are to be read as references to things enabled or done by virtue of subsection (4) so far as it refers to that provision.

(6) Section 10B applies in relation to a direction to, or determination of, the Appeal Tribunal as it applies in relation to a direction to or determination of an employment tribunal.

- (7) For the purposes of subsection (6), the references in section 10B(1) to section 10(5) and 10(6) are to be read as references to subsection (4) of this section so far as it refers to section 10(5) or (as the case may be) 10(6)."
- 20 In section 31 (restriction of publicity in cases involving sexual misconduct)—
- (a) in subsection (1), for "Appeal Tribunal procedure rules" substitute "Procedure Rules";
  - (b) in subsection (7)(a)(i), for "rules made by virtue of this section" substitute "Procedure Rules of the kind mentioned in subsection (1)(b)".
- 21 In section 32 (restriction of publicity in disability cases)—
- (a) in subsection (2), for "Appeal Tribunal procedure rules" substitute "Procedure Rules";
  - (b) in subsection (7)(b)(i), for "rules made by virtue of this section" substitute "Procedure Rules of the kind mentioned in subsection (2)(a)";
  - (c) in subsection (8), in the definition of "promulgation", for "rules made by virtue" substitute "Procedure Rules made for the purposes".
- 22 (1) Section 34 (costs and expenses) is amended as follows.
- (2) For subsection (1) substitute—
- "(1) Procedure Rules may make provision for regulating matters relating to costs and expenses."
- (3) In subsection (2), for "Rules under subsection (1) may" substitute "Procedure Rules may, in particular,".
- (4) In subsection (3), for "Appeal Tribunal procedure rules may" substitute "Procedure Rules may, in particular,".
- (5) In subsection (4), for "Appeal Tribunal procedure rules may also" substitute "Procedure Rules may, in particular,".

#### *General*

- 23 In the heading of Part 3, at the beginning insert "General and".
- 24 After section 37QA (inserted by section 34(4) of this Act) insert—

#### **"37QB Power to amend legislation in connection with Procedure Rules**

- (1) The Lord Chancellor may by regulations amend, repeal or revoke any enactment to the extent that the Lord Chancellor considers necessary or desirable—
- (a) in order to facilitate the making of Procedure Rules, or
  - (b) in consequence of—
    - (i) section 37QA,
    - (ii) Schedule A1, or
    - (iii) Procedure Rules.
- (2) In subsection (1) "enactment" means any enactment whenever passed or made, including an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978."

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- 25 (1) Section 41 (orders, regulations and rules) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) No recommendation may be made to Her Majesty to make an Order in Council under section 38(4) unless a draft of the Order in Council has been laid before Parliament and approved by a resolution of each House of Parliament.”
- (3) In subsection (2)—
- (a) for the words from the beginning to “no order shall be made under” substitute “A statutory instrument containing—
  - (a) an order under”;
  - (b) for “and no regulations are to be made under” substitute—
  - “(b) regulations under”;
  - (c) for the words from “unless a draft” to the end substitute “, or
  - (c) regulations under section 37QB that amend or repeal provision made by an Act,
- may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (4) After subsection (4) insert—
- “(5) This section does not apply in relation to Procedure Rules (the procedure for which is provided for by Schedule A1).”
- 26 In section 42(1) (definition of terms)—
- (a) omit the definitions of “Appeal Tribunal procedure rules” and “employment tribunal procedure regulations”;
  - (b) at the appropriate place insert—
  - ““Procedure Rules” is to be read in accordance with section 37QA(2), and—
  - (a) in Part 1, means Procedure Rules in respect of employment tribunals;
  - (b) in Part 2, means Procedure Rules in respect of the Appeal Tribunal,”;
  - (c) omit the “and” immediately before the definition of “trade union”;
  - (d) after that definition insert—
  - ““Tribunal Procedure Committee” means the committee of that name constituted under Part 2 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.”

### PART 3

#### RELATED AMENDMENTS OF OTHER LEGISLATION

##### *Employment Rights Act 1996*

- 27 In section 163 of the Employment Rights Act 1996 (references to employment tribunals about redundancy payments), after subsection (5) insert—

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“(6) Where in accordance with Employment Tribunal Procedure Rules an employment tribunal determines in the same proceedings a complaint presented under section 111 (unfair dismissal) and a question referred under this section, subsection (2) has no effect for the purposes of the proceedings in so far as they relate to the complaint under section 111.”

*Tribunals, Courts and Enforcement Act 2007*

28 In section 8(2) of the Tribunals, Courts and Enforcement Act 2007 (functions of the Senior President of Tribunals not capable of delegation under that section), at the end insert—

“paragraph 2 of Schedule A1 to the Employment Tribunals Act 1996.”

29 (1) Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 (which, among other things, deals with membership of the Tribunals Procedure Committee) is amended as follows.

(2) In paragraph 21 (Lord Chancellor’s appointees)—

- (a) in sub-paragraph (1)(a), for “three” substitute “four”;
- (b) after sub-paragraph (1) insert—

“(1A) At least one of those persons must have experience of—

- (a) practice in employment tribunals and the Employment Appeal Tribunal, or
- (b) advising persons involved in employment tribunal proceedings and the Employment Appeal Tribunal.”

(3) In paragraph 22(1) (Lord Chief Justice’s appointees)—

- (a) omit “and” at the end of paragraph (b);
- (b) at the end of paragraph (c) insert “, and
- (d) one person who is a judge, or other member, of the Employment Appeal Tribunal or a member of a panel of members of employment tribunals (whether or not a panel of Employment Judges).”