



Ministry of  
**JUSTICE**

National Offender  
Management Service

Commissioning Support Guidance

# **An Introduction to NOMS Offender Services Commissioning**

2011

# Foreword



The National Offender Management Service's business helps change lives. Since its inception in 2008, the Agency has been committed to commissioning as one of the ways of securing improved outcomes in services delivered to offenders, defendants, victims and the courts whilst making best use of all available resources. The term 'commissioning' covers a range of widely used activities, business processes and behaviours that are designed to ensure that resources are deployed in the best way possible to meet the twin aims of NOMS; protecting the public and reducing reoffending through effective delivery of the orders and sentences of the courts.

The Coalition Government has set out, and consulted on, clear plans for wide ranging reform of Public Services<sup>1</sup>, rehabilitation of offenders<sup>2</sup> and use of competition in offender services<sup>3</sup>. These collectively aim to improve outcomes for those in contact with our system through encouraging greater innovation in the delivery of services, increasing the involvement of independent providers and increasingly paying providers by the results they achieve. At the same time, we must deliver better services in a significantly more challenging financial climate. Commissioning services differently to both manage and reform offenders is one of the ways in which we believe we can further improve outcomes and increase public value.

This guide provides a high-level introduction to NOMS' approach to commissioning offender services. This approach is not new; it has been our business model since the creation of the organisation. This is not a 'how-to' guide, neither does it set out what we want to buy or from whom. It aims to serve as a reference point for those both currently working and interested in working in our system to help develop a common language and tools. In publishing the guide we recognise the dynamic nature of our system and that as we continue to develop and implement major system reform, for example in the future delivery of offender services in the community, we will need to revisit and update the guide.

How and what we commission will continue to adapt to face the real challenges ahead including continuing to achieve 'better for less'. We remain passionate in our belief that through commissioning high quality public services, we can and do protect the public and reduce reoffending and in doing so change lives.

**IAN PORÉE**  
**Director Commissioning and Commercial**

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<sup>1</sup> [www.openpublicservices.cabinetoffice.gov.uk](http://www.openpublicservices.cabinetoffice.gov.uk)

<sup>2</sup> Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders, MOJ (2010) [www.justice.gov.uk/consultations/consultation-040311.htm](http://www.justice.gov.uk/consultations/consultation-040311.htm)

<sup>3</sup> [www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm](http://www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm)

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Foreword

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# Introduction

Effective commissioning helps change lives. It is a set of fairly common processes and behaviours for both securing better outcomes and increasing value for the tax-paying public. It is a way of doing business; a rational resource allocation tool that aims to drive up performance and value for money. It can be transformational, with commissioners operating as investors and innovators, commissioning and decommissioning services to achieve the best possible outcomes and return on investment from a position of remaining provider neutral. At its heart, commissioning differs from other business models by the primary focus being on the outcomes for recipients and users of services rather than the providers of those services. This is not to suggest that providers are not important to delivering good outcomes, on the contrary, by a focus on *what* services deliver, not *how* or *who* delivers them, commissioning encourages greater flexibility and innovation by service providers.

Created in April 2008, the National Offender Management Service is the Agency of the Ministry of Justice responsible for commissioning adult offender services in both custody and the community, including prison and probation services. As both a provider (managing the public sector Prison Service) and commissioner of services, one of the key challenges facing NOMS over the coming years will be to continue to achieve better outcomes operating with fewer resources. We firmly believe that commissioning is one of the tools to help us deliver both this challenge and the Government's wider reform agenda. To fully embed this model we must continue to build the capacity and capability not only of our own staff but our partners and other funders of services which help in rehabilitating offenders. We must develop a shared understanding of commissioning 'offender services' and the essential components that make it work.

Public sector commissioning in general continues to mature and evolve, with a wealth of documents, commissioning tools and guidance available for service providers and commissioners alike (see section 7 'Further Information'). This guide is intended as a high-level introduction for those engaged in the commissioning of offender services in its widest sense. It is not intended as a manual or 'how to' guide. Neither is it a description of 'what' or 'whom' NOMS plans to commission. It is designed to help staff, providers and partners understand the evolving offender services commissioning landscape and develop a shared language as a platform for helping to deliver the Government's agenda for reform. It describes a direction of travel since the creation of the Agency in 2008 to delivering ever more effective commissioning of offender services that continues to evolve and mature to meet the very real challenges ahead.

The guide has been grouped into the following sections:

- 1) **Commissioning Offender Services** describes our vision for offender services commissioning, what we mean by Offender Services commissioning, the role of a commissioner and what we mean by commissioning for outcomes
- 2) **The Offender Services Commissioning Cycle** offers a high level overview of the commissioning cycle for offender services and implications for the way we do business at each stage
- 3) **Governance** explains the formalised high level roles and responsibilities in the commissioning process, in particular how NOMS manages transparency around being both a commissioner and a provider of services
- 4) **Competition** sets out why and how NOMS uses competition to help drive innovation and public value in the provision of offender services
- 5) **Market Development** outlines the importance of engaging with both current and potential providers in designing, competing and delivering offender services
- 6) **Skills for Commissioning** summarises some of the tools and frameworks which can support the development of commissioning capability
- 7) **Further Information** provides signposts to useful contacts and resources to explore some of the themes touched on in the guide in more detail

# Commissioning Offender Services

## What is Offender Services Commissioning?

Commissioning is both a business model and cyclical planning process to prioritise the most effective use of resources to deliver better outcomes for users. It has become widely used within the public sector as a model for driving better public services and value for the taxpayer. While a commissioning operating model drives different behaviours in delivering public services, many of the business processes which underpin it will be very familiar to anyone working in this sector. Similarly, while commissioning language and models vary between different public bodies, they share common features and functions and at their heart are based on the basic principles of 'plan, buy, do and review'.

The National Offender Management Service is responsible for commissioning and delivering adult offender management services, in custody and in the community, in England and Wales. The Agency is funded to provide specific services on behalf of the Secretary of State as set out in statute<sup>4</sup> and which contribute to our twin aims of protecting the public and reducing reoffending while delivering the sentence of the courts. The work of the Agency is underpinned by a commitment to a clear vision and values.<sup>5</sup>

The Agency is responsible for commissioning and delivering a wide range of services in support of delivering its remit and wider Government Reforms. We use the term '**offender services**' as an umbrella term for 'service user' or 'beneficiary' facing services.<sup>6</sup> These are delivered not only to **offenders** (those sentenced by the court), but **defendants** (those awaiting trial, either remanded in custody or provided bail accommodation), **courts** (to whom we are responsible for carrying out their sentences and orders, including feedback on effectiveness), **victims** (for example providing information to victims of violent and sexual offences) and **communities** (such as ensuring offenders sentenced to undertake unpaid work in the community support local projects to visibly payback for the harms that they cause).

NOMS corporately defines offender services commissioning as:

**The cycle of assessing the needs of courts, offenders, defendants, victims and communities then designing, securing and monitoring services to meet those needs, while making best use of total available resources.**

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<sup>4</sup> Offender Management Act 2007 and the Prisons Act 1952 (Amended)

<sup>5</sup> [www.justice.gov.uk/about/noms/noms-vision-and-values.htm](http://www.justice.gov.uk/about/noms/noms-vision-and-values.htm)

<sup>6</sup> Examples of other services include 'infrastructure' such as IT, estates management and 'business support' (e. g. HR, Finance)

It is important to recognise that this is a corporate definition of offender services commissioning, and different parts of the Agency and wider Ministry of Justice have distinct but complementary roles in helping to delivering this. It is also important to stress that commissioning is not just concerned with new spend but instead is about maximising the total resource available including revenue, capital, service providers and workforce.

NOMS has developed a Directory of Services<sup>7</sup>, which sets out the services for which the Agency is funded to commission for offenders, defendants, victims and the courts on behalf of the Secretary of State for Justice. The Specification, Benchmarking and Costing (SBC) Programme has produced service specifications which set out mandatory minimum outcomes and outputs for each of these services, ensuring that they are legal, safe and decent.

NOMS service specifications support outcome based commissioning as they help define *what* needs to be provided, but not *how* they should be delivered or by *whom*. The commissioner is ultimately responsible for defining the mix and type of services they want to commission. Service specifications provide the core building blocks that may be combined, exceeded, or supplemented by other funders to arrive at a final ask as part of a commercial tender package or Service Level Agreement negotiation. More information about how NOMS service specifications are used to shape the final services commissioners wish to secure is set out in the 'Design Services' section as part of the Commissioning Cycle on page 18.

There are several different types and levels of offender services commissioning which vary according to the contexts and manner in which they are undertaken. Descriptions of some of these are set out on page 13.

NOMS is also not the only organisation responsible for commissioning adult offender services. For example, the Skills Funding Agency (SFA) is responsible for commissioning the Offender Learning and Skills Service (OLASS) in custody and the community in England and in Wales many of the services which support rehabilitation are devolved to the Welsh Assembly Government. More information about aligning commissioning of offender services is set out on page 15.

Inevitably the process of commissioning involves making choices about priorities including investment of limited resources and preferred providers of services. As such it has the potential to both introduce but also redress, direct or indirect discrimination for service users whether on the basis of gender, age, race, faith or sexual orientation. It is for individual commissioners to ensure that the services they commission give due regard to possible equality impacts, and ensure a standard of service that applies best practice and, where applicable, accords with the relevant service specifications. All providers, whether from the public, private or voluntary and community sector, will be

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<sup>7</sup> [www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme](http://www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme)

expected to demonstrate that they can meet the commissioner's requirements for a particular service, including the duty to mitigate any possible equality impacts that might occur during service delivery.

## Our Vision for Offender Services Commissioning

At its most fundamental, commissioning is about ensuring that services are designed around improving 'outcomes' for users and beneficiaries or are 'user-centric'. It is also about both rationalising and maximising resources, continuously driving better value for money as well as investing in longer term system reform. Commissioning differs from some more traditional forms of public sector business planning and delivery, which have a tendency over time to become organisationally focused or 'provider-centric'. The focus on outcomes allows commissioners to specify *what* services they want, at *what* quality and *what* cost rather than *how* services are delivered or by *whom*. This encourages providers to offer innovation, improve performance and make best use of limited resources within a context of value for money, equality impact and continuous improvement. By using open and transparent processes, commissioning builds confident partnerships which can provide and sustain challenge for all practitioners, and give access to the best services available by opening the 'market' to providers from all sectors. The overall impacts of commissioned services can be further increased by aligning priorities and resources through co-commissioning and joint commissioning.

Public sector commissioning can bring with it many misconceptions. It is important therefore to understand what commissioning really means for the Agency and not assume commissioning is:

- about saving money at the expense of safety, decency or quality
- just another term for procurement or competition
- a label for privatisation or outsourcing
- a one-off activity or politically driven agenda - it is important to recognise that all the major political parties support the use commissioning as a way of driving public sector reform.

Effective and intelligent commissioning is transformational and a catalyst for change. For example it can provide a mechanism for making make system reform happen faster than would otherwise be possible. To reduce reoffending, protect the public and deliver the Government's commitments for wide reaching system reforms we need to change lives – offenders, their families, victims and communities. We believe commissioning provides an effective, efficient, equitable and sustainable tool for maximising available resources to achieve the best possible outcomes.



Moving towards our vision will require different ways of doing business and a different set of cultures. Transforming the way we do business is not to suggest that previous business models have not delivered high quality services rather that the continuing challenges facing the Agency require different solutions. The vision table below summarises the transformational journey which the Agency has been on since its creation in 2008. It gives examples of some of the ways in which commissioning is transforming the way we do business.

| We are moving away from a system characterised by ...                 | to one characterised by ...   |
|---|---|
| A focus on delivery organisations (a provider-centric focus)          | A focus on the needs and outcomes for users and beneficiaries of our services e.g. courts, offenders, defendants, victims and communities (a user-centric focus)                              |
| Service providers focusing on what is counted (a process culture)     | Service providers focus on what counts (an outcome culture)   |
| Specifying <i>how</i> services should be delivered and by <i>whom</i> | Specifying what legal, safe and decent outcomes we want from services and leaving providers to decide how services are delivered  |
| Who provides services based on historical decisions                   | Using competition to ensure services are delivered by providers which demonstrate they can get results in meeting outcomes and value for the taxpayer (provider neutrality)                   |
| Decisions based on historical spending patterns                       | Decisions based on evidence of the needs of service users and beneficiaries, effective interventions and value for money  |
| Services bought on the basis of historical budgets (provider-driven)  | Services bought on the basis of outcomes, quality and public value (commissioner-driven) and investing for longer term system reform  |
| Designing services in isolation                                       | Designing services in concert with providers, users and recipients of those services (e.g. service users and ex-offenders as well as wider organisations who work with victims and offenders) |
| Planning how we buy services entirely from our own budgets            | Greater alignment of funding with other commissioners and funders to provide more joined up offender services   |
| Operating within discrete business planning rounds                    | A culture of continuous learning from successive cycles of commissioning activity   |

Realising our business vision requires not only continuing leadership by those in clear commissioning roles but ‘root and branch’ changes to the behaviours at all levels in the organisation and the way in which our partners and providers of services relate to us. Cultural

change takes time and the vision therefore represents a continuing journey rather than a status-quo. We will fully realise our vision when at all levels of the organisation and delivery system:

- we can fully translate our shared strategic priorities into service outcomes
- we have an honest appraisal of our effectiveness in achieving these
- we fully understand where our service gaps lie
- we know what we need to stop doing
- we invest to achieve outcomes
- we know what efficiencies will accrue from our investments
- we use tiers of commissioning effectively to deliver efficient, equitable and sustainable services
- we use competition to develop new markets, improve outcomes and achieve value for money
- we fully understand the role and contribution of partners and align resources to maximise shared outcomes

## The Role of the Commissioner

Commissioning involves a number of business practices that will already be familiar to many working in organisations involved in delivering offender services, for example:

1. Engaging with offenders, victims and or sentencers
2. Mapping what services are needed to address sentence and offending need and the extent to which existing services meet this need
3. Designing and/or planning a new service based on the most current evidence base for effective practice
4. Starting up and/or managing a service
5. Developing and/or delivering a strategic business plan
6. Championing and/or managing change
7. Working with people
8. Using resources effectively
9. Managing a project or programme to achieve results

These nine functions broadly correspond to the headings in the National Occupational Standards (NOS) for Public Sector Commissioning published in 2010 which are intended to set out core common competencies for those commissioning services.<sup>8</sup> Five of the nine skill sets in the standards are drawn from those for existing occupational skill sets around good management, leadership and business administration. Recognising that commissioning draws on familiar sets of skills is not however to devalue the skills required to be an effective commissioner. While many will have experience in the nine areas highlighted above, the skill of being a commissioner is the ability to balance all of these roles simultaneously and be able to apply them practically to achieve service delivery outcomes.

