

OFFENDER MANAGEMENT BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Offender Management Bill as introduced in the House of Commons on 22nd November 2006. They have been prepared by the Home Office in order to assist the reader 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. Where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. In December 2003, Lord Carter published his report, “Managing Offenders, Reducing Crime”, which recommended the establishment of a National Offender Management Service (NOMS) with the aim of reducing re-offending through more consistent and effective offender management. A key recommendation of the report was that more effective service delivery could be achieved through greater use of competition from private and voluntary providers, and through a separation of the line-management of public sector providers and the commissioning of services. In January 2004, the Government published its response, “Reducing Crime, Changing Lives”, which broadly accepted Lord Carter’s conclusions, and NOMS was established in June 2004.
4. Under the current legislation the statutory duty to make arrangements for the provision of probation services rests exclusively with the local probation board. Probation services cannot currently be provided by any other organisation unless sub-contracted directly by probation boards themselves. This Bill will transfer to the Secretary of State the statutory duty to make arrangements to provide probation services, so enabling him to commission from providers in the public, private and voluntary sector. It will establish probation trusts, as the public sector providers with whom he may make such arrangements.

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5. The initial proposals for these changes were set out in “Restructuring Probation to Reduce Re-offending” in October 2005. The responses, along with the Government’s proposals for taking the policy forward, were published in March 2006 in “Working with Probation to Protect the Public and Reduce Re-offending”. The Government’s intention to introduce greater diversity of provision was reiterated in both “A Five Year Strategy for Protecting the Public and Reducing Re-offending” (published in February 2006) and “Rebalancing the criminal justice system in favour of the law-abiding majority” (July 2006). In August 2006, the Government published “Improving Prison and Probation Services: Public Value Partnerships”, which outlined the vision for contestability and indicated the pace and scale of change envisaged.

6. The Bill will also:

- enable information to be shared between relevant bodies and persons for offender management purposes;
- remove some of the inconsistencies between the powers of staff in public and private custodial institutions;
- reform existing offences of bringing articles into prison;
- remove the requirement for the appointment of a prison medical officer; and
- make technical amendments to enable more efficient management of juvenile offenders sentenced to custody.

TERRITORIAL EXTENT

7. The Bill generally applies to England and Wales only. Some repeals and consequential amendments also extend to Scotland and Northern Ireland, as does the power in clause 30 to make consequential amendments.

THE BILL

8. The Bill is in four parts.

Part 1 – New arrangements for the provision of probation services

9. Clauses 1 to 9 make new arrangements for the provision of probation services. They give to the Secretary of State the responsibility to ensure the provision of probation services and enable him to contract with others to do this. The clauses also abolish local probation boards and allow the establishment of probation trusts with whom he may contract.

10. Clause 10 will allow NOMS, its constituent bodies and other entities specified on the face of the clause (e.g. other government departments) to engage in reciprocal information sharing agreements for the purpose of furthering NOMS aims.

Part 2 – Prisons

11. Clauses 11 to 15 remove some of the differences in the ways in which contracted-out prisons operate by giving their directors and prisoner custody officers powers comparable to those which governors and prison officers in directly-managed prisons already possess. Clauses 16 to 19 reform the existing offence of bringing proscribed articles into a prison and create a new offence of taking photographic images inside a prison. Clause 20 removes the requirement for prisons to have a medical officer. Clause 21 clarifies who may be authorised to undertake limited searches of prisoners.

Part 3 – Other provisions about Offender Management

12. Clause 22 amends section 202 of the Criminal Justice Act 2003 to allow the Secretary of State to accredit programmes for the purposes of programme requirements.

13. Clause 23 amends section 41 of the Crime and Disorder Act 1998 to allow the Secretary of State to ask the Youth Justice Board to exercise certain functions.

14. Clause 24 amends the arrangements for early release from the custodial part of the Detention and Training Order.

15. Clause 25 widens the category of accommodation in which a period of detention and training may be served.

16. Clause 26 enables the Secretary of State to direct that a term of detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 226 or 228 of the Criminal Justice Act 2003 may be treated as a sentence of imprisonment when the offender has reached the age of 18.

17. Clause 27 extends the provisions of the Criminal Justice and Public Order Act 1994 with regard to the authority for transporting detained young persons between relevant premises.

COMMENTARY ON CLAUSES

PART 1: PROBATION SERVICES

Clause 1 Meaning of “the probation purposes”

18. This clause sets out various purposes that govern the probation services that are to be provided under Part 1.

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19. *Subsection (1)* defines “the probation purposes.” It broadly replicates the existing provisions in the Criminal Justice and Court Services Act 2000 (“the 2000 Act”), as supplemented by the Local Probation Boards (Miscellaneous Provisions) Regulations 2001 (S.I. 2001/786) and as amended to reflect provisions on conditional cautions in the Criminal Justice Act 2003.

20. *Subsection (2)* adds further detail to the general purposes and is also based on the 2000 Act as amended. *Subsection (2)(b)* is new and puts beyond doubt that the provisions also cover the work which providers of probation services do in relation to offenders in prison.

21. *Subsection (3)* is new and clarifies that the probation purposes include the supervision and rehabilitation of persons convicted of an offence outside England and Wales who are serving all or part of their sentence in England and Wales.

22. *Subsection (4)* defines the terms “authorised person”, “conditional caution”, “community order”, “suspended sentence order” and “victim” which are used in this clause.

23. *Subsection (5)* enables the Secretary of State to extend these purposes by Regulations which will be subject to the negative resolution procedure.

Clause 2: Responsibility for ensuring the provision of probation services

24. This clause sets out the functions of the Secretary of State.

25. *Subsection (1)* states that it is the function of the Secretary of State to ensure that sufficient provision is made for probation purposes (as described in the previous clause) and for probation functions of the Secretary of State in other legislation. Similar functions to those set out in this section currently rest with local probation boards under section 5 of the 2000 Act.

