The Rt Hon the Baroness Jay of Paddington  
Chairman, Constitution Committee  
House of Lords  
London  
SW1A 0PW  

Dear Margaret,

TRANSFORMING REHABILITATION

Thank you for your letter of 12 June requesting clarification of the legislative or other legal basis for implementing those proposals I referred to in my second reading speech, and which fall outside the scope of the Offender Rehabilitation Bill currently before Parliament.

Our plans to extend 12 months of statutory rehabilitation to all offenders released from custody through the provisions in the Offender Rehabilitation Bill are part of a wider programme of reforms to how offenders are managed in the community. We published our wider plans for reform, following a consultation period, on 9 May 2013, in Transforming Rehabilitation: a strategy for reform. We will: open up the market to a diverse range of new rehabilitation providers, so that we get the best out of the public, voluntary and private sectors, at the local as well as national level; put in place a nationwide ‘through the prison gate’ resettlement service, meaning most offenders are given continuous support by one provider from custody into the community; and introduce new payment incentives for market providers to focus reforming offenders. Alongside these reforms, we will also put in place a new national public sector probation service, working to protect the public and building upon the expertise and professionalism which are already in place.

The Offender Management Act (OMA) 2007 provides the legislative basis for our plans to introduce a more diverse market of rehabilitation providers. It imposes a duty on the Secretary of State to ensure that sufficient provision is made for probation services in England and Wales, including the supervision and rehabilitation of offenders. Section 3 of that Act provides a broad power for the Secretary of State to make contractual or other arrangements with any other person for the provision of probation services. Section 4 restricts that power by providing that assistance to courts can be provided only by probation trusts or another public body. The Secretary of State also has common law powers to establish and sell companies; nothing in the OMA circumscribes those powers. The OMA 2007 also allows the Secretary of State
to establish and dissolve probation trusts by order (which is subject to the negative resolution procedure). So, under the OMA 2007 the Secretary of State may contract with a probation trust, providers from the private or voluntary sectors, or he may provide probation services directly. The Secretary of State intends to use the powers conferred by the OMA, together with his common law powers to create and sell companies, to transfer the delivery of a large proportion of probation services to the private sector via contractual arrangements involving the formation and then sale of a number of new community rehabilitation companies.

Transforming Rehabilitation: a strategy for reform explained how we would create a new public sector probation service, carrying out the critical roles of assessing the risk an offender poses to the public and directly managing those subject to MAPPA and those who pose the highest risk to the public. Services which involve giving assistance to the courts, such as writing pre-sentence reports, will be reserved to this new public sector probation service, in line with the requirements of section 4 of the OMA. The consultation response also explained that having considered our system requirements, and respondents’ views on the strengths of the current public sector probation service, we have decided to move away from the current system of individual Probation Trusts. Instead, we will introduce a new National Probation Service to deliver the functions identified. This new public sector probation service will be managed directly by MoJ through the National Offender Management Service (NOMS). This will ensure that MoJ/NOMS contract managers can effectively oversee the work of both the public sector probation service and competed providers and how they interact. The OMA powers to dissolve Probation Trusts will allow for this reorganisation.

The changes made to the sentencing and release frameworks by the Bill will apply to any model for offender management (whether the current one of public sector Probation Trusts or the mixed economy of providers we are looking to move towards).

I hope this letter is helpful in clarifying the legislative basis for our broader package of reforms.

Yours Sincerely,

TOM MCNALLY