

OFFENDER MANAGEMENT BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Offender Management Bill as brought from the House of Lords on 16 July 2007. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 47, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords amendments were in the name of the Minister or accepted by the Government, except for amendments 6, 8, 9, 11-14, 22, 23, 36, 38, which were opposed by the Government. (In the following Commentary, an asterisk appears in the heading of each of the paragraphs dealing with a non-Government amendment which was opposed by the Government.) Amendments 16 and 35 are further explained below.

These notes refer to the Lords Amendments to the Offender Management Bill, as brought from the House of Lords on 16 July 2007 [Bill 147]

COMMENTARY ON LORDS AMENDMENTS

Lords Amendment 1

5. Lords Amendment 1 would define “prison” for the purposes of clause 1.

Lords Amendments 2 and 3

6. Lords Amendments 2 and 3 would make drafting changes to clause 2 (responsibility for ensuring the provision of probation services).

Lords Amendments 4 and 5

7. Lords Amendments 4 and 5 respectively would remove from clause 2 the duty on the Secretary of State to consult on probation provision, and the definition of “year”. These provisions now appear respectively in subsections (1) and (6) of the new clause after clause 6: see Lords Amendment 15.

****Lords Amendments 6, 8 and 9***

8. Lords Amendments 6 and 8 would make changes to the power to make contractual arrangements for the making of probation provision. Amendment 6 would place the power in subsection (2) with the probation board or trust, instead of the Secretary of State. Amendment 8 would enable the Secretary of State to make contractual or other arrangements, or make provision himself, if it appears to him that sufficient provision is not being, or will not be, made by the board or trust. Amendment 9 is linked to Amendment 8.

Lords Amendments 7 and 10

9. Lords Amendments 7 and 10 would make drafting changes in clause 3 (power to make arrangements for the provision of probation services).

****Lords Amendment 11***

10. Lords Amendment 11 would require providers of probation services and their officers, in carrying out their functions under Part 1, and in particular in providing assistance to the courts and the Parole Board, to ensure that such assistance does not give rise to any conflict of interest between their obligation to provide such advice impartially and the financial interest of the provider.

****Lords Amendment 12***

11. Lords Amendment 12 links to Amendments 6 and 8. It would require probation trusts and boards to provide a plan for probation services for the forthcoming year.

****Lords Amendment 13***

12. Lords Amendment 13 is consequential on Lords Amendments 6 and 8.

****Lords Amendments 14 and 36***

13. Lords Amendments 14 and 36 would require that orders made under clause 5(1) to establish, alter, or dissolve a probation trust must take the form of a statutory instrument.

These notes refer to the Lords Amendments to the Offender Management Bill, as brought from the House of Lords on 16 July 2007 [Bill 147]

Lords Amendment 15

14. Lords Amendment 15 would insert a new clause which would require the Secretary of State to continue to publish national standards for the management of offenders and make clear that they may include standards relating to the management of offenders in custody. Subsection (3) of the new clause would require the Secretary of State, when making arrangements for probation services, to have regard to the need to ensure that the standards apply, so far as practicable, in the same way to every relevant provider.

Lords Amendment 16

15. Lords Amendment 16 would insert a new clause (annual plans etc). Subsection (1) includes the duty on the Secretary of State to consult on the probation provision to be made for the following year, a duty which was previously in clause 2 (see Lords Amendment 4); the Secretary of State is now required to include Welsh Ministers in this consultation. Subsection (2) requires the Secretary of State to publish an annual plan for the following year setting out how he proposes to make provision for probation services. Subsection (4) enables the Secretary of State to require providers of probation services, other than trusts, also to publish an annual plan. This new clause was added by a Government amendment in Committee but was subsequently amended on Report and Third Reading by non-Government amendments.

Lords Amendments 17, 18 and 19

16. Lords Amendments 17, 18 and 19 would make drafting changes in clause 7 (officers of providers of probation services).

Lords Amendment 20

17. Lords Amendment 20 would insert a new clause (national framework for qualifications of officers). Subsection (1) states that the Secretary of State may publish guidelines about any qualifications, experience or training required to perform the work of an officer of a provider of probation services; subsection (2) states that he must publish guidelines in relation to work involving the supervision of offenders and other work requiring direct contact with offenders (including offenders held in custody). Subsection (4) requires the Secretary of State, when making arrangements for probation services, to have regard to the need to ensure that the guidelines apply, so far as practicable, in the same way to every provider.

