

Restructuring Probation to Reduce Re-offending

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FOREWORD

Over half of crime is committed by people who have already been through the criminal justice system. If we are to cut crime overall, we have to put preventing re-offending at the centre of the organisation of our correctional services. That is why we have set ourselves a target to reduce re-offending by 5% by 2008 and 10% by 2010.

It is this thinking which has underpinned the creation and continuing development of the National Offender Management Service (NOMS) and, in particular, the offender management model, in which a single offender manager takes responsibility for each offender throughout their time in prison and under supervision in the community, identifying their needs and ensuring that the right interventions are delivered to meet them.

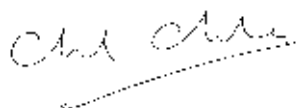
We have made enormous progress in recent years. But we must maintain momentum and ensure that the high standards achieved in some areas can be reached more consistently across the country. That is why I am committed to the creation of a vibrant mixed economy within NOMS. We have already seen the benefits of competition in the provision of prison services where the public sector provider has risen impressively to the challenge. I want to see the same thing happening in the community and that is why I propose to legislate to enable us to seek the very best providers for interventions and offender management in each area.

This is not about cost-cutting: it is about driving up standards and improving value for money.

It is not about privatisation: it is about finding the best provider for the job, whether from the private, voluntary and community or public sector. In many areas, I expect that it will be the public sector which will deliver the improvements we need.

Nor is it about changing staff – whose dedication and skill have contributed so much to recent progress. It is about changing the organisation and management of the service to achieve our goals of reducing re-offending and creating safer communities.

I trust that you will work with us to achieve this goal.



Charles Clarke

Secretary of State

PROPOSALS

Introduction

1. This paper sets out how the Government proposes to introduce commissioning and contestability into the provision of probation services and the organisational consequences that flow from that. These proposals require legislative change and will form part of a Management of Offenders Bill which we will bring forward as soon as parliamentary time allows.

2. We would welcome views on the overall way in which we propose to make this change and on some specific questions highlighted in the text. Responses should reach us by 20 December 2005 (see details at the end of the paper). Because we have conducted previous consultation exercises on the National Offender Management Service and are now hoping to introduce the legislation needed to give effect to these proposals as soon as possible, we are not offering a 12-week consultation period (see Annex A for the Cabinet Office Code of Practice on Consultation). But, in parallel with the publication of this document, we will be engaging in active consultation with key stakeholders, as well as considering written comments.

Background

3. The background to the proposals is Patrick Carter's review of the correctional services in England and Wales, "Managing Offenders, Reducing Crime", which was published in December 2003. The review concluded that a new approach was needed with:

- prison and probation focused on the management of offenders throughout the whole of their sentence; and
- effectiveness and value for money improved through greater use of competition from private and voluntary providers and through establishing a purchaser/ provider split.

4. In January 2004, the Government published its response, "Reducing Crime – Changing Lives", which broadly accepted these conclusions. The National Offender Management Service (NOMS) was then established in June 2004 with the aim of reducing re-offending through more consistent and effective offender management. A considerable amount has since been achieved:

- an offender management model has been developed, and a pathfinder involving 3,359 offenders is now in progress in the North West;
- we are on course to apply the model to all offenders subject to community orders and licences by the end of March 2009;
- the National Offender Manager (NOM) and 10 Regional Offender Managers (ROMs) have been appointed;
- the structures and systems are being put in place to enable them to commission services from the prison and probation services from April 2006;

- probation areas have almost completed the process of reorganising themselves to establish a clear division in the organisation and resourcing of offender management and interventions;
- over 650,000 assessments have been completed using the unified Offender Assessment System (OASys);
- performance improvement testing is underway for prisons in the Isle of Sheppey;
- investment in front-line prison and probation services is continuing; and
- there have been real and sustained improvements in delivery against current targets.

Offender management will ensure that offenders are managed in a consistent, constructive and coherent way during their entire sentence. It introduces a single, named Offender Manager for each offender who will work with them throughout their sentence, whether in a custodial or community setting, and accurately assess their needs, so improving the selection, sequencing and targeting of interventions for each offender.

