

# CONVENTION RIGHTS MEMORANDUM

## The Criminal Justice (Sentencing, etc) Bill

### INTRODUCTION

1. This memorandum has been prepared for the Committee for Justice ('the Committee') to assist with its scrutiny of the Criminal Justice (Sentencing, etc) Bill ('the Bill').
2. The Bill was introduced on 3 March 2026. This memorandum addresses issues arising under the European Convention on Human Rights ('the Convention) and Article 2(1) of the Windsor Framework ('Article 2(1)'), in relation to the Bill. It has been prepared by the Legal Services Office.
3. The memorandum does not constitute legal advice but sets out whether this Bill engages Convention rights, and where there is potential interference with a Convention rights, those clauses which may merit further scrutiny by the Committee.
4. Where a clause of the Bill may occasion interference with one or more Convention rights, that clause may merit further scrutiny by the Committee and discussion with the Department of Justice ('the Department').
5. Where a clause of the Bill may engage rights which fall within the scope of Article 2(1), the rights issues in those clauses are set out, and that clause may also merit further scrutiny and discussion with the Department to identify any potential incompatibility with Article 2(1).
6. The Convention rights given effect in domestic law are set out at Annex A to this memorandum. The text of Article 2(1) of the Windsor Framework and its associated annex is at Annex B to the memorandum.

### SUMMARY OF THE BILL

7. The Bill consists of 51 clauses, divided into 8 parts, and 7 schedules. The long title describes it as,

*'A Bill to make provision about the exercise of the court's discretion when sentencing; to make provision about the availability and effect of suspended sentence orders; to create general principles relating to the determination of tariffs where a court is required to pass a life sentence on an adult; to provide for the review of certain sentences by superior courts; to make provision about the effect of an offender convicted of murder or manslaughter failing to disclose information about the victim's remains; to create an offence of assaulting a*

*public worker; to create sentencing aggravations concerning offences against public workers, particular groups and vulnerable victims; to amend the law relating to penalties for certain road traffic offences; and to make provision for connected purposes.'*

8. The Explanatory and Financial Memorandum notes that this Bill, '*will make provision in relation to the policy issues arising from the Department's Sentencing Policy Review; offenders who fail to disclose information about victims' remains; and a statutory aggravator model for hate crime offences.'*

9. The Bill is divided into 7 parts as follows:

Part 1 deals with the exercise of the court's discretion when sentencing;

Part 2 concerns suspended sentences;

Part 3 deals with life sentences;

Part 4 deals with unduly lenient sentences;

Part 5 deals with failure to disclose information about a victim's remains;

Part 6 deals with particular persons or groups;

Part 7 deals with road traffic offences.

## SECTION 1: CONVENTION RIGHTS

10. This section sets out the Convention rights<sup>1</sup> which the Legal Services Office considers may be engaged by the Bill. These Convention rights are marked in the table below.

<b>Part I</b>	<b>The Convention Rights and Freedoms</b>	Engaged?
Article 2	Right to life	
Article 3	Prohibition of Torture	
Article 4	Prohibition of slavery and forced labour	
Article 5	Right to liberty and security	x
Article 6	Right to a fair trial	x
Article 7	No punishment without law	x
Article 8	Right to respect for private and family life	x
Article 9	Freedom of thought, conscience and religion	
Article 10	Freedom of expression	x
Article 11	Freedom of assembly and association	
Article 12	Right to marry	
Article 14	Prohibition of discrimination	
<b>Part II</b>	<b>The First Protocol</b>	
Article 1	Protection of Property	x
Article 2	Right to Education	
Article 3	Right to free elections	

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<sup>1</sup> As set out in Section 1(1) and Schedule 1 of the Human Rights Act 1998, see Annex A for further guidance

## CLAUSES FOR FURTHER CONSIDERATION

11. This section of the memorandum only deals with provisions of the Bill which may raise Convention rights issues. The remaining provisions of the Bill are not considered to engage the Convention rights.

