

OFFENDER MANAGEMENT ACT 2007

EXPLANATORY NOTES

EUROPEAN CONVENTION ON HUMAN RIGHTS

Part 1 –New arrangements for the provision of probation services

203. Sections 1 to 13 and section 15 abolish local probation boards and give the responsibility for providing probation services to the Secretary of State. These are the legislative provisions necessary to enable the Secretary of State to commission probation services from the best available provider, whether in the public, private or voluntary sectors. Probation trusts will be established as the public sector provider with whom he may contract. Section 13 deals with approved premises. The Government expects that most services commissioned under section 3(2) will be regarded as “public functions” for the purposes of section 6 of the Human Rights Act 1998. It is not considered that these sections give rise to any other ECHR issues.
204. Section 14 enables the Secretary of State, providers of probation services and their officers, to share information with each other or with any of the following: other Government Departments; relevant Local Authorities; the Youth Justice Board; the Parole Board; relevant contactors including private prisons; a chief officer of police; any person responsible for electronically monitoring an individual, and any other person specified or described in regulations made by the Secretary of State. The power applies where it is necessary or expedient for certain specified purposes.
205. Disclosure of information relating to individuals is capable, in individual cases, of engaging the Government’s obligations under article 8 of the ECHR (right to respect to private life). The power created by the clause is compatible with those obligations. This is because the clause creates a power to disclose information, not a duty to do so. Accordingly, the party proposing to disclose is able to refrain from doing so if he considers that such a disclosure would amount to an unlawful interference with an individual’s article 8 rights. That the clause enables disclosure of information where it is expedient to do so does not undermine the obligation to ensure that a particular disclosure is necessary in pursuit of a legitimate aim in those cases where Article 8 is engaged and interference with that right has been established.