INTRODUCTION

1. These Explanatory Notes relate to the Offender Rehabilitation Bill [HL] as brought from the House of Lords on 9 July 2013. They have been prepared by the Ministry of Justice in order to assist the reader in their understanding of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. On 9 January 2013, the Ministry of Justice published a consultation paper entitled “Transforming Rehabilitation: A revolution in the way we manage offenders”. The document set out the Government’s plans to reduce the rate of re-offending by:

- Extending rehabilitation to offenders released from short custodial sentences.
- Competing delivery of rehabilitation services for the majority of offenders.
- Paying providers of these services according to their results in reducing re-offending.
- Putting in place a public sector probation service which is focussed on protecting the public and managing offenders who pose the highest risk of serious harm.
- Ensuring the new system is responsive to local needs and integrates effectively with the other local partnerships and structures relevant to offenders.
4. The consultation paper proposed a number of reforms to the existing legislation regarding the sentencing and release of offenders, including the introduction of supervision on release for offenders serving custodial sentences of less than 12 months and changes to the requirements available to the court as part of community orders and suspended sentence orders. The consultation concluded on 22 February 2013. The Ministry of Justice published its response to the consultation on 9 May 2013.

5. This Bill implements the sentencing and release reforms set out in the Government’s response.

6. Clause 1 was inserted as a non-Government amendment at Report stage in the Lords.

SUMMARY

7. A summary of the Bill is set out below.

8. The current adult sentencing framework is broadly governed by the Criminal Justice Act 2003 (the 2003 Act). The Bill makes a number of changes to the release arrangements set out in the 2003 Act for offenders serving custodial sentences of less than 12 months and those serving sentences of between 12 months and 2 years. The Bill is designed to ensure that all adult offenders serving custodial sentences can be supervised on release for a period of at least 12 months.

9. In particular the Bill:
   
   • Requires that alteration to the structure of the probation service can only be made with the approval of both Houses of Parliament.
   • Applies arrangements for release under licence to offenders serving fixed-term custodial sentences of more than 1 day but less than 12 months.
   • Introduces new supervision arrangements for offenders released from fixed-term custodial sentences of less than 2 years so that all offenders are supervised in the community for at least 12 months.
   • Creates a new court process and sanctions for breach of supervision requirements for offenders serving fixed-term custodial sentences of less than 2 years.
   • Introduces a requirement that offenders sentenced to an extended determinate sentence must have an extension period of supervision of at least 1 year.
   • Introduces for offenders released from custody a new drug appointments condition for the licence or supervision period, and expands the existing drug testing requirement for licences to include Class B drugs and makes it available during the supervision period.
   • Introduces a requirement that any juvenile who reaches his or her 18th
These notes refer to the Offender Rehabilitation Bill [HL] as brought from the House of Lords on 9 July 2013 [Bill 88]

birthday before being released from the custodial element of a Detention and Training Order (DTO) should spend at least 12 months under supervision in the community.

- Introduces a requirement that contracts or other arrangements made under the Offender Management Act 2007 for the supervision or rehabilitation of offenders must state what provision, if any, is intended to meet the particular needs of female offenders.

10. The Bill also makes some changes to the arrangements for community orders and suspended sentence orders. In particular it:

- Creates a new “rehabilitation activity requirement” for community orders and suspended sentence orders and in doing so abolishes the “supervision” and “activity” requirements.
- Introduces new arrangements for the designation of “responsible officers” in relation to the supervision of offenders and makes clear that the responsibility for bringing breach action lies with the public sector.
- Introduces new arrangements for offenders serving community orders or suspended sentence orders to obtain permission from the responsible officer or the court before changing their place of residence.

TERRITORIAL EXTENT AND APPLICATION

11. Most of the provisions of the Bill consist of textual amendments of other Acts. Clause 23(1) provides that a provision that amends or repeals another Act has the same extent as the amended or repealed provision. Clause 23(2) provides that the other provisions of the Bill extend to the whole of the United Kingdom. Clause 23(3), (4) and (6) makes further provision about extent in relation to amendments of the Armed Forces Act 2006 and of provisions applied by that Act.

12. The Bill does not contain any provisions which trigger the need for a legislative consent motion. If there are amendments which trigger the need for a legislative consent motion, the consent of the relevant devolved Parliament or Assembly will be sought for them.

Probation

Clause 1: Probation service reform Parliamentary Approval

13. Clause 1 requires that no alteration or reform of the structure of the probation service can be made unless the proposals have been laid before, and approved by resolutions of both Houses of Parliament.
14. Clause 1 was inserted as a non-Government amendment at Report stage in the Lords.

**Release and supervision of offenders sentenced to less than 2 years**

**Clause 2: Reduction of cases in which prisoners released unconditionally**

15. Clause 2 amends section 243A of the 2003 Act, which relates to the duty to release offenders serving a fixed-term sentence of less than 12 months unconditionally at the halfway point in their sentence.

16. The amendments made by clause 2 to section 243A mean that only offenders sentenced to a custodial sentence of 1 day, or offenders serving a fixed-term sentence of more than 1 day but less than 12 months when the offender is aged under 18 at the halfway point in their sentence or where that sentence was imposed for an offence committed before the Bill provision comes into force, will be released unconditionally at the halfway point in their sentence. Other offenders serving sentences of more than 1 day and less than 12 months will now be subject to release on licence when they reach the halfway point in their sentence. That means, for example, that an offender sentenced to a custodial sentence of 6 months will be released at three months and spend three months on licence in the community.

**Clause 3: Supervision after end of sentence**

17. Clause 3 amends Chapter 6 of Part 12 of the Criminal Justice Act 2003. It inserts a new section 256AA into the 2003 Act. The new section 256AA creates a new period of supervision for offenders serving custodial sentences of more than 1 day but less than 2 years. This period of supervision will apply to a sentence imposed in respect of an offence committed on or after the provisions of this Bill come into force.

18. The supervision period begins at the end of the sentence and ends on the expiry of 12 months from the date of release. This means that an offender serves half of their custodial sentence in custody, the second half under licence in the community, with the supervision period then applying until the offender has spent 12 months in the community since the date of their release from the custodial part of their sentence.

