

OFFENDER MANAGEMENT ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Probation Services

Section 1: Meaning of “the probation purposes”

18. This section sets out various purposes that govern the probation services that are to be provided under Part 1.
19. *Subsection (1)* defines “the probation purposes.” It broadly replicates the existing provisions in the Criminal Justice and Court Services Act 2000 (“the 2000 Act”), as supplemented by the [Local Probation Boards \(Miscellaneous Provisions\) Regulations 2001 \(S.I. 2001/786\)](#) and as amended to reflect provisions on conditional cautions in the Criminal Justice Act 2003.
20. *Subsection (2)* adds further detail to the general purposes and is also based on the 2000 Act as amended. *Subsection (2)(b)* is new and puts beyond doubt that the provisions also cover the work which providers of probation services do in relation to offenders in prison.
21. *Subsection (3)* clarifies that the probation purposes include the supervision and rehabilitation of persons convicted of an offence outside England and Wales who are serving all or part of their sentence in England and Wales.
22. *Subsection (4)* defines the terms “authorised person”, “conditional caution”, “community order”, “suspended sentence order” and “victim” which are used in this section.
23. *Subsection (5)* enables the Secretary of State to extend these purposes by regulations which, by virtue of section 36, will be subject to the negative resolution procedure.

Section 2: Responsibility for ensuring the provision of probation services

24. This section sets out the functions of the Secretary of State.
25. *Subsection (1)* states that it is the function of the Secretary of State to ensure that sufficient provision is made for probation purposes (as described in the previous section) and for probation functions of the Secretary of State in other legislation. Similar functions to those set out in this currently rest with local probation boards under section 5 of the 2000 Act.
26. *Subsection (2)* states that the Secretary of State is to discharge his function in relation to any probation provision by making arrangements under section 3. Those arrangements will normally involve the making of contracts with a provider of services, but there is also the possibility of non-contractual arrangements or of the services being provided by the Secretary of State directly.

*These notes refer to the Offender Management Act 2007
(c.21) which received Royal Assent on 26 July 2007*

27. *Subsection (3)* requires the Secretary of State to have regard to aims in the exercise of his probation functions under subsections (1) and (2).
28. *Subsection (4)* sets out those aims, which replicate the ones currently set out in section 2(2) of the 2000 Act.
29. *Subsection (5)* makes clear that the Secretary of State does not need to take action under this section if he is satisfied that adequate provision will be made under other arrangements.

Section 3: Power to make arrangements for the provision of probation services

30. This section gives details of how the Secretary of State will make arrangements for the provision of probation services.
31. *Subsection (1)* states that this section applies to any probation provision which the Secretary of State considers should be made under section 2(1).
32. *Subsection (2)* states that the Secretary of State may make contractual or other arrangements with any other person for the making of probation provision. In most cases, it is envisaged that arrangements will be made under contract but this subsection does allow for other possibilities.
33. *Subsection (3)* clarifies that contractual or other arrangements may require or authorise the other party to:
 - co-operate with other providers of probation services or persons concerned with crime prevention or reduction or with assisting victims;
 - designate individuals as officers of a provider of probation services (subsequently defined in section 9); and
 - sub-contract with third parties.
34. *Sub (4)* makes clear that the Secretary of State may make arrangements under section 3(2) to delegate the performance of statutory functions.
35. *Subsection (5)* enables the Secretary of State, if he considers it appropriate, to provide probation services himself, and makes clear that he may use prison staff for this purpose. In most cases, it is anticipated that the Secretary of State will make arrangements with others to deliver probation services but this makes it possible for prison staff, for example, to deliver probation services in the community. This could be helpful in terms of bridging the gap between custody and the community.
36. *Subsection (6)* defines provider of probation purposes as either the person with whom the Secretary of State makes arrangements or the Secretary of State, where he makes provision through members of his staff.
37. *Subsection (7)* places a duty on the Secretary of State in carrying out his functions under subsection (2). It requires him to have regard to the need to take reasonable steps to avoid (so far as practicable) the risk that the provision of probation services might be adversely affected by any potential conflict of interest between the provider's obligations and the financial interests of the provider.

Section 4: Restrictions on certain arrangements under section 3

38. **Section 4** places a restriction on the ability of the Secretary of State to make contractual or other arrangements under section 3(2).
39. *Subsection (1)* states that contractual or other arrangements relating to restricted probation provision may be made only with a probation trust or other public body.

40. *Subsection (2)* defines restricted probation provision as the giving of assistance to courts in determining the appropriate sentence to pass, or making any other decision, in respect of a person charged with or convicted of an offence.