5. NOMS has a target to reduce re-offending by 5% by 2008 rising to 10% by the end of the decade. This is an ambitious target. If it is to be met, the programme of reform must continue. The current legislation allows for competition in the provision of prison services. It also allows the introduction of a commissioning regime across prison and probation services whereby the specification of the services to be delivered is separated out from the running of those services. But under the current legislation the statutory duty to make arrangements for the provision of probation services rests exclusively with the local probation board. The ROMs are therefore prevented from commissioning offender management or interventions other than through the board, and the potential benefits of genuine competition, where the commissioner has a choice between providers, are not available.

Commissioning involves separating out the specification of services to be delivered from the delivery of those services. The commissioner decides what services are needed, sets priorities and enters into service level agreements or contracts with providers to ensure that they are delivered.

Contestability is about challenging existing suppliers to demonstrate that they continue to offer the best value for money to the taxpayer.

6. Following two previous written consultations on NOMS in January and May 2004, the Management of Offenders and Sentencing Bill included a provision to enable the Secretary of State to direct a local probation board to contract out certain of their functions. The Bill had its first reading in the House of Lords on 12 January 2005 but progressed no further due to lack of parliamentary time.

7. This additional power would have supported commissioning and contestability, in that it would have enabled a ROM, acting on behalf of the Secretary of State, to direct a local probation board to contract out specified functions to a specified provider where the ROM thought that that provider would deliver a better service. But the power had its drawbacks. It would not have supported commissioning across geographical and organisational boundaries. The ROM would still have been tied to working through the board, and the board would have found itself in the potentially awkward position of having to enter into and manage contracts with providers to whom it had lost out in a competition.

8. Since then consideration has been given to how the power might be made more effective. Between February and May this year, the Home Office held detailed discussions with key stakeholders on the way forward, and concluded that it was necessary to go significantly further than the provision in the previous Bill and change the statutory framework under which probation services are delivered. Various organisational models for delivering this were considered and details are given in the Regulatory Impact Assessment which will be available at www.noms.homeoffice.gov.uk or by emailing noms.consultation@homeoffice.gsi.gov.uk. This paper focuses on the preferred model and the detail of what this means.

Proposal

9. The Government proposes:

- to give to the Secretary of State the statutory duty to make arrangements with others to provide probation services; and
- to create new bodies, replacing local probation boards, with whom he may contract.

What does this mean?

10. This does not mean that the Secretary of State will provide probation services directly (in the way that he does with public sector prisons). What it does mean is that the National Offender Manager and the 10 Regional Offender Managers will, on his behalf, enter into arrangements, through contracts or service level agreements, with other organisations in the public, private or voluntary and community sectors to provide them for him.

How will the ROMs choose providers?

11. The National Offender Manager will oversee commissioning and may commission some services at a national level. The Regional Offender Managers will commission services within their region from whichever organisation is best placed to deliver them. They will be free to commission across probation area boundaries and across the custody/community divide. This added flexibility will support the overall aim of improving end-to-end management of offenders throughout the whole of their sentence. Offender management and interventions will be commissioned separately.

12. In order to ensure that services are properly targeted, the ROMs will need to identify the particular offender management and intervention needs in their region. They will also expect providers to demonstrate that they link into local communities and that the services they are delivering are relevant to them. This will be particularly relevant in the case of minority communities at risk of exclusion from mainstream provision.

13. *We would welcome views on the support which ROMs might need in identifying these needs.*

What does this mean for probation boards?

Duties

14. Probation boards will cease to exist in their present form and will be replaced by new bodies which will operate with greater independence from the centre. Instead of carrying a statutory duty to provide probation services, they will become one of a number of possible providers of those services under contract to the Secretary of State and their continued existence will depend on their ability to contribute to the reduction of re-offending and thereby win business.

15. The role of the new bodies will change accordingly. They will need to be able to win contracts in the first place in a competitive environment and then to manage performance so that the standards specified in the contracts are met. The membership of the new bodies will therefore need to include individuals with senior financial, business and management experience. We remain committed to maintaining the good progress made in recent years in diversifying the membership of boards.

Appointment of members

16. The Secretary of State will appoint the members of the new bodies. It is not proposed to replicate the detailed legislative prescriptions on the appointment process for, or membership and constitution of, the current boards, so as to create flexibility to adapt over time in the light of experience and as contractual arrangements change. For example, as one of the new bodies wins or loses business, it may need more or fewer members to run it. In practice it is likely that most members will have links with the local area, but this will no longer be a statutory selection criterion.