19. The following are illustrative examples of how these provisions will apply for different sentence lengths, compared with sentences under the law before amendment.
These notes refer to the Offender Rehabilitation Bill [HL] as brought from the House of Lords on 9 July 2013 [Bill 88]

<table>
<thead>
<tr>
<th>Sentence imposed by court</th>
<th>Current custodial period</th>
<th>Custodial period once the provisions of the Bill are in force</th>
<th>Current arrangements on release</th>
<th>Arrangements on release once the provisions of the Bill are in force</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 month sentence</td>
<td>3 months</td>
<td>3 months</td>
<td>3 months in community, but with no licence conditions or supervision</td>
<td>3 months’ licence</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>9 months’ supervision</td>
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<td></td>
<td>Total supervision 12 months</td>
</tr>
<tr>
<td>10 month sentence</td>
<td>5 months</td>
<td>5 months</td>
<td>5 months in community, but with no licence conditions or supervision</td>
<td>5 months’ licence</td>
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<td></td>
<td>7 months’ supervision</td>
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<td></td>
<td>Total supervision 12 months</td>
</tr>
<tr>
<td>18 month sentence</td>
<td>9 months</td>
<td>9 months</td>
<td>9 months’ licence</td>
<td>9 months’ licence</td>
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<td></td>
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<td>3 months’ supervision</td>
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<td></td>
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<td>Total supervision 12 months</td>
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</tbody>
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20. Subsection (2) of new section 256AA requires offenders to comply with requirements during the supervision period. Subsection (4) defines the supervision period as beginning at the expiry of the sentence and ending 12 months after the halfway point of the sentence (the automatic release date). The requirements are to be specified in a notice given to the offender by the Secretary of State (subsection (3)). Subsection (5) makes clear that the purpose of the supervision period is the rehabilitation of the offender and subsection (6) requires the Secretary of State to have regard to that purpose when setting the requirements. Subsection (7) requires the supervisor of the offender to have regard to that purpose when carrying out functions in relation to the requirements. Subsection (8) defines “supervisor” for the purposes of this section to be an officer of a provider of probation services, which may be a public or private sector provider.
21. Clause 3(4) introduces Schedule 1 to the Bill. Schedule 1 is in two parts. The first part deals with the requirements which may be specified in the new supervision period. The second part sets out further provision relating to drug testing and drug appointments requirements during the supervision period.

22. Part 1 of Schedule 1 amends the 2003 Act to insert a new section 256AB after new section 256AA. This section sets out ten requirements of the offender that may be specified by the Secretary of State during the supervision period. They are:

- Subsection (1)(a): to be of good behaviour and not behave in a way that undermines the rehabilitative purpose of the supervision period.
- Subsection (1)(b): not to commit any offences.
- Subsection (1)(c): to keep in touch with the supervisor.
- Subsection (1)(d): to receive visits from the supervisor.
- Subsection (1)(e): to reside permanently at an address approved by the supervisor and to obtain prior permission for any stay of one or more nights at another address.
- Subsection (1)(f): not to undertake work, or a particular type of work, unless it is approved by the supervisor and to notify the supervisor of any proposal to undertake work.
- Subsection (1)(g): not to travel outside the British Islands except with prior permission of the supervisor or to comply with a legal obligation (for example, deportation or extradition).
- Subsection (1)(h): to participate in activities in accordance with instructions given by the supervisor.
- Subsection (1)(i): a drug testing requirement (see paragraph 25 below).
- Subsection (1)(j): a drug appointment requirement (see paragraphs 26 to 30 below).

23. Subsection (2) of new section 256AB provides that where an offender is subject to a requirement to participate in activities under subsection (1)(h) then provisions under new section 200A(5) to (8) apply. New section 200A creates a new rehabilitation activity requirement for community orders and suspended sentence orders and is inserted by clause 15 of the Bill and described at paragraphs 99 to 104 below.

24. Subsection (4) of new section 256AB provides the Secretary of State with a power, by order, to add to, remove or amend the requirements for the supervision period and to make provision for instructions regarding these requirements.

25. Part 2 of Schedule 1 relates to drug testing and drug appointment requirements. It inserts a new section 256D into the 2003 Act. Section 256D provides that an offender subject to a drug testing requirement during the supervision period must provide a sample to ascertain whether the
offender has a specified Class A or Class B drug in his or her body. Subsection (2) provides that a drug testing requirement can only be imposed when the offender’s sentence was for a trigger offence (as defined in subsection (5)) and the testing requirement is imposed for the purpose of checking whether the offender is complying with any other supervision requirement. Subsection (3) requires instructions for drug testing to be in accordance with any guidance given by the Secretary of State and subsection (4) confers a power on the Secretary of State to make rules in relation to the provision of drug testing samples.

26. Part 2 of Schedule 1 also inserts new section 256E into the 2003 Act. New section 256E enables an offender to be made subject to a drug appointment requirement as part of their supervision. This requires an offender, in accordance with instructions, to attend appointments designed to address the offender’s dependency on, or propensity to misuse, a controlled drug.

27. Subsection (2) provides that the requirement can only be imposed where it has been recommended by the supervisor and where the Secretary of State is satisfied of a number of matters connected with the offender’s dependency on or propensity to misuse drugs. Subsection (3) sets out those matters. It provides that the offender’s misuse of controlled drugs must have either contributed to an offence for which the offender has been convicted or is likely to cause or contribute to further offending. It goes on to require that the Secretary of State is satisfied that the offender’s dependency or propensity to misuse drugs is susceptible to treatment and that arrangements have or can be made for the offender to be treated.

28. Subsection (4) provides that the supervision requirement must set out where and with whom the offender is required to meet.

29. Subsection (5) provides that the person with whom the offender is required to meet to address his or her drug problems must have the necessary qualifications or experience. Subsection (6) makes clear that the only instructions that may be given by the supervisor are the duration of each appointment and when each appointment takes place.

30. Subsection (7) makes clear that the offender is not required to submit to medical treatment at the appointment. The offender will only be treated as breaching his supervision condition if he fails to attend or remain at the appointment for the duration instructed by his supervisor.

**Clause 4: Breach of supervision requirements**

31. Clause 4 amends Chapter 6 of Part 12 of the 2003 Act by inserting a new section 256AC. The new section 256AC deals with breach of supervision
requirements imposed under new section 256AA.

32. Subsection (1) of new section 256AC provides that where it appears to the court that an offender has failed to comply with a supervision requirement, the court may issue a summons for the offender to appear or a warrant for the offender’s arrest.

33. Subsection (2) makes clear that where a summons or warrant is issued it must direct the offender to appear at a magistrates’ court in the local justice area in which the offender resides or, if unknown, where the summons or warrant was issued. Subsection (3) provides that where a summons is issued, but the offender does not appear, the court may issue a warrant for the offender’s arrest.

34. Subsection (4) of new section 256AC sets out the sanctions available to the court where it is proved to the satisfaction of the court that the offender has without reasonable excuse failed to comply with a requirement during the supervision period. The sanctions available to the court are:

- Committal to prison for a period not exceeding 14 days.
- A fine not exceeding level 3 on the standard scale.
- A “supervision default order” imposing either an unpaid work requirement or a curfew requirement.

35. Subsection (5) of new section 256AC provides that where a court imposes a curfew as part of a supervision default order, it is obliged also to impose electronic monitoring, unless it is unable to because suitable arrangements for monitoring cannot be made or it considers it inappropriate to do so (see section 177(3) of the 2003 Act).

36. Subsection (6) of new section 256AC means that where a court deals with a breach of supervision requirement by either committing an offender to prison, imposing a fine or imposing a supervision default order, it must revoke any existing supervision default order.

37. Subsection (7) relates to offenders under the age of 21 where an order is made under subsection (4)(a) – that is, committal to prison. The person must be committed to a young offender institution, but subsection (7)(b) makes clear that the Secretary of State can direct that such a person can be detained in a prison or remand centre instead. Subsection (8) makes clear that a person committed to custody in a young offender institution is to be regarded as being in legal custody.

