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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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 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*.

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 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
- 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 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 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.