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LIBRARY NOTE

Management of Offenders and Sentencing Bill [HL]
[HL Bill 16, 2004/05]

LLN 2005/002

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1. Introduction

The Management of Offenders and Sentencing Bill 2004/05 [HL] was introduced in the House of Lords on 12th January 2005. A date for the second reading debate had not been set at the time of the publication of this Library Note.

In March 2003, Patrick Carter, now Lord Carter of Coles, was asked by the Prime Minister, the Home Secretary and the Chief Secretary to the Treasury to conduct a review into the correctional services in England and Wales. His report, *Managing Offenders, Reducing Crime* was published by the Strategy Unit in December 2003. Lord Carter suggested that “a new approach is needed for managing offenders, to reduce crime and maintain public confidence” (*ibid*, page 4). He recommended that this should occur through the creation of a National Offenders Management Service (NOMS) and through sentencing reforms building on the Criminal Justice Act 2003. The Government responded to Lord Carter’s report in January 2004 in *Reducing Crime—Changing Lives*. They substantially accepted Lord Carter’s recommendations, and stated that Lord Carter’s vision for the management of offenders was entirely consistent with the reform programme they had been pursuing (*ibid*, page 12). Concurrently with the publication of their response to the Carter report, the Government announced that a National Offender Management Service was to be established by 1st June 2004, and that they had appointed Martin Narey, former director general of the prison service, as the chief executive of the new service (HC *Hansard*, 6th January 2004, cols. 170–172). The Government’s response to Lord Carter’s proposals sought views on the changes announced. The Home Office initiated a second consultation exercise in May 2004—*National Offender Management Service: Organisational Design*. A summary of responses to both consultation exercises was published in October 2004 as *National Offender Management Service—Next Steps*. A Bill to implement the necessary statutory changes was announced in the Queen’s Speech on 23rd November 2004.

The Management of Offenders and Sentencing Bill is divided into six parts and contains 58 clauses and ten Schedules. The *Explanatory Notes* outline the purpose of the Bill:

The Bill is intended to support the development of the NOMS within the existing legislative framework of the correctional services. It establishes the aims of the service; it extends the Secretary of State’s powers to direct the contracting-out of probation services; it makes provision for the constituent parts of the NOMS and the police to share information with one another and it imposes a duty on a local probation board to secure that a sentence plan is prepared for every offender who receives a custodial or community sentence. The Bill also includes a number of measures to increase parity between private and public sector prisons.

The sentencing reforms in the Bill derive from the recommendations of the Carter review, which proposed a day fines scheme. The Bill includes a new scheme for calculating fines which takes into account in each case the gravity of the offence and the daily disposable income of the offender. This involves related changes to the standard scale to bring it into line with the new scheme. The purpose of the new scheme is to reduce fine defaults and help revive the use of fines by the courts. The measure amending the Sentencing Guidelines Council’s role will require the Council, when framing or revising guidelines, to have regard to the resources which are likely to be available for giving effect to sentences.

The Bill makes three provisions to extend the use of technology in improving the management of offenders. Two provisions extend the use of electronic monitoring, one for offenders serving community sentences and the other for defendants on bail who would otherwise have been remanded in custody. A further provision enables the wider use of polygraph (lie-detector) testing in the management of sex offenders to be explored.

The Bill also makes provision which will enable the use of attendance centres for a wider range of offenders to be piloted.

(Management of Offenders and Sentencing Bill, *Explanatory Notes*, paragraph 5 to 7)

The press release accompanying the introduction of the Bill quotes Paul Goggins, Minister for Correctional Services:

Reducing crime and protecting the public remain the Government's top priorities. This Bill, which establishes both the aims of NOMS and the core function of offender management, will help achieve these goals. We will also ensure that we are getting the best services from the best providers by placing contestability at the heart of NOMS.

The greater use of new technology and other sentencing reforms will put us in a better position to ensure offenders receive effective punishments whilst ensuring that prison is reserved for the most dangerous and persistent offenders.

(Home Office Press Release, 'Management of Offenders and Sentencing Bill Strengthens Correctional Services and Puts Sense into Sentencing', 13th January 2005: 005/2005)

Baroness Scotland of Asthal, Minister for Criminal Justice, is also quoted:

We refocused the Criminal Justice system so it better addressed the needs of the victim through the Criminal Justice Act 2003.