26. *Subsection (2)* states that the Secretary of State is to discharge his function in relation to any probation provision by making arrangements under clause 3. Those arrangements will normally involve the making of contracts with a provider of services, but there is also the possibility of non-contractual arrangements or of the services being provided by the Secretary of State.

27. *Subsection (3)* makes clear that the Secretary of State does not need to take action under this clause in relation to any particular probation service if he is satisfied that adequate provision will be made under other arrangements.

28. *Subsection (4)* requires the Secretary of State to consult at least once a year on the probation provision to be made for the following year. It is envisaged that consultation will be conducted on a regional basis and that those consulted will include sentencers, providers of probation services, providers of custodial services,

other criminal justice agencies, local authorities and bodies involved in the provision of services which contribute to the reduction of re-offending.

Clause 3: Power to make arrangements for the provision of probation services

29. This clause gives details of how the Secretary of State will make arrangements for the provision of probation services.

30. *Subsection (1)* states that this section applies to any probation provision which the Secretary of State considers should be made under section 2(1).

31. *Subsection (2)* states that the Secretary of State may make contractual or other arrangements with any other person for the making of any probation provision. In most cases, it is envisaged that arrangements will be made under contract but this subsection does allow for other possibilities.

32. *Subsection (3)* clarifies that contractual or other arrangements may require or authorise the other party to:

- co-operate with other providers of probation services or persons concerned with crime prevention or reduction or with assisting victims;
- designate individuals as officers of a provider of probation services (subsequently defined in clause 7);
- sub-contract with third parties.

33. *Subsection (4)* enables the Secretary of State, if he considers it appropriate, to provide probation services himself, acting through any members of his staff, including prison officers. In most cases, it is anticipated that the Secretary of State will make arrangements with others to deliver probation services but this makes it possible for prison staff, for example, to deliver probation services in the community. This could be helpful in terms of bridging the gap between custody and the community.

34. *Subsection (5)* defines providers of probation purposes as either the person with whom the Secretary of State makes arrangements or the Secretary of State, where he makes provision through members of his staff.

Clause 4: Power to establish probation trusts

35. This clause gives details of the Secretary of State's power to establish probation trusts.

36. *Subsection (1)* states that the Secretary of State may, by order:

- establish a trust for purposes specified in the order;
- alter the name or purposes of a probation trust;
- dissolve a probation trust.

It is not envisaged that any geographical area for which a trust is to act will be specified in the order establishing the trust. This will be a matter for the contract agreed with the Secretary of State.

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37. *Subsection (2)* specifies that the purposes of a probation trust must consist of, or include, the making or performance by the trusts of contracts with the Secretary of State in line with clause 3(2).

38. *Subsection (3)(a)* specifies that the purposes may also enable the trust to enter into contracts with parties other than the Secretary of State for the provision of probation services. In practice, it is envisaged that the majority of a trust's activity will be under contract to commissioners acting on behalf of the Home Secretary, but this subsection allows trusts the flexibility to enter into contracts with others, including other probation trusts, where appropriate, provided that the activity concerned is part of their core purposes.

39. *Subsection (3)(b)* specifies that these contracts may also cover probation-related activities in relation to service courts.

40. *Subsection (3)(c)* provides that the purposes of a probation trust may also include any other purposes specified in regulations made by the Secretary of State.

41. *Subsection (4)* clarifies that the purposes set out in the order may be expressed in more specific terms than those used in *subsection (2) and (3)*.

42. *Subsection (5)* clarifies that a trust may carry out activities relating to contracts, including before and after contracts are agreed; this enables it to bid for and negotiate contracts in the first place and to carry out any activities necessary to wind up business after a contract has expired.

Clause 5: Power to make grants for probation purposes

43. This clause enables the Secretary of State to make payments (other than under the contractual or other arrangements referred to in clause 3) to a trust or any other person for the section 1 purposes. It is envisaged that contractual or other arrangements will be the main source of probation funding but this clause allows for situations where this may not be appropriate; a possible example might be a pilot or research project.

44. *Subsection (2)* makes clear that the Secretary of State may attach conditions to such grant payments.

Clause 6: Officers of providers of probation services

45. Existing legislation (e.g. section 2(1)(b) of the 2000 Act) refers to "officers of local probation boards". As local probation boards are abolished, a new term is needed. This clause sets out provisions relating to "officers of providers of probation services".

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46. *Subsection (1)* defines an “officer of a provider of probation services” as an individual who is for the time being authorised to carry out the functions of an officer of a particular provider of probation services.

47. Under *subsections (2) and (3)* an individual may be authorised as an officer of a provider of probation services by the Secretary of State or (where the provider is not the Secretary of State) by a provider of probation services who has been authorised to do so.

48. *Subsection (4)* defines the functions referred to in *subsection (1)*.

Clause 7: Abolition of local probation boards and transfers of property etc and staff

49. *Subsection (1)* provides for the abolition of local probation boards constituted under section 4 of the 2000 Act.

50. *Subsection (2)* gives effect to Schedule 2 which contains provisions relating to transfers of property etc or staff in connection with the abolition of local probation boards or the implementation or termination of arrangements under clause 3.

Clause 8: The inspectorate

51. This clause makes consequential amendments to the provisions establishing the Inspectorate of the National Probation Service to reflect the fact that the National Probation Service will cease to exist when the local probation boards are abolished and that the inspectorate will in future need to inspect a range of providers of probation services.

52. *Subsection (1)* renames Her Majesty’s Inspectorate of the National Probation Service for England and Wales “Her Majesty’s Inspectorate of Probation for England and Wales”, and renames its Chief Inspector “Her Majesty’s Chief Inspector of Probation for England and Wales”.

