

CRIMINAL JUSTICE AND COURT SERVICES ACT 2000

EXPLANATORY NOTES

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 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 CAFCASS 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 CAFCASS'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 CAFCASS 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 CAFCASS 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 CAFCASS. It will also enable the transfer to CAFCASS of property currently owned by local authorities, probation committees and the Official Solicitor. Subsections (2) and (3) provide that land transferring to CAFCASS 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 CAFCASS, and the transfer of relevant local authority staff and staff of the Official Solicitor's office to CAFCASS. 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 CAFCASS, to set up a scheme for the transfer of staff where, at a future date, functions of a local probation board or CAFCASS 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 CAFCASS and its officers. It further ensures that those organisations which perform functions on behalf of CAFCASS 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 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;
 - *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 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 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.

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).
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

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

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.