



# Criminal Justice and Court Services Act 2000

## 2000 CHAPTER 43

### PART I

#### THE NEW SERVICES

#### CHAPTER I

#### NATIONAL PROBATION SERVICE FOR ENGLAND AND WALES

#### *Introduction*

#### **1 Purposes of the Chapter.**

[<sup>F1</sup>(1) This Chapter has effect for the purposes of providing for—

- (a) courts to be given assistance in determining the appropriate sentences to pass, and making other decisions, in respect of persons charged with or convicted of offences, and
- (b) the supervision and rehabilitation of such persons.

[<sup>F2</sup>(1A) This Chapter also has effect for the purposes of providing for—

- (a) authorised persons to be given assistance in determining whether conditional cautions should be given and which conditions to attach to conditional cautions, and
- (b) the supervision and rehabilitation of persons to whom conditional cautions are given.]

(2) Subsection (1)(b) extends (in particular) to—

- (a) giving effect to community orders [<sup>F3</sup>(as defined by section 177 of the Criminal Justice Act 2003)] [<sup>F4</sup>, youth rehabilitation orders (as defined by section 1 of the Criminal Justice and Immigration Act 2008)] [<sup>F5</sup>and service

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community orders and overseas community orders under the Armed Forces Act 2006],

- (b) supervising persons released from prison on licence,
- (c) providing accommodation in approved premises.
- [<sup>F6</sup>(d) giving effect to suspended sentence orders (as defined by section 189 of the Criminal Justice Act 2003).]

(3) Regulations may extend the purposes mentioned in subsection (1) to include other prescribed purposes relating to persons charged with or convicted of offences.

[<sup>F7</sup>(4) In this section “authorised person” and “conditional caution” have the same meaning as in Part 3 of the Criminal Justice Act 2003.]]

#### Textual Amendments

- F1** Ss. 1-5 repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), Sch. 5 Pt. 1; [S.I. 2008/504](#), art. 4(1)(m)(i)(2); [S.I. 2009/547](#), art. 2(1)(m)(i)(2)
- F2** S. 1(1A) inserted (3.7.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 26(2)**, 336(3)(4); [S.I. 2004/1629](#), art. 2(1)(2)(a)
- F3** Words in s. 1(2)(a) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 32 para. 134(a)**; [S.I. 2005/950](#), art. 2(1), **Sch. 1 para. 42(36)** (with Sch. 2) (as explained (29.7.2005) by [S.I. 2005/2122](#), **art. 2**; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, **Sch. 28 Pt. 2**; [S.I. 2008/1586](#), Sch. 1 paras. 48(s), **50(2)(d)**; (30.11.2009) by [S.I. 2009/3111](#), **art. 2**; (3.12.2012) by [S.I. 2012/2905](#), **art. 4**; (3.12.2012) by 2012 c. 10, **Sch. 14 para. 17**; [S.I. 2012/2906](#), **art. 2(I)**)
- F4** Words in s. 1(2)(a) inserted (30.11.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), **Sch. 4 para. 69** (with Sch. 27 paras. 1, 5); [S.I. 2009/3074](#), art. 2(p)(xiii)
- F5** Words in s. 1(2)(a) inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 177**; [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4
- F6** S. 1(2)(d) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 32 para. 134(b)**; [S.I. 2005/950](#), art. 2(1), **Sch. 1 para. 42(36)** (with Sch. 2) (as explained (29.7.2005) by [S.I. 2005/2122](#), **art. 2**; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, **Sch. 28 Pt. 2**; [S.I. 2008/1586](#), Sch. 1 paras. 48(s), **50(2)(d)**; (30.11.2009) by [S.I. 2009/3111](#), **art. 2**; (3.12.2012) by [S.I. 2012/2905](#), **art. 4**; (3.12.2012) by 2012 c. 10, **Sch. 14 para. 17**; [S.I. 2012/2906](#), **art. 2(I)**)
- F7** S. 1(4) inserted (3.7.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 26(3)**, 336(3)(4); [S.I. 2004/1629](#), art. 2(1)(2)(a)

#### Modifications etc. (not altering text)

- C1** S. 1(1) extended (1.4.2001) by [S.I. 2001/786](#), **art. 2**

## 2 Aims of the Service.

[<sup>F1</sup>(1) This section applies to—

- (a) the functions of the Secretary of State under this Chapter,
- (b) the functions of local probation boards, and officers of local probation boards, under this Act or any other enactment,

so far as they may be exercised for the purposes mentioned in section 1.