53. *Subsection (3)(a)* amends section 7 of the 2000 Act to include the inspection of the provision of probation services under clause 3. *Subsection (3)(b)* makes an amendment to allow the Secretary of State to give further directions related to the probation purposes referred to in Clause 1, conferring further functions on the inspectorate.

Clause 9: Approved premises

54. This clause sets out provisions relating to approved premises. It is closely based on existing provision in section 9 of the 2000 Act.

55. *Subsection (1)* is based on section 9(1) of the 2000 Act. It enables the Secretary of State to approve premises providing accommodation for persons on bail or for the supervision or rehabilitation of offenders.

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56. *Subsection (2)* enables the Secretary of State to make regulations concerning approved premises. This subsection is based on section 9(3) of the 2000 Act, under which the Criminal Justice and Court Services Act 2000 (Approved Premises) Regulations 2001 (S.I.2001/850) were made.

57. *Subsection (3)* enables the Secretary of State to make payments in relation to the operation of approved premises. They may also make payments in relation to their construction, enlargement or improvement if they are approved premises already or the works are being carried out with a view to their approval.

58. *Subsection (4)* is additional to the provision in the 2000 Act and makes clear that the Secretary of State may attach conditions to the payments in *subsection (3)*.

59. *Subsection (5)* clarifies that *subsection (3)* does not prevent the Secretary of State from using his powers under sections 2 to 5 to commission new premises and the running of them.

60. *Subsection (6)* clarifies that references in other enactments to an approved bail hostel or approved probation hostel are to be read as a reference to approved premises. This replicates *subsection (2)* of the 2000 Act.

61. *Subsection (7)* makes a consequential amendment to paragraph 2(7) of Schedule 2 to the Private Security Industry Act 2001 to make clear that those involved in the management of approved premises, who may need to determine who has access to those premises, are not caught by the licensing requirements applicable to manned guards.

Clause 10: Disclosure for offender management purposes

62. This clause clarifies the powers of certain bodies to share data for any purpose mentioned in *subsection (4)*.

63. *Subsections (1) and (2)* list the entities who are able to benefit from the power to share data.

64. *Subsection (3)* provides the power to share data but only if the disclosure is necessary or expedient for purposes mentioned in *subsection (4)*. That enables the bodies listed in *subsection (1)* to share data with one another. It also enables disclosure between those bodies and the bodies listed in *subsection (2)*. The clause has no application to disclosures between bodies listed in *subsection (2)*, but there may be powers elsewhere that cover these.

65. *Subsection (4)* specifies the purposes for which disclosures are permitted by the clause. These include “the probation purposes (see clause 1), “the performance of functions of the Secretary of State, other persons to whom clause 10 applies and persons listed in *subsection (2)*, provided the functions relate to prisons or prisoners, and other purposes connected with the management of offenders.

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66. *Subsection (5)* expands upon the meaning of functions, prisons, and prisoners, and confirms that young offender institutions and secure training centres, together with those persons detained within them, are treated as prisons or prisoners.

67. *Subsection (6)* confirms that exchange of information by virtue of this clause does not affect any existing power to share data that exists independently of the clause and is subject to the existing safeguards regarding data protection.

68. *Subsection (7)* creates a power for the Secretary of State to amend any enactment which would otherwise prevent the sharing of data permitted by this clause. Clause 28 provides that this order making power is subject to the affirmative resolution procedure.

69. *Subsection (8)* defines relevant contractor for the purposes of *subsection (2)* and confirms that those contracted to provide prison, young offender institution, secure training centre and related escort services are within the ambit of the clause.

70. *Subsection (9)* defines “enactment” for the purposes of *subsection (6)* so as to include any subordinate legislation within the meaning of the Interpretation Act 1978.

PART 2: PRISONS

Clause 11: Power of search in contracted out prisons and secure training centres

71. *Subsection (1)* of this clause amends section 86(2) of the 1991 Act which prevents prisoner custody officers performing custodial duties at a contracted-out prison from conducting anything more than a “rub-down” search of a visitor. The amendment removes this restriction and allows a prisoner custody officer to require a visitor he wishes to search to remove an item of clothing which is not only an outer coat, jacket or gloves. However, the amendment makes clear that a prisoner custody officer shall not be able to require that an intimate search is carried out. This subsection also amends section 86 by clarifying that the power to search will be exercised in line with relevant Prison Rules and Young Offender Institution Rules.

72. *Subsection (2)*, amends section 9 of the Criminal Justice and Public Order Act 1994 by removing an equivalent restriction placed upon a custody officer at a secure training centre and expands his power to search in line with *subsection (1)*. *Subsection (2)(a)* provides that the power to search will be exercised in accordance with relevant Secure Training Centre Rules.

Clause 12: Power of detention in contracted out prisons and secure training centres

73. *Subsection (1)* of this clause amends the Criminal Justice Act 1991 by inserting a new section 86A. This gives a prisoner custody officer the power to require a visitor to wait with him where that officer believes the visitor has committed an offence under sections 39 to 40D of the Prison Act 1952 or an offence of attempting,

inciting, conspiring or aiding, abetting, counselling or procuring the commission of such an offence.

74. The new section 86A enables the requirement to wait to be imposed solely in order to enable a constable to arrive. It also makes clear that the period for which a visitor may be required to wait shall be for so long as is necessary for a constable to arrive and, in any event, shall not exceed two hours. Section 86A also enables the prisoner custody officer to use reasonable force to prevent the visitor whom he has detained from making off. Further, it provides that a person who makes off when required by a prisoner custody officer to wait with him will be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

75. *Subsection (2)* ensures that the new section 86A power to detain extends to a prisoner custody officer performing contracted out functions at a directly managed prison.