Now the Management of Offenders and Sentencing Bill allows us to build on these reforms. The measures in the Bill will ensure that sentences are managed with a consistency and rigour that will really challenge the individual offender to change their ways and lead a law abiding life on the conclusion of that sentence.

(*ibid*)

This House of Lords Library Note looks at some of the key issues raised by the Management of Offenders and Sentencing Bill.

2. The National Offender Management Service

In *Managing Offenders, Reducing Crime* (December 2003), Patrick Carter, now Lord Carter of Coles, noted that despite improvements in both the prison and probation services, “access to services such as drug treatment and education depends more on whether an offender is sent to prison or probation, rather than their individual needs” (*ibid*, page 33). He went on to argue:

- With the increase in the number of short-term prisoners and large numbers of transfers during the prison sentence, many offenders are not in the same place for long enough to receive effective interventions. However, often it is these short-term prisoners that would most benefit from interventions. For example, Home Office research indicates that drug misuse is most prevalent among offenders sentenced to less than a year.
- In probation, the interventions available are largely dependent on the court order issued. For example, someone given a Community Punishment Order is unlikely to have access to suitable rehabilitation programmes, irrespective of their needs.
- The quality of interventions varies greatly depending on the prison or probation area to which an offender is sent. This was highlighted by the latest HM Inspectorate of Probation annual report, whilst the National Audit Office reported in 2002 that “a prisoner’s access to programmes still owes much to where they are sent”.

The problem is particularly stark for those offenders who move from custody into community supervision.

- Programmes and interventions received in prison are often not followed-up in the community. This is compounded by the absence of a national resettlement strategy.
- Information sharing on offenders between the services is often poor. Prison and probation operate different systems, with different ways of capturing data. The organisational boundaries also raise legal issues—such as data protection concerns.
- No single organisation is ultimately responsible for the offender. This means that there is no clear ownership on the front line for reducing re-offending.

(*ibid*, pages 33 to 34)

Lord Carter proposed the establishment of a National Offender Management Service (NOMS), led by a chief executive, with the objective of punishing offenders and helping to reduce reoffending: “Within the service there should be a single person responsible for offenders. This would be separate from day-to-day responsibility for prisons and probation. This new structure would break down the silos of the services. It would ensure the end-to-end management of offenders, regardless of whether they were given a custodial or community sentence” (*ibid*, page 33).

Absorbing the existing organisations within a new service would ensure:

- A system focused on the end-to-end management of offenders throughout their sentence—with a clear responsibility for reducing re-offending two years after the end of the sentence.
- The risk-assessed use of scarce resources, through the use of a system based on improved information.
- More effective service delivery can be achieved through greater contestability, using providers of prison and probation from across the public, private and voluntary sectors.

(*ibid*, page 34)

Lord Carter made a number of observations in relation to the office of chief executive:

- He or she would be accountable to Ministers for the delivery of offender outcomes and the efficient operation of the public sector providers.
- He or she would have overall responsibility for the strategic development of the sector. This would include developing policy and standards, the provision of a shared offender database, strategic finance and HR.
- He or she would agree operating targets and annual plans with the operational heads.
- He or she would have responsibility for ensuring contestability in the provision of prison and probation by attracting new providers into the market, through a planned programme of market testing.
- The Minister would chair an executive board, supporting the work of the Chief Executive, which would include a number of independent non-executive directors (potentially including a member of the judiciary).

The Chief Executive would be the voice of the service.

- He or she would need to sit on the National Criminal Justice Board to ensure that the strategy for managing offenders supports the rest of the work of the Criminal Justice System.
- He or she would also need to work closely with the senior members of the judiciary and sit as an observer on the Sentencing Guidelines Council. This would help provide feedback to the judiciary and magistracy on the capacity of the Service to deliver.

Crucially, it would also ensure that the Service could understand the needs and concerns, and win the confidence of, sentencers.

(*ibid*, page 35)

The Government responded to the Carter report in January 2004 in *Reducing Crime—Changing Lives*. They substantially accepted Lord Carter’s recommendations, and stated that Lord Carter’s vision for the management of offenders was entirely consistent with the reform programme they had been pursuing (*ibid*, page 12). Concurrently with the publication of their response to the Carter report, the Government announced that a National Offender Management Service was to be established by 1st June 2004, and that they had appointed Martin Narey, former director general of the prison service, as chief executive of the new service (HC *Hansard*, 6th January 2004, cols. 170–172).

