

Offender Management Bill:

Regulatory Impact Assessment

REGULATORY IMPACT ASSESSMENT

Contents

Overarching RIA for Offender Management Bill **p.4**

Annex A: RIA: New arrangements for provision of probation services **p.13**

Annex B: RIA: Transfer of powers to contracted-out prisons and secure training centres **p.28**

Annex C: Race Equality Impact Assessment **p.33**

Overarching Regulatory Impact Assessment

1. TITLE OF PROPOSAL

Offender Management Bill

2. PURPOSE AND INTENDED EFFECT

Objective

The overall aim of the Bill is to contribute to the reduction of re-offending and the protection of the public. The Bill will improve the way in which we manage offenders within the criminal justice system by:

1. Enabling the Secretary of State to contract with a range of providers for the delivery of probation services.
2. Removing some of the inconsistencies between the powers of staff in public and private custodial institutions.
3. Reforming existing offences of bringing articles into prison.
4. Enabling the component parts of the National Offender Management Service (NOMS) to share information with each other.
5. Making technical amendments to enable more efficient delivery of the youth justice system

Background

The Regulatory Impact Assessment (RIA) for the Offender Management Bill includes two full RIAs, identified below, as annexes. Information on aspects of the Bill on which full RIAs have not been conducted because of their negligible impact is included as an appendix.

Annex 1: New arrangements for the provision of probation services – Clauses 1 to 9 and Schedules 1 to 2

Annex 2: Powers of contracted-out prisons and secure training centres – Clauses 11 to 15

Rationale for Government Intervention

See the individual RIAs at Annex 1 and Annex 2 for the rationale for Government intervention.

3. CONSULTATION

See the individual RIAs at Annex 1 and Annex 2 for information on consultations.

4. OPTIONS

See the individual RIAs at Annex 1 and Annex 2 for specific options. General options for the Bill are:

- 1 **Do nothing.** This would prevent the introduction of a comprehensive structure of commissioning with contestability for probation, and would restrict the opportunity for improving probation services to better protect the public and reduce reoffending. As such, we would be unable to realise the full benefits of the NOMS reform programme.
- 2 **Implement in part.** This would not fully realise all the benefits from the proposed reforms; or
- 3 **Implement in full.** This would allow us to take forward the reform agenda for probation services and offender management

It is recommended that the measures in the Bill are taken forward in their entirety in order to realise all the benefits we seek and to help the correctional services better manage offenders.

5. BENEFITS

Business sectors affected

See the individual RIAs at Annex 1 and Annex 2 for business sectors affected.

Issues of Equity and Fairness

A full Race Equality Impact Assessment is attached at Annex 3

6. COSTS

See the individual RIAs at Annex 1 and Annex 2 for the full details of costs.

7. SMALL FIRMS IMPACT TEST

The measures in the Bill will not have an adverse impact on small firms. Some additional business opportunities for the small business sector may be created through the increased competition for services.

8. COMPETITION ASSESSMENT

See the individual RIAs at Annex 1 and Annex 2 for competition assessments.

9. ENFORCEMENT, SANCTIONS AND MONITORING

See the individual RIAs at Annex 1 and Annex 2 for enforcement, sanctions and monitoring.

10. IMPLEMENTATION AND DELIVERY PLAN

Implementation and delivery plans for the individual measures in the Bill are being developed.

11. POST-IMPLEMENTATION REVIEW

The component parts of the legislation will be reviewed to check that they are fully effective and economic.

12. RECOMMENDATION

It is recommended that Option 3, full implementation of the proposals detailed in this RIA, be pursued.

13. DECLARATION AND PUBLICATION

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed

Date

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APPENDIX

INFORMATION ON PROVISIONS FOR WHICH AN RIA HAS NOT BEEN CONDUCTED

1. Disclosure of information - Clause 10

In order for the various organisations that will together make up NOMS to work efficiently together, it is essential that their power to share data with each other and with criminal justice partners is beyond doubt. The provisions in the Bill will do this and promote better management of offenders and efficiency within the criminal justice system.

The provisions also include powers in respect of sharing data with other government departments for research purposes. Again, this will help promote a more effective criminal justice system. The Bill will enable, rather than require, the organisations to share data.

2. Offences relating to prison security – Clauses 16-19

These measures are intended to address shortcomings of provisions in the Prison Act 1952 which create offences of conveying certain items into prisons. These provisions have been shown not to provide an adequate sanction against those who bring cameras or sound recording devices into prisons without authority. Such actions pose a threat to security, and breach our obligations to protect the privacy of prisoners and others in prisons. The provisions in this Bill will amend the Prison Act to make it a criminal offence for a person without authorisation to bring a camera, mobile phone or similar device into a prison, or to remove articles including images of a prison or person in a prison, sound recordings or information relating to a prisoner from a prison. These provisions will also distinguish more clearly the offences and penalties of taking other prohibited articles into prison.

The impact of these provisions will be low (a) because it is expected that the number of prosecutions will not exceed 10 each year; and (b) because these provisions will not impose any significant additional burden upon front-line staff.

3. Removal of requirement to appoint a medical officer etc – Clauses 20

The continued presence of this term in primary legislation sustains its use in secondary legislation Prison Rules, and Prison Service guidance, reflecting practice that is long outdated and failing to take account of the significant changes that have taken place in this area. In the past it has acted as a barrier to the delivery of practical and cultural change, and in the present it provides duplication between health and correctional services legislation in this area. The legislative change will, of itself, have no practical implications for doctors currently employed by prisons. The transfer of commissioning responsibility to the NHS does of course have HR implications, which are being worked through with relevant stakeholders, but the removal of the medical officer provisions in the Bill will not introduce any additional complexities.

4. Accreditation of programmes for purposes of programme requirements

This measure enables the Secretary of State to abolish the independent Correctional Services Accreditation Panel's (CSAP) NDBP status and place the duty for making these arrangements on the Secretary of State. Bringing the accreditation process in-house will not place additional demands on staff, including those in front-line delivery posts in prison and probation services, as working methods are not expected to change. Sponsorship of CSAP moved to NOMS at the beginning of 2005/6, where its secretariat is now located.

5. Functions of the Youth Justice Board – Clause 23

Placement of young people in custody is currently a split function. Detention and Training Order (DTO) trainees are placed by the Youth Justice Board and section 90 and 91 offenders by the Prison Service. To combine the two roles, with benefits for the management of the juvenile secure estate, it is necessary to amend the section 90/91 placement power (contained in section 92 of the Powers of Criminal Courts (Sentencing) Act 2000) to enable the YJB to exercise it.

6. Detention and training orders: early release – Clause 24

Subject to certain criteria (mainly relating to acceptable behaviour in custody), DTO trainees serving medium or long-term DTOs can be released one or two months

early. The current legislation requires that early release take place *exactly* one or two months before the ordinary release date. If that date passes – for example because of an administrative delay – the trainee has to remain in custody to the end of the term. This clause would allow release at a point *up to* one or two months before the ordinary release date. There should be a (very small) benefit in terms of reducing the numbers in custody.

