

*These notes refer to the Criminal Justice and Court Services Act 2000 (c.43) which received Royal Assent on 30 November 2000*

# **CRIMINAL JUSTICE AND COURT SERVICES ACT 2000**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Criminal Justice and Court Services Act which received Royal Assent on 30 November 2000. They have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a Section or part of a Section does not seem to require any explanation or comment, none is given.

### **SUMMARY**

3. The Act is in four parts.
  - *Part I:* creates two new services: the National Probation Service for England and Wales and the Children and Family Court Advisory and Support Service;
  - *Part II:* sets up an integrated statutory system to prevent unsuitable people from working with children, with a statutory ban enforced by criminal sanctions. Part II also increases the maximum penalties for offences relating to indecent photographs of children and raises the age of the child protected by section 1(1) of the Indecency with Children Act 1960 from under 14 to under 16.
  - *Part III:* deals with community orders including the renaming of probation orders, community service orders and combination orders, the greater use of electronic monitoring and stricter enforcement and ensures that sex offenders subject to the notification requirements of Part I of the Sex Offenders Act 1997 should not be eligible for the Home Detention Curfew scheme. Part III introduces new powers for the compulsory drug testing of offenders and alleged offenders at various points in their contact with the criminal justice system and allows a court considering the question of bail to take into account any drug misuse by the defendant. It provides the Crown Court with new powers to issue a summons or warrant in respect of an offender who fails to appear at the Crown Court to answer a summons issued by a justice in respect of an alleged breach of a community order. It also provides for reprimands and final warnings, under the Final Warning Scheme, to be given away from the police station. It introduces changes to the way in which tariffs are set for those under age 18 and abolishes the sentences of detention in a Young Offender Institution and custody for life for those over age 18. Part III also makes amendments to the Sex Offenders Act 1997, and makes provision in relation to the management of violent and sexual offenders;
  - *Part IV:* introduces a new power to allow the police access to Driver and Vehicle Licensing Agency (DVLA) driver records and increases the penalty for parents who fail to ensure that their children attend school regularly. Part IV extends the range

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of persons able to serve as a responsible officer under a parenting order. It also contains supplementary and consequential provisions.

## **THE ACT**

### ***Explanatory Notes for the Criminal Justice and Court Services Act***

4. The explanatory notes are divided into parts reflecting the structure of the Act. The background and summary of each subject area are detailed, followed by the commentary on Sections in number order.

## **BACKGROUND AND SUMMARY**

### **Part I: The New Services**

#### ***Chapter I: National Probation Service for England and Wales***

5. The consultation paper, "Joining Forces to Protect the Public", was issued in August 1998, and proposed various ways in which the prison and probation services could work together to improve the protection of the public and reduce re-offending. As a result of the consultation process, the Home Secretary decided that the two services should not combine, but should retain their separate identities while using complementary methods to achieve these common goals.
6. In the case of the probation service, the Home Secretary decided that the aim should be to protect the public and to reduce re-offending through the effective enforcement of community sentences. It was, however, concluded that the existing arrangements under the Probation Service Act 1993, which provides for 54 separate probation services, were not conducive to the efficient and successful achievement of this aim. Nor did that Act allow the Secretary of State to take steps to improve the performance of services. In addition, the Probation Service's responsibility for Family Court work did not fit well with its core aim.
7. *Chapter I* of the Act restructures the Probation Service and creates a unified service for England and Wales which will be renamed the National Probation Service for England and Wales. It will be directly accountable to the Home Secretary. It will have a structure based on 42 local areas, each with a local probation board composed of representatives of the local community who understand local needs. The boundaries of these areas will match those of the police forces, and the structure is designed as a step towards the government's aim of improving efficiency by creating common boundaries across all the agencies in the criminal justice system. The local probation boards will employ staff or make other contractual arrangements for the delivery of the services for which they are responsible. The Children and Family Court Advisory and Support Service, created in *Chapter II* of Part I of this Act, will take over Family Court work, leaving the National Probation Service for England and Wales to concentrate on working with individuals who are charged with or convicted of an offence.
8. The Act provides for the Home Secretary to appoint the members of local probation boards, and to appoint the chief officer of each area. He will be able to give directions to boards, and through them to chief officers, as to how they fulfil their statutory responsibilities.

#### ***Chapter II : Children and Family Court Advisory and Support Service***

9. Following recommendations in the consultation paper, "Support Services in Family Proceedings - Future Organisation of Court Welfare Services", issued in July 1998, *Chapter II* of Part I of the Act sets up the new Children and Family Court Advisory and Support Service (CAFCASS) for England and Wales. CAFCASS assumes the functions currently carried out by the Family Court Welfare Service (currently the responsibility of the Probation Service), the Guardian Ad Litem and Reporting Officer

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service (GALROs – who act in adoption and public law cases regarding the care of children – currently the responsibility of the Department of Health) and part of the Official Solicitor's Office (Lord Chancellor's Department).

10. CAF/CASS will serve the Family Division of the High Court, county courts (including care centres) and family proceedings courts. The service is intended to safeguard and promote the welfare of the children before courts dealing with family proceedings; give advice to any court about any application made to it in such proceedings; make provision for the children to be represented in such proceedings; and provide information, advice and other support for the children and their families.
11. The provisions in Part I, Chapter II and Schedule 2 establish the Children and Family Court Advisory and Support Service as a non-departmental public body, which will be accountable to the Lord Chancellor. The new service will also be subject to independent inspection in order to monitor and report on its activities.

## **Part II: Protection of Children**

12. *Part II* of the Act introduces measures which will complete the establishment of an integrated system for the protection of children. Under this system those who 'come to notice' as posing a risk to children, either when working with children in the health or education sectors or by commission of a serious criminal offence against a child, may, after a proper process, be made subject to a statutory ban on working with children. This builds on the provisions of the Education Reform Act 1988, the Education Act 1996 and the Protection of Children Act 1999.
13. Part V of the Police Act 1997 provided for a new criminal record system to be established which would provide three different levels of certification according to the authority of the individual requesting the information and the purpose of the requirement. This will be managed by a new Criminal Records Bureau. The Protection of Children Act 1999 provides for the Criminal Records Bureau to include information from the lists of those banned by the Secretary of State or by the courts in the two higher level certificates, where the information is sought in respect of a person seeking to work with children. It also provides for further positions prescribed by the Secretary of State to be added to those areas where information on those banned by the Secretary of State may be requested. This will permit the full scope of the new definition of working with children contained in this Part of this Act to be covered.
14. This part of the Act sets out that, where an individual is identified as being unsuitable to work with children, that individual should, after due process, be banned from such work. The Education Reform Act 1988, the Education Act 1996 and the Protection of Children Act 1999 provide for lists to be kept by the Secretary of State or National Assembly for Wales of individuals banned from working with children in organisations in the areas of healthcare, social services and education. The new measures will create a further way to ban unsuitable people from working with children. They provide that those who commit a serious offence against a child can be banned by a disqualification order by a judge from all such work as part of their sentence or the disposal of their case. The measures also provide a review process for those subject to a ban, whether imposed by the Secretary of State or a judge.
15. This Part of the Act further provides that those identified as unsuitable to work with children and banned from working with children under any of the specified methods, should be subject to criminal sanctions if they breach the ban. It will also be an offence for someone to offer the opportunity to work with children to an individual whom they know is subject to disqualification from such work.
16. The provisions include a new definition of working with children to enable all such areas of work to be covered by the ban. This will apply to work with children in all sectors, including casual work, and irrespective of whether the work is paid or unpaid.

### **Indecency with Children Act 1960: Sections 39 and 40**

17. This part of the Act raises the age of a child against whom the offence of indecency with a child can be committed to include children up to 16. This closes a loophole in the law and should improve the protection of children against those who abuse them.

### **Indecent photographs of children: increase of maximum penalties: Section 41**

18. Further provisions in this part of the Act strengthen the law which protects children through the prohibition on child pornography. Under the Protection of Children Act 1978, it is a criminal offence to take, permit to be taken, distribute, show, advertise or possess for distribution any indecent photograph or pseudo-photograph of a child under the age of 16. The maximum penalty for this offence is three years in prison and/or an unlimited fine. Section 160 of the Criminal Justice Act 1988 introduced the offence of simple possession of an indecent photograph of a child. This is a summary only offence carrying a maximum penalty of six months imprisonment and/or a level 5 fine.
19. The government is concerned that the level of penalties available for those exploiting children through the production of child pornography should reflect the fact that its production involves actual abuse of children. The number of offences committed under the Protection of Children Act 1978 and Section 160 of the Criminal Justice Act 1988 has increased significantly since the concept of pseudo-images (images produced by electronic means) was added to the legislation through an amendment in the Criminal Justice and Public Order Act 1994. Prosecutions under the PCA 1978 have increased from 40 (1994) to 116 (1998) whilst prosecutions for possession have increased from 53 (1994) to 167 (1998). So the government is ensuring that the current penalties reflect the seriousness of these offences. The measure increases the maximum sentence for taking, making, distributing and showing and possessing with a view to distribution, indecent photographs of children under sixteen. The penalty for simple possession of indecent images is also being increased.

