

OFFENDER MANAGEMENT ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Other Provisions about Offender Management

Section 28: Application of polygraph condition to certain licences

119. This section permits a polygraph condition to be included in the licence of an offender convicted of a specified sexual offence who is released from custody into the community on licence. Any offender released from custody with such a condition would be required to undertake polygraph tests. Polygraphy is a means of measuring certain physiological responses that may be associated with deception. The purpose of the polygraph test is to monitor whether offenders are complying with their licence conditions or to improve the management of the offender during his release in the community on licence.
120. *Subsection (1)* permits the Secretary of State to include a polygraph condition in the licence of a person covered by *subsection (2)*. The term ‘licence’ refers to the licence issued to certain offenders on release from relevant custodial sentences, which specifies the terms of their conditional release from prison. Current legislation allows certain conditions to be set in release licences – this legislation extends this to enable the addition of a requirement to undertake polygraph testing in the case of offenders serving sentences for relevant sexual offences.
121. *Subsection (2)* specifies the offenders who may be required to undertake a polygraph test, namely those who have served a relevant custodial sentence for a relevant sexual offence and who are released on licence and are not aged under 18 on the day of release from custody.
122. *Subsection (3)* defines ‘relevant custodial sentence’ for the purposes of *subsection (2)*.
123. *Subsection (4)* defines ‘relevant sexual offences’ for the purposes of *subsection (2)*.
124. *Subsection (5)* amends the Criminal Justice Act 2003 to enable the polygraph condition to be inserted in the licence of a prisoner released under that Act, provided that he meets the eligibility requirements for having a polygraphy condition included in his licence.

Section 29: Effect of polygraph condition

125. This section sets out the requirements placed on an offender where polygraph testing is set as a condition of licence, describes a polygraph session and permits the Secretary of State to make rules to govern the conduct of polygraph sessions.
126. *Subsection (1)* describes the requirements of a polygraph condition. When imposed, such a condition requires an offender to participate in a polygraph session with a view to monitoring his compliance with the other conditions of his licence and improving his management on licence in the community. It also provides that an offender must participate in a polygraph session in accordance with instructions given by the appropriate officer and comply with instructions given him by the polygraph operator.

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(c.21) which received Royal Assent on 26 July 2007*

127. *Subsection (2)* describes what takes place during a polygraph session. During a polygraph session, the polygraph operator conducts a polygraph examination and interviews the offender in question in preparation or in connection with that examination.
128. *Subsection (3)* describes a polygraph examination. The polygraph operator questions the offender, and the offender's answers are recorded. In addition, the physiological reactions of the released offender are measured and recorded by means of equipment approved by the Secretary of State.
129. *Subsection (4)* defines who is an 'appropriate officer' for the purpose of subsection (1).
130. *Subsection (5)* requires appropriate officers to have regard to any guidance issued by the Secretary of State with regard to instructions that an appropriate officer may issue with regard to attendance at polygraph sessions.
131. *Subsection (6)* enables the Secretary of State to make rules regarding the conduct of polygraph sessions.
132. *Subsection (7)* states that rules made under subsection (6) may include the qualifications that polygraph operators must satisfy, the way in which records of polygraph sessions are to be kept and the way reports on the results of polygraph sessions are to be prepared.
133. *Subsection (8)* states that the power to make rules as described in subsection (6) is exercisable by statutory instrument subject to the negative resolution procedure.

Section 30: Use in criminal proceedings of evidence from polygraph sessions

134. This section provides that any statement made by a person during a polygraph session or any physiological reaction made during such a session may not be used in criminal proceedings in which that person is the defendant.

Section 31: Accreditation of programmes for purposes of programme requirements

135. Currently section 202 of the Criminal Justice Act 2003 makes provision for an 'accreditation' body to accredit programmes. The Correctional Services Accreditation Panel (CSAP) is designated as the accreditation body and is an advisory non-departmental public body. The Panel replaced the Prison Service's General and Sex Offender Treatment Programme Accreditation Panels established by the Prison Service in 1996.
136. The establishment of the National Offender Management Service (NOMS) has created a different framework for the provision of correctional services. The separation of commissioning from operational delivery has secured the independence from service providers necessary for NOMS to make accreditation decisions itself in relation to offending behaviour programmes. There is therefore no longer a need for an accreditation body that is independent of NOMS and constituted as a non-departmental public body. This section amends section 202 of the Criminal Justice Act 2003, making provision for the Secretary of State to accredit programmes in place of the accreditation body. Decisions on accreditation will be taken after consulting and receiving advice from an independent non-statutory panel of experts to replace the CSAP.