7. Accommodation in which period of detention and training to be served – Clause 25

At present, juveniles sentenced to a DTO can be sent to a variety of establishments, defined as “secure accommodation”. “Secure accommodation” includes young offender institutions (YOIs) - including “open” YOIs - secure training centres (STCs) and local authority secure children’s homes. It does not include “open” local authority homes. The Youth Justice Board considers that certain trainees could appropriately be placed in such accommodation. That would bring benefits in terms of the management of the secure estate and an opportunity for cost savings, as well as a better match between trainee and establishment. The provision will replace the current definition of “secure accommodation” with a new category of “youth detention accommodation”. This expanded placement power would remove an anomaly: currently young people sentenced to detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 – i.e. those who have committed more serious offences – can be placed in a wider range of accommodation than DTO trainees.

Young people serving a DTO must be kept in “secure accommodation”, which is defined by means of a list in section 107 of the Powers of Criminal Courts (Sentencing) Act 2000. The list includes YOIs (and secure training centres, etc) but not prisons. Henceforth, offenders aged 18 or above will be held in prison rather than in a YOI. That leaves a difficulty with young people serving a DTO who *become* 18 and still have a substantial part of their sentence to serve. At present they can be moved to an “adult” YOI (which is covered by the section 107 list). In future, they would have to go to a prison (which is not). A young person aged 17 on conviction but 18 at the time of sentence, who received a 24 month DTO, would be 19 by the time of release. It is not acceptable to keep someone of that age in the juvenile estate. The new provision is needed to allow these young people to be moved to a prison.

8. Conversion of sentence of detention to sentence of imprisonment – Clause 26

The minimum age at which a person can receive a sentence of imprisonment is currently 21. Section 61 of the Criminal Justice and Court Services Act (which has yet to be commenced) reduces it to 18. The existing power to convert a sentence of detention to a sentence of imprisonment when a young person reaches the age of 21 needs to be amended to take account of that reduction in the minimum age. This is simply a consequential amendment. We do not believe it has any implications for diversity.

9. Escort arrangements - Clause 27

Escorting of young offenders between courts, establishments, hospitals and police stations is provided for by two pieces of legislation. However, there are certain transfers (mainly those between YOIs and STCs) that are not covered by either. Such transfers do, however, take place and this clause is needed to provide legislative cover. There is no regulatory impact as a result of this provision.

ANNEX 1

1. TITLE OF PROPOSAL

New arrangements for the provision of probation services.

2. PURPOSE AND INTENDED EFFECT

Objective

The objective is to enable the Secretary of State to commission probation services from a range of providers in the public, private and third sectors so as to improve performance overall and contribute to the reduction of reoffending and the better protection of the public.

Background

In December 2003, Lord Carter published his report, "Managing Offenders, Reducing Crime", which recommended the establishment of a National Offender Management Service (NOMS) with the aim of reducing reoffending through more consistent and effective offender management. A key recommendation of the report was that more effective service delivery could be achieved through greater competition, using providers of prison and probation from across the public, private and voluntary sectors, and through a separation of the line-management of public sector providers and the commissioning of services.

In January 2004, the Government published its response, "Reducing Crime, Changing Lives", which broadly accepted Lord Carter's conclusions, and NOMS was established in June 2004.

Since then we have made some progress in improving performance within the probation service and in establishing the structures necessary for commissioning at national and regional level. This provides a solid foundation on which to build.

However, we need to do more. NOMS has a target to reduce the reconviction rate by 5% by 2008 and by 10% by 2010. This is an ambitious target. If it is to be met, we now need to pick up the pace of change to make a reality of Carter's original vision. In particular, we need to harness the dynamism of as wide a range of talents as possible from the private, voluntary and public sectors to ensure that offender services are only delivered by those who show they can do the best job.

The Government's intention to introduce greater diversity of provision was reiterated in both "A Five Year Strategy for Protecting the Public and Reducing Re-offending" (published in February 2006) and "Rebalancing the criminal justice system in favour of the law-abiding majority" (July 2006). In August 2006, the Government published "Improving Prison and Probation Services: Public Value Partnerships", which outlined the vision for contestability and indicated the pace and scale of change envisaged.

Rationale for Government Intervention

Under the current legislation the statutory duty to make arrangements for the provision of probation services rests exclusively with the local probation board. Unlike custodial services, probation services cannot currently be provided by any other organisation unless sub-contracted directly by probation boards themselves. This applies regardless of how well the local board is itself performing or how appropriate the geographical boundaries of that area are for the service concerned.

A new framework is needed that allows us to work in stronger and more creative partnerships with a wide range of other organisations. Commissioners need to build a complex range of partnerships to match provision to demand, and to draw on the skills of a wide range of organisations working together to common goals and each playing to their strengths. A mixed economy of providers is needed. Our aim is to utilise the talents of a diverse pool of public, private and voluntary providers, each with their own set of skills and expertise.

The Government now proposes to legislate in the Offender Management Bill:

- 1 to give to the Secretary of State the statutory duty to make arrangements with others to provide probation services, so enabling him to commission from providers in the public, private and third sectors; and
- 2 to abolish local probation boards and establish probation trusts, as the public sector provider with whom he may contract.

3. CONSULTATION

The case for change was first set out in “Restructuring Probation to Reduce Re-offending” in October 2005. The responses, along with the Government’s proposals for taking the policy forward, were published in March 2006 in “Working with Probation to Protect the Public and Reduce Re-offending”. The consultation revealed general support for the involvement of alternative providers and some support for commissioning as a means of driving up standards. But concerns were expressed about the justification for, and scale and timing of, change.

This Regulatory Impact Assessment, together with “Improving Prison and Probation Services: Public Value Partnerships”, sets out the pace and scale of change envisaged. We intend to move from boards to trusts in a measured and phased way, using clear and objective criteria (on which we will consult stakeholders) for determining which boards move when. Subject to parliamentary approval, we envisage that the first trusts will be established, and the first contracts awarded, in April 2008.

4. OPTIONS

This RIA provides an assessment of the overall benefits of the Government’s proposals to introduce full contestability to probation services set against a “no legislation” option. Year-on-year performance improvements are expected of any public sector organisation as a matter of course. These are assumed under this RIA, and are therefore stripped out of the calculations, which simply compare the additional impact of full contestability. Although the impact of the introduction of a fully contestable environment - where all services are subject to both internal and external competition - is shown in financial terms, this is only to illustrate how our proposals compare with the option of retaining the existing legislative framework. It is anticipated that the resources released through innovation and efficiency improvements as a result of the introduction of a fully contestable environment will be reinvested to deliver service improvements.

