These notes refer to the Criminal Justice and Court Services Act 2000 (c.43) which received Royal Assent on 30 November 2000

CRIMINAL JUSTICE AND COURT SERVICES ACT 2000

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

Part I: The New Services

Chapter I: National Probation Service for England and Wales

5. The consultation paper, "Joining Forces to Protect the Public", was issued in August 1998, and proposed various ways in which the prison and probation services could work together to improve the protection of the public and reduce re-offending. As a result of the consultation process, the Home Secretary decided that the two services should not combine, but should retain their separate identities while using complementary methods to achieve these common goals.

6. In the case of the probation service, the Home Secretary decided that the aim should be to protect the public and to reduce re-offending through the effective enforcement of community sentences. It was, however, concluded that the existing arrangements under the Probation Service Act 1993, which provides for 54 separate probation services, were not conducive to the efficient and successful achievement of this aim. Nor did that Act allow the Secretary of State to take steps to improve the performance of services. In addition, the Probation Service's responsibility for Family Court work did not fit well with its core aim.

7. *Chapter I* of the Act restructures the Probation Service and creates a unified service for England and Wales which will be renamed the National Probation Service for England and Wales. It will be directly accountable to the Home Secretary. It will have a structure based on 42 local areas, each with a local probation board composed of representatives of the local community who understand local needs. The boundaries of these areas will match those of the police forces, and the structure is designed as a step towards the government's aim of improving efficiency by creating common boundaries across all the agencies in the criminal justice system. The local probation boards will employ staff or make other contractual arrangements for the delivery of the services for which they are responsible. The Children and Family Court Advisory and Support Service, created in Chapter II of Part I of this Act, will take over Family Court work, leaving the National Probation Service for England and Wales to concentrate on working with individuals who are charged with or convicted of an offence.

8. The Act provides for the Home Secretary to appoint the members of local probation boards, and to appoint the chief officer of each area. He will be able to give directions to boards, and through them to chief officers, as to how they fulfil their statutory responsibilities.

Chapter II : Children and Family Court Advisory and Support Service

9. Following recommendations in the consultation paper, "Support Services in Family Proceedings - Future Organisation of Court Welfare Services", issued in July 1998, *Chapter II* of Part I of the Act sets up the new Children and Family Court Advisory and Support Service (CAFCASS) for England and Wales. CAFCASS assumes the functions currently carried out by the Family Court Welfare Service (currently the responsibility of the Probation Service), the Guardian Ad Litem and Reporting Officer service (GALROs – who act in adoption and public law cases regarding the care of children – currently the responsibility of the Department of Health) and part of the Official Solicitor's Office (Lord Chancellor's Department).

10. CAFCASS will serve the Family Division of the High Court, county courts (including care centres) and family proceedings courts. The service is intended to safeguard and promote the welfare of the children before courts dealing with family proceedings; give advice to any court about any application made to it in such proceedings; make provision for the children to be represented in such proceedings; and provide information, advice and other support for the children and their families.

11. The provisions in Part I, Chapter II and Schedule 2 establish the Children and Family Court Advisory and Support Service as a non-departmental public body, which will be accountable to the Lord Chancellor. The new service will also be subject to independent inspection in order to monitor and report on its activities.

Part II: Protection of Children

12. *Part II* of the Act introduces measures which will complete the establishment of an integrated system for the protection of children. Under this system those who 'come to notice' as posing a risk to children, either when working with children in the health or education sectors or by commission of a serious criminal offence against a child, may, after a proper process, be made subject to a statutory ban on working with children. This builds on the provisions of the Education Reform Act 1988, the Education Act 1996 and the Protection of Children Act 1999.

13. Part V of the Police Act 1997 provided for a new criminal record system to be established which would provide three different levels of certification according to the authority of the individual requesting the information and the purpose of the requirement. This will be managed by a new Criminal Records Bureau. The Protection of Children Act 1999 provides for the Criminal Records Bureau to include information from the lists of those banned by the Secretary of State or by the courts in the two higher level certificates, where the information is sought in respect of a person seeking to work with children. It also provides for further positions prescribed by the Secretary of State to be added to those areas where information on those banned by the Secretary of State may be requested. This will permit the full scope of the new definition of working with children contained in this Part of this Act to be covered.

14. This part of the Act sets out that, where an individual is identified as being unsuitable to work with children, that individual should, after due process, be banned from such work. The Education Reform Act 1988, the Education Act 1996 and the Protection of Children Act 1999 provide for lists to be kept by the Secretary of State or National Assembly for Wales of individuals banned from working with children in organisations in the areas of healthcare, social services and education. The new measures will create a further way to ban unsuitable people from working with children. They provide that those who commit a serious offence against a child can be banned by a disqualification order by a judge from all such work as part of their sentence or the disposal of their case. The measures also provide a review process for those subject to a ban, whether imposed by the Secretary of State or a judge.