(2) In exercising those functions the person concerned must have regard to the following aims—

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- (a) the protection of the public,
- (b) the reduction of re-offending,
- (c) the proper punishment of offenders,
- (d) ensuring offenders' awareness of the effects of crime on the victims of crime and the public,
- (e) the rehabilitation of offenders.]

#### Textual Amendments

- F1** Ss. 1-5 repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), Sch. 5 Pt. 1; [S.I. 2008/504](#), art. 4(1)(m)(i)(2); [S.I. 2009/547](#), art. 2(1)(m)(i)(2)

### Functions

#### 3 Functions of the Secretary of State.

- [<sup>F1</sup>(1) The Secretary of State has the function of ensuring that provision is made throughout England and Wales for the purposes mentioned in section 1.
- (2) The Secretary of State may make any payment he considers appropriate towards expenditure incurred by any person for any of those purposes.
  - (3) If he considers it appropriate, he may make any payment on conditions.
  - (4) The conditions may (among other things)—
    - (a) regulate the purposes for which the payment or any part of it may be used,
    - (b) require repayment to the Secretary of State in specified circumstances.]

#### Textual Amendments

- F1** Ss. 1-5 repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), Sch. 5 Pt. 1; [S.I. 2008/504](#), art. 4(1)(m)(i)(2); [S.I. 2009/547](#), art. 2(1)(m)(i)(2)

#### 4 Local probation boards.

- [<sup>F1</sup>(1) For the purpose of implementing this Chapter, England and Wales shall be divided into areas.
- (2) For each area there shall be a board (referred to in this Act as a local probation board) which is to exercise the functions conferred on it by virtue of this Act and any other enactment.
  - (3) Schedule 1 (which makes provision about the constitution of local probation boards, their powers and other matters relating to them) is to have effect.
  - (4) References in this Act or any other enactment to an officer of a local probation board are references to—
    - (a) any member of the staff of a local probation board appointed to exercise the functions of an officer of the board, and

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- (b) any other individual exercising functions of an officer of a local probation board by virtue of section 5(2).
- (5) The initial areas for the purpose of implementing this Chapter are—
- (a) the police areas listed in Schedule 1 to the <sup>M1</sup>Police Act 1996 (areas into which England and Wales, apart from London, is divided), and
  - (b) the area comprising the Metropolitan Police District and the City of London Police Area.
- (6) The division of England and Wales into areas for that purpose may be altered from time to time by order made by the Secretary of State.]

#### Textual Amendments

- F1** Ss. 1-5 repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), Sch. 5 Pt. 1; [S.I. 2008/504](#), art. 4(1)(m)(i)(2); [S.I. 2009/547](#), art. 2(1)(m)(i)(2)

#### Marginal Citations

- M1** 1996 c. 16.

## 5 Functions of local probation boards.

- [<sup>F1</sup>(1) It is a function of a local probation board—
- (a) to make arrangements for ensuring that sufficient provision is made in respect of its area for the purposes mentioned in section 1 and for ensuring the performance of any other functions conferred by virtue of this Act or any other enactment on the board,
  - (b) to make arrangements for ensuring the performance of any functions conferred by virtue of this Act or any other enactment on officers of the board,
- and to implement, or ensure the implementation of, any arrangements it makes under this section.
- (2) In addition to making arrangements for provision to be made by its staff, a local probation board may (for example)—
- (a) make arrangements with organisations for provision to be made on the board’s behalf by the organisations,
  - (b) make arrangements with individuals who are not members of the board’s staff under which they may perform functions of officers of the board,
- and arrangements under paragraph (a) may provide for the organisations to designate individuals who may perform functions of officers of the board.
- (3) The provision that may be made in pursuance of such arrangements includes providing services to any person and, in particular—
- (a) giving assistance to persons remanded on bail or for whom officers of the board have responsibilities,
  - (b) providing accommodation in approved premises for persons who have at any time been charged with or convicted of an offence.

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- (4) A local probation board may provide for its staff to co-operate with persons in its area who are concerned with the prevention or reduction of crime or with giving assistance to the victims of crime.
- (5) Regulations may confer further functions on local probation boards or officers of local probation boards.
- (6) A local probation board may give grants or other financial assistance to any person only in pursuance of regulations.
- (7) A local probation board—
  - (a) may make an arrangement with another local probation board under which it provides on behalf of the other board, in respect of the other board's area, any services which it could provide under this section in respect of its own area, and
  - (b) may charge the other local probation board for any services it provides in pursuance of the arrangement.
- (8) It is for the Secretary of State to determine whether or not any provision made by a local probation board under this section is sufficient.]