Section 32: Functions of Youth Justice Board

137. Section 41 of the Crime and Disorder Act 1998 ("the 1998 Act") deals with the Youth Justice Board. Section 41(5) of the 1998 Act lists the functions of the Youth Justice Board and section 41(6) enables the Secretary of State, by order, to allow the Board to exercise concurrently with him his own functions in relation to the youth justice system. The Youth Justice Board already exercises Secretary of State functions in relation to the placement of offenders sentenced to a Detention and Training Order.

138. *Subsection (2)* of this section amends section 41(5) of the 1998 Act to enable the Secretary of State to ask the Board to assist him in carrying out his functions in relation to the release of offenders in youth detention accommodation.
139. *Subsection (3)* allows the Secretary of State, in an order under section 41(6), to restrict the manner or classes of case in which the Youth Justice Board may exercise functions of his in respect of individual offenders. The Secretary of State is also given power to include in the order supplementary, incidental or consequential provisions.

Section 33: Detention and training orders: early release

140. This section introduces an element of flexibility into the arrangements for early release from the custodial part of the Detention and Training Order. Young offenders serving Detention and Training Orders of 8 months or longer may be released one month before the mid-point of their sentence. Those serving orders of 18 months or longer may be released either one or two months before the mid-point. At present, early release, where authorised, must take place exactly one or, where appropriate, two months before the mid-point. If anything happens to prevent this, the young person must remain in custody for a further month (i.e. until the halfway point of a sentence or the second early release point in the case of sentences of 18 months or longer).
141. The amendments made by *subsection (1)* enable the trainee to be released at any point during the last month before the mid-point of the order (or two months, in the case of orders of 18 months or longer).
142. *Subsection (2)* specifies that this new flexibility will apply to orders made before the section comes into force as well as those made subsequently.

Section 34: Accommodation in which period of detention and training to be served

143. Detention and Training Orders are in two parts: the first spent in custody and the second under supervision in the community. At present, the young person (or “trainee”) must be placed, during the custodial part, in one of the types of “secure accommodation” listed in section 107 of the Powers of Criminal Courts (Sentencing) Act 2000.
144. The amendments made by the section provide that (unless he or she has attained the age of 18) the trainee must be placed in “youth detention accommodation”. This category is wider than the current “secure accommodation”. In future, it will be possible, for example, to place a young person in other forms of local authority accommodation as well as in a secure children’s home. Trainees who are sent back to custody because they have breached the terms of their notice of supervision or committed a further offence during the community part of the order must, unless they have reached 18, also be placed in “youth detention accommodation”.
145. *Subsection (6)* replaces the list of “secure accommodation” with a new list of “youth detention accommodation”. *Subsection (6)(b)* adds, as a type of “youth detention accommodation”, secure accommodation provided *on behalf of* a local authority to the list of allowable types of placement. (Secure accommodation provided *by* the local authority itself is already on the list.). *Subsection (6)(c)* removes the requirement that accommodation, directed by the Secretary of State to be “youth detention accommodation”, must have the purpose of restricting liberty as its purpose.

Section 35: Escort arrangements

146. Arrangements for conveying juvenile offenders between courts, custodial establishments, police stations and hospitals are currently provided in the Criminal Justice Act 1991 and the Criminal Justice and Public Order Act 1994. This section extends the provisions of the 1994 Act. It gives authority for the transporting of a greater range of detained young persons between a wider range of types of premises, including young offender institutions, secure training centres and secure children’s

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homes. Transporting of remanded, as well as sentenced, young people is covered, between any of the types of youth detention accommodation defined in section 107(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended by section 25(7)), as well as courts, police stations and hospitals.