### **Part III: Dealing with Offenders**

20. This part of the Act deals with community sentences. It provides for the renaming of some existing orders, for the creation of two new orders, for new warning and punishment measures for breach of orders and for new conditions to be attached to community sentences, and to prisoners on release from custody. It also provides for new police powers in relation to drug testing, and amends the Bail Act 1976.

### **Renaming certain community orders: Section 43, 44 and 45**

21. It is the government's view that the existing names of community orders are not easily understood. Therefore, probation orders, community service orders and combination orders will be renamed community rehabilitation orders, community punishment orders and community punishment and rehabilitation orders respectively. The new names are intended to reflect the functions and aims of the service as set out in Sections 1 and 2 of the Act.

### **Electronic Monitoring: Sections 46, 50, 51, 52, 62, 63, and 65**

22. The Criminal Justice Act 1991 made provision for court ordered curfews that could be monitored electronically. The Criminal Justice and Public Order Act 1994 amended the 1991 Act to enable this provision to be piloted in selected areas before being implemented nationally. From 1995, electronic monitoring of curfew orders was piloted in various areas of the country. The Crime (Sentences) Act 1997 amended the 1991 Act so that the offender's consent was not required for electronic monitoring to be carried out. On the basis of these successful trials, the arrangements were made available nationally from 1st December 1999.

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23. In addition, the 1997 Act enabled trials to begin in 1998 for the electronic monitoring of curfew orders imposed on persistent petty offenders, fine defaulters, and offenders aged 10 to 15 years old. Electronic monitoring of curfews imposed as a condition of bail was also the subject of a pilot scheme in 1998 and 1999. Electronically monitored curfew orders for 10 to 15 year olds will be rolled out nationally on 1 February 2001. No decision has yet been taken on the future of the remaining uses.
24. The Crime and Disorder Act 1998 amended the Criminal Justice Act 1991 so as to provide for certain categories of prisoner to spend part of their sentence on Home Detention Curfew subject to a risk assessment. The provisions came into operation in January 1999 and compliance is also being monitored electronically.
25. Electronic Monitoring is delivered by the private sector. Following trials of curfew orders, new five-year contracts were issued to the private sector in 1999. In the first year of the contract (28 January 1999 to 31 January 2000), electronic monitoring was used in 19,642 cases. Of these, 84.5% (16,589) were prisoners on Home Detention Curfew, and 13.1% (2,568) were curfew orders made under the Criminal Justice Act 1991 (others account for the remaining 2.4% (471)). As at May 2000 the completion rate of the Home Detention Curfew scheme was around 94% and is estimated around 90% for all other forms of electronic monitoring.
26. This Part of the Act provides for the extension of electronic monitoring. It creates a new disposal – an exclusion order – which can be used as a free-standing sentence or as a requirement of a community penalty. This order will require an offender to stay away from a certain place or places at certain times. Such monitoring is aimed at offenders who present a particular danger or nuisance to a particular victim or particular victims.
27. These Sections will allow for curfew and/or exclusion requirements to be a condition of a community penalty. In addition, they make provisions for the electronic monitoring of these exclusion/curfew requirements as well as allowing for the electronic monitoring of any other requirement of a community order.
28. These Sections also make provision for electronic monitoring to be imposed where offenders are released from custody. They explicitly provide for the electronic monitoring of exclusion or curfew requirements where offenders are subject to licence or Notice of Supervision, and establish the power of the Secretary of State to monitor electronically the movements of such offenders whilst subject to post-release supervision.
29. This part of the Act also makes a change to the existing Home Detention Curfew scheme. It excludes sex offenders subject to the notification requirements of Part I of the Sex Offenders Act 1997 from the scheme.

**Drug Testing: Sections 47, 48, 49, 57, 58, 63, 64 and 70**

30. The government believes that there is a clear link between drug misuse, particularly heroin and cocaine/crack, with crime, particularly acquisitive crime. Research evidence indicates that getting drug misusers into treatment can considerably reduce both their illegal use of drugs and their offending behaviour. Testing will help identify those who need treatment. Identifying drug misusing offenders at every stage in the criminal justice system is now a prime objective of the crime reduction strategy and is intended to make a contribution to the overall drugs strategy.
31. The powers provided for in the Act will build upon drug testing already being carried out through the Drug Treatment and Testing Order, provided for under Sections 61 to 64 of the Crime and Disorder Act 1998, and drug testing in prison, carried out under Section 16A of the Prison Act 1952.
32. The Act provides for the compulsory drug testing of offenders and alleged offenders at various points of the criminal justice system. The new powers will allow for drug testing:

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- after charge with a relevant offence, or where a police officer of at least the rank of Inspector has reasonable grounds to suspect a link between an offence with which a person has been charged and the misuse of a specified Class A drug, and authorises the taking of the sample at the police station, with a view to informing subsequent bail decisions of a court and referral to a drug worker;
  - after conviction but before sentence, where the court is considering passing a community sentence
    - after conviction of a relevant offence, with the offender being subject to a community sentence containing a drug testing requirement;
    - after release from prison on licence or Notice of Supervision, where the offender was serving a sentence imposed in respect of a relevant offence.
33. In addition, when making a decision about bail the court is also to have regard to drug misuse. Courts are also to be given a new free-standing community sentence – the Drug Abstinence Order – and will be placed under an express duty to have regard to a defendant’s drug misuse when considering the exercise of their bail discretion.
34. The provisions apply to offenders and alleged offenders aged 18 and over.

### **Breach of community orders: Sections 53, 54 and 55**

35. The revised *National Standards for the supervision of offenders in the community*, which came into force on 1 April 2000, set the standards to which offenders are supervised in the community and the action that will be taken if they fail to comply with their sentence. The purpose of these measures is to enhance compliance with community sentences by creating a statutory warning to reinforce the new National Standards and by introducing a certain and consistent penalty for breach of an order. The new National Standards provide that offenders will be issued with a maximum of one warning for an unacceptable failure to comply with a community sentence in any 12 month period, rather than, as previously, two warnings. The Act would put this warning on a statutory basis. Where a further breach of the order occurs, the court will have to determine whether it considers it likely that the offender will comply with the requirements of the order if it remains in force. If not then, unless there are exceptional circumstances, it must impose a sentence of imprisonment. Otherwise the court must impose a further community penalty.
36. The Access to Justice Act 1999 gave the Crown Court the power (now consolidated in the Powers of Criminal Courts (Sentencing) Act 2000) to direct that any breach proceedings in respect of a community sentence imposed by the Crown Court should be heard in that court, on a summons issued by a justice. The Act provides the Crown Court with a power to issue a summons or a warrant where an offender fails to appear in answer to the original summons.

### **Final Warning Scheme: Section 56**

37. Reprimands and final warnings were introduced under the Crime and Disorder Act 1998 to replace cautions for young offenders. The final warning scheme is designed to end repeat cautioning and ensure effective intervention programmes to help prevent re-offending.
38. Experience has shown that the effect of a reprimand or warning can be significantly enhanced by delivering it as part of a restorative process involving the young offender, the parents and, where appropriate, the victim. Guidance has been issued to the police encouraging this restorative approach.
39. In order to facilitate the restorative approach there are two measures, the first amending the 1998 Act to give flexibility to allow reprimands and warnings to be given away from

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the police station and the other amending the Police and Criminal Evidence Act 1984 to allow for release on bail pending the administration of the reprimand or final warning.

### **Abolition of sentences of detention in a young offender institution and custody for life: Sections 59 and 61**

40. The sentence of detention in a young offender institution (DYOI) was originally available for all those under the age of 21. The Crime and Disorder Act 1998 replaced the Secure Training Order and detention in a young offender institution for under 18s with the Detention and Training Order, implemented in April 2000. This leaves the sentence of DYOI available only for the 18-20 age group. However, as it is now widely accepted that 18, and not 21, is the age of majority, the government's view is that there is no logic in having a separate sentence for those aged between 18 and 20 years old, and those aged 21 and over.
41. Abolition of the sentence of detention in a young offender institution will remove the need for separation between those aged 18-20 and those aged 21 and over. This will enable the Prison Service to manage its estate more efficiently and provide young adult offenders with access to a wider range of regime activities.
42. As a corollary of this, it should be noted that in the case of an offender aged between 18 and 20 who would have been sentenced to life imprisonment if aged 21 or over, the court must currently pass a sentence of custody for life. Since the separate custodial sentence for 18 to 20 year olds of detention in a young offender institution is being abolished, the need for a separate life sentence provision no longer exists.

### **Life sentences: tariffs: Section 60**

43. On 16 December 1999, the European Court of Human Rights announced its conclusions in the cases of *T v. UK* and *V v. UK* - proceedings brought by Robert Thompson and Jon Venables who had been convicted in 1993 of having, at the age of 10, murdered James Bulger. Amongst other things, the Court concluded that it was not compatible with Article 6 of the Convention for the Home Secretary to set tariffs in cases of detention during Her Majesty's pleasure. This sentence must be passed where an offender is convicted of having committed murder under the age of 18. The tariff represents the minimum period that must be served by a life sentence prisoner before they can be considered for release.
44. In response to this finding by the Court, Section 60 makes provision for the sentencing court to set the tariff in these cases in the future.