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### **Clause 2**

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12. Clause 2 places a duty on a court to following any sentencing guidance which is relevant to a case, unless it is contrary to the interests of justice to do so. This duty is subject to any statutory provision or rule of law that makes particular provision in regard to sentencing (e.g. mandatory minimum sentences for certain offences).
13. Clause 2(3) also places a duty on a court to identify any sentencing guidance which is relevant to the court's decision on the sentence. This must be explained in open court and in general terms, or the court must state why it would be contrary to the interests of justice to follow that guidance. Clause 2(5) specifies that nothing in the clause restricts any power of the court to deal appropriately with an offender suffering from a mental disorder.

### Rights engaged: Article 5; Article 6

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14. Article 5 of the Convention provides that everyone has the right to liberty and security of the person, with limited exceptions.
15. Article 5(1)(a) identifies the lawful detention of a person after conviction by a competent court as a permissible deprivation of liberty. In order to meet the requirement of lawfulness, detention must be '*in accordance with a procedure prescribed by law*'.
16. As clause 2 imposes a duty on courts to follow relevant sentencing guidance unless it would be contrary to the interests of justice, and to give reasons where guidance is departed from, Article 5 is engaged.
17. The Committee may wish to raise with the Department when sentencing guidelines are departed from, how the courts will ensure that detention remains 'in accordance with a procedure prescribed by law'.
18. The Committee will note, under section 6 of the Human Rights Act 1998 ('HRA'), as a public authority, a court must act in a way which is compatible with the Convention. There is no reason to believe that a court would not act in a way that was compliant with Article 5.
19. Article 6 concerns the right to a fair hearing, including the requirement that judicial decisions be reasoned and transparent. The requirement to identify relevant

guidance and to explain how it has been applied or why it has been departed from reinforces procedural fairness and legal certainty.

20. Pursuant to section 6 of the HRA, there is no reason to believe that the procedural safeguards that would be afforded to a person sentenced upon conviction would not meet the requirements of Article 6. The rights engaged by this clause would be taken into account by the court as with any criminal proceedings both of which are core components of Article 6 jurisprudence.

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### Clause 3

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21. Clause 3 makes provision as to when a suspended sentence order ('SSO') may be made. Clause 3(1) provides that the court should be dealing with an offence that would allow for a court to pass a sentence of imprisonment or detention in a young offenders centre. If the offence is not a '*serious offence*' (as defined in clause 3(4), where the sentence is 5 years or more) and the term of the sentence is not more than 2 years, the court may make a SSO. Where the offence is a serious offence the court may make a SSO if the term of the sentence is not more than 7 years.

### Right engaged: Article 5

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22. This clause engages Article 5 of the Convention. Article 5(1)(a) identifies the lawful detention of a person after conviction by a competent court as a permissible deprivation of liberty. In order to meet the requirement of lawfulness, detention must be '*in accordance with a procedure prescribed by law*'.
23. If the court makes a SSO, the offender does not go to prison but usually has to comply with certain requirements in order to stay out of prison. If the offender does not comply with the requirements, or is convicted of another offence committed during the time of their suspended sentence (an 'activation event'), they may have to serve the original custodial term as well as the sentence for the new offence. The Committee may wish to raise with the Department the circumstances under which a court may decline to make a SSO.

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### Clause 4

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24. Clause 4 defines a SSO as a sentence of imprisonment or detention in a young offenders centre that is not to take effect unless an activation event occurs (as defined in clause 4(4)) and a court having power to do so subsequently orders that the sentence is to take effect. Clause 4(2) also provides that a SSO may also specify one or more community requirements with which the offender must comply during the supervision period. The offender must be under the supervision of a responsible officer during the supervision period.

25. Under paragraph 9 to Schedule 2, the starting point when an order for a suspended sentence to take effect is that the original sentence term is unaltered unless the court is of the opinion that it would be unjust in all the circumstances.

