

EXPLANATORY MEMORANDUM TO
THE OFFENDER MANAGEMENT ACT 2007 (ESTABLISHMENT OF
PROBATION TRUSTS) ORDER 2010

2010 No. 195

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 The primary purpose of this Order is to establish public sector bodies, Probation Trusts, in those geographical areas where Local Probation Boards will be abolished on commencement of the relevant provisions of Part I of the Offender Management Act 2007 (“OMA 2007”). The principal purpose of each Trust is to enter into contracts for the provision of probation services with the Secretary of State under the OMA 2007.
 - 2.2 This Order will also dissolve the two Probation Trusts established in Dyfed Powys and South Wales to allow for the establishment of an all-Wales Probation Trust.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Probation Trusts replace local probation boards. 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 and a further two were established by Order on 1st April 2009.
 - 4.2 Section 5(1) of the OMA 2007 provides the Secretary of State with the power to establish and to dissolve Probation Trusts. 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 4 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 pursuant to Part 1 of the OMA 2007. The new arrangements have been implemented in phases, with the first phase beginning on 1st April 2008, the second phase beginning on 1st April 2009, and this final phase to begin on 1st April 2010. A related Order prepared for the implementation of this final phase is the Offender Management Act 2007 (Commencement No. 5) Order 2010, 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 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 with local probation boards, which were established by Part 1 of the Criminal Justice and Court Services Act 2000 ("CJCSA 2000"). Those services provided included 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), but 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 The principal purpose of the Trusts established by this Order is to enter into contractual arrangements with the Secretary of State for the provision of probation services under section 3(2) of the OMA 2007. These contracts will be the main mechanism for setting out in detail what the Trusts are to do. 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.
- 7.4 Local probation boards were all required to apply for Trust status and meet a required standard in four domains (Local Engagement & Accountability; Operational Performance; Use of Resources; and Organisational Capability). Six local probation boards were part of the first phase of Probation Trust implementation and became Trusts on 1st April 2008. Two further boards successfully completed the application process in December 2008 and became Trusts on 1st April 2009. All remaining local probation boards have now applied and met the criteria to be part of this final phase of Probation Trust implementation.
- 7.5 Decisions relating to the size of individual Probation Trusts have been made at a local level with local consultation and business planning undertaken. As a result of this some individual Local Probation Boards will be merging to form larger geographical Trusts. For example Surrey Probation Board and Sussex Probation Board will merge to become the Surrey and Sussex Probation Trust.
- 7.6 In Wales, it has been decided that a single Probation Trust covering the entire country should be created. To do so, two existing Probation Trusts in Dyfed Powys and South Wales will be dissolved.

8. Consultation Outcome

- 8.1 Although consultation on the Order as a whole has not been undertaken, each of the individual geographical areas covered by the instrument have engaged in substantial consultation. Further, national discussions have been taken forward with Trade Union colleagues and other key stakeholders such as the Probation Association.

9. Guidance

- 9.1 The newly established Probation Trusts are provided with a

number of guidance documents including a Governance Handbook which outlines the minimum governance standards expected of a Probation Trust and the Trust Contract detailing the service provision requirements on each Trust.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is unchanged from that of Local Probation Boards.
- 10.2 The impact on the public sector is unchanged.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating Small Business

- 11.1 This instrument does not apply to small business.

12. Monitoring & Review

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 probation Trusts. Management information will continue to be collected and collated by National Offender Management Service. The results are released quarterly to probation areas. Year end performance figures are published in the annual report of each Trust. The OMA 2007 (Section 8 (2)) requires the Secretary of State to publish an Annual Plan which sets out the way in which the Secretary of State proposes to discharge his statutory probation functions and carry out any contractual arrangements for the provision of probation services.

13. Contact

Angie Munley at the Ministry of Justice Tel: 020 7217 2183 or email: angela.munley@justice.gov.uk can answer any queries regarding the instrument.