Within NOMS, the role of the offender services commissioner includes:

- driving better system and user outcomes for greater public value
- allocating finite resources against priorities
- making strategic decisions over how the Agency invests to achieve short, medium and longer term system-wide outcomes
- aligning resources and priorities with other funders and commissioning organisations to maximise resources available to improve outcomes for users
- promoting service integration across the NOMS, Criminal Justice System and local delivery landscape, devolving decision making to the most appropriate level and promoting positive supply chain practices

In support of these functions, each lead commissioner is expected to

- be clear about the outcomes being sought from services
- understand the Ministerial expectation and Departmental Policy related to their service area
- own and maintain the Directory of Services specifications relevant to their service area
- understand the unit costs for the services they buy
- identify what analytical information is needed to establish need and demand for their services
- understand the current evidence base for the services they buy both domestically and internationally
- understand appropriate levels of quality assurance for their services including what information is needed to assure this and how
- be able to define what contract measurement and service evaluation is needed

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<sup>8</sup> [www.ukstandards.co.uk](http://www.ukstandards.co.uk)

- formulate and manage a strategy for commissioning their service understanding options for securing, optimum service mix and integration with other services
- manage relationships with relevant stakeholders for the service area, including market intelligence (strengths, gaps, capability and capacity)
- understand current and historical provider performance in their service area
- lead competitions for their service area drawing on relevant expertise and skills
- know and apply relevant professional and National Occupational standards as they apply to the service area
- maintain risk mitigation strategies for their service area
- capture and promote good practice in their service area.

In doing so, it is important to recognise that effective commissioning is a collaborative activity and requires the commissioner to draw on a wide range of complementary resources and expertise including:

- Procurement
- Finance
- Human Resources
- Legal services
- Strategy and business planning
- Research Evidence
- Subject matter expertise
- Provider expertise
- Service user and beneficiary expertise
- Performance information and analysis.

## Commissioning for Outcomes

Central to our vision for commissioning offender services is to continue to move to commissioning for outcomes and away from specifying how a service should be delivered. Shifting our performance focus from a historically detailed focus on inputs, processes and outputs to outcomes has been a direction of travel for the Agency since 2008. We have year on year sought to move away from process measures and reduce the number of performance targets set for prisons and probation.<sup>9</sup>

New National Standards for Offender Management were launched on 5 April 2011 which marked a step change in the Agency's direction of travel to reduce the amount of prescription and bureaucracy on how Offender Managers undertake their role. The revised standards are significantly shorter and followed a Professional Judgement Pilot carried out by Surrey and Sussex Probation Trust to develop a new approach to national standards to improve services. The pilot showed that staff had more purposeful and better focused contact with offenders when they were allowed to exercise their professional judgement in deciding how to work with each individual.

While we continue to seek to reduce burdens of bureaucracy on front line organisations, we must also ensure as commissioners that the public is clear what is being achieved, to what quality at what cost as well as understanding how providers are held to account for poor delivery.

The Open Public Services White Paper clearly sets out the Coalition Government's commitment to paying providers on the basis of results they achieve and the Green Paper, Breaking the Cycle, commits to the Agency exploring at least six payment by results pilots. This places even greater emphasis on ensuring that both commissioner and provider have a shared understanding of what we want to achieve and how we can measure success without stifling innovation.

Developing outcome frameworks is a complex process, particularly as outcomes for one body might be 'intermediate' outcomes for another e.g. offenders being healthy will contribute to reducing reoffending and therefore crime reduction but just being healthy not in itself guarantee reduced reoffending. It is therefore helpful to consider outcomes in hierarchies based on different perspectives and expectations of service users, service providers and commissioners. The NOMS specification programme identifies the legal, safe and decent outcomes, or where more appropriate outputs, required from each of the services in the NOMS Directory of Services. The outcomes model on page 12 is intended to demonstrate how offender service outcomes can contribute to each other in tiers. This is not intended as an operational framework. Instead it is

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<sup>9</sup> For example the Agency reduced the number of performance indicators for Probation in 2011/12 by two thirds (from 42 indicators in 2010-11 to 13 in 2011-12).

designed to show examples of how NOMS' core purpose, vision and values can translate into strategic, service and service beneficiary level outcomes.

### **a. Strategic level outcomes**

Strategic level outcomes describe the goals an organisation ultimately wants to achieve. For example, they would represent the highest level of outcomes sought in pursuit of delivering NOMS' core purpose of protecting the public and reducing reoffending while delivering the orders and sentences of the court. In doing so we must be transparent and give the public confidence in what we do in particular in demonstrating the best use of public monies. Strategic level outcomes measure success of the Agency in delivering its core purposes and changing lives

### **b. Service level outcomes**

In the context of NOMS, service level outcomes are the desired impacts from individual services commissioned for offenders, defendants, victims and courts. The Service Specifications underpinning the NOMS Directory of Services set out the mandatory minimum outcomes and outputs for services funded by the Agency.<sup>10</sup> These inform the minimum ask of providers in tenders and Service Level Agreements. Measures may be directly linked to the strategic outcomes of the organisation or they might represent 'intermediate' outcomes or outputs which will contribute wholly or in part to higher level outcomes. As such, they may be used to provide individual service providers with more manageable goals and help them understand how the services they deliver contribute to wider strategic level outcomes, which often require more than one service to achieve. This can be particularly helpful in supply chains where, subject to contractual agreement, smaller organisations may be more appropriate focusing on specific narrower outcomes than are required from the contract overall. Service level outcomes used in the model on page 12 are examples and are not intended to be an exhaustive list.

### **c. Service beneficiary level outcomes**

Service beneficiary level outcomes express the impact of our strategic and service level goals on individuals. In the case of NOMS this includes individual offenders, defendants, victims and members of the public. We will only be able to achieve high level outcomes if we are able to effect change in the lives of individuals. The Offender Management model tailors sentence plans to individuals. This recognises that interventions need to be sequenced to maximise impact and not all offenders will need to address all risks of offending behaviour or need all forms of rehabilitative support.

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<sup>10</sup> For more information see [www.justice.gov.uk/about/completed-service-specs.htm](http://www.justice.gov.uk/about/completed-service-specs.htm). In practice service specifications may include strategic, service level and service beneficiary level outcomes.

|  |   |                                   |  |  |  |  |  |  |  |
|--|---|-----------------------------------|--|--|--|--|--|--|--|
| <p><b>The Agency can demonstrate</b></p> <p>(Strategic level outcomes)</p>   | <p><b>The public is given value for money and confidence is maintained in our ability to...</b></p>   |                                   |  |  |  |  |  |  |  |
|  | <p>Deliver the sentence of the courts</p>   |                                   | <p>Protect the public from harm</p>          |  |  | <p>Reduce the amount of crime as a result of reoffending</p> |  |  |  |
|  | <p>Justice is done</p>  | <p>Justice is seen to be done</p> | <p>Victims and communities feel informed</p> | <p>Risks of harm are reduced</p>   | <p>Risks of further serious offences are reduced</p> | <p>Victims and communities feel safe</p>                     | <p>The frequency of reoffending is reduced</p>   | <p>The seriousness of reoffending is reduced</p> | <p>Victims and communities understand how reoffending is being tackled</p> |
| <p><b>Service providers can demonstrate</b></p> <p>(Service Level Outcomes)</p>  | <p><b>Offenders are punished</b><br/>                 The sentence of the court is delivered<br/>                 The requirements of the sentence are implemented<br/>                 The purposes of the sentence are achieved<br/>                 Courts have confidence in the advice and services provided to them<br/>                 Offenders are treated with decency and respect<br/>                 Offenders and defendants are held lawfully and safely in custody<br/>                 Reparation is made to the community<br/>                 Good behaviour is recognised and bad behaviour has consequences</p> |                                   |  | <p><b>The public and identified victims are protected</b><br/>                 The risks of harm is reduced<br/>                 Escapes are prevented and the risk of absconds from custody managed<br/>                 Offenders are managed with regard to both their and other's safety and wellbeing<br/>                 Threats to public protection are detected reported and deterred<br/>                 The offender is made aware of the impact of his/her offending<br/>                 Perpetrators of violence recognise the consequences of their behaviour<br/>                 Harm to self and others is reduced</p> |  |  | <p><b>The seriousness, frequency and volume of reoffending is reduced</b><br/>                 The likelihood of reoffending is reduced<br/>                 Crime is detected and deterred<br/>                 Offenders are helped and motivated to change<br/>                 Needs related to the likelihood of reoffending, as defined by the Sentence Plan, have been met or their severity has been reduced<br/>                 Positive change in the offender's attitudes, thinking and behaviour are achieved<br/>                 The life skills of offenders are developed<br/>                 Offenders identified rehabilitation needs are met<br/>                 Offenders ability to re-integrate into the community is enhanced<br/>                 Desirable family contact is maintained and supported<br/>                 Offenders are able to lead lawful and constructive lives in the community</p> |  |  |
| <p><b>Victims and communities</b></p> <p><b>Offenders (and Defendants)</b></p> <p>(Service Beneficiary Level Outcomes)</p> | <p>Have information about how the sentences of the court are carried out<br/>                 Receive payback for the harm offenders cause</p>  |                                   |  | <p>Have information about how the risks posed by offenders are being managed<br/>                 Victims of violent and sexual offences are provided information</p>  |  |  | <p>Have information about how offenders are being rehabilitated<br/>                 Have opportunities to support rehabilitation activity in custody and the community</p>  |  |  |
|  | <p>Complete the sentence or order of the court<br/>                 Understand the sentence and how it will be carried out<br/>                 Are motivated to change their lives<br/>                 Feel treated with decency and respect (and safe if held in custody)<br/>                 Are able to pay back victims and communities for the harm they cause</p>  |                                   |  | <p>Feel motivated and supported to change<br/>                 Are aware of the impact of his/her offending<br/>                 Respect each other, staff (and visitors in custody)<br/>                 Feel safe<br/>                 Are not at risk of self-harm<br/>                 Understand the causes and triggers of their offending behaviour and how to address or manage these</p>  |  |  | <p>Feel motivated and supported to change<br/>                 Have respect for themselves and those their actions impact on<br/>                 Understand the causes and triggers of their offending behaviour and how to address or manage these<br/>                 Have equitable access to both specialist and mainstream services which support rehabilitation<br/>                 Feel confident to lead constructive and law abiding lives in the community</p>  |  |  |

## Commissioning Types and Levels

NOMS currently operates a multi-tier commissioning model for offender services - commissioning in a range of ways and at different geographical levels depending upon need and desired outcome, for example:

- **Strategic commissioning** is the annual cycle of setting out the high level priorities of the Agency recognising changes in service need and demand, resources, Government policy and the priorities of other commissioners and funders of Offender Services. Commissioning intentions are used as the basis of negotiating Service Level Agreements and specific contract schedules with 'prime' providers such as prison establishments or Probation Trusts. This recognises that most SLAs and contracts with prisons or Probation Trusts span many years, in some cases decades, while need and demand and other commissioners' priorities can change more quickly. The negotiation process is important in identifying new or potential services to compete as well as services to disinvest in or even decommission.
- **Service level commissioning** is the process of securing new or revised services (often though not exclusively through competition) or of decommissioning a specific service. Examples of NOMS' service level commissioning include the Prisoner Escort and Custody Service (PECS) or Bail Accommodation and Support Service (BASS)
- **Co-commissioning** is the process of aligning strategies for using resources with one or more external commissioning body, but where each retains separate funding for example the Offender Learning and Skills Service (OLASS)
- **Joint commissioning** is the process of pooling resources to implement a common strategy for providing services within binding partnership agreements for example NOMS ESF Employment Programmes co-financed between the Agency and the European Union's Economic Social Fund.<sup>11</sup>
- **Personalised commissioning** also known as 'micro' or 'individual' commissioning, operates at the level of the individual service beneficiary and is designed to meet very specific needs. While sentence planning and Offender Management is already managed at this level, unlike many other public services areas there must be recognition that the individual offender is not engaging with all services voluntarily having been sentenced to a punishment of the courts and therefore there limitations on for example concepts such as fund holding but this should not reduce self determination and choice where appropriate.
- **Decommissioning** describes the process of planning and managing a reduction in service activity or terminating a contract or Service Level Agreement in line with commissioning

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<sup>11</sup> <http://co-financing.org>



objectives. It is an important part of aligning services with needs, outcomes and resources, particularly in times of budget constraint.<sup>12</sup>

Decisions on the most appropriate level of commissioning will vary depending on a number of factors but will generally be informed by the principle we should seek to commission services as close as possible to the point of delivery while most effectively managing risk and providing public value. 'Prime providers' commissioned by NOMS to provide custodial or probation services under the terms of their SLA or contract are already able to decide to provide or sub-contract delivery of any non-legally restricted services to providers from any sector through a process of 'local commissioning'. This management decision is commonly referred to as the decision to 'make' or 'buy'. This enables providers to meet specific differing local needs as well as commissioning and co-commissioning complementary local services. Providers are responsible for managing their own supply chains with transparency and integrity (see section 5 'Market Engagement'). This may include the decision to fund services collaboratively with other providers in the public or independent sectors, or through exploring aligning or pooling budgets through local partnership structures such as Community Safety Partnerships (CSPs).

As part of the commitment to the further restructuring of the Agency made following the Spending Review 2010, we have committed to further devolving responsibility for commissioning decisions to local areas. The Green Paper 'Breaking the Cycle' also committed to piloting a number of different approaches to exploring how local commissioning might be strengthened through incentivisation.<sup>13</sup> For example we are piloting Financial Incentive Models with Local Authorities in six London Boroughs and Greater Manchester where we will support local partners to tackle barriers to reducing reoffending and share any savings that can be achieved through reducing demand. Sixteen local areas are also currently piloting a first wave of Community Budgets, with Probation Trusts aligning resources with other local partners to improve outcomes for families with multiple needs. The Government has committed to roll out Community Budgets across all Local Authorities by 2015. We will also pilot at least six large scale pathfinders aimed at incentivising different providers to come together to reduce reoffending and paying them by their results. These pilot areas and establishments will test greater freedoms and flexibilities working to a single measure of reducing reoffending in return for sharing the risks and rewards. The MoJ Business Plan commits to rolling out the principles of payment by results across the public sector by 2015.

Many of these different models of public sector commissioning are being explored across a range of public service areas from health to substance misuse and employment, all of which have a bearing on rehabilitation. It is therefore very important that NOMS commissioners work closely with other commissioners to align strategies and resources.

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<sup>12</sup> The national Audit Office has published a useful guide aimed specifically at decommissioning public services delivered by civil society organisations and maintain value for money, but this is a useful guide to the challenges of decommissioning generally [www.nao.org.uk/sectors/civil\\_society/decommissioning\\_csos/home.aspx](http://www.nao.org.uk/sectors/civil_society/decommissioning_csos/home.aspx)

<sup>13</sup> Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders, MOJ (2010) [www.justice.gov.uk/consultations/consultation-040311.htm](http://www.justice.gov.uk/consultations/consultation-040311.htm)

We will continue to revisit this guidance to reflect changes in the commissioning environment as these and other Government reforms in areas such as health or crime (for example, elected Police and Crime Commissioners) develop.

## Co-Commissioning Offender Services

In 2006 it was estimated that as much as half of the services that support the rehabilitation of adult offenders were not funded or directly commissioned by NOMS.<sup>14</sup> Instead many of the services which offenders require or need to access to support their rehabilitation are funded and commissioned by a range of other Public Bodies as well as independent Trust funders and charitable foundations. Since 2006 this proportion will have increased as the Agency has sought to transfer responsibility for commissioning specialist services to the bodies responsible for mainstream services and to tailor access to the specific needs of offenders rather than to operate parallel commissioning arrangements for specialist services within NOMS.