Introduction of a fully contestable environment will stimulate more efficient and effective provision of offender management and interventions services, providing better value for money. Contestability will encourage innovative approaches through opening up service provision to a wide range of providers. This will enable services

to be commissioned across geographical boundaries and facilitate wider working across different organisations.

In summary, the two options being assessed in this RIA are:

- **Option 1: Do not introduce a change in legislation**, whereby new legislation is not introduced and probation boards remain the sole statutory providers of probation services and access to alternative providers is only via the existing boards;
- **Option 2: Remove the statutory restriction on the provision of probation services**, which creates the potential to open all of the current and future business of probation boards to competition.

5. BENEFITS AND COSTS

NOMS is currently developing the National Provider Network, a central directory of providers that will speed up the process of tendering and reduce the associated costs. This will provide benefits and savings to the work of commissioners separate from the introduction or not of legislation. As such, it has been decided not to include these benefits in the modelled scenarios.

Option 1: Do not introduce a change in legislation.

Under current legislation, Probation Boards have an exclusive statutory duty to provide probation services, and without a change in legislation access to alternative providers would remain via the existing Probation Boards. In this situation other providers remain as sub-contractors only, when they might themselves be lead contractors with the commissioner, and it does not provide a mechanism for addressing a failing probation board. It is also envisaged that under this continued situation there would be limited multi-regional contracts, which would inhibit the ability to commission across organisational and geographical boundaries plus reduce the potential for economies of scale that larger contracts could bring.

It would remain the decision of individual probation boards, in consultation with the commissioner, albeit recognising targets for partnership working through subcontracting, as to the services and volumes to be delivered through partnership working. However, sub-contracting of services by individual Boards can well be advantageous on a local level, and when trusts are in place such arrangements may still continue, but with greater direction setting by the commissioner who can decide

if the local benefit is aligned with any regional/national perspectives. That said, the increase in partnership working targets modelled in this option is assumed to result in increased partnership working by Probation Boards and a general increase in the level of benefits realised.

In 2005-06 around £12.5m¹ of offender services within probation was subcontracted which equates to approximately 2.5% of Probation Board expenditure on probation services. The level of partnership working at year end modelled in this option is laid out in the table below.

| Table 1 | Assumptions on extent of partnership working |
|---------|--|
| 2005-06 | 2.5% in value of services (£12.5m) |
| 2006-07 | 5% in value of services (£25m) |
| 2007-08 | 10.0% in value of services (£50m) |

Assuming efficiency savings in the order of 3.5% to 8.5% and taking account of tendering and contract management costs, it is estimated that average annual savings through the increase in sub-contracting to partner organisations would be around £280k at 3.5% savings rate and around per £2m annum at a savings rate of 8.5%.

The cost of subcontracting this level of business is estimated at 4% of contract value and the cost of managing these contracts is estimated at 1.2% of contract value. Discounted over 25 years to allow for inflation, this option would have a positive net present value (ie net savings) of £4m at a 3.5% savings rate and £33m at a 8.5% savings rate (figures expressed at 2006-07 prices).

¹ Total estimated value of sub-contracted probation business is £12.5m (2005/06)- this includes training, operation of some approved premises and the provision of a proportion of interventions.

Option 2: Transfer the statutory responsibility for provision of probation services from Probation Boards to the Secretary of State.

The changes will help NOMS to reduce re-offending and better protect the public by:

- getting more out of existing resources and freeing up resources to reinvest;
- enabling commissioners to require in service specifications joined up working and seamless delivery across prisons and probation institutional boundaries;
- allowing providers with new and better ways of doing things, including synergies with their existing operations, to propose how they would provide services.

The evidence from the custodial sector's experience over the past decade indicates that the introduction of competition for the operation of prisons and related services has contributed towards increases in efficiency. This introduction - aligned with strong organisational leadership - has led to efficiency savings of up to 8.5%. While it is not possible to forecast perfectly in advance, we believe that the introduction of commissioning and contestability for probation services can emulate the improvements delivered within the custodial sector.

While we recognise that there are differences between the custodial and probation sectors, the custodial sector is still the best comparator to use when modelling the impact of full contestability for probation services. The figure of 8.5% is considered reasonable for the upper end of the expected savings and as such a range of savings rates, with 8.5% as an upper limit, have been used to demonstrate the impact of the use of the legislation.

The level of savings generated can be estimated by taking a selection of different aspects of probation services - from the provision of specific interventions to the running of the a whole probation board - and then modelling these on a rolling programme of competition.

Using a range of savings rates starting at 3.5% of the value of business contested and taking the upper limit of savings as 8.5% it is anticipated that there will be annual savings of over £2m at 3.5% and around £13m at 8.5%. These figures apply once the programme of contestability is established.

Applying these rates of savings to the programme over a period of 25 years and discounting to allow for inflation, a positive net present value of £35m is generated at a savings rate of 3.5% and at 8.5% the net present value rises to £212m.

Introducing a commissioning system and competition for provision of probation services will incur costs in the following: running procurement exercises; contract management; in-house bids; and in-house contract compliance. These are estimated at 1% of contract value, 1.2% of contract value, 4.0% of bid total and 0.5% per annum respectively.

Public protection through a reduction in re-offending

It is clear that providers are not yet able to play to their strengths, as Probation Boards have a 97.5% market share. As such we are not availing ourselves of the benefits and opportunities that working with a complete spectrum of providers would bring to the provision of correctional services. There are a large number of providers outside the public sector already working with offenders, such as private sector prison management, prisoner escort services and electronic monitoring of offenders in the community. Elsewhere, they are providing specialist services – for example, community chaplaincy services. In other areas, and particularly in probation work, private and third sector provision is often minimal, and may only be offered opportunities to get involved in a limited range of services. We believe there is potential for service improvement by accessing a wider range of providers, with much greater input from current providers, to deliver the wide range of services for offenders with varying needs. In an environment of full contestability, we expect providers will look critically at themselves to review what could be done better by working in partnership. We want all providers to play to their strengths. In doing this, we expect service delivery to improve

In addition to the financial benefits from contestability, the National Audit Office has concluded that the introduction of competition for custodial services has had a positive impact on the decency agenda which aims to treat offenders with decency in a caring and secure environment.

“...Competition has been important within the prison system for improving both management and conditions for prisoners...A key innovation by the private sector has been in promoting a more constructive staff/prisoner relationship...The private companies involved in PFI consider that a major private sector innovation has been in the attitude of staff towards prisoners. Our prisoner survey supported this assertion by finding that prisoners held in PFI prisons felt that they were shown greater respect and were treated better than prisoners in public prisons. The Institute of Criminology (Cambridge University) has undertaken pioneering work in this area and is collaborating with the Prison Service on measuring this aspect of the quality of life in prisons. We view this as a positive

development which will help the Prison Service take the decency agenda forward.”²

Further, there is evidence that competition has helped provide the impetus for improved performance across many public sector organisations and it is expected that a similar “ripple effect” will be seen with the introduction of full competition across probation services. That said, due to difficulties of quantifying this effect, the additional potential benefits arising from this improved performance have not been modelled.