### Rights engaged: Article 5; Article 8

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26. This clause engages Article 5 of the Convention. Article 5(1)(a) identifies the lawful detention of a person after conviction by a competent court as a permissible deprivation of liberty. In order to meet the requirement of lawfulness, detention must be *'in accordance with a procedure prescribed by law'*.
27. The Committee may wish to raise with the Department that any activation event will be in accordance with a procedure prescribed by law, particularly where the SSO has specified a community requirement.
28. However, as the court must act in a way which is compatible with the Convention under section 6 of the HRA, there is no reason to believe that any finding of an activation event would not be compliant with Article 5.
29. Where the offender is under the supervision of a responsible officer due to being subject to a community requirement, this may engage the Article 8 to right to private and family life. The Committee will wish to be satisfied that any such interference is a proportionate means of achieving any legitimate aim such as protection of other individuals and that any interference can be justified. However, the Committee will note that the bodies on which the duty is placed under this clause are themselves public bodies with a discrete obligation to carry out their functions in a manner compatible with the Convention rights. Under clause 11, the responsible officer is under the authority of the Probation Board for Northern Ireland.

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### Clause 6

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30. Clause 6(2) places a duty on the court to explain to the offender in ordinary language the consequences if an activation event occurs where a court has made a suspended sentence. Clause 6(4)) also places a duty on the court to explain details of any community requirements imposed.

### Right engaged: Article 6

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31. Clause 6 may engage the procedural aspects of Article 6, the right to a fair trial, as it requires the court to explain to the offender their liability when an activation event occurs. Further, the court must explain why they are imposing any community requirements and the effect.
32. The Committee may wish to raise with the Department whether it is proposed to provide any guidance to the court for the purposes of this clause. I note Article 6(3)(c) which requires that the offender be informed promptly, in a language which

he understands and in detail, of the nature and cause of the accusation against him. Though under section 6 of the Human Rights Act 1998, as a public authority, a court must act in a way which is compatible with the Convention. There is no reason to believe that the procedural safeguards that would be afforded to a person sentenced upon conviction would not meet the requirements of Article 6.

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### **Clause 8**

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33. Clause 8 provides for community requirements which are authorised by certain statutory provisions. It introduces in Schedule 1 of the Bill, a requirement for an offender to perform unpaid work.

#### **Rights engaged: Article 8**

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34. This requirement to perform unpaid work could interfere with an offender's right to private and family life. The Committee may wish to raise with the Department that this interference is a proportionate means of achieving any legitimate aim and that any interference can be justified.

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### **Clause 9**

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35. Clause 9 relates to the exercise of power to impose community requirements pursuant to a suspended sentence. If a SSO imposes two or more different community requirements, the court must consider whether the requirements are compatible with each other. Clause 9(4) also obliges the court to ensure an imposed community requirement does not conflict with the offender's religious beliefs, or any other court order to which the offender may be subject, or interfere with work or educational obligations.

#### **Right engaged: Article 8**

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36. As a community requirement has to take into account the offender's religious beliefs, other court orders and work or educational obligations, the Committee may wish to consider the Department's assessment of proportionality and balancing of rights related to work, education and religious observance as matters to be taken account of by a court in passing sentence.

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### **Clause 10**

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37. Clause 10 requires the court to obtain and consider a pre-sentence report ('PSR') before deciding to make a SSO which imposes community requirements. Under clause 10(2) and (3) the court does not have to obtain a PSR if it is of the opinion that it is unnecessary to do so, and this is stated in open court along with the circumstances which have led the court to form that opinion. A decision to not

obtain a PSR will not be invalidated by the fact that the court did not do explain its actions. Where an appeal is made against a SSO, the appellate court should obtain a PSR report if none was obtained by the court below. This requirement does not apply if the appellate court is of the opinion that the court below was justified in not doing so or was unnecessary to do so. Clause 10(7) contains a regulation-making power for the Department in regard to the content of PSRs.

