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The Offender Management Bill

Committee Stage Report

This is a report on the Committee Stage of the *Offender Management Bill* produced in response to a recommendation of the Modernisation Committee in its report on *The Legislative Process* (HC 1097, 2005-6).

This is a pilot Committee Stage Report and we would welcome all feedback on its content and format. This should be sent to papers@parliament.uk or to the Director of the Research Service, Rob Clements (X3622).

The *Offender Management Bill* would allow for probation boards to be replaced with trusts, with the Secretary of State commissioning services from a range of providers, including in the private and voluntary sectors. It would also make changes to the powers of officers in contracted out prisons, bringing them more into line with those in the public sector. It also introduces changes to tighten up prison security.

Pat Strickland

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Summary of Bill

Part 1 of this Bill is designed to increase the involvement of the private and voluntary sectors in probation work by allowing the Secretary of State to commission services directly. Currently only probation boards can make provision for probation work, either providing services directly or contracting them out. The Bill forms part of a programme of change which has taken place since the Government accepted the main recommendations of the Carter Report in 2004. This argued for:

- “end-to-end management” of offenders, to ensure continuity both in prison and under supervision in the community
- a purchaser/provider split, with regional managers contracting services
- greater “contestability” (allowing the private and voluntary sectors to compete to provide services)

The National Offender Management Service (NOMS) was formed in 2004, and has an aim of reducing reoffending by 5% by 2008 and 10% by 2010. Ten regional managers were appointed, and they began commissioning services in April 2006. The Probation Service is being required to contract out more of its services. However, the Government considered that legislation was necessary to gain more control over this process, and ensure greater contestability. Generally speaking, whilst “end-to-end management” of offenders has been broadly welcomed, contestability has proved more controversial.

An earlier Offender Management bill was introduced in the Lords in January 2005, but made no progress before the General Election.

Part 1 of the Bill gives the Secretary of State responsibility for providing probation services and the power to establish probation trusts. It would also allow for existing probation boards to be abolished, although there is a provision for the commencement of this to be phased in. The first trusts are expected to be created from April 2008.

The rest of the Bill mainly concerns prisons. Part 2 contains measures to increase some of the powers of officers in private prisons to bring them more into line with those of their public sector counterparts. Directors of private prisons would be given new adjudication and segregation powers. There is a range of other measures designed to improve prison security, with new search and detention powers for officers, particularly in private prisons. Offences connected with assisting escapes and with smuggling drugs, alcohol and other forbidden items into prisons are overhauled. A new offence of smuggling cameras, recording equipment and mobile phones into prisons would be created, although there would be a public interest defence. Part 3 of the Bill contains a variety of other “offender management” measures.

Further background and information on the Bill’s provisions is contained in Library Research Paper 06/02 which was prepared for the Bill’s second reading. The Bill was not amended at all in committee, apart from a few minor consequential amendments.

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I Introduction

The *Offender Management Bill* was published on 22 November 2006 and had its second reading on 11 December 2006. It had seven sittings in a Public Bill Committee between 11 January 2007 and 23 January 2007. Further background on the Bill is available in Library Research Paper 06/62.¹ A Bill Gateway is available on the parliamentary intranet, which gives additional information and detail of the progress of the bill.

II The second reading debate

The main issues raised in the second reading debate were to do with the reform of probation, and the extent to which greater involvement by the private and voluntary sectors could offer solutions to reoffending. The Secretary of State, John Reid, emphasised that the main purpose behind the bill was to reduce the reoffending rate:²

The fact that we have thrown money and various improvements at the issue in recent years and still had an obstinately high – 60 per cent. – reoffending rate suggests that we at least ought to be open to asking how we do this better on the back of our present probation service, but supplementing its effort and by addressing the complexity of some of these problems with a comprehensive range of complex provisions, drawn not only from the private sector but from the voluntary sector and the charitable sector, as well as from our public sector.

The Conservative Home Affairs Spokesman, Edward Garnier, stated that the Conservatives had no objection to contracting out or the provision of probation services by non-state organisations:³

We support opening up the supervision of offenders to non-state providers, just as we championed, in the teeth of Labour protests, setting up privately run prisons. The public sector has no monopoly on the public service ethos, nor should it disparage private sector disciplines.

However, the manner in which the Government have set about mending what they have broken is wrong headed, counter-productive, unnecessary and incompetent.

He went on to state that the Conservatives' support for the bill was not open ended but conditional on the Government working with them to "improve the bill".

For the Liberal Democrats, Nick Clegg, argued that the principle at stake was not whether there should be private or voluntary sector participation in probation services:

The problem with the Bill is the artificial enforcement of greater contracting out and privatisation from the top. In my view, privatisation can work and has worked

¹ <http://www.parliament.uk/commons/lib/research/rp2006/rp06-062.pdf>

² HC Deb 11 December 2006 c589-90

³ ibic c 600

when private sector operators compete with each other in the pursuit of consumers who are free to choose in a commercial environment. In that case, most private sector operators are accountable to the custom given to them by those consumers. The Bill, however, would erect a totally distorted, rigged market, in which contracts are dished out to private contractors at the behest of the Home Secretary via the new quangos - the so-called trusts.