The assumptions that have been made in modelling the costs and benefits are explained in the technical note.

6. SMALL FIRMS IMPACT TEST

The measure does not adversely impact on small businesses. Some additional business opportunities for the small business sector may be created through the increased competition for services.

7. COMPETITION ASSESSMENT

There is an existing private sector market for the provision of custodial services (£227m) and prisoner escorts (£135m). It is expected that private and voluntary sector providers will be interested in increasing their partnership working with the Probation Service and will respond to invitations to tender placed by NOMS. In fact, there are already large numbers of voluntary sector organisations working with the public and private sectors to deliver services. Over 900 different organisations in total are currently working with offenders, with more than 600 projects working with probation in the community.

8. ENFORCEMENT, SANCTIONS AND MONITORING

² National Audit Office: *The Operational Performance of PFI Prisons, 2003*

The success of contestability in contributing to the driving up of performance will be routinely monitored by the Home Office Group Executive Board and by the Prime Minister's Delivery Unit. The cashable and non-cashable savings from contestability will be included in the NOMS Value for Money strategy monitored by the Office of Government Commerce.

9. POST-IMPLEMENTATION REVIEW

An illustrative programme of contestability for probation services is costed above. This programme will be subject to review after each year of contestability is completed following the introduction of legislation, with the first review in 2009-10 of the 2008-09 round.

10. SUMMARY AND RECOMMENDATION

Some performance and cost improvements can be obtained (with cost savings to be reinvested in service provision) by influencing Probation Boards to make greater use of external providers in service delivery. But it will not be possible to meet the Government's target on reducing re-offending without significantly driving up performance in the delivery of offender services, including probation services. One of the tools for doing this is to open the full spectrum of service delivery within NOMS to a full range of providers. This will give commissioners a wider choice of providers, and the freedom to move services from poorer performing providers. This requires the removal of the statutory duty limiting provision of probation services to Probation Boards. The potential performance and cost benefits of increasing commissioners' freedoms to buy from the best providers are up to £288m (on a discounted costs basis) over the next twenty-five years and it will also serve the Government's aim of increasing the involvement of the voluntary and community sectors in the delivery of NOMS services.

APPENDIX – COST ASSUMPTIONS TECHNICAL NOTE

COSTS AND BENEFITS

Option 1: Do Nothing

Access to alternative providers would be possible only at the discretion of individual probation boards which would need to take the decision to contract out services. Currently some £12.5m of probation business is contracted out. This includes training contracts, provision of some interventions and the operation of some approved premises. These figures were extracted from the activity costing returns produced by probation board for the financial year 2005-06. There is no power for the Secretary of State to compel boards to subcontract or market test core services. Without direct intervention it is felt raising this to £50m by 2007-08 is realistic maximum expansion of contracting out. To deliver more than £50m of contracting out would require significant areas of activity either currently or planned to be undertaken by core probation staff to be contracted out and it is considered unlikely that Probation Boards would be willing to embark on major revision of recently agreed staffing structures.

Assuming efficiency savings within the range of 3.5% to 8.5% the estimated annual savings of contracting out a further £37.5m of probation business would be in the range of £0.3 to £2m per annum. The basis for modelling assumption within this range is the experience gained from contracting out within the Prison Service. The upper estimate of 8.5% annual efficiency was achieved in a number of large establishments, where there was greater scope for efficiencies. 3.0% was the minimum level of efficiency improvement delivered through contracting out Prison Service activity. A high proportion of Prison Service costs are fixed infrastructure costs with over £450m of resource cost being required for the maintenance and capital charges on the estate alone. The probation service has proportionately higher levels of staff related costs and the scope for medium term efficiencies is therefore at least comparable and probably far higher than in the Prison Service where the nature of the estate imposes severe constraints on restructuring. A lower estimate of 3.5% has therefore been used.

The minimum cost of contracting out this level of business is estimated at £20k per board, a total of £840k. This figure was estimated to the full costs of one member of staff for four months writing tender specifications, reviewing bids and letting contracts. The minimum cost of managing these contracts is estimated at 0.9% of contract value. This is based on the average contract management costs on the major contracts (including Prisoner Escort and Custody Service and the various electronic monitoring contracts) already let within the NOMS area and includes the staff costs and associated overheads of the directly employed contract management staff.

Option 2: Transfer the statutory responsibility for provision of probation services from boards to the Secretary of State.

Benefits are expected to arise as follows:

- to help NOMS achieve its aim of reducing reoffending, by getting more out of existing resources and freeing up resources to reinvest, by enabling ROMs as commissioners to insist (in service specifications) on common approaches and seamless delivery across prisons and probation institutional boundaries, and by allowing providers with new and better ways of doing things, including synergies with their existing operations, to provide services.

Some of these benefits can be evidenced from the example of competition for the operation of prisons over the past decade. Some benefits can be costed, others cannot.

Reduction in Reoffending

Together with the introduction of offender management within NOMS, the creation of a purchaser provider model and the introduction of increased competitive forces in to the market for the provision of correctional service is a core enabling measure designed to deliver an additional reduction in crime through a further five per cent reduction in reoffending.

Performance enhancements

In addition to the tangible and costed benefits from contestability, there is widespread acceptance that introduction of competition for custodial services has had a positive impact on the decency agenda which aims to treat offenders with decency in a caring and secure environment. This helps develop positive relationships with prisoners and increase the probability that they will be more likely to go on to live useful and law-abiding lives that will benefit them as individuals and society as a whole.

There is also evidence that competition has helped provide the impetus for improved performance in prisons across a wide spectrum of measures. Prisons are rated on a 1 to 4 performance scale on the basis of a weighted scorecard of measures: level 4 is awarded to excellent establishments that are delivering exceptionally high performance and level 1 indicates a poor performer. Currently 18% of contracted prisons are rated at performance level 4, compared to 15% of public sector prisons.³

Delivering financial efficiency in a competitive market: evidence from custodial sector

The custodial sector provides the following examples of delivering financial efficiencies in a competitive market:

- a number of prisons have been market tested. As a consequence of this the annual cost of providing those prisons has reduced from £82m to £75m, a saving of 8.5%;
- the outsourcing of the Prisoner Escort Service has delivered savings of £3.8m per annum, equivalent to 3% of the cost of providing the service;
- a small number of prisons have been privately built and are privately managed. The estimated savings are £15.9m equivalent to about 6% on a base of about £250m;
- performance testing of prisons has generated savings of £2.8m, equivalent to 3% on those prisons where performance testing has been carried out;
- this evidence from the Prison Service suggests that further market testing of services within the National Probation Service could deliver savings within the range of 3.5% to 8.5%;

The assumptions that have been made in modelling the costs and benefits are explained in the following paragraphs.