76. *Subsection (3)* amends the Criminal Justice and Public Order Act 1994 by inserting a new section 9A which gives a custody officer in a secure training centre a power to detain, equivalent to that in the new section 86A of the 1991 Act.

77. *Subsection (4)* makes clear that the new section 9A power extends to a custody officer performing contracted out functions at a directly managed secure training centre.

Clause 13: Powers of authorised persons to perform custodial duties and search prisoners

78. *Subsection (2)* of this clause amends the Criminal Justice Act 1991 further by inserting a new section 86B.

79. Section 86B provides a mechanism for authorising a person working at a contracted out prison who is not a prisoner custody officer to perform restricted activities. Such activities are those that would involve the performance by the worker of a custodial duty. A custodial duty can only be performed by prisoner custody officers, owing to the effect of section 85(1) of the 1991 Act.

80. The new section 86B enables the Secretary of State to specify in an order subject to negative procedure the activities that a worker may be authorised to carry out. The director of a prison in which that worker is working may then authorise a worker to carry out one or more of the listed restricted activities. Any authorisation may be limited or given in general or specific terms and to be given either to individuals or a defined class of persons. Finally, none of the powers conferred by the section permit the use of force by a worker when carrying out a restricted activity.

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81. *Subsection (3)* provides that section 85(1) of the 1991 Act, which requires custodial duties to be performed only by a prisoner custody officer takes effect subject to the new section 86B.

Clause 14: Powers of director of a contracted out prison

82. This clause removes the prohibition in section 85(3) of the Criminal Justice Act 1991 that prevents a director in a contracted-out prison from exercising certain adjudication and segregation functions. The effect of this amendment is that a director, rather than a controller (who is employed by the Home Office and currently exercises the functions in question) will be able to inquire into a disciplinary charge laid against a prisoner, conduct the hearing of a charge or make an award in respect of any charge. All such proceedings will take place in accordance with the Prison Rules or the Young Offender Institution Rules, as appropriate. By virtue of the amendments made by this clause a director will also be able to segregate prisoners, temporarily confine prisoners or apply special controls or restraints in non-urgent situations.

Clause 15: Amendment of section 87 of Criminal Justice Act 1991

83. This clause makes two small amendments to section 87 of the Criminal Justice Act 1991. The principal effect of the clause is to enable the search powers vested in “authorised employees” under section 8A of the 1991 Act, together with the mechanism for authorising those searches, to apply in a contracted-out prison. Accordingly a director of such a prison will be able to authorise employees who are not prisoner custody officers to carry out “rub down” searches in accordance with section 8A.

Clause 16: Assisting a prisoner to escape

84. This clause replaces section 39 of the Prison Act 1952 with a new section 39 to bring the terminology up-to-date and more in line with the new sections contained in clause 17.

Clause 17: Conveyance of prohibited articles into or out of prison

85. This clause replaces section 40 of the Prison Act 1952 with new sections 40A, 40B and 40C. These new sections clarify the existing law, make changes to the penalties and mode of trial for certain offences and create new offences of taking mobile phones, sound recording devices and cameras into a prison.

86. New section 40A defines the categories of articles which are referred to in sections 40B and 40C. There are 3 groups (described as List A, List B and List C) of prohibited items. *Subsection (2)* provides for List A (dangerous articles and controlled drugs). *Subsection (3)* provides for List B articles (alcohol, mobile telephones, cameras and sound-recording devices). *Subsection (4)* defines “camera” and “sound-recording device”. *Subsection (5)* provides for List C items which include any article or substance prescribed by prison rules. *Subsection (6)* enables the Secretary of State

to amend new section 40A by adding, repealing or modifying an entry to List A or B or any provision for the interpretation of the section.

87. New section 40B makes it an offence to convey List A articles into or out of prison without authorisation. *Subsection (1)* details the type of conduct which is covered by the new offence. *Subsections (2) to (5)* define authorisation and detail how the authorisation may be given and by whom. *Subsection (6)* sets out the maximum penalty and mode of trial for the new offence.

88. New section 40C makes it an offence to convey List B or C articles into or out of prison. *Subsections (1) (List B) and (2) (List C)* detail the type of conduct which is prohibited by the new offences which a person commits if he does so without authorisation. *Subsection (4)* provides for defences where the person reasonably believed he had authorisation or where there was an overriding public interest which justified the doing of the prohibited act. *Subsections (5) (List B) and (6) (List C)* set out the maximum penalty and mode of trial for the new offences.

89. Clause 17 (2) deals with the Secretary of State's power to make orders under the Prison Act 1952.

Clause 18: Other offences relating to prison security

90. This clause inserts new sections 40D and 40E to the Prison Act 1952. These new sections create new offences of taking a photograph or making sound recordings within a prison or transmitting images or sounds from a prison without authorisation. It also makes it an offence to take a restricted document out of a prison.

91. New section 40D creates the offence of taking a photograph or making sound recordings in a prison or transmitting any image or sound by electronic communications. *Subsection (3)* creates offences related to restricted documents. *Subsection (4)* provides for defences where the person reasonably believed he had authorisation or where there was an overriding public interest which justified the doing of the prohibited act. *Subsection (5)* sets out the maximum penalty and mode of trial for the new offences.

92. New section 40E gives details of how an authorisation may be given and by whom. It also provides definitions of terms used in the new sections and makes minor repeals of, and consequential amendments to, the Prison Act 1952. Amendments by Order under section 40A(6) relating to List A articles can only be made after a draft order has been laid before and approved by a resolution of each House of Parliament. Where an amendment is only made to List B articles then the order is subject to annulment in Parliament.