A number of Members raised concerns about potential disruption to probation services caused by the reforms. Labour MP Austin Mitchell argued that the probation service was reformed as recently as 2001 and had a good record on meeting its targets.⁴ Another Labour MP, Mike Wood, argued that the bill would “fracture the probation function in detriment to the public, offenders and the courts.”⁵ By contrast, Labour MP Kerry McCarthy spoke of the effects the Bill would have on voluntary organisations. She described successes voluntary organisations had had in working with offenders.⁶

Protection of the public is best achieved by ensuring that those who are released from prison will not offend again. We must look beyond what we have tried to do in the past, and think of imaginative ways of achieving that aim.

Plaid Cymru’s Elfyn Llwyd argued that contestability was “nothing short of privatisation” and said that while he was not averse to greater involvement from the voluntary sector, he did not see why “such a wholesale series of measures as are in the Bill” were needed to achieve this.⁷ The Conservative MP Humfrey Malins spoke of the pressures the probation service was under.⁸ Labour’s Anne Snelgrove described concerns that “the agenda is the privatisation of service delivery”, and said that while she did not believe that privatisation was the intention, “the fear exists and we must address it”.⁹

By contrast, the Conservative David TC Davies discussed provisions of the bill to do with early release, arguing that “long prison sentences work”. While he could support the Bill, with the exception of the clauses in question, unless people served the sentences they were given and were given help to get off drugs and obtain vocational skills in prison, “the bill would do nothing whatsoever to reduce crime.”¹⁰

The Bill received its second reading by 411 votes to 91.

III Evidence

Following proposals by the Modernisation Committee, the Leader of the House, Jack Straw, announced that from the New Year, Public Bill Committees would be able to take oral evidence. As the Offender Management Bill was introduced before Christmas, it was not one of the Bills to which this new procedure would be applied. In the second

⁴ c604

⁵ c610

⁶ 633

⁷ 634

⁸ c652

⁹ c660

¹⁰ c623

reading debate, the shadow Home Affairs minister, Edward Garnier, requested that evidence taking sessions should be held, the Home Secretary refused on the grounds that there had already been a great deal of consultation on the reforms.¹¹

Nevertheless, Conservative Members hosted a private evidence session on 10 January 2007 which both Conservative and Liberal Democrat MPs and peers attended. The proceedings were recorded on a compact disc; as it was not an official committee of the House, it was not reported by Hansard. On the request of the shadow Home Office Minister, Edward Garnier, it was later transcribed by officials at the Home Office, and presented as Written Evidence to the Offender Management Bill committee.¹²

During the unofficial session, evidence was taken from: the Crossbench Peer, Lord Ramsbotham, formerly Chief Inspector of Prisons; Martin Narey, currently the Chief Executive of Barnados, but, until October 2005, the Chief Executive of the National Offender Management Service, and before that was Director General of the Prison Service; and Dr David Green, the director of the think tank Civitas.

Lord Ramsbotham identified the principal problem facing the Probation Service as one of overload, and was sceptical that trusts contracting out the supervision of offenders to the private or voluntary sector could solve the problem. He also raised the issue of the very high proportion of offenders with serious communication difficulties, and advocated speech therapy in Young Offender Institutions – a point which was later taken up in committee. Martin Narey argued in favour of both offender management and competition, but said that neither counted for much unless the right balance could be struck between sentencing and the prison population, because of the damage overcrowding does to work on rehabilitation. David Green argued for the need to get “the basics” right in terms of sufficient police and prison places to deter potential criminals and to enable rehabilitative work to take place in prisons. He suggested the proposed system for contestability was too dominated by central Government to allow sufficient innovation. Although this was not a formal evidence session, and only six members of the Public Bill Committee attended, several of these issues were later raised during debate in Committee.

IV Committee Debate

A. Amendments agreed to

The Bill was hardly amended at all in Committee. There were very few Government amendments – a reflection, perhaps, of the fact that this legislation has been in preparation since 2004. Those Government amendments (all of which were agreed to without debate) were to schedule 3 which itself covers the Bill’s “minor and consequential amendments”. The Opposition described these Government amendments as “uncontroversial”. In brief, at present a young person subject to a Detention and Training Order must be placed, during the custodial part of the sentence, in “secure

¹¹ HC Deb 11 December 2006 c584

¹² Public Bill Committee, Offender Management Bill, Written Evidence, 10 January 2007, <http://pubs1.tso.parliament.uk/pa/cm200607/cmpublic/offender/memos/m01.htm>

accommodation". Under clause 25 of the Bill, in future this will have to be served in "youth detention accommodation", which is a wider category. Schedule 3 applies this terminology to a range of different legislative provisions, and the Government amendments introduced a number of further similar substitutions.

