

Offender Management Bill

COMMONS REASONS AND AMENDMENTS

[The page and line references are to HL Bill 53, the bill as first printed for the Lords.]

Clause 3

LORDS AMENDMENT NO. 6

- 6** Page 3, line 21, leave out “Secretary of State” and insert “probation boards and probation trusts”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 6, 9, 12 and 13 for the following Reason –

- 6A** *Because it is an essential feature of Part 1 of the Bill that the commissioning function in Clause 3(2) is exercised by the Secretary of State.*

LORDS AMENDMENT NO. 8

- 8** Page 3, line 35, at end insert –
- “(3A) If it appears to the Secretary of State that sufficient provision of probation services is not being, or will not be, made in accordance with the arrangements under subsection (2), he shall –
- (a) make contractual or other arrangements with any other person for the making of the probation provision; or
 - (b) make the probation provision himself.”

COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

The Commons disagree to Lords Amendment No. 8 but propose the following Amendment in lieu –

- 8A** Page 3, line 35, at end insert –
- “(3A) The Secretary of State may make provision for the performance of any function to which section 2(1)(c) applies by making arrangements under

subsection (2) above providing for the delegation of that function to the other person.”

LORDS AMENDMENT NO. 9

- 9 Page 3, line 36, leave out from beginning to “, he” in line 37 and insert “Where the Secretary of State makes probation provision himself in accordance with subsection (3A)(b)”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 6, 9, 12 and 13 for the following Reason –

- 9A *Because it is an essential feature of Part 1 of the Bill that the commissioning function in Clause 3(2) is exercised by the Secretary of State.*

LORDS AMENDMENT NO. 11

- 11 Page 3, line 46, at end insert –

“(6) In carrying out their functions under this Part, and in particular in providing any assistance to the courts and to the Parole Board for England and Wales, providers of probation services and their officers shall ensure that such assistance does not give rise to any conflict of interest between their obligation to give such advice impartially and the financial interest of the provider.”

COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

The Commons disagree to Lords Amendment No. 11 but propose the following Amendment in lieu –

- 11A Page 3, line 46, at end insert –

“(6) In carrying out functions under this Part in relation to arrangements under section 3(2) with another person (“the provider”), the Secretary of State shall have regard to the need to take reasonable steps to avoid (so far as practicable) the risk that –

- (a) the provision, in pursuance of the arrangements, of assistance to a court or to the Parole Board for England and Wales, and
- (b) the carrying out, in pursuance of the arrangements, of any other activities,

might be adversely affected by any potential conflict between the provider’s obligations in relation to those activities and the financial interests of the provider.”

After Clause 3

LORDS AMENDMENT NO. 12

- 12 Insert the following new Clause –

“Requirement for probation trusts and probation boards to prepare plans

- (1) Each probation trust and probation board shall provide a plan for the forthcoming financial year at least four months before the commencement of that year.
- (2) A plan submitted under subsection (1) shall set out for the trust or board –
 - (a) its anticipated probation service needs;
 - (b) from whom it proposes to commission services; and
 - (c) the cost of those services.
- (3) Where the Secretary of State considers that sufficient provision will not be made, he may modify the plan.
- (4) Any modifications made by the Secretary of State shall be made no later than one month before the start of the financial year covered by the plan.”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 6, 9, 12 and 13 for the following Reason –

- 12A** *Because it is an essential feature of Part 1 of the Bill that the commissioning function in Clause 3(2) is exercised by the Secretary of State.*

Clause 4

LORDS AMENDMENT NO. 13

- 13** Page 4, line 2, leave out “3(2)” and insert “3”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 6, 9, 12 and 13 for the following Reason –

- 13A** *Because it is an essential feature of Part 1 of the Bill that the commissioning function in Clause 3(2) is exercised by the Secretary of State.*

After Clause 6

LORDS AMENDMENT NO. 16

- 16** Insert the following new Clause –

“Annual plans etc

- (1) The Secretary of State shall at least once in every year consult the Welsh Ministers, and such other persons as he thinks fit, about the provision that should be made for the purposes mentioned in section 2(1) for the following year.
- (2) The Secretary of State shall, before the end of each year, publish an annual plan for the following year which sets out the way in which the Secretary of State proposes to –

- (a) discharge his functions under section 2(1) and (2) during that year; and
 - (b) carry out any arrangements which he expects to be in force under section 3(4) for that year.
- (3) The Secretary of State shall have regard to the annual plan published under subsection (2) for any year –
- (a) in discharging his functions under section 2(1) and (2) during that year; and
 - (b) in making or carrying out arrangements under section 3(3A) or (4) for that year.
- (4) Arrangements made by the Secretary of State under section 3(3A) or (4) with a person other than a probation trust shall, if the Secretary of State thinks fit, require that person to publish an annual plan for each year in which it expects to carry out any specified activities.
- (5) In subsection (4) –
- “annual plan” means a plan setting out the way in which the person required to publish the plan proposes to carry out any specified activities during the year to which the plan relates;
 - “specified activities”, in relation to a person with whom arrangements under section 3(4) or (5) are made, means activities of a description specified in those arrangements for the purposes of subsection (4) above.
- (6) In this section “year” means a period of 12 months ending with 31st March.”