### **Sexual and violent offenders: Section 66, 67, 68, 69 and Schedule 5**

45. The provisions in this part of the Act seek to tighten existing protections and create new protections against sexual and violent offenders.
46. The proposed measures fall into three main categories.
  - Changes to Part I of the Sex Offenders Act 1997 to amend its provisions and increase the penalties for failing to comply with them. These are additional safeguards to the Act which are being dealt with in advance of a major review of Part I of the Act announced in July 2000
  - Making statutory arrangements for risk management jointly by the police and probation services. These provisions will also provide a framework for guidance on the publication of information on arrangements for managing risk and other matters by these bodies. In addition, the framework for victim consultation and notification in respect of serious sexual and violent offenders will be placed on a statutory basis.
  - Finally the measures include a new sex offender restraining order to be available to senior courts in certain circumstances.

## **Part IV: General and Supplemental**

### **Access to driver licensing records: Section 71**

47. The Vehicle Crime Reduction Action Team established by the Home Secretary in September 1998 recommended that the police should have full access to driver records via the Police National Computer. The measure in the Act would enable police officers to have full and immediate access to those records.

### **School attendance: Section 72**

48. The Social Exclusion Unit's report of May 1998, *Truancy and Social Exclusion*, noted the important role that parents play in ensuring their children attend school and it stressed that the more serious the problems, the greater the need for more serious sanctions. In Autumn 1999, the Department for Education and Employment undertook a consultancy exercise entitled *Tackling Truancy Together* which included the proposal to raise the level of penalties for parents convicted of school attendance offences.
49. Section 444 of the Education Act 1996 provides that if a registered child of compulsory school age fails to attend school regularly, his parent is guilty of an offence. A parent convicted under this Section is liable to a fine up to level 3 on the standard scale – currently up to £1,000. Even when prosecuted, 80% of parents currently fail to attend court. The new provisions create a new aggravated offence committed where a parent fails without good reason to secure their child's attendance at school even though they know that he is not attending. In these cases the court will be able to impose a fine up to level 4 – i.e. a fine of up to £2,500 – or if it thinks appropriate a prison sentence of up to 3 months.

### **Parenting orders: responsible officer: Section 73**

50. Section 8 of the Crime and Disorder Act 1998 provided for the parenting order as a new means of reinforcing parents' responsibility for their children's behaviour and providing parents with structured help and support to cope with this. Following pilots which ran from September 1998 to March 2000 the order was implemented across England and Wales on 1 June 2000. *Section 73* extends the range of persons able to serve as responsible officer under a parenting order, that is the person responsible for overseeing the delivery of, and compliance with, the order.

## **COMMENTARY ON SECTIONS**

### **Part I: The New Services**

#### ***Chapter I: National Probation Service for England and Wales***

##### ***Sections 1 and 2: The New Service***

51. *Section 1* makes general provision for the existence of the service and defines its purposes in terms of assisting courts in sentencing decisions and providing for the supervision and rehabilitation of persons charged with or convicted of offences. *Section 2* sets out the aims of the service, which are to protect the public, to reduce reoffending, to provide for the proper punishment of offenders, to ensure that offenders are aware of the effects of their crimes on their victims and on the public and to rehabilitate offenders.

##### ***Section 3: Functions of the Secretary of State***

52. This Section sets out the role of the Secretary of State who will have responsibility for the National Probation Service for England and Wales and its funding.

#### ***Section 4 and 5: Local administration of the service***

53. At present there are 54 separate and independent probation services, each governed by a probation committee. The new service will operate as a single unified service for England and Wales.
54. The unified service will be administered on a local basis by local probation boards. This is to allow national priorities to be interpreted in the light of local circumstances and local needs. There will be 42 areas in all; 41 will match the police areas and a London service will cover both the Metropolitan Police District and the City of London Police Area. This will reduce the current number of 54 probation areas, with 20 of the existing services amalgamating to form 8 new local areas. This is designed to improve the management of the criminal justice system by creating common boundaries, based on police areas, for the different criminal justice agencies. *Section 4(6)* allows the Secretary of State to alter the probation areas.
55. *Section 5* describes the functions of the local probation boards. These will include the employment of staff, and may also include contracting with partner organisations (other boards, private sector companies, voluntary organisations or individuals) for the provision of services. Local probation boards will be able to contract out any activity relating to their core functions such as community service provision or delivery of offender programmes, but the Board will remain responsible for ensuring the quality of the service delivered by the contractor. They will be able to provide hostel accommodation for people who are on bail, people under supervision, people released on licence from prison and people who accept the need to live in a hostel on a voluntary basis because of the nature of their offending.
56. *Section 5(4)* allows the staff employed by local probation boards to work with other agencies in their local area on crime reduction, crime prevention and assisting victims of crime. This will include work on local crime reduction strategies undertaken under the provisions of the Crime and Disorder Act 1998 which will require the Boards of the new Service to contribute to the development and implementation of a crime reduction strategy for the local area.
57. *Section 5(8)* gives the Secretary of State the responsibility for determining whether a local probation board has made sufficient provision to meet its responsibilities.

#### ***Section 6 and 7: The Inspectorate***

58. *Section 6* maintains the current arrangements under which Her Majesty's Chief Inspector of Probation and other members of the inspectorate of probation hold office, but changes their title. *Section 7* describes the functions of the inspectorate, which may be required to inspect the work of each local probation board. The Secretary of State may give directions to the Inspectorate setting out the criteria on which the inspections are to be based and requiring the Inspectorate to report to the Secretary of State on each inspection, within a given timescale and on a consistent basis with an agreed format. The Chief Inspector will continue to advise the Home Secretary on particular problems that arise, and on personnel matters. The Secretary of State will be able to give additional functions to the Chief Inspector which will enable him to inspect partner organisations, for example, Langley House, National Association for Care and Resettlement of Offenders. It will also enable the Home Secretary to call for reports where he has concerns about the performance of a service or the people he has appointed to manage the service.

#### ***Section 8: Support Services - Powers to contract out***

59. This Section gives the Home Secretary the power to make an order to contract out work undertaken by local probation boards. This power may be exercised in relation to one or more parts of boards' responsibilities. In contrast to the contracting out power in Section 5, this Section is designed to enable the contracting out of support services

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which are common to all boards such as the provision of information technology and the administration of the payroll.

60. This power is available for use where greater efficiency or better value for money can be achieved; for instance if a particular activity could be managed more cost-effectively by organising it on a national or regional basis. Arrangements for contracting out all the functions of a board are dealt with under Section 10.

### ***Section 9: Approved premises***

61. This Section gives the Secretary of State the power to approve premises in which accommodation is provided for persons on bail and for, and in connection with, the supervision and rehabilitation of persons who have been convicted of an offence, to make regulations for the regulation, management and inspection of those premises, and to make payments for the maintenance or improvement of such premises.

### ***Section 10: Default powers***

62. *Section 10* gives the Secretary of State the power to make a management order which can modify the composition of a local probation board by#
- removing any or all of the chair, the chief officer and other board members;
  - replacing them in accordance with an alternative arrangement, i.e. a contract made with a private, voluntary or public sector organisation.
63. Although the composition of the board would change in such circumstances, the board as a legal entity would remain the same with all its duties and responsibilities under the Act.
64. It is intended that this power would only be used as a last resort where the Secretary of State concluded that a board is failing to perform its functions to a satisfactory standard, or where the board had made arrangements which did not offer good value for money, and the normal processes of performance management had been unable to achieve the required improvement.

## ***Chapter II : Children and Family Court Advisory and Support Service (CAFCASS)***

### ***Section 11: Establishment of CAFCASS***

65. *Section 11* makes a general provision for the creation of the new Children and Family Court Advisory and Support Service (CAFCASS), as a body corporate.

### ***Section 12: The principal functions of CAFCASS***

66. *Section 12* sets out the functions of CAFCASS, which are described in paragraph 25 of these notes. Subsection (3) provides for regulations for grants to be paid for the furthering of the performance of any functions of CAFCASS.

### ***Section 13: Other powers of CAFCASS***

67. *Section 13* sets out the other powers that CAFCASS may use to perform its functions, such as to commission or assist the conduct of research. Subsection (1) will allow CAFCASS to enter into arrangements with voluntary and other organisations to contract out some of its work, provided that it is satisfied that the work will be done efficiently, to the required standard and cost-effectively. Subsection (4) also provides that CAFCASS may enter into arrangements with individuals including self-employed people.

### ***Section 14: Provision of staff or services to other organisations***

68. *Section 14* gives CAFCASS the power to provide services to other organisations.

### ***Section 15: Right to conduct litigation and right of audience***

69. *Section 15* enables CAF/CASS to authorise prescribed officers of the Service to undertake litigation and have rights of audience. It replicates the current arrangements in the Official Solicitor's office, with lawyers and caseworkers having the ability to conduct litigation and have rights of audience in all courts. Control over CAF/CASS's power under *Section 15* will be exercised through regulations, made by the Lord Chancellor, which will set out the criteria that officers of the service will have to meet before they can be authorised under this *Section*.