#### Textual Amendments

- F1** Ss. 1-5 repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), Sch. 5 Pt. 1; [S.I. 2008/504](#), art. 4(1)(m)(i)(2); [S.I. 2009/547](#), art. 2(1)(m)(i)(2)

#### [<sup>F8</sup>5A Local probation boards and service justice

- (1) A local probation board may, in pursuance of arrangements made with the Secretary of State, carry out activities anywhere in the world in relation to persons who are or have been subject to proceedings before the Court Martial, the Summary Appeal Court or the Service Civilian Court.
- (2) Any activities carried out in relation to such persons must correspond to activities which the board is required or authorised to carry out in relation to persons who have been charged with or convicted of criminal offences.]

#### Textual Amendments

- F8** S. 5A substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 327, 383(2); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

#### Modifications etc. (not altering text)

- C2** [S. 5A](#) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), art. 1(3), [Sch. 1 para. 47](#)
- C3** [S. 5A\(1\)](#) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), arts. 1(3), [187](#)

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## 6 The inspectorate.

- (1) The inspectorate, and the office of chief inspector, established under section 23 of the <sup>M2</sup>Probation Service Act 1993 (inspectorate of probation) shall continue in being, <sup>F9</sup> ...
- <sup>F9</sup> .....
- <sup>F9</sup> .....
- (2) The power to appoint a person to be chief inspector or one of the other members of the inspectorate is exercisable by the Secretary of State.
- (3) The Secretary of State may determine—
- (a) the number of members of the inspectorate,
  - (b) the remuneration, allowances or other amounts to be paid by him to or in respect of the members of the inspectorate.
- (4) Below in this Chapter—
- (a) references to the chief inspector are to Her Majesty’s Chief Inspector of [<sup>F10</sup>Probation] for England and Wales,
  - (b) references to the members of the inspectorate are to the chief inspector and the other members of Her Majesty’s Inspectorate of [<sup>F10</sup>Probation] for England and Wales.

### Textual Amendments

**F9** Words in s. 6(1) repealed (1.4.2008) by [Offender Management Act 2007 \(c. 21\)](#), ss. 12(2)(a), 41(1), [Sch. 5 Pt. 1](#); S.I. 2008/504, art. 3(d)(n)

**F10** Word in s. 6(4) substituted (1.4.2008) by [Offender Management Act 2007 \(c. 21\)](#), ss. 12(2)(b), 41(1); S.I. 2008/504, art. 3(d)

### Marginal Citations

**M2** 1993 c. 47.

## 7 Functions of inspectorate.

- (1) The chief inspector must secure that the provision made in pursuance of arrangements made by [<sup>F11</sup>each local probation board under section 5][<sup>F11</sup>the Secretary of State under section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services)] is inspected by a member of the inspectorate.
- (2) The Secretary of State may direct the members of the inspectorate to assess the provision made by reference to criteria specified in directions.
- (3) A report of an inspection under subsection (1) must be sent to the Secretary of State.
- (4) The Secretary of State may give directions as to—
- (a) the information to be given in the report and the form in which it is to be given,
  - (b) the time by which the report is to be given.
- (5) The Secretary of State must lay a copy of the report before each House of Parliament.
- (6) The Secretary of State may give directions, in connection with the purposes mentioned in section 1 [<sup>F12</sup>of the Offender Management Act 2007] or any related purposes,

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conferring further functions on the chief inspector and the other members of the inspectorate.

[<sup>F13</sup>(7) Schedule 1A (which makes further provision about the inspectorate) has effect.]

**Textual Amendments**

- F11** Words in s. 7(1) substituted (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), ss. 12(3)(a), 41(1); [S.I. 2008/504](#), art. 4(1)(j)(2); [S.I. 2009/547](#), art. 2(1)(j)(2)
- F12** Words in s. 7(6) inserted (1.4.2008 for specified purposes, 1.4.2009 for specified purposes, 1.4.2010 in so far as not already in force) by [Offender Management Act 2007 \(c. 21\)](#), **ss. 12(3)(b)**, 41(1); [S.I. 2008/504](#), art. 4(1)(j)(2); [S.I. 2009/547](#), art. 2(1)(j)(2); [S.I. 2010/191](#), art. 2(10)
- F13** S. 7(7) inserted (1.4.2007) by [Police and Justice Act 2006 \(c. 48\)](#), **ss. 31(1)**, 53(1); [S.I. 2007/709](#), art. 3(m) (with art. 6)

*Miscellaneous*

**8 Support services.**

- [<sup>F14</sup>(1) The Secretary of State may by order provide for any services to which, in his opinion, subsection (3) applies to be provided not by the staff of local probation boards but by others under arrangements made with the boards.
- (2) The order may provide that only the Secretary of State, or an organisation or individual of a description specified in the order, may provide the services.
- (3) This subsection applies to services—
- (a) which are required by local probation boards in connection with the exercise of their functions, but
  - (b) which, with a view to obtaining better value for money or to improving the standard of the services or the efficiency of their provision, are better provided by persons other than the staff of local probation boards.]