The main controversies which arose in debate – including 4 divisions – related to Part 1 of the Bill, which deals with the new system for delivering probation services. However there were a number of specific issues raised in relation to parts 2 and 3 of the Bill.

B. Debate on probation reform

1. Purposes of probation - contractual or statutory obligations?

Under the Government's proposals, regionally based civil servants known as Regional Offender Managers (ROMs) will contract probation work to public, private or voluntary sector providers. One issue which arose a number of times during the committee stage was the extent to which requirements for these providers of probation services should be set out in legislation or should be left to the contracts. Opposition parties made a number of attempts to set out more detail in the Bill. The junior Home Office Minister, Gerry Sutcliffe, argued that placing such matters on the face of the Bill could lead to confusion between legislative and contractual requirements. Edward Garnier for the Conservatives argued that the requirements should be on the face of the Bill, and should then be replicated in the contracts.

An example of this arose in connection with clause 1 of the Bill, which defines the term "probation purposes" as covering matters such as writing court reports, supervising and rehabilitating offenders and giving information to victims. An amendment tabled jointly by the Conservatives and the Liberal Democrats proposed to set out a number of factors which the Secretary of State and providers would have to have regard to when exercising functions relating to "probation purposes".¹³ These included public protection, reducing reoffending, punishment, ensuring offenders' awareness of effects on victims and rehabilitation. For the Conservatives, Edward Garnier argued that this was necessary for accountability purposes. For the Liberal Democrats, Mark Hunter said that the Bill should clearly specify the aims as well as the purpose of probation, not least because, in his view, contestability would almost inevitably introduce fragmentation. The Labour MP David Kidney, also spoke in favour of statutory objectives, although he did not support the amendment because he did not consider it went far enough. The junior Minister pointed to NOMS strategy documents, and expressed concern about possible confusion about the "interface between contractual and statutory responsibilities", but undertook to reflect and either return with a Government amendment or write to the committee to let them know that this was not possible.¹⁴

The amendment was withdrawn.¹⁵

¹³ Offender Management Bill Committee, PBC Deb 11 January 2007, cc9-29

¹⁴ PBC Deb 11 January 2007 c29

¹⁵ *ibid*

2. Contestability and the role of the Secretary of State

Clause 2 of the Bill gives the Secretary of State responsibility for ensuring that probation services are provided, and clause 3 (the “contestability clause”) allows him to make “contractual or other arrangements with any other person for the making of the probation provision”. Opposition parties tabled a number of amendments either to probe for more details on how this would work, or to modify the provisions. The Conservatives criticised the proposed arrangements as being too “top down” – a claim the Government denied.¹⁶ The Liberal Democrats proposed an amendment to substitute the Secretary of State’s duty under clause 2(4) annually to consult “such persons as he sees fit” about probation provision, with a new requirement to consult with representatives from a list of specified sectors such as the judiciary, local government, providers and trade unions. Conservative amendments proposing a rather shorter list of consultees and a duty to report to Parliament on the consultation were debated alongside this. The Government resisted the Liberal Democrat amendment on the grounds that a list could prove too restrictive, and it was negated on division by nine votes to six.

The Conservatives’ criticisms of what they perceive as a “top down, over-centralised” approach were reflected in an amendment to clause 3 of the Bill, which proposed devolving the power to make contracts for probation services from the Secretary of State to probation boards and probation trusts. Two other Conservative amendments were debated with this: the first aimed to limit the type of probation functions which could be contracted out so that they would exclude making reports to courts to help them determine sentences, supervising community orders and supervising ex-prisoners on licence; the second would require providers to ensure that carrying out their functions did not give rise to any conflict of interests. The shadow Homeland Security minister James Brokenshire explained that “concerns had been expressed about the same party being responsible for the provision of services and the writing of reports because it might be encouraged to support its own services and generate business in that way.”¹⁷

In the course of the debate, the alternative “Scottish Model” was raised. The *Management of Offenders etc (Scotland) Act 2005* established new Criminal Justice Authorities to co-ordinate services for offenders and monitor joint working between local agencies to tackle re-offending. Criminal justice agencies in local government have a duty to consult with partners, share information and draw up plans to reduce reoffending. The Labour backbencher, Neil Gerrard, who has campaigned against the changes to probation, argued that while the Scottish model could not be translated perfectly into the English system because of the different criminal justice system, a “co-operative structure rather than a contracting structure” could be adopted.¹⁸ For the Liberal Democrats, Mark Hunter argued that “moving to a nationally planned and regionally commissioned probation service would mean that the ability to tailor the probation service to the individual circumstances and needs of the local area would be lost”.¹⁹ He also raised concerns about conflicts of interest. Pressed by Mr Sutcliffe on whether his party argued that there was no role for the private sector, he replied that he was not saying this, and

