EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (SURCHARGE) (AMENDMENT) ORDER 2014

2014 No. 2120

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 At present, when a court sentences an offender they are under a duty to order payment of a surcharge; that is, a specified sum of money which goes towards funding victims' services.

2.2 The sentences which attract payment of a surcharge and the amounts to be ordered are set out in the Criminal Justice Act 2003 (Surcharge) Order 2012 ("the 2012 Order").

2.3 The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 ("the 2014 Order") amends the 2012 Order to extend the circumstances in which a surcharge is payable. A surcharge will now also be payable when the magistrates' court imposes an immediate custodial sentence.

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

3.1 None

4. Legislative context

4.1 The duty on a court to order a surcharge when dealing with an offender for one or more offences was introduced by the Domestic Violence, Crime and Victims Act 2004 which amended the Criminal Justice Act 2003.

4.2 The Criminal Justice Act 2003 (Surcharge No. 2) Order 2007 ("the 2007 Order") provided that a surcharge would be required to be ordered at a fixed sum of £15 whenever an individual was sentenced to a fine.

4.3 The 2012 Order revoked the 2007 Order and specified increased amounts and further sentences in relation to which a surcharge should be ordered. The provisions came into force for offences committed on or after 1 October 2012.

4.4 The 2014 Order follows commencement of section 179 of the Anti-social Behaviour Crime and Policing Act 2014 ("the 2014 Act") (see further policy background below). Section 179 amends section 82 of the Magistrates' Courts Act 1980 which permits the court, at the point that it convicts a person, to commit the offender to prison in a limited number of circumstances for a default in paying certain

financial impositions, including the surcharge. Section 179 of the 2014 Act prevents magistrates from discharging the surcharge through additional days in prison.

5. Territorial extent and application

5.1 The instrument extends to England and Wales.

6. European Convention on Human Rights

6.1 As the 2014 Order is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In 2013-2014, approximately £19.5 million of MoJ's overall funding of £50 million for victim services came from offenders via the Victim Surcharge. The Government response to the consultation, '*Getting it right for Victims and Witnesses*' set out proposals to make offenders contribute more by way of financial reparation towards the cost of victims' services, as opposed to the taxpayer, to help repair the damage that their behaviour has caused.

7.2 The October 2012 reforms increased and extended the Victim Surcharge alongside increases to financial penalties such as Penalty Notices for Disorder and will raise up to an additional £50 million for victims' services. This is in addition to changes to make offenders contribute more to victims though implementation of the Prisoners' Earnings Act 1996 which currently helps fund Victim Support, and provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which strengthened the duty to consider ordering compensation to be paid by the offender. In accordance with the commitment provided in the Government's response to the consultation, *'Getting it right for victims and witnesses'*, a phased introduction of reforms relating to the Victim Surcharge was put forward to allow for provisions in the 2014 Act to be commenced.

7.3 The provisions in the 2014 Act will prevent magistrates from being able to order the Victim Surcharge to be served as additional days in prison and also allows magistrates to remit the Surcharge when the whole or any part of a fine is remitted by the court. This meets the policy objective of requiring more offenders to make greater contributions towards the cost of victims' services and ensures that the Surcharge reflects the comparative seriousness of the sentence imposed by a court, with a greater amount payable for custodial sentences.

7.4 The effect of the 2014 Order is this. When a magistrates' court sentences an offender who was aged 18 and over at the time an offence was committed with an immediate sentence of imprisonment, or imposes a sentence of detention in a young offenders' institution, it will order payment of a Surcharge of £80 for a sentence of 6 months and below. The sentencing powers of the magistrates' court are currently limited to 6 months' imprisonment in respect of any one offence, subject to commencement of the power in section 154(1) of the Criminal Justice Act 2003 extending this upper limit to 12 months, or the express exclusion of the limit in accordance with section 78(2) of the Powers of Criminal Courts (Sentencing) Act

2000. In the event that the sentencing powers of the magistrates' court are amended in this way to enable sentences of up to 12 months' imprisonment, the Order will apply and a Surcharge of £100 would be payable.

7.5 Where an offender is under 18 at the time an offence is committed and given an immediate sentence of imprisonment by a magistrates' court, the 2014 Order will require the court to order payment of a Surcharge of £20.

7.6 Nothing in this Order affects the application of the provisions in the 2012 Order which explain what the court should do where it deals with an individual for one or more offences by more than one disposal referred to in column 1 of the relevant table. Where the amount in column 2 of the relevant table which corresponds to each of the disposals is the same, the amount of the Surcharge should be that amount. Where the amount in column 2 is not the same the court should order the Surcharge against whichever disposal in column 1 sets the highest amount. A magistrates' court may currently impose consecutive sentences up to a total aggregate of 12 months' imprisonment. But the maximum sentence of imprisonment a court can impose for a single offence is still 6 months. Accordingly, (assuming the offender was over 18 at the time the offences were committed), where a court imposes two sentences of 6 months' imprisonment, ordered to run consecutively, the court is required to order a Surcharge of £80. That is because the amount in column 2 of table 2 to the Schedule to the 2012 Order which corresponds to each of those disposals is the same

8. Consultation outcome

8.1 The changes implemented by the 2012 and 2014 Order were subject to a full public formal consultation process between January and April 2012. The consultation '*Getting it right for Victims and Witnesses'* set out a full explanation of the policy proposals and was published with supporting Impact and Equality Impact Assessments. Further details of the consultation can be found in the explanatory memorandum which accompanied the 2012 Order. Links to the relevant documents can be found below.

https://consult.justice.gov.uk/digital-communications/victims-witnesses

http://www.legislation.gov.uk/uksi/2012/1696/contents/made

9. Guidance

9.1 Information about the changes to the Surcharge following the 2012 reforms was made available to HMCTS staff and court manuals updated to reflect the changes made by that Order. Further information about the 2014 Order will be made available to all court staff on the Department's and the HMCTS intranet prior to implementation of the 2014 Order to ensure that all staff are aware of the changes. We will work with colleagues to update the court manuals at the earliest possible opportunity. No further guidance is considered necessary. The changes were subject to public consultation and the effect of the Order is explained in the Explanatory Note and as described above.

10. Impact

10.1 The potential impact of the changes given effect by the instrument were initially set out in the impact assessment which accompanied the consultation '*Getting it right for Victims and Witnesses*'. The impact assessment was updated and published on 2 July 2012. An addendum to the impact assessment accompanies the statutory instrument attached to this memorandum and is published on www.legislation.gov.uk.

10.2 The 2014 Order will apply to those found guilty of an offence and sentenced to an immediate custodial sentence by a magistrates' court.

10.3 The impact on the public sector is also set out in the impact assessment. The main bodies that will be impacted are: Ministry of Justice; Her Majesty's Courts and Tribunals Service through increased administrative and enforcement workloads and HM Treasury; Crown Prosecution Service; and other prosecuting agencies through potential reductions in fines and costs received from offenders. Overall, the reforms will increase spending on victim support services and also ensure that the level of contribution offenders make to the cost of supporting victims of crime is proportionate to the seriousness of the sentence imposed.

11. Regulating small business

11.1 This instrument does not regulate small businesses.

12. Monitoring and review

12.1 The Government is committed to reviewing the operation and implementation of the increase and extension of the surcharge. There will be an operational review scheduled at 6 and 18 months and a policy review 3 years after the coming into force of this instrument.

13. Contacts

13.1 Martin Hau at the Department can answer any questions regarding this Order.
Tel: 020 3334 5318 or email martin.hau@justice.gsi.gov.uk.