**Textual Amendments**

- F14** Ss. 8-10 repealed (1.4.2008 for the repeal of ss. 8, 10 for specified purposes and for the repeal of s. 9, 1.4.2009 for the repeal of ss. 8, 10 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), **Sch. 5 Pt. 1**; [S.I. 2008/504](#), arts. 3(n), 4(m)(ii)(iii); [S.I. 2009/547](#), art. 2(1)(m)(ii)(2)

**<sup>F149</sup> Approved premises.**

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**Textual Amendments**

- F14** Ss. 8-10 repealed (1.4.2008 for the repeal of ss. 8, 10 for specified purposes and for the repeal of s. 9, 1.4.2009 for the repeal of ss. 8, 10 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), **Sch. 5 Pt. 1**; [S.I. 2008/504](#), arts. 3(n), 4(m)(ii)(iii); [S.I. 2009/547](#), art. 2(1)(m)(ii)(2)

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## 10 Default powers.

- [<sup>F14</sup>(1) The power conferred by this section is exercisable by the Secretary of State in respect of a local probation board if it appears to him that the board is failing to perform the functions conferred on it or that its arrangements for performing those functions do not represent good value for money.
- (2) The Secretary of State may make an order (a “management order”) in respect of the board.
- (3) A management order may modify the application of Schedule 1 in relation to the board by—
- (a) providing for the board to comprise persons determined in accordance with an arrangement made between the Secretary of State and an organisation (a “management arrangement”), and
  - (b) making any other modifications which appear to the Secretary of State to be necessary or expedient in consequence of that provision or of the management arrangement.
- (4) A management order may provide for the persons determined in accordance with the management arrangement to replace all or any of the chairman, the chief officer and the other existing members of the board; and vacancies occurring among the replacements are to be filled in accordance with the management arrangement.
- (5) The power to revoke a management order is exercisable at any time when the Secretary of State considers it necessary or expedient to revoke it.
- (6) On the revocation of a management order, any person who is a member of the board by virtue of the order and the arrangement ceases to be a member; and, accordingly, any vacancy occurring by virtue of the revocation is to be filled in accordance with Schedule 1 (unless the Secretary of State makes a new management order).]

### Textual Amendments

**F14** Ss. 8-10 repealed (1.4.2008 for the repeal of ss. 8, 10 for specified purposes and for the repeal of s. 9, 1.4.2009 for the repeal of ss. 8, 10 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), [Sch. 5 Pt. 1](#); S.I. 2008/504, arts. 3(n), 4(m)(ii)(iii); S.I. 2009/547, art. 2(1)(m)(ii)(2)

## CHAPTER II

### CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT SERVICE

## 11 Establishment of the Service.

- (1) There shall be a body corporate to be known as the Children and Family Court Advisory and Support Service (referred to in this Part as the Service) which is to exercise the functions conferred on it by virtue of this Act and any other enactment.
- (2) Schedule 2 (which makes provision about the constitution of the Service, its powers and other matters relating to it) is to have effect.
- (3) References in this Act or any other enactment to an officer of the Service are references to—



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- (a) any member of the staff of the Service appointed under paragraph 5(1)(a) of that Schedule, and
- (b) any other individual exercising functions of an officer of the Service by virtue of section 13(2) or (4).

## 12 Principal functions of the Service.

- (1) In respect of family proceedings in which the welfare of children [<sup>F15</sup>other than children ordinarily resident in Wales] is or may be in question, it is a function of the Service to—
  - (a) safeguard and promote the welfare of the children,
  - (b) give advice to any court about any application made to it in such proceedings,
  - (c) make provision for the children to be represented in such proceedings,
  - (d) provide information, advice and other support for the children and their families.
- (2) The Service must also make provision for the performance of any functions conferred on officers of the Service by virtue of this Act or any other enactment (whether or not they are exercisable for the purposes of the functions conferred on the Service by subsection (1)).
- (3) Regulations may provide for grants to be paid by the Service to any person for the purpose of furthering the performance of any of the Service’s functions.
- (4) The regulations may provide for the grants to be paid on conditions, including conditions—
  - (a) regulating the purposes for which the grant or any part of it may be used,
  - (b) requiring repayment to the Service in specified circumstances.
- (5) In this section, “family proceedings” has the same meaning as in the <sup>M3</sup>Matrimonial and Family Proceedings Act 1984 and also includes any other proceedings which are family proceedings for the purposes of the <sup>M4</sup>Children Act 1989, but—
  - (a) references to family proceedings include (where the context allows) family proceedings which are proposed or have been concluded, [<sup>F16</sup>and]
  - <sup>F16</sup>(b) .....