In order for offenders to be able to access services to support their rehabilitation as well as maximising use of public monies, it is important for offender services commissioners to align priorities with other commissioners and funders. For example responsibility for commissioning offender health services was transferred from HM Prison Service to the Department of Health and the budget for learning and skills in prison is now held by the Department of Business Innovation and Skills. Where two or more commissioning agencies co-ordinate strategies for using their resources but retain separate funding this is known as 'co-commissioning'. Examples of co-commissioned services include benefits surgeries in custody commissioned together with Job Centre Plus. Where two or more agencies pool their resources to implement a common strategy for providing services within binding partnership agreements, this is known as 'joint commissioning'. There are fewer examples of joint commissioning of services for offenders but Supporting People and the Pooled Drug Treatment Budget are two examples of where funding has been pooled and jointly commissioned.

## Delivering Offender Services in Wales

The core offender services which NOMS directly commissions apply to both England and Wales. NOMS directly commissions four prisons (one currently operated by the independent Sector – HMP/YOI Parc) and the Wales Probation Trust, following the merger of the former four Probation Boards. It also directly commissions with third sector organisations to deliver Wales-wide services eg. Women's Turnaround Service. However, while Criminal Justice is not a function devolved to the Welsh Assembly Government, many of the services which offenders require as part of their rehabilitation and community resettlement are. For example the Welsh Assembly Government has devolved responsibility for local government. NHS Health services, education, training and

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<sup>14</sup> 'Improving Prison and Probation Services: Public Value Partnerships' NOMS, August 2006

employability and housing. As a consequence the arrangements for designing, commissioning and delivering these services takes account of the unique relationship NOMS has in working with the Welsh Assembly Government to deliver the devolved and non-devolved services that affect offenders and their communities. For this reason NOMS has a dedicated team in Wales to work with the Assembly Government and key stakeholders in Wales, to take account of devolved issues in commissioning and delivering services to protect the public and reduce re-offending in Wales.

## Co-Commissioning Arrangements in England

In England co-commissioned services can be broadly divided into those with specific provision for offenders and those which are generic provision which offenders can and access. Examples of specific provision include:

- **Offender Health** - the **Department of Health and the NHS** (currently through Primary Care Trusts but to be replaced by the NHS National Commissioning Board, Clinical Commissioning Groups and Health and Wellbeing Boards) are responsible for commissioning offender health and substance misuse services<sup>15</sup> for offenders in both custody and the community.
- **Employment and Benefits** - the **Department for Work and Pensions** are responsible for commissioning employment interventions such as the Work Programme which place particular priority on work with offenders as part of the core offer. **Job Centre Plus**, as an Agency of DWP are responsible for providing employment and benefits advice surgeries for offenders in custody and the community
- **Skills and Training** - the Department for Business Innovation and Skills and Skills Funding Agency (formerly the Learning and Skills Council) are responsible for commissioning the Offender Learning and Skills Service (OLASS) which delivers skills and education programmes in custody.

Examples of generic provision include:

- **Housing and Homelessness Services** – Local authorities are responsible for providing housing and support to tackle homelessness in their area. Recognising the specific demand and challenges placed by offenders on their services a number of Authorities are providing advice surgeries and support in prisons and on probation premises.
- **Adult Social Care** - Local Authorities are also responsible for commissioning adult social care services which many offenders, particularly older offenders need to be able to access and their needs need to be recognised within local Joint Strategic Needs Assessments.

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<sup>15</sup> Responsibility for commissioning psycho-social drug and alcohol services such as CARATS was transferred to the NHS from April 2011 to align with existing responsibility for funding treatment services in custody and the community. Only responsibility for Mandatory Drug Testing and offender health services in certain contracted out prisons has not been transferred.

Where it is recognised that there are specific or additional barriers to offenders accessing mainstream services, then NOMS may commission additional services to help broker access to those services or to provide additionality to help tailor them specifically for the needs of offenders. For example, Since January 2010, the NOMS European Social Fund (ESF) Co-financing programme has been working with participants who would benefit from additional employment and skills provision.<sup>16</sup> This prepares offenders to be able to access mainstream provision and support.

To strengthen the focus on co-commissioning, an Offender Services Co-Commissioning Group (OCSG) has been created within the Directorate of Commissioning and Commercial to specifically lead on managing relationships with other commissioners and funders of offender services.

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<sup>16</sup> [www.co-financing.org](http://www.co-financing.org)

# The Offender Services Commissioning Cycle

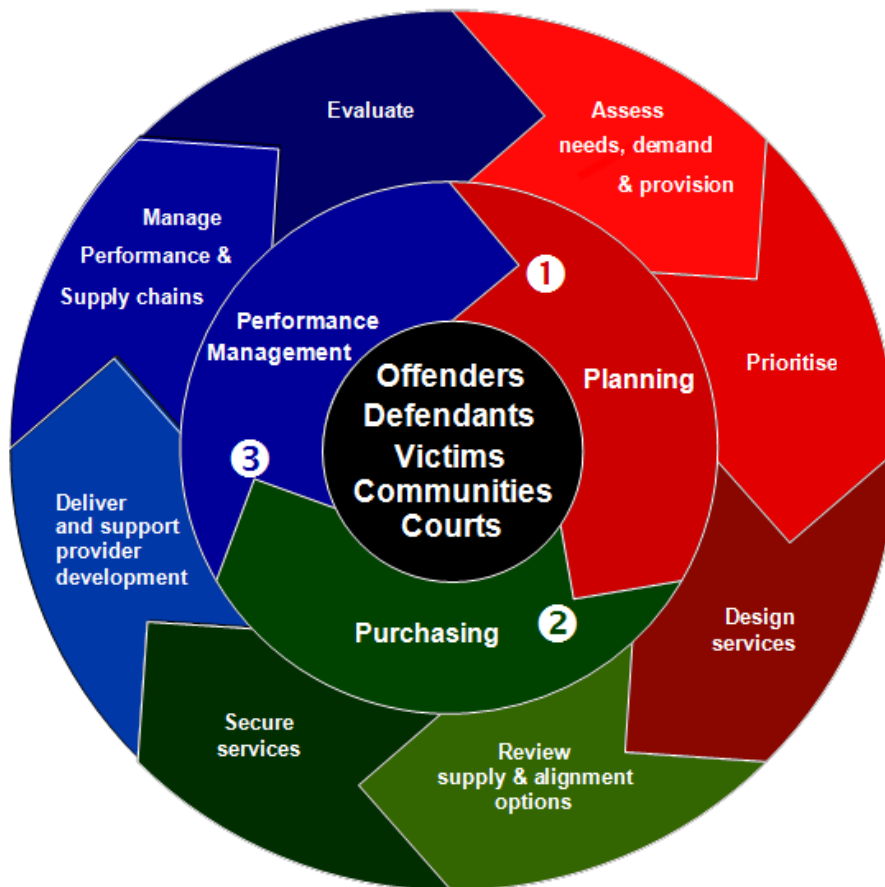
Commissioning is a cyclical and iterative business process. The 'offender services commissioning cycle' is a high level model of the cyclical processes that NOMS commissioners will typically work through to commission offender services. The cycle:

- places stakeholders, users and beneficiaries of our services at the centre of the model to reflect the user-centric focus of commissioning
- divides the cycle into three phases of 'planning', 'purchasing' and 'performance management' which in simple terms might be described as 'plan', 'buy', 'do and review'
- divides each of the three phases into stages (see page 19).

In interpreting and using the cycle, it is important to understand:

- the model is not a rigid framework but a guide to help both commissioners, SLA/contract managers and providers understand where they are in the commissioning process and how individual stages interact
- the model is applicable to different types and levels of commissioning
- the model is not prescriptive about the length of time it should take to complete stages, phases or the whole cycle - a cycle might take months, a year, three years, or more
- in practice phases of the cycle are not mutually exclusive and may run in parallel
- stages of the cycle are dynamic rather than fixed tasks and may continue throughout the process for example collating information about needs and demand for services is an ongoing process with a snapshot taken to inform commissioning priorities
- the extent and complexity of each stage will depend upon the complexity and scale of the services being commissioned
- the commissioning cycle is intended to be a continuous improvement process with learning and feedback from each complete cycle feeding into improving the next.

## NOMS Offender Services Commissioning Cycle



An example of the cycle applied to NOMS Strategic Commissioning is set out below. This is intended to exemplify the sorts of activities at each stage of the cycle rather than act as a detailed guide to commissioning activity in practice.

| <b>1 PLANNING</b>   |   |
|---|---|
| Understanding need and demand for services, analysing gaps, prioritising and deprioritising services and designing services to meet needs |   |
| <b>Evaluate</b>   | <p>Offender services commissioning must be evidence based, so the cycle both starts and finishes with an evaluation of existing services. This might include the extent to which they have:</p> <ul style="list-style-type: none"> <li>• delivered expected (or unexpected) outcomes</li> <li>• been positively received by users and stakeholders</li> <li>• performed against agreed criteria including value for money</li> <li>• complied with the terms of the contract, SLA or other agreement (such as a grant)</li> <li>• promoted equality</li> <li>• offered public value.</li> </ul> |

|  |  |
|--|--|
| <p><b>Assess needs, demand and provision</b></p> | <p>In commissioning offender services, it is important to understand both the level and type of demand for offender services from the courts, victims and communities and the profile of offenders and defendants, their rehabilitation support needs and related barriers (<b>a needs analysis</b>). Having identified demand and needs it is important to review the extent to which current provision does or does not meet both needs and demand (<b>a gap analysis</b>). It is also important to understand and update the evidence base for effective practice with different offender groups to ensure that resources continue to support evidence based practice and equality.</p>   |
| <p><b>Prioritise</b></p>                         | <p>It is unlikely that resources available to commissioners will ever be sufficient to meet all the demand for services or the level of rehabilitation needs presented by offenders and therefore it is essential to prioritise. At this point in the cycle, the emphasis is on <i>what</i> commissioners wish to buy as opposed to <i>how</i> they wish to secure services and from <i>whom</i>.</p> <p>In drawing up priorities, commissioners will consider specified core service outcomes, service need and demand, their gap analysis, strategic priorities (including those of partners and stakeholders), the latest evidence base and match these to available resources. In doing so, they should aim to consult as widely as possible in determining and finalising priorities and understanding their impacts including on equality. This may also include de-prioritising services which do not meet needs or provide public value and may result in services being ‘decommissioned’.</p> <p><b>NOMS Commissioning Intentions Plan</b> sets out intended priorities together with supporting evidence to promote dialogue and challenge with existing and potential providers as well as key stakeholders (such as other Government Departments and the Welsh Assembly Government). The final priorities then form part of the Annual <b>NOMS Strategic and Business Plan</b> (see commissioning plans page 24)</p> |
| <p><b>Design services</b></p>                    | <p>Having set out commissioning priorities, the next step for commissioners is identify which services will deliver the outcomes which will meet those priorities. This may involve looking at securing new services (either alone or in conjunction with other commissioners and funders) or designing changes to an existing provision.</p> <p>The NOMS Directory of Services<sup>17</sup> sets out specifications of legal, safe and decent minimum outcomes and outputs for each of the core services the Agency is funded to provide.</p> <p>The NOMS Service Specifications provide Commissioners with key tools which they may build on to arrive at the final specifications for the services they wish to commission, for example by:</p> <ul style="list-style-type: none"> <li>• setting detailed requirements such as target beneficiaries, volumes, locality-specific ask and interdependencies</li> <li>• exceeding the mandatory minimum outcomes and outputs</li> <li>• repackaging the outcomes and outputs required in one or more NOMS service specifications to develop a custom service or range of services which they wish to commission</li> <li>• deciding to commission a service collaboratively with an external</li> </ul>  |

<sup>17</sup> [www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme/noms-directory-of-services-and-specifications.htm](http://www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme/noms-directory-of-services-and-specifications.htm)

|  |   |
|--|---|
|  | <p>commissioner or funder who will add their own specific requirements to create the customised service specification</p> <ul style="list-style-type: none"> <li>• adding specific branding to a service.</li> </ul> <p>As part of NOMS core value to incorporate equality and diversity in all that it does it is also important for commissioners to ensure that the services they commission give due regard to possible <b>equality impacts</b>.</p> <p>Not all services NOMS commissioners are involved in designing will be within the scope of the NOMS Directory of Services - for example, when co-commissioning health or skills services. In developing specifications in these instances, commissioners should seek to identify linkages to NOMS service specification outcomes to support alignment by providers.</p> <p>In specifying services, the focus remains on <i>what</i> outcomes services must deliver not <i>who</i> should deliver them or <i>how</i>. As such, it is not only appropriate but vital to involve as many interested parties in agreeing service outcomes as possible, including engaging current and potential providers and ex- and current beneficiaries of services. This is part of what has been termed being an <b>'intelligent commissioner'</b>.<sup>18</sup></p> |
|--|---|

## 2 PURCHASING

Understanding the market for services and agreeing a strategy for securing them, including alignment of resources with other commissioners

|  |  |
|--|--|
| <b>Review supply and alignment options</b> | <p>An important stage for commissioners is deciding how best to secure the services they want. This requires an understanding of the extent, range and diversity of both current and potential providers of those services. This requires both <b>market sounding and assessment</b>. Where the current market for specific services is immature, it may be desirable for the commissioner working with procurement to develop market interest through <b>market stimulation</b> techniques (see section 5 'Market Engagement'). MoJ Procurement provides NOMS commissioners with professional support and advice to undertake market sounding and assessments.</p> <p>A further task is to identify opportunities for aligning commissioning of services with other commissioners or funders. This can range from aligning priorities but retaining responsibility for commissioning the service (<b>co-commissioning</b>) to pooling resources with another commissioner and jointly taking responsibility for commissioning the service (<b>joint commissioning</b>).</p> |
| <b>Secure services</b>                     | <p>Having reviewed the options for securing the services the commissioner will work with procurement to agree the <b>procurement strategy</b>. This is the agreed approach to securing the service and could include negotiating change to an existing contract or service level agreement, creating a special purpose vehicle, running a competition, developing a framework agreement from which to call off services or in special cases awarding a grant. Again it is important that in considering how services will be secured that due regard is given to promoting <b>diversity and equality</b>.</p> <p>The process of running competitive procurement exercises or 'competitions' and contract administration is undertaken by <b>MoJ Procurement</b> working with</p>   |

<sup>18</sup> The Audit Commission report *Hearts and Minds* (2007) sets out in more detail the desired traits of intelligent commissioning [www.audit-commission.gov.uk/nationalstudies/localgov/Pages/heartsandminds.aspx](http://www.audit-commission.gov.uk/nationalstudies/localgov/Pages/heartsandminds.aspx)



contract managers, commissioners or both. MoJ Procurement is a corporate service function independent of NOMS. This ensures that procurement processes are open, transparent, fair and comply with **prevailing legislation, regulation and government policy**.

The commissioner retains overall responsibility for competitions and the procurement process working with a wide range of other key stakeholders to ensure that processes deliver the service outcomes being sought. For example, where it is decided to run a **competition**, the decision as to what type of competition to run and at what level to let the contract is a decision for the commissioner advised by MoJ Procurement within the specific guidelines set out by procurement rules .

Where a service is awarded to a crown body, such as the public sector Prison Service, this will be in the form of a **Service Level Agreement (SLA)**. For non-crown bodies including Probation Trusts, voluntary, community and social enterprise (Civil Society) organisations; or private sector organisations this will be in the form of a legally binding **contract**.

