

OFFENDER MANAGEMENT ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Probation Services

Section 3: Power to make arrangements for the provision of probation services

30. This section gives details of how the Secretary of State will make arrangements for the provision of probation services.
31. *Subsection (1)* states that this section applies to any probation provision which the Secretary of State considers should be made under section 2(1).
32. *Subsection (2)* states that the Secretary of State may make contractual or other arrangements with any other person for the making of probation provision. In most cases, it is envisaged that arrangements will be made under contract but this subsection does allow for other possibilities.
33. *Subsection (3)* clarifies that contractual or other arrangements may require or authorise the other party to:
 - co-operate with other providers of probation services or persons concerned with crime prevention or reduction or with assisting victims;
 - designate individuals as officers of a provider of probation services (subsequently defined in section 9); and
 - sub-contract with third parties.
34. *Sub (4)* makes clear that the Secretary of State may make arrangements under section 3(2) to delegate the performance of statutory functions.
35. *Subsection (5)* enables the Secretary of State, if he considers it appropriate, to provide probation services himself, and makes clear that he may use prison staff for this purpose. In most cases, it is anticipated that the Secretary of State will make arrangements with others to deliver probation services but this makes it possible for prison staff, for example, to deliver probation services in the community. This could be helpful in terms of bridging the gap between custody and the community.
36. *Subsection (6)* defines provider of probation purposes as either the person with whom the Secretary of State makes arrangements or the Secretary of State, where he makes provision through members of his staff.
37. *Subsection (7)* places a duty on the Secretary of State in carrying out his functions under subsection (2). It requires him to have regard to the need to take reasonable steps to avoid (so far as practicable) the risk that the provision of probation services might be adversely affected by any potential conflict of interest between the provider's obligations and the financial interests of the provider.