### Textual Amendments

**F15** Words in s. 12(1) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 67(6), Sch. 3 para. 13; S.I. 2005/700, art. 2(2)

**F16** S. 12(5)(b) repealed (28.11.2003) by 2002 c. 38, ss. 139, 148, Sch. 3 para. 118, Sch. 5 (with Sch. 4 paras. 2, 6-8); S.I. 2003/3079, art. 2(1)(c)(d)

### Modifications etc. (not altering text)

**C4** S. 12: transfer of functions (12.1.2004) by The Transfer of Functions (Children, Young People and Families) Order 2003 (S.I. 2003/3191), arts. 1(2), 3, 4

**C5** S. 12 power to extend functions conferred by 1989 c. 41, s. 26(2C) (as inserted (21.5.2004) by Adoption and Children Act 2002 (c. 38), ss. 118(2), 148(1) (with Sch. 4 paras. 6-8); S.I. 2004/1403, art. 2)

### Marginal Citations

**M3** 1984 c. 42.

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**M4** 1989 c. 41.

### **13 Other powers of the Service.**

- (1) The Service may make arrangements with organisations under which the organisations perform functions of the Service on its behalf.
- (2) Arrangements under subsection (1) may provide for the organisations to designate individuals who may perform functions of officers of the Service.
- (3) But the Service may only make an arrangement under subsection (1) if it is of the opinion—
  - (a) that the functions in question will be performed efficiently and to the required standard, and
  - (b) that the arrangement represents good value for money.
- (4) The Service may make arrangements with individuals under which they may perform functions of officers of the Service.
- (5) The Service may commission, or assist the conduct of, research by any person into matters concerned with the exercise of its functions.

### **14 Provision of staff or services to other organisations.**

- (1) The Service may make arrangements with an organisation or individual under which staff of the Service may work for the organisation or individual.
- (2) The Service may make arrangements with an organisation or individual under which any services provided to the Service by its staff are also made available to the organisation or individual.
- (3) The Service may charge for anything done under arrangements under this section.

### **15 Right to conduct litigation and right of audience.**

- (1) The Service may authorise an officer of the Service of a prescribed description—
  - (a) to conduct litigation in relation to any proceedings in any court,
  - (b) to exercise a right of audience in any proceedings before any court,
 in the exercise of his functions.
- (2) An officer of the Service exercising a right to conduct litigation by virtue of subsection (1)(a) who would otherwise have such a right by virtue of <sup>F17</sup>the fact that he is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to that activity] is to be treated as having acquired that right solely by virtue of this section.
- (3) An officer of the Service exercising a right of audience by virtue of subsection (1)(b) who would otherwise have such a right by virtue of <sup>F18</sup>the fact that he is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to that activity] is to be treated as having acquired that right solely by virtue of this section.
- (4) In this section and section 16, “right to conduct litigation” and “right of audience” have the same meanings as in section 119 of the <sup>M5</sup>Courts and Legal Services Act 1990.

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#### Textual Amendments

- F17** Words in s. 15(2) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 133(a)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F18** Words in s. 15(3) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 133(b)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

#### Marginal Citations

- M5** 1990 c. 41.

### 16 Cross-examination of officers of the Service.

- (1) An officer of the Service may, subject to rules of court, be cross-examined in any proceedings to the same extent as any witness.
- (2) But an officer of the Service may not be cross-examined merely because he is exercising a right to conduct litigation or a right of audience granted in accordance with section 15.

### <sup>F19</sup>17 Inspection.

#### Textual Amendments

- F19** S. 17 repealed (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 10**; S.I. 2005/910, art. 3(aa)

## CHAPTER III

### GENERAL

#### *Property and staff*

### 18 Definitions.

- (1) This section applies for the purposes of sections 19 to 21 and Schedule 3.
- (2) “Eligible employee” means—
  - (a) in relation to a local authority or the Official Solicitor or the Receiver for the Metropolitan Police District, a person who is employed under a contract of employment with the authority, the solicitor or the receiver on work which would have continued but for this Part,
  - (b) [<sup>F20</sup>in relation to a probation committee, a person (other than a chief probation officer) who is employed under a contract of employment with the committee.]
- (3) “New employer” means [<sup>F21</sup>a local probation board or] the Service.
- (4) “Old employer” means a local authority, [<sup>F22</sup>a probation committee], the Official Solicitor or the Receiver for the Metropolitan Police District.