### 3 PERFORMANCE MANAGEMENT

Gaining assurance that service providers deliver expected outcomes, strive for continuous improvement and manage delivery chains effectively and fairly

#### Deliver and support provider development

Once a contract or service level agreement is in place (complete with service targets, incentives and payment models), the commissioner, contract manager (where applicable) and provider are jointly responsible for ensuring that the new service is introduced in a planned manner including any transition between providers (**service mobilisation**). This includes ensuring due regard to impacts on existing staff resulting from a change in provider including **equality impacts**.

All providers to NOMS are expected to work collaboratively both with the commissioning authority and each other in a spirit of mutual trust and cooperation. The commissioning authority is responsible for securing services on behalf of users, beneficiaries and stakeholders. It is therefore in their interest to see providers develop to their full potential. This might include: removing obvious blockages to delivery of services; signposting providers to relevant opportunities, ensuring providers are kept informed of changes to professional standards; guidance and codes of practice; and encouraging providers to invest in workforce development. These processes are known as **provider development**.

Providers of offender services (including public sector providers) may also be commissioned and funded to deliver services by organisations other than NOMS (within any legal constraints placed on undertaking such activities). It is important therefore to explore opportunities to work with other commissioners and funders to join up development opportunities.

#### Manage performance and supply chains

The commissioner and SLA/contract manager will require a range of evidence and **assurances** from all providers, whether from the public, private or voluntary and community sectors, that the contract or SLA is being delivered legally, safely, with decency and effectively for all the beneficiaries of that service. This includes assurances that appropriate levels of quality are being maintained and due regard is given to **equality impacts** that might occur during service delivery

Activities to support assurance might include:

- formal monitoring of performance against agreed targets and contract/agreement measures including value for money
- viewing services at the point of delivery
- feedback on services from stakeholders and users

This should not be an adversarial relationship and should be proportionate to the scale and nature of the contract or SLA involved. It is in the best interests of the provider to demonstrate that they are providing a good service to the commissioning authority. Similarly it is in the best interests of the commissioner and SLA/contract manager to not over-burden the provider with activity which diverts resources from delivery. The provider should seek to provide the SLA/contract manager with continued assurance that they are delivering a quality service including evidence of providing public value, user satisfaction feedback and examples of impacts of their service for users. This relationship should also encourage the provider to feedback what has worked well in the commissioning and delivery process and what might be improved in future.

There are a number of different contract delivery models, which might be used to deliver a commissioned service. In some situations, a commissioned provider will be acting as a contract holder or **lead provider** for a range of other (often smaller) in delivery **consortia**. This may comprise of organisations from a number of different disciplines and sectors. Another model is where the commissioner contracts or enters into an SLA with a **prime provider** who in turn will subcontract delivery of specific parts of their contract or agreement to named third parties referred to as **sub-contractors** or **sub-prime providers**. This model is particularly common where contracts are large and complex requiring wide ranging skills.

While contractual responsibility in both models remains with the lead provider or prime contractor, it is in the interests of the SLA/contract manager to ensure that the delivery or **supply chain** functions effectively and fairly and protects the interests of service users. These processes of **market stewardship** and **supply chain management** should be undertaken jointly between the SLA /contract manager and lead or prime provider. It is intended to protect the interests of both the service users and sub-contractors to ensure that resources flow to delivery not organisational overhead and that the risk of the chain being dysfunctional or collapsing altogether requiring a new competition is minimised.

In the course of delivery, it may be necessary for services to change to reflect differences in the operating environment or changes in the needs or profile of the service users. Such changes might be sought by the commissioner, SLA/contract manager or provider. It may therefore be necessary to alter a contract or SLA during the life of the agreement; particularly for long term agreements (for example some prison contracts are for 15 years). Minor contract variance or changes to the agreement may be covered by existing clauses but for larger changes, this may require additional negotiation and formal **notices of change** to the contract or SLA. All contract changes and variations are made by MoJ Procurement to ensure that the process is legal and transparent.

The process of monitoring a contract or SLA may result in the SLA/contract manager needing to instigate measures to address underperformance, which may range from agreeing remedial actions with the provider to formal sanctions and financial penalties. The ultimate sanction of the commissioning authority is early **contract termination** or removal of the SLA and to re-compete delivery of the service. In all cases, the interests of the service users and offering public value should be paramount.

**Evaluate**

One complete cycle finishes as it starts - with an evaluation of existing service providers and the extent to which in the previous business cycle they have

- delivered expected (or unexpected) outcomes
- been positively or negatively received by users and stakeholders
- performed against agreed criteria including value for money
- complied with the terms of the contract, SLA or other agreement (such as a grant)
- offered best value

As the cycle is a continuous improvement loop, this stage also informs the start of the next commissioning cycle and phase.

## Commissioning Plans

With the exception of the final Service Level Agreement or Contract, some of the most important products of the commissioning cycle are commissioning plans. These allow commissioners at all levels in the system to communicate their commissioning intentions and supporting evidence and to engage with current providers (including sub-contractors), potential providers and wider stakeholders.

Both NOMS and its prime providers publish a range of plans which inform commissioning activity:

- The **NOMS Commissioning Intentions Plan** sets out the Agency's assessment of need and demand and resulting intended commissioning priorities together with the supporting evidence to support the prioritisation proposed. The aim of the document is to engage with both existing and potential providers and stakeholders to gather further evidence to support or challenge prioritisation. This also helps to support dialogue as part of the process of refreshing SLAs and contracts with existing providers to align with departmental priorities and available resources
- The **NOMS Strategic and Business Plan**<sup>19</sup> lays out both the strategic and corporate priorities agreed for the Agency by the Secretary of State, as reflected in the Departmental corporate strategies and the Business Plan for the Ministry of Justice.<sup>20</sup> This document includes the final commissioning priorities which were set out provisionally in the Commissioning Intentions Plan and as such is the NOMS Strategic Commissioning Plan.
- Under the provisions of the Offender Management Act 2007, Probation Trusts are required to consult on and publish a **Probation Trust Annual Plan**<sup>21</sup> on behalf of the Secretary of State. This sets out how Probation Services will be delivered in the area covered by the Trust. This should include a local assessment of need and demand for offender services together with

<sup>19</sup> [www.justice.gov.uk/about/noms.htm](http://www.justice.gov.uk/about/noms.htm)

<sup>20</sup> [www.justice.gov.uk/publications/business-plan-2011-15.htm](http://www.justice.gov.uk/publications/business-plan-2011-15.htm)

<sup>21</sup> Trust Plans will be published on their respective websites, see [www.justice.gov.uk/about/probation-trusts.htm](http://www.justice.gov.uk/about/probation-trusts.htm)

plans for the delivery of those services including without prejudice for any restricted services, current contracts held and plans for sub-contracting/local commissioning of specific offenders services with providers from the public, private and voluntary, community and social enterprise sectors

- Each Prison Establishment<sup>22</sup> (whether managed by the public or commercial sector) is required to produce an **Establishment Annual Business Plan**. This sets out the specific needs of their respective offender populations, strategic priorities as (defined by the Service Level Agreement) and how those priorities will be met, including current and planned sub-contracting for the delivery of services within the establishment.

In addition to specific offender service commissioning plans, there are also currently a number of complementary plans which support commissioning and funding of interventions with offenders. For example, in Wales each of the 22 local authorities currently has a Local Service Board (LSB). These are responsible for ensuring that all public services in their area work together across organisational boundaries to improve outcomes for citizens. Each LSB has a number of collaborative projects selected on the basis of local needs assessments and engagement with citizens. They are drawn from the Community Strategy and other existing local plans and strategies. The Local Delivery Agreement (LDA) is an agreement between LSB partners to commit to the delivery of a small number of local collaborative projects that need the executive leadership the LSB can provide.

Similarly, under the Policing and Crime Act 2009 Community Safety Partnerships (CSP) in England and Wales are required to consult on and produce an **Annual Strategic Assessment** covering crime and disorder, antisocial behaviour, substance misuse and as of April 2010 reducing reoffending.<sup>23</sup> The responsible authorities for the CSP (including Probation Trusts) are then required to publish an **Action Plan** for addressing these priorities in the local area, including reducing reoffending. The majority of the responsible authorities for CSPs are commissioning organisations and therefore much of the delivery might be expected to be taken forward through aligning or co-commissioning and pooling or joint commissioning. CSPs in Wales are an important conduit for the work of LSBs and help inform their priorities.

Many other commissioners of offender services also produce and publish strategic assessments and plan. For example, Local Authorities and Primary Care Trusts (in future Clinical Commissioning Groups and Health and Wellbeing Boards) are required under the Local Government and Public Involvement in Health Act 2007 to produce a **Joint Strategic Needs Assessments** which set out the health and social care needs of the local population. This clearly should reflect the specific needs of offenders both in custody and the community.

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<sup>22</sup> For information about a prison in England and Wales visit [www.justice.gov.uk/global/contacts/noms/prison-finder/index.htm](http://www.justice.gov.uk/global/contacts/noms/prison-finder/index.htm)

<sup>23</sup> Reducing Reoffending, Cutting Crime, Changing Lives, published by the Home Office and Ministry of Justice sets out guidance for CSPs on interpreting the duties <http://tna.europarchive.org/20100413151441/http://www.crimereduction.homeoffice.gov.uk/crimereduction055.htm>

It is an important role of both commissioners and providers to act as system integrators and to align priorities and planning at the different levels throughout commissioning and delivery systems.

# Governance

Offender services commissioning requires a number of distinct but complementary executive roles overseen by formal governance arrangements. This is particularly important in NOMS in order to maintain transparency between the Agency's roles as both commissioner and provider of services.

The **NOMS Agency Framework Document**<sup>24</sup>, first published in 2008 and substantially revised and republished on 6 April 2011, sets out the arrangements for the governance, accountability, financing, staffing and operation of the NOMS Agency. Section three of the Framework Document specifically sets out the roles, responsibilities and governance arrangements for the Agency - in particular the respective roles of the Secretary of State, Permanent Secretary, Chief Executive, and NOMS Board. In addition to these arrangements which cover all of the Agency's activities, the Agency has introduced specific structural and governance arrangements with respect to its' commissioning and competition activity.

## Commissioning Governance

### Secretary of State for Justice

Under the powers conferred by the Prisons Act 1952 (Amended) and the Offender Management Act 2007, the Secretary of State for Justice is statutorily responsible for the provision of prisons and probation services in England and Wales. This ensures democratic accountability to Parliament and the electorate for both policy and value for money for the taxpayer. These responsibilities are discharged through the National Offender Management Service as their proxy agent.

### The NOMS Board

The National Offender Management Service Agency Board<sup>25</sup> has corporate responsibility for all of the Agency's commissioning and competitions activity, with final accountability resting with the Chief Executive Officer. The Chief Executive Officer as the Accounting Officer for the Agency is directly accountable to Parliament for all expenditure by the Agency and as such is subject to both independent Audit by the National Audit Office and may also be called to give evidence to the Public Accounts Committee.

Created in April 2008, the Agency is both a commissioner and provider of services, being responsible for the direct management of the public sector Prison Service (HMPS). As this

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<sup>24</sup> [www.justice.gov.uk/downloads/publications/corporate-reports/noms/NOMS\\_framework%202011.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/noms/NOMS_framework%202011.pdf)

<sup>25</sup> [www.justice.gov.uk/about/noms](http://www.justice.gov.uk/about/noms)

creates a potential conflict of interest a key responsibility of the Board and the Chief Executive in particular is to ensure that clear ethical walls exist between the commissioning and providing parts of the Agency, particularly in planning and running live competitions (See Ethical Wall Arrangements below).

Commissioning is the Agency's business model for securing adult offender services in both custody and the community. The Offender Management Act 2007 added the commissioning of offender services in community settings<sup>26</sup> to the existing powers of the Secretary of State for Justice for commissioning providers of custodial services created by the Criminal Justice Act 1991<sup>27</sup>. The Act established the power to create Probation Trusts as incorporated independent public sector bodies with whom NOMS may commission for the delivery of probation services and who have the ability to act as local commissioners through sub-contracting, obtaining a range of services from public, private and voluntary, community and social enterprise sector providers. As of April 2010, there were 35 Probation Trusts, replacing the previous 42 Probation Boards in England and Wales. Each Trust operates through a number of smaller Local Delivery Units (LDUs) of which there are currently 149 across England and Wales.

## **NOMS Commissioning and Commercial Sub-Committee**

The NOMS Board delegates responsibility for routine oversight of commissioning activity to the **Commissioning and Commercial Sub-Committee** which is chaired by the Director of Commissioning and Commercial. The Sub-Committee meets every six weeks and comprises Director level representation from across the Agency with the deliberate exception of the Directors of Public Sector Prisons and High Security Prisons who are NOMS provider arm. It has specific responsibility for the oversight of:

- the development and approval of NOMS' commissioning strategy
- the development and approval of outcome-focussed service specifications
- the commissioning of services
- the decision to compete services
- NOMS' commercial operations and bids for external funding

The sub-committee is also responsible for escalating decision making where appropriate for example to the MoJ Procurement Committee in the case of major contract awards or where NOMS is leading on securing a service on behalf of others such as in the case of Prisoner Escorts.

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<sup>26</sup> <http://www.legislation.gov.uk/ukpga/2007/21/part/1/crossheading/functions-of-the-secretary-of-state>

<sup>27</sup> <http://www.legislation.gov.uk/ukpga/1991/53/part/IV/crossheading/contracted-out-prisons>



The work of the Sub-Committee is in turn supported by three subordinate Working Committees for Commissioning, Service Development, and Commercial Activity. In addition it has oversight of the work of the Offender Services Competition Programme Board (OSCPB).

## Commissioning Roles

The NOMS Organisational Review was announced in response to the Comprehensive Spending Review 2010 to ensure that the Agency can continue to deliver its core purpose and aims while delivering the Government's ambitions for rehabilitation and sentencing reform within the Departmental settlement. The Green Paper, *Breaking the Cycle*, clarified the aims of this restructure:

*The National Offender Management Service will be reformed and significantly slimmed down through replacing the existing regional structures with a leaner functional approach. This functional model will support commissioning of services; management of public sector prisons; management of contracts with Probation Trusts, private and voluntary and community sector providers; and delivery of national operational services. The new commissioning function will retain central oversight for commissioning in the short term, but this responsibility will increasingly be devolved to local commissioners to get the best responsiveness to local needs, to drive out cost and to enable smaller community-based organisations to participate fully. In the interim we could require main contractors to involve small, local organisations to ensure an integrated approach at local level. This model will be developed over the next two years<sup>28</sup>.*

New Directorate structures were established in April 2011<sup>29</sup> replacing the previous Director of Offender Management (DOM) regional structures. The new functional directorates collectively share the same corporate commissioning priorities but have different roles in achieving these.

### Roles of NOMS Directorates in the Commissioning Process

The **Directorate of National Operational Services** has lead responsibility for translating MoJ Policy into subject matter expertise both for commissioners and providers in the NOMS system.<sup>30</sup> The Directorate has responsibility for coordinating the Agency's contribution to the MOJ's Policy Plan development and implementation, including clarifying Ministerial expectation of what is legal, safe and decent. National Operational Services also has lead responsibility for managing the Agency's system of instructions.

