

OFFENDER MANAGEMENT ACT 2007

EXPLANATORY NOTES

COMMENTARY ON THE SCHEDULES

Schedule 1: Probation trusts: further provisions

162. *Paragraph 1* states that a probation trust is a body corporate and that its name is that specified in the order. It is envisaged that the order will name the probation trust in accordance with the geographical area in which it is based but without limiting the trust's area of operation to that geographical area.
163. *Paragraph 3(1)* specifies that a probation trust shall comprise a chairman and no fewer than four other members appointed by the Secretary of State. In practice, it is envisaged that most trusts will have more members than this but the legislation allows flexibility for the number to vary between trusts and over time, depending on the nature and scale of an individual trust's business. A trust shall also include the chief executive who will become an *ex officio* member on appointment. *Paragraph 3(2)* clarifies that, where subsequent provisions refer to an "appointed member" of a trust, this refers to a member appointed by the Secretary of State; it does not include the chief executive.
164. *Paragraph 3(3)* states that, where practicable, at least one of the appointed members of a trust must, when appointed, be a member of a relevant local authority. *Paragraph 3(4)* defines "relevant local authority" for these purposes.
165. *Paragraph 5* states that the Secretary of State shall pay appointed members and pay, or make provision for the payment of, pensions etc. In both cases, the level of such payments is for the Secretary of State to determine. The paragraph also enables, but does not require, the Secretary of State to compensate a member who ceases to hold office (other than on the expiry of his term) if the Secretary of State deems it appropriate.
166. *Paragraph 6* states that the members appointed by the Secretary of State shall appoint a chief executive who shall be an employee of the trust and whose terms of employment are for the appointed members to determine (at present the chief officer of a local probation board is appointed by the Secretary of State). But this would not apply if the Secretary of State were to direct the appointment of the first chief executive of the trust and his terms and conditions.
167. *Paragraph 7* sets out the provisions for the appointment of staff. The trust appoints its own staff and sets its own terms and conditions, subject to the proviso (in *paragraph 8*) that the determination of terms of employment relating to remuneration, fees or expenses and pensions, allowances or gratuities requires the approval of the Secretary of State.
168. *Paragraph 9* enables the trust to regulate its own procedure.
169. *Paragraph 10* clarifies that the validity of a trust's proceedings are not affected by a vacancy among its members or a defect in the appointment of any member.

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170. *Paragraph 11* enables a probation trust to authorise an appointed member, a committee, the chief executive or any other member of staff to do anything that the trust would otherwise have to do itself.
171. *Paragraph 12* empowers a trust to do anything it thinks necessary to achieve its purposes, except that it may not hold land or borrow or invest money without the general or specific approval of the Secretary of State
172. *Paragraph 13* requires a trust to keep proper financial records and prepare an annual statement of accounts, which may be examined by the Comptroller and Auditor General and, in the case of a Welsh probation trust, the Auditor General for Wales. The paragraph also makes consequential amendments to the Audit Commission Act 1988 (as amended by the 2000 Act), and the Public Audit (Wales) Act 2004.
173. *Paragraph 14* requires a trust to comply with any general or specific directions given to it by the Secretary of State and to provide the Secretary of State with information if he so directs.

Schedule 2: Transfers of property etc and staff in connection with probation services arrangements

174. *Schedule 2* covers certain matters relating to the abolition of local probation boards or the making or termination of any arrangements for the delivery of probation services.
175. *Paragraph 1* states that transfer schemes may be made in connection with this and defines “property transfer scheme”, “property”, “relevant person” and “staff transfer scheme”.
176. *Paragraphs 2 to 4* deal with property transfer schemes.
177. *Paragraph 2* enables the Secretary of State to make a property transfer scheme to transfer to the Secretary of State the property and liabilities of a local probation board, or a relevant person, or to transfer to a relevant person any property or liabilities of the Secretary of State.
178. *Paragraph 3* states that a property transfer scheme takes precedence over any other provisions which might restrict transfers. Such compensation for loss of rights or reverter is to be paid by the transferor and/or transferee as appropriate, and the scheme may include a mechanism for resolving disputes over compensation.
179. *Paragraph 4* states that any ongoing proceedings or activities relating to the transferor are to be treated as if relating to the transferee when the transfer has taken place.
180. *Paragraphs 5 to 10* deal with staff transfer schemes. The policy intention is that staff who transfer between providers of probation services should have their terms and conditions protected by law. In many cases the Transfer of Undertakings (Protection of Employment) Regulations 2006 will provide the appropriate protection. But, in cases where TUPE does not apply, these paragraphs enable the Secretary of State to make equivalent provision.
181. *Paragraph 5* enables the Secretary of State to make a staff transfer scheme to transfer:
- employees of a local probation board to a relevant person;
 - employees of one relevant person to another; or
 - transfers from providers to the civil service and vice versa.