17. *We would welcome views on the competencies required by, and the size of, the new bodies.*

18. As boards will no longer be the sole providers of probation services, we no longer see a case for the statutory requirement for the Lord Chancellor to appoint a Crown Court judge to sit on the board. But links between NOMS and the judiciary will be important and should build on the high level contact existing through the board and the recently established arrangements for future liaison meetings.

19. *We would welcome views on how the relationship between the judiciary, the providers and the ROMs as commissioners can best be developed.*

Appointment of chief officers

20. If the new bodies are to operate with greater freedom from the centre and be held to account by the ROM for performance against contract, it makes sense for them to be able to choose their own chief officer. Chief officers will therefore cease to be statutory office holders appointed by the Secretary of State. Instead, they will be appointed, employed and line-managed by the new body.

21. We expect that most existing chief officers will transfer to the employment of the new body, with their terms and conditions protected. If they are not appointed for any reason, they will be compensated accordingly.

Name

22. Although they may look superficially similar at the outset, the new probation bodies will be very different entities from the existing ones. To avoid confusion, it is proposed that the terminology should reflect this change. It is proposed therefore to describe the new bodies as probation trusts. This is the term used for the rest of this document.

23. It is envisaged that individual areas will retain their separate identities and that services will be provided under an overarching title, such as “West Yorkshire Probation Services”. The services themselves will then be delivered by West Yorkshire Probation Trust and/or an alternative provider from the private or voluntary and community sectors.

24. *We would welcome views on this terminology.*

What happens if a trust does not win business from the Secretary of State?

25. At the outset most probation services will continue to be provided by the local trust. But, as contestability is developed, some work may be transferred to alternative providers. If a trust loses all its business, or so much that what remains is insufficient to support the overheads, the trust will cease to exist.

26. To ensure continuity of provision, the Secretary of State will have powers of last resort. He will be able to recreate a trust to take over from an alternative provider in case of failure and/or to create a “shadow trust” to bid for work on behalf of the public sector in a future market test, with a full trust being set up if the bid is successful.

What does this mean for local partnership arrangements?

27. Significant advantages have accrued from co-terminosity of geographical boundaries between local agencies and these need to be retained as far as possible. At the outset it is envisaged that there will be 42 probation areas, though the Secretary of State will have the flexibility to amend their boundaries in time to keep pace with changes elsewhere, particularly in the police and local criminal justice boards. It is proposed that this be done administratively rather than, as at present, by means of a parliamentary procedure.

28. Commissioning will operate across area boundaries (and over time some probation areas may merge if the outcome of a market test is one trust taking over the running of the neighbouring area as a result). But existing area boundaries will be reflected in the way merged services are run so that co-terminosity is retained. For example, if probation trust A takes over offender management and interventions in the area currently covered by probation trust B, trust A would be expected to maintain a separate management interface for that area so that partner agencies had clear points of contact.

29. In addition to their basic duty to provide probation services, existing boards also have a range of statutory duties in relation, for example, to victims, children, crime and disorder reduction partnerships, multi-agency public protection arrangements, youth offending teams and so on. Under the proposed new arrangements, it will not be appropriate for these statutory duties to rest exclusively with probation trusts. Instead, the duties will fall to the organisation with which the Secretary of State contracts for this purpose. That does not mean that the probation input into these activities will be reduced but simply that it will be governed by contractual arrangements instead and certain elements of it may, in due course, be performed by organisations other than the local probation trust.

30. Probation boards also fulfil crucial non-statutory roles, for example in relation to persistent and priority offenders and on Local Criminal Justice Boards (LCJBs). In future, it will be the responsibility of the ROM to ensure that satisfactory arrangements for partnerships with LCJBs exist and are built into contracts. We will be considering whether the ROM (or his or her representative) as commissioner, or a senior representative of the relevant provider organisation, is best placed to be a member of the LCJB. Through the Office of Criminal Justice Reform, we will be discussing this further with LCJBs and *would welcome views on how partnership arrangements can best be managed.*

What does this mean for offenders?

31. These changes support the introduction of offender management, whereby each offender will have a named offender manager for the duration of the sentence, whether served in custody or the community. The changes will enable services to be commissioned according to need and without organisational or geographical constraints. So, for example, the same provider might run programmes in both custody and the community, making it easier for the offender to continue on release work started in prison. The changes will also raise the standards of services delivered. Taken together, this will lead to better quality and more effectively targeted interventions for offenders, which should make it easier for them to lead law-abiding and productive lives in the future. A reduction of 5% in the adult reconviction rate would equate to around 4,500 fewer offenders being reconvicted over the course of a typical year.