### Right engaged: Article 6

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38. As clause 10 requires consideration of a PSR before imposing community requirements it engages the procedural requirements of Article 6 and supports informed, fair sentencing procedures. The Committee may wish to raise with the Department, the circumstances in which a court may decline to obtain a PSR.

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### Clause 12

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39. Clause 12 requires a responsible officer to make any arrangements that are necessary in connection with any community requirement imposed and promote the offender's compliance. Clause 12(4) provides that any instruction or requirement must not conflict with the offender's religious beliefs, any other court order to which the offender may be subject, or interfere with work or educational obligations.

### Right engaged: Article 8

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40. As the obligations of the responsible officer may engage the offender's right to private and family life, the Committee may wish to consider the Department's assessment of proportionality and balancing of rights of the offender related to work, education and religious observance in order for the responsible officer to carry out their duties.

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### Clause 15

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41. Clause 15 is a regulation making power for the Department to make further provision with regard to supervision of offenders, performance of work and functions of responsible officers.

### Right engaged: Article 8

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42. As the Department may make further regulations concerning aspects of the offender's right to work, these will likely engage the right to private and family life under Article 8. The Committee may wish to raise how the Department sees the content of regulations and that any interference to the offender's right to private and family life from further regulations is a proportionate means of achieving any

legitimate aim such as protection of other individuals and that any interference can be justified.

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### **Clause 18**

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43. Clause 18 inserts a new paragraph (3A) into Article 5 of the Life Sentences (Northern Ireland) Order 2001 ('the 2001 Order') which places a duty on the court to give reasons when determining a tariff. Where the court makes an order as to release provisions for a life sentence under paragraph (1) or declines to make an order as to release due to the seriousness of the offence(s) under paragraph (3), it must state its reasons openly and in ordinary language, and to explain to the offender, also in ordinary language, the effect of the order.

### **Rights engaged: Article 5; Article 6**

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44. Article 5 provides that any deprivation of liberty must be in accordance with a procedure prescribed by law. Article 6 requires that a court should adequately state reasons for judgments, and the Committee may wish to raise with the Department that this clause sufficiently addresses these points.

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### **Clause 19**

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45. Clause 19 inserts a new Article 5B into the 2001 Order which makes further provision for mandatory life sentences for adult offenders. Where an offender was over 18 when the offence was committed and has received a life sentence fixed by law, the court is to have regard to the general principles set out in a new Schedule A1 when considering the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
46. New Article 5B(3) of the 2001 Order also provides that where a court is setting out its reasons under new Article 5(3A)(a), it must in particular state which of the starting points in Schedule A1 it has chosen, the reasons and any reasons for where there has been a departure from the starting point.
47. Under new Schedule A1, paragraph 1(1), the starting point is 20 years where the seriousness of the offence is exceptionally high. Sub-paragraph 2 provides examples of cases that would normally fall within this category including murder for financial gain, murder intended to obstruct justice or where the victim is police officer, a prison officer or a fire and rescue officer. If the case does not fall within paragraph 1(1), the starting point is 15 years.
48. Once a starting point has been determined, the court should then take into account aggravating and mitigating factors under paragraph 3 of new Schedule A1. These can lead to a term of any length being specified under Article 5 of the 2001 Order. Aggravating factors under paragraph 5(1) of new Schedule A1 include the use of a

weapon, abuse of position of trust and concealment, destruction and dismemberment of the body. Mitigating factors under paragraph 6(1) of new Schedule A1 include an intention to cause grievous bodily harm rather than an intent to kill, lack of pre-mediation, belief of self-defence and evidence of remorse.

49. Paragraph 8 of new Schedule A1 allows the Department to make changes to the starting points or add new categories of serious offences under paragraph 1(2).