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Clause 19: Offences under sections 17 and 18: extension of Crown immunity

93. New section 40F extends Crown immunity in relation to offences under new sections 40B, 40C and 40D to designated persons working at a prison. This ensures that all relevant staff can be treated the same in relation to the new offences.

Clause 20: Removal of requirement to appoint a medical officer etc

94. This clause removes the requirement in the Prison Act 1952 for prisons to appoint a medical officer. The medical officer role was created to reflect custom and practice at the time of incorporating specific managerial and clinical responsibilities within the prison. The role of the medical officer has, in practice, evolved over the years so that it is no longer common practice for managerial responsibilities to be part of the role. In recent years in many cases the purely clinical “prison doctor” role has been undertaken by externally contracted GPs from the NHS.

95. From April 2003, prison health services became the responsibility of the Secretary of State for health under separate existing legal provisions. The NHS, in the form of Primary Care Trusts have now assumed statutory responsibility for local prison health services. The original medical officer role is no longer required.

Clause 21: Amendment of section 8A of the Prison Act 1952

96. This clause makes a small amendment to section 8A of the Prison Act 1952 by providing that a person who is not necessarily an employee of a prison, but who is working there can be authorised to carry out a “rub down search” under section 8A.

PART 3: OTHER PROVISIONS ABOUT OFFENDER MANAGEMENT

Clause 22: Accreditation of programmes for purposes of programme requirements

97. Currently section 202 of the Criminal Justice Act 2003 makes provision for an ‘accreditation’ body to accredit programmes. The Correctional Services Accreditation Panel (CSAP) is designated as the accreditation body and is an advisory non-departmental public body. The Panel replaced the Prison Service’s General and Sex Offender Treatment Programme Accreditation Panels established by the Prison Service in 1996.

98. Following the establishment of NOMS the separation of commissioning from operational delivery secures the independence from service providers necessary for accreditation. There is therefore no longer a need for an NDPB or external chair. This clause amends section 202 of the Criminal Justice Act 2003, making provision for the Secretary of State to accredit programmes in place of the accreditation body. Decisions will be taken after consulting and receiving advice from a panel of experts to replace the CSAP.

Clause 23: Functions of Youth Justice Board

99. Section 41(6) of the Crime and Disorder Act 1998 currently enables the Secretary of State, by order, to allow the Youth Justice Board to exercise concurrently with him his functions in relation to the youth justice system. The Youth Justice Board already exercises functions in relation to the placement of offenders sentenced to a Detention and Training Order. *Subsection (2)* of this clause enables the Secretary of State to ask the Board to assist him in carrying out his functions in relation to the release of offenders in youth detention accommodation. *Subsection (3)* allows the Secretary of State, in an order under section 41(6), to restrict the manner or classes of case in which the Youth Justice Board may exercise functions of his in respect of individual offenders. The Secretary of State is also given power to include in the order supplementary, incidental or consequential provisions.

Clause 24: Detention and training orders: early release

100. This clause introduces an element of flexibility into the arrangements for early release from the custodial part of the Detention and Training Order. Young offenders serving Detention and Training Orders of 8 months or longer may be released one month before the mid-point of their sentence. Those serving orders of 18 months or longer may be released either one or two months before the mid-point. At present, early release, where authorised, must take place exactly one or, where appropriate, two, months before the mid-point. If anything happens to prevent this, the young person must remain in custody for a further month (i.e. until the mid-point, or the second early release point in the case of sentences of 18 months or longer).

101. The amendments made by *subsection (1)* enables the trainee to be released at any point during the last month of the order (or two months, in the case of orders of 18 months or longer).

102. *Subsection (2)* specifies that this new flexibility will apply to orders made before the clause comes into force as well as those made subsequently.

Clause 25: Accommodation in which period of detention and training to be served

103. Detention and Training Orders are in two parts: the first spent in custody and the second under supervision in the community. At present, the young person (or “trainee”) must be placed, during the custodial part, in one of the types of “secure accommodation” listed in section 107 of the Powers of Criminal Courts (Sentencing) Act 2000.

104. The amendments made by the clause provide that (unless he or she has attained the age of 18) the trainee must now be placed in “youth detention accommodation”. This category is wider than the current “secure accommodation”. In future, it will be possible, for example, to place a young person in an “open” children’s home as well as in a secure children’s home. Trainees who are sent back to custody because they have breached the terms of their notice of supervision or

committed a further offence during the community part of the order must, unless they have reached 18, also be placed in “youth detention accommodation”.

105. *Subsection (7)* replaces “secure accommodation” with “youth detention accommodation”. *Subsection (7)(b)* adds, as a type of “youth detention accommodation”, secure accommodation provided *on behalf of* a local authority to the list of allowable types of placement. (Secure accommodation provided *by* the local authority itself is already on the list.). *Subsection (7)(c)* removes the requirement that accommodation, directed by the Secretary of State to be “youth detention accommodation”, be for the purpose of restricting liberty.

106. Once the repeal of the sentence of detention in a Young Offender Institution (under the Criminal Justice and Court Services Act 2000) is brought into force, it is possible that young offender institutions will cease to accommodate 18-20 year olds. It is therefore necessary to make alternative provision for trainees for whom youth detention accommodation is no longer appropriate. *Subsection (5)* inserts a new section 105A in the 2000 Act which provides that, where a trainee has reached the age of 18, it will be possible for him or her to be detained in a prison at the direction of the Secretary of State.

Clause 26: Conversion of sentence of detention to sentence of imprisonment

107. This clause amends section 99 of the Powers of Criminal Courts (Sentencing) Act 2000 which currently enables the Secretary of State to direct that a term of detention under section 90 or 91 of that Act or section 226 or 228 of the Criminal Justice Act 2003 may be treated as a sentence of imprisonment, where the offender has reached the age of 21, or where the offender has reached the age of 18 if certain circumstances apply.