¹⁶ See for example, PBC 11 January 2007 c 32

¹⁷ PBC Deb 16 January 2007 c67

¹⁸ *ibid* c71

¹⁹ *Ibid* c76

that the Bill “may indeed have positive parts”, but they were not “necessarily convinced about the entirety of it.”²⁰

In response to comparisons with the Scottish Model, Gerry Sutcliffe pointed out that the *Local Government and Public Involvement in Health Bill*, introduced in December 2006, would place a new duty on the local authority, and other parties including probation providers, to co-operate with each other in agreeing the relevant targets in the Local Area Agreement.²¹ He rejected the idea that the structure was top-down, pointing out a provision for subcontracting by providers:

We do not envisage regional commissioners directly holding myriad small contracts. Instead, the commissioners will agree contracts directly with a small number of providers who, in turn, will subcontract aspects of delivery to other providers.

The Conservative amendment to devolve contracting to probation boards and trusts was negated on division by ten votes to five.²²

There was also a Conservative probing amendment to require probation providers to adhere to the race equality duty under the *Race Relations Act 1976*. This had been prompted by concerns from the Commission for Racial Equality over the extent to which NOMS was meeting its statutory responsibilities under the Act. The junior Home Office minister, Vernon Coaker, said that NOMS took its race equality responsibilities very fully, and that providers were already covered by the 1976 Act. However he accepted that a consequential amendment would be necessary to ensure that relevant duties apply when probation boards cease to exist, and he said that the Government would table one “in due course”.²³

3. Replacement of probation boards by trusts

Clause 4 would give the Secretary of State the power to establish Probation Trusts. Schedule 1 contains more detailed provisions on matters such as membership, proceedings and powers. In a debate on whether the clause should stand part of the Bill, opposition parties asked for clarification on the timing and eventual number of trusts. Concerns were raised about their geographical coverage, local accountability and the potential disruption their creation might cause.

Responding, Gerry Sutcliffe confirmed that the first trusts would be in place after April 2008 and that “others would follow in phases thereafter”. The Government would be consulting on the criteria for trust status shortly. If all 42 probation boards wanted to become trusts very quickly, he would be “very happy” but it was likely that they would develop over time.²⁴ It was envisaged that trusts would continue to be linked to, and named after, their local area but the order creating the trust would not limit their activities

²⁰ ibid

²¹ Ibid, c79

²² Ibid c96

²³ PBC Deb 16 January 2007 c97

²⁴ c103

to that area. So a trust with particular expertise might deliver that service in another area as well as its own.²⁵

In the debate on schedule 1, the Conservatives tabled a probing amendment on the minimum number of trust members, which was debated at the same time as other Tory and Liberal Democrat amendments designed to regulate the membership of trusts to ensure representation by magistrates, local councillors and others. In the debate, the Labour MP Neil Gerrard raised the issue of the number of trusts which, he said mattered because "a small number means bigger areas" which would have implications for local accountability. Gerry Sutcliffe responded that the Government had "no magic number" in its head about the number of trusts. Similarly, the minimum number of four members for trusts apart from the chairman was simply that, as the size of the trust should match the work it would carry out. Local accountability would be achieved through the various existing partnerships such as Local Strategic Partnerships and Crime and Disorder Reduction Partnerships. The Government believed it should have freedom to appoint individuals "on the basis of their skills and expertise".²⁶ The Conservatives withdrew their amendment.²⁷

Neil Gerrard moved an amendment intended to ensure that terms of employment and pay of trust employees should be determined by the Secretary of State rather than the trust.²⁸ The Bill provides that, while trusts are to determine employment terms, the Secretary of State must approve pay, pension and other allowances; however, a further provision allows the Secretary of State to decide that his approval is not required.²⁹ Responding, the Secretary of State said that these provisions were "designed to allow flexibility for the long term and to leave sufficient room for manoeuvre to respond to circumstances that we cannot yet foresee".³⁰ The amendment was withdrawn.

The Conservatives and Liberal Democrats jointly moved a probing amendment questioning a provision allowing the Secretary of State to give different directions "for different purposes and in relation to different probation trusts"³¹ Mr Sutcliffe explained that over time trusts might not be delivering the same services, so that blanket directions would be pointless. He also said that the Government might give higher performing trusts greater autonomy. The amendment was withdrawn.³²

Clause 7 of the Bill covers the abolition of the existing local probation boards. While it states simply that the boards as constituted under the *Criminal Justice and Court Services Act 2000* "are abolished", clause 33(2) which provides for commencement sets out that "different provision may be made under this section for different purposes for different areas". This allows for the replacement of boards by trusts to be phased in over time, which is what the Government has said will happen. On a debate on whether

²⁵ cc102-3

²⁶ cc111-3

²⁷ c114

²⁸ cc114-8

²⁹ schedule 1 paragraph 8(2)

³⁰ c117

³¹ c118

³² c121

clause 7 should stand part, Edward Garnier stated that he had “yet to find a logical, rational and cogent reason, emanating from any Home Office Minister, on the need for a change from local probation boards to probation trusts.”³³ He also spoke of concerns about recruitment and retention amongst probation staff because of controversy over the Government’s policy. Gerry Sutcliffe countered that the rate at which probation staff leave the service had fallen since 2003-04, and compared well with other public services.³⁴ He promised further consultation on probation trusts.