Section 5: Power to establish probation trusts

41. This section gives details of the Secretary of State's power to establish probation trusts.
42. *Subsection (1)* states that the Secretary of State may, by order (subject to negative resolution by virtue of section 36):
- establish a trust for purposes specified in the order;
 - alter the name or purposes of a probation trust; or
 - dissolve a probation trust.
43. *Subsection (2)* specifies that the purposes of a probation trust must consist of, or include, the making or performance of contracts by the trusts with the Secretary of State under section 3(2).
44. *Subsection (3)(a)* specifies that the purposes may also enable the trust to enter into contracts with parties other than the Secretary of State for the provision of probation services. In practice, it is envisaged that the majority of a trust's activity will be under contract to commissioners acting on behalf of the Secretary of State, but this subsection allows trusts the flexibility to enter into contracts with others, including other probation trusts, where appropriate, provided that the activity concerned is part of their core purposes.
45. *Subsection (3)(b)* specifies that these contracts may also cover probation-related activities in relation to service courts.
46. *Subsection (3)(c)* provides that the purposes of a probation trust may also include any other purposes specified in regulations made by the Secretary of State. Any such regulations are subject to the affirmative procedure by virtue of section 36(3)(a).
47. *Subsection (4)* clarifies that the purposes set out in the order may be expressed in more specific terms than those used in *subsection (2) and (3)*.
48. *Subsection (5)* clarifies that a trust may carry out activities relating to contracts, including before and after contracts are agreed. This enables it to bid for and negotiate contracts in the first place and to carry out any activities necessary to wind up its business after a contract has expired.

Section 6: Power to make grants for probation purposes

49. This section enables the Secretary of State to make payments (other than under the contractual or other arrangements referred to in section 3) to a trust or any other person for probation purposes (as defined in section 1). It is envisaged that contractual or other arrangements will be the main source of probation funding but this section allows for situations where this may not be appropriate.
50. *Subsection (2)* makes clear that the Secretary of State may attach conditions to such payments.

Section 7: National standards for the management of offenders

51. This section requires the Secretary of State to continue to publish national standards for the management of offenders.
52. *Subsection (2)* makes clear that these national standards may include standards relating to the management of offenders in custody.

53. *Subsection (3)* requires the Secretary of State, in making contractual or other arrangements, to have regard to the need to secure, so far as practicable, that national standards have the same effect in relation to every provider of probation services.

Section 8: Annual plans

54. *Section 8* sets out the requirements for annual plans.
55. *Subsection (1)* requires the Secretary of State, at least once a year, to consult Welsh Ministers and such other person as he thinks fit about the probation provision to be made the following year. It is envisaged that the other persons consulted will include stakeholders at regional and local level, such as sentencers, providers of probation services, providers of custodial services, other criminal justice agencies, local authorities and bodies involved in the provision of services which contribute to the reduction of re-offending.
56. *Subsection (2)* requires the Secretary of State, before the end of each year, to publish an annual plan for the following year setting out how he proposes to ensure that sufficient probation provision is made.
57. *Subsection (3)* requires the Secretary of State to have regard to the plan in discharging his functions.
58. *Subsection (4)* states that arrangements made by the Secretary of State with a probation trust shall require the trust to publish its own annual plan.
59. *Subsection (5)* states that arrangements with a provider other than a trust may also require that provider to publish an annual plan if the Secretary of State thinks fit.
60. *Subsection (6)* defines “annual plan” and “specified activities” and *subsection (7)* defines a “year”.

Section 9: Officers of providers of probation services

61. Existing legislation (e.g. section 2(1)(b) of the 2000 Act) refers to “officers of local probation boards”. As local probation boards are abolished, a new term is needed. This section sets out provisions relating to “officers of providers of probation services”.
62. *Subsection (1)* defines an “officer of a provider of probation services” as an individual who is for the time being authorised to carry out the functions of an officer of a particular provider of probation services.
63. Under *subsections (2) and (3)* an individual may be authorised as an officer of a provider of probation services by the Secretary of State or (where the provider is not the Secretary of State) by a provider of probation services who has been authorised to do so.

Section 10: National framework for qualifications of officers

64. This section sets out provisions relating to a national framework for qualifications of officers.
65. *Subsection (1)* states that the Secretary of State may publish guidelines about any qualifications, experience or training required to perform the work of an officer of a provider of probation services.
66. *Subsection (2)* states that the Secretary of State must publish guidelines in relation to work involving the supervision of offenders and other work requiring direct contact with offenders, including offenders held in custody.
67. *Subsection (3)* makes clear that guidelines may make different provision for different purposes.

*These notes refer to the Offender Management Act 2007
(c.21) which received Royal Assent on 26 July 2007*

68. *Subsection (4)* requires the Secretary of State, in making contractual or other arrangements, to have regard to the need to secure, so far as practicable, that guidelines have the same effect in relation to every provider of probation services.

Section 11: Abolition of local probation boards and transfers of property etc and staff

69. *Subsection (1)* provides for the abolition of local probation boards constituted under section 4 of the 2000 Act.
70. *Subsection (2)* gives effect to Schedule 2 which contains provisions relating to transfers of property etc or staff in connection with the abolition of local probation boards or the implementation or termination of arrangements under section 3.