108. *Subsection (1)* provides that the Secretary of State may make such a direction whenever the offender has reached the age of 18. This is to take account of the reduction in the minimum age of imprisonment to 18 (by section 61 of the Criminal Justice and Court Services Act 2000 – yet to be commenced). *Subsection (1A)* provides that the change made by *subsection (1)* does not affect the Secretary of State’s power to direct that a person detained under section 92 or section 235 of the Criminal Justice Act 2003 be detained in a prison.

Clause 27: Escort arrangements

109. Arrangements for conveying juvenile offenders between courts, custodial establishments, police stations and hospitals are currently provided in the Criminal Justice Act 1991 and the Criminal Justice and Public Order Act 1994. This clause extends the provisions of the 1994 Act. It gives authority for the transporting of a greater range of detained young persons between a wider range of types of premises, including young offender institutions, secure training centres and secure children’s homes. Transporting of remanded, as well as sentenced, young people is covered, between any of the types of youth detention accommodation defined in section 107(1)

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of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended by clause 25(7)), as well as courts, police stations and hospitals.

PART 4: SUPPLEMENTAL

Clause 28: Orders and Regulations

110. This clause sets out the level of parliamentary scrutiny applicable to orders and regulations made under the Act. It does not apply to orders establishing probation trusts and commencement orders which are not subject to any Parliamentary procedure. Save for orders made under clause 10(2)(g) or (7) or clause 30(2)(b), which are subject to draft affirmative procedure, orders and regulations will be subject to negative resolution procedure.

Clause 29: Financial Provisions

111. This clause gives the Secretary of State authority to spend money provided by Parliament for the purposes of the Act.

Clause 30: Power to make consequential and transitional provision etc

112. This clause enables the Secretary of State, by order, to make any supplementary, incidental or consequential provision, and any transitional or saving provision which he considers necessary to give full effect to the Act.

Clause 31: Amendments, transitionals and repeals

113. This clause gives effect to Schedules 3, 4 and 5 which deal with minor and consequential amendments, transitional provisions and savings, and repeals respectively.

Clause 32: Extent

114. The Bill forms part of the law of England and Wales only, save for the exceptions listed.

Clause 33: Commencement

115. This clause sets out the arrangements for bringing into force the provisions of the Act.

116. *Subsection (1)* states that the preceding provisions shall come into force on a day which the Secretary of State may, by order, appoint.

117. *Subsection (2)* states that different provisions may be brought into force at different times and in different areas.

118. *Subsection (3)* states that orders under this section may include transitional provisions or savings.

Clause 34: Short title

119. This clause sets out the short title of the Bill.

COMMENTARY ON THE SCHEDULES

Schedule 1: Probation trusts: further provisions

120. *Paragraph 1* states that a probation trust is a body corporate and that its name is that specified in the order. It is envisaged that the order will name the probation trust in accordance with the geographical area in which it is based but without limiting the trust's area of operation to that geographical area (see also note to clause 4).

121. *Paragraph 3(1)* specifies that a probation trust shall comprise a chairman and no fewer than four other members appointed by the Secretary of State. In practice, we envisage that most trusts will have more members than this but the legislation allows flexibility for the number to vary between trusts and over time, depending on the nature and scale of an individual trust's business. A trust shall also include the chief executive who will become an ex officio member on appointment. *Paragraph 3(2)* clarifies that, where subsequent provisions refer to an "appointed member" of a trust, this refers to a member appointed by the Secretary of State; it does not include the chief executive.

122. *Paragraph 5* states that the Secretary of State shall pay appointed members and pay, or make provision, for the payment of pensions etc. In both cases, the level of such payments is for the Secretary of State to determine. The paragraph also enables, but does not require, the Secretary of State to compensate a member who ceases to hold office (other than on the expiry of his term) if the Secretary of State deems it appropriate.

123. *Paragraph 6* states that the members appointed by the Secretary of State shall appoint a chief executive who shall be an employee of the trust and whose terms of employment are for the appointed members to determine (at present the chief officer of a local probation board is appointed by the Secretary of State). But this would not apply if the Secretary of State were to direct the appointment of the first chief executive of the trust and his terms and conditions.

124. *Paragraph 7* sets out the provisions for the appointment of staff. The trust appoints its own staff and sets its own terms and conditions, subject to the proviso (in *paragraph 8*) which sets out that the determination of terms of employment relating to remuneration, fees or expenses and pensions, allowances or gratuities requires the approval of the Secretary of State unless he directs otherwise. Such a direction may apply to all trusts or to individual ones.

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125. *Paragraph 9* enables the trust to regulate its own procedure.
126. *Paragraph 10* clarifies that the validity of a trust's proceedings are not affected by a vacancy among its members or a defect in the appointment of any member.
127. *Paragraph 11* enables a probation trust to authorise an appointed member, a committee, the chief executive or any other member of staff to do anything that the trust would otherwise have to do itself.
128. *Paragraph 12* empowers a trust to do anything it thinks necessary to achieve its purposes, except that it may not hold land or borrow or invest money without the general or specific approval of the Secretary of State
129. *Paragraph 13* requires a trust to keep proper financial records and prepare an annual statement of accounts, which may be examined by the Comptroller and Auditor General. It makes consequential amendments to the Audit Commission Act 1988, as amended by the 2000 Act, changing references to "local probation boards" to "probation trusts" and requiring trusts to prepare their accounts in accordance with Audit Commission requirements. However, the Bill does not require the Secretary of State to consolidate accounts from the individual trusts for the National Audit Office (as the Home Office does currently for probation boards).
130. *Paragraph 14* requires a trust to comply with any general or specific directions given to it by the Secretary of State and to provide the Secretary of State with information if he so directs.