### ***Section 16: Cross-examination of officers of the Service***

70. *Section 16* sets out that all CAF/CASS officers may be subject to cross-examination, except when exercising the rights given in *Section 15*.

### ***Section 17: Inspection***

71. *Section 17* amends *Section 62* of the Justices of the Peace Act 1997 by inserting a new *Section 3A* in order to extend the remit of the Magistrates' Court Inspectorate to include inspecting CAF/CASS to monitor and report on its activities. A new Subsection (2A) of *Section 63* of the 1997 Act sets out a general right of inspection. It consists of a right of entry to any premises occupied by the Service and also a right to inspect and take copies of any records kept by the Service relating to the performance of its function.

## ***Chapter III : General***

### ***Section 18: Definitions***

72. *Section 18* provides the definitions of the people, property and organisations to whom this Part of the Act, which deals with transfers from existing organisations to new ones, applies.

### ***Section 19: Property***

73. This *Section* provides the power for either the Secretary of State or the Lord Chancellor to set up a scheme to transfer to the Crown property and liabilities from probation committees, the Receiver for the Metropolitan Police District (who owns property on behalf of the Inner London Probation Service), local authorities and the Official Solicitor. The property (other than land in the case of probation committees) may then be transferred from the Crown to a new organisation. This provision will make possible the central ownership and management, by the Secretary of State, of the current probation service estate which amounts to approximately 1,100 buildings. It will also allow the transfer of elements of the estate related to Family Court Welfare Officers to CAF/CASS. It will also enable the transfer to CAF/CASS of property currently owned by local authorities, probation committees and the Official Solicitor. Subsections (2) and (3) provide that land transferring to CAF/CASS will be exempted from Stamp Duty.

### ***Sections 20 and 21: Transfer of staff and effect of transfer***

74. *Sections 20* and *21* allow the Secretary of State and the Lord Chancellor to make schemes for transferring staff into the new Services. These schemes would cover the transfer of staff from a probation committee to a local probation board or to CAF/CASS, and the transfer of relevant local authority staff and staff of the Official Solicitor's office to CAF/CASS. The *Sections* contain provisions which give staff the right to maintain their terms and conditions of service when they transfer to their new employers. *Section 20(2)* provides that chief probation officers currently employed by probation committees may be appointed as chief officers of local boards.

### ***Section 22: Effect of transfer of chief probation officers***

75. *Section 22* makes provision for the effect of the transfer of people currently employed as chief probation officers into post-holders appointed as chief officers of local probation boards. It gives those who are appointed the right to transfer their terms and conditions of employment, so far as they are appropriate to the new post. *Paragraph 3(5)* of *Schedule 1* gives the chief officer the same employment rights as he would have under the Employment Rights Act 1996 as if he were in Crown Employment, for instance rights against unfair dismissal. Chief officers of local probation boards will be able to count their previous service as a chief probation officer as a part of their continuous employment for these purposes. Under *Section 22(7)*, chief probation officers who are not appointed as chief officers are deemed to have been dismissed by their probation committee.

### ***Section 23: Transfer of staff in consequence of arrangements under Part I***

76. *Section 23* allows the ‘appropriate Minister’, i.e. the Secretary of State in the case of the probation service or the Lord Chancellor in relation to CAF/CASS, to set up a scheme for the transfer of staff where, at a future date, functions of a local probation board or CAF/CASS are contracted out under the provisions in *Sections 5, 8 or 13* of the Act. It gives staff the right to transfer to the new service provider and to maintain their terms and conditions of service when they transfer to the new employer.

### ***Section 24: Provision for the protection of children***

77. *Section 24* ensures that the Protection of Children Act 1999 will apply to CAF/CASS and its officers. It further ensures that those organisations which perform functions on behalf of CAF/CASS will also be governed by the Protection of Children Act 1999.

### ***Section 25: Interpretation of Part I***

78. *Section 25* provides definitions of terms used in Part I of the Act.

## **Part II: Protection of Children**

### ***Sections 26 and 27: Meaning of “offence against a child”***

79. *Section 26* establishes the circumstances under which an individual will be deemed to have committed an offence against a child. *Subsection (1)* sets out those circumstances, according to the list of offences and circumstances in *Schedule 4*. *Subsection (2)* allows the Secretary of State to alter *Schedule 4*, subject to the agreement of Parliament by *affirmative resolution order*. The Secretary of State can thereby ensure that the legislation remains comprehensive in scope, covering all (and potentially new) circumstances in which an individual commits a serious offence against a child.
80. *Section 27* ensures that an individual charged with or convicted of an armed forces offence equivalent to an offence against a child is treated as an individual under *Section 26*, and that members of the armed forces serving overseas are also caught by the legislation.

### ***Sections 28, 29 and 30: Disqualification from working with children***

81. *Section 28* sets out the conditions under which a court is required to make an order disqualifying an adult from working with children. *Subsections (5)* and *(6)* state the circumstances when a court might not make such an order, and require a record of the reasons why no such order was made. Such disqualification orders are not available in a Magistrates’ Court.
82. *Section 29* makes similar provisions to those in *Section 28*, but for juveniles (those aged under 18 at the time when they commit the offence). However, *Subsection (5)* of *Section*

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28 allows the court not to make an order for an adult only when it is satisfied that further offences against children are unlikely. In contrast, in the case of a juvenile – *Subsection (4)* of Section 29 – the court may make an order only if they deem it likely that the juvenile will re-offend against children. An adult must therefore be disqualified unless the court is satisfied that he is unlikely to re-offend, whereas a court must assume that a juvenile will not re-offend, unless they are satisfied that there is sufficient evidence to the contrary, in which case it is required to disqualify the juvenile.

83. *Section 30* establishes the meaning of a ‘qualifying sentence’, a ‘relevant order’, and other key phrases used in Sections 28 and 29. *Subsection (4)* also clarifies the issue of the determination of an offender’s age.

### ***Section 31: Appeals***

84. *Section 31* provides for appeal against the disqualification order.

### ***Section 32: Review of disqualification***

85. *Section 32* entitles an individual to apply for a review of the disqualification order by a Tribunal set up under Section 9 of, and the Schedule to, the Protection of Children Act 1999. (Paragraphs in *Schedule 7* also provide for a review of those individuals listed by the Secretary of State).

### ***Section 33: Conditions for application for review***

86. *Section 33* sets out the circumstances and conditions under which a disqualified individual might apply to the Tribunal to have the disqualification lifted. *Subsections (3), (4)* and *(6)* set out how long either an adult or a juvenile who is disqualified must wait (ten and five years respectively) before he can apply to the Tribunal for the disqualification to be lifted. *Subsections (3)(b)* and *(4)(b)* require that the same period must pass after an unsuccessful application for review, before a further application can be made.
87. *Subsection (5)* of Section 33 requires that the individual first prove to the Tribunal that his circumstances have changed sufficiently to warrant a review of the disqualification order. Thus someone who has successfully reared his own children, or once committed an act of violence towards a child when an alcoholic but can now demonstrate he is free of this addiction, might be entitled to a review. The individual must then demonstrate to the Tribunal that this change of circumstances is such that he is suitable to work with children, and therefore need no longer be subject to disqualification from working with children, before the Tribunal can lift the disqualification.

### ***Section 34: Restoration of a disqualification order***

88. Where a tribunal has reviewed a disqualification and has ordered that it should cease to have effect, *Section 34* allows for the disqualification order to be restored, and sets out the circumstances under which that might occur. Where an individual no longer subject to a disqualification order acts in a way which gives either a chief officer of police or a director of social services reasonable cause to believe that the individual’s behaviour threatens the safety of children and that a further disqualification order is necessary to protect children from serious harm, the chief officer or director can apply to a High Court for a disqualification order to be made. The High Court, if satisfied that the conditions of *Subsection (2)* are met, can order the restoration of the order. (Paragraphs in Schedule 7 also provide for the restoration of previously disqualified individuals to the lists maintained by the Secretary of State.)

