

*These notes relate to the Commons Amendments to the Offender Rehabilitation Bill [HL]  
as brought from the House of Commons on 15th January 2014 [HL Bill 72]*

## **OFFENDER REHABILITATION BILL [HL]**

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### **EXPLANATORY NOTES ON COMMONS AMENDMENTS**

#### **INTRODUCTION**

1. These explanatory notes relate to the Commons Amendments to the Offender Rehabilitation Bill [HL], as brought from the House of Commons on 15th January 2014. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and the Commons Amendments and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Commons Amendments themselves, refer to Bill 88, the Bill as first printed for the Commons.
3. These notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Commons Amendments.
4. All the Commons Amendments were in the name of the Minister.

#### **COMMENTARY ON COMMONS AMENDMENTS**

##### *Commons Amendment 1*

5. Commons Amendment 1 would remove clause 1 from the Bill. Clause 1 would provide that no alteration or reform may be made to the structure of the probation service unless the proposals have been laid before, and approved by resolution of, both Houses of Parliament.

##### *Commons Amendments 2, 3, 4, 9 and 22*

6. Commons Amendments 2 and 3 would amend clause 3, which provides for a post-sentence supervision period for certain categories of offender released from fixed-term sentences of more than 1 day but less than 2 years. Together the amendments would provide that offenders who are sentenced as a juvenile under section 91 of the Powers of Criminal

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Courts (Sentencing) Act 2000 – and whose sentence would attract an additional supervision period – can be supervised either by an officer of a provider of probation services or by a member of a Youth Offending Team (YOT).

7. Commons Amendment 4 is consequential on Commons Amendments 2 and 3. It would amend clause 5 so as to amend section 256B of the Criminal Justice Act 2003, to make clear that an offender released from a section 91 sentence can be managed by a member of a YOT if the offender is over 18 on release. After commencement of the Bill this would only affect offenders who have committed offences before the commencement of the post-sentence provisions and who receive a sentence of under 12 months (see new subsection (1A) of section 256B inserted by clause 5).

8. Commons Amendment 9 is also consequential on Commons Amendments 2 and 3. It would amend clause 7 to adjust the current gloss on the definition of “the supervisor” of a post-sentence supervision period in line with the changes that would be made to clause 3 by Commons Amendments 2 and 3.

9. Commons Amendment 22 would make consequential amendments, flowing from Commons Amendments 2 and 3, to YOT powers under the Crime and Disorder Act 1998.

***Commons Amendments 5, 6, 7, 8 and 23***

10. Commons Amendments 5, 6, 7 and 8 would make amendments to clause 6, which provides for the calculation of consecutive sentences involving post-sentence supervision. Amendments 5, 6 and 7 would re-number the new section of the Criminal Justice Act 2003 that clause 6 creates from 264A to 264B. This is to avoid confusion with a former section 264A of the Criminal Justice Act 2003 that has been repealed.

11. Commons Amendment 8 would make consequential amendments to two sections of the Criminal Justice Act 2003: section 249 (which governs the length of a licence period) and section 250 (which governs the conditions imposed under licence and includes a redundant provision, which would be repealed).

12. Commons Amendment 23 would renumber a reference to new section 264A of the Criminal Justice Act 2003 to 264B, to reflect the changes that would be made by Commons Amendments 5, 6, 7 and 8.

***Commons Amendment 10***

13. Commons Amendment 10 would change the wording of section 255A(4) of the Criminal Justice Act 2003 (which deals with fixed term recall periods and release from them). The subsection currently reads:

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“(4) A person is suitable for automatic release only if the Secretary of State is satisfied that the person will not present a risk of serious harm to members of the public if released at the end of that period.” [ie the period of 28 days mentioned in section 255A(3)]

14. As a result of Amendment 10 subsection 255A(4) would read:

“(4) A person is suitable for automatic release only if the Secretary of State is satisfied that the person will not present a risk of serious harm to members of the public if released at the end of the automatic release period.”