In the debate on schedule 2, which deals with transfers of property and staff, Edward Garnier raised the fact that under paragraph 6, if an employee objected to transferring from a board to a trust and refused to do so, his or her contract would be terminated and he would not be treated as having been dismissed under the *Employment Rights Act 1996*. Gerry Sutcliffe gave a detailed account of the employment provisions in the schedule.³⁵ As part of this, he confirmed that an employee who chose not to be transferred would not be entitled to compensation as he or she would be considered to have resigned. However, he stated that the overall aim of the schedule was to “ensure that staff who transfer between providers of probation services have their terms and conditions protected by law” and pointed out that paragraph 9 of the schedule “makes it clear that the schedule does not prejudice an employee’s right to terminate his employment if his working conditions are changed substantially to his detriment.”³⁶ He assured the Committee that employees would be fully informed and consulted about the future.³⁷

4. Qualifications of officers

Clause 6 of the Bill deals with the staff authorised to carry out probation functions, who are termed “officers of providers of probation services”. The Conservatives and Liberal Democrats jointly moved an amendment to regulate their qualifications. For the Tories, Edward Garnier raised the issue of speech therapy, literacy and comprehension skills which had been identified as important by Lord Ramsbotham in his evidence.³⁸ Labour MP Ian Lucas also raised this issue, and called on all parties to recognise its importance in preventing reoffending.³⁹ For the Liberal Democrats, Mark Hunter argued more generally that, as probation services were opened up to competition under Clause 3, it was essential that professional training was regulated to ensure staff were properly qualified.⁴⁰ For the Government, Gerry Sutcliffe explained that the term “officers of providers of probation services” covered a broad range of staff, and that contracts would determine the skills, experience and qualifications required for particular tasks. He went on to describe increases in the numbers of speech and language therapists employed by the NHS, and undertook to write to Mr Garnier to set out how many were dedicated to

³³ 144

³⁴ c144

³⁵ cc147-150

³⁶ c148

³⁷ c149

³⁸ c133

³⁹ c136

⁴⁰ cc134-5

prison and custody work.⁴¹ A letter was subsequently sent which stated that, because speech therapy was the responsibility of the NHS, its availability was “not specific to establishments but the local health economy.” The level of services was determined by needs assessment as part of mainstream commissioning by Primary Care Trusts:⁴²

It follows that there are no therapists dedicated to the custody system. Where individuals in custody are assessed as needing speech and language therapy, they are referred to the local Primary Care Trust to receive mainstream NHS services.

The amendment to regulate qualifications was negated on division by ten votes to seven.

C. Debate on other provisions

1. “Approved premises” (probation and bail hostels)

Clause 9 of the Bill deals with “approved premises” – a term which was introduced by the *Criminal Justice and Court Services Act 2000* to cover premises which used to be known by a variety of names including probation hostels and bail hostels. Clause 9 is closely based on the existing provisions in section 9 of the 2000 Act. The Conservatives moved an amendment to replace the term “approved premises” with “probation and bail hostels”.⁴³ Speaking to the amendment, Edward Garnier referred to a Panorama documentary, screened in November 2006, showing a convicted paedophile befriending children whilst under supervision at a hostel in Bristol. Replying, Gerry Sutcliffe argued that the term “bail hostel” was now misleading and inappropriate for legislation, as these types of accommodation are now targeted at high-risk offenders on licence after release from prison rather than defendants who otherwise might have been remanded into custody. On the issues raised by Panorama he stated:⁴⁴

The expectation that offenders can be watched 24 hours a day, seven days a week is not realistic. However, they can be managed properly, and the multi-agency public protection arrangements that we have in the UK are unique and are working very well on the whole.

The amendment was withdrawn.⁴⁵

Labour MP Neil Gerrard moved an amendment to remove a subsection which would exclude managers of approved premises from the control of the *Private Security Act 2001* – an Act which regulates the activities of the private security industry. Mr Gerrard requested an explanation, as the 2001 Act requires criminal records and other checks, and he was puzzled by the exclusion. Replying, Gerry Sutcliffe explained that the work of staff in approved premises does not constitute private security work in the sense

⁴¹ c138

⁴² Home Office, Letter from Gerry Sutcliffe MP Parliamentary Under Secretary of State, 2 February 2007, Dep 07/501

⁴³ c155

⁴⁴ c156

⁴⁵ c157

intended by the 2001 Act, and that the types of training and qualifications demanded of people in that industry were not appropriate to these hostels. However, those bidding to run approved premises would have to meet “stringent tests and demonstrate an ability to run premises to a high standard” and managers and staff would receive “training appropriate to their work”.⁴⁶ The amendment was withdrawn.