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- (5) “Property” includes rights and interests of any description, other than—
- (a) those under a contract of employment,
  - (b) land, in the case of transfers to a local board.

#### Textual Amendments

- F20** S. 18(2)(b) repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by Offender Management Act 2007 (c. 21), s. 41(1), **Sch. 5 Pt. 1**; S.I. 2008/504, art. 4(1)(m)(iv)(2); S.I. 2009/547, art. 2(1)(m)(iv)(2)
- F21** Words in s. 18(3) repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by Offender Management Act 2007 (c. 21), s. 41(1), **Sch. 5 Pt. 1**; S.I. 2008/504, art. 4(1)(m)(iv)(2); S.I. 2009/547, art. 2(1)(m)(iv)(2)
- F22** Words in s. 18(4) repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by Offender Management Act 2007 (c. 21), s. 41(1), **Sch. 5 Pt. 1**; S.I. 2008/504, art. 4(1)(m)(iv)(2); S.I. 2009/547, art. 2(1)(m)(iv)(2)

## 19 Property.

- (1) The [<sup>F23</sup>Secretary of State] may by order make a scheme—
- (a) for the transfer to the [<sup>F23</sup>Secretary of State] or the Service of any property belonging to the old employer,
  - (b) for the transfer to the [<sup>F23</sup>Secretary of State] or the Service of any liabilities to which the old employer is subject,
  - (c) for the transfer of property or liabilities to a new employer after an initial transfer to the [<sup>F23</sup>Secretary of State] under paragraph (a) or (b),
  - (d) for the Service to have any rights or interests which the [<sup>F23</sup>Secretary of State] considers appropriate in relation to any property transferred to the [<sup>F23</sup>Secretary of State] under the scheme.
- (2) Stamp duty is not chargeable in respect of any transfer or grant to the Service effected by virtue of this section.
- (3) No instrument made or executed under or in pursuance of the scheme for the purposes of such a transfer or grant is to be treated as duly stamped unless—
- (a) it is stamped with the duty to which it would, but for this section, be liable, or
  - (b) it has, in accordance with the provisions of section 12 of the <sup>M6</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped.
- (4) Schedule 3 (contents of schemes) applies in relation to a scheme under this section.
- [<sup>F24</sup>(5) For the purposes of stamp duty land tax, a land transaction effected by virtue of this section, under which the purchaser is the Service, is exempt from charge.
- (6) Relief under subsection (5) must be claimed in a land transaction return or an amendment of such a return.
- (7) In this section—
- “land transaction” has the meaning given by section 43(1) of the Finance Act 2003;

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“land transaction return” has the meaning given by section 76(1) of that Act;

“purchaser” has the same meaning as in Part 4 of that Act.]

#### Textual Amendments

**F23** Words in s. 19 substituted (12.1.2004) by [The Transfer of Functions \(Children, Young People and Families\) Order 2003 \(S.I. 2003/3191\)](#), art. 1(2), **Sch. para. 4(2)**

**F24** S. 19(5)-(7) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, **Sch. para. 30**

#### Modifications etc. (not altering text)

**C6** S. 19: transfer of functions (12.1.2004) by [The Transfer of Functions \(Children, Young People and Families\) Order 2003 \(S.I. 2003/3191\)](#), arts. 1(2), 3, 4

#### Marginal Citations

**M6** 1891 c. 39.

## 20 Transfer of staff.

- (1) The [<sup>F25</sup>Secretary of State] may by order make a scheme for the transfer to a new employer of any eligible employee.
- (2) [<sup>F26</sup>A scheme may also provide for any persons who are employed as chief probation officer under a contract of employment with a probation committee to be appointed (under paragraphs 2 and 3 of Schedule 1) as chief officer of a local probation board.]
- (3) A scheme may apply—
  - (a) to all, or any description of, eligible employees or persons so employed, or
  - (b) to any individual eligible employee or person so employed.
- (4) A scheme may be made only if any directions about consultation given by the [<sup>F25</sup>Secretary of State] have been complied with in relation to each of the eligible employees and chief probation officers to be transferred or appointed in pursuance of the scheme.

