

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.

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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.

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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.

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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.

Part 2: Prisons

Section 16: Power of search in contracted out prisons and secure training centres

92. *Subsection (1)* amends section 86(2) of the 1991 Act which prevents prisoner custody officers performing custodial duties at a contracted-out prison from conducting anything more than a “rub-down” search of a visitor. The amendment removes this restriction and allows a prisoner custody officer to require a visitor he wishes to search to remove an item of clothing which is not only an outer coat, jacket or gloves. However, the amendment makes clear that a prisoner custody officer shall not be able to require that an intimate search (within the meaning of section 164(5) of the Customs and Excise Management Act 1979) is carried out. This subsection also amends section 86 by clarifying that the power to search will be exercised in line with relevant Prison Rules and Young Offender Institution Rules.
93. *Subsection (2)*, amends section 9 of the Criminal Justice and Public Order Act 1994 by removing an equivalent restriction placed upon a custody officer at a secure training centre and expands his power to search in line with *subsection (1)*. *Subsection (2)(a)* provides that the power to search will be exercised in accordance with relevant Secure Training Centre Rules.

Section 17: Power of detention in contracted out prisons and secure training centres

94. *Subsection (1)* amends the Criminal Justice Act 1991 (“the 1991 Act”) by inserting a new section 86A. This gives a prisoner custody officer the power to require a visitor to wait with him where that officer believes the visitor has committed an offence under sections 39 to 40D of the Prison Act 1952 or an offence of attempting, inciting, conspiring or aiding, abetting, counselling or procuring the commission of such an offence.
95. The new section 86A enables the requirement to wait to be imposed solely in order to enable a constable to arrive. It also makes clear that the period for which a visitor may be required to wait shall be for so long as is necessary for a constable to arrive and, in any event, shall not exceed two hours. Section 86A also enables the prisoner custody officer to use reasonable force to prevent the visitor whom he has detained from making off. Further, it provides that a person who makes off when required by a prisoner custody officer to wait with him will be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
96. *Subsection (2)* ensures that the new power to detain extends to a prisoner custody officer performing contracted out functions at a directly managed prison.
97. *Subsection (3)* amends the Criminal Justice and Public Order Act 1994 by inserting a new section 9A which gives a custody officer in a secure training centre a power to detain, equivalent to that in the new section 86A of the 1991 Act.
98. *Subsection (4)* makes clear that the new section 9A power extends to a custody officer performing contracted out functions at a directly managed secure training centre.

Section 18: Powers of authorised persons to perform custodial duties and search prisoners

99. *Subsection (2)* of this section amends the 1991 Act further by inserting a new section 86B.
100. Section 86B provides a mechanism for authorising a person working at a contracted out prison who is not a prisoner custody officer to perform restricted activities. Such activities are those that would involve the performance by the worker of a custodial duty. A custodial duty can only be performed by prisoner custody officers, owing to the effect of section 85(1) of the 1991 Act.

101. The new section 86B enables the Secretary of State to specify in an order subject to negative procedure the activities that a worker may be authorised to carry out. The director of a prison in which that worker is working may then authorise a worker to carry out one or more of the listed restricted activities. Any authorisation may be limited or given in general or specific terms and be given either to individuals or a defined class of persons. Finally, none of the powers conferred by the section permit the use of force by a worker when carrying out a restricted activity. That will not prevent the use of force in circumstances where it is authorised by another enactment or the common law.
102. *Subsection (3)* provides that section 85(1) of the 1991 Act, which requires custodial duties to be performed only by a prisoner custody officer, takes effect subject to the new section 86B.

Section 19: Powers of director of a contracted out prison

103. This section removes the prohibition in section 85(3) of the Criminal Justice Act 1991 that prevents a director in a contracted-out prison from exercising certain adjudication and segregation functions. The effect of this amendment is that a director, rather than a controller (who is employed by the Ministry of Justice and currently exercises the functions in question) will be able to inquire into a disciplinary charge laid against a prisoner, conduct the hearing of a charge or make an award in respect of any charge. All such proceedings will take place in accordance with the Prison Rules or the Young Offender Institution Rules, as appropriate. By virtue of the amendments made by this section a director will also be able to segregate prisoners, temporarily confine prisoners or apply special controls or restraints on a routine basis. At present, these powers are available to a director only in an emergency.