38. Subsection (9) provides that a fine imposed under subsection (4)(b) is to be treated as being a sum adjudged to be paid by a conviction, meaning that the normal enforcement procedures will apply. Subsection (11) provides that a person may appeal to the Crown Court against an order under subsection (4),
that is, against the imposition of a sanction for an unreasonable failure to comply with a supervision requirement.


40. The new Schedule 19A relates to supervision default orders: that is, where an offender has failed without reasonable excuse to comply with their supervision requirements and the court has imposed either unpaid work or a curfew for that breach. Schedule 19A applies the provisions of the 2003 Act that relate to unpaid work and curfews when imposed as part of a community order or suspended sentence order to those requirements when imposed as part of a supervision default order. Schedule 19A also makes a number of modifications to the provisions to reflect the different nature of community order requirements and supervision default order requirements.

41. Paragraph 3 of Schedule 19A sets out the modifications. These include limits on the imposition of unpaid work so that the minimum period is no less than 20 hours and the maximum no more than 60 hours. Paragraph 3(3) also makes clear that the work must be performed by the end of the supervision period.

42. Paragraph 3(4) also provides that, for a supervision default order, a curfew should be no less than 2 hours per day but no more than 16 hours per day. The curfew period must be at least 20 days in duration but cannot fall outside the supervision period.

43. Sections 217(1) and (2) of the 2003 Act, which require a court to avoid setting requirements which would conflict with an offender’s religious beliefs or with times when offenders would normally be in work or education, apply in relation to setting supervision default orders as they do to community orders. Paragraph 4 of Schedule 19A makes clear that the order making power in section 217(3), which allows the Secretary of State to impose further restrictions by order, applies in relation to supervision default orders. Paragraph 5 extends the Secretary of State’s powers to make rules for regulating the supervision of offenders subject to community orders to supervision default orders. Paragraph 6 provides that the Secretary of State may by order amend the number of hours or days specified in relation to unpaid work and curfews imposed as part of a supervision default order.

44. Part 2 of Schedule 19A deals with the breach, revocation and amendment of supervision default orders. Paragraphs 7 and 8 provide that where an offender’s supervisor is satisfied that the offender has failed, without reasonable excuse, to comply with requirements of their supervision default
order and that the failure should be dealt with by the court, then the offender’s supervisor must refer the matter to an enforcement officer. The enforcement officer must then consider the case and if appropriate cause an information to be laid before a justice of the peace. Paragraph 7(4) makes clear that an enforcement officer is a public sector provider of probation services.

45. Paragraph 8 provides that if the court is satisfied that an offender has failed to comply with a supervision default order, it may issue a summons requiring the person to appear or issue a warrant for the person’s arrest.

46. Paragraph 9 of Schedule 19A sets out the powers of magistrates to deal with a breach of the supervision default order. If the court is satisfied that an offender has, without reasonable excuse, failed to comply with the supervision default order, the court may revoke the supervision default order and deal with the failure in the same way it could deal with the original breach of the supervision requirements (that is, by committal to prison, imposing a fine or a by a new supervision default order). Paragraph 9(3) makes clear that the court must take account of the extent to which the offender complied with the supervision default order and paragraph 9(4) provides for an appeal to the Crown Court against the order made by the court.

47. Paragraph 10 of Schedule 19A provides that an officer of a provider of probation services or the offender may make an application to the court to revoke or amend a supervision default order or to revoke it and deal with the offender in any way he could have been dealt with had the order never been made (i.e. by committing him to prison, imposing a fine or imposing a new supervision default order). Paragraph 10(2) provides that when it is amending an order under this power the court may not increase the number of days or hours specified in the order, but it may reduce them provided that it does not reduce them below the minimum of 20 hours for unpaid work and 2 hours per day for at least 20 days for curfew. Paragraph 10 also provides that the court in exercising its powers must take into account the extent to which the offender has complied with the supervision default order. Paragraph 10(4) provides for a right of appeal to the Crown Court. Paragraphs 10(5) and (6) provide that where a court proposes to exercise its powers on an application by an officer of a provider of probation services, unless it proposes only to reduce the number of days or hours specified in the order, it must summon the offender to appear before the court, and if he does not appear the court may issue a warrant for his arrest. Paragraph 10(7) provides that where the application to amend or revoke is made by the offender, the court may only hear the application if it is satisfied that adequate notice has been given to relevant officers of a provider of probation services. Paragraph 10(8) provides that an application to amend or revoke may not be made while an appeal against a supervision default order is pending.

48. Paragraph 11 provides powers to the court to amend the supervision default
order to specify a new local justice area, where it is satisfied that the offender proposes to change or has changed his address from the local justice area specified in the order.

49. Paragraph 12 requires a court to revoke a supervision default order if the person who is subject to the order is convicted of an offence and the court dealing with that new offence imposes a sentence of imprisonment or detention (other than a suspended sentence order). If the court imposes a community order or a suspended sentence order it may revoke the supervision default order and deal with the person under section 256AC(4) in any way it could have dealt with him had the supervision default order not been made (that is, by committing him to prison, imposing a fine or imposing a new supervision default order). Paragraph 13 provides that where a court orders that a suspended sentence is to take effect in respect of someone who is subject to a supervision default order, the court must revoke the supervision default order.

Clause 5: Supervision of certain young offenders after release from detention

50. Clause 5 makes provision in relation to (a) offenders serving sentences of less than 12 months detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (which for these purposes includes a term of detention under section 209 of the Armed Forces Act 2006) who are under 18 when released, (b) offenders serving section 91 sentences of less than 12 months imposed for pre-commencement offences, and (c) offenders serving sentences under section 96 of that Act (detention in a young offender institution) imposed for pre-commencement offences. A sentence under section 91 may be imposed on offenders under the age of 18 in respect of certain serious offences. A sentence under section 96 may be imposed on offenders aged at least 18 but under 21.

51. Clause 5 amends section 256B of the 2003 Act, which relates to supervision of young offenders after release from a section 91 or a section 96 sentence. Section 256B in its current form provides for a 3 month period of supervision to be applied to an offender who is released from a sentence under section 91 or section 96 of less than 12 months. The amendments made by clause 5 have the effect that section 256B now relates only to offenders serving sentences described in paragraph 50 above. In other words, those offenders serving section 91 or section 96 sentences in relation to post-commencement offences, who are 18 or over on the last day of the custodial period, will no longer be subject to supervision under section 256B, but will be subject instead to the same arrangements as apply to an adult sentenced to a custodial sentence of less than 12 months. The amendments also have the effect that section 256B continues to apply in any case where the offence for which the sentence was imposed was committed before the commencement of clause 5.
Section 256B of the 2003 Act currently provides for drug testing requirements relating to certain Class A drugs to be imposed where the offender is 18 or over. The Bill will also enable drug testing requirements relating to certain Class B drugs to be imposed (see new section 256D of the 2003 Act, which is inserted by Schedule 1 to the Bill). Section 256B is also amended so that, for those released under this section when the offender is aged 18 or over, the supervision period requirements may include drug appointment requirements (see new section 256E of the 2003 Act, which is inserted by Schedule 1 to the Bill).

Clause 6: Consecutive terms

Clause 6 relates to arrangements for release of offenders serving consecutive terms of imprisonment.