³ Source: Prison Service Performance Ratings August 2005

Released Resources

In the standard estimate it is assumed that work that has been subject to a formal market test process will generate efficiencies within the first year after testing,

A key assumption is that the process of market testing will deliver efficiencies from suppliers, irrespective of whether the process results in a change of supplier. As part of the testing process, it is envisaged that existing providers will be expected to produce bids that offer better value for money than the existing provision.

Although expressed as financial savings for modelling purposes, the expectation is that the benefits will be delivered through a combination of undertaking additional work with offenders within the same level of financial resources. It is further assumed that the process will create additional capacity to generate innovative solutions to address re-offending which will be at least as, and probably more, effective in addressing the rehabilitation needs of offenders and thus deliver a greater impact on reducing re-offending and hence crime.

Central costs of market testing regimes

Evidence from the custodial sector

The evidence from the custodial sector is as follows:

- **Design, Construct and Manage (DCM) Prisons:** The prisons at Peterborough and Bronzefield have recently opened and are DCM Prisons, designed, constructed and managed by the private sector. The estimated cost of running the competition for these prisons is estimated at £2m, equivalent to £1m a prison. It is now estimated that further DCM Prisons might cost £1.1m to procure. These costs are made up as follows (and could be reduced in the event of there being more DCM prisons):
 - £120K – Financial advisors
 - £360K – Legal advisors
 - £40K – Insurance
 - £220K – Compliance Engineers
 - £340K – Staff
 - £20K – Expenses

-
- **Market Testing Prisons** where an individual prison is marked tested and put out to competition with the private sector. This is estimated to cost about £700k per prison as follows:
 - £70K – Financial advisors
 - £200K – Legal advisors
 - £40K – Insurance
 - £300K – Compliance Engineers (condition surveys)
 - £100K – Staff
 - £10K – Expenses
 - **Performance Testing Prisons** where a prison is required considerably to improve its performance or be subject to market testing/competition. It is estimated that performance testing a prison costs £350k. This is £100k for the staff in the Competitions Unit within NOMS and £250k for the in-house bid team within the prison service.

Inferences For Probation Market/Performance Testing

The average prison has a budget of about £12m. This figure is on a par with the average budget for individual probation areas (excluding London). It is estimated that market testing a whole probation area might cost broadly the equivalent to the cost of market testing a prison. Until the market testing approach is agreed, this is the simplest approach to estimating probation market testing costs. If that assumption is valid then the cost would be in the region of £700k. However, it is questionable whether it would be necessary to spend £300k on building condition surveys. All probation buildings have regularly been subjected to condition surveys so this expenditure might not be required, reducing the cost to £400K.

In House Bid Costs

There are costs for the supplier in preparing bids. It is estimated that performance testing a prison costs £350K. This is £100K for the staff in the Competitions Unit within NOMS and £250K for the in-house bid team within the Prison Service. It is assumed that a learning curve effect would reduce this to £200k by the end of the testing cycle. Using this as a benchmark, the cost of in-house bid preparation for contracts to the value of expenditure currently committed to the 42 probation areas would total £9.1m.

In house contract compliance costs

In addition to the existing reporting requirements, it is estimated that the additional costs associated with the move to a contractual relationship are likely to be of the order of £50k per annum per probation area. These are primarily legal costs associated with contract compliance and would be additional to existing financial and performance reporting requirements.

Contract Management Costs

The average annual costs of future probation contract management is estimated at 1.2% of contract value. This assumption is based on evidence of the contracted management costs of the current contracted out prisons, the electronic monitoring contracts and the PECS contracts. These contracts are larger than those anticipated for probation and consequently contract management represents a smaller percentage than assumed above for probation services contracts.

ANNEX 2

REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSAL

Powers of contracted out prisons and secure training centres

2. PURPOSE AND INTENDED EFFECT

Objective

The purpose of the measures is to remove anomalies between the way contracted-out and public sector prisons and secure training centres operate.

Background

There are currently 11 privately operated prisons in England and Wales. On any given day approximately 12% of the total prison population is being held in a contracted-out prison (in the female estate approximately 25% of the total female prison population is now held in private prisons). It is estimated that around a quarter of all prisoners will spend at least some of their sentence in the custody of a private prison contractor.

There are four contracted-out secure training centres for offenders under 18. They accommodate about 10 per cent of the under-18 custodial population.

Private prisons were established in law by the 1991 Criminal Justice Act. The first private prison was opened in 1992 at the Wolds. The most recent prison to open was HMP Peterborough in March 2005.

The legislation that provides for the setting up and running of secure training centres (STCs) (including contracted out centres) is the Criminal Justice and Public Order

Act 1994. The most recent centre to open was Oakhill, near Milton Keynes, in August 2004.

Every private prison has a Director who carries out a role similar to that of a Governor in a public sector prison. By law however there must also be a Controller, who is a Crown Servant who monitors the operation of the prison and the treatment of prisoners, as well as undertaking certain statutory duties (such as adjudications and segregation) on behalf of the Secretary of State. Similarly, every STC that is contracted out has a Director and a Monitor, who is a Crown Servant. Directors of secure training centres, however, have a wider range of powers than Directors of private prisons and it is not necessary to supplement them.

Staff who work with prisoners in private prisons are called Prisoner Custody Officers (PCOs) and they perform the same range of tasks and duties as prison officers in public sector prisons. In addition, there are auxiliary staff who support prisoner custody officers in their duties in a manner broadly similar to the way the public sector uses Operational Support Grades (OSGs). However, auxiliary staff do not have the same powers as OSGs. There are no auxiliary staff in STCs.

Rationale for government intervention

The proposed measures will give Directors and staff of contracted-out prisons powers to (a) adjudicate upon and segregate prisoners, (b) powers to search and detain visitors, and (c) provide for non-prisoner custody officer staff to perform equivalent tasks to those conducted by operational support grade staff in public sector prisons. These powers are all comparable to those already held by Governors and staff in public sector prisons, and will provide for consistent operations in both public and private prisons whilst maintaining appropriate safeguards for the treatment of prisoners. In addition, it is proposed that COs in contracted out STCs should have equivalent powers to search and detain visitors.

When private prisons were first established these powers were withheld from Directors until it could be shown that private prisons operate to a satisfactory standard. The overall track record of private prisons since 1992 shows this has been achieved. All of the powers to be transferred are seen as essential tools for Governors in public sector prisons to use for the maintenance of order, control and discipline.

We also propose to formally recognise the work undertaken by staff other than PCOs to support the effective running of a private prison. This again will replicate the situation in the public sector where the role of OSGs has become critical in supporting prison officers.