15. Commons Amendment 10 is necessary because as a consequence of clause 10, the period of fixed-term recall will no longer be a set 28 days for any length of sentence, but will vary depending on whether the sentence is less than 1 year (fixed term recall of 14 days) or 1 year and over (fixed term recall of 28 days) – see the definition of “automatic release period” in new subsections (9) and (10) of section 255A inserted by clause 10.

### ***Commons Amendments 11 and 12***

16. Commons Amendments 11 and 12 would change the way in which clause 12 amends section 64 of the Criminal Justice and Court Services Act 2000. Section 64 of the 2000 Act provides for drug testing conditions to be imposed on offenders who are released from prison subject to licence. Amendments 11 and 12 would remove the requirement for an offender to have committed a specified trigger offence in order to have a drug testing condition imposed as part of licence. They would instead substitute a two-limbed test such that a requirement could only be imposed if:

- the misuse of a specified Class A or B drug by the offender caused or contributed to a past offence or is likely to result in further offending; and
- the offender is dependent on, or has a propensity to misuse, a specified Class A or Class B drug.

### ***Commons Amendment 13***

17. Commons Amendment 13 would amend the new section 64A of the Criminal Justice and Court Services Act 2000 inserted by clause 13. New section 64A provides for a drug appointment condition to be imposed on offenders who are released from prison subject to licence. Amendment 13 would make clear that the “conditions imposed on the offender’s release” referred to in the current drafting for new section 64A(3) are conditions that apply at any time after the offender’s release, not just conditions imposed at the point of release.

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***Commons Amendment 14, 21, 24 and 25***

18. Commons Amendments 14, 21 and 24 would amend Schedule 1 to the Crime (Sentences) Act 1997 (C(S)A 1997). Schedule 1 to the C(S)A 1997 provides for transfers of licence and other forms of post-release supervision from one United Kingdom jurisdiction to another through two means:

- Restricted: the sentencing provisions of the exporting jurisdiction are incorporated into the law of the receiving jurisdiction in relation to the transferred offender so that the offender can be managed in the receiving jurisdiction. The exporting jurisdiction retains overall control of the sentence.
- Unrestricted: the offender transfers onto an equivalent sentence in the receiving jurisdiction's legislation. The receiving jurisdiction assumes complete control of the offender.

19. Commons Amendment 14 would insert a new clause after clause 13 of the Bill. The new clause would amend Schedule 1 to the C(S)A 1997 to allow for drug testing and drug appointment conditions imposed under section 64 and new section 64A of the Criminal Justice and Court Services Act 2000 be transferred to Scotland or Northern Ireland on a restricted basis.

20. Commons Amendment 21 would amend Schedule 1 to the Crime (Sentences) Act 1997 (C(S)A 1997) to make provision for the transfer of offenders subject to post-sentence supervision to other jurisdictions in the British Islands.

21. The amendments to paragraphs 6 and 20 of the Schedule 1 to the C(S)A 1997 would bring post-sentence supervision within the scope of Schedule 1, permitting transfer of the supervision period on a restricted or unrestricted basis.

22. The amendments to paragraph 8 would incorporate the provisions relevant to post-sentence supervision into Scots law so that post-sentence supervision applies as part of Scots law to offenders transferred to Scotland when in custody, on licence or in the post-sentence supervision period. New sub-paragraph (10) would provide a 'gloss' to certain England and Wales specific terms so that when incorporated into Scots law the terms are read as being the equivalent in Scotland.

23. New sub-paragraph (11) would modify the effect of the supervision provisions to account for the differences in Scots law. The modifications would provide for:

- disapplication of post-sentence supervision when an offender is subject to certain licences particular to Scotland;

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- Scottish Ministers to be able to move offenders given custody for breach of post-sentence supervision between different types of custodial institution;
- electronic monitoring to be tailored to Scottish circumstances;
- supervisors in Scotland to be able to bring proceedings for breach of a Supervision Default Order (SDO);
- the Scottish court to be able to modify an SDO if another Scottish sentence is imposed.

24. New sub-paragraph (12) would provide further modifications where the post-sentence supervision in Scotland follows a Detention and Training Order (DTO) so that the supervisor is the officer of a Scottish local authority and Scottish Ministers are able to impose and modify supervision requirements (consistent with existing provisions in Schedule 1 for imposing DTO requirements on offenders transferred to Scotland).