Clause 6 amends section 264 of the 2003 Act and inserts new section 264A to the same Act. New section 264A modifies the effect of section 264 when an offender is serving one or more sentences imposed for offences committed before commencement.

Clause 6(2) amends section 264 to insert new subsections (3B) to (3E).

New section 264(3B) preserves unconditional release at the halfway point of sentence where the aggregate of the consecutive terms is less than 12 months and where, in respect of each of those terms, section 243A requires unconditional release (i.e. the categories referred to above in the explanation of clause 2). This subsection also imposes a licence period in every other case where an offender is released under section 264.

New section 264(3C) determines the period of licence and supervision under new section 256AA when all of the sentences are imposed for offences committed after commencement. New section 264(3C)(a) imposes a licence period equal to the aggregate length of the terms of imprisonment imposed. New section 264(3C)(b) imposes a supervision period under new section 256AA if it is required by at least one of the sentences and the aggregate length of the terms of imprisonment is less than 2 years.

New section 264(3D) determines the starting point of the supervision period under new section 256AA. The supervision period begins on expiry of the total licence period determined under new section 264(3C)(a). The end point of the supervision period is 12 months from the end of the requisite custodial period (under new section 256AA(4)(b)). The requisite custodial period for consecutive sentences is the aggregate of the custodial periods for the consecutive sentences as determined by sections 244(3)(d) and 264(2).

New section 264(3E) requires that an offender with a number of sentences
imposed consecutively is subject to supervision under section 256B (supervision of certain young offenders after release from detention) if at least one of the sentences attracts supervision under section 256B. The period of supervision applies for three months from release of the offender (see section 256B(5)).

60. Subsections (3) and (3A) of section 264 are deleted. These subsections are no longer required as they are replaced by new provisions dealing with unconditional release and release on licence from aggregated sentences.

61. Clause 6(3) inserts new section 264A. The new section applies when an offender is released on licence under Chapter 6 of Part 12 of the 2003 Act, the aggregate length of the consecutive terms of imprisonment that were imposed is less than 12 months and at least one of the terms was imposed for an offence committed before the new provisions are commenced (a “short transitional term”) with at least one term imposed for an offence committed on or after the day of commencement.

62. New section 264A(2) determines the length of the licence period when there is at least one short transitional term to be served consecutively with one other term. The licence period is to be the aggregate of the remainder of each term of imprisonment that is not a short transitional term, following deduction of the relevant custodial period for each of those terms (as determined by section 264(6)). The licence period is to be served after the aggregate of the custodial periods for the sentences has been served.

63. Clause 6(4) to (6) amend Schedule 20B to the 2003 Act to establish the date from which the supervision period is calculated under new section 256AA(4)(b) (the end of the requisite custodial period) for offenders with sentences subject to supervision under new section 256AA that are ordered to be served consecutively to sentences governed by Schedule 20B.

64. Clause 6(5) inserts new sub-paragraph (3A) into paragraph 22 of Schedule 20B. Under new sub-paragraph (3A) the requisite custodial period is the period ending with the release of the offender.

65. Clause 6(6) inserts new sub-paragraph (4) into paragraph 33 of Schedule 20B. Under new sub-paragraph (4) the requisite custodial period is the period ending with the release of the offender.

Clause 7: Supervision of certain young offenders after detention and training order

66. Clause 7 relates to offenders in respect of whom Detention and Training Orders (DTO) have been made, who are 18 or over when they reach the
67. Clause 7(3) amends section 103 of the Powers of Criminal Courts (Sentencing) Act 2000 so that the power of the Secretary of State to vary by order when the period of supervision of a DTO will end does not apply where an order is made and the offender is aged 18 or over at the halfway point of the term of the DTO.

68. Clause 7(4) inserts new section 106B of the Powers of Criminal Courts (Sentencing) Act 2000. Subsection (1) of new section 106B sets out the circumstances where further supervision applies, that is: where the offender is aged 18 or over at the halfway point of their DTO, the DTO is of less than 24 months and the DTO was imposed for an offence committed on or after the day on which clause 7(4) comes into force.

69. Subsection (2) of section 106B applies sections 256AA to 256AC, 256D and 256E of, and Schedule 19A to, the 2003 Act (that is, the new sections inserted by this Bill introducing supervision for sentences of less than 2 years) but with the modifications set out in subsections (3) to (5) of section 106B.

70. Subsection (3) of section 106B defines the supervision period for a young offender who turns 18 before the halfway point in their sentence. The supervision period for these offenders begins at the end of their detention and training order and ends 12 months after the halfway point of the detention and training order.

71. In this way an offender serving a DTO of 10 months would currently spend (subject to certain exceptions) half of the sentence (i.e. 5 months) in custody and half subject to supervision in the community. Once the Bill is in force, such an offender would be subject to an additional supervision period (to start once the DTO comes to an end) of 7 months.

72. Subsection (4) of section 106B relates to the definition of the supervisor of offenders subject to further supervision. Subsection (5) extends the power under new section 256AB(4) of the 2003 Act so that it includes a power to make provision about the supervision requirements that can be imposed by virtue of new section 106B.

**Clause 8: Minor and consequential provision**

73. Clause 8 introduces Schedule 3 to the Bill, which contains minor consequential provisions. Subsection (2) of clause 8 provides the Secretary of State with a power to amend by order the Powers of Criminal Courts (Sentencing) Act 2000 and the 2003 Act to replace references to dates on which a provision of this Bill comes into force with the actual date.
Other provisions about release and supervision

Clause 9: Extended sentences: length of extension period

74. Clause 9 addresses an issue whereby, in very exceptional circumstances, it is possible for an offender who is considered dangerous by a court and sentenced to an extended determinate sentence to serve less than 12 months under supervision in the community.

75. Subsection (2) of clause 9 amends section 226A of the 2003 Act to insert a new provision requiring the extension period of the extended determinate sentence to be at least 1 year. Subsection (3) of clause 9 makes the same change to section 226B of the 2003 Act in regard to persons under 18 years of age sentenced to an extended determinate sentence.

Clause 10: Recall and further release of offenders

76. Clause 10 relates to the provisions for release of offenders who have been recalled to custody during their period of release on licence. Offenders serving custodial sentences of 12 months or more can currently be recalled until the end of their sentence or for a fixed period of 28 days.

77. Subsection (4)(a) and (c) of clause 10 amend the default period to be served by people who, while on licence, are recalled (under section 254 of the 2003 Act) and who are considered by the Secretary of State to be suitable for automatic release under section 255A of the 2003 Act. This is to take account of the introduction of licence periods (and, therefore, liability to recall to prison) for offenders with custodial sentences of less than 12 months. Subsection (4) of clause 10 amends section 255A of the 2003 Act so that those offenders serving custodial sentences of less than 12 months who are recalled to custody for a fixed period are released after a period of 14 days from the day on which they return to custody (new subsection (9)(a) of section 255A). An offender serving a custodial sentence of 12 months or more who is recalled to custody will be released after a period of 28 days (new subsection (9)(b) of section 255A).