3. CONSULTATION

We have consulted with colleagues in the public sector Prison Service, the Youth Justice Board, the existing private sector prison contractors, and with Controllers of private prisons. Private sector prison contractors strongly support these changes and have in some cases been pressing for them for many years.

4. OPTIONS

1. Do nothing - this will simply perpetuate the existing inconsistency between public and commercial providers. It will ensure the perpetuation of unwarranted operational differences between public and private sector and it will hamper future contestability when it inevitably takes place. It also leaves open the possibility of the embarrassment of a successful legal challenge to long-term practice in private prisons.
2. Transfer the powers as described previously - this will allow for full contestability in the future as each provider will be on an equal footing. Equivalent staff grades in the public and private sectors would be doing the same range of duties. The legal challenge concern is avoided.

5. COSTS AND BENEFITS

Sectors and groups affected

The implications of our proposals for other public services are limited, except for some small impact for the public sector Prison Service. They may find that some of the potential commercial advantage they hold due to the greater flexibility in regard to staff deployment would be removed from future contestability rounds. There is no impact on the third sector.

Benefits

There are considerable benefits to be gained from adopting option 2. Transfer of the powers gives contractors greater operational control over their prisons and STCs. It will allow for much easier future contestability due to parity between public and private providers and it offers the potential for cost savings in contracts by the more flexible use of staff. The possibility of a successful legal challenge is avoided.

Costs

The overall effect of option 2 is cost neutral. Existing costs will transfer from public sector to each of the four private prison contract providers. Any costs they incur are offset by the simultaneous reduction in headcount in Controller's teams. Training costs for contractors will be part of their contractual price

6. SMALL FIRMS IMPACT TEST

The measure does not adversely impact on small businesses

7. COMPETITION ASSESSMENT

The proposed measures are likely to be welcomed by existing and future private sector contractors. They would enjoy increased control over the operational risks of running their contracts as well as greater flexibility in staff deployment. These measures may also tempt other potential suppliers to enter the marketplace.

8. IMPLEMENTATION AND DELIVERY PLAN

Implementation and delivery plans are being developed.

9. POST-IMPLEMENTATION REVIEW

The measures will be reviewed to ensure that they are fully effective and economic.

10. SUMMARY AND RECOMMENDATION

It is recommended that Option 2, full implementation of the proposals detailed in this RIA, be pursued.

ANNEX 3

RACE EQUALITY IMPACT ASSESSMENT

BACKGROUND

The overall aim of the Bill is to contribute to the reduction of re-offending and the protection of the public. The Bill will improve the way in which we manage offenders within the criminal justice system by:

1. Enabling for the delivery of probation services by a range of providers.
2. Removing some of the inconsistencies between the powers of staff in public and private prisons.
3. Reforming existing offences of bringing articles into prison.
4. Enabling the component parts of the National Offender Management Service (NOMS) to share information with each other.
6. Making technical amendments to enable more efficient delivery of the youth justice system

DEVELOPMENT OF PROPOSALS AND ASSESSMENT FOR RACE EQUALITY IMPACT

This legislation referred to above changes the ways in which we will deliver probation services. Consultation was carried out on these proposals, as more fully set out in *Restructuring Probation to Reduce Re-offending*⁴, between October and December 2005. A total of 748 submissions were received, and a number of replies raised points relevant to race equality and wider issues of diversity. A concern expressed was that private sector providers would lack the 'public sector ethos' and so be less committed to ensuring diversity than the current Probation Boards. There was also concern around the extent to which action on diversity could be enforced through contracts with providers, and queries about whether the role of the National Probation Directorate in co-ordinating diversity activity would continue. There was a

⁴ <http://www.noms.homeoffice.gov.uk/downloads/NOMSconsultation.pdf>

strong body of opinion that membership of Probation Trusts should be representative of the local community being served. These issues are addressed below.

NOMS hosted a Race Equality Impact Assessment workshop on 27 April to further consider these issues with representatives of organisations with a particular interest in race equality. Attendees thought that the new commissioning system provided an opportunity to address more fully issues around equality and diversity, in particular because a commissioning model should be based more on offender and community needs rather than services being delivered more to suit the provider. This means that needs assessments undertaken either nationally or regionally must reflect diversity issues and address them in commissioning proposals.

Race equality issues must be made an integral part of the work on developing contracts and the introduction of commissioning. To address this, we also now publish our ongoing engagement strategy. Uncertainty around the pace of change at a time when there have been competing priorities in the Home Office has prevented progress with implementing our engagement plans until we could be clearer about our agenda for change and associated timescales. We shortly publish our commissioning framework, which will set out more clearly our commissioning priorities and associated targets and measures.

1. NEW ARRANGEMENTS FOR THE PROVISION OF PROBATION SERVICES – CLAUSES 1-9 AND SCHEDULES 1-2

Policy Objective

To develop a commissioning environment and structure for probation services and to allow full competition for provision of probation services, subject to legislation.

The proposed legislation will give 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. This will allow services to be commissioned by regional commissioners, acting on behalf of the Secretary of State, from a range of providers in the public, private and voluntary sectors.

These changes will enable:

- Commissioning of services which cross geographical boundaries, including potentially on a national basis, where appropriate;
- Commissioning across organisation boundaries, e.g. for services provided to offenders both when in custody and when under supervision in the community;
- Alternative providers from the private sector and from the voluntary and community sector to compete to win contracts;
- A purchaser/provider split;
- Performance improvements and innovation in services.

Probation services will be subject to challenge and potential competition. We will introduce a phased programme, including performance and market testing. In due course some alternative providers from the private or voluntary and community sector may win contracts for services currently provided by Boards. However, the publication's main emphasis is on achieving collaborative ventures with providers from the various sectors working to their respective strengths.

Relevance to Race Equality

The key change under the proposals is that services are commissioned, and the associated new accountabilities that a commissioner / provider relationship requires. Providers will have the responsibility for running their organisation. The

commissioner will set the required outcomes, and it will be for the provider to determine how they will be delivered, and for the commissioner to be satisfied, or not, with what the provider delivers through contract or service level agreement monitoring.

Commissioning requires that all providers are treated equally and that providers are judged on their operational effectiveness using criteria and processes that are transparent. Commissioners will base their purchasing decisions on increasingly good information about individual and community needs, rather than on historic provision, and will marry this information with national and local priorities to achieve the best mix of provision within their budgets. The fact that service provision will be founded on better needs analysis supports improved responsiveness to our diversity agenda. It will be entirely appropriate for providers to advise commissioners of the needs that they have identified in their communities, understanding that the commissioner will only choose to address these if they impact on reduced re-offending and better public protection.

The Race Relations (Amendment) Act 2000 puts a duty upon public bodies to both eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people of different racial groups. The Secretary of State must, in contracting with third parties for probation services, have regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations.