In *Reducing Crime—Changing Lives* the Government also sought views on the changes announced. Responses to this consultation exercise were summarised in part 1 of *National Offender Management Service—Next Steps* (October 2004). Although this consultation exercise did not specifically ask respondents whether they supported the Government’s proposals or not, the summary of responses included an analysis of how often expressions of concern or support were offered. The column ‘General’ reflects broader statements of support or concern, whereas ‘Specific’ denotes that the respondent qualified their support or concern with reference to a particular topic:

| Affiliation | Support | | | Concern | | |
|------------------|---------|----------|-----|---------|----------|-----|
| | General | Specific | NE* | General | Specific | NE* |
| Prison | 17 | 9 | 46 | 5 | 41 | 26 |
| Probation | 23 | 19 | 19 | 2 | 49 | 10 |
| Government | 5 | 5 | 14 | 0 | 13 | 10 |
| Voluntary Agency | 10 | 6 | 6 | 0 | 17 | 5 |
| Other | 15 | 5 | 13 | 0 | 20 | 14 |
| Total | 70 | 44 | 98 | 7 | 140 | 65 |
| Overall | 114 | | | 147 | | |

*NE: ‘Not Expressed’. This does not mean that the respondent expressed the opposite (e.g. a lack of support).

(*ibid*, page 8)

Responses supporting the principle of the proposals are summarised as follows:

“I wish everyone involved in the changes much success and congratulate the Government on its courage to see the need for change and the conviction it demonstrates to put that change into action!” (Former probation officer)

The quote above is an illustration of the warm support that the proposals received from some commentators. In total, expressions of support were made in 114 of the responses analysed. Of these, 44 were qualified and referred to specific areas of ‘Reducing Crime—Changing Lives’. Far more respondents (70) offered statements that showed that they welcomed the proposals (e.g. “I am broadly supportive of the thrust of the report”; “I am delighted to read of this new initiative to be introduced by this government in regard to NOMS”).

A probation officer commented, “these changes can only improve services that have such a valid role in their own right yet have the potential to address offending behaviour in a holistic manner that can only be for the better.”

A response from a voluntary agency outlined how they felt that “the proposed National Offender Management Service will be a major improvement because it will give explicit ownership of the goal of reducing re-offending.” These broad statements of support were often quite enthusiastic and were accompanied by offers to become more involved with the implementation and development of the new Service.

(*ibid*, page 9)

In relation to the integrated approach of offender management, the summary of responses says:

The aspect that received the most consistent support was the concept of an integrated, end-to-end system for managing offenders (e.g. “the Board welcomes the move towards a more holistic approach to offender management...”; “main advantages of the new service is ensuring a seamless approach with both prisons and probation combined...”; “I welcome an approach that will marry the work done with an offender in prison with that undertaken in the community”). Linked very closely to support for an integrated approach was support for a stronger focus on the offender (e.g. “the Board supports... the concept of designing and delivering services around individual offenders”).

(*ibid*, page 9)

The category of ‘concern’, according to the summary, is broad, and “includes expressions of dissent with the proposals or, far more frequently, apprehension about specific issues raised in the document. This also includes concern about the imagined consequences of the changes in respect of pay and conditions, or with the perceived speed or manner in which the changes have happened. This latter issue very frequently reflects a concern about lack of involvement or consultation” (*ibid*, page 11). The summary goes on to say: “It should be noted, however, that a number of these respondents also expressed support for NOMS in general, or for specific proposals” (*ibid*, page 11). On the issue of consultation and information, the summary states:

A number of people felt disappointed that they had not been fully and formally consulted before the new service was announced in January 2004. One organisation expressed, “dismay that the Home Office appears to have taken far-reaching decisions without public or parliamentary scrutiny and that those matters which have yet to be decided are offered only for ‘comment or suggestions’ ”. One individual respondent from the Prison Service commented: “I cannot help but feel slightly suspicious of such radical change without proper consultation with the people it will directly affect”.