### Rights engaged: Article 5; Article 6; Article 7

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50. Article 5 provides that any deprivation of liberty must be in accordance with a procedure prescribed by law.
51. Article 6 requires that a court should adequately state reasons for judgments and the Committee may wish to raise with the Department that the mitigating and aggravating factors sufficiently address this point.
52. Article 7, the right to no punishment without law, requires that offences and penalties be clearly prescribed by law, accessible and foreseeable in their application, prohibiting retrospective imposition of a heavier penalty. As these changes are to apply to persons who may have committed offences but had not been charged, convicted or sentenced before this clause comes into effect, the Committee may wish to raise with the Department the circumstances in which the matters set out at Schedule A1 may may lead to a heavier penalty.

### **Clause 24**

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53. Clause 24 deals with determination of the custodial period in cases of murder or manslaughter where the person convicted of the offence fails to disclose information about the victim's remains. In these cases, the court must give an additional custodial period as appropriate to take account of the effect of the non-disclosure unless it is contrary to the interests of justice.

### Rights engaged: Article 5; Article 7

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54. An additional period of custody will engage Article 5 and the Committee may wish to raise with the Department that the method of calculating the additional period as set out in the steps at clause 24(3) safeguard against arbitrary detention.
55. Article 7 requires that offences and penalties be clearly prescribed by law, accessible and foreseeable in their application, prohibiting retrospective imposition of a heavier penalty.
56. As these changes are to apply to persons who may have committed offences but not charged, convicted or sentenced before this clause comes into effect, the

Committee may wish to raise with the Department whether the additional custodial periods amount to a retrospective heavier penalty.

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### Clause 29

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57. Clause 29 provides for reductions in sentence where an offender makes a relevant disclosure (information as to where or how a victim's remains were disposed of) and the Department accepts the disclosure. The relevant custodial period is reduced by a period calculated under sub-clause (5) which may be up to 50% of the additional custodial period). In the case of a sentence other than a life sentence or an indeterminate custodial sentence, the term of the sentence is to be treated as reduced by the same period.

### Right engaged: Article 8

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58. As an accepted relevant disclosure (as long as it is not made within the 1 month period before the end of the relevant custodial period), will result in a reduction to the additional custodial period, it may engage the Article 8 rights of the victim's family members. Article 8 imposes on States a positive obligation to protect the right to effective respect for the physical and psychological integrity of persons.
59. Reductions in custodial periods of offenders may affect the psychological integrity of the victim's family members. The Committee may wish to raise with the Department how their rights have been balanced against the rights of the offender to ensure that if the Article 8 rights of family members have been interfered with, it is a proportionate means of achieving any legitimate aim and that any interference can be justified. This should take into account that any relevant disclosure can be made up to 1 month before the expiry of the relevant custodial period.

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### Clause 31

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60. Clause 31 deals with '*public protection decisions*' made by the Parole Commissioners in circumstances where a prisoner ('P') is thought to have information about where, or how, a victim's remains were disposed of, which P has not disclosed. A public protection decision is a decision as to whether the Parole Commissioners are satisfied that it is no longer necessary for the protection of the public to confine P. The clause provides that before making the public protection decision, the Commissioners must obtain and consider information about P's non-disclosure, and must take into account P's non-disclosure, and the reasons for that non-disclosure. Sub-clause (4) provides that subsection (3) does not limit the matters which the Commissioners must, or may, take into account when making a public protection decision.

## Rights engaged: Article 5; Article 8

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61. Article 5 may be engaged as the Parole Commissioners determine whether continued detention remains justified. Clause 31 requires the Parole Commissioners to take account of non-disclosure of information on victim's remains as part of the overall public protection assessment alongside the reasons for that non-disclosure and all other relevant factors.
62. The Committee may wish to raise with the Department that any refusal of parole is still based on individual risk.

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### Clause 33

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63. Clause 33(1) provides that it may be specified alongside a criminal charge that the offence is aggravated by a particular form of hostility. Paragraphs (a)-(d) set out the categories of hostility as racial, religious, sexual orientation or disability. Sub-clause (2) sets out when an offence can be treated as aggravated by hostility. Paragraph (a) provides that hostility can aggravate an offence when the offender shows hostility towards the victim because they are a member (or presumed member) of a racial, religious, sexual orientation or disability group. Paragraph (b) provides that hostility can aggravate where an offender is motivated by hostility towards people who are part of that group in general. Sub-clause (3) provides that for the purposes of sub-clause 2(a) or (b) it is irrelevant if the offender's hostility is also based on any other factor not listed in sub-clause 2(a) or (b).