15. This Part of the Act further provides that those identified as unsuitable to work with children and banned from working with children under any of the specified methods,

should be subject to criminal sanctions if they breach the ban. It will also be an offence for someone to offer the opportunity to work with children to an individual whom they know is subject to disqualification from such work.

16. The provisions include a new definition of working with children to enable all such areas of work to be covered by the ban. This will apply to work with children in all sectors, including casual work, and irrespective of whether the work is paid or unpaid.

Indecency with Children Act 1960: Sections 39 and 40

17. This part of the Act raises the age of a child against whom the offence of indecency with a child can be committed to include children up to 16. This closes a loophole in the law and should improve the protection of children against those who abuse them.

Indecent photographs of children: increase of maximum penalties: Section 41

18. Further provisions in this part of the Act strengthen the law which protects children through the prohibition on child pornography. Under the Protection of Children Act 1978, it is a criminal offence to take, permit to be taken, distribute, show, advertise or possess for distribution any indecent photograph or pseudo-photograph of a child under the age of 16. The maximum penalty for this offence is three years in prison and/or an unlimited fine. Section 160 of the Criminal Justice Act 1988 introduced the offence of simple possession of an indecent photograph of a child. This is a summary only offence carrying a maximum penalty of six months imprisonment and/or a level 5 fine.

19. The government is concerned that the level of penalties available for those exploiting children through the production of child pornography should reflect the fact that its production involves actual abuse of children. The number of offences committed under the Protection of Children Act 1978 and Section 160 of the Criminal Justice Act 1988 has increased significantly since the concept of pseudo-images (images produced by electronic means) was added to the legislation through an amendment in the Criminal Justice and Public Order Act 1994. Prosecutions under the PCA 1978 have increased from 40 (1994) to 116 (1998) whilst prosecutions for possession have increased from 53 (1994) to 167 (1998). So the government is ensuring that the current penalties reflect the seriousness of these offences. The measure increases the maximum sentence for taking, making, distributing and showing and possessing with a view to distribution, indecent photographs of children under sixteen. The penalty for simple possession of indecent images is also being increased.

Part III: Dealing with Offenders

20. This part of the Act deals with community sentences. It provides for the renaming of some existing orders, for the creation of two new orders, for new warning and punishment measures for breach of orders and for new conditions to be attached to community sentences, and to prisoners on release from custody. It also provides for new police powers in relation to drug testing, and amends the Bail Act 1976.

Renaming certain community orders: Section 43, 44 and 45

21. It is the government's view that the existing names of community orders are not easily understood. Therefore, probation orders, community service orders and combination orders will be renamed community rehabilitation orders, community punishment orders and community punishment and rehabilitation orders respectively. The new names are intended to reflect the functions and aims of the service as set out in Sections 1 and 2 of the Act.

Electronic Monitoring: Sections 46, 50, 51, 52, 62, 63, and 65

22. The Criminal Justice Act 1991 made provision for court ordered curfews that could be monitored electronically. The Criminal Justice and Public Order Act 1994 amended

the 1991 Act to enable this provision to be piloted in selected areas before being implemented nationally. From 1995, electronic monitoring of curfew orders was piloted in various areas of the country. The Crime (Sentences) Act 1997 amended the 1991 Act so that the offender's consent was not required for electronic monitoring to be carried out. On the basis of these successful trials, the arrangements were made available nationally from 1st December 1999.

23. In addition, the 1997 Act enabled trials to begin in 1998 for the electronic monitoring of curfew orders imposed on persistent petty offenders, fine defaulters, and offenders aged 10 to 15 years old. Electronic monitoring of curfews imposed as a condition of bail was also the subject of a pilot scheme in 1998 and 1999. Electronically monitored curfew orders for 10 to 15 year olds will be rolled out nationally on 1 February 2001. No decision has yet been taken on the future of the remaining uses.

24. The Crime and Disorder Act 1998 amended the Criminal Justice Act 1991 so as to provide for certain categories of prisoner to spend part of their sentence on Home Detention Curfew subject to a risk assessment. The provisions came into operation in January 1999 and compliance is also being monitored electronically.

25. Electronic Monitoring is delivered by the private sector. Following trials of curfew orders, new five-year contracts were issued to the private sector in 1999. In the first year of the contract (28 January 1999 to 31 January 2000), electronic monitoring was used in 19,642 cases. Of these, 84.5% (16,589) were prisoners on Home Detention Curfew, and 13.1% (2,568) were curfew orders made under the Criminal Justice Act 1991 (others account for the remaining 2.4% (471)). As at May 2000 the completion rate of the Home Detention Curfew scheme was around 94% and is estimated around 90% for all other forms of electronic monitoring.

