EXPLANATORY MEMORANDUM TO

THE COSTS IN CRIMINAL CASES (GENERAL) (AMENDMENT) REGULATIONS 2015

2015 No. 12

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Offender Rehabilitation Act 2014 creates a new post sentence supervision period that will apply to certain offenders after release from custody, together with a supervision default order that can be imposed as a sanction for breach of the supervision period. The Regulations add breach of a post sentence supervision period and breach of a supervision default order to the list of breach proceedings for which costs can be ordered against defendants. This will allow the National Probation Service to seek costs from offenders in either type of breach proceeding.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 18(1) of the Prosecution of Offences Act 1985 ("the POA 1985") provides a power for the magistrates' courts and the Crown Court to make an order for a defendant to pay costs to the prosecutor in cases where a person is convicted of an offence in either court, or where the Crown Court dismisses an appeal against a conviction or sentence imposed in the magistrates' courts.

4.2 The Costs in Criminal Cases (General) Regulations 1986 ("the 1986 Regulations") set out how the provisions relating to costs in criminal cases in the POA 1985 are to be applied. Regulation 14(3) extends the application of section 18 of the POA 1985 to proceedings considering an alleged breach of various sentences and court orders, as if the offender had been tried in those proceedings for the offence for which the sentence was passed or the order made.

4.3 The Offender Rehabilitation Act 2014 ("the ORA 2014") amends the current sentencing and release framework in various ways. In particular, it inserts a new section 256AA into the Criminal Justice Act 2003 ("the CJA 2003") to create a new post sentence supervision period that applies to relevant offenders released from an immediate custodial sentence of more than 1 day or less than 2 year. The post sentence supervision period is added to the licence period the offender serves

after release from custody, so that together the two make a total of 12 months subject to one form of supervision or another in the community. Offenders subject to a post sentence supervision period can be required to comply with a number of different rehabilitative requirements.

4.4 The ORA 2014 also inserts a new section 256AC into the CJA 2003 to create a process for dealing with alleged breaches of a post sentence supervision period. Where it appears on information to a magistrates' court that an offender has failed to comply with a supervision requirement, the court can direct the offender to appear or be brought before them. If a breach without reasonable excuse is proven, the court can impose one of a number of sanctions:

- committal to custody for up to 14 days; or
- a fine not exceeding level 3 on the standard scale; or
- a supervision default order.

4.5 A supervision default order can require the offender either to carry out unpaid work or to comply with an electronically-monitored curfew. Section 256AC also provides for the Crown Court to hear any appeal against a proven breach of a post sentence supervision requirement.

4.6 The ORA 2014 also inserts a new Schedule 19A into the CJA 2003 which makes provision for supervision default orders. Paragraphs 7 to 9 of Schedule 19A provide for a magistrates' court to hear an alleged breach of a supervision default order, and provides a route of appeal to the Crown Court where a magistrates' court finds the offender to have breached the order without reasonable excuse.

4.7 Regulation 3 of these Regulations amends Regulation 14 of the 1986 Regulations, so as to add section 256AC and paragraphs 7 to 9 of Schedule 19A to the CJA 2003 to the existing list of breach hearings to which section 18 of the POA 1985 applies.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The provisions of the ORA 2014 are part of a wider series of reforms known as the Transforming Rehabilitation programme. The objectives of this programme are to:

- Open up delivery of probation services for low and medium-risk offenders to a range of rehabilitation provider across the public, voluntary and private sectors.
- Introduce new payment incentives to give providers flexibility to do what works, but only paying them in full for reductions in reoffending.
- Create a new public sector National Probation Service, supervising high-risk offenders and providing advice to courts.
- Extend statutory supervision after release from custody to the 45,000 offenders released every year from custodial sentences of less than 12 months.
- Introduce a nationwide 'through the prison gate' resettlement service, so that most offenders are given continuous support by one provider from custody into the community.

7.2 Until 30 May 2014, probation services in England and Wales were delivered by 35 probation trusts. Probation trusts' functions included the prosecution of alleged breaches of court orders such as community orders and suspended sentence orders.

7.3 As a result of these reforms, from 1 June 2014 onwards responsibility for delivering probation services in England and Wales transferred to a single public sector National Probation Service (NPS), managing the highest risk offenders in the community, and 21 Community Rehabilitation Companies (CRCs), supervising low and medium risk offenders. The NPS, which is part of the National Offender Management Service, is also responsible for prosecuting breaches of sentences and court orders, regardless of whether the offender is managed by the NPS or by a CRC. In cases where an offender managed by a CRC is alleged to have breached a court order, the CRC will pass relevant information to the NPS in order for the NPS to lay an information before the relevant court and prosecute the breach.

7.4 Remaining un-commenced provisions in the Offender Rehabilitation Act 2014 are planned to be brought into force on 1 February 2015. These include commencement of provisions introducing the post sentence supervision period, provisions setting out the process for magistrates' courts to hear alleged breaches of a post sentence supervision period, and provisions for the supervision default order.

7.5 Existing sentences and court orders which involve a court process for dealing with breach are already listed in Regulation 14(3) of the 1986 Regulations. This allows the NPS to apply for costs in such cases – for example, where an offender is proven to have breached a community order without reasonable excuse. In order to replicate this position for breach of a post sentence supervision period or supervision default order – so that the NPS can also apply for costs against defendants in such cases – it is necessary to amend the 1986 Regulations to add the relevant provisions of the CJA 2003 as amended to the list of breach hearings for which costs can be sought.

8. Consultation outcome

8.1 A public consultation on key provisions in the ORA 2014 took place between December 2012 and February 2013, and the provisions were also subject to debate in Parliament during the passage of the legislation. As these Regulations extend a longstanding policy by successive governments of adding new sentences and court orders to the list of proceedings in which costs can be ordered against a defendant, a specific consultation on the Regulations was not considered necessary.

9. Guidance

9.1 The NPS is planning to issue guidance to its staff on the circumstances in which prosecution costs should be sought in such cases.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is limited in that the Regulations will provide a discretionary ability for the NPS to apply for costs in two new types of breach proceeding, as the NPS already can in other breach proceedings such as breach of a community order. There is no requirement for the NPS to apply for costs in all cases and no assessment has been made of the potential level of applications for costs. This will be a matter for NPS staff to consider on a case-by-case basis, in accordance with the proposed guidance.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The NPS will monitor the use of prosecution cost applications, and keep their operation under regular review.

13. Contact

13.1 Nick Poyntz at the Ministry of Justice (tel: 020 3334 3555 or email: nick.poyntz@justice.gsi.gov.uk) can answer any queries regarding the instrument.