EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE (SENTENCING) (LICENCE CONDITIONS) (AMENDMENT) (NO. 2) ORDER 2022

2022 No. 703

1. Introduction

1.1 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 Offenders released from prison on licence are subject to conditions that they have to adhere to. Those which apply automatically to every determinate released offender are known as "standard licence conditions". There are currently 7 standard licence conditions set out in the Criminal Justice (Sentencing) (Licence Conditions) Order 2015 ("the 2015 Order") which apply to an offender's licence on release.

2.2 This instrument introduces two new standard licence conditions: to require the person on licence to inform their probation practitioner if they change or use a name that is different to the one on their licence; and to provide their probation practitioner with up-to-date contact details.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is to England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 When a determinate sentenced offender is released, supervising officers, will consider what licence conditions are required to manage any risk that offender may pose in the community. A licence consists of the mandatory standard conditions, as well as any additional conditions considered necessary and proportionate to ensure the offender's successful integration into the community, prevent re-offending or to ensure the protection of the public.

6.2 The 2015 Order sets out the licence conditions and types of licence conditions to which an offender must or may be subject by the Secretary of State. Article 3(2) sets out the standard conditions that must be included in an offender's licence, pursuant to section 250(4)(a) of the Criminal Justice Act 2003 ("the 2003 Act") and article 3(1) of the 2015 Order. This instrument amends this list to provide for the inclusion of two

new standard condition in the licences of released offenders to assist Probation services with monitoring and keeping in contact with them.

6.3 As a result of this Order, all determinate sentenced offenders will now have the two new conditions imposed when they are released on licence by the Secretary of State (or Parole Board, where relevant). Offenders who breach their licence conditions may be recalled to custody.

6.4 Standard conditions apply to an offender's release on licence as a matter of general law, rather than by virtue of any physical paper licence issued. This means that when the instrument comes into force, the new conditions will automatically apply to those offenders who are currently on licence. Probation services will ensure all offenders who are already subject to licence in the community are notified in writing of the new conditions, and the application of those conditions to their release

7. Policy background

What is being done and why?

7.1 This amending Order adds two new standard licence conditions to the 2015 Order. The effect of this addition is that the conditions will be imposed on the licences of everyone released from custody on a determinate sentence after the instrument comes into force, as well as applying to the licences of every offender already released from custody, to ensure that probation practitioners have the information they need to effectively supervise and manage them.

Addition of standard licence condition relating to change or use of a different name

7.2 The amending Order introduces a new standard licence condition requiring the person on licence to 'tell the supervising officer [now known as probation practitioner] if they use a name which is different to the name or names which appear on their licence'. At present, an individual on licence could formally change their name, or use several different names in different settings, and they are not required to tell their probation practitioner. It is essential for practitioners to know the name/s that someone is using, to be able to effectively manage the risk of reoffending and serious harm that they pose. Failure to inform your probation practitioner may currently be categorised as a breach of the condition to be of good behaviour, but the Government intends to put it beyond any doubt that change of name must be communicated to the probation practitioner.

7.3 This standard licence condition will expressly require everyone with such a condition to tell their probation practitioner if they change their name via the enrolled or unenrolled deed poll process. This includes if they change their name multiple times. It also requires someone to tell their probation practitioner of any other names they use, even if they have not formally changed their name, for example if they use a different name to set up a social media account, or when entering into a new relationship. This includes if they are using different names at the same time.

7.4 The inclusion of this licence condition will not restrict or prohibit people from changing/using alternative names – it is intended to make sure that, when this happens, the probation practitioner is aware of it.

Addition of standard licence condition relating to providing probation with up-to-date contact details

7.5 The amending Order introduces a new standard licence condition requiring the person on licence to "tell the supervising officer if they change or update any contact details, including any phone number or email address", therefore requiring an offender to provide their supervising officer with up-to-date contact details.

7.6 This licence condition seeks to ensure that the probation practitioner is always able to get in touch with the individual, which forms part of effective supervision in the community component of the custodial sentence.

7.7 This standard condition will not restrict individuals from making changes to their contact details, but only ensure that they inform their probation practitioner when they do so.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 These order does not consolidate any existing secondary legislation.

10. Consultation outcome

10.1 Consultation on the introduction of new standard licence conditions was undertaken with practitioners and trade unions as part of the work in relation to an update to the Licence Conditions Policy Framework which sets out the requirements for practitioners responsible for supervising offenders on licence. The views of those consulted were taken into account in the drafting of these instructions.

10.2 In summary, all of the responses from the Policy Framework consultation in relation to the introduction of new standard licence conditions to require offenders to tell them of any change of name and up-to-date contact details were positive, on the basis that it will assist with risk management and being able to clearly take enforcement action where individuals are not being fully compliant with their licence.

11. Guidance

11.1 The use of licence conditions is underpinned by a Policy Framework which can be found here: Licence conditions Policy Framework - GOV.UK (www.gov.uk). The changes introduced by this amending Order will be communicated to all internal and external stakeholders who will be directly affected by the changes. In particular, probation practitioners and operational leads across HMPPS, policy leads for whom this is relevant, prison Governors and their teams who are responsible for issuing licences, Probation who will be responsible for communicating the change to existing released offenders, and the Parole Board who are responsible for setting licence conditions for cases they review. The probation service will be provided with a form letter to