### ***Sections 35 and 36: Work in regulated positions***

89. *Section 35* provides for the offence of seeking, offering, accepting, or continuing to, work with children while under a disqualification order. An individual commits an

offence if he knowingly seeks etc. to work with children in a regulated position while disqualified:

- by inclusion (other than provisionally) on the list held by the Department of Health, of those considered unsuitable to work with children, under the Protection of Children Act 1999;
  - by inclusion on ‘List 99’, on the grounds of not being a fit person to be employed as a teacher or in certain other areas of education under the Education Reform Act 1988, as amended by the Protection of Children Act 1999;
  - by inclusion on any list kept by the Secretary of State or National Assembly of Wales of persons disqualified under Section 470 or 471 of the Education Act 1996 (as being amended by the Care Standards Act 2000 on grounds that they are unsuitable to work with children);
  - by a disqualification order made under this Part.
90. An individual also commits an offence if he knowingly offers work in a regulated position to a disqualified person. This is intended to cover the individual who knows someone is disqualified, but nevertheless offers him work in a regulated position. It is also an offence for someone to fail to remove an individual he knows is disqualified from working with children (e.g. to hold open a position for a disqualified person).
91. *Subsection (3)* provides the defence for an individual who seeks to work with children that he neither knew, nor could be reasonably expected to know, that he was himself disqualified from such work. The provision ‘be reasonably expected to know’ is intended to ensure that an individual cannot escape liability by, for example, moving house to prevent the notification of a disqualification by the Secretary of State being served on him.
92. *Subsection (6)* sets out the penalty that will follow if an individual is convicted of either offence.
93. *Section 36* provides a definition of ‘working with children’ that encompasses all the positions and roles from which those subject to disqualification will be excluded. The definition is deliberately wide-ranging, in order to provide protection for children across as broad an area as possible. However it seeks to ensure that casual contact with children which does not form part of the normal duties of the position or where there is no element of care involved (for example, the supermarket assistant) is excluded, except in some particular areas identified in the Act. Under *Section 42* a child is defined as a person under 18. The only exception to this is in *Subsection (1)(e)* of Section 36 in relation to children in work where the age limit is under 16. This is intended to ensure that those who, for example, supervise children who have left school and are in regular work, are not covered by the definition. *Subsection (1)* of Section 36 identifies the eight main areas of ‘regulated positions’ to be covered by the disqualification. *Subsections (2) to (12)* of Section 36 go on to clarify some of these areas:
- *Subsection (2)* clarifies *Subsection (1)(a)* by defining the nature of the establishment in which the regulated position is held; these are the areas of work in which it is considered right that all members of staff, whether carers or ancillary staff, should be included;
  - *Subsection (3)* clarifies *Subsection (1)(b)* by ensuring that it does not apply to any parts of the premises where children are not looked after, or at time when children are not present. This prevents, for example, the need to check workers in another part of a building in which a holiday crèche is held, or the cleaners who clean the premises when the children are not present;
  - *Subsections (4) and (5)* clarify *Subsections (1)(c) and (1)(d)* by ensuring that they do not apply where the contact is made in the course of a child’s employment;

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- *Subsection (6)* defines *Subsection (1)(g)*, listing positions or roles not otherwise caught by the definition, such as members of a school's governing body and charitable trustees; these positions are ones which may provide privileged access to children and imply that the individual concerned is a person who can be properly trusted with children, and are therefore included even if contact with children is not a regular part of the position. *Subsection (7)* clarifies certain of these definitions as they relate to local government, and *Subsections (8)* and *(9)* further qualify *Subsection (6)* for the purposes of applying these measures to Northern Ireland;
  - *Subsection (10)* clarifies *Subsection (1)(h)* by explaining what is meant by the supervision or management of an individual; and
  - *Subsections (11)* to *(14)* provide further definition and clarification where necessary.
94. *Subsection (15)* gives the Secretary of State power to amend the definition of a 'regulated position' by *affirmative resolution order*, should it become apparent that - perhaps because new positions are created or developed - there are positions or roles not covered by this legislation that should be caught.

### ***Section 37: Disqualification in Scotland or Northern Ireland***

95. *Section 37* provides a power for the Secretary of State to ensure that individuals who, under the law of Scotland or Northern Ireland are subject to a prohibition or disqualification which corresponds to the means of disqualification provided for by *Section 35*, are subject to this Part i.e. disqualified from working with children in England and Wales. Statutory provisions are not yet in place in Scotland or Northern Ireland. This *Section* is intended to allow the protections provided by the integrated system to be available on a UK basis in due course.

### ***Section 38: Rehabilitation of offenders***

96. *Section 38* is designed to ensure that an offender disqualified from working with children under this part is not unfairly disadvantaged in other spheres of work. This *Section* provides that a disqualification order is not considered a sentence for the purposes of the Rehabilitation of Offenders Act 1974. It will prevent the existence of the disqualification order stopping the normal rehabilitation period for the sentence it accompanies applying. However, information on such convictions and the disqualification order will be available to those able to ask exempted questions under Exceptions Orders made under the Rehabilitation of Offenders Act 1974.

### ***Sections 39 and 40: Indecency with Children Act 1960***

97. This Part of the Act raises the age of a child against whom the offence of indecency with a child can be committed to include children up to 16. This closes a loophole in the law and should improve the protection of children against those who abuse them. A similar amendment is made to the Children and Young Person's Act (Northern Ireland) 1968, although there a child up to 17 is protected to reflect their higher age of consent.

### ***Section 41: Indecent photographs of children: increase of maximum penalties***

98. The effect of this *Section* will be to increase the maximum penalties relating to indecent photographs of children. The maximum sentence, for the offences of taking, making, distributing, showing, publishing or possessing with a view to distribution, indecent photographs of children under sixteen, under *Section 6* of the Protection of Children Act 1978 is increased from three years imprisonment and an unlimited fine, to ten years imprisonment and an unlimited fine. The maximum sentence for the simple possession of child pornography under *Section 160* of the Criminal Justice Act 1988 is increased

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from six months imprisonment and a level 5 fine to five years imprisonment and an unlimited fine. The Section will also amend the equivalent Northern Ireland legislation.

### **Part III: Dealing with Offenders**

#### ***Chapter I: Renaming certain community orders, new community orders, breach of community order, miscellaneous.***

##### ***Sections 43, 44 and 45: Renaming certain community orders***

99. *Sections 43, 44 and 45* rename probation orders, community service orders and combination orders as community rehabilitation orders, community punishment orders and community punishment and rehabilitation orders respectively.

##### ***Section 46: Exclusion orders***

100. *Section 46* amends the Powers of Criminal Courts (Sentencing) Act 2000 to make provision for 'exclusion orders'. An exclusion order is similar in many respects to a 'curfew order'. However, whereas a curfew order requires an offender to remain at a specified place, an exclusion order prohibits an offender from entering a specified place or area for a specified period of not more than two years (three months for a juvenile). Different areas or places can be specified for different periods. An exclusion order must take account of the offender's religious beliefs, times of employment or education, and of any other community orders to which the offender is subject.
101. When making the exclusion order, the effect and possible consequences of the order, together with the court's power to review the order, must be explained to the offender in ordinary language.
102. Breach, revocation, and amendment of the exclusion order are provided for in the same way as for curfew orders. The Secretary of State is empowered to make rules for the regulation of the monitoring regime of offenders subject to exclusion orders, and of the functions of the persons responsible for monitoring them. The Secretary of State may also make an order to add to the list of activities with which the requirements of an order must not conflict.

##### ***Section 47: Drug Abstinence Orders***

103. *Section 47* defines a Drug Abstinence Order as an order requiring the offender to abstain from misusing specified Class A drugs and to undertake a drug test on instruction.
104. It gives the power to the courts to make a drug abstinence order where the offender is convicted of a trigger offence (see note on Schedule 6), or the court feels that Class A drug misuse caused or contributed to the offence. The offender must be aged 18 years or over and be dependent on, or have a propensity to misuse, specified Class A drugs.
105. The Section allows for the court to decide the length of the order, between a minimum of 6 months and a maximum of three years.
106. In addition to setting out the provisions as to the supervision of orders, the Section also sets out provisions for dealing with failures to comply with the requirements of such orders, under Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000.

##### ***Section 48: Pre-sentence drug testing***

107. When the court is considering passing a community sentence, *Section 48* provides powers to require a convicted offender, aged 18 and over, to undertake a drug test for specified Class A drugs.

**Section 49: Community Sentences: drug abstinence requirements**

108. *Section 49* sets out drug abstinence requirements of community sentences. It amends Section 42 of the Powers of Criminal Courts (Sentencing) Act 2000 in order to require the courts to include a drugs abstinence requirement where the offender:
- is aged 18 or over;
  - is dependent on, or has a propensity to misuse specified Class A drugs; and
  - has committed a trigger offence (see note on Schedule 6).
109. If the offender has been charged with a non-trigger offence, the courts may include an abstinence requirement if the offender#
- is aged 18 or over;
  - is dependent on, or has a propensity to misuse specified Class A drugs; and
  - the misuse by the offender of any specified class A drug caused or contributed to the offence.
110. Drug abstinence requirements may not be included where a community sentence already includes an abstinence requirement, or where a community order includes a Drug Treatment and Testing Order (DTTO) or a Drug Abstinence Order (DAO).