Schedule 2: Transfers of property etc and staff in connection with probation services arrangements

131. *Schedule 2* covers certain matters relating to the abolition of local probation boards or the making or termination of any arrangements for the delivery of probation services.
132. *Paragraph 1* states that transfer schemes may be made in connection with this and defines "property transfer scheme", "property", "relevant person" and "staff transfer scheme".
133. *Paragraphs 2 to 4* deal with property transfer schemes. *Paragraph 2* enables the Secretary of State to make a property transfer scheme to transfer to the Secretary of State the property and liabilities of a local probation board, or a relevant person, or to transfer to a relevant person any property or liabilities of the Secretary of State.
134. *Paragraph 3* states that a property transfer scheme takes precedence over any other provisions which might restrict transfers. Such compensation for loss of rights or reverter is to be paid by the transferor and/or transferee as appropriate, and the scheme may include a mechanism for resolving disputes over compensation.

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135. *Paragraph 4* states that any ongoing proceedings or activities relating to the transferor are to be treated as if relating to the transferee when the transfer has taken place.

136. *Paragraphs 5 to 10* deal with staff transfer schemes. The policy intention is that staff who transfer between providers of probation services should have their terms and conditions protected by law. In many cases the Transfer of Undertakings (Protection of Employment) Regulations 2006 will provide the appropriate protection. But, in cases where TUPE does not apply, these paragraphs enable the Secretary of State to make equivalent provision. *Paragraph 5* enables the Secretary of State to make a staff transfer scheme to transfer:

- employees of a local probation board to a relevant person;
- employees of one relevant person to another; or
- transfers from providers to the civil service and vice versa.

A scheme may not be made unless any directions about consultation given by the Secretary of State have been complied with.

137. *Paragraph 6* deals with transfers between relevant persons or between probation boards and relevant persons and it provides that, when an employee is transferred under the scheme, his continuity of employment is maintained and the rights, duties and liabilities of his previous employer are transferred to the new one. If an employee does not wish to transfer to the new employer, his contract is terminated and he is not to be treated as having been dismissed for the purposes of the Employment Rights Act 1996.

138. *Paragraph 7* makes similar provision in relation to employees of probation boards who transfer to the civil service.

139. *Paragraph 8* makes similar provision in relation to civil servants who transfer to the employment of a probation trust or other provider.

140. *Paragraph 9* makes clear that the Schedule does not prejudice an employee's right to terminate his employment if his working conditions are changed substantially to his detriment.

141. *Paragraph 10* states that, if a contract of employment with either a board or a trust is not transferred to a new employer, the contract is terminated and the employee is treated as having been dismissed for the purposes of the Employment Rights Act 1996.

Schedule 3: Minor and Consequential Amendments

142. *Part 1* makes amendments to various Acts consequential on the amendments in clause 25 relating to the accommodation in which a person may be detained under a detention and training order.

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143. *Part 2* makes changes consequential to the revision by clause 27 of the escort arrangements for young people who are detained, so as to include those remanded or committed to custody and to cover the full range of “youth detention accommodation”.

Schedule 4: Transitional and transitory provisions and savings

144. *Paragraph 1* deals with what happens when a chief officer of a local probation board is not appointed chief executive of a probation trust. If a local probation board is abolished under the terms of the Act and the chief officer of that board is not appointed as chief executive of a probation trust before ceasing to hold office as chief officer, the Secretary of State may pay such compensation as he considers appropriate.

145. *Paragraph 2* deals with what happens when a chief officer of a local probation board is appointed chief executive of a probation trust. In that case, his continuity of employment is preserved and the period he spent as a chief officer (including any previous service as a chief probation officer with a probation committee) will count as a period of employment with the trust.

146. *Paragraph 6* makes clear that the Secretary of State may make an order under clause 30(1) to provide transitional arrangements, in the event that the new escort arrangements in clause 27 are introduced before the sentences of detention in a young offender institution and custody for life are abolished.

147. Paragraph 7 of the Schedule makes transitory provision to cover the possibility that section 59 of the Criminal Justice and Court Services Act 2000 (which provides for the abolition of remand centres) does not come into force before the amendment made by paragraph 7(2) of Schedule 3.

Schedule 5: Repeals and revocations

148. This Schedule lists provisions repealed as a consequence of the Act.

FINANCIAL EFFECTS AND EFFECTS ON PUBLIC SERVICE MANPOWER

149. The Probation Service estimated outturn for 2006/07 is £880m. This estimate includes the cost of local probation boards and the National Probation Directorate. It excludes certain probation related functions that are carried out at NOMS centre such as Public Protection and Finance. The cost of electronic Monitoring is not included in this estimate.

150. The main financial implications arise from implementation of the new arrangements for the provision of probation services in Part 1. Offering other providers the opportunity to demonstrate what they could deliver will incur costs for NOMS in a number of areas, including the administration of procurement exercises,

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the preparation of providers proposals and commissioner requirements, and the management of contracts and in-house contract compliance. These are both affordable within current allocations and expected to be offset and exceeded by the savings from implementing commissioning with contestability.

151. Using a range of savings rates starting at 3.5% of the value of business contested and taking the upper limit of savings as 8.5% it is anticipated that there will be annual savings of over £2m at 3.5% and around £13m at 8.5%. These figures apply once the programme of contestability is established.

152. It is not envisaged that Parts 2 or 3 of the Bill would have any significant financial effects.

Effects of the Bill on Public Sector Manpower

153. Public sector manpower is not expected to increase as a result of the Bill.

154. The new arrangements for the provision of probation services may result in some public sector staff transferring to the private or voluntary sector. In such circumstances, terms and conditions will be protected by TUPE regulations, or by the equivalent provisions detailed in paragraph 5 of Schedule 2.