Section 20: Amendment of section 87 of Criminal Justice Act 1991

104. This section makes two small amendments to section 87 of the Criminal Justice Act 1991. The principal effect of the Section is to enable the search powers vested in “authorised employees” under section 8A of the 1991 Act, together with the mechanism for authorising those searches, to apply in a contracted-out prison. Accordingly a director of such a prison will be able to authorise employees who are not prisoner custody officers to carry out “rub down” searches in accordance with section 8A.

Section 21: Assisting a prisoner to escape

105. This section replaces section 39 of the Prison Act 1952 with a new section 39 to bring the terminology up-to-date and in line with the terminology used in the new offences on the conveyance of prohibited articles in and out of prisons contained in section 22.

Section 22: Conveyance of prohibited articles into or out of prison

106. This section replaces section 40 of the Prison Act 1952 with new sections 40A, 40B and 40C. These new sections clarify the existing law, make changes to the penalties and mode of trial for certain offences and create new offences of taking mobile phones, sound recording devices and cameras into a prison.
107. New section 40A defines the categories of article which are referred to in sections 40B and 40C. There are 3 groups (described as List A, List B and List C) of prohibited items. *Subsection (2)* provides for List A (dangerous articles and controlled drugs). *Subsection (3)* provides for List B articles (alcohol, mobile telephones, cameras and sound-recording devices). *Subsection (4)* defines “camera” and “sound-recording device”. *Subsection (5)* provides that the reference in list B to a mobile telephone, a camera or a sound-recording device includes component parts and articles designed or adapted for use with those articles as well as the articles themselves. *Subsection (6)* provides that a list C item is an article or substance that has been prescribed as such by the prison rules.

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108. *Subsection (7)* enables the Secretary of State to amend new section 40A by adding, repealing or modifying an entry to List A or B or any provision for the interpretation of the section. An Order relating to List A articles is exercisable by statutory instrument and is subject to the affirmative procedure. Where an amendment is made to the list of List B articles then the order is subject to the negative resolution procedure. Section 22(2) makes the necessary consequential amendments to section 52 of the Prison Act 1952 which deals with the Secretary of State's power to make orders under that Act.
109. New section 40B makes it an offence to convey List A articles into or out of prison without authorisation. *Subsection (1)* details the type of conduct which is covered by the new offence. *Subsections (2) to (5)* define "authorisation" and detail how the authorisation may be given and by whom. *Subsection (6)* sets out the maximum penalty and mode of trial for the new offence.
110. New section 40C makes it an offence to convey List B or C articles into or out of prison. *Subsections (1)* (List B) and *(2)* (List C) detail the type of conduct which is prohibited by the new offences. A person commits an offence if he carries out a listed activity without authorisation. *Subsection (4)* provides for defences where the accused individual reasonably believed he had authorisation or where there was an overriding public interest which justified the doing of the prohibited act. *Subsections (5)* (List B) and *(6)* (List C) set out the maximum penalty and mode of trial for the new offences.

Section 23: Other offences relating to prison security

111. This section inserts new sections 40D and 40E to the Prison Act 1952. These new sections create new offences of taking a photograph or making sound recordings within a prison or transmitting images or sounds from a prison without authorisation. It also creates an offence of taking a restricted document out of a prison.
112. New section 40D creates the offence of taking a photograph or making sound recordings in a prison or transmitting any image or sound by electronic communications. *Subsection (3)* creates offences designed to prohibit the conveyance or transmission of restricted documents out of a prison. *Subsection (4)* provides for defences where the accused individual reasonably believed he had authorisation or where there was an overriding public interest which justified the doing of the prohibited act. *Subsection (5)* sets out the maximum penalty and mode of trial for the new offences.
113. New section 40E gives details of how an authorisation may be given and by whom. It also provides definitions of terms used in the new sections and makes minor repeals of, and consequential amendments to, the Prison Act 1952.