78. Clause 10 also makes provision in relation to offenders who have been recalled. The main effect relates to offenders who have been recalled to custody under section 254 for breach of a condition (other than the curfew condition) after having been released before the halfway point of sentence on home detention curfew (HDC) (under section 246 of the 2003 Act). With one exception these offenders will be released at the point in their sentence when they would normally be released, had they not been released early under HDC or after a period of 14 days (if the sentence is less than 12 months) or 28 days (for sentences of 12 months or more) following their recall if that period gives a later release date. In other words, for breach of a condition other than the HDC curfew condition offenders recalled during their HDC period will serve
either until their normal release date at the halfway point of sentence or until the end of the 14 day or 28 day period if that falls later. Offenders who will be released unconditionally at the expiry of the HDC period (under section 243A) are the exception. These offenders will be released at the expiry of the HDC period whether or not the end of the 14 day period is after the expiry of the HDC period.

79. Subsection (2) of clause 10 clarifies that the provision in sections 255A to 255C about recall and subsequent release applies to prisoners released under section 248 (compassionate release).

80. Subsection (3) of clause 10 amends section 255(1)(a) of the 2003 Act so that offenders may only be recalled under that subsection for breach of the curfew condition required by section 250(3) when an offender is released on HDC under section 246.

Clause 11: Arrangements for supervision and rehabilitation: female offenders

81. Clause 11 amends section 3 of the Offender Management Act 2007. Clause 11 inserts a new subsection (6A) in section 3 of the 2007 Act, which requires the Secretary of State to ensure that contracts or other arrangements providing for the supervision or rehabilitation of offenders must (a) state that the Secretary of State has complied with the public sector equality duty in section 149 of the Equality Act 2010 as it relates to female offenders; and (b) identify anything in the arrangements that is intended to meet the particular needs of female offenders. The new duty will apply where the Secretary of State enters into arrangements with any other person (under section 3(2)) and where he undertakes the provision himself (under section 3(5)). The new duty applies only in the context of arrangements for the supervision and rehabilitation of offenders, and requires the Secretary of State to record that he has complied with the public sector equality duty in the specific context of female offenders. As such, it does not affect the wider application of the public sector equality duty in any way.

Drugs and offenders released during custodial sentence

Clause 12: Drug testing

82. Clause 12 amends section 64 of the Criminal Justice and Court Services Act 2000, which makes provision for the Secretary of State to impose a drug testing requirement on offenders aged 18 or over released from prison on licence.

83. Clause 12 expands the categories of drugs that an offender can be tested for from Class A to Class A and Class B drugs.
84. Subsection (5) makes clear that the expansion of drug testing to Class B drugs does not relate to testing persons in police detention.

85. The expansion of drug testing to Class B drugs will apply to offenders who are released before clause 12 comes into force and are still subject to supervision in the community and offenders released after the provision comes into force (see paragraph 6 of Schedule 7).

Clause 13: Drug appointments

86. Clause 13 inserts new section 64A into the Criminal Justice and Court Services Act 2000, which provides the Secretary of State with a power to impose a new licence condition requiring offenders aged 18 or over on release from prison to attend, in accordance with instructions, appointments designed to address the offender’s dependency on or propensity to misuse a controlled drug.

87. Subsection (2) of new section 64A provides that the licence condition can only be imposed where it has been recommended by an officer of a provider of probation services, and where the Secretary of State is satisfied the offender is dependent on or has a propensity to misuse drugs; that the misuse has either contributed to an offence for which the offender has been convicted or is likely to cause or contribute to further offending; and the dependency or propensity is susceptible to treatment and arrangements have or can be made for the offender to be treated.

88. Subsection (4) of new section 64A provides that the condition must set out where and with whom the offender is required to meet. Subsection (5) provides that the person with whom the offender is required to meet to address his or her drug problems must have the necessary qualifications or experience. Subsection (6) makes clear that the only instructions that may be given by the officer of a provider of probation services are the duration of each appointment and when each appointment takes place.

89. Subsection (7) makes clear that the offender is not required to submit to medical treatment at the appointment. The offender will only be treated as breaching his licence condition if he fails to attend or remain at the appointment for the duration instructed by the officer of a provider of probation services.

Community orders and suspended sentence orders

Clause 14: Officers responsible for implementing orders

90. Clause 14 amends the 2003 Act to make changes to the meaning of “the
These notes refer to the Offender Rehabilitation Bill [HL] as brought from the House of Lords on 9 July 2013 [Bill 88]

responsible officer”, who is the officer responsible for implementing community orders and suspended sentence orders imposed by the court.

91. Subsection (1) of clause 14 replaces section 197 of the 2003 Act. The new subsection (1) of section 197 defines the responsible officer as a person who is, for the time being, responsible for discharging the functions of the responsible officer in accordance with arrangements made by the Secretary of State. The new subsection (2) of section 197 provides that the responsible officer must be either an officer of a provider of probation services (which can be a public or a private sector provider) or a person responsible for monitoring an offender in accordance with an electronic monitoring requirement.

92. Subsection (2) of clause 14 introduces Schedule 4 to the Bill. Schedule 4 is in two parts.

93. Part 1 provides that certain functions of responsible officers are confined to the public sector. Paragraphs 1 to 5 amend provisions which confer a function on the responsible officer to provide assistance to a court carrying out a review of a community order or suspended sentence order, or of the offender’s progress under a drug rehabilitation requirement under such an order. Such functions will in the future be carried out by officers of providers of probation services, rather than the responsible officer. Under section 4 of the Offender Management Act 2007 (the 2007 Act) the Secretary of State may not arrange for private sector providers to perform functions that involve helping courts to make decisions about people convicted of offences. These functions have to be performed by an officer of a public sector provider (i.e. the Secretary of State or a probation trust or some other public body). The effect of the changes in paragraphs 1 to 5, coupled with section 4 of the 2007 Act, is that only public sector providers will in future be permitted to carry out the function of giving assistance to a court carrying out a review of a community order, a suspended sentence order or the offender’s progress under a drug rehabilitation requirement imposed under such an order. In some cases that public sector provider may be the responsible officer, but in those cases where the responsible officer is a private provider they will not be permitted to undertake these functions.

94. Paragraph 6 of Schedule 4 amends Schedule 8 to the 2003 Act – which deals with the breach, amendment or revocation of community orders – to add definitions of “enforcement officer” and “public sector provider”. Paragraphs 6(3) and 6(4) provide that if the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the requirements of his community order he must refer the matter to an enforcement officer. Paragraph 6(2) inserts a new definition of “enforcement officer” at paragraph 1A of Schedule 8, and makes clear that the enforcement function can only be carried out by an officer of a provider of probation
services that is a public sector provider. In other words, only an officer of a public sector provider, defined as a probation trust, other public body or the Secretary of State, can be the officer responsible for enforcement action under a community order.

95. Paragraph 6(5) provides that the role of the enforcement officer is to consider the case, and where, appropriate cause an information to be laid. In this way, the enforcement officer, who will be a public sector provider, will be responsible for the decision whether or not to bring cases to court for a breach hearing.