**Section 50: Community sentences: curfew requirements**

111. *Sub-paragraph (1)* (of the new paragraph 7 to be inserted in Schedule 2 to the Powers of the Criminal Courts (Sentencing) Act 2000) makes provision for community rehabilitation orders to include a curfew requirement. *Sub-paragraph (2)* provides for a requirement that the offender remain at a particular place for between two and twelve hours a day, for a maximum period of six months. The order may specify different curfew addresses or different periods of curfew on different days.
112. *Sub-paragraph (3)* provides that, as with the curfew order, account must be taken of the offender's religious beliefs, times of employment or education and of any other community orders to which the offender is subject when the terms of the curfew are decided by the court.
113. *Sub-paragraph (4)* states that a community rehabilitation order that includes a curfew requirement must include provision for a responsible officer who will monitor whether or not the offender complies with the curfew requirements. The responsible officer must be a person as described in an order made by the Secretary of State.
114. *Sub-paragraph (5)* prevents a court from including a curfew requirement in a community rehabilitation order or a community punishment and rehabilitation order, unless the Secretary of State has notified the court that the arrangements necessary for monitoring the offender's whereabouts are currently available in the area where the curfew address is situated. This will enable these provisions to be piloted.
115. *Sub-paragraph (7)* requires courts to obtain and consider information about the curfew address – which must include information about the attitude of other people likely to be affected by the offender's enforced presence there – before they impose a curfew requirement.
116. *Sub-paragraph (8)* permits the Secretary of State to make rules regulating the monitoring of an offender and the functions of the responsible officer.

***Section 51: Community sentences: exclusion requirements***

117. *Section 51* is similar to *Section 50*, except that it allows a court to include an exclusion requirement in a community rehabilitation order or a community punishment and rehabilitation order. It differs from *Section 50* in that:
- under *sub-paragraphs (1) and (2)*, an exclusion requirement may last for no more than two years and may operate continuously, or for periods specified in the order, and may specify different places from which the offender is to be excluded for different periods;
  - there is no requirement for the court to obtain and consider information about the place proposed to be specified in the requirement, as the offender's presence will not be enforced in any place in a way that might affect other persons; and,
  - it is made clear that offenders may be excluded from an area as well as a particular place.

***Section 52: Community sentences: electronic monitoring of requirements***

118. *Section 52* makes provision for a requirement for the electronic monitoring of any other requirement of a community order. This provision might be used to require an offender to register his attendance at a particular place, for example. Once again, these powers will not be available to a court until the Secretary of State has notified it of the availability of the powers
119. *Subsections (3) and (4)* make clear that, where the co-operation of a person other than the offender is required for electronic monitoring to take place, the requirement for electronic monitoring cannot be imposed without that person's consent.
120. Provision is made for making a person responsible for the monitoring, with a power for the Secretary of State to make rules for regulating both the electronic monitoring and the function of responsible persons.
121. *Subsections (7) to (10)* make clear the definition of the 'relevant area' in the various instances in which a community sentence might be electronically monitored.

***Section 53: Breach of community orders: warning and punishment***

122. *Subsection (2)* specifies the community orders to which the warning scheme will apply, namely, curfew orders, exclusion orders, community rehabilitation orders, community punishment orders, community punishment and rehabilitation orders, and drug abstinence orders.
123. *Subsection (3)* places a duty on staff employed by local probation boards to issue a warning to an offender who has unacceptably failed to comply with the requirements of his order if the offender has not already been referred back to court for the failure. Where there is a second unacceptable failure to comply within 12 months, or six months in the case of a curfew order, the offender must be referred back to court for breach proceedings. The warning must be recorded. If two or more orders were imposed for the same offence, they will be considered as one order to which the warning scheme applies, i.e. only one warning in total will be given in any 12 month period.
124. *Subsection (4)* creates new arrangements for dealing with a breach of community sentences where that breach is referred back to the court. In such a case, where the warning provisions apply, the court must first determine whether it is likely that the offender will comply with the requirements of the community order if it remains in force. If the court does not consider this likely then it must impose a custodial sentence as punishment for breach of the community order, even where the original offence was not imprisonable, unless there are exceptional circumstances. Where the warning provisions do not apply or where the court thinks that the offender is likely to comply

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with the community sentence or that there are exceptional circumstances the court must impose a community sentence in respect of the breach or re-sentence the offender for the original offence as if he had just been convicted of it.

125. *Subsection (5)* places the same duty on the Crown Court.
126. *Subsection (6)* disapplies the warning and punishment measures to any failure to abstain from misusing specified Class A drugs.

#### ***Section 54: Breach of community orders: failure to answer summons***

127. *Section 54* provides the Crown Court with new powers to issue a summons or warrant in respect of an offender who fails to appear at the Crown Court to answer a summons issued by a justice in respect of an alleged breach of a community order. The Section inserts two new sub-paragraphs into paragraph 3 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000. New *sub-paragraph (3)* provides a power to issue a summons and new *sub-paragraph (4)* the power to issue a warrant.

#### ***Section 55: Regulation of community orders***

128. *Section 55* provides for regulations relating to community sentences (community rehabilitation orders, community punishment orders and community punishment and rehabilitation orders). This will allow the Secretary of State to set standards for the delivery of these orders.

### ***Chapter II: Miscellaneous***

#### ***Section 56: Reprimands and warnings***

129. *Section 56* removes the current requirement that a reprimand or warning may only be given in a police station. This will give the police flexibility to arrange for restorative conferences in more suitable locations such as the offices of the youth offending team responsible for assessing the young offender and providing the intervention programme. This Section also gives the police an explicit power to bail pending delivery of reprimands and final warnings. This will enable the police to deliver reprimands and final warning at restorative conferences involving parents and, where appropriate, victims.

#### ***Section 57: Testing persons in police detention***

130. *Section 57* sets out the procedure for taking urine and non-intimate samples (e.g. oral saliva swabs) for the purposes of testing those charged with certain acquisitive and drugs offences for the presence of specified Class A drugs. The procedures are set out through insertions of new Sections in the Police and Criminal Evidence Act 1984. Only those aged over 18 can be tested under these provisions.
131. The procedure for testing states that:
  - A test may be taken if a person has been charged with a “trigger offence”; or
  - A person has been charged with an offence and a police officer of at least the rank of Inspector has reasonable grounds to suspect a link between the offence and the misuse of a specified Class A drug, and authorises the taking of the sample.
132. As well as setting out the procedure for testing, the Section provides for requesting a sample for testing, and creates a new offence, with a penalty of up to three months in prison or a fine (not exceeding level 4 on the standard scale – currently £2,500), or both for failing without good cause to give a sample.
133. The Secretary of State may authorise people other than police officers to take samples, but only by *affirmative resolution order*.

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134. The Section also provides powers for a custody officer to detain someone for up to six hours, following charge, for the purposes of testing.

***Section 58: Right to bail: relevance of drug misuse***

135. *Section 58* amends Section 4 of the Bail Act 1976 in order to require courts to have regard to any evidence of drugs misuse when considering the granting of bail and/or any conditions of bail.

***Section 59: Remand Centres***

136. *Section 59* repeals the power to set up remand centres. No remand centres have ever been set up under this power. Section 56 of the Act will lead to 18-20 year old offenders being detained together with 17-20 year old remands and this removes the main reason for the existence of the power to establish remand centres.

***Section 60: Life sentences: tariffs***

137. This Section changes the way tariffs are set in cases of detention during Her Majesty's pleasure. It provides for the sentencing court, rather than the Home Secretary, to do so in future and replaces the tariff setting aspects of the Crime (Sentences) Act 1997 with separate provision in the Powers of Criminal Courts (Sentencing) Act 2000. The tariff will continue to represent the minimum period that must be served before a case can be referred to the Parole Board to consider release. The period set by the court will be open to appeal by the offender or referral by the Attorney General if he considers it unduly lenient.
138. The effect of this provision is to bring the law into compliance with the conclusions of the European Court of Human Rights in the cases of *T v. UK* and *V v. UK*. There the Court found, amongst other things, that it was not compatible with Article 6 of the European Convention on Human Rights for the Home Secretary to set tariffs in cases of detention during Her Majesty's pleasure.
139. As a result of the change contained in this Section, the arrangements for setting tariffs in these cases will be the same as those that currently apply to offenders serving discretionary life sentences. The Parole Board is already responsible for determining release, following tariff expiry, in respect of both groups of offender.

***Section 61: Abolition of sentences of detention in a young offender institution and custody for life***

140. *Section 61* abolishes the sentences of detention in a young offender institution and custody for life. Following abolition, all defendants aged 18 or over at the time of sentencing who receive a custodial sentence will be sentenced to imprisonment or life imprisonment. *Subsections (2) and (4)* make provision for the Secretary of State to determine certain arrangements for the detention of those sentenced before this Section comes into effect (i.e. before the abolition of detention in a young offender institution and custody for life). These arrangements will be necessary in order to make the transition from the current system to that created by this Section.

***Sections 62, 63 and 64: Conditions or requirements of release of prisoners – electronic monitoring and drug testing***

141. *Section 62* will provide powers to include, in the licence of any prisoner being released from a custodial sentence, a requirement to submit to electronic monitoring. The Secretary of State currently has the statutory power to attach conditions to a release licence. It is therefore already possible to impose curfew conditions, non-contact or exclusion conditions, and such conditions are used where appropriate. This Section will enable these types of condition to have the additional requirement of electronic monitoring attached to them. At present, the only statutory basis for the use of electronic

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monitoring of curfew conditions in a release licence is under the Home Detention Curfew scheme, which applies only to prisoners serving sentences of less than 4 years.