The **Directorate of Commissioning and Commercial** has lead responsibility on behalf of the Agency Board for specifying the offender services the Agency commissions and co-commissions, as well as oversight of commercial activities. This includes leading the process of specifying legal,

<sup>28</sup> *Breaking the Cycle*, Ministry of Justice, December 2010, Para 164

<sup>29</sup> <http://www.justice.gov.uk/about/noms/index.htm>

<sup>30</sup> The Directorate of National Operational Services will generally have the Agency's subject matter experts for different service areas, although exceptionally some will be in other Directorates



safe and decent outcomes and outputs for all NOMS services set out in the Directory of Services, agreeing NOMS commissioning priorities, identifying and running competitions for service delivery and co-commissioning services with other Government Departments. The Directorate is responsible for setting out the expected levels of service, performance and quality in Service Level Agreements (with public sector and high security prisons) and through contracts (with Probation Trusts and independent providers) negotiated through the Directorate of Probation and Contracted Services working with MoJ Procurement and then evaluating service outcomes.

Lead commissioners work with Deputy Directors for Custody, the Director of High Security and contract managers throughout the contract and SLA cycle in order both negotiate and to evaluate services. This includes: agreeing material changes to what services have been agreed in SLAs and contracts; revisiting service specifications; exploring and understanding best practice and; benefit realisation to inform future commissioning strategies and competitions. Lead commissioners will also work with the Deputy Directors for Custody, the Director of High Security and contract managers to set out the commissioning priorities and strategies of other commissioners of offender services in areas such as health, skills and employment.

The **Directorate of Probation and Contracted Services** has lead responsibility for contract management of independent providers of services commissioned by the Agency. This includes Service Delivery Management, Relationship Management and Contract Administration.<sup>31</sup> The Directorate is responsible for ensuring that the services specified by the Directorate of Commissioning and Commercial are being delivered as agreed to the required level of performance and quality. Contract managers are also responsible for ensuring constructive relationships with providers to seek to resolve or ease tensions and identify problems early and for maintaining ongoing dialogue with relevant lead commissioners who in turn can draw on the advice of subject matter experts.

The process of entering into, or making formal changes to, contract agreements will be undertaken by MoJ Procurement working with the relevant contract manager. Where the change has the potential to have a material impact on what has been commissioned the contract manager must agree service changes with the relevant lead commissioner.

The **Directorates of Public Sector Prisons** and **High Security** are responsible for delivering the services specified in the agreed SLAs. The Directorate of Commissioning and Commercial will be responsible for leading annual negotiations to determine the content of the SLAs with the Directorates of Public Sector Prisons and High Security. SLA negotiation will focus on how each Directorate will deliver the NOMS commissioning priorities, including agreeing levels of quality and

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<sup>31</sup> These three processes are defined by the Office of Government Commerce as the key functions of contract management.

processes for assurance over the life of the SLA. Where potential changes to existing SLAs are identified which have the potential to have a material change on what has been commissioned these must be agreed with the lead commissioner.

In addition to annual negotiation of SLAs, the Directorate of Commissioning and Commercial will also be responsible for entering into SLAs for delivering new services, where HMPS is successful in winning offender services competitions and for working with the Directorates of Public Sector Prisons and High Security to set out the commissioning priorities and strategies for other commissioners of offender services.

The remaining directorates in the Agency have a key role in providing defined and distinct services to both the Directorates of Commissioning and Commercial and Probation and Contracted Services as the commissioning side of the Agency and the Directorates of Public Sector Prisons and High Security as the provider side of the Agency:

The Performance Information and Analysis Group in the **Chief Executive's Directorate** is responsible for providing a single verified source of performance information and analysis to support all Directorates through out the commissioning cycle. The Group is also responsible for providing specific support to the Directorate of Commissioning and Commercial to undertake performance evaluation of existing providers, needs analysis and gap analysis.

The **Directorate of Finance** is responsible for providing financial management services and support to commissioners, contract managers and Public Sector Prisons and High Security. It is also responsible for assuring the Chief Executive as Accounting Officer of affordability and probity. The Directorate is also the conduit for the escalation of financial matters relating to MoJ Corporate Finance and Treasury (such as Treasury Approval Process (TAP) for high value competitions).

The **Directorates of Change & ICT** and **HR** are responsible for providing technical expertise and support to commissioners, contract managers and additionally Public Sector Prisons and High Security in relation to their bid activities. Additionally the Change & ICT Directorate is accountable for any changes made to NOMS systems as a result of commissioning activities.

The **Directorate of Offender Health** is responsible for supporting collaborative commissioning of health and social care services for offenders in custody and the community between the Agency, Department of Health and National Health Service.

## Competition Governance

While subject to the governance arrangements for commissioning as a whole, competition requires additional governance measures to ensure appropriate ethical wall arrangements between the commissioning and provider functions of the Agency.

### Ethical Wall Arrangements

*The NOMS Agency will comply with best practice guidance and relevant reports of the Office of Government Commerce, the National Audit Office, the Audit Commission and the Wales Audit Office in its conduct of commissioning and competition activities. This is to ensure transparent commissioning decisions, competitive neutrality as between providers from all sectors and the even-handed application of comparative cost and performance benchmarks<sup>32</sup>*

To ensure that no provider, in particular the Public Sector Prison Service, gains unfair competitive advantage by virtue of their closeness to the commissioning function, the Agency has introduced a series of ethical wall arrangements:

- organisational separation of commissioning and procurement responsibility between NOMS and the parent Ministry of Justice, with procurement authority retained at the Department level and all procurement policy and support activity being provided as an independent shared service<sup>33</sup>
- structural demarcation within the Agency of roles between commissioning and provider functions with the creation of a Directorate of Commissioning and Commercial, Directorates of Public Sector Prisons and High Security Prisons and creation of an HMPS Business Development Group (encompassing the functions of the former Public Sector Bids Unit) to lead public sector prison bids
- separate governance arrangements to oversee competition activity managed on a portfolio basis with formal reporting as part of both the NOMS and MoJ Programme Portfolio
- clarity over what conduct is required by all NOMS staff through a formal staff code with clear disciplinary implications for breaching the code, and
- a formal accessible register of staff who have declared conflicts of interest with respect to each competition run.

These arrangements apply before and after as well as during competitions. NOMS is committed to working with a mixed economy of providers. In addition to ensuring that no one provider is given unfair advantage during the course of a competition, the Agency is committed to ensuring equitable treatment in managing delivery across all providers once a service provider is selected.

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<sup>32</sup> NOMS Agency Framework Document 2011 [www.justice.gov.uk/downloads/publications/corporate-reports/noms/NOMS\\_framework%202011.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/noms/NOMS_framework%202011.pdf) , p7

<sup>33</sup> NOMS Agency Framework Document 2011 p.15

## Ministry of Justice Procurement

While responsibility for managing competitions and contract management sits with the Agency overall, and to the Directorate of Commissioning and Commercial and the Directorate of Probation and Contracted Services respectively, accountability and responsibility for procurement strategy, running competitive procurements and then subsequently the commercial management of the contracts rests with MoJ Procurement. MoJ Procurement is a shared service Directorate within the Ministry of Justice operating at arm's length from but closely with NOMS. As well as reducing the administrative cost to the Department by procuring services across all of its areas of business, this also ensures that competitions are managed fairly and in line with legislation, regulation and government procurement policy.<sup>34</sup> In terms of Offender Service competitions MoJ Procurement are accountable and responsible for:

- procurement strategy including the determination of the most appropriate approach to managing the supply chain
- market engagement and development in accordance with the procurement strategy
- running competitive procurement exercises ensuring that they comply with prevailing legislation, regulation and government policy
- co-ordinating all communications with bidders during live competitions
- recommending contract awards that meet the objectives set out in the procurement strategy
- issue of contract award notices
- bidder debriefing
- entering into legally binding contracts on behalf of the Secretary of State for Justice
- managing extensions and amendments to contracts post award including:
  - issuing Notices of Change (NOC)
  - implementing contractual performance penalties incurred by suppliers to ensure this process is managed correctly according to the terms of the relevant agreement
  - contract termination

## The Offender Services Competition Programme Board (OSCPB)

The Offender Services Competition Programme Board (formerly the Commissioning and Competition Board) has delegated authority from the Agency Board through the Commissioning

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<sup>34</sup> For more information about doing business with the MoJ see [www.justice.gov.uk/about/procurement-and-commercial](http://www.justice.gov.uk/about/procurement-and-commercial)

and Commercial Sub-Committee for oversight of delivering the Agency's competition Portfolio Chaired by the Director of Commissioning and Commercial, the Board's core responsibilities are to:

- oversee all national and large competitions for the provision of Offender Services as part of the Agency's published Offender Service Competition Strategy, approved by Ministers and the NOMS Board<sup>35</sup>
- agree the criteria against which bids in each competition are to be evaluated and ensure competitive neutrality by determining how different costs elements are to be treated
- appoint a Senior Responsible Official (SRO) for each competition whose role it will be to ensure the competition is run in accordance with competition rules, and with direction given to it by the Board
- manage any potential conflicts of interest and ensure effective "ethical wall" arrangements are established throughout NOMS
- support the development of a competitive market for offender services
- ensure Project Assurance to MPA and GMPP requirements
- authorise the project mandate for new competition projects

## **HMPS Business Development Group**

Having competitive bids from the public sector is important in having access to the best possible market of potential providers of offender services, irrespective of which sector they may come from. Where competitions run by NOMS involve Probation Trusts, there is a clear purchaser provider separation as Trusts are independent organisations whose staff are not employed by the Agency. However as Public Sector Prison Service staff are directly employed by the Agency, where HMPS wishes to compete for business commissioned or co-commissioned by NOMS it is necessary to maintain clear ethical walls so as not to advantage or disadvantage any independent provider by virtue of their proximity to the commissioner.

A Public Sector Bids Unit (PSBU) was created in 2009 to represent NOMS' 'provider' arm (HM Prison Service) during prison competitions with separate line management arrangements and separation for any commissioning functions. The unit was successful in overseeing the bid which retained the management of HMP Buckley Hall as part of the prisons competition which was awarded in March 2011.

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<sup>35</sup> [www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm](http://www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm)

As part of the restructure of the Agency during 2011 ethical walls arrangements have been further strengthened by the creation of a Directorate of Public Sector Prisons and a dedicated HMPS Business Development Group overseen by the Deputy Director Custody for Wales. The new Group will in future be responsible for leading the public sector bids as well as sharing and promoting good practice across public sector prisons, ensuring separation from the commissioner. The separation of subject matter expertise from the commissioning function in NOMS through the creation of separate directorates for National Operational Services and Commissioning and Commercial means that the Public Sector Prison Service will have the same access to expertise to inform their bids as any external provider.

Conduct of all NOMS staff during competitions is underpinned by a code of conduct linked to the NOMS code of discipline. In line with HM Treasury requirements, there are also formal arrangements to prevent any member of staff who has been involved in any commissioning activity being involved in any subsequent in-house bid, without an appropriate period of quarantine. Similarly requests for NOMS staff involved in commissioning to leave the organisation to join a charity or company which may subsequently compete to deliver services are subject to scrutiny by the Civil Service Commission which may impose a range of conditions on their activities in agreeing to the new employment. Former Civil Service staff and secondees also remain bound by the Official Secrets Act.

## Competition Assurance and Scrutiny

NOMS competitions are managed as a portfolio of programmes and projects, following standard project and programme methodologies. In addition to *ad hoc* guidance provided by NOMS Quality Assurance, and the external process assurance provided by using MoJ Procurement Directorate, the value of the majority of contracts competed by NOMS means that they are also subject to a number of external scrutiny and assurance processes to ensure that they are fit for purpose and offer the taxpayer value for money.

### Major Projects Authority

Introduced on 31 March 2011, the Major Projects Authority<sup>36</sup> (MPA) is a collaboration between the Cabinet Office, HM Treasury and Departments with the fundamental aim of significantly improving the delivery success rate of Major Projects across central government. The MPA has cross-government authority to:

- develop the Government Major Projects Portfolio, in collaboration with departments, with regular reporting to Ministers

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<sup>36</sup> [www.cabinetoffice.gov.uk/content/major-projects-authority](http://www.cabinetoffice.gov.uk/content/major-projects-authority)

- require Integrated Assurance and Approval Plans for each Major Project or Programme, including timetables for Treasury approvals, and validation by the MPA and HM Treasury
- make a Starting Gate Review, or equivalent, mandatory for all new Projects/Programmes and Policy
- escalate issues of concern to Ministers and Accounting Officers
- provide additional assurance and direct involvement where Projects are causing concern including the provision of commercial and operational support
- require publication of project information consistent with the Coalition's Transparency agenda
- work with departments to build capability in Projects and Programme management
- publish an annual report on the Governments Major Projects

Major competitions managed by NOMS form part of the **Government's Major Project Portfolio** which requires that they obtain direct HM Treasury approval before they can proceed to the next stage. This is managed by requiring each competition to produce an **Integrated Assurance and Approval Plan** which will indicate how assurance reviews of all types will be scheduled to support decision making and inform approvals by the Department and by the Treasury, while avoiding duplication and activity which does not add value. The MPA has the authority to require more intensive intervention if it feels necessary. Progress on all Major Projects will be published annually.

## Keyholder Reviews

Keyholder reviews are peer led reviews within NOMS and MoJ by key senior decision makers to provide assurance to the competition Senior Responsible Officer that the proposals and plans meet required standards and are fit for purpose. They may be used for lower value competitions or as preparation for independent Gateway Review.

## Gateway Reviews

The Gateway Process<sup>37</sup> examines programmes and projects at key decision points in their lifecycle. The process is mandatory for Central Government Departments and looks ahead to provide assurance that projects and programmes (including major competition projects) can progress successfully to the next stage. There are six potential 'gateways' identified corresponding to major decision points in the project or competition lifecycle:

- **Gate 0: Strategic Assessment** (undertaken in planning a programme or portfolio of competitions)

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<sup>37</sup> [www.ogc.gov.uk/what\\_is\\_ogc\\_gateway\\_review.asp](http://www.ogc.gov.uk/what_is_ogc_gateway_review.asp)

- **Gate 1: Business Justification** (undertaken at the outset of a project)
- **Gate 2 – Procurement Strategy** (undertaken prior to launching a competitive process)
- **Gate 3 – Investment Decision** (undertaken prior to contracts being awarded)
- **Gate 4 - Readiness for Service** (undertaken before a new contract commences delivery)
- **Gate 5 – Benefit Realisation** (undertaken after the project or service has been live)

Reviews deliver a "peer review" in which independent practitioners from outside the programme or project use their experience and expertise to examine the progress and likelihood of successful delivery of the programme or project. The review uses a series of interviews, documentation reviews and the teams experience to provide valuable additional perspective on the issues facing the project team, and an external challenge to the robustness of plans and processes. They are used to provide a valuable additional perspective on the issues facing the internal team, and an external challenge to the robustness of plans and processes.



# Competition

Competition is a means of finding the best provider for a set of specified services, defined both in terms of outcomes and public value. It can provide commissioners with the means to secure new services, improve existing service delivery, encourage innovation and drive value for money. The Office of Fair Trading<sup>38</sup> has summarised the benefits of competition as a driver that can:

- place downward pressure on costs;
- force providers to be more focused on meeting customer needs;
- lead to more efficient allocations of resources between providers;
- act as a spur to innovation.