## Right engaged: Article 10

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64. Article 10 concerns freedom of expression and as clause 33 allows acts of hostility at or around the time of the offence to be used as evidence of aggravation, the right to freedom of expression by the offender may be engaged. This clause does not criminalise expression as such, but it permits expression to be relied upon evidentially to increase sentencing seriousness.
65. The Committee may wish to raise with the Department that any interference to an offender's freedom of expression is in accordance with the law and necessary in a democratic society. The restriction must also achieve a legitimate aim and be proportionate. For example, the Committee may consider whether this clause strikes a fair balance between the rights of the offender and the wider community.

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### Clause 41

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66. Clause 41 amends the Road Traffic Offenders (Northern Ireland) Order 1996 ('the 1996 Order') to increase the maximum term of imprisonment for the offences of causing death or grievous bodily injury by dangerous driving, and causing death or grievous bodily injury by careless driving when under the influence of drink or drugs

from 14 years to 20 years. The clause does not create new offences, but alters the sentencing framework applicable following conviction.

### Rights engaged: Article 5; Article 8

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67. The Committee may wish to raise that any increase in sentence is not arbitrary in accordance with Article 5.
68. The right to private and family life of a convicted offender may be engaged by this clause as sentences can be increased. The Committee may wish to rise with the Department that the increased sentences are proportionate means of achieving any legitimate aim and that any interference can be justified.

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### Clause 42

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69. Clause 42 makes provision for a substantially increased maximum sentence for certain repeat road traffic offences causing death or grievous bodily injury. Where a person has previously been convicted of causing death or grievous bodily injury by dangerous driving, or by careless driving while under the influence of drink or drugs, and is subsequently convicted of a further such offence within the defined relevant period, the clause permits the court to impose a maximum sentence of imprisonment for life in respect of the later offence.

### Rights engaged: Article 5; Article 8

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70. The Committee may wish to raise that any increase in sentence is not arbitrary in accordance with Article 5. The right to private and family life of a convicted offender under this clause may be engaged by this clause as sentences are increased. The Committee may wish to rise with the Department that the increased sentences are proportionate means of achieving any legitimate aim and that any interference can be justified.

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### Clause 43

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71. Clause 43 amends the 1996 Order to increase the minimum period of obligatory disqualification from driving following conviction for certain serious road traffic offences to 4 years. In particular, it extends the minimum disqualification period for offences of causing death or grievous bodily injury by dangerous driving, and by careless driving when under the influence of drink or drugs.

### Right engaged: Article 8; Article 1 Protocol 1

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72. Article 8 may be engaged as disqualification from driving may have a significant impact on an individual's ability to work, maintain family life, and participate in everyday activities, particularly where the minimum period of disqualification is

extended. The Committee may wish to raise if any Article 8 rights have been interfered with, and whether the disqualification is a proportionate means of achieving any legitimate aim and that any interference can be justified.

73. Article 1 of Protocol No. 1 ('A1P1') which concerns the protection of property may also be engaged. While a driving licence is not itself a possession in the strict sense, disqualification can affect the use of property, including vehicles and, in some cases, livelihood.
74. However, like Article 8, A1P1 is a qualified right, with States able to enforce laws that can deprive an individual of his possessions or control the use of property in accordance with the general interest. Controls on the use of property must be proportionate and strike a fair balance between the general interest of the community and the private interests of the property owner.

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### **Clause 44**

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75. Clause 44 amends Article 35 of the 1996 Order to increase the minimum period of obligatory disqualification from driving for certain repeat road traffic offences. It applies where a person has a previous conviction for specified serious driving offences and is convicted of a further such offence within the defined relevant period. The clause differentiates between categories of repeat offending and prescribes longer minimum disqualification periods accordingly.