Section 12: The inspectorate

71. This section makes consequential amendments to the provisions establishing Her Majesty's Inspectorate of the National Probation Service to reflect the fact that the National Probation Service will cease to exist when the local probation boards are abolished and that the inspectorate will in future need to inspect a range of providers of probation services.
72. *Subsection (1)* renames Her Majesty's Inspectorate of the National Probation Service for England and Wales "Her Majesty's Inspectorate of Probation for England and Wales", and renames its Chief Inspector "Her Majesty's Chief Inspector of Probation for England and Wales".
73. *Subsection (3)(a)* amends section 7 of the 2000 Act to include the inspection of the provision of probation services under section 3. *Subsection (3)(b)* makes an amendment to allow the Secretary of State to give further directions related to the probation purposes referred to in section 1 and to confer further functions on the inspectorate as a result.

Section 13: Approved premises

74. This section sets out provisions relating to approved premises. It is closely based on existing provision made by section 9 of the 2000 Act.
75. *Subsection (1)* is based on section 9(1) of the 2000 Act. It enables the Secretary of State to approve premises for the purposes of providing accommodation for persons on bail or for the supervision or rehabilitation of offenders.
76. *Subsection (2)* enables the Secretary of State to make regulations concerning approved premises. This subsection re-enacts section 9(3) of the 2000 Act, under which the [Criminal Justice and Court Services Act 2000 \(Approved Premises\) Regulations 2001 \(S.I.2001/850\)](#) were made. These Regulations are expected to remain in force following the repeal of section 9 of the 2000 Act and the bringing into force of this section.
77. *Subsection (3)* enables the Secretary of State to make payments in relation to the operation of approved premises. The Secretary of State may also make payments in relation to the construction, enlargement or improvement of premises, if they are approved premises already or if the works are being carried out with a view to their being approved as such.
78. *Subsection (4)* makes clear that the Secretary of State may attach conditions to any payment made under *subsection (3)*.
79. *Subsection (5)* clarifies that *subsection (3)* does not prevent the Secretary of State from using his powers under sections 2 to 6 to commission new premises and the running of them.

*These notes refer to the Offender Management Act 2007
(c.21) which received Royal Assent on 26 July 2007*

80. *Subsection (6)* clarifies that references in other enactments to an approved bail hostel or approved probation hostel are to be read as a reference to approved premises. This replicates *subsection (2)* of the 2000 Act.
81. *Subsection (7)* makes a consequential amendment to paragraph 2(7) of Schedule 2 to the Private Security Industry Act 2001 to make clear that those involved in the management of approved premises, who may need to determine who has access to those premises, are not caught by the licensing requirements which apply to those who undertake “manned guarding” activity within the meaning of that Act.

Section 14: Disclosure for offender management purposes

82. This section clarifies the powers of certain bodies to share data for any purpose mentioned in *subsection (4)*.
83. *Subsections (1) and (2)* list the entities who are able to benefit from the power to share data.
84. *Subsection (3)* provides the power to share data but only if the disclosure is necessary or expedient for purposes mentioned in *subsection (4)*. This subsection enables the bodies listed in *subsection (1)* to share data with one another. It also enables disclosure between those bodies and the bodies listed in *subsection (2)*. The section does not authorise disclosures between bodies listed in *subsection (2)*. However, there may be powers outside this Act that authorise these.
85. *Subsection (4)* specifies the purposes for which disclosures are permitted by the section. These include the probation purposes (see section 1), the performance of functions of the Secretary of State, other persons to whom section 14 applies and persons listed in *subsection (2)*, provided the functions relate to prisons or prisoners or for other purposes connected with the management of offenders.
86. *Subsection (5)* expands upon the meaning of functions, prisons, and prisoners, and confirms that young offender institutions and secure training centres, together with those persons detained within them, are treated as prisons or prisoners respectively for the purposes of this clause.
87. *Subsection (6)* confirms that the power to exchange information by virtue of this section does not affect any existing power to share data that exists independently of the section (e.g. section 34 of the [Serious Organised Crime and Police Act 2005 \(c.15\)](#)) and that any such exchange is subject to existing safeguards regarding the sharing of data.
88. *Subsection (7)* creates a power for the Secretary of State to amend any passed enactment in the current or previous sessions, which would otherwise prevent the sharing of data permitted by this section. Section 36 provides that this order making power is subject to the affirmative resolution procedure.
89. *Subsection (9)* defines relevant contractor for the purposes of *subsection (2)* and confirms that those contracted to provide prison, young offender institution, secure training centre and related escort services are within the ambit of the section.
90. *Subsection (10)* defines “enactment” for the purposes of *subsection (6)* so as to include any subordinate legislation within the meaning of the Interpretation Act 1978.

Section 15: Powers to repeal section 4

91. **Section 15** provides a power for the Secretary of State to repeal section 4 by order which (by virtue of section 36(3)(c)) will be subject to affirmative resolution.