COMMONS AMENDMENTS TO LORDS AMENDMENT

The Commons agree to Lords Amendment No. 16 to which they have made the following Amendments –

- 16A** Line 18, leave out “3(3A) or (4)” and insert “3(4)”
- 16B** Line 19, at end insert –
 - “(3A) Arrangements made by the Secretary of State under section 3(2) with a probation trust shall require the trust to publish an annual plan for each year in which it expects to carry out any specified activities.”
- 16C** Line 20, leave out “3(3A) or (4)” and insert “3(2)”
- 16D** Line 24, leave out “subsection (4)” and insert “subsections (3A) and (4)”
- 16E** Line 25, leave out “person required to publish the plan” and insert “probation trust or other person (as the case may be)”
- 16F** Line 28, leave out “person with whom arrangements under sections 3(4) or (5)” and insert “probation trust or other person with whom arrangements under section 3(2)”
- 16G** Line 30, leave out “(4) above” and insert “(3A) or (4) above (as the case may be)”

After Clause 12

LORDS AMENDMENT NO. 22

22 Insert the following new Clause –

“Procedure for orders under section 12

- (1) The Secretary of State must not make an order under section 12 unless –
 - (a) a draft of the order has been laid before and approved by a resolution of each House; and
 - (b) each of the resolutions for approving the draft was agreed more than 60 days after the day on which the draft was laid before the House in question.
- (2) No draft order under section 12 is to be laid before Parliament unless –
 - (a) the Secretary of State has prepared and published a report containing a proposal for the making of such provision;
 - (b) the report sets out the Secretary of State’s reasons for making the proposal;
 - (c) the report has been laid before Parliament and each House has approved the proposal contained in the report, either with or without modifications; and
 - (d) the draft order gives effect to the proposal so far as approved by both Houses.
- (3) An approval given in either House satisfies the requirements of subsection (2)(c) only if it was given in that House on the first occasion on which a motion for the approval of the proposal was made in that House by a Minister of the Crown after –
 - (a) the laying of the report; or
 - (b) if more than one report containing that proposal has been laid before that House, the laying of the one laid most recently.
- (4) In reckoning a period of 60 days for the purposes of subsection (1), no account shall be taken of a day for which –
 - (a) Parliament is dissolved or prorogued; or
 - (b) the House in question is adjourned as part of an adjournment for more than four days.”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendment No. 22 for the following Reason –

22A *Because the ordinary affirmative procedure provided for by Clause 33 is sufficient to enable Parliament to consider the reasons for making an order under Clause 12.*

LORDS AMENDMENT NO. 23

23 Insert the following new Clause –

“Probation report

- (1) Within a period of six months of the coming into force of this Act, the Secretary of State shall lay a report before both Houses of Parliament containing—
- (a) a review of the proposals contained within the report published on 11th December 2003 “Managing Offenders, Reducing Crime: A New Approach”;
 - (b) the collated responses to the consultation document “Restructuring Probation to Reduce Re-Offending”;
 - (c) a review of the responses referred to in paragraph (b); and
 - (d) proposals for reform of the Probation Service.
- (2) The Secretary of State must include in a report under subsection (1) notification of when he will exercise his power under section 38(1A).”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 23 and 38 for the following Reason –

- 23A** *Because the proposed report is unnecessary as Part 1 of the Bill has been fully debated in Parliament.*

Clause 33

LORDS AMENDMENT NO. 35

- 35** Page 23, line 1, leave out “under” and insert “or regulations under –
() section 5(1) or (3)(c),”

COMMONS AMENDMENT TO LORDS AMENDMENT

The Commons agree to Lords Amendment No. 35 to which they have made the following Amendment –

- 35A** Line 2, leave out “5(1) or (3)(c)” and insert “5(3)(c)”

Clause 38

LORDS AMENDMENT NO. 38

- 38** Page 24, line 15, leave out subsection (1) and insert—
- “(1) Section (*Probation report*) comes into force on the day on which this Act is passed.
- (1A) Apart from section (*Probation report*), Part 1 of this Act comes into force on such day as the Secretary of State may appoint by order made by statutory instrument, but no such order may be made until the end of a period of 60 days commencing with the laying of a report under section (*Probation report*).
- (1B) Parts 2 to 4 of this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument.”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendments Nos. 23 and 38 for the following Reason –

- 38A** *Because the proposed report is unnecessary as Part 1 of the Bill has been fully debated in Parliament.*

Schedule 3

LORDS AMENDMENT NO. 47

- 47** Page 32, line 30, at end insert –

“Interpretation Act 1978 (c. 30)

In Schedule 1 to the Interpretation Act 1978 (words and expressions defined) there is inserted, at the appropriate places –

““Officer of a provider of probation services” in relation to England and Wales, has the meaning given by section 7(1) of the Offender Management Act 2007;”;
and

““Provider of probation services”, in relation to England and Wales, has the meaning given by section 3(5) of the Offender Management Act 2007;”.”

COMMONS AGREEMENT AND CONSEQUENTIAL AMENDMENT

The Commons agree to Lords Amendment No. 47 and have made the following consequential Amendment –

- 47A** Page 3, line 41, leave out subsection (5) and insert –

“(5) In this Part “provider of probation services” means –

- (a) a person with whom the Secretary of State has made arrangements that are in force under subsection (2); or*
- (b) the Secretary of State (in relation to probation provision which is the subject of arrangements that are in force under subsection (4)).”*