#### Textual Amendments

**F25** Words in s. 20 substituted (12.1.2004) by [The Transfer of Functions \(Children, Young People and Families\) Order 2003 \(S.I. 2003/3191\)](#), art. 1(2), **Sch. para. 4(2)**

**F26** S. 20(2) repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), **Sch. 5 Pt. 1**; [S.I. 2008/504](#), art. 4(1)(m)(v)(2); [S.I. 2009/547](#), art. 2(1)(m)(v)(2)

#### Modifications etc. (not altering text)

**C7** S. 20: transfer of functions (12.1.2004) by [The Transfer of Functions \(Children, Young People and Families\) Order 2003 \(S.I. 2003/3191\)](#), arts. 1(2), 3, 4

## 21 Effect of transfer of eligible employees.

- (1) The contract of employment of an employee transferred under a scheme—

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- (a) is not terminated by the transfer,
  - (b) has effect from the date of transfer as if originally made between the employee and the transferee.
- (2) Where an employee is transferred under a scheme—
- (a) all the rights, powers, duties and liabilities of the old employer under or in connection with the contract of employment are by virtue of this subsection transferred to the transferee on the date of transfer, and
  - (b) anything done before that date by or in relation to the old employer in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the transferee.

This subsection does not prejudice the generality of subsection (1).

- (3) But if the employee informs the old employer or the transferee that he objects to the transfer—
- (a) subsections (1) and (2) do not transfer his contract of employment, or the rights, powers, duties and liabilities under or in connection with it, and
  - (b) the contract of employment is terminated immediately before the date of transfer.
- (4) An employee is not to be treated, for the purposes of the <sup>M7</sup>Employment Rights Act 1996, as having been dismissed by the old employer by reason of—
- (a) the transfer of his contract of employment under a scheme, or
  - (b) the termination of his contract of employment by virtue of subsection (3).
- (5) [<sup>F27</sup>Subject to subsection (4), where an employee’s contract of employment with a probation committee is not transferred under a scheme, it is terminated immediately before the date on which the committee ceases to exist; and the employee is to be treated, for the purposes of the <sup>M8</sup>Employment Rights Act 1996, as having been dismissed by the committee.]

- (6) This section does not prejudice any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions.

But no such right arises by reason only that, by virtue of this section, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

- (7) In this section—

“date of transfer” means the date of transfer determined under the scheme in relation to the employee,

“scheme” means a scheme made by virtue of section 20,

“transferee” means the new employer to whom the employee is or would be transferred under the scheme.

#### Textual Amendments

**F27** S. 21(5) repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\), s. 41\(1\), Sch. 5 Pt. 1](#); S.I. 2008/504, art. 4(1)(m)(vi)(2); S.I. 2009/547, art. 2(1)(m)(vi)(2)

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### Marginal Citations

**M7** 1996 c. 18.

**M8** 1996 c. 18.

## 22 Effect of transfer of chief probation officers.

- [<sup>F28</sup>(1) This section applies where a scheme made by virtue of section 20 provides for a person who is employed as chief probation officer under a contract of employment with a probation committee to be appointed as chief officer of a local probation board.
- (2) The officer’s period of employment with the committee counts as a period of employment in his Crown employment and the appointment does not break the continuity of that employment.
- (3) So far as it is consistent with appointment under paragraphs 2 and 3 of Schedule 1, the terms and conditions of the officer’s contract of employment have effect on and after his appointment as if they were terms and conditions of his Crown employment.
- (4) Section 21(2) applies, with the necessary modifications, in relation to the officer as it applies in relation to an employee of a probation committee whose contract of employment is transferred to the local probation board.
- (5) The officer is not to be treated, for the purposes of the <sup>M9</sup>Employment Rights Act 1996, as having been dismissed by the probation committee by reason of his appointment.
- (6) But if the officer informs the probation committee or the Secretary of State that he objects to the appointment, subsections (2) to (5) do not apply.
- (7) Where the officer is not appointed as chief officer of a local probation board (whether because he objects to the appointment or for any other reason), his contract of employment is terminated immediately before the date on which the committee ceases to exist; and he is to be treated, for the purposes of the <sup>M10</sup>Employment Rights Act 1996, as having been dismissed by the committee.
- (8) In this section, “Crown employment” means the employment which the chief officer of a local probation board is to be treated as employed in, for the purposes of the <sup>M11</sup>Employment Rights Act 1996, by virtue of paragraph 3(5) of Schedule 1 to this Act.]