Lords Amendment 21

18. Lords Amendment 21 would amend subsection (7) of clause 11 (disclosure for offender management purposes) which provides the Secretary of State with a power to amend or repeal, by order subject to the affirmative procedure, any legislative provisions including any future legislation which prevents or inhibits disclosure which clause 11 seeks to authorise. Lords Amendment 21 restricts this power to legislation made before this Bill or in the same parliamentary session.

****Lords Amendment 22***

19. Lords Amendment 22 would set out a new procedure for orders made under clause 12 (power to repeal section 4). Clause 4 (restriction on certain arrangements under section 3(2)) states that contractual or other arrangements relating to the giving

These notes refer to the Lords Amendments to the Offender Management Bill, as brought from the House of Lords on 16 July 2007 [Bill 147]

of assistance to the courts may be made only with a probation trust or other public body. Orders made under clause 12 can allow for clause 4 to cease to have effect. Orders made under clause 12 may repeal clause 4. Lords Amendment 22 would provide that an order under clause 12 must not be made unless a draft order is laid before and approved by a resolution of each House. The draft must be laid before the House more than 60 days before the resolution for approving the draft can be agreed. It goes on to provide that no draft order can be laid until the Secretary of State has laid a report before Parliament, and until each House has approved the proposals contained within the report, either with or without modifications.

****Lords Amendment 23***

20. Lords Amendment 23 would insert a new clause (probation report). Subsection (1) requires the Secretary of State, within a period of six months of the coming into force of the Act, to lay a report before both Houses of Parliament containing: a review of the proposals in the report by Lord Carter, “Managing Offenders, Reducing Crime”, published in December 2003; responses to the Government consultation paper “Restructuring Probation to Reduce Re-Offending”, published in October 2005; a review of those responses; and proposals for the reform of the Probation Service. Subsection (2) also requires the report to include notification of when the Secretary of State intends to bring into force clause 38(1A) which enables different provision to be made for different purposes and for different areas.

Lords Amendment 24

21. Lords Amendment 24 would amend new section 40A of the Prison Act 1952 (c.52) which is set out in clause 19. It inserts subsection (4A) which provides that the reference in list B to a mobile telephone, a camera or a sound-recording device includes component parts and articles designed or adapted for use with those articles as well as the articles themselves.

Lords Amendment 25

22. Lords Amendment 25 would amend new section 40B of the Prison Act 1952 as set out in clause 19. New section 40B would make it an offence to convey list A articles into or out of prison without authorisation. Subsections (2) to (5) define authorisation and detail how the authorisation may be given and by whom. Amendment 24 would amend subsection (2) to add to the ways in which authorisation can be given in relation to all prisons or prisons of a specified nature so that authorisation can now be given by the Prison Rules as well as by the Secretary of State.

Lords Amendments 26 and 27

23. Lords Amendments 26 and 27 would make drafting changes in clauses 19 (conveyance of prohibited articles into or out of prison) and 20 (other offences relating to prison security).

Lords Amendments 28, 54, 55 and 56

24. Lords Amendment 28 would provide for the change of name from ‘Boards of Visitors’ to ‘Independent Monitoring Boards’ and would replace references to ‘Boards of Visitors’ in the Prison Act 1952 with the title “Independent Monitoring

These notes refer to the Lords Amendments to the Offender Management Bill, as brought from the House of Lords on 16 July 2007 [Bill 147]

Boards". It would also remove the requirement in section 6 of the Prison Act 1952 that at least two members of the Board must be justices of the peace.

25. Lords Amendment 54 would insert in Schedule 5, Repeals, the repeal of the statutory requirement in the Prisons Act 1952 that at least two members of the Board need to be magistrates. Lords Amendments 55 and 56 would insert in that same Schedule the repeal of entries relating to Boards of Visitors in the Race Relations Act 1976 and Freedom of Information Act 2000.

Lords Amendment 29

26. Lords Amendment 29 would require rules relating to the conduct of polygraphy sessions to be made by statutory instrument subject to the negative procedure rather than by the Secretary of State without formal procedure.

Lords Amendments 30, 31, 32 and 33 and 52

27. Lords Amendments 30, 31, 32, 33 and 52 would remove from the Bill clause 30(5) and related provisions. They are consequential to section 61 of the Criminal Justice and Court Services Act 2000, which abolishes the young adult sentence of detention in a young offender institution (and has yet to be commenced). When the sentence of detention in a young offender institution is abolished, young offender institutions may cease to be provided for young people over 18 and if so, it would no longer be possible to transfer young people sentenced to a detention and training order to a young offender institution when they reached the age of 18. Clause 30(5) would have made it possible to place 18 year-old DTO detainees in prison instead.