26. This Part of the Act provides for the extension of electronic monitoring. It creates a new disposal – an exclusion order – which can be used as a free-standing sentence or as a requirement of a community penalty. This order will require an offender to stay away from a certain place or places at certain times. Such monitoring is aimed at offenders who present a particular danger or nuisance to a particular victim or particular victims.

27. These Sections will allow for curfew and/or exclusion requirements to be a condition of a community penalty. In addition, they make provisions for the electronic monitoring of these exclusion/curfew requirements as well as allowing for the electronic monitoring of any other requirement of a community order.

28. These Sections also make provision for electronic monitoring to be imposed where offenders are released from custody. They explicitly provide for the electronic monitoring of exclusion or curfew requirements where offenders are subject to licence or Notice of Supervision, and establish the power of the Secretary of State to monitor electronically the movements of such offenders whilst subject to post-release supervision.

29. This part of the Act also makes a change to the existing Home Detention Curfew scheme. It excludes sex offenders subject to the notification requirements of Part I of the Sex Offenders Act 1997 from the scheme.

Drug Testing: Sections 47, 48, 49, 57, 58, 63, 64 and 70

30. The government believes that there is a clear link between drug misuse, particularly heroin and cocaine/crack, with crime, particularly acquisitive crime. Research evidence indicates that getting drug misusers into treatment can considerably reduce both their illegal use of drugs and their offending behaviour. Testing will help identify those who need treatment. Identifying drug misusing offenders at every stage in the criminal justice system is now a prime objective of the crime reduction strategy and is intended to make a contribution to the overall drugs strategy.

31. The powers provided for in the Act will build upon drug testing already being carried out through the Drug Treatment and Testing Order, provided for under Sections 61 to 64 of the Crime and Disorder Act 1998, and drug testing in prison, carried out under Section 16A of the Prison Act 1952.

32. The Act provides for the compulsory drug testing of offenders and alleged offenders at various points of the criminal justice system. The new powers will allow for drug testing:

- after charge with a relevant offence, or where a police officer of at least the rank of Inspector has reasonable grounds to suspect a link between an offence with which a person has been charged and the misuse of a specified Class A drug, and authorises the taking of the sample at the police station, with a view to informing subsequent bail decisions of a court and referral to a drug worker;
- after conviction but before sentence, where the court is considering passing a community sentence
    - after conviction of a relevant offence, with the offender being subject to a community sentence containing a drug testing requirement;
    - after release from prison on licence or Notice of Supervision, where the offender was serving a sentence imposed in respect of a relevant offence.

33. In addition, when making a decision about bail the court is also to have regard to drug misuse. Courts are also to be given a new free-standing community sentence – the Drug Abstinence Order – and will be placed under an express duty to have regard to a defendant's drug misuse when considering the exercise of their bail discretion.

34. The provisions apply to offenders and alleged offenders aged 18 and over.

Breach of community orders: Sections 53, 54 and 55

35. The revised *National Standards for the supervision of offenders in the community*, which came into force on 1 April 2000, set the standards to which offenders are supervised in the community and the action that will be taken if they fail to comply with their sentence. The purpose of these measures is to enhance compliance with community sentences by creating a statutory warning to reinforce the new National Standards and by introducing a certain and consistent penalty for breach of an order. The new National Standards provide that offenders will be issued with a maximum of one warning for an unacceptable failure to comply with a community sentence in any 12 month period, rather than, as previously, two warnings. The Act would put this warning on a statutory basis. Where a further breach of the order occurs, the court will have to determine whether it considers it likely that the offender will comply with the requirements of the order if it remains in force. If not then, unless there are exceptional circumstances, it must impose a sentence of imprisonment. Otherwise the court must impose a further community penalty.

36. The Access to Justice Act 1999 gave the Crown Court the power (now consolidated in the Powers of Criminal Courts (Sentencing) Act 2000) to direct that any breach proceedings in respect of a community sentence imposed by the Crown Court should be heard in that court, on a summons issued by a justice. The Act provides the Crown Court with a power to issue a summons or a warrant where an offender fails to appear in answer to the original summons.

Final Warning Scheme: Section 56

37. Reprimands and final warnings were introduced under the Crime and Disorder Act 1998 to replace cautions for young offenders. The final warning scheme is designed to end repeat cautioning and ensure effective intervention programmes to help prevent re-offending.

38. Experience has shown that the effect of a reprimand or warning can be significantly enhanced by delivering it as part of a restorative process involving the young offender, the parents and, where appropriate, the victim. Guidance has been issued to the police encouraging this restorative approach.