What does this mean for victims and the public?

32. Fewer offenders mean fewer victims and safer communities for everyone. But local probation boards also have a specific statutory duty towards victims in cases where an offender is sentenced to 12 months or more in prison for a sexual or violent offence. In such cases, boards are required to inform and consult the victim, or their family, of any release arrangements and conditions, allowing them the opportunity to make representations about them. This service will continue to be provided under the new arrangements and will be included in the contracts which the ROM agrees with providers. The ROM will be free to contract with someone other than the probation trust to provide the service if that will result in a better service to victims.

What does this mean for staff?

33. With its emphasis on end-to-end offender management and reducing reoffending, the overall reform programme places probation staff at the very heart of NOMS. There will therefore be greater opportunities for innovation and creative working outside traditional organisational and geographical boundaries. These proposals offer exciting opportunities for staff.

34. The change from boards to trusts and the introduction of commissioning is likely to impact at working level only gradually. At the outset, the contracts of employment of most staff will simply transfer from probation boards to the new trusts. If, in due course, work is transferred to an alternative provider as a consequence of contestability, staff will transfer too, with their pay, terms and conditions protected by TUPE and the recent extension of the Two Tier Workforce Agreement.

What does this mean for the National Probation Directorate?

35. The present National Probation Directorate will need to adapt to the greater independence with which trusts will operate in the future. The centre will have an important role in offering support and guidance to trusts, especially as they adapt to the new competitive environment. However, it is envisaged that the relationship will become increasingly light touch, as trusts become more independent. The centre will also support the Secretary of State in appointing members of trusts.

What does this mean for the Prison Service?

36. The Prison Service, like the probation service, will move to a world where its services are commissioned and where the main responsibility for overseeing performance against individual contracts will move to the ROM. But, unlike the probation service, it is already subject to competition from other providers, so legislative change is not necessary to enable commissioning.

What does this mean for other providers?

37. The proposals offer scope for providers from the private and voluntary and community sectors to expand their role in NOMS and to do so without being unduly constrained by existing organisational and geographical boundaries. It will be important to build on existing relationships, especially between the voluntary and community sectors and probation boards, and some joint ventures with trusts may well be desirable.

What does this mean for diversity in NOMS?

38. The Government attaches high priority to diversity in both the provision of services and the running of provider organisations. Anyone involved in the provision of NOMS services will be expected to demonstrate that they have proper policies and procedures in place to support and promote diversity, in terms of both delivering services to offenders and victims and in terms of employment. Commissioners will set out clearly what their expectations are in service delivery and how this should be monitored. They will also specify what kind of ethnic monitoring providers will be required to carry out, any specific targets to be met and any specific initiatives which they want providers to take on.

39. The main responsibility for the running of the organisation will rest with the provider: in practice, a provider is unlikely to be able to deliver services of the kind and to the standard we require if diversity is not fully embedded in how the organisation is run. In the case of trusts, the prime responsibility will rest with the members of the trust, and ability to deliver on this is something which the Secretary of State will be looking for when members are appointed.

When will this happen?

40. The timing is dependent on Parliament. The earliest we envisage that this could come into effect would be April 2007.

CONTACT POINT FOR COMMENTS

41. Comments should reach us by email or post by 20 December at the following address:

Emily Whitehead
NOMS Design/Bill Team
Home Office
Horseferry House
Dean Ryle Street
London SW1P 2AW

Email: noms.consultation@homeoffice.gsi.gov.uk

42. You should also contact us at this address if you require a copy of this consultation paper in any other format, such as Braille, large font or audio.

43. A summary of the responses received will be published within three months of the closing date for this consultation, and will be made available on the NOMS website (www.noms.homeoffice.gov.uk).

44. Please see Annex B for details of our policy on confidentiality.

Annex A

CABINET OFFICE CODE OF PRACTICE ON CONSULTATION

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at: www.cabinet-office.gov.uk/regulation/Consultation

Consultation Coordinator

If you have any complaints or comments about the consultation process, you should contact the Home Office consultation coordinator Pio Smith by email at pio.smith31@homeoffice.gsi.gov.uk. Alternatively, you may wish to write to:

Pio Smith
Consultation Coordinator
Performance and Delivery Unit
Home Office
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

Annex B

RESPONSES: CONFIDENTIALITY AND DISCLAIMER

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA - in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.