2. Information disclosure

Clause 10 of the bill deals with disclosure of information for offender management purposes. It allows the Secretary of State, providers of probation services, officers of such providers or people subcontracted to provide probation services to disclose information to each other or to other “listed persons” for certain purposes to do with the management of offenders.

The Liberal Democrats moved an amendment to include local authorities in this list, citing a 2005 Local Government Association survey which showed that only 3% of them were informed when prisoners were released into the community. Responding, Gerry Sutcliffe said that local authorities’ needs for information differed substantially from the needs of those listed in the Bill (which include the Parole Board, the police and people securing electronic monitoring of offenders). He also pointed out that others could be added to the list by regulation. However, he said that the amendment merited “further consideration” and he undertook to “return on Report with a considered view”.⁴⁷ The amendment was withdrawn.

The Conservatives moved an amendment to define the nature of the information which might be disclosed under clause 10 in regulations arguing that more clarity was needed.⁴⁸ The Minister argued that to do this would be a “near impossible task” and would create unacceptable inflexibilities.⁴⁹ The amendment was withdrawn.

3. Powers of staff and directors in private prisons

Clauses 11 and 12 remove some of the differences between officers’ powers’ in private and state-run prisons. Clause 11 would allow “prisoner custody officers” (private prisons’ equivalents of prison officers) the same kind of powers to strip search visitors as officers in the public sector have. Clause 12 would give officers in contracted out prisons powers to detain visitors suspected of certain offences, such as smuggling drugs or assisting escapes, for up to 2 hours pending the arrival of the police.

These clauses were both debated briefly on clause stand part. For the Conservatives, Crispin Blunt asked if there were still differences between the powers to conduct intimate searches in contracted out and in public sector prisons and the minister confirmed that there were.⁵⁰ On clause 11, Edward Garnier asked for clarification of whether the power

⁴⁶ c160

⁴⁷ c165

⁴⁸ c165

⁴⁹ c164

⁵⁰ c170-1

to detain would be limited to the geographical area of the contracted-out prison and the Gerry Sutcliffe confirmed that it would be.⁵¹

Clause 13 gives powers to “authorised persons” (in other words people working in private prisons and secure training centres who are not prisoner custody officers) to perform custodial duties and search prisoners. The Liberal Democrat spokesman Mark Hunter moved a probing amendment which would have required such people to be subject to qualification requirements to be set out in regulations.⁵² He asked for assurances that these people would have the necessary training and skills as concerns had been raised by a number of organisations, particularly in relation to children in secure training centres. In reply Gerry Sutcliffe explained that the changes were intended to bring these officers into line with the equivalent public sector staff. He said that the Government wanted to ensure that all the current protection measures would be in place and that the appropriate checks would be made on such staff, and that it was important that “the contractor can prove that the training will be provided to ensure that the person who will carry out the services is adequately trained and supported”.⁵³ The amendment was withdrawn, as was a subsequent probing amendment by the Liberal Democrats to amend the *Safeguarding Vulnerable Groups Act 2006* to cover contracted out prisons.⁵⁴

Clause 14 deals with the powers of directors of contracted out prisons. Section 85(3) of the *Criminal Justice Act 1991* prevents a director of such a prison from exercising certain adjudication and segregation functions which in the public sector could be performed by the prison governor. Instead these functions are performed by a controller, who is employed by the Home Office. Under the Bill’s provisions, the director would be able to inquire into a disciplinary charge laid against a prisoner, conduct hearings of charges or make an award in respect of any charge. He or she would also be able to segregate prisoners, temporarily confine prisoners or apply special controls or restraints in non-emergency situations – currently such powers are only available in emergencies.⁵⁵

In the debate on whether clause 14 should stand part of the Bill, the Labour MP David Kidney referred to letters some Committee members had received from the Prison Governors Association expressing concern about the changes.⁵⁶

The PGA, which is not known for being a radical, publicly protesting body, has said that it is particularly concerned because it feels that, when imposing a punishment in prison, public accountability is an important issue and that such a function should fall within the public sector. The new provisions provide that there will be some monitoring by a public servant, but it will be left to the prison to impose its own punishments.