Their study *Commissioning and Competition in the Public Sector* (March 2011) argues that having an open, transparent and competitive tender process is not enough on its own to ensure that public services markets are open and contestable. Achieving effective competition in public services must also involve: reducing barriers to entry and exit; encouraging a diverse supplier base; and ensuring suppliers have the right incentives to make efficiency savings, raising quality and innovating.

## Open Public Services

The Coalition Government set out its commitment to the use of competition and choice in delivering public service reform as part of the Open Public Services White Paper published 11 July 2011.<sup>39</sup> The paper signals:

- a switch from a presumption that the public sector should be the default deliverer of public services to a commitment that the Government will commission from a range of providers
- the importance of public bodies functionally separating commissioning and provider activities
- the importance of consulting with potential providers as well as considering how to ensure contracts are accessible to small and medium enterprises including charities
- a recognition that some services, such as prisons, do not make sense to devolve to individuals or communities and are more effectively commissioned nationally but should be opened up to greater competition and where appropriate providers should be paid by results.

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<sup>38</sup> Choice and Competition in Public Services, A guide for policy makers, A report prepared for the OFT by Frontier Economics, March 2010, OFT1214

<sup>39</sup> [www.openpublicservices.cabinetoffice.gov.uk](http://www.openpublicservices.cabinetoffice.gov.uk)

## Offender Services Competition

Competition for offender services is not new. HMP Wolds became the first privately managed prison in both the UK and Europe in 1992. The role of the private sector in running prisons is now well established, with 11 prisons currently managed by private sector providers. A further two prisons – HMP Birmingham and the planned new build HMP Featherstone 2 – were awarded to the private sector as a result of the recently completed competition. Contestability in service provision was an important factor in both the creation of the National Offender Management Service in 2004 and the NOMS Agency in 2008. Competition in Offender Services has been shown to be effective in improving outcomes, driving efficiency and delivering more innovative models of service delivery, including:

- Efficient and affordable increases in prison capacity, through the PFI prison building programme
- Increased value for money in the national delivery of three services: Prisoner Escort and Custody Services, the Bail Accommodation and Support Service, and Electronic Monitoring
- Competition has been used by commissioners to find the most suitable providers to deliver services in both custody and the community, including services for health, substance misuse and offender learning and skills
- Competition has also been applied to offender employment support services through the European Social Fund with £142m of services covering all of England having been competed to date. The successful bidders cover a broad mix of service providers from all sectors who meet particular local market conditions.

The **Competition Strategy for Offender Services**,<sup>40</sup> published 13 July 2011, set out the Coalition Government's ambition for Offender Services reform - encouraging greater involvement of the private and voluntary sectors in the rehabilitation of offenders to cut re-offending, improve outcomes and efficiency. In line with the Open Public Services White Paper, the strategy signaled a significant change in the approach to competing offender services, replacing all previous competition methodologies in both custody and the community. It set out the principles which should apply to all competition across the Ministry of Justice, specifically that:

- competition activity should be focused on achieving mid- to long-term savings, not finding the cheapest solution at the expense of quality
- competition should be used to deliver public sector reforms, ensuring providers are more effectively held to account for the outcomes they deliver

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<sup>40</sup> [www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm](http://www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm)

- providers should be involved early to identify where efficiencies could be realised in national or process-based functions through competition
- small and medium sized enterprises (SMEs) and the voluntary and community sector (VCS) should be encouraged to participate to drive innovation
- competition should be widely applied, with public sector providers allowed to bid where we are competing localised services and robustly held to account where successful.

The strategy stresses:

- Competition in Offender Services is about delivering savings and service reforms in the medium and long term. This will not always mean the cheapest options. The competitions we run will use outcome-focused service specifications with agreed minimum acceptable service quality
- While the public sector has a wealth of experience, expertise and commitment to bring to bear on the challenges we face and will remain an essential provider of services, NOMS will work with both existing and new providers from the public, private and voluntary sectors, with contracts awarded on the basis of whoever is best placed to deliver our strategic objectives<sup>41</sup>
- NOMS will no longer limit the use of competition to selecting providers for new services or as a means of dealing with poor performance. Competition will instead become central to our approach to commissioning and delivering based on the required outcomes and the demand for our services
- The Agency will continue to develop and expand a range of models where providers are paid based on the results they achieve. We see this as a powerful tool, both to allow providers to innovate and to ensure that value for money is achieved. Providers will be encouraged to put forward innovative models to focus more effectively on rehabilitation, building on the Payment by Results (PBR) pilots already launched.

To support the embedding of competition in the mainstream business of the Agency and providers, the Competition Strategy also commits NOMS to publishing an annual update on current competitions and new opportunities planned in the coming 12 months following publication of the Annual Business Plan. This will enable more effective planning, and help commissioners and providers to better understand where we are in the competition lifecycle for any given service or set of services.

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<sup>41</sup> The MoJ Business Plan 2011-15 committed that the Department will not 'provide new rehabilitation services directly without testing where voluntary or private sectors can provide them more effectively and efficiently', p3

While a competition involves a significant number of specialist skills and support, the entire process is firmly owned by the commissioner who remains ultimately responsible to realising the intended benefits of competing a service.

## The Competition Lifecycle

Competitions or 'competitive procurements' to give them their proper name, are a tool for commissioners as part of the process of securing the services they have prioritised (see Commissioning Cycle page 18). NOMS runs competitions using a programme and project methodology. Irrespective of what services are being competed and over what timescale, competitions run by NOMS follow a specific lifecycle (see page 41). This identifies that there are three distinct phases in any competition:

- 1) Pre-Procurement
- 2) Procurement
- 3) Mobilisation.

While a competition involves a significant number of specialist skills and support, the entire process is firmly owned by the commissioner who remains ultimately responsible to realising the intended benefits of competing a service.

### Pre-Procurement

Pre-procurement consists of essential work to set up the competition governance, business case and preparatory work prior to formally launching a procurement process. Each competition is issued a mandate drawn from the published competition strategy and has a Senior Responsible Officer appointed by the NOMS Offender Services Competition Programme Board, to which it is accountable throughout the lifecycle. An **Outline Business Case** is completed setting out the desired service outcomes, expected business benefits and costs of the competition which will be subject to the appropriate level of governance and assurance as detailed in the Integrated Assurance and Approval Plan (See page 32). The phase is completed following assurance and approval (i.e. a MPA Gateway 2 review & Treasury TAP) of the 'Procurement strategy', which specifies the services they wish to commission and the intended method of securing those services as advised by MoJ Procurement specialists.

### Procurement

As the Offender Services Competition Strategy (2011) highlights, NOMS commissioners have a key role in ensuring that the market for Offender Services operates efficiently. This includes ensuring that:

- competitions are run and regulated fairly
- the differences between providers in the public, private and voluntary sectors are recognised and valued
- we provide a mix of opportunities that encourages investment and capacity building in the market
- providers work with each other to deliver the best outcomes for communities.

To ensure transparency (in particular separation of NOMS commissioning and delivery arms) as well as compliance with competition regulations, the procurement phase of any competition is led by MoJ Procurement Directorate in support of the commissioner.

MoJ Procurement Directorate provides useful information on the Justice website about doing business with the Department including NOMS.<sup>42</sup> All opportunities for contracting with both the Ministry of Justice and the wider public sector are now advertised on Contracts Finder<sup>43</sup> which is the single web portal for identifying all government tendering opportunities. This site helpfully allows potential suppliers to identify the types of contracting opportunities that they are interested in, and it will send them an email when compatible opportunities are posted.

At the outset of any competition that may include bids from the public sector, MoJ Procurement will publish 'Principles of Competition'. This explains how the MoJ will handle any issues that arise in running competitions that feature both public and private sector bidders. The Principles of Competition typically cover:

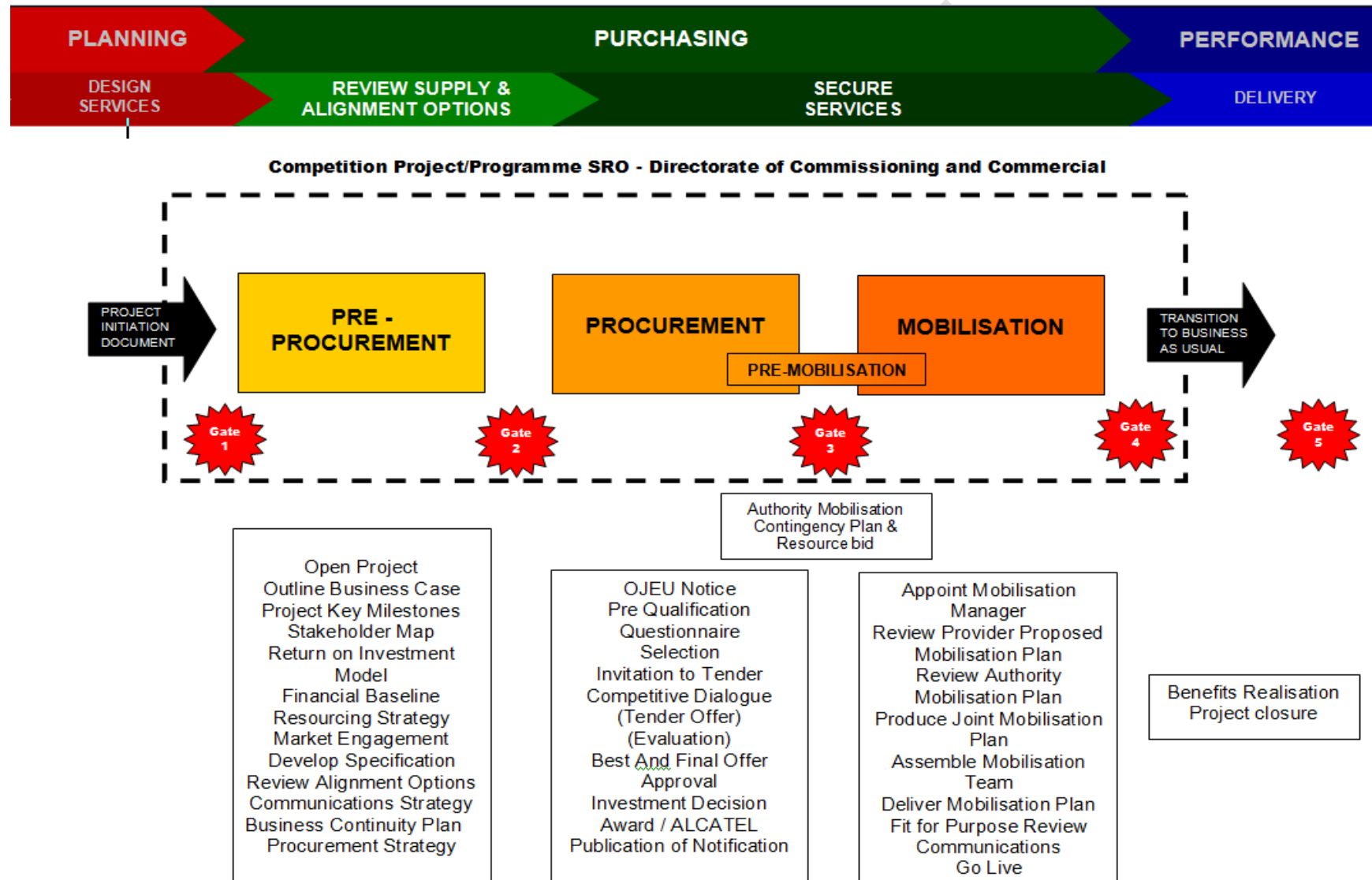
- process issues including the conflict of interest that may arise as a result of NOMS presiding over both the commissioning and public sector bidding functions
- cost issues such as the treatment of indirect costs incurred by the public sector
- grant funding issues
- pension issues
- risk issues including insurance
- adjustments for the redeployment of staff within the public sector in lieu of redundancy

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<sup>42</sup> [www.justice.gov.uk/about/procurement-and-commercial](http://www.justice.gov.uk/about/procurement-and-commercial)

<sup>43</sup> [www.contractsfinder.businesslink.gov.uk](http://www.contractsfinder.businesslink.gov.uk)

## NOMS Competition Lifecycle



- taxation issues
- use of government contracts for common commodities
- property issues and the capacity for the public sector to make capital funding commitments
- information and communication technology issues and the use of common platforms

The majority of the services that NOMS competes are complex and often require system reform and innovation as part of the competition outcome. For this reason, competitions typically feature a **pre-qualification** process to identify potential providers which do not satisfy the minimum criteria to participate in the competition and clarify with others whether it is realistically going to be worth them investing significant resources to remain in the competition. In addition the procurement phase may involve one or more competitive dialogues subject to the type of services being competed.

Following submission of Best and final Offers (BAFO) and assessment contract award recommendation is written and made by MoJ Procurement. Access to this information is strictly controlled for commercial reasons. A **Full Business Case** is completed setting out the service outcomes, expected business benefits and costs of the competition, contract(s) and post contract activities as determined by the winning bid or bids. Before a contract can be awarded the Full Business Case must first be assured (i.e. a MPA Gateway 3 review) and approved financially (i.e. **Treasury TAP**) as defined in the Integrated Assurance and Approval Plan agreed with the Major Projects Authority. Once approved the preferred bidder is notified of the outcome of the competition together with unsuccessful bidders and a ten day standstill period is observed to ensure that all bidders are properly debriefed.

## **Mobilisation**

Having awarded the new contract, it is the Commissioner's responsibility to ensure that the service is ready to commence delivery on schedule. Where a provider is starting a new service or an existing provider has retained a service, it is important that the service will deliver to the new contract specification including delivering service reforms and any efficiencies offered as part of the award. For an existing service where a new provider has been awarded the contract, this will involve the smooth transfer of responsibility between providers including TUPE arrangements for staff as appropriate and due regard to any equality and diversity impacts. This involves on-site visits with the providers and in more complex cases on-site teams to support the service as it goes live. Before the service can commence it is subject to further assurance (ie a MPA Gateway Review 4) as defined in the Integrated Assurance and Approval Plan agreed with the Major Projects Authority to ensure that the service is fit for purpose.

Once the service is live, the competition will close once the SRO is able to report the extent to which the intended benefits of the competition have been realised and this is assured (i.e. a MPA Gateway Review 5) as defined in the Integrated Assurance and Approval Plan agreed with the Major Projects Authority.



# Market Development

The government's vision for both public service<sup>44</sup> and rehabilitation<sup>45</sup> reform includes a commitment to developing a vibrant market of diverse providers. Effective competition in the delivery of offender services is dependent upon having a strong market of engaged and capable suppliers from all sectors. The term "market" in the context of NOMS may be described as:

**The opportunity for providers from any sector to supply, and commissioners to be able to purchase, required offender services.**<sup>46</sup>

NOMS is committed to engaging with providers and potential providers from all sectors throughout the commissioning cycle to ensure that commissioners are fully aware of market dynamics, and encourage greater participation by a wider range of providers in the delivery of offender services.

This process of Market Development can be characterised by three strands of activity:

- 1) market sounding and analysis
- 2) market stimulation
- 3) market stewardship.