142. The new powers provided for in *Subsection (2)(a)* may be used in the following ways:
- where a licence requires the released person to observe a curfew or otherwise remain at a specified place, electronic monitoring could be used to determine whether the curfew is observed;
  - where a licence requires the released person not to enter a specified place or places, electronic monitoring could be used to determine whether that person has entered the restricted area.
143. In addition, *Subsection (2)(b)* of Section 55 introduces new powers enabling the “tracking” of offenders released from prison on licence, by electronically monitoring their whereabouts, on a continuous basis, until the expiry of the licence or the removal of the condition, whichever happens first. Suitable technology to support “tracking” is not currently available, but is under development. These powers will therefore provide the basis for making use of “tracking” technology as and when it becomes available. *Subsection (3)* of Section 55 establishes that these new powers should not be used to achieve the electronic monitoring of curfew conditions imposed on prisoners who are subject to the Home Detention Curfew scheme. Those powers are provided for separately in the Criminal Justice Act 1991, as amended by the Crime and Disorder Act 1998.
144. *Section 63* makes similar provision to those in Section 62 and Section 64 but applies to those released on a Notice of Supervision under Section 65 of the Criminal Justice Act 1991, rather than a licence. This covers some young offenders under 22 years of age who are released from a young offender institution and those released under Section 53 of the Children and Young Persons Act 1933. Section 63 also stipulates that any electronic monitoring or drug testing condition included in a Notice of Supervision must cease at the sentence expiry date - the date on which the person would (but for release) have served the custodial sentence in full.
145. *Section 64* provides powers to impose drug testing conditions on those who are convicted of a trigger offence and are subsequently released from prison on licence, provided they are over 18 at the time of release from custody. It is already a standard condition in release licences that a prisoner should be “of good behaviour” whilst on licence. These new powers will be used to determine compliance with that condition in respect of drug use, and may also be used to determine compliance with other more specific conditions which may be imposed in individual cases.
146. The enforcement mechanism for breaches of electronic monitoring or drug testing conditions or requirements will be the same as that applying in respect of any other type of condition or requirement. The arrangements will be those already in place for, and determined by, the particular type of licence or Notice of Supervision.

### ***Section 65: Short-term prisoners: release subject to curfew conditions***

147. *Section 65* amends the Criminal Justice Act 1991 to provide that sex offenders subject to the notification requirements of Part I of the Sex Offenders Act 1997 are not eligible for the Home Detention Curfew scheme.

### ***Section 66: Amendments of the Sex Offenders Act 1997***

148. *Section 66* gives effect to *Schedule 5*. *Schedule 5* contains a number of amendments to Part I of the Sex Offenders Act 1997, which requires offenders convicted of or cautioned for certain serious sex offences to keep the police informed of their whereabouts.

### **Section 67: Arrangements for assessing etc risks posed by certain offenders**

149. *Section 67* places a joint duty on the “responsible authority” ie the chief officer of police and the local board for each area to establish and keep under review arrangements for assessing and managing the risks posed by “*relevant sexual or violent offenders*” (explained in Section 68 – see below) or other offenders who may cause serious harm.
150. The responsible authority is also required to prepare and publish at least every 12 months a report on how they have discharged the duties. As part of the report they must give details of the arrangements which have been made and such information as the Secretary of State has notified to the authorities that he wishes them to include. The intention is that the public should be able to see what arrangements have been made without the details of individual offenders being made public.
151. In addition, Section 67(6) provides that the Secretary of State will have the power to issue guidance to the authorities on how to discharge the functions under this Section.
152. It is envisaged the Secretary of State’s guidance will cover areas such as consultation with other organisations, including social services departments, child protection organisations, prisons etc as appropriate in fulfilling these functions. It will also contain guidance on what the report to be issued should contain.

### **Section 68: Interpretation of Section 67**

153. *Section 68* defines who is a “*relevant sexual or violent offender*” for the purposes of Section 67. It is those who fall into any of four categories.
154. First, where a person is subject to the notification requirement under Part 1 of the Sex Offenders Act 1997. It includes offences such as rape and unlawful sexual intercourse with a girl under 16.
155. Second, where a person is convicted by a court in England and Wales of a “sexual or violent offence” within the meaning the Powers of the Criminal Courts (Sentencing) Act 2000 (see below) and in respect of such an offence is:
  - sentenced to a term of imprisonment or some form of detention for 12 months or more; or
  - detained during Her Majesty’s pleasure; or
  - subject to a hospital order or guardianship order under the Mental Health Act 1983.
156. A “sexual or violent offence” is defined in Section 161 of the Powers of the Criminal Courts (Sentencing) Act 2000. A “violent offence” is:

“an offence which leads, or is intended to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall into this definition)”

This would therefore include offences such as those in the Offences against the Person Act 1861, including assault occasioning actual bodily harm contrary to Section 47, wounding or inflicting grievous bodily harm contrary to Section 20 and the offences in Section 18 such as wounding or causing grievous bodily harm with intent.

“sexual offence” is defined in Section 161 of the Powers of the Criminal Courts (Sentencing) Act 2000 to include an offence under :

  - the Sexual Offences Act 1956, (other than an offence under Section 30,31, or 33 to 36 relating to prostitution and brothels). These include for example the offences of rape, unlawful sexual intercourse with a girl under 16, buggery, indecent assault and indecency between men

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- Section 128 of Mental Health Act 1959 - Sexual intercourse with patients
  - Indecency with Children Act 1960 - gross indecency with or towards a child, under the age of 16, or someone who incites a child under that age to such an act with him or another. The indecency with Children Act 1960 has been amended by Section 39 of this Act to increase the age of the child against which this offence can be committed.
  - Section 9 of the Theft Act 1968 - burglary with intent to commit rape
  - Section 54 of the Criminal Law Act 1977 - Inciting girl under sixteen to have incestuous sexual intercourse
  - An offence under the Protection of Children Act 1978 - Indecent photographs of children
  - Section 1 of the Criminal Law Act 1977 - conspiracy to commit any of the offences above
  - Section 1 of the Criminal Attempts Act 1981 - attempting to commit any of the offences above
  - inciting another to commit any of those offences
157. Third, where a person is found not guilty by a court in England and Wales of a sexual or violent offence, as defined above, by reason of insanity or to be under a disability and to have done the act charged and an order is made that he is admitted to hospital or a guardianship order within the meaning of the Mental Health Act 1983 is made in respect of him.
158. Fourth where a person is eligible for a disqualification order to be imposed to prevent them from working with children under Sections 28, 29 and 30 of this Act (paragraphs 81-83) of this Explanatory Note above refers).

***Section 69: Duties of local probation boards in connection with victims of certain offences***

A.

**Duties imposed by Section 69**

159. Where a court imposes a relevant sentence on a sexual or violent offender (see B: Application of Section 69 below), duties are imposed on the local probation board.
160. The first duty (Section 69(2)) for the local probation board in the area in which the offender is sentenced, is to take all reasonable steps to ascertain whether the victim wishes to make representations about any conditions or requirements attached to any licence to which the offender should be subject to when he is released.
161. Where the victim does wish to make representations the local probation board is under a duty to forward those representations to the person responsible for determining the offenders release conditions or requirements – normally the governor at the prison where the offender is detained.
162. There is also a duty (Section 69(2)(b)) on the same board to take all reasonable steps to ascertain if the victim wishes to be informed about any conditions or requirements that apply to the offender's release .
163. If the victim has requested information, the local probation board for the area where the offender is to be supervised or institution from which he is to be released, is under a duty to provide details of whether the offender is to be subject to any conditions/requirements (Section 69(5)). If so the victim is to be informed of any conditions or requirements which relate to contact with the victim or family and any other information

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which seems to the local probation board to be appropriate. So, for example, victims will be informed if the licence contains a condition not to go within a certain radius of the victim's home.

164. It will remain open to the probation service, as at present, to provide information to the victim, or victim's family as appropriate, in cases falling outside the scope of Section 69.

**B:**

#### Application of [Section 69](#)

165. The new statutory duties on local probation board in Section 69 are in respect of offenders sentenced to a "relevant sentence" for a "sexual or violent offence".

166. A "relevant sentence" is defined in Section 69(7) as including:

- a sentence of imprisonment of 12 months or more;
- a sentence of detention in a young offenders institution for 12 months or more;
- a sentence of detention during Her Majesty's pleasure;
- a sentence of 12 months or more where an offender under 18 has been convicted for certain serious offences; and
- a detention and training order for a term of 12 months or more.

A "sexual or violent offence" has the meaning given to it by Section 69(8). That is

- (i) a "sexual or violent offence" within the meaning the Powers of the Criminal Courts (Sentencing) Act 2000 or
- (ii) an offence where the offender is subject to the notification provisions of the Sex Offenders Act 1997 or
- (iii) an offence against a child with the meaning of Part II of the Act

167. For explanations of a sexual or violent offence under the Powers of the Criminal Courts (Sentencing) Act 2000 and an offence where the offender is subject to the notification provisions of the Sex Offenders Act 1997, see explanation of Section 68 above.

168. For the explanation of an offence against a child with the meaning of Part II of the Act, see paragraphs 79 and 80 of this Explanatory Note above.