⁵¹ c173

⁵² c175

⁵³ c178

⁵⁴ c179-181

⁵⁵ Explanatory notes, paragraph 82

⁵⁶ c182

Gerry Sutcliffe responded that the changes would enable the directors of private prisons to be more responsible for order and control, and would free up the Home Office controllers to spend more time monitoring the quality and value of the services provided by the contractor. He noted that both in public or private prisons, disciplinary offences that may result in the award of additional days on top of the sentence have to be dealt with by an independent adjudicator under article 6 of the European Convention on Human Rights, and the proposal did nothing to change that. He undertook to make available copies of the Home Office's response to the Prison Governors Association's letter, and did so on 2 February 2007.⁵⁷

4. Prison security

Clause 17 makes changes to the offences of bringing unauthorised items in or out of prisons. Articles would now be classified as "List A", "List B" or "List C", and different rules and penalties would apply to each. The most serious offences concern "list A" articles, including items such as drugs and firearms. In the debate on whether clause 17 should stand part of the Bill, Edward Garnier said that most of the clause was "common sense" although he called on the Government to do more to "get a grip" on the problem of drugs in prison. James Brokenshire asked why mobile phones were included on List B rather than List A given the serious threat to security they could pose, "including terrorism and other issues". The junior minister, Gerry Sutcliffe, said that the Government believed that it was right for them to be on List B for now, but he undertook to "keep them under consideration".⁵⁸

5. Young offenders

Clauses 25 and 26 of the Bill contain provisions which would allow a young person to be transferred to prison once he or she reaches the age of 18. Clause 25 would generally widen the category of accommodation in which a period of detention or training may be served. At present, a young person subject to a Detention and Training Order (a "trainee") must be placed, during the custodial part of the sentence, in one of the types of "secure accommodation" set out in section 107 of the *Powers of Criminal Courts (Sentencing) Act* such as Local Authority Secure Children's Home or a Secure Training Centre. Under Clause 25, a trainee would, unless he or she had attained the age of 18, be put in "youth detention accommodation". The explanatory notes set out what this means:⁵⁹

This category is wider than the current "secure accommodation". In future, it will be possible, for example, to place a young person in an "open" children's home as well as in a secure children's home. Trainees who are sent back to custody because they have breached the terms of their notice of supervision or committed a further offence during the community part of the order, must, unless they have reached 18, also be placed in "youth detention accommodation".

⁵⁷ Home Office, Letter from Gerry Sutcliffe MP Parliamentary Under Secretary of State, 2 February 2007, Dep 07/501

⁵⁸ c191

⁵⁹ paragraph 104

However, the explanatory notes go on to say that, once the repeal of the sentence of detention to a Young Offender Institution is brought into force, clause 25(5) would allow a trainee who reached the age of 18 to be detained in an adult prison.⁶⁰

Once the repeal of the sentence of detention in a Young Offender Institution (under the Criminal Justice and Court Services Act 2000) is brought into force, it is possible that young offender institutions will cease to accommodate 18-20 year olds. It is therefore necessary to make alternative provision for trainees for whom youth detention accommodation is no longer appropriate. *Subsection (5)* inserts a new section 105A into the 2000 Act which provides that, where a trainee has reached the age of 18, it will be possible for him or her to be detained in a prison at the direction of the Secretary of State.

The Government has been carrying out a series of reviews of the management of young adult offenders, and final decisions have not yet been made.

The Liberal Democrat spokesman, Mark Williams, moved an amendment to leave out subsection 5, citing opposition from groups such as Rainer, the Prison Reform Trust and the Howard League for Penal Reform. In response, Mr Sutcliffe said that the Government was “attempting not to put 18 year-olds in prison, but to enact a contingency that is required under current legislation”.⁶¹

Subsection (5) allows detention and training order trainees who become 18 during the course of their sentences to be placed in an adult prison, which is a necessary provision for a situation that might arise when section 61 of the Criminal Justice and Court Services Act is brought into force. Section 61 abolishes the sentence of detention in a young offenders institution that is currently available for 18 to 20-year-olds. Following that change, if we then decided that young offenders institutions would no longer be provided for 18 to 20-year-olds, that would create a Column number: 203problem for the under-18 estate, because moving an 18-year-old trainee to a young adults institution would no longer be possible. Clause 25 would instead enable him or her to be placed in an adult prison.

I might be asked why 18-year-old DTO trainees cannot stay in the juvenile estate until the end of their sentences. There is no difficulty in a trainee remaining for a reasonable period, but an offender who is just under 18 at the time of conviction may be over 18 by the time sentence is passed and may then have to serve up to 12 months in custody. He or she could then well be over 19 by the end of the custodial period. An even more extreme case would be if the trainee was then released from custody but subsequently breached the terms of the notice of supervision. He or she could be sent back to custody by the court. By that time, the trainee could be over 20.

Forcing the Youth Justice Board to place 19 or 20-year-olds in the under-18 estate, where they would be mixing with 15-year-olds and so on, is clearly not desirable. There are obvious safeguarding implications. As I have tried to make clear, the policy on young adult offenders in custody is currently under review and no decision on the way forward has yet been taken.

⁶⁰ paragraph 106

⁶¹ c202

The amendment was withdrawn.