### Textual Amendments

**F28** S. 22 repealed (1.4.2008 for specified purposes, 1.4.2009 for specified purposes) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), [Sch. 5 Pt. 1](#); S.I. 2008/504, art. 4(1)(m)(vii)(2); S.I. 2009/547, art. 2(1)(m)(vii)(2)

### Marginal Citations

**M9** 1996 c. 18.

**M10** 1996 c. 18.

**M11** 1996 c. 18.

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## 23 Transfer of staff in consequence of arrangements under Part I.

- (1) This section applies where, by reason of the implementation or termination of any arrangements under section 5, 8 or 13, any functions exercisable by any person (the “old employer”) become exercisable by another person (whether on behalf, or instead, of the old employer).
- (2) The [<sup>F29</sup>Secretary of State] may by order make a scheme for the transfer to the other person (the “transferee”) of any person (an “eligible employee”) employed under a contract of employment with the transferor on work which would have continued but for the implementation or termination of the arrangements.
- (3) A scheme may apply—
  - (a) to all, or any description of, eligible employees, or
  - (b) to any individual eligible employee.
- (4) A scheme may be made only if any directions about consultation given by the [<sup>F29</sup>Secretary of State] have been complied with in relation to each of the eligible employees to be transferred in pursuance of the scheme.
- (5) Section 21 (except subsection (5) and the definitions of “scheme” and “transferee”) applies to a scheme made by virtue of this section as it applies to a scheme made by virtue of section 20, and as if “old employer” and “transferee” had the same meanings as in this section.

### Textual Amendments

**F29** Words in s. 23 substituted (12.1.2004) by [The Transfer of Functions \(Children, Young People and Families\) Order 2003 \(S.I. 2003/3191\)](#), art. 1(2), **Sch. para. 4(2)**

### Modifications etc. (not altering text)

**C8** S. 23: transfer of functions (12.1.2004) by [The Transfer of Functions \(Children, Young People and Families\) Order 2003 \(S.I. 2003/3191\)](#), arts. 1(2), 3, 4

### *Provision for the protection of children*

## 24 Provision for the protection of children.

- <sup>F30</sup>(1) The <sup>M12</sup>Protection of Children Act 1999 (“the 1999 Act”) shall have effect as if the Service were a child care organisation within the meaning of that Act.
- (2) Arrangements which the Service makes with an organisation under section 13(1) must provide that, before selecting an individual to be employed under the arrangements in a child care position, the organisation—
  - (a) must ascertain whether the individual is included in any of the lists mentioned in section 7(1) of the 1999 Act, and
  - (b) if he is included in any of those lists, must not select him for that employment.
- (3) Such arrangements must provide that, if at any time the organisation has power to refer a relevant individual to the Secretary of State under section 2 of the 1999 Act (inclusion in list on reference following disciplinary action etc.), the organisation must so refer him.



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In this subsection, “relevant individual” means an individual who is or has been employed in a child care position under the arrangements.

(4) In this section, “child care position” and “employment” have the same meanings as in the 1999 Act.]

#### Textual Amendments

**F30** S. 24 repealed (12.10.2009 for specified purposes, 30.3.2010 for specified purposes) by [Safeguarding Vulnerable Groups Act 2006 \(c. 47\)](#), s. 65, **Sch. 10** (with ss. 51, 57(3), 60(4), 64(5)); S.I. 2009/2611, art. 3; S.I. 2010/1101, art. 5

#### Marginal Citations

**M12** 1999 c. 14.

### Interpretation

## 25 Interpretation of Part I.

In this Part—

**F31**  
...

**F32**  
...

“by virtue of” includes by or under,

“organisation” includes a public body and a private or voluntary organisation,

“prescribed” means prescribed by regulations,

“regulations” means—

- (a) [<sup>F33</sup>in the case of regulations under section 15, regulations made by the Lord Chancellor, and]
- (b) [<sup>F33</sup>in any other case, regulations made by the Secretary of State.]

#### Textual Amendments

**F31** Words in s. 25 omitted (12.1.2004) by virtue of [The Transfer of Functions \(Children, Young People and Families\) Order 2003 \(S.I. 2003/3191\)](#), art. 1(2), **Sch. para. 4(3)(a)**

**F32** Words in s. 25 repealed (1.4.2008) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), **Sch. 5 Pt. 1**; S.I. 2008/504, art. 3(n)

**F33** Words in s. 25 substituted (12.1.2004) by [The Transfer of Functions \(Children, Young People and Families\) Order 2003 \(S.I. 2003/3191\)](#), art. 1(2), **Sch. para. 4(3)(b)**

**Status:**

Point in time view as at 30/03/2010.

**Changes to legislation:**

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