SUMMARY OF THE REGULATORY APPRAISAL

155. A regulatory impact assessment is published with the Bill. There are no proposals that have an adverse impact on business. Some additional business opportunities for the small business sector may be created through the increased competition for services.

EUROPEAN CONVENTION ON HUMAN RIGHTS

156. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before the Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Home Secretary, Dr John Reid, has made the following statement:

In my view the provisions of the Offender Management Bill are compatible with the Convention rights.

Part 1 – New arrangements for the provision of probation services

157. Clauses 1 to 8 abolish local probation boards and give the responsibility for providing probation services to the Secretary of State. These are the legislative provisions necessary to enable the Secretary of State to commission probation

services from the best available provider, whether in the public, private or voluntary sectors. Probation trusts will be established as the public sector provider with whom he may contract. Clause 9 deals with approved premises. It is not considered that these clauses give rise to any ECHR issues.

158. Clause 10 enables the Secretary of State, providers of probation services and their officers, to share information with each other or with the Youth Justice Board, private prison contractors, the police and any person responsible for electronically monitoring an individual. The power applies where it is necessary or expedient for certain specified purposes. Disclosure of information relating to individuals is capable, in individual cases, of engaging the Government's obligations under article 8 of the ECHR (right to respect to private life). However, the power created by the clause is compatible with those obligations. This is because the clause creates a power to disclose information, not a duty to do so. Accordingly the party proposing to disclose is able to refrain from doing so if he considers that such a disclosure would amount to an unlawful interference with an individual's article 8 rights

Part 2 – Prisons

159. *Powers of search etc.* Clauses 11 and 13 confer new powers of search. It is possible that the exercise of these new powers might engage the "right to respect for private life" limb of article 8 ECHR. Such an issue is most likely to arise in relation to exercise of new search powers or where the exercise of these new powers might engage the "correspondence" limb of article 8 ECHR, e.g. where the exercise of the new power authorises the performance of an activity which requires the supervision or observation of a prisoner in the prison or his communications with the outside world. However, it is considered that any interference with the right to respect for private life occasioned by these new powers would be in accordance with the law (because of the provision the Bill makes) and would be justified by reference to a legitimate aim – that of maintaining good order, protecting the health and security of prisoners and others and, possibly, preventing the commission of a crime. The question of whether any interference is proportionate will always depend on the circumstances of each case.

160. *Powers to detain.* Clause 12 amends the Criminal Justice Act 1991 and the Criminal Justice and Public Order Act 1994 to enable a prisoner custody officer, or a custody officer, to require a person to wait with him for a period no longer than is necessary for a constable to arrive and, in any event, for no longer than two hours. The Government considers that this requirement to wait does not amount to a deprivation of liberty and therefore does not engage article 5 of the ECHR (the right to liberty and security). However, even if this were not the case and article 5 was engaged, the power does not of itself breach any of the obligations under article 5 in any event. This is because article 5(1)(c) permits an interference with the right to liberty guaranteed by article 5, where that interference is "effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence". The power provided for in the Bill is squarely within this limb of article 5, as it is clear from the express wording of the clause that a

requirement to wait can be imposed by a prisoner custody officer or custody officer only where that officer has reason to believe that a person has committed a prison offence.

161. *Prison adjudication powers.* Clause 14 enables a director of a contracted out prison to inquire into a disciplinary charge against a prisoner and to order the removal of a prisoner from association with other prisoners, temporarily confining him or imposing any control or restraints. It is not considered that this gives rise to any ECHR issues.

162. *Conveyance of prohibited articles into or out of a prison.* Clauses 17, 18 and 19 amend the law relating to taking prohibited articles into and out of a prison by inserting new sections into the Prison Act 1952 and replacing section 40 and repealing section 41. The new section 40D will create the offences of: taking a photograph or making a sound-recording inside a prison; or the transmission of images or sound. That section will also create an offence of removing or transmitting a restricted document from a prison. Both of these offences will only be committed if the person is acting without authorisation. The Government is of the view that the new section 40D could, in certain circumstances, engage and interfere with rights under Article 10. However, the Department believes that the interference will be justified for the protection of the rights of prison staff and prisoners and the security of the prison.

163. The new section 40B will prohibit the conveyance of dangerous articles like drugs, explosives and weapons and does not therefore engage ECHR rights.

164. The new section 40C will prohibit the conveyance of, amongst other things, cameras, sound-recording devices and mobile phones as well as any other article prescribed by prison rules. These offences will only be committed if the person is acting without authorisation. The Government is of the view that the new section 40C may also engage Article 10 but that this is justifiable for the same reasons as for new section 40D.

165. *Abolition of requirement for a medical officer.* Clause 20 provides that it is no longer a requirement for there to be a medical officer for every prison. The reason for this change is because the provision of medical care is now contracted out to primary care trusts and the role of medical officers has become redundant. This raises no ECHR issues.

Part 3 – Other provisions about offender management

166. *Conversion of sentence of detention to sentence of imprisonment.* Clause 26 gives the Secretary of State power to send people who receive a detention and training order, and who turn 18, to prison and in this regard we note the Joint Committee on Human Rights' findings and recommendations in its Third Report. There will be policy guidelines in place to ensure that transfer to prison takes place only in appropriate cases, with due consideration to the requirements of the ECHR.

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Part 4 – Supplemental

167. The provisions in Part 4 of the Bill do not give rise to any ECHR issues.

COMMENCEMENT DATE

168. The provisions of the Bill with the exception of sections 33 and 34 will be brought into force by way of a commencement order made by the Secretary of State.

OFFENDER MANAGEMENT BILL

EXPLANATORY NOTES

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