A scheme may not be made unless any directions about consultation given by the Secretary of State have been complied with.

182. *Paragraph 6* deals with transfers between relevant persons or between probation boards and relevant persons and it provides that, when an employee is transferred under the

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scheme, his continuity of employment is maintained and the rights, duties and liabilities of his previous employer are transferred to the new one. If an employee does not wish to transfer to the new employer, his contract is terminated and he is not to be treated as having been dismissed for the purposes of the Employment Rights Act 1996.

183. *Paragraph 7* makes similar provision in relation to employees of probation boards who transfer to the civil service.
184. *Paragraph 8* makes similar provision in relation to civil servants who transfer to the employment of a probation trust or other provider.
185. *Paragraph 9* makes clear that the Schedule does not prejudice an employee's right to terminate his employment if his working conditions are changed substantially to his detriment.
186. *Paragraph 10* states that, if a contract of employment with either a board or a trust is not transferred to a new employer, the contract is terminated and the employee is treated as having been dismissed for the purposes of the Employment Rights Act 1996.

Schedule 3: Minor and Consequential Amendments

187. *Part 1* makes amendments to the following Acts consequential on the provisions in Part 1 of the Act relating to the new arrangements for the provision of probation services: the Race Relations Act 1976, Interpretation Act 1978, Crime and Disorder Act 1998, Children Act 2004 and Local Government and Public Involvement in Health Act 2007 (at the time of writing, this is still the Local Government and Public Involvement in Health Bill). With the exception of the amendments to the Interpretation Act, these consequential amendments clarify how responsibilities which are currently placed on local probation boards in other enactments will be exercised under the new arrangements. However, most consequential amendments will be made through secondary legislation using the power in section 38.
188. *Part 2* makes a number of consequential amendments to existing legislation to reflect the change of name of Boards of Visitors in section 26. "Independent Monitoring Board" is inserted into the Race Relations Act 1976 and Freedom of Information Act 2000 and is substituted for "Boards of Visitors" in the Prison Act 1952, Employment Rights Act 1996 and Powers of Criminal Courts (Sentencing) Act 2000.
189. *Part 3* makes amendments to various Acts consequential on the amendments in section 34 relating to the accommodation in which a person may be detained under a detention and training order.
190. *Part 4* makes changes consequential to the revision by section 35 of the escort arrangements for young people who are detained, so as to include those remanded or committed to custody and to cover the full range of "youth detention accommodation".

Schedule 4: Transitional and transitory provisions and savings

191. *Paragraph 1* deals with what happens when a chief officer of a local probation board is not appointed chief executive of a probation trust. If a local probation board is abolished under the terms of the Act and the chief officer of that board is not appointed as chief executive of a probation trust before ceasing to hold office as chief officer, the Secretary of State may pay such compensation as he considers appropriate.
192. *Paragraph 2* deals with what happens when a chief officer of a local probation board is appointed chief executive of a probation trust. In that case, his continuity of employment is preserved and the period he spent as a chief officer (including any previous service as a chief probation officer with a probation committee) will count as a period of employment with the trust.

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193. *Paragraph 6* makes clear that the Secretary of State may make an order under section 38(1) to provide transitional arrangements, in the event that the new escort arrangements in section 35 are introduced before the sentences of detention in a young offender institution and custody for life are abolished.
194. *Paragraph 7* of the Schedule makes transitory provision to cover the possibility that section 59 of the Criminal Justice and Court Services Act 2000 (which provide for the abolition of remand centres) does not come into force before the amendment made by paragraph 8(2) of Schedule 3.

Schedule 5: Repeals and revocations

195. This Schedule lists provisions repealed as a consequence of the Act.