6. Other provisions

Clause 20 would remove the requirement to appoint a medical officer in prisons, because prison health has become the responsibility of the NHS since April 2003. Edward Garnier used the debate on clause stand part to raise the issue of health provision for mentally ill prisoners, which he described as an “enormous problem” Mr Sutcliffe outlined progress which has been made, but agreed that “a great deal more needs to be and can be done”.⁶²

Clause 27 deals with escort arrangements. The Liberal Democrats and Conservatives tabled a joint amendment to ensure that young offenders’ welfare needs would be addressed during transport. For the Conservatives, Edward Garnier described a case of a young offender being driven for a long period in poor conditions. Gerry Sutcliffe replied that there were already welfare duties in other legislation and that the proposed amendment would not go as far as these. He undertook to look into the case Mr Garnier had raised.⁶³ The amendment was withdrawn.

D. Proposed new clauses

1. Standards for probation providers

Edward Garnier moved a New Clause, tabled jointly with the Liberal Democrats, to make provision by regulation for standards to be achieved by probation providers, including standards for court and Parole Board reports, and to impose financial penalties where providers failed to meet these.⁶⁴ Gerry Sutcliffe said that he understood the concerns about ensuring high standards, but that the Government did not believe that the legislative approach was the right way to go about it. Non-legislative national standards were already in place. The new clause was withdrawn.⁶⁵

2. Reoffending targets

The Conservatives moved a new clause requiring the Secretary of State to set annual targets for every provider of probation on the reduction of reoffending. The Liberal Democrats proposed an amendment to this new clause requiring annual reports to Parliament on progress. Gerry Sutcliffe pointed to problems in holding individual providers to account as more than one provider would be involved in the management of an individual offender, and responsibility extended beyond criminal justice agencies.⁶⁶ The new clause was withdrawn.

⁶² cc196-7

⁶³ c206

⁶⁴ c208

⁶⁵ c212

⁶⁶ c214

3. Polygraph conditions for sex offenders released on licence

In 2005 the *Management of Offenders and Sentencing Bill* included provisions which would have allowed a polygraph (lie-detector) condition to be imposed on the licences of certain sex offenders,⁶⁷ but this Bill made no progress before the May 2005 General Election. In its 2005 manifesto, the Labour party said "By 2007 every offender will be supervised after release; we will increase the use of electronic tagging; and we will test the use of compulsory lie detector tests to monitor convicted sex offenders."⁶⁸ Following reports in the Sunday Times on 28 January 2007 that compulsory lie detector tests were to be introduced for monitoring sex offenders,⁶⁹ a Home Office spokeswoman said that the current *Offender Management Bill*⁷⁰ would be amended to allow for this: "John Reid has agreed to include it as a government amendment. What this amendment will do is legislate for us to trial these tests."⁷¹

Lie detectors are being piloted with volunteers, in order to test compliance with licence conditions, as explained in the following answer to a Parliamentary Question:

Evidence relating to the credibility of a witness from a lie-detector has not been admitted in the courts. The main reason is that there have been concerns about the accuracy of such tests. This led the Royal Commission on Criminal Procedure to conclude in 1981 that the machine's 'lack of certainty from an evidential point of view' told against its introduction in this country.

However, since 2003 the probation service has been piloting the use of polygraph examination with convicted sex offenders. The purpose is to test compliance with license conditions, risk management plans and treatment. Information from the examination can be shared with the police and other agencies. To date over 200 offenders have volunteered to be tested. During the course of examination many offenders have disclosed further information which has been useful in confirming the risk assessment or revising the risk management plan. If information were to be divulged in a polygraph test that could help in the investigation of an unsolved crime, this would, of course, be passed to the police.⁷²

Neil Gerrard tabled a new clause, based on the equivalent clause in the previous bill, to allow for polygraph conditions to be included in sex offenders' licences. Gerry Sutcliffe said that the Government were "sympathetic to the new clause" and would carefully consider it before report.⁷³ The new clause was withdrawn.

⁶⁷ HL Bill 16 of 2004/05, clauses 47-50:

<http://www.publications.parliament.uk/pa/ld200405/ldbills/016/05016.26-31.html#jpg14>

⁶⁸ *The Labour Party manifesto 2005*, p. 48:

http://www.labour.org.uk/fileadmin/manifesto_13042005_a3/pdf/manifesto.pdf

⁶⁹ Sunday Times, *Reid to give sex offenders lie tests*, 28 January 2007

⁷⁰ Bill 9 of 2006-07; see the Library's [Bill Gateway](#) on the intranet.

⁷¹ BBC news online, *Paedophiles to undergo lie tests*, 28 January 2007:

http://news.bbc.co.uk/1/hi/uk_politics/6306901.stm

⁷² HC Deb, 13 October 2005, c562W

⁷³ c221

Membership of the Public Bill Committee

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† Brokenshire, James (Hornchurch) (Con)
† Campbell, Mr. Alan (Lord Commissioner of Her Majesty's Treasury)
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† McCarthy, Kerry (Bristol, East) (Lab)
† Maclean, David (Penrith and The Border) (Con)
† Sutcliffe, Mr. Gerry (Parliamentary Under-Secretary of State for the Home Department)
† Williams, Mark (Ceredigion) (LD)