

**EXPLANATORY MEMORANDUM TO
THE OFFENDER MANAGEMENT ACT 2007 (ESTABLISHMENT OF
PROBATION TRUSTS) ORDER 2009**

2009 No. 504

- 1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.**

- 2. Purpose of the Instrument**
 - 2.1 This Order establishes 2 Probation Trusts on 1st April 2009. These are: Greater Manchester Probation Trust, and Lancashire Probation Trust. The principal purpose of each Trust is to enter into contracts for the provision of probation services with the Secretary of State under the Offender Management Act 2007 (“OMA 2007”).

- 3. Matters of Special Interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

- 4. Legislative Context**
 - 4.1 Probation Trusts will replace the local probation board structure. The Secretary of State has the power to establish Probation Trusts for the purposes specified, by Order, subject to the negative resolution procedure. The OMA 2007 received Royal Assent on 26th July 2007 and Section 5 was commenced on 1st March 2008. Six Probation Trusts were established by Order on 1st April 2008.
 - 4.2 Section 5(2) of the OMA 2007 provides that the purposes of a Trust must include “the making and performance by the Trust of contracts with the Secretary of State under section 3(2) of the OMA 2007” for the provision of probation services. Section 5(3) also lists a number of other possible purposes of a Probation Trust, including “the making and performance by the Trust of contracts with another Probation Trust or any other person which provide for the carrying out by the Trust of activities which contribute to the achievement of any purpose mentioned in section 2(1) of the Offender Management Act 2007”. Both these purposes are specified in article 3 of this Order as the purposes of the Probation Trusts established by this Order.
 - 4.3 This Order is one of a series of Orders implementing the new arrangements for the provision of probation services in Part 1 of the OMA 2007. The new arrangements are being implemented in phases, with the first phase having commenced on 1st April 2008 and this phase proposed to commence on 1st April 2009. A related Order prepared for the implementation of the second phase is the Offender Management Act 2007 (Commencement No.4) Order 2009 which

commences the relevant provisions of the OMA 2007.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Prior to April 2008, the requirement to provide probation services rested exclusively with local probation boards, which were established by Part 1 of the Criminal Justice and Court Services Act 2000 (“CJCSA 2000”). These services include giving assistance to courts; the management of offenders (such as supervising offenders in custody or on licence); and the delivery of interventions (such as drug treatment requirements as part of a community order). Probation services could only be provided by another supplier if sub-contracted directly by the local probation board.

7.2 The OMA 2007 places the statutory duty to ensure that sufficient probation services are provided throughout England and Wales on the Secretary of State (section 2(1) of the OMA 2007), and enables the Secretary of State either to provide the services himself or to enter into contractual arrangements with organisations from the public, private or third sector for the delivery of probation services (section 3(2) of the OMA 2007). Section 5 of the OMA 2007 provides for the establishment of Probation Trusts as the new public sector provider of probation services.

7.3 As the then Offender Management Bill was progressing through Parliament, concern was expressed that certain key probation services should remain within the public sector in the short term and it was decided that the provision of assistance to courts should be retained within the public sector until Parliament agrees, via an order subject to the affirmative resolution procedure, that this work should be opened up to private or voluntary sector providers (sections 4 and 15 of the OMA 2007).

7.4 The first six Probation Trusts were established in April 2008. This Order establishes 2 further Probation Trusts as the public sector bodies with whom the Secretary of State will contract for the provision of probation services.

7.5 Visits were made to each of the six First Wave Trusts to identify learning after six months of operation as a Trust. Findings from these visits were shared with the Probation Trust Programme and Performance Improvement Unit to support their work in establishing Trusts across the rest of England and Wales.

The first wave learning discussions identified a number of areas for

development. Developments have included revision of the Trusts Governance Handbook, a forum for resolving issues relating to the management of the Contract, and revisions to the drafting of the Contract.

- 7.6 There have been a number of organisational and environmental changes since the first six Trusts were established. NOMS has now been established as an Agency and the probation service, in common with all public services, is facing challenging budgetary constraints. NOMS must therefore ensure that Trusts are capable of operating efficiently, and have the competence to operate as effective organisations delivering efficient and effective services.

To assist NOMS, and alongside the lessons learned from working with the first 6 Trusts, a review of probation structures was conducted. As a result of this review Local Probation Boards will need to demonstrate how they will be both effective and efficient, deliver services at a local level and continue to meet the needs of the probation provision.

To test the abilities required a new application and assessment process has been developed based on the following four domains:

- Local Engagement and Accountability
- Operational Performance
- Use of Resources
- Organisational Capability

- 7.7 The Trusts in the second phase will be established on 1st April 2009. Staff currently employed by these local probation boards will become employees of the equivalent Probation Trusts via a staff transfer scheme. The Chief Executive of the Trust (generally the chief officer of the local probation board) will be appointed by the Secretary of State.

- 7.8 The principal purpose of the Trusts established by this Order is to enter into contractual arrangements with the Secretary of State under section 3(2) of the OMA 2007 for the provision of probation services. These contracts will be the main mechanism for setting out what Trusts do in detail, including specifying the geographical area for which a Trust is to act. The other purpose of the Trusts established by this Order is to contract with other commissioners (which could include other Probation Trusts) for the provision of probation services.

- 7.9 There will be a third phase establishing a larger number of Probation Trusts in April 2010. Performance across the four domains noted above will continue to be a significant factor in deciding which areas make the transition. Work to consider performance will be ongoing, based on performance data current at the point of decision.

8. Consultation Outcome

- 8.1 Consultation was completed before the OMA 2007, and the Probation Trusts Programme has continued to work with key stakeholders. As part of the transition to Trust status local areas are required to consult with key stakeholders, staff and local trade unions.

9. Guidance

- 9.1 As this Order simply establishes Trusts, no guidance is considered necessary for the Order itself. For the probation areas making the transition, a number of key documents have been produced: a transition planning template, a progress reporting tool and a governance handbook providing guidance on the running and management of the Trust.

10. Impact

- 10.1 A copy of the full Regulatory Impact Assessment was attached to the Explanatory Memorandum for The Offender Management Act 2007 (Consequential Amendments) Order 2008.

11. Regulating Small Business

- 11.1 The legislation does not apply to small business.

12. Monitoring and Review

- 12.1 Probation Trusts are bodies that are contracted to the Secretary of State. This contractual arrangement involves ongoing performance measurement, with updates being produced from figures collated from local probation boards and Trusts. The results are released quarterly to probation areas. Year end performance figures are published in the annual report of each area or Trust.

13. Contact

- 13.1 Angie Munley at the Ministry of Justice Tel: 020 7217 5415 or e-mail: angela.munley@justice.gsi.gov.uk can answer any queries regarding the instrument.