39. In order to facilitate the restorative approach there are two measures, the first amending the 1998 Act to give flexibility to allow reprimands and warnings to be given away from the police station and the other amending the Police and Criminal Evidence Act 1984 to allow for release on bail pending the administration of the reprimand or final warning.

Abolition of sentences of detention in a young offender institution and custody for life: Sections 59 and 61

40. The sentence of detention in a young offender institution (DYOI) was originally available for all those under the age of 21. The Crime and Disorder Act 1998 replaced the Secure Training Order and detention in a young offender institution for under 18s with the Detention and Training Order, implemented in April 2000. This leaves the sentence of DYOI available only for the 18-20 age group. However, as it is now widely accepted that 18, and not 21, is the age of majority, the government's view is that there is no logic in having a separate sentence for those aged between 18 and 20 years old, and those aged 21 and over.

41. Abolition of the sentence of detention in a young offender institution will remove the need for separation between those aged 18-20 and those aged 21 and over. This will enable the Prison Service to manage its estate more efficiently and provide young adult offenders with access to a wider range of regime activities.

42. As a corollary of this, it should be noted that in the case of an offender aged between 18 and 20 who would have been sentenced to life imprisonment if aged 21 or over, the court must currently pass a sentence of custody for life. Since the separate custodial sentence for 18 to 20 year olds of detention in a young offender institution is being abolished, the need for a separate life sentence provision no longer exists.

Life sentences: tariffs: Section 60

43. On 16 December 1999, the European Court of Human Rights announced its conclusions in the cases of T v. UK and V v. UK - proceedings brought by Robert Thompson and Jon Venables who had been convicted in 1993 of having, at the age of 10, murdered James Bulger. Amongst other things, the Court concluded that it was not compatible with Article 6 of the Convention for the Home Secretary to set tariffs in cases of detention during Her Majesty's pleasure. This sentence must be passed where an offender is convicted of having committed murder under the age of 18. The tariff represents the minimum period that must be served by a life sentence prisoner before they can be considered for release.

44. In response to this finding by the Court, Section 60 makes provision for the sentencing court to set the tariff in these cases in the future.

Sexual and violent offenders: Section 66, 67, 68, 69 and Schedule 5

45. The provisions in this part of the Act seek to tighten existing protections and create new protections against sexual and violent offenders.

46. The proposed measures fall into three main categories.

- Changes to Part I of the Sex Offenders Act 1997 to amend its provisions and increase the penalties for failing to comply with them. These are additional safeguards to the Act which are being dealt with in advance of a major review of Part I of the Act announced in July 2000

- Making statutory arrangements for risk management jointly by the police and probation services. These provisions will also provide a framework for guidance on the publication of information on arrangements for managing risk and other matters by these bodies. In addition, the framework for victim consultation and notification in respect of serious sexual and violent offenders will be placed on a statutory basis.

- Finally the measures include a new sex offender restraining order to be available to senior courts in certain circumstances.

Part IV: General and Supplemental

Access to driver licensing records: Section 71

47. The Vehicle Crime Reduction Action Team established by the Home Secretary in September 1998 recommended that the police should have full access to driver records via the Police National Computer. The measure in the Act would enable police officers to have full and immediate access to those records.

School attendance: Section 72

48. The Social Exclusion Unit's report of May 1998, *Truancy and Social Exclusion*, noted the important role that parents play in ensuring their children attend school and it stressed that the more serious the problems, the greater the need for more serious sanctions. In Autumn 1999, the Department for Education and Employment undertook a consultancy exercise entitled *Tackling Truancy Together* which included the proposal to raise the level of penalties for parents convicted of school attendance offences.

49. Section 444 of the Education Act 1996 provides that if a registered child of compulsory school age fails to attend school regularly, his parent is guilty of an offence. A parent convicted under this Section is liable to a fine up to level 3 on the standard scale – currently up to £1,000. Even when prosecuted, 80% of parents currently fail to attend court. The new provisions create a new aggravated offence committed where a parent fails without good reason to secure their child's attendance at school even though they know that he is not attending. In these cases the court will be able to impose a fine up to level 4 – i.e. a fine of up to £2,500 – or if it thinks appropriate a prison sentence of up to 3 months.

Parenting orders: responsible officer: Section 73

50. Section 8 of the Crime and Disorder Act 1998 provided for the parenting order as a new means of reinforcing parents' responsibility for their children's behaviour and providing parents with structured help and support to cope with this. Following pilots which ran from September 1998 to March 2000 the order was implemented across England and Wales on 1 June 2000. *Section 73* extends the range of persons able to serve as responsible officer under a parenting order, that is the person responsible for overseeing the delivery of, and compliance with, the order.