## Market Sounding and Analysis

Understanding the range, scope and capability of current and potential providers is an important part of commissioning services. This can only be achieved through routine engagement or 'market sounding' by commissioners with current and potential providers of offender services to build and maintain strong relationships and two-way dialogue. This engagement helps the commissioner to:

- clarify gaps between supply and demand for services
- understand the feasibility of planned new services, including similar models often from other sectors
- understand the interest, capability, capacity of current and potential providers to respond to opportunities to deliver specific types of services
- gauge market maturity
- improve existing services through provider feedback

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<sup>44</sup> [www.openpublicservices.cabinetoffice.gov.uk](http://www.openpublicservices.cabinetoffice.gov.uk)

<sup>45</sup> [www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm](http://www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm)

<sup>46</sup> This definition is adapted from a one offered within NHS Commercial guidance [www.csl.nhs.uk/support/commissioningskillsdevelopment/toolsandadvice/toolkit/pages/stimulatingthemarket.aspx](http://www.csl.nhs.uk/support/commissioningskillsdevelopment/toolsandadvice/toolkit/pages/stimulatingthemarket.aspx)

- shape and improve service design and redesign including through addressing barriers to entry and exit, and the creation of incentives to promote value for money
- stimulate innovation
- improve commissioned services during tender processes through participative dialogue
- improve commissioning and competition practice through feedback on commissioning and competition processes.

While it is important to maintain transparent managed communications between commissioners and potential providers during live competitions to ensure competitive neutrality (for example by routing all queries through the MoJ Procurement), active engagement with providers from all sectors at all other stages of the commissioning cycle is an essential part of intelligent commissioning.

NOMS currently manages market soundings in a number of ways, both formally and informally, for example:

- holding dedicated events, for example roundtable events to provide soundings about new policy proposals and future competitions
- standing provider fora which bring together current suppliers to NOMS to discuss collective successes, challenges and barriers
- sectoral advisory fora (e.g. the Reducing Reoffending Third Sector Advisory Group) which can help to advise on commissioning and competition developments for example the development of service specifications as part of NOMS Specification, Benchmarking and Costing Programme<sup>47</sup>
- open meetings and engagement with a wide range of existing fora outside of NOMS as part of consulting on commissioning and competition plan priorities
- feedback from current providers as part of routine performance management meetings
- bi-lateral meetings with providers to explore specific issues or ideas
- feedback from those who have participated in competitions (both successful and unsuccessful bidders)
- responding to enquiries and approaches from individual organisations

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<sup>47</sup> [www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme](http://www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme)

The NOMS Competition Strategy for Offender Services also commits NOMS to publish an annual update on current competitions and new opportunities planned in the coming 12 months following publication of the Annual Business Plan. This will enable more effective planning for both potential providers and commissioners of services, and provide a basis for informed dialogue between both parties.

Market soundings can provide the commissioner with a rich source of information to inform market analysis which good practice suggests may include:

- the structure of the relevant market and size of suppliers
- key players in the marketplace
- the current market offerings of products and services
- the drivers for the market: what business opportunities and finance models are regarded as most desirable
- the scope for innovation and for expanding the market
- current capacity and capability in the marketplace and the demands currently being placed on the relevant supply markets
- the barriers to entry in the market.<sup>48</sup>

This analysis is important information for both the commissioner and the market and should inform both service specifications as well as plans for market stimulation activity.

## Market Stimulation

Markets vary significantly in both size and maturity. To be able to access the best possible provision to deliver desired outcomes, it may be necessary for commissioners to 'stimulate' markets. The aim of market stimulation is to drive improved services for users and value for money from services, by ensuring that there is a vibrant competitive market for provision of required services. A well-stimulated market may be characterised as having providers of offender services who are able and motivated to continuously improve the quality and range of services, and the cost of delivering those services.

There are a number of ways for commissioners to stimulate the market for offender services including:

- introducing competition into new areas of service delivery

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<sup>48</sup> [www.ogc.gov.uk/documents/Market\\_Creation\\_Guidance.pdf](http://www.ogc.gov.uk/documents/Market_Creation_Guidance.pdf)

- investing in capacity building to encourage new entrants to the market
- commissioning for outcomes maintaining a provider-neutral approach, stimulating providers from all sectors to provide innovative and better value services
- piloting new approaches collaboratively with providers to test ideas and potential options prior to running an open competition (e.g. co-production models, open book relationships, proof of concept pilots etc)
- designing competition lots in such a way as to encourage greater engagement by new market entrants in particular smaller organisations (e.g. SMEs or voluntary and community organisations) or encouraging existing providers to explore diversification.
- support for the development and use of alternative development models, such as joint ventures, social enterprises and public sector mutualisation.

NOMS is working with Clinks, an umbrella organisation which represents, supports and campaigns on behalf of voluntary and community sector organisations working with offenders. NOMS funding provides 'Sustainable Funding Roadshows', providing up to date information on the funding and policy environment, as well as one to one surgeries and workshops. Social Enterprise development is fostered through a range of initiatives, with funding provided both by NOMS and through the auspices of the European Social Fund (ESF). Building on the findings of the 'Reducing Reoffending Through Social Enterprise' Report<sup>49</sup> NOMS has commissioned, and provided seed funding for, a number of Social Enterprises working with prisons and Probation Trusts, as well as 'through the gate'. Through the NOMS ESF co-financing programme, NOMS has also taken out group membership of Social Firms UK in order to promote best practice case studies and to develop business opportunities which ultimately improve the employment prospects of offenders. This work is supported further through NOMS' work with Cooperative and Mutual Solutions (CMS) engaging NOMS and Probation Trust staff in how cooperative models, including mutualisation, can be used to deliver services.

A well-stimulated market is important to all commissioners across the range of services they wish to secure, both when markets are growing and once they are established since this helps to promote positive relationships between providers, particularly in supply chains

## Market Stewardship

NOMS Commissioners are responsible for investing significant amounts of money in services, which will deliver outcomes for courts, victims, offenders, defendants and communities. It is important therefore that commissioners have assurance that providers of services remain focused

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<sup>49</sup> [www.justice.gov.uk/publications/docs/social-enterprise-prison-probation.pdf](http://www.justice.gov.uk/publications/docs/social-enterprise-prison-probation.pdf)

on service outcomes. This is particularly the case in complex contractual delivery arrangements.

For example:

- **Delivery consortia** where the commissioner contracts with a 'lead provider' who represents a consortium of organisations who will be involved in delivering the services as 'partners', often ranging significantly in size, complexity and representing different sectors
- **Prime Provider** supply chain models where the commissioner contracts with an organisation who takes responsibility for being a 'prime' contractor for the entire contract but sub-contracts aspects of the contract to different 'sub-prime' organisations in a managed supply chain.

It is important to ensure that supply chain arrangements do not unintentionally create perverse incentives that, unchecked, can drive delivery behaviour contrary to the intentions of the commissioner. For example, evaluation of programmes in other parts of the public sector have highlighted risks of providers engaging in practices known as 'creaming' (where providers concentrate their efforts on those participants who are easiest to achieve outcomes with) and 'parking' (where participants who are deemed hardest to help receive a bare minimum of services and are therefore less likely to benefit). Similarly, there is evidence that where there are poorly managed supply chain arrangements, risk is disproportionately passed to sub-prime organisations relative to levels of funding.

Promoting positive relationships between providers and supply chains or market stewardship is a key role for commissioners. It is important they work in conjunction with lead and prime providers, and their sub-primes, to ensure that delivery consortia and supply chains are properly managed, resources are maximised for frontline delivery and intended benefits for service users and beneficiaries realised.

There are a number of mechanisms and techniques that can help promote good stewardship of markets. For example, it is important to operate a range of commissioning delivery models and arrangements and to recognise the benefits and challenges of each. NOMS is committed to working with providers and other public sector commissioners to ensure our models for commissioning promote positive market stewardship practices. Some of our existing practice has already been recognised by industry awards. Together with MoJ Procurement Directorate, DHL Supply Chain and Booker Direct, NOMS was winner of the European Supply Chain Excellence Award 2010. However we continue to strive to further strengthen working practices. For example we are examining transparency models to support good supply chain management being used in other Departments such as the Merlin Standard developed by the Department for Work and Pensions.<sup>50</sup> We are also looking a range of payment models including payment by results, cohort

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<sup>50</sup> [www.merlinstandard.co.uk](http://www.merlinstandard.co.uk)

definitions and social finance models each of which discourages providers from working only with those with less complex needs.

# Skills for Commissioning

Delivering our commissioning business model requires new skills and behaviours. This section sets out some of the frameworks, opportunities and tools which can support organisations to build their capability in this area.

## National Occupational Standards for Public Sector Commissioning

Commissioning is a skill set of growing importance both within central government and across the wider public sector. Government Skills, the Sector Skills Council for central government,<sup>51</sup> has developed National Occupational Standards (NOS) for Commissioning in the Public Sector.<sup>52</sup> These were developed in conjunction with colleagues from the sectors for use across the Public Sector. The standards produced capture the performance, behaviours and knowledge that an individual must demonstrate to be considered competent to carry out a particular task within a commissioning role. The NOS cover all stages of the commissioning cycle from identifying needs, engaging the market and service users, planning, service specification, managing risk and provider development all the way to decommissioning services.

NOMS is working with Government Skills, Skills for Justice<sup>53</sup> (the Sector Skills Council and Standards Setting Body for the Justice sector) and the Academy for Justice Commissioning to explore opportunities for promoting the standards in training and workforce development.

## The Academy for Justice Commissioning

The Academy for Justice Commissioning was formed in September 2007 and seeks to identify and promote excellence in justice commissioning. By setting standards and raising commissioner capability it aims to support the transformation of justice services to deliver best value and enable improved effectiveness and increased public confidence in the justice system.

The Academy is free to join and has over a thousand members from all sectors and across a range of non-justice specialisms including health, employment, skills, local government and academia. Its aims are achieved through a number of different mediums including:

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<sup>51</sup> For more information visit [www.government-skills.gov.uk](http://www.government-skills.gov.uk)

<sup>52</sup> [www.ukstandards.org.uk](http://www.ukstandards.org.uk)

<sup>53</sup> [www.skillsforjustice.com](http://www.skillsforjustice.com)

- An evening seminar programme with a wide range of expert guest speakers involved in commissioning. Each seminar features a networking reception to encourage networking and sharing of best practice
- A quarterly guest edited bulletin focusing on various commissioning aspects
- Undertaking and supporting specific development and learning activities, such as the development of the National Occupational Standards (NOS) for Public Sector Commissioning
- A useful A-Z of Commissioning e-learning tool freely available to all those wishing to improve their understanding of commissioning. The materials aim to help leaders, commissioners, and all the communities involved in the provision of public services to develop a shared understanding of commissioning, and the essential components that make it work. The e-learning tool has been developed from the Department for Education's Commissioning Support Programme tool of the same name and will be available from autumn 2011 on the Academy's website (see below) under the Learning & Development section.
- Practical commissioning workshops
- The Academy for Justice Commissioning website <sup>54</sup>, which includes the e-learning tool, signposting to further learning and development resources that support commissioning, details of forthcoming events, copies of presentations from previous seminars and Academy news bulletins. The Academy also plans to launch a series of commissioning workshops based on topical and practical commissioning themes.

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<sup>4</sup> [www.academyforjusticecommissioning.org.uk](http://www.academyforjusticecommissioning.org.uk)



# Further Information

## Useful Contacts

For more information about this guide, please contact:

**Commissioning Support Unit**  
Directorate of Commissioning and Commercial  
National Offender Management Service  
3<sup>rd</sup> Floor  
Clive House  
70 Petty France  
London  
SW1H 9EX

Email: [commissioning.support@noms.gsi.gov.uk](mailto:commissioning.support@noms.gsi.gov.uk)

To contact MoJ Procurement, please use the online contact form (<http://procurement.hmprisonservice.gov.uk/contactus>) or write to

**MoJ Procurement**  
Second floor  
Clive House  
70 Petty France  
London  
SW1H 9HD

[www.justice.gov.uk/about/procurement-and-commercial](http://www.justice.gov.uk/about/procurement-and-commercial)

For more information on commissioning skills and networking opportunities contact:

**Academy for Justice Commissioning**  
Unit 2, Cygnet Park  
Forder Way, Hampton  
Peterborough  
PE7 8GX  
[academy@noms.gsi.gov.uk](mailto:academy@noms.gsi.gov.uk)  
[www.academyforjusticecommissioning.org.uk](http://www.academyforjusticecommissioning.org.uk)

## Useful Web Resources

The following web based resources are not necessarily specific to offender services commissioning but provide useful information, tools and background reading. They are externally hosted and NOMS takes no responsibility for the accuracy of the information they contain.

**A-Z of Commissioning (DfE Commissioning Support Programme archived website)**

[www.commissioningsupport.org.uk/events--training/csp-events--training/development-programme.aspx](http://www.commissioningsupport.org.uk/events--training/csp-events--training/development-programme.aspx)

**Academy for Justice Commissioning**

[www.academyforjusticecommissioning.org.uk](http://www.academyforjusticecommissioning.org.uk)

**Business Link Guide to 'Winning the Contract'**

[www.businesslink.gov.uk/procurement](http://www.businesslink.gov.uk/procurement)

**Cabinet Office Efficiency and Reform Group (Office of Government Commerce)**

[www.ogc.gov.uk](http://www.ogc.gov.uk)

**Contracts Finder (Single site for Government Tendering Opportunities)**

[www.contractsfinder.businesslink.gov.uk](http://www.contractsfinder.businesslink.gov.uk)

**EU Procurement Rules**

[www.ogc.gov.uk/procurement\\_policy\\_and\\_application\\_of\\_eu\\_rules\\_european\\_procurement\\_directives.asp](http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_european_procurement_directives.asp)

**Major Projects Authority**

[www.cabinetoffice.gov.uk/content/major-projects-authority](http://www.cabinetoffice.gov.uk/content/major-projects-authority)

**Merlin Standard (supply chain management)**

[www.merlinstandard.co.uk](http://www.merlinstandard.co.uk)

**MoJ Procurement**

[www.justice.gov.uk/about/procurement-and-commercial](http://www.justice.gov.uk/about/procurement-and-commercial)

**NAO Successful Commissioning Toolkit**

[www.nao.org.uk/guidance\\_\\_good\\_practice/third\\_sector/successful\\_commissioning/successful\\_commissioning\\_toolkit](http://www.nao.org.uk/guidance__good_practice/third_sector/successful_commissioning/successful_commissioning_toolkit)

**NAO Decommissioning Toolkit**

[www.nao.org.uk/sectors/civil\\_society/decommissioning\\_csos/home.aspx](http://www.nao.org.uk/sectors/civil_society/decommissioning_csos/home.aspx)

**National Offender Management Service**

[www.justice.gov.uk/about/noms.htm](http://www.justice.gov.uk/about/noms.htm)

**National Offender Management Service Directory of Services and Service Specifications**

[www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme](http://www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme)

**National Occupational Standards for Public Sector Commissioning**

[www.ukstandards.org.uk/Find\\_Occupational\\_Standards.aspx?NosFindID=4&FormMode=ViewModule&SuiteID=2280](http://www.ukstandards.org.uk/Find_Occupational_Standards.aspx?NosFindID=4&FormMode=ViewModule&SuiteID=2280)

**Offender Services Competition Strategy**

[www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm](http://www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm)

**Open Public Services Website**

[www.openpublicservices.cabinetoffice.gov.uk](http://www.openpublicservices.cabinetoffice.gov.uk)

**'Pathways Through the Maze: A Guide to Procurement Law' (NAVCA and NACVO)**

[www.navca.org.uk/publications/maze](http://www.navca.org.uk/publications/maze)