96. Paragraph 6(6) amends the various powers in Parts 3 to 6 of Schedule 8 that allow the court to revoke or vary a community order, to provide that in the future the function of applying to the court to exercise such powers will be undertaken by an officer of a provider of probation services rather than the responsible officer. The same analysis applies as in paragraphs 1 to 5 of Schedule 4, and the effect of the changes will be that only public sector providers will be able to make applications to the court to revoke or amend the order. Paragraph 8 of Schedule 4 makes consequential amendments to section 4 of the 2007 Act to ensure that these powers are reserved to the public sector.

97. Paragraph 7 of Schedule 4 makes similar changes to Schedule 12 to the 2003 Act in relation to suspended sentence orders.

98. Part 2 of Schedule 4 makes further consequential amendments.

**Clause 15: Rehabilitation activity requirement**

99. Clause 15 amends the 2003 Act to create, for community orders and suspended sentence orders, a new “rehabilitation activity requirement”. The rehabilitation activity requirement replaces the existing “activity” and “supervision” requirements, which are repealed (see clause 15(4)).

100. Subsection (3) of clause 15 inserts a new section 200A into the 2003 Act, which sets out the details of the new rehabilitation activity requirement.

101. Subsection (1) of new section 200A provides that an offender subject to this requirement must comply with instructions given by the responsible officer to attend appointments or participate in activities, or both. Subsection (2) requires the court imposing the requirement to specify in the order the maximum number of days for which the offender may be instructed to participate in activities. Subsection (3) makes clear that the instructions given under this requirement must be given with a view to promoting the rehabilitation of the offender, although they may also serve other purposes.
102. Subsection (4) allows the responsible officer to instruct the offender to attend appointments with the responsible officer or someone else. Subsection (5) makes clear that instructions may require the offender to participate in specified activities or go to a specified place and comply with instructions given by the person in charge of the activities or that place. Subsection (6) provides that the instructions given under subsection (5) can include instructions given by anyone acting under the person in charge’s authority. Subsection (7) clarifies that activities under the requirement may include accredited programmes as set out in section 202(2) of the 2003 Act or include reparative activities, such as restorative justice activities. Subsection (8) requires the responsible officer to obtain the agreement of any person, other than the offender, whose co-operation is necessary to comply with the requirement.

103. Subsection (9) defines the “relevant period” for both community orders and suspended sentence orders so that the requirement must last for the whole of the order. This means that appointments and activities can take place at any time during the order.

104. Clause 15(5) introduces Schedule 5 to the Bill, which contains consequential amendments.

Clause 16: Programme requirement

105. Clause 16 amends section 202 of the 2003 Act which is about programme requirements for community orders and suspended sentence orders. The clause removes the provision from the 2003 Act that an offender can only participate in accredited programmes in places approved by the local probation board or local provider of probation services. Subsections (3) and (4) of clause 16 make consequential amendments to Schedules 9 and 13 to the 2003 Act, which relate to transfers of community orders and suspended sentence orders to Scotland and Northern Ireland.

Clause 17: Attendance centre requirement

106. Clause 17 amends section 214 of the 2003 Act, which relates to the requirement, as part of a community order or suspended sentence order, to attend an attendance centre. Clause 17(5) amends section 214 to provide that the responsible officer, rather than the court, must notify the offender which attendance centre he or she is required to attend. The remainder of clause 17 makes consequential amendments to give effect to the change at clause 17(5).

Clause 18: Duty to obtain permission before changing residence

107. Clause 18 inserts a new section 220A into the 2003 Act to require an offender subject to a community order or suspended sentence order (which does not
include a residence requirement under section 206 of the 2003 Act) to seek the permission of the responsible officer or the court before changing their place of residence.

108. New section 220A(1) provides that an offender subject to a community order or suspended sentence order must not change residence without permission of their responsible officer or a court. Subsection (2) provides that the offender may apply to the court to reconsider a decision by the responsible officer to refuse permission. Subsection (3) provides that the court may grant permission when it is considering whether an offender has breached his or her order, or whether to amend or revoke an order, under Schedule 8 (for community orders) or Schedule 12 (for suspended sentence orders) to the 2003 Act.

109. Subsection (4) of section 220A sets out that the grounds for refusing an application to change residence are that the change is likely to prevent the offender from complying with a requirement of the order or that it would hinder the offender’s rehabilitation. Subsection (5) provides that the requirement to seek permission for a change in residence is enforceable as if it were a requirement imposed by the order. As such, an unreasonable failure to seek permission may be treated as a breach of the order. Subsection (6) disapplies the duty to seek permission for a change in residence in cases where the offender is subject to a residence requirement imposed by the court under section 206 of the 2003 Act.

110. Clause 18(3) omits the obligation in section 220(1)(b) of the 2003 Act for the offender to notify the responsible officer of any change of address, on the basis that this will no longer be relevant once the new duty to seek permission to change residence is in force.

111. Clause 18(4) to (6) simplifies paragraph 16 of Schedule 8 to the 2003 Act, under which the court may (and in certain circumstances must) amend a community order where it is satisfied that the offender proposes to change, or has changed, his or her residence from the local justice area specified in the order to another local justice area. Where an offender has been allowed to change residence under section 220A the court must amend the order to specify the new local justice area in which the offender now resides. If the change of residence was agreed by the responsible officer rather than the court the responsible officer must apply to the court to have the order amended and the court must make that amendment.

112. Similar changes to those made to Schedule 8 are made by clause 18(7) to (9) to Schedule 12 to the 2003 Act, which deals with breach, revocation and amendment of suspended sentence orders.

113. Clause 18(10) and (11) disapply the new duty to seek permission to change residence from the regime governing breach of a default order (under which
unpaid work, curfew or an attendance centre requirement may be imposed in lieu of a distress warrant for unpaid fines). They amend Schedule 31 to the 2003 Act to provide that the new section 220A will not apply in the context of default orders and to provide a power for the court to amend a default order where the person subject to the order moves out of the local justice area specified in the order. Clause 18(12) amends Schedule A1 to the Children Act 1989 to disapply the new duty to seek permission to change residence from the regime governing enforcement orders (under which unpaid work can be imposed in respect of breach of a contact order under the Children Act 1989).

**Offenders sentenced by service courts**

**Clause 19: Amendments of Armed Forces Act 2006.**

114. Clause 19 gives effect to Schedule 6, which makes a number of amendments to the Armed Forces Act 2006 which are consequential on the other provisions of the Bill.

115. Paragraph 2 of Schedule 6 is consequential on clause 7 (supervision of certain young offenders after detention and training order).

116. Paragraph 3 is consequential on clause 10 (recall and further release of offenders).

117. Paragraphs 4 to 11 relate to service community orders (community orders made by service courts in respect of offenders expected to reside in the United Kingdom), overseas community orders (made by service courts in respect of civilian offenders residing with the armed forces overseas), and suspended sentence orders with community requirements when made by service courts.

118. Paragraphs 4 to 7 are consequential on clause 14 and Schedule 4 (officers responsible for implementing orders). Paragraphs 4 and 6 ensure that the new provisions relating to the enforcement of community orders do not apply to overseas community orders: as at present, the “responsible officer” is to be responsible for enforcement as well as supervision. Paragraph 5 relates to service community orders, and paragraph 7 to suspended sentence orders with community requirements made by service courts.