The move to a system based on commissioning and the introduction of new providers has been identified as having the potential to impact on race equality in two areas, subject to the legislation being enacted:

Recruitment and employment of staff

Under the legislative proposals:

- Chairs and members of Probation Trusts will be appointed by the Secretary of State in the same way as Chairs and members of Probation Boards;
- Chief Officers of Probation Trusts will cease to be appointed by the Secretary of State and will instead be appointed and employed by the Trust;
- Staff employed by the Probation Boards will transfer to become employees of the Trust; *and*
- If an alternative provider wins contracts for the services the Trust provides, staff terms and conditions will be protected by law

Service delivery

The legislative proposals will enable services offered to offenders to be determined by the regional commissioner, in consultation with local criminal justice partners including sentencers, as well as Trusts and alternative providers. These services will be delivered by a variety of providers managed through contracts or service level agreements held with the commissioner

a) Recruitment and employment of staff

Probation has a good record in ensuring appropriate minority representation on Probation Boards: the HM Inspectorate of Probation 2004 follow-up report on the 2000 thematic inspection of race equality noted that 16% of Probation Board members came from a minority ethnic background. It considered the recommendation made by the 2000 report, that the Home Office should ensure appropriate minority representation on Probation Boards, to have been “well met”. The Secretary of State and officials working on his behalf will continue to have this regard to diversity in the selection and appointment of Trust members.

The National Probation Service is currently exceeding its target for 2009 of 8.4% staff being from minority ethnic backgrounds. At the end of December 2005, 12.1% of NPS staff were from minority ethnic backgrounds, increased from 10.9% a year earlier and 9.8% in 2000⁵. HM Inspectorate of Probation carried out a thematic inspection of race equality in the probation service in 2000, and the 2004 follow-up report noted that 16% of Probation Board members came from a minority ethnic background, and the proportion of managers from minority ethnic backgrounds had increased since the original inspection⁶.

The National Probation Directorate diversity strategy identifies a number of objectives for the Probation Service, e.g. 7% minority ethnic staff at senior management levels by 2009, and sets out a programme of action to achieve these. This strategic direction is clearly valuable. In addition, NPD provides specific training for minority ethnic staff in order to recognise potential and encourage career progression. The National Probation Directorate also contributes to funding for staff support groups and ensures staff representative have paid leave to work for these groups. Under the proposed new arrangements the role of the Directorate will change, as many of its key functions will transfer to NOMS HQ and the regional

⁵ NPD Performance Report 19 – February 2006

⁶ Towards Race Equality: Follow-up Inspection Report, *HMIP (2004)*

commissioners. Work on future arrangements for the Directorate is underway and will need to take account of where this work should lie, ensuring that these training needs and strategies for recruitment, retention and career progression are addressed.

NOMS is committed to ensuring that all probation service providers, whether public, private or voluntary sector employ professional, skilled, and diverse staff, competent to carry out their roles to the highest standards. Race equality and diversity are a fundamental part of this commitment, not only in a legal sense but in terms of the Home Office's clear commitment to ensure diversity in the public services for which it is responsible.

b) Service delivery

BME groups are disproportionately represented amongst those supervised by the probation service. Available statistics suggest that 11.7% of persons starting pre- or post-release supervision and 8.8% starting court order supervision by the Probation Service self-described as belonging to a non-white ethnic group, compared to 7.9% of the UK population⁷ (it should be noted however that these figures exclude the London area due to a lack of available data, an omission which, given the large proportion of the total for which London accounts, may well have led to an underestimate).

Commissioners will set out diversity expectations in service delivery and how these should be monitored. They will specify what kind of ethnic monitoring providers will be required to carry out, and the outcomes to be delivered. In addition, services will in future be increasingly commissioned according to an evidence base of what works. This will enable the needs of different offenders and groups of offenders, including BME groups, to be better identified and addressed. We expect this to lead to an improvement in how services are tailored to the needs of different offenders by addressing the variable effectiveness of providers and through the commissioners setting clearer expectations that will be monitored and reviewed. It is particularly intended that commissioning will promote innovation and bring in new providers, often working in partnership with others.

We expect third sector organisations to be able to compete both for contracts with the ROM and for sub-contracts with other providers. BME organisations will have the opportunity to bid for work and may be well placed to tailor programmes to the needs

⁷ Statistics on Race and the Criminal Justice System – 2004, *Home Office (2004)*.

of the specific communities they represent. Some consultation responses were worried that small organisations would be 'squeezed out' in a competitive environment; NOMS will address the needs of BME organisations through its procurement approaches to ensure they are not.

Safeguards

- NOMS will build standards on diversity and race equality into contracts as part of its due diligence verification of the legal obligations on contractors. All providers are obliged to comply with the body of legislation governing race equality.
- NOMS will use Commission for Racial Equality guidance on procurement to ensure obligations on race equality are met by commissioners and potential providers. Principles of diversity will be embedded in all contracts with organisations working with offenders.
- NOMS will work with commissioners to develop guidance on what commissioners will do to take race, gender and disability equality and diversity issues into account when identifying service needs, commissioning services and negotiating contracts.
- Commissioners will set out expectations of service delivery and how providers should be able to monitor the ethnicity and gender of offenders.
- The establishment of the National Provider Network should assist smaller providers with issues such as registration and 'accreditation'.
- NOMS HQ will hold the responsibility to monitor, identify and put in place strategies to tackle overarching race equality issues, such as the involvement of probation in race inequalities in the CJS.
- HM Inspectorate of Probation continues to have a statutory role to monitor and identify areas of concern, both on a thematic basis as with the 2000/2004 Race Equality reports, and with regard to a specific probation area, service or provider. Regional commissioners will be responsible for reviewing any recommendations for providers as part of their performance management.

Recommendation

We do not recommend any changes to these provisions, but note the need to continue dialogue with stakeholders on these issues and embed diversity into the development and the implementation of the commissioning and contestability programme.

2. POWERS OF CONTRACTED OUT PRISONS AND SECURE TRAINING CENTRES

Policy Objective

To create an environment that supports greater contestability in the provision of custodial places. This will be achieved by removing some of the historical inconsistencies in powers held by directors of private prisons and governors in the public sector. These specifically relate to the power to conduct adjudication hearings into alleged offences against prison discipline; to authorise the use of force and segregation; and to resolve legal anomalies between the powers to search and detain of public and private sector staff in prisons and secure training centres for young people under 18.

The 1991 Criminal Justice Act created the roles of director and controller in private prisons. Although the director was given powers comparable to a governor in a public sector prison, specific provision was made to prevent the director from adjudicating or authorising the use of force and segregation. These statutory duties were given to controllers who were Crown servants and were generally former public sector prison staff.

The first private prison opened in 1992, and there are now 11 (the latest being HMP Peterborough that opened in March 2005). Private prisons now hold in excess of 12% of the total prison population at any time. They have a strong record of delivery, employ many senior managers with an operational background in public sector prisons, and have been a key driving force behind the introduction of the 'decency agenda' across the Prison Service.

