

CRIMINAL JUSTICE AND COURT SERVICES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: The New Services

Chapter I: National Probation Service for England and Wales

Sections 1 and 2: The New Service

51. *Section 1* makes general provision for the existence of the service and defines its purposes in terms of assisting courts in sentencing decisions and providing for the supervision and rehabilitation of persons charged with or convicted of offences. *Section 2* sets out the aims of the service, which are to protect the public, to reduce reoffending, to provide for the proper punishment of offenders, to ensure that offenders are aware of the effects of their crimes on their victims and on the public and to rehabilitate offenders.

Section 3: Functions of the Secretary of State

52. This Section sets out the role of the Secretary of State who will have responsibility for the National Probation Service for England and Wales and its funding.

Section 4 and 5: Local administration of the service

53. At present there are 54 separate and independent probation services, each governed by a probation committee. The new service will operate as a single unified service for England and Wales.
54. The unified service will be administered on a local basis by local probation boards. This is to allow national priorities to be interpreted in the light of local circumstances and local needs. There will be 42 areas in all; 41 will match the police areas and a London service will cover both the Metropolitan Police District and the City of London Police Area. This will reduce the current number of 54 probation areas, with 20 of the existing services amalgamating to form 8 new local areas. This is designed to improve the management of the criminal justice system by creating common boundaries, based on police areas, for the different criminal justice agencies. *Section 4(6)* allows the Secretary of State to alter the probation areas.
55. *Section 5* describes the functions of the local probation boards. These will include the employment of staff, and may also include contracting with partner organisations (other boards, private sector companies, voluntary organisations or individuals) for the provision of services. Local probation boards will be able to contract out any activity relating to their core functions such as community service provision or delivery of offender programmes, but the Board will remain responsible for ensuring the quality of the service delivered by the contractor. They will be able to provide hostel accommodation for people who are on bail, people under supervision, people released

on licence from prison and people who accept the need to live in a hostel on a voluntary basis because of the nature of their offending.

56. *Section 5(4)* allows the staff employed by local probation boards to work with other agencies in their local area on crime reduction, crime prevention and assisting victims of crime. This will include work on local crime reduction strategies undertaken under the provisions of the Crime and Disorder Act 1998 which will require the Boards of the new Service to contribute to the development and implementation of a crime reduction strategy for the local area.
57. *Section 5(8)* gives the Secretary of State the responsibility for determining whether a local probation board has made sufficient provision to meet its responsibilities.

Section 6 and 7: The Inspectorate

58. *Section 6* maintains the current arrangements under which Her Majesty's Chief Inspector of Probation and other members of the inspectorate of probation hold office, but changes their title. *Section 7* describes the functions of the inspectorate, which may be required to inspect the work of each local probation board. The Secretary of State may give directions to the Inspectorate setting out the criteria on which the inspections are to be based and requiring the Inspectorate to report to the Secretary of State on each inspection, within a given timescale and on a consistent basis with an agreed format. The Chief Inspector will continue to advise the Home Secretary on particular problems that arise, and on personnel matters. The Secretary of State will be able to give additional functions to the Chief Inspector which will enable him to inspect partner organisations, for example, Langley House, National Association for Care and Resettlement of Offenders. It will also enable the Home Secretary to call for reports where he has concerns about the performance of a service or the people he has appointed to manage the service.

Section 8: Support Services - Powers to contract out

59. This Section gives the Home Secretary the power to make an order to contract out work undertaken by local probation boards. This power may be exercised in relation to one or more parts of boards' responsibilities. In contrast to the contracting out power in Section 5, this Section is designed to enable the contracting out of support services which are common to all boards such as the provision of information technology and the administration of the payroll.
60. This power is available for use where greater efficiency or better value for money can be achieved; for instance if a particular activity could be managed more cost-effectively by organising it on a national or regional basis. Arrangements for contracting out all the functions of a board are dealt with under Section 10.

Section 9: Approved premises

61. This Section gives the Secretary of State the power to approve premises in which accommodation is provided for persons on bail and for, and in connection with, the supervision and rehabilitation of persons who have been convicted of an offence, to make regulations for the regulation, management and inspection of those premises, and to make payments for the maintenance or improvement of such premises.

Section 10: Default powers

62. *Section 10* gives the Secretary of State the power to make a management order which can modify the composition of a local probation board by—
- removing any or all of the chair, the chief officer and other board members;
 - replacing them in accordance with an alternative arrangement, i.e. a contract made with a private, voluntary or public sector organisation.

63. Although the composition of the board would change in such circumstances, the board as a legal entity would remain the same with all its duties and responsibilities under the Act.
64. It is intended that this power would only be used as a last resort where the Secretary of State concluded that a board is failing to perform its functions to a satisfactory standard, or where the board had made arrangements which did not offer good value for money, and the normal processes of performance management had been unable to achieve the required improvement.

Chapter II : Children and Family Court Advisory and Support Service (CAFCASS)

Section 11: Establishment of CAFCASS

65. *Section 11* makes a general provision for the creation of the new Children and Family Court Advisory and Support Service (CAFCASS), as a body corporate.