### ***Chapter III: Supplementary***

#### ***Section 70: Interpretation***

169. [Section 70](#) provides the Secretary of State with an order making power to amend the list of "trigger offences" in [Schedule 6](#). It also allows for the Secretary of State to specify, by order, which Class A drugs are to be tested for.

### **Part IV: General and Supplementary**

#### ***Chapter I: General***

#### ***Section 71: Access to driver licensing records***

170. [Section 71](#) provides for the Secretary of State to make driver licensing records available to the Police Information Technology Organisation for use by the police. The intention is that this information will be transferred on to the Police National Computer (PNC).

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171. These records will include the licence holder's name, address, sex, date of birth, country of birth (where known), driver number, type of licence held, classes of vehicle covered, other relevant restrictions on driving entitlement, endorsements, penalty points, licence commencement and expiry date. They will also include an electronic photograph and electronic signature which are an integral part of the photo-card driving licence record which the PNC is not currently able to store, but provision needs to be made now to allow transfer of this data for a time when the PNC is able to store it.

### ***Section 72: Failure to secure regular attendance at school: increase in penalty***

172. *Section 72* inserts a new offence in Section 444 of the Education Act 1996 which is committed where a parent knows that their child is failing to attend school and fails to cause him to do so without reasonable justification. The penalty for the new offence is a fine of up to £2,500, that is up to level 4 on the standard scale of offences, and/or imprisonment for three months or less.

### ***Section 73: Parenting orders: responsible officer***

173. *Section 73* extends the range of persons who may serve as responsible officer under a parenting order under Section 8 of the Crime and Disorder Act 1998. This is currently limited under Section 8(8) of the 1998 Act to a probation officer, a social worker of a local authority social services department or a member of a youth offending team. Section 70 enables local education authority staff working outside youth offending teams to serve as responsible officer under a parenting order. Such staff could include education welfare officers and education social workers.

#### **Schedules:**

### ***Schedule 1: Local Probation Boards***

174. *Schedule 1* provides details of the constitution and operation of the local probation boards of the National Probation Service for England and Wales. Paragraph 8 gives local probation boards the power to appoint their staff and determine their terms and conditions, but these must be approved by the Secretary of State. The Secretary of State can also specify the qualifications or training that staff are required to have.
175. *Paragraph 9* allows a local probation board to delegate its functions to committees, subcommittees or members. The effect of this provision will be to enable the Secretary of State to give directions (under paragraph 14) with which the chief officer will be required to comply.

### ***Schedule 2: CAF/CASS***

176. *Schedule 2* provides details of the constitution of CAF/CASS, its powers and those of the Lord Chancellor.

### ***Schedule 3: Transfer of Property***

177. *Schedule 3* sets out the basis on which a Minister (the Secretary of State or the Lord Chancellor) may devise a scheme under Section 19 for the transfer of property. It provides that all ownership and liabilities will be transferred under such a scheme, and that the Minister's judgement as to whether a transfer has taken place is final.

### ***Schedule 4: Meaning of "offence against a child"***

178. *Schedule 4* provides a list of offences and circumstances as a result of committing which, or falling within the categories defined, an individual will be deemed to have committed an offence against a child, as designated in Subsection (1) of Section 26.

### ***Schedule 5: Amendments of the Sex Offenders Act 1997***

179. *Schedule 5* provides for a number of amendments to the Sex Offenders Act 1997 including:

- a new requirement that a relevant offender must give his initial notification to the police in person; and
- that he may be required, when doing so, to allow his fingerprints and photograph to be taken;
- there is a power for the Secretary of State to make regulations to prescribe the police stations at which initial notification must be made;
- a reduction in the period during which such offenders must initially register from 14 days to three;
- a new power for the Secretary of State to make regulations concerning notification to the police of relevant offenders' intention to leave the United Kingdom;
- an increase in the maximum penalty for a breach of the Act's requirements to 5 years imprisonment on indictment, a fine or both;
- a new power for courts sentencing for more serious sexual offences to impose a restraining order, which may impose restrictions on offenders' behaviour on their return to the community where this is necessary in order to protect the public from serious harm; and
- a new power for the Secretary of State to make regulations to ensure that information about the notification requirement and the discharge or release of an offender liable for registration with the police is exchanged between relevant agencies .

### ***Schedule 6: Trigger Offences***

180. *Schedule 6* lists those offences defined as "trigger offences" for the purposes of drug testing. If an offence is defined as a "trigger offence", the authorisation required for the testing procedure will differ as described above.

## **TERRITORIAL EXTENT**

181. Most of the provisions in the Act will extend to England and Wales only. The exceptions are as follows.

182. First, the provisions relating to the protection of children in Sections 26-38 and Schedule 4. Those disqualified in England and Wales from working with children, on the basis of these measures, will also be disqualified in Northern Ireland, but not Scotland. Northern Ireland are examining the need to introduce an equivalent disqualification system and Scotland are examining the need to legislate to ensure the England and Wales disqualifications apply in Scotland and that they introduce an equivalent system of disqualification. In addition, courts-martial have UK jurisdiction and this is reflected in the provisions relating to them. The Protection of Children Act 1978 and Section 160 of the Criminal Justice Act 1988 apply to England and Wales with relevant Sections applying by order to Northern Ireland. The Scottish Executive are reviewing their own legislation. Finally the change in the age of the child for the offence of indecency with children applies to Northern Ireland only.

183. Secondly, the provisions concerning the disclosure by the Secretary of State of driver licensing records extend to both Northern Ireland and Scotland in Section 71.

184. Thirdly, certain provisions relating to the abolition of detention in a Young Offender Institution and custody for life. Section 61 (so far as it relates to sentences passed by a

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court-martial or a Standing Civilian Court) and the provisions in Schedule 7 to the Act relating to armed forces legislation extend throughout the United Kingdom.

185. In addition, the provisions relating to tariff setting – Section 60 and related amendments to the Crime (Sentences) Act 1997 in Schedule 7 – extend throughout the United Kingdom so far as they relate to sentences passed by a court-martial.
186. The devolved National Assembly for Wales has been informed about the proposals concerning CAF/CASS and consulted where appropriate, including in areas which are not within its formal responsibilities.
187. The provisions relating to sexual and violent offenders in Section 66 and Schedule 5 extend to England, Wales, Northern Ireland and Scotland. Sections 67-69 apply to England and Wales only.

## COMMENCEMENT

188. The provisions of this Act come into effect as follows:
- Sections 26 to 38 and Schedule 4 on preventing unsuitable people working with children are planned to come into effect as soon as possible after Royal Assent. Section 60 on lifer tariffs will come into effect on Royal Assent.
  - Section 71 on driver information, Section 65 on Home Detention Curfew, Section 56 on final warnings and reprimands, Section 72 failure to secure regular attendance at school and Section 73 on parenting orders are planned to come into effect two months after Royal Assent. Sections 39 and 40 on indecency with children and Section 41 on child pornography are planned to come into effect within three months after Royal Assent.
  - Sections 1 to 25 and Schedules 1 to 3 on the National Probation Service, and the Children and Family Court Support and Advisory Service, Section 54 on breach of community orders and Section 55 on regulation of community orders are all planned to commence on 1<sup>st</sup> April 2000. Sections 67 to 69 relating to sexual or violent offenders will not be implemented before 1<sup>st</sup> April 2001. Section 66 and Schedule 5 will be implemented incrementally during 2001.
  - The measures on drug testing and electronic monitoring in Sections 46 to 52, 57, 58, 62 to 64 and Schedule 6 are due to be piloted and trials are likely to commence from May 2000.
  - The measures in Sections 59 and 61 on abolition of Detention in a Young Offenders Institution and Section 53 on enforcement will be implemented later.

## HANSARD REFERENCES

189. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

<b>Stage</b>	<b>Date</b>	<b>Hansard Reference</b>
<b>House of Commons</b>		
Introduction	15 March 2000	Vol 346, Col 324
Second Reading	28 March 2000	Vol 347, Cols 225 – 291
Committee	4 – 9 May 2000	Standing Committee G
Report and Third Reading	12 June 2000	Vol 351, Cols 653 – 764
<b>House of Lords</b>		

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Second Reading	3 July 2000	Vol 614, Cols 1284–1341
Committee – Day 1	2 October 2000	Vol 616, Cols 1133 – 1206
Committee – Day 2	4 October 2000	Vol 616, Cols 1518 – 1680
Report	31 October 2000	Vol 618, Cols 792 – 860 and Cols 875 – 938
Third Reading	8 November 2000	Vol 618, Col 1535 – 1559
Commons Consideration of Lords Amendments	14 November 2000	Vol 356, Cols 833 – 913
Lords Consideration of Commons Amendments	28 November 2000	Vol 619, Cols 1262 – 1297
Commons Consideration of Lords Reasons and Amendments	30 November 2000	Vol 357, Cols 1186 – 1231
<b>Royal Assent</b> House of Commons House of Lords	<b>30 November 2000</b> <b>30 November 2000</b>	Vol 357, Col 1231 Vol 619, Col 1491