Section 24: Offences under sections 22 and 23: extension of Crown immunity

114. New section 40F extends Crown immunity in relation to offences under new sections 40B, 40C and 40D to designated persons working at a prison. This ensures that all relevant staff can be treated the same in relation to the new offences.

Section 25: Removal of requirement to appoint a medical officer etc

115. Historically, prison health services were provided via a requirement in the Prison Act 1952 for each prison to appoint a medical officer. From April 2003, prison health services became the responsibility of the Secretary of State for health under separate existing legal provisions. This section removes the original requirement in the Prison Act 1952.
116. The original medical officer role is at odds with modern professional management of health services and the development of multi-disciplinary clinical teams and the role as envisaged by the original legislation has become defunct. As the NHS, in the form of Primary Care Trusts, have now assumed statutory responsibility for local prison health services, the original medical officer role is no longer required.

Section 26: Independent Monitoring Boards

117. **Section 26** provides for the change of name from “Boards of Visitors” to “Independent Monitoring Boards” and replaces references to “Boards of Visitors” in the Prison Act 1952 with the title “Independent Monitoring Boards”. It also removes the requirement in section 6 of the Prison Act 1952 that at least two members of the Board must be magistrates.

Section 27: Amendment of section 8A of the Prison Act 1952

118. This section makes a small amendment to section 8A of the Prison Act 1952 by providing that a person who is not necessarily an employee of a prison, but who is working there can be authorised to carry out a “rub down search” under section 8A.

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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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

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.

Part 4: Supplemental

Section 36: Orders and Regulations

147. This section sets out the level of parliamentary scrutiny applicable to orders and regulations made under the Act. It does not apply to commencement orders which are not subject to any Parliamentary procedure. Save for orders made under section 5(3)(c), section 14(2)(h) or (7), section 15 or section 38(2)(a), which are subject to the affirmative procedure, orders and regulations will be subject to negative resolution procedure.

Section 37: Financial Provisions

148. This section gives the Secretary of State authority to spend money provided by Parliament for the purposes of the Act.

Section 38: Power to make consequential and transitional provision etc

149. This section enables the Secretary of State, by order, to make any supplemental, incidental or consequential provision, and any transitory, transitional or saving provision which he considers necessary to give full effect to the Act.

150. *Subsection (2)(a)* states that such an order may amend, repeal or revoke any enactment and *subsection (2)(b)* states that the order may also provide for any provision of this Act which comes into force before another provision has come into force to have effect until that other provision has come into force, with specified modifications. The power in subsection (2)(a) is subject to the affirmative procedure by virtue of section 36(3)(d).

151. *Subsection (3)* makes clear that the reference to an enactment in subsection (2) includes legislation which is passed or made before the end of the 2007/2008 parliamentary session.

Section 39: Minor and consequential amendments, transitionals and repeals

152. This section gives effect to Schedules 3, 4 and 5 which deal with minor and consequential amendments, transitional provisions and savings, and repeals respectively.

Section 40: Extent

153. The Bill forms part of the law of England and Wales only, save for the exceptions listed.

Section 41: Commencement

154. This section sets out the arrangements for bringing into force the provisions of the Act.

155. *Subsection (1)* states that the preceding provisions shall come into force on a day which the Secretary of State may, by order, appoint.

156. *Subsection (2)* states that different provisions may be brought into force at different times and in different areas.

157. *Subsection (3)* states that orders under this section may include transitional provisions or savings.

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

158. *Subsection (4)* provides that, unless making provision as set out in subsections (5)(a) and (6), an order made bringing into force anything in sections 24 or 25 (which relate to polygraph testing) will be subject to the affirmative resolution procedure.
159. *Undersubsection (5)(a)*, the Secretary of State may by order bring polygraph testing as a condition of licence into force in a specified area for a specified period.
160. *Subsection (6)* provides that an order made under subsection 5(a) may be amended by a subsequent order so as to extend the period in which polygraph testing as a condition of licence is in force in respect of the specified area.

Section 42: Short title

161. This Section sets out the short title of the Bill.