### **Rights engaged: Article 8, Article 1 Protocol 1**

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76. Article 8 may be engaged as disqualification from driving may have a significant impact on an individual's ability to work, maintain family life, and participate in everyday activities, particularly where the minimum period of disqualification is extended. The Committee may wish to raise if any Article 8 rights have been interfered with, and whether the disqualification is a proportionate means of achieving any legitimate aim and that any interference can be justified.
77. A1P1 may also be engaged. While a driving licence is not itself a possession in the strict sense, disqualification can affect the use of property, including vehicles and, in some cases, livelihood.
78. However, A1P1 is a qualified right, with states able to enforce laws that can deprive an individual of his possessions or control the use of property in accordance with the general interest. Controls on the use of property must be proportionate and strike a fair balance between the general interest of the community and the private interests of the property owner.

## SECTION 2: ARTICLE 2(1) OF THE WINDSOR FRAMEWORK

79. It is not considered that any clause in the Bill falls within the scope of Article 2(1) of the Windsor Framework.

## SECTION 3: SUMMARY

- Clauses or provisions of Schedules to the Bill which call for particular scrutiny by the Committee have been set out in Section 1.
- Minor elucidation might be sought from the Department on how several provisions will operate in practice, but none raise particular concerns as regards compatibility with the Convention.
- Article 2(1) is not engaged by the Bill.

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Legal Services Office

May 2026

## ANNEX A: THE CONVENTION RIGHTS AND FREEDOMS

### **Article 2: Right to life**

- (1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- (2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

### **Article 3: Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Article 4: Prohibition of slavery and forced labour**

- (1) No one shall be held in slavery or servitude.
- (2) No one shall be required to perform forced or compulsory labour.
- (3) For the purpose of this Article the term "forced or compulsory labour" shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - (d) any work or service which forms part of normal civic obligations.

### **Article 5: Right to liberty and security**

- (1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;

- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- (2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- (3) Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- (4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- (5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

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### **Article 6: Right to a fair trial**

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- (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- (2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

- (3) Everyone charged with a criminal offence has the following minimum rights:
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

### **Article 7: No punishment without law**

- (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- (2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

### **Article 8: Right to respect for private and family life**

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### **Article 9: Freedom of thought, conscience and religion**

- (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in

the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

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### **Article 10: Freedom of expression**

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- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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### **Article 11: Freedom of assembly and association**

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- (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

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### **Article 12: Right to marry**

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Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

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### **Article 14: Prohibition of discrimination**

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The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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### **Article 16: Restrictions on political activity of aliens**

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Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

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### **Article 17: Prohibition of abuse of rights**

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Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

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### **Article 18: Limitation on use of restrictions on rights**

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The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

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### **Article 1 of the First Protocol: Protection of property**

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- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- (2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

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### **Article 2 of the First Protocol: Right to education**

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No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

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### **Article 3 of the First Protocol: Right to free elections**

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The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

## ANNEX B: ARTICLE 2 OF THE WINDSOR FRAMEWORK

### **Article 2: Rights of individuals**

- (1) The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.
- (2) The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

### **Annex 1: provisions of Union law referred to in Article 2(1)**

- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services<sup>1</sup>
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation<sup>2</sup>
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>3</sup>
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>4</sup>
- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC<sup>5</sup>
- Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security<sup>6</sup>

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<sup>1</sup>OJ L 373, 21.12.2004, p. 37.

<sup>2</sup>OJ L 204, 26.7.2006, p. 23.

<sup>3</sup>OJ L 180, 19.7.2000, p. 22.

<sup>4</sup>OJ L 303, 2.12.2000, p. 16.

<sup>5</sup>OJ L 180, 15.7.2010, p. 1.

<sup>6</sup>OJ L 6, 10.1.1979, p. 24.