Lords Amendment 34

28. Lords Amendment 34, to leave out clause 31, was also related to changes brought about by the Criminal Justice and Court Services Act 2000. Clause 31 would have amended section 99 of the Powers of Criminal Courts (Sentencing) Act 2000 allowing the Secretary of State to direct that certain terms of detention may be treated as a sentence of imprisonment, where the offender has reached the age of 18, rather than 21 as at present.

Lords Amendment 35

29. Lords Amendment 35 would apply the affirmative resolution procedure to orders made under clause 5(1) to establish, alter or dissolve a probation trust, or any regulations made under clause 5(3)(c) adding to the purposes of a probation trust. The clause was amended by the Government in relation to clause 5(3)(c) at Committee, and subsequently amended by the Opposition in relation to clause 5(1) at Report.

Lords Amendment 37

30. Lords Amendment 37 would amend clause 35 (power to make consequential and transitional provision etc) and is designed to facilitate the making of consequential amendments. Subsection (3) of clause 35 includes a power to amend, repeal or revoke any enactment which is passed or made before the end of the session in which this Act is made. The amendment would extend this power to the end of the session after the Act is made.

These notes refer to the Lords Amendments to the Offender Management Bill, as brought from the House of Lords on 16 July 2007 [Bill 147]

****Lords Amendment 38***

31. Lords Amendment 38 is linked to Lords Amendment 22 and deals with commencement of Part 1 of the Act. It would provide that the new clause inserted by Lords Amendment 22 would come into force on the day on which the Act is passed. The rest of Part 1 would come into force on such day as the Secretary of State may appoint by order, but this order may not be laid until 60 days after the report required by Lords Amendment 22 has been laid before both Houses of Parliament.

Lords Amendment 39

32. Lords Amendment 39 states that, where practicable, at least one of the appointed members of a probation trust must be a member of a relevant local authority.

Lords Amendments 40 and 41

33. Lords Amendments 40 and 41 would have the effect of ensuring that the terms of employment of employees of probation trusts, insofar as they relate to remuneration, fees or expenses, and pensions, allowances or gratuities, require the approval of the Secretary of State.

Lords Amendments 42, 43, 44 and 45

34. Lords Amendments 42, 43, 44 and 45 are consequential amendments which would set out audit requirements for Welsh probation trusts.

Lords Amendment 46

35. Lords Amendment 46 is a consequential amendment which sets out how the duty conferred on probation boards by section 71(1) of the Race Relations Act 1976 in regard to race equality would transfer to the new arrangements in Part 1.

Lords Amendment 47

36. Lords Amendment 47 would add definitions of “officer of a provider of probation services” and “provider of probation services” to Schedule 1 to the Interpretation Act 1978.

Lords Amendment 48

37. Lords Amendment 48 is a consequential amendment which sets out how the duties conferred on probation boards by Sections 38, 39 and 41 of the Crime and Disorder Act 1998 in regard to the provision of youth justice services, youth offending teams and the Youth Justice Board would transfer to the new arrangements in Part 1.

Lords Amendment 49

38. Lords Amendment 49 is a consequential amendment which sets out how the duties conferred on probation boards by Sections 10(4), 11(1), 13(3), 25(4), 28(1), and 31(3) of the Children Act 2004 in regard to the welfare of children would transfer to the new arrangements in Part 1.

Lords Amendments 50 and 53

39. Lords Amendments 50 and 53 are consequential amendments which set out how the duties conferred on probation boards by Section 80 of the Local Government

These notes refer to the Lords Amendments to the Offender Management Bill, as brought from the House of Lords on 16 July 2007 [Bill 147]

and Public Involvement in Health Bill in regard to local improvement targets would transfer to the new arrangements in Part 1.

Lords Amendment 51

40. Lords Amendment 51 makes a number of consequential amendments to existing legislation to reflect the change of name. “Independent Monitoring Board” would be inserted into the Race Relations Act 1976 and Freedom of Information Act 2000 and is substituted for “Boards of Visitors” in the Prison Act 1952, Employment Rights Act 1996 and Powers of Criminal Courts (Sentencing) Act 2000.

FINANCIAL EFFECTS OF THE LORDS AMENDMENTS

41. There are no financial effects in any of the Lords Amendments.

OFFENDER MANAGEMENT BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These notes refer to the Lords Amendments to the Offender Management Bill, as brought from the House of Lords on 16 July 2007 [Bill 147]

Ordered, by The House of Commons, to be Printed, 16th July 2007.

© Parliamentary copyright House of Commons 2007
*Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ
Fax 01603 723000*

LONDON: THE STATIONERY OFFICE

Printed in the United Kingdom by
The Stationery Office Limited

£x.00