25. New paragraph 8A would provide that for an offender subject to an SDO transferred between Scotland and England and Wales the area in which the offender resides will determine the court with jurisdiction to manage the SDO before and after the transfer.

26. The amendments to paragraph 9 would have the same effect in relation to Northern Ireland law as the amendments to paragraph 8 have in relation to Scots law with the following differences:

- the power for the court to impose an SDO is not incorporated into Northern Ireland law;
- the glossing provisions do not apply to supervision under section 256B of the Criminal Justice Act 2003;
- the power to impose supervision requirements on offenders subject to post-sentence supervision after a DTO is retained by the UK Secretary of State (consistent with existing provisions in Schedule 1 for imposing DTO requirements on offenders transferred to Northern Ireland).

27. The amendments to paragraph 15 would provide that, for unrestricted transfers, Ministers in Scotland or Northern Ireland would be able to direct how the supervision period of an offender transferred on an unrestricted basis is to be dealt with if there is no equivalent form of supervision the law of that jurisdiction.

28. New paragraph 19A would provide for the service of court processes relating to post-sentence supervision issued in Scotland or in England and Wales in the other jurisdiction.

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29. New paragraph 19B would provide for provisions in Scots law on electronic monitoring to apply to electronic monitoring imposed as part of an SDO enforced in Scotland.

30. Commons Amendment 24 would provide for court processes related to post-sentence supervision issued in Scotland or England and Wales to be executed in the other jurisdiction.

31. Commons Amendment 25 would amend Schedule 7 to the Bill to provide that the provision for transfer of drug testing and drug appointment conditions to other UK jurisdictions that would be made by Commons Amendment 14 would apply to cases where a person was released before the commencement day.

***Commons Amendment 15***

32. Commons Amendment 15 would amend new section 200A of the Criminal Justice Act 2003, which would be inserted into the Criminal Justice Act 2003 by clause 15 and create a rehabilitation activity requirement that could be imposed as part of a community order or suspended sentence order. The amendment would make clear that activities that responsible officers instruct offenders to participate in that have a reparative as well as a rehabilitative purpose can include restorative justice activities. The amendment would also provide a definition of restorative justice activities in this context, based on that set out in section 1ZA(2) of the Powers of Criminal Courts (Sentencing) Act 2000.

***Commons Amendments 16 and 17***

33. Commons Amendment 16 would amend clause 23 of the Bill to provide that so far as clause 20 (consequential and supplementary provision), clause 21 (transitional provision), and clause 22 (commencement) confer any powers relating to Schedule 1 to the C(S)A 1997, they also extend to the Channel Islands. This amendment would be consequential on Commons Amendments 14 and 21.

34. Commons Amendment 17 would amend clause 23 of the Bill to provide that the power in paragraph 19 of Schedule 1 to the C(S)A 1997 to apply Schedule 1 with appropriate amendments to the Isle of Man is exercisable in relation to any amendments made to Schedule 1 by the Bill.

***Commons Amendment 18***

35. Commons Amendment 18 would remove the privilege amendment added to the Bill by the House of Lords at Third Reading stage.

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***Commons Amendments 19 and 20***

36. Commons Amendment 19 and 20 would amend the drug testing requirement provided for by Schedule 1 as part of the post-sentence supervision period, and provided for as part of the 3-month youth supervision period under section 256B of the Criminal Justice Act 2003. The amendments would remove the requirement for an offender to have committed a specified trigger offence in order to have a drug testing requirement imposed as part of the supervision period. They would instead substitute a two-limbed test such that a requirement could only be imposed if:

- the misuse of specified Class A or B drugs by the offender caused or contributed to a past offence or is likely to result in further offending; and
- the offender is dependent on, or has a propensity to misuse, a specified Class A or Class B drug.

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*Ordered to be Printed,  
15th January 2014*

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LONDON: THE STATIONERY OFFICE

Printed in the United Kingdom by  
The Stationery Office Limited

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