Emerging from this concern was a strong recommendation that all staff and stakeholders are actively engaged with the development of NOMS from now on. A

prison officer who felt that the voices of front line workers was not being given due consideration pointed out:

“The National Offender Management Service must use all the available resources open to it and should not ignore the voice of the people who do take pride in the Criminal Justice System and what we strive to achieve.”

A voluntary organisation recommended that:

“All future proposals are fully consulted, particularly with the voluntary sector, who are being asked to take on a new and expanded service delivery role.”

Closely linked to the issue of consultation was concern about the lack of information currently available on the new services. A response from a Trades Union pointed out “there is little detail, nor evidence of detailed thought, about the size, shape, structure, scope, role and status of NOMS... almost 2 months since the announcement... we have still received no information on these questions of detail”. A prison service respondent agreed, noting, “there seems to be a distinct lack of information about how it will affect me, for example, does it affect the H.M.P. status of the service, will it affect my civil service pension?”. Concern about information also included uncertainty about the parameters of terms such as ‘not-for-profit organisation’ and ‘partnerships’.

(ibid, pages 13 to 14)

Some respondents were also concerned with the pace of change:

The rate of change was an issue which concerned some respondents (e.g. “the risks are that too much will be attempted too soon”; “time and cost for resolution should not be underestimated”). Respondents felt that the magnitude of the changes warranted careful planning, and more consultation with staff, before they were fully implemented. One representative body commented, “our primary concerns relate to the effective planning and implementation of these proposals. It is an immensely complex project that is being proposed.” They felt that the best way of achieving this was by consulting closely with the Unions “every step of the way”. Another Trades Union response called for a timetable for the next four years and a detailed project plan to be produced and shared with them.

(ibid, page 14)

Considerable concern was expressed about how “the new service would affect current arrangements in relation to governance and management structure and progress of successful initiatives and programmes. There was also concern about the impact on existing relationships between services, and the potential loss of goodwill that had been built up over years under another name” *(ibid, page 14)*.

In response to these concerns, the Government initiated a second consultation, *National Offender Management Service: Organisational Design* (May 2004), focusing on the preferred organisational design of the new service, in particular the proposal to replace the existing structure of forty two probation boards with ten regional boards. Responses to this

consultation exercise were summarised in part 2 of *National Offender Management Service—Next Steps* (October 2004):

Although in general the responses were more apprehensive than for the first consultation, there was nevertheless some positive feedback. Without prompting, a significant number of respondents expressed support for the concept of end-to-end management of offenders, in line with the first consultation document, and a small number specifically welcomed the proposed model. Others at least welcomed the opportunity to offer further comments.

Quite a few respondents, however, made it clear that they felt there was no need for such radical structural changes and that the required changes in delivery could be brought about without so much upheaval to staff. Others expressed dissatisfaction with the amount of detail provided which, they felt, made it difficult to offer any informed comment on value for money, amongst other things, while others were unhappy about being presented with only one preferred model rather than an analysis of different possible models.

(*ibid*, page 30)

As a result of the feedback received during the consultation period, the Government announced on 20th July 2004 that they would develop the National Offender Management Service within the present structure, and would retain the existing forty two probation boards (HC *Hansard*, 20th July 2004, cols. 17–18WS).

More recently, on 7th January 2005, the House of Commons Home Affairs Committee published their first report of the current session, *Rehabilitation of Prisoners* (HC 193-I). In the course of their inquiries into the rehabilitation of offenders the committee looked at the National Offender Management Service and concluded:

We welcome in principle the introduction of the National Offender Management Service, although we regret the lack of prior consultation and the failure to publish a comprehensive business case. These failures have undoubtedly created unnecessary difficulties in developing NOMS. We welcome recent signs that the Government has recognised these problems. A more collaborative approach with those working in the Prison and Probation Services will produce effective change more swiftly.

(*ibid*, page 40)

The Chief Inspector of Prisons, Anne Owers, commented on the National Offender Management Service in her annual report for 2003/04 published on 26th January 2005:

Much rides on the back of the embryonic National Offender Management Service. At best, it can refocus and reinvest in community penalties, reversing the rise in the number in custody; and ensure that there are joined-up, offender-focused interventions that drive down reoffending rates. At worst, it can insert another layer of bureaucracy, and divert energy and resources from managing what there is: 75,000 people in prison.