The proposed measures will allow directors, rather than controllers employed by the Home Office, to exercise adjudication functions and authorise use of force and segregation. Directors of contracted out secure training centres (see below) have wider powers than directors of private prisons and it is not necessary to add to them.

The 1991 Criminal Justice Act also set the powers of staff employed in private prisons – prisoner custody officers (PCOs). Unlike prison officers in the public sector who enjoy limited constabulary powers in the course of their duties, PCOs were given clearly legally defined and limited powers. Their power to search was limited, and they had no right to detain a visitor even if they found them in the act of conveying drugs into the prison.

The setting up and running of secure training centres (STCs) is provided for by the Criminal Justice and Public Order Act 1994. The Act allows centres to be contracted out; and all four of the centres that have been established are run by the private

sector. They accommodate about 10 per cent of young people under 18 in custody on any given day. The Act also specifies the powers of staff in contracted out STCs, known as Custody Officers (COs). These are similar to the powers of PCOs in private prisons.

The proposed measures will give PCOs and COs extended powers to search and detain visitors, while stopping short of giving them constabulary powers. A PCO or CO will be able to conduct a full external search of a visitor, and will also be able to detain a person found to have committed an offence until the police can attend the prison. An additional power will be given to non-PCO staff in private sector prisons to enable them to undertake a limited range of duties that will allow them to be deployed in the same manner as equivalent Operational Support Grade staff in public sector prisons. It is not necessary to extend this power to contracted out STCs, as they do not employ auxiliary staff.

Relevance to Racial Equality

The policy will affect prisoners in, and visitors to, private prisons and contracted out STCs only. Although BME groups are disproportionately represented in the custodial population, transferring the power to adjudicate, segregate and authorise the use of force to directors as well as to increase the range of work done by non-PCO staff in line with existing practice in the public sector, will not result in any difference in treatment between white and BME prisoners.

Similarly, although a larger proportion of visitors are likely to be from a BME background and thus affected disproportionately by the increased search and detention powers for PCOs and COs, this measure will not result in any difference between the treatment of white or BME visitors.

Safeguards

This policy will not have any adverse impact on race equality issues due to important safeguards that exist within the contracted prison estate. Firstly, in relation to all aspects of operations including adjudications, segregation and the use of force, all providers have a contractual obligation to comply fully with all current race relations legislation. A tough competency framework will be introduced for directors and their staff before they are able to exercise these powers. All contractors' staff are already required to undertake training in race awareness. Contractors will additionally be required to ensure their staff are trained to at least the standard required to undertake this range of duties in the public sector. Each private prison already has a controller who will monitor the application of these powers on a daily basis.

Recommendation

We do not recommend any change to the provisions of this measure in light of the above assessment.

Additional Measures

The following measures are also in the Bill and, following screening, have been assessed as having no race equality issues.

1. Disclosure of information – Clause 10

This measure will formalise arrangements for data sharing across government for NOMS purposes. The majority of the data we seek to gain access to will be in anonymised form for the purposes of monitoring the general effectiveness of offender management programmes. This provision will have no exaggerated impact on any particular sector of society in terms of race, gender or other equality issues.

2. Offences relating to prison security – Clauses 16-19

The provisions in this Bill will amend the Prison Act to make it a criminal offence for a person without authorisation to bring a camera, mobile phone or similar device into a prison, or to remove articles including images of a prison or person in a prison, sound recordings or information relating to a prisoner from a prison. These provisions will also distinguish more clearly the offences and penalties of taking other prohibited articles into prison. They will apply to any person who commits such an offence whether they be prisoner, visitor or member of staff. The measures are not considered to impact unfairly on any particular sector of society because of race, gender or other equality issue.

3. Removal of the requirement to appoint a medical officer etc – Clause 20

The legislative change will, of itself, have no practical implications for doctors currently employed by prisons. The transfer of commissioning responsibility to the NHS does of course have HR implications, which are being worked through with relevant stakeholders, but the removal of the medical officer provisions in the Act will not introduce any additional complexities. The amendment also reflects changes that have already taken place in the modernisation of prison health service delivery and therefore will not in itself have an impact on the services. As such there will be no impact specific impact on race equality issues.

4. Accreditation of programmes for purposes of programme requirements – Clause 22

There is a requirement already built into the accreditation process for programme designers and providers to demonstrate evidence of due regard for diversity and for inclusivity in terms of equality of access to programmes on the basis of need.

Programmes must address specific diversity criteria. When arrangements for accreditation are brought in house race equality and diversity issues will continue to be embedded and integrated into accredited programmes and the wider work on effective interventions.

5. Functions of the Youth Justice Board – Clause 23

Placement of young people in custody is currently a split function. DTO trainees are placed by the Youth Justice Board and section 90 and 91 offenders by the Prison Service. To combine the two roles, with benefits for the management of the juvenile secure estate, it is necessary to amend the section 90/91 placement power (contained in section 92 of the Powers of Criminal Courts (Sentencing) Act 2000) to enable the YJB to exercise it.

6. Detention and training orders: early release – Clause 24

Subject to certain criteria (mainly relating to acceptable behaviour in custody), DTO trainees serving medium- or long-term DTOs can be released one or two months early. The current legislation requires that early release take place *exactly* one or two months before the ordinary release date. If that date passes – for example because of an administrative delay – the trainee has to remain in custody to the end of the term. This clause would allow release at a point *up to* one or two months before the ordinary release date. There should be a (very small) benefit in terms of reducing the numbers in custody. It would not affect eligibility for early release or the profile of trainees being allowed it. This a technical amendment, and we do not believe it has any implications for diversity.

7. Accommodation in which period of detention and training to be served – Clause 25

This provision should have a beneficial effect on offenders in custody and this effect should be felt equally by different ethnic groups. The YJB carry out ethnic monitoring of secure placement. It has been suggested in consultation that guidance should be issued to ensure that placements do not have a disproportionate effect on race equality, and we will work to establish guidance for implementation.

8. Conversion of sentence of detention to sentence of imprisonment – Clause 26

The minimum age at which a person can receive a sentence of imprisonment is currently 21. Section 61 of the Criminal Justice and Court Services Act (which has yet to be commenced) reduces it to 18. The existing power to convert a sentence of detention to a sentence of imprisonment when a young person reaches the age of 21

needs to be amended to take account of that reduction in the minimum age. This is simply a consequential amendment, and we do not believe it has any implications for diversity.

9. Escort arrangements - Clause 27

Escorting of young offenders between courts, establishments, hospitals and police stations is provided for by two pieces of legislation. However, there are certain transfers (mainly those between YOIs and STCs) that are not covered by either. Such transfers do, however, take place and this clause is needed to provide legislative cover. This change will not have a disproportionate effect on any category of trainees.