119. Paragraphs 8 to 11 are consequential on clause 18 (duty to obtain permission before changing residence).

**General**

**Clause 20: Power to make consequential and supplementary provision etc**

120. Clause 20 provides for the Secretary of State, by order, to
make consequential, supplementary or incidental amendments in relation to any provision of the Bill. An order may make different provision for different purposes and amend, repeal or revoke legislation. An order may also make different provision for different areas where it relates to clauses 2 to 8 of, and Schedules 1 to 3 to, the Bill, that is, the provisions relating to the release and supervision of offenders sentenced to less than 2 years.

Clause 21: Transitional provision

121. Clause 21 introduces Schedule 7 to the Bill, which contains details of cases to which the Bill provisions apply. Subsections (2) to (4) confer power on the Secretary of State to make transitional, transitory and saving provision in connection with the commencement of provisions of the Bill.

Clause 22: Commencement

122. Clause 22 provides that the substantive provisions of the Bill will come into force on such day or days as the Secretary of State appoints. Subsection (3) allows for commencement on different days for different purposes; and in connection with the provisions relating to the release and supervision of offenders, it allows for commencement at different times for different areas.

Clause 23: Extent

Territorial extent and application

123. Clause 23 sets out the territorial extent of the Bill. Clause 23(1) provides that, except for armed forces amendments or repeals, a provision that amends or repeals another Act has the same extent as the amended or repealed provision. Subject to that, the Bill extends to England and Wales, Scotland and Northern Ireland (see clause 23(2)).

124. Clause 23(5) enables the provisions made by this Bill which amend the 2003 Act to be extended to any of the Channel Islands or the Isle of Man by Order in Council.

125. Much of the Armed Forces Act 2006 (the 2006 Act) relates to offenders sentenced by service courts. Some of the relevant provisions work by applying, with modifications, provisions of the 2003 Act and the Powers of Criminal Courts (Sentencing) Act 2000. The 2006 Act extends to the whole of the United Kingdom, the Isle of Man and the British Overseas Territories. Where a provision of an Act is applied by or under the 2006 Act, section 385 of the 2006 Act ensures that the provision as thus applied has the same extent as the 2006 Act itself. There is also power to extend both the Act and the applied provisions (as applied) to any of the Channel Islands, but this has not
been done.

126. The amendments of the 2006 Act made by Schedule 6 extend throughout the United Kingdom by virtue of clause 23(2). So too, again by virtue of clause 23(2), do the amendments and repeals of provisions of Acts as applied by or under the 2006 Act. Clause 23(3), in conjunction with clause 23(6), makes it clear that section 385 of the 2006 Act does not extend such amendments and repeals outside the United Kingdom.

127. Clause 23(4), in conjunction with clause 23(6), confers power to make an Order in Council in relation to the amendments of the 2006 Act made by Schedule 6, or, in the case of amendments or repeals of provisions applied by or under that Act, in relation to the provisions as so applied. Such an Order in Council can extend the provisions in question, with or without modifications, to any of the Channel Islands, the Isle of Man, or any of the British Overseas Territories.

128. The overall effect of clauses 23(2) to (4) is that the changes made by the Bill do not affect the laws of the Isle of Man and the British Overseas Territories in relation to service courts; but any of those laws can be aligned with United Kingdom law, with respect to those changes, by Order in Council.

Clause 24: Short title

129. Clause 24 gives the short title of the Bill as the Offender Rehabilitation Act 2013.
FINANCIAL EFFECTS OF THE BILL

130. There will be costs associated with provisions on extending licence and supervision and drug testing and appointments. There are potential financial benefits associated with provisions on extending licence and supervision, drug testing and appointments, and community orders and suspended sentence orders. These are set out in more detail in the section summarising the impact assessment of the Bill below.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

131. None of the Bill’s provisions are expected to have an impact on public service manpower.

SUMMARY OF THE IMPACT ASSESSMENT

Extension of licence and supervision

132. Expanding rehabilitative provision to offenders serving custodial sentences of less than 12 months has the potential to reduce current high re-offending rates. This has the potential to cut prison and probation costs, reduce court backlogs and allow for savings on legal aid provision. There is also the potential for reduced social costs associated with re-offending behaviour as crime imposes costs on society, notably the physical, emotional and financial impact on victims.

133. There will be a cost associated with extending rehabilitative services in the community to offenders who do not currently receive them. This cost will be dependent on the outcome of competing provision of probation services. There will be court costs associated with breaches of this provision, and costs of providing sanctions for these breaches. These may include additional pressure on the prison population arising out of offenders being recalled to custody and additional costs for probation providers in delivering electronically-monitored curfews or unpaid work. Our best estimate of these costs is around £27m pa, with a low estimate of £6m pa and a high estimate of £42m pa.

134. Although it is not the intention of these provisions that they should change sentencing practice, there is a risk that these changes could affect the number of short custodial sentences imposed by courts, and the length of these sentences. Three possible scenarios for possible changes in sentencer behaviour have been considered. The first is that sentencers down-tariff short custodial sentences to community orders. This would reduce the demand for prison places per year by around 500 places. The second is that sentencers reduce custodial sentence lengths. This would reduce the demand for prison places per year by around 600 places. The third is that sentencers up-tariff
sentences served in the community to short custodial sentences. This would increase the demand for prison places by around 800 places per year.

Drug appointments and testing

135. It is expected that these provisions will support probation providers to tackle offenders’ drug misuse issues, which may in turn support offenders to desist from crime. There may be costs associated with drug testing and appointments and costs of sanctions if offenders fail to comply. It is estimated that the cost of delivering sanctions could be up to £1m per year.

Community orders and suspended sentence orders

136. It is expected that increasing the flexibility of community orders and suspended sentence orders will give probation providers the opportunity to improve innovation in the delivery of rehabilitation services leading to reduced re-offending. It is not anticipated that any costs will arise from this proposal. There is a risk that the changes to community orders could lead to changes in sentencer behaviour, and therefore affect the number of community orders, and the requirements given.

137. The Ministry of Justice has published a fuller Impact Assessment of the Bill’s provisions, which is available at www.gov.uk/government/publications/offender-rehabilitation-bill. Copies will be made available in the Vote Office and House Libraries.

EUROPEAN CONVENTION ON HUMAN RIGHTS

138. Section 19 of the Human Rights Act 1998 (the 1998 Act) requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as set out in Schedule 1 to that Act).

139. The Lord Chancellor and Secretary of State for Justice has made the following statement under section 19(1)(a): “In my view the provisions of the Offender Rehabilitation Bill are compatible with the Convention rights”.

140. There are a number of provisions of the Bill which engage the Convention rights. The main ones are mentioned in the following paragraphs. The Ministry of Justice has submitted a separate note to the Joint Committee on Human Rights, which provides a fuller analysis of the Convention rights issues in relation to this Bill.