(HM Inspectorate of Prisons, *Annual Report of HM Chief Inspector of Prisons for England and Wales 2003/04*, page 8)

A number of organisations have issued responses to the Management of Offenders and Sentencing Bill [HL]. The Howard League for Penal Reform have expressed concern that the aims of the National Offender Management Service set out in clause 1 “are too limited and the over-arching aim of the criminal justice system should be to restore the damage done by crime. A real failing with the bill, and perhaps with the NOMS concept, is the lack of centrality given to restorative justice, despite it being a government priority. It should be the idea upon which all criminal justice legislation is based” (Howard League for Penal Reform, *Briefing for the Management of Offenders and Sentencing Bill*, 25th January 2005)

Harry Fletcher, assistant general secretary of Napo the Probation Union has said that “the amount of support for the concept of NOMS with key stakeholders including trade unions is virtually non-existent. There is a general feeling that NOMS, as currently constructed, will not work. The Government remains determined to dismantle the Probation Service despite the fact that it is performing at record levels...” (H. Fletcher, ‘Contracting-Out and Sentencing Bill Published’, in *Napo News*, forthcoming: February 2005).

3. Contracting-Out/Contestability

The Management of Offenders and Sentencing Bill [HL] includes provisions relating to contracting-out. However, discussions on the Bill and the National Offender Management Service (NOMS) often use the term ‘contestability’. The term ‘contestability’ is quite new, and includes not only the concept of contracting-out, but also the concept of competition.

In his review of the correctional services, Patrick Carter, now Lord Carter of Coles, recommended that innovative options should be considered to increase contestability: “This could include fixed term management contracts for all prisons, which would be open to competition at the end of the term” (*Managing Offenders, Reducing Crime* (December 2003), page 37). The Government responded that they are not interested in using the private sector for its own sake, whether in prisons or in the community:

We want the most cost effective custodial and community sentences no matter who delivers them. The experience with the Prison Service’s use of the private sector has been extremely positive. Four private companies successfully run nine prisons (shortly to grow to eleven). Many prisoners and visitors to these prisons speak positively about the way they are treated by staff. More significantly, the threat of contestability in running prisons has led to dramatic improvements in regimes and reductions in cost at some of the most difficult public sector prisons. So effective has contestability been that the public sector have won two prison contracts back from private sector operators and in the last few weeks, responding to the threat of the private sector, Dartmoor and Liverpool Prisons have transformed their performance. We intend therefore to encourage the private and ‘not for profit’ sectors to compete to manage more prisons and private and voluntary sector organisations to compete to manage offenders in the community. We want to encourage partnerships between public and private sector providers and the voluntary and community sectors which harness their respective strengths. As a market develops, offender managers will be able to buy custodial places or community interventions from providers, from whatever sector, based only on their cost effectiveness in reducing re-offending.

(*Reducing Crime—Changing Lives* (January 2004), page 14)

The summary of responses to the views sought in *Reducing Crime—Changing Lives* states:

Although views on increased contestability were quite mixed, it is clear that many people supported the idea in principle (e.g. “We welcome the objective of increasing contestability”; “in principle we accept that there is much to commend the ‘contestability’ discipline, which splits provider/commissioner roles and provides for greater involvement by other providers whether public, private or not-for-profit organisations.”). A prison governor commented,

“There can be no doubt that the introduction of performance testing and market testing in the Prison Service has acted as an incentive to improve performance. The very fact that there are other key players on the field who are competent has acted as a real wake up call to the Prison Service.”

(*National Offender Management Service—Next Steps* (October 2004), page 11)

The summary also describes expressions of concern over contestability:

The effect of the introduction of competition was a concern for some. One commentator noted,

“There is a risk that this approach could be counterproductive if the National Offender Management Service is to succeed in delivering end-to-end management of offenders that will rely upon co-operation between service providers from all sectors.”

Concern was quite frequently raised about the ability of the smaller, not-for-profit, and voluntary organisations to engage with the new service and procedures. This included competing for contracts (“how can the smaller organisations afford the time and resources that go into bid-writing?”; “while not-for-profit and voluntary groups are envisaged as providing a range of services... the lack of a level playing field is not recognised”).

(ibid, page 15)

In her annual report published on 26th January 2005, the Chief Inspector of Prisons, Anne Owers, wrote that: “At best, ‘contestability’ can encourage innovation and best practice, as private sector prisons have often been able to do, under experienced public sector management. At worst, the new competitive landscape can result in variable, even contradictory, practices; or be a vehicle for cutting costs and corners” (HM Inspectorate of Prisons, *Annual Report of HM Chief Inspector of Prisons for England and Wales 2003/04*, page 8)

In relation to clause 2 of the Management of Offenders and Sentencing Bill, which enables the Secretary of State to give specific directions about how local probation boards perform their contracting-out functions, the Howard League for Penal Reform have stated:

As this proposal stands it probably is not unacceptable, particularly if the boards are to remain within the national probation structure and can work with voluntary groups at a local level. We do have concerns if the boards are to contract out functions and services hitherto performed by the probation service. We also have concerns about the private sector running community sentences on both practical and ethical grounds. Contractual and financial constraints have meant that commercialising penal services results in stultification rather than innovation.

(Howard League for Penal Reform, Briefing for the Management of Offenders and Sentencing Bill, 25th January 2004)

The Howard League are also concerned about the effect of clauses 7 to 10 of the Management of Offenders and Sentencing Bill, which remove the differences in the ways in which contracted-out prisons operate by providing their directors and prison custody officers with powers comparable to those of governors and prison officers in directly managed prisons:

Private companies can be subject to financial penalties if there are incidents of indiscipline so there is a financial incentive to use segregation as a preventive measure. So, for example, if two young teenagers refuse to go back to their cells at a

weekend when staffing levels are lower, this could result in the prison being fined. Under current rules the director of the prison has to seek consent from the Home Office controller to put the children into segregation. Under the new clause the director will be empowered to segregate the children. We fear that directors will err on the side of the company's financial interests rather than on children's rights. We believe that controllers should retain their current powers.

(ibid)

The Prison Reform Trust are concerned about clause 7 of the Management of Offenders and Sentencing Bill, which transfers additional powers to directors of private prisons relating to segregation, control and punishment of prisoners: "These powers have been in the hands of Government appointed controllers whose duty has been to oversee the fair and lawful treatment of prisoners. Granting more power to the directors of private prisons raises concerns about the need to monitor and hold accountable private contractors" (Prison Reform Trust, Management of Offenders and Sentencing Bill Briefing, 26th January 2005).

Harry Fletcher, assistant general secretary of Napo the Probation Union said: "The purpose of the National Offender Management Service ... is to dismantle the Probation Service and introduce privatisation in order to drive down costs. This will be done through reducing the terms and conditions of staff. This is unlikely to reduce re-offending and, indeed, could actually lead to an increase in crime, because quantity not quality will become the main principle" (Napo press release PR 01-05: 13th January 2005).

4. Fines

On the subject of fines, Patrick Carter, now Lord Carter of Coles, recommended, in his report *Managing Offenders, Reducing Crime* (December 2003), that “fines should be rebuilt as credible punishment”. He suggested the adoption of a day fine system:

Day Fine systems are used successfully in much of Europe.

- In the German Länder of Bavaria and Northrhine Westphalia, 80 per cent of criminal sentences are Day Fines. The fine is set as a number of days (between 5 and 360). This is then multiplied by an amount based on the offender’s ability to pay.
- The offender can pay in a lump sum, in instalments or can opt instead to work for the community. However, if the offender fails to do this, he faces a custodial sentence. The length of the sentence is linked to the fine. For example, if the court ordered 30 days of fines, then the number of days to be served would be 30, as would the number of days’ community service.

A Day Fine system should be introduced in England and Wales.

- Day Fines would need to be restricted to those offences that would go to court. Fixed penalty and minor offences, where the offender is not normally in court, should be excluded. This would avoid excessive fines for very low level crimes.
- They offer a transparent link with ability to pay—and so give sentencers the ability to impose credible punishment for offenders.
- Those failing to pay their fine would face a prison sentence based on the number of unpaid days.
- The current maximum deduction from benefit for fine payment (£2.70 a week) should be increased and the priority order for deductions from benefit should be reconsidered.