**Supplement to the Official Journal of the European Union (Tender Opportunities)**

<http://ted.europa.eu>

# Glossary of Terms and Acronyms

The following definitions explain many of the common terms and acronyms used in commissioning and competing offender services.

|  |   |
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| <b>Alcatel Period</b>                    | A period of at least ten calendar days following the notification of an award decision in a contract tendered via the Official Journal of the European Union, before the contract is signed with the successful supplier(s) to allow unsuccessful bidders to be properly debriefed and raise any challenge before the contract is signed. |
| <b>Authority</b>                         | The organisation responsible for commissioning services   |
| <b>Award</b>                             | Confirmation of a successful preferred provider following a competition   |
| <b>BAFO</b>                              | Best and Final Offer, the final bid from an organisation participating in a competition   |
| <b>Business Support Services</b>         | Services which support delivery but do not come into direct contact with the service user or beneficiaries, e.g. HR and Finance   |
| <b>Co-commissioning</b>                  | Two or more commissioning agencies aligning strategies for using their resources  |
| <b>Commissioner</b>                      | Designated representative of the organisation (the Authority) responsible for commissioning services  |
| <b>Commissioning (Offender Services)</b> | The cycle of assessing the needs of courts, offenders, defendants and communities then designing, securing and monitoring services to meet those needs, while making best use of total available resources  |
| <b>Commissioning cycle</b>               | One complete commissioning round comprising planning, purchasing and performance management   |
| <b>Commissioning Intentions</b>          | Document setting out proposed commissioning priorities to support engagement with both current and potential providers as well as wider stakeholders as part of the NOMS Strategic commissioning cycle  |
| <b>Competition</b>                       | A competitive procurement exercise to award a contract or service level agreement under procedures specified by European procurement directives   |
| <b>Competition lifecycle</b>             | A description of the processes involved in delivering a competition which includes pre-procurement, procurement and mobilisation  |
| <b>Competitive Dialogue</b>              | Optional competition process which allows bidders to meet one-to-one with commissioners to explore points of clarification or potential innovation  |
| <b>Consortium</b>                        | Mutual agreement between two or more provider organisations to deliver a service. For contracting purposes one organisation must operate as a 'lead' provider   |

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| <b>Contract</b>                                      | Legally binding agreement between an authority (e.g. NOMS) and a provider organisation to deliver agreed service outcomes within an agreed pricing and payment structure  |
| <b>Contractor</b>                                    | An organisation contracted to deliver services  |
| <b>Contract penalty</b>                              | Formal financial deduction made to the payment to a provider by the commissioning authority for failing to meet the agreed levels or quality of service as defined in the contract or associated national standards   |
| <b>Decommissioning</b>                               | The process of planning and managing a reduction in service activity or terminating a contract in line with commissioning objectives  |
| <b>Demand</b>  | The predicted or actual volume of services needed to meet the requirements of the courts in carrying out sentencing e.g. provision of custodial places or availability of provision for particular sentence types or interventions                                |
| <b>Director of Commissioning and Commercial</b>      | NOMS Director with responsible for oversight and management of commissioning and competition activity within the Agency on behalf of the Agency Board   |
| <b>Director National Operational Services</b>        | NOMS Director with responsibility for translating departmental strategy into operational policy including providing subject matter expertise both for commissioners and providers   |
| <b>Director High Security</b>                        | NOMS Director responsible for the High Security Prison Estate   |
| <b>Director of Probation and Contracted Services</b> | NOMS Director with responsibility for managing contracts with external providers directly commissioned or funded by the Agency  |
| <b>Director Public Sector Prisons</b>                | NOMS Director responsible for Managing HM Prison Service (with the exception of High Security Prisons)  |
| <b>Ethical walls</b>                                 | Communication and information sharing barriers which provide clear separation between NOMS commissioning and provider functions (i.e. Public Sector Prisons) in order that no provider has access to information or is treated in way that gives unfair advantage |
| <b>FBC</b>   | Full Business Case. Expansion of the Outline Business Case (OBC) for a competition to set out the full justification for a competition including detailed financial returns expected and benefits realisation   |
| <b>Framework agreement</b>                           | A type of contract for service delivery resulting from a competition to produce an approved shortlist of providers from which commissioners may 'call off' services as required   |
| <b>Gap analysis</b>                                  | Strategic analysis of the shortfall between demand and need for offender services and the current volume and type of provision of services  |
| <b>Gateway Review</b>                                | Independent peer-led process to assess the viability of a programme, project or competition at key stages within its lifecycle. A requirement for all Government Major Projects   |
| <b>HMPS</b>  | Her Majesty's Prison Service. Provider arm of the National Offender Management Service responsible for managing Public Sector Prisons   |
| <b>HMPS Business</b>                                 | Dedicated Group within HM Prison Service responsible for managing   |

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| <b>Development Group (BDG)</b>                       | business development activity including leading in-house HMPS bids within competitions, governed under strict ethical wall arrangements. Replaced the former HMPS Public Sector Bids Unit.   |
| <b>Independent Sector</b>                            | Providers other than the public sector i.e. private or voluntary, community and social enterprise sectors  |
| <b>Infrastructure Services</b>                       | Services which support the business, often shared services (e.g. MoJ ICT and procurement services)   |
| <b>Integrated Assurance and Approval Plan (IAAP)</b> | Planning document required for all high value projects and programmes (including competitions) on the Government's Major Projects Register, setting out timelines and agreed assurance reviews over the life of the project or programme |
| <b>Intelligent commissioner</b>                      | Description of a set of inclusive behaviours exhibited by commissioners who actively seek to engage users, providers and wider stakeholders in the commissioning process   |
| <b>Invitation to Participate in Dialogue (ITPD)</b>  | An Invitation to Participate in Dialogue' is a formal stage of a competitive procurement exercise where potential providers meet with the commissioner to explore shared understanding before submitting a Best and Final Offer (BAFO)   |
| <b>Invitation to Tender (ITT)</b>                    | An Invitation to Tender is a formal stage of the procurement process where prospective providers are invited to submit a formal written tender   |
| <b>Joint commissioning</b>                           | Two or more agencies pooling their resources to implement a common strategy for providing services within binding partnership agreements   |
| <b>Keyholder Review</b>                              | Internal peer review of a programme or competition to ensure that it is fit for purpose  |
| <b>Lowest tender</b>                                 | Criteria for assessing bids in a competition process based on lowest cost provider that meets the evaluation criteria. Alternative to Most Economically Advantageous Tender (MEAT)   |
| <b>Lead provider</b>                                 | A named organisation representing a consortium of delivery organisations with whom the commissioner contracts  |
| <b>Local commissioning</b>                           | The commissioning of offender services in and for a defined local area (including localised subcontracting by a 'prime provider')  |
| <b>Major Projects Authority (MPA)</b>                | Jointly sponsored Cabinet Office and Treasury authority created April 2011 with responsibility for oversight of all major projects and competitions run by Whitehall Departments   |
| <b>Market</b>  | The opportunity for providers from any sector to supply, and commissioners to be able to purchase, required services   |
| <b>Market Sounding</b>                               | Process of identifying market capability and capacity to deliver desired services  |
| <b>Market Stewardship</b>                            | Process of promoting positive relationships between providers in particular those operating in supply chains   |

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| <b>Market Stimulation</b>                           | Process of engaging with both current and potential service providers in order to develop capability to deliver services   |
| <b>Merlin Standard</b>                              | An independent supply chain management standard developed by the Department of Work and Pensions to promote good relationships between prime contractors and their sub-contractors   |
| <b>Mobilisation</b>                                 | Final stage in the competition lifecycle which plans and oversee the transfer of responsibility for a new or revised service to 'go live' and become business as usual.  |
| <b>MOJ Procurement</b>                              | Shared corporate directorate of the Ministry of Justice responsible for undertaking procurement and commercial activity on behalf of all parts of the Department including NOMS  |
| <b>Most Economically Advantageous Tender (MEAT)</b> | Criteria for assessing bids in a competition based on balancing price, quality and outcomes. Alternative to 'lowest tender'  |
| <b>Need</b>   | Requirements for different types of offender services to respond to needs of service users and or wider beneficiaries linked to reducing reoffending, public protection or delivering the sentence of the courts. May be defined for an individual user as part of case management or collectively e.g. for offenders in a location or groups of offenders |
| <b>NOMS</b>   | National Offender Management Service. Agency of the Ministry of Justice responsible for commissioning and delivering adult offender services in custody and the community which protect the public and reduce reoffending while delivering the sentences and orders of the courts  |
| <b>NOMS Board</b>                                   | Board with overall responsibility for the National Offender Management Service, chaired by the Chief Executive of the Agency   |
| <b>Notice of Change (NOC)</b>                       | A formal amendment to an existing legal contract between the commissioner and a provider issued by the commissioning authority. May include changes, new requirements or removal of existing clauses   |
| <b>Offender Learning and Skills Service (OLASS)</b> | Service commissioned by the Skills Funding Agency, an Agency of the Department of Business Innovation and Skills, to deliver education and skills provision in custody. Co-commissioned with NOMS.   |
| <b>Offender Management</b>                          | An evidence-based case management structure for adult offenders sentenced by the courts providing an end-to-end process of supervision by a named offender manager throughout a sentence   |
| <b>Offender Services</b>                            | User facing services delivered to offenders, defendants, victims, courts and communities.  |
| <b>Offender Services Commissioning</b>              | The cycle of assessing the needs of courts, offenders, defendants, victims and communities then designing, securing and monitoring services to meet those needs while making best use of total available resources.  |
| <b>Outcome</b>                                      | The overall change in service recipients' or beneficiaries' lives as a result of receiving a services e.g. a reduced likelihood of reoffending   |
| <b>Outcome-based</b>                                | Commissioning services on the basis of outcomes for service users  |

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| <b>commissioning</b>              | and beneficiaries. A focus on what the desired impacts of services are for users and beneficiaries as opposed to how or who delivers services  |
| <b>OBC</b>                        | Outline Business Case. A preliminary business case completed as part of a competition which sets out the expected benefits and costs.  |
| <b>Partnership</b>                | Two or more organisations working together for mutual benefit. May be response to meeting statutory, strategic or operational requirements   |
| <b>Payment by results</b>         | Contractual funding mechanism where full or partial payment is dependent upon achieving an agreed level of performance against a defined outcome or outcomes   |
| <b>Personalised commissioning</b> | The process of securing and monitoring services at the level of the individual to meet personalised need. Also known as 'micro' or 'individual' commissioning.   |
| <b>Pre-Qualification</b>          | Optional initial stage of a formal procurement exercise designed to identify interested potential bidders' capability to satisfy the essential elements of the Invitation to Tender.   |
| <b>Preferred provider</b>         | An identified supplier who the commissioner intends to contract with subject to conclusion of contract negotiation following a competition. Also refers to providers who have successfully been selected to join a framework agreement or restricted supplier list   |
| <b>Prime provider</b>             | A provider who holds the contract for delivery of offender services through a managed supply chain of sub-contractors or sub-prime organisations   |
| <b>Principles of Competition</b>  | Document published at the launch of a procurement exercise which sets out the criteria against which bids will be assessed and what treatments will be made of bids to recognise differential costs between sectors in order to promote transparency and competitive neutrality  |
| <b>Probation Trust</b>            | Non Departmental Public organisation and body corporate commissioned on behalf of the Secretary of State for the delivery of probation services in an area, as defined by the Offender Management Act 2007. Replaced Probation Boards  |
| <b>Pre-Procurement</b>            | The first stage in the competition lifecycle which involves defining the governance, assurance, specification and principles of the competition to be run prior to formally launching the procurement exercise   |
| <b>Procurement</b>                | The process of acquiring goods, works and services including through running competitions, on behalf of a commissioner in compliance with UK law and EU regulations. Can only be undertaken by individuals authorised to enter into legally binding financial agreements on behalf of the business. The process includes both the act of purchasing, and post-contractual negotiation. The second stage in the competition lifecycle |
| <b>Prison</b>                     | A custodial establishment for male or female adult offenders as defined by the Prisons Act 1952 (Amended)  |
| <b>Private sector provider</b>    | A company in private ownership able to contract for services   |



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| <b>Public sector provider</b>                                  | Any public sector organisation responsible for, or capable of providing, commissioned services. Examples include HM Prison Service, Probation Trusts, other central government departments or their agencies and Local Authorities   |
| <b>Purchasing</b>  | The act of buying goods, works and services  |
| <b>Rectification Notice</b>                                    | Formal contract notice issued by the commissioning authority in the event of unsatisfactory delivery by a contracted provider. Failure to satisfy the conditions of the rectification notice within the agreed timescale may result in termination of the contract   |
| <b>Skills Funding Agency (SFA)</b>                             | Agency of the Department for Business, Innovation and Skills responsible for commissioning the Offender Learning and Skills Service. This function was formerly carried out by the Learning and Skills Council.  |
| <b>Service Level Agreement (SLA)</b>                           | A non-legally binding statement of mutually agreed levels of service provision. Most commonly used to specify in-house provision (e.g. between NOMS and HM Prison Service) as the Crown cannot contract with itself. Also used where a public body enters into a grant agreement with a voluntary, community and social enterprise sector organisation |
| <b>Service level commissioning</b>                             | The process of securing new or revised services (often though not exclusively through competition) or of decommissioning a specific service.   |
| <b>Service provider</b>  | An organisation from any sector responsible for, or capable of providing, commissioned services  |
| <b>Service specification</b>                                   | A specification describing the outcomes (and outputs) required for a specific service. The NOMS Directory of Services sets out mandatory minimum outcomes and outputs for each core service the Agency is required to provide to ensure that it is legal, safe and decent.   |
| <b>Social Investment</b>                                       | Mechanisms for funding services paid for with investment outside government with payment linked to outcome based results   |
| <b>Specification, Benchmarking and Costing Programme (SBC)</b> | NOMS change programme responsible for development of costed outcome specifications for all NOMS-funded generic services delivered to offenders, defendants, victims and courts.  |
| <b>Strategic commissioning</b>                                 | The Annual cycle of setting out the high level priorities of the Agency recognising changes in service need and demand, resources, Government Policy and the priorities of other commissioners and funders of Offender Services  |
| <b>Sub-contractor</b>  | A provider contracted to deliver a service by an organisation, which holds a direct contract with the service commissioner   |
| <b>Sub-prime</b>   | A named provider contracted to deliver a service as part of a supply chain to a 'prime provider' organisation  |
| <b>Supply chain</b>  | The hierarchy of organisations contracted to deliver specific offender   |



services through a prime or lead organisation and those they sub-contract with

**Supply chain management**

Active management of organisations within a supply chain to seek to mitigate perversities and ensure focus on the outcomes of the overall contract

**Treasury Approval Process (TAP)**

Formal process for HM Treasury to approve any major spend above central Government Department spending authority

**Voluntary, community and social enterprise providers**

Non-governmental 'civil society' organisations that are value driven and which principally reinvest their surpluses to further social, environmental or cultural objectives and which are capable of contracting to delivering services. It is an umbrella reference to a range of organisations that includes voluntary and community organisations, charities, social enterprises, social firms, co-operatives and mutuals. Also referred to as Civil Society Sector.

**National Offender Management Service (NOMS)**  
**Clive House**  
**70 Petty France**  
**London**  
**SW1H 9EX**  
**[commissioning.support@noms.gsi.gov.uk](mailto:commissioning.support@noms.gsi.gov.uk)**