Section 12: The principal functions of CAFCASS

66. *Section 12* sets out the functions of CAFCASS, which are described in paragraph 25 of these notes. Subsection (3) provides for regulations for grants to be paid for the furthering of the performance of any functions of CAFCASS.

Section 13: Other powers of CAFCASS

67. *Section 13* sets out the other powers that CAFCASS may use to perform its functions, such as to commission or assist the conduct of research. Subsection (1) will allow CAFCASS to enter into arrangements with voluntary and other organisations to contract out some of its work, provided that it is satisfied that the work will be done efficiently, to the required standard and cost-effectively. Subsection (4) also provides that CAFCASS may enter into arrangements with individuals including self-employed people.

Section 14: Provision of staff or services to other organisations

68. *Section 14* gives CAFCASS the power to provide services to other organisations.

Section 15: Right to conduct litigation and right of audience

69. *Section 15* enables CAFCASS to authorise prescribed officers of the Service to undertake litigation and have rights of audience. It replicates the current arrangements in the Official Solicitor's office, with lawyers and caseworkers having the ability to conduct litigation and have rights of audience in all courts. Control over CAFCASS's power under Section 15 will be exercised through regulations, made by the Lord Chancellor, which will set out the criteria that officers of the service will have to meet before they can be authorised under this Section.

Section 16: Cross-examination of officers of the Service

70. *Section 16* sets out that all CAFCASS officers may be subject to cross-examination, except when exercising the rights given in Section 15.

Section 17: Inspection

71. *Section 17* amends Section 62 of the Justices of the Peace Act 1997 by inserting a new Section 3A in order to extend the remit of the Magistrates' Court Inspectorate to include inspecting CAFCASS to monitor and report on its activities. A new Subsection (2A) of Section 63 of the 1997 Act sets out a general right of inspection. It consists of a right of entry to any premises occupied by the Service and also a right to inspect and take copies of any records kept by the Service relating to the performance of its function.

Chapter III : General

Section 18: Definitions

72. **Section 18** provides the definitions of the people, property and organisations to whom this Part of the Act, which deals with transfers from existing organisations to new ones, applies.

Section 19: Property

73. This Section provides the power for either the Secretary of State or the Lord Chancellor to set up a scheme to transfer to the Crown property and liabilities from probation committees, the Receiver for the Metropolitan Police District (who owns property on behalf of the Inner London Probation Service), local authorities and the Official Solicitor. The property (other than land in the case of probation committees) may then be transferred from the Crown to a new organisation. This provision will make possible the central ownership and management, by the Secretary of State, of the current probation service estate which amounts to approximately 1,100 buildings. It will also allow the transfer of elements of the estate related to Family Court Welfare Officers to CAF/CASS. It will also enable the transfer to CAF/CASS of property currently owned by local authorities, probation committees and the Official Solicitor. Subsections (2) and (3) provide that land transferring to CAF/CASS will be exempted from Stamp Duty.

Sections 20 and 21: Transfer of staff and effect of transfer

74. **Sections 20** and **21** allow the Secretary of State and the Lord Chancellor to make schemes for transferring staff into the new Services. These schemes would cover the transfer of staff from a probation committee to a local probation board or to CAF/CASS, and the transfer of relevant local authority staff and staff of the Official Solicitor's office to CAF/CASS. The Sections contain provisions which give staff the right to maintain their terms and conditions of service when they transfer to their new employers. Section 20(2) provides that chief probation officers currently employed by probation committees may be appointed as chief officers of local boards.

Section 22: Effect of transfer of chief probation officers

75. **Section 22** makes provision for the effect of the transfer of people currently employed as chief probation officers into post-holders appointed as chief officers of local probation boards. It gives those who are appointed the right to transfer their terms and conditions of employment, so far as they are appropriate to the new post. **Paragraph 3(5) of Schedule 1** gives the chief officer the same employment rights as he would have under the Employment Rights Act 1996 as if he were in Crown Employment, for instance rights against unfair dismissal. Chief officers of local probation boards will be able to count their previous service as a chief probation officer as a part of their continuous employment for these purposes. Under Section 22(7), chief probation officers who are not appointed as chief officers are deemed to have been dismissed by their probation committee.

Section 23: Transfer of staff in consequence of arrangements under Part I

76. **Section 23** allows the 'appropriate Minister', i.e. the Secretary of State in the case of the probation service or the Lord Chancellor in relation to CAF/CASS, to set up a scheme for the transfer of staff where, at a future date, functions of a local probation board or CAF/CASS are contracted out under the provisions in Sections 5, 8 or 13 of the Act. It gives staff the right to transfer to the new service provider and to maintain their terms and conditions of service when they transfer to the new employer.

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

Section 24: Provision for the protection of children

77. *Section 24* ensures that the Protection of Children Act 1999 will apply to CAFCASS and its officers. It further ensures that those organisations which perform functions on behalf of CAFCASS will also be governed by the Protection of Children Act 1999.

Section 25: Interpretation of Part I

78. *Section 25* provides definitions of terms used in Part I of the Act.