(*ibid*), page 27)

In their response to Lord Carter’s report, *Reducing Crime—Changing Lives* (January 2004), the Government said that they would explore a day fine scheme further (page 12). As a consequence, clause 43 of the Management of Offenders Bill [HL] has been introduced. At the moment, courts assess an offender’s ability to pay a fine together with the seriousness of the offence committed. However, according to the Home Office, the current procedure results in fines which can be inconsistent and are not transparent. Clause 43 introduces a statutory method for calculating fines to solve these problems (Home Office, Management of Offenders and Sentencing Bill Team Briefing, 24th January 2004). It amends the Criminal Justice Act 2003 to create a new scheme under which the amount of the fine is calculated by multiplying the number of income units that the court determines to be appropriate to the offence with the value of the offender’s income units, that is his disposable income. The number of income units must reflect the seriousness of the offence and take into account the circumstances of each individual case.

A unit fine scheme was introduced under the Criminal Justice Act 1991, but was repealed by the Criminal Justice Act 1993. Under the Criminal Justice Act 1991, the amount of the fine was calculated by multiplying the number of units determined by the court to be commensurate with the seriousness of the offence with the value given to each of those units—the value of the units was the amount determined by the court to be the offender’s disposable weekly income (see section 18(2) (repealed) of the Criminal Justice Act 1991). The *Law Society’s Gazette* reported in May 1993 that magistrates had complained that the unit fine scheme was inequitable: “In the face of tabloid press outrage at the sight of several long-serving JPs resigning, Mr Clarke grasped the nettle. Parts of the 1991 Act, he told MPs were, ‘plainly not working as Parliament would like. It is clearly in the interest of justice that I should move to put matters right quickly’”. The *Gazette* went on to comment:

But, whether he has really put matters right or has simply-soothed the nerves of back-bench Conservative MPs is open for debate. Roger Ede, secretary to the Law Society’s criminal law committee, is convinced that the government has overreacted to the media hype.

‘Scrapping the system is completely unnecessary,’ Mr Ede said this week. He suggested instead two methods of modifying the unit fine system which, he maintained, would have ironed out the perceived unfairness.

Mr Ede said the Home Office could first have reduced the value of the maximum unit from £100 to about £40. Secondly, allowances for expenses which are subtracted from income in the unit fine equation could be linked more accurately in proportional terms to a person’s means.

Mr Ede explained: ‘It is generally accepted that a person’s expenses tend to rise with their income.’ Under provisions in the 1991 Act, allowances for expenses were fixed, meaning that those on lower incomes were afforded the same level as those on substantially higher earnings. This often resulted in those on moderately high incomes having disproportionately high disposable income under the unit fine calculations, he said.

Mr Ede also pointed out that basic misunderstanding of the means form also caused practical difficulties. ‘Many courts have been inflexible in the way they have dealt with people who have not completed the form. They have automatically allocated the highest unit value instead of looking at court papers and assessing what a person’s income is likely to be’.

(J. Ames, ‘Mixed Verdict on Clarke U-turn’, in *Law Society’s Gazette*, 19th May 1993, page 9)

The Home Office have pointed out that the unit fine scheme under the Criminal Justice Act 1991 was based on a system of weekly units which provided a much smaller range of units than the proposed unit fine schemes. They go on to say:

The previous scheme failed because it was flawed in practice but not in principle. It was abandoned after a few high profile cases in which disproportionately high fines were levied for trivial offences.

We have learnt the lessons of the failed unit fine by providing for greater flexibility in the range of “income units” so that it is much less likely that courts would levy unrealistically high sums for comparatively minor offences.

(Home Office, Management of Offenders and Sentencing Bill Team Briefing, 24th January 2004).

The Howard League for Penal Reform support the proposed unit fine scheme:

We consider it in the interests of justice that both the seriousness of the offence and the income of the offender should be taken into account. We are however, concerned that the use of imprisonment for default in payment of a fine is retained and we would have preferred that this was abolished especially as there is now the possibility of imposing unpaid work as a sanction for default.

(Howard League for Penal Reform, *Briefing for the Management of Offenders and Sentencing Bill*, 25th January 2005)

Harry Fletcher, assistant general secretary of Napo the Probation Union commented: “Attempts to match fines to income... could reduce the use of custody, but the dismantled Probation Service, which will be weaker and cheaper, would not be in a position to cope” (Napo press release PR 01-05: 13th January 2005).

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