141. Clause 3 makes provision about supervision after end of sentence of prisoners (which for these purposes includes offenders serving sentences of detention in a young offender institution or under section 91 of the Powers of Criminal
These notes refer to the Offender Rehabilitation Bill [HL] as brought from the House of Lords on 9 July 2013 [Bill 88]

Courts (Sentencing) Act 2000) serving less than 2 years. Clause 7 makes similar provision in relation to offenders serving detention and training orders of less than 24 months. The supervision provided for in the Bill may be subject to requirements, and provision is made about these in Schedule 1.

142. These requirements engage Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life).

143. In relation to Article 6, the Secretary of State will determine which requirements should be imposed on individual offenders to achieve the rehabilitative purpose of the top-up supervision period. This is similar to the existing process for imposing licence conditions. Article 6 requires there to be access to court to allow for review of the exercise of the Secretary of State’s discretion in imposing conditions in the top-up supervision period and the conduct of supervisors when managing offenders during the supervision period. In our view, this requirement is satisfied by the right of an offender to bring judicial review proceedings against the Secretary of State for imposition of the conditions of statutory supervision and against supervisors for decisions when administering top-up supervision. The adequacy of this safeguard was tested in the context of licences in R (on the application of Ahmed) v National Probation Service and another.²

144. In relation to Article 8, the supervision requirements have the potential to amount to an interference (as do current licence conditions). Any interference may be justified by virtue of Article 8(2) as being necessary for the legitimate aim of preventing crime. In particular, the Secretary of State may only impose a requirement having had regard to the express rehabilitative purpose of the supervision period. As a public authority, the Secretary of State must comply with his obligations under the section 6(1) of the 1998 Act, to act compatibly with the offender’s Convention rights.

145. The following comments are made in relation to specific requirements.

146. In relation to the requirement to be of good behaviour etc, there is a certain degree of imprecision in the requirement, but it is considered that it would be clear to offenders and the court what conduct would be prohibited under the requirement. A virtually identical requirement has been in operation in all licences for many years. Prison Service Instruction 2012/20 (licence conditions and temporary travelling abroad) is also to be noted. It sets out the scope and meaning of the ‘good behaviour’ licence condition.³ It is proposed to apply the substance of this Instruction in relation to the supervision

³ See paras 2.4 and 2.5.
requirements, so far as relevant. In any event, clear policy guidance will be issued in relation to this topic.

147. In relation to the requirement to permanently reside at an address, it is noted that the Court of Appeal in R (Francis) v West Midlands Parole Board confirmed that a Probation Trust’s refusal of an application from an offender for his supervision to be transferred from one probation trust to another so that he could live with his fiancée was justifiable under Article 8 because there was no good reason for the transfer. It was acceptable to assess the adequacy of a reason by reference to an assessment of the risk the offender posed and the viability of the offender’s release plan. This provides authority that managing where offenders may reside during supervision is capable of being justified in Article 8 terms.

148. In relation to the requirement to submit to drug testing, it is noted that the requirement can only be imposed if an offender has been convicted of an offence in the list of trigger offences in Schedule 6 to the Criminal Justice and Court Services Act 2000 (generally acquisitive, drug related and vagrancy offences). Article 8 is engaged and the considerations and justification for the requirement are substantively the same as with clause 12 (which extends the drug testing condition in licence conditions). A further safeguard in the context of this provision is that top-up supervision is expressly for rehabilitative purposes only and so use of the testing condition as a top-up supervision requirement will be restricted to supporting rehabilitative requirements.

149. Clause 7 makes provision about supervision of offenders serving detention and training orders of less than 24 months. It applies only to offenders who are 18 or over at the halfway point of the DTO.

150. It is considered that the application of a further supervision period after the end of the DTO (and the supervision requirements attached to that period) falls within the ambit of Article 8 for the purposes of Article 14 (prohibition of discrimination). If (which is not accepted) offenders subject to a DTO who are 18 or over and such offenders who are under 18 are in an analogous position, it is considered that the difference in treatment is objectively and reasonably justified. The criminal justice system distinguishes in various ways between adults and children, in relation to the type and severity of sentence imposed, the purposes of sentencing and detention, and the nature of post-release arrangements. It is to be noted, for instance, that children released from detention are supervised by specialist youth offending teams. These differences reflect the different needs of children and adults. That adults and children are to be treated differently in the criminal justice system is supported by (among other things) the UN Convention on the Rights of the Child. It is

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considered that the Government enjoys considerable latitude in framing criminal justice policy in the area of post-release supervision, and that the chosen approach – which is to apply a specific supervision period for the purpose of rehabilitation to offenders released as adults – is objectively and reasonably justified, and recognises the specific needs of offenders released as adults, set alongside the interests of children in being subject to less onerous provisions.

151. Clause 12 makes provision to allow for a licence condition that an offender must submit to drug testing in relation to specified Class B drugs (it is already possible to impose a condition in relation to specified Class A drugs). This provision is closely related to clauses in the Bill which allow for supervision requirements that an offender must submit to drug testing in the same terms. Such a condition amounts to an interference with the offender’s Article 8 rights, but is justifiable as necessary in pursuit of the legitimate aim of the prevention of crime. It is noted that the condition may only be applied where the offender has committed an offence which is specified as a ‘trigger offence’. Significant numbers of such offenders are Class B drug users, and in some cases drug use will be related to offending behaviour and pose obstacles to effective rehabilitation. Testing for drug use is justifiable in order to assist such rehabilitation and therefore for the prevention of crime.

152. The condition in relation to Class B drugs may be applied in the case of an offender who committed their offence before the Bill comes into force. It is considered, however, that the condition is not punitive, but preventative, and as such does not amount to an additional penalty for the purposes of Article 7.

153. Clause 13 makes provision about drug appointment conditions that may be included in a licence (and mirrors provision in Schedule 1 in relation to such requirements during the supervision period). The condition does not require the offender to submit to treatment, but merely to attend the appointment. It is considered that this may amount to a marginal interference with the offender’s Article 8 rights. Any interference is justifiable, and it is noted that the condition may not be imposed unless specific conditions are met (see clause 13(1), inserting new section 64A(2) of the 2000 Act). It is considered that any interference is justifiable for the purpose of preventing crime.

154. The condition may be applied in the case of an offender who committed their offence before this Act comes into force. It is considered, however, that the condition is not punitive, but preventative, and as such does not amount to an additional penalty for the purposes of Article 7.

155. Clause 18 provides that offenders subject to a community order or suspended sentence order (which does not include a residence requirement under section 206 of the 2003 Act) may not, without the permission of the responsible officer or the court, change residence. This provision amounts to an
interference with the offender’s rights under Article 8. It is considered that the interference is justifiable as necessary in pursuit of the legitimate aim of preventing crime (by encouraging and supporting the rehabilitation of the offender). The requirement is subject to important restrictions on the ability of the responsible officer or the court to refuse permission (see clause 18(2), inserting new section 220A(4) into the 2003 Act). For substantially the same reasons it is considered that the provision is compatible with Article 12 of the International Covenant on Civil and Political Rights, which guarantees freedom of movement within the borders of the relevant state.
OFFENDER REHABILITATION BILL [HL]

EXPLANATORY NOTES

These notes refer to the Offender Rehabilitation Bill as brought from the House of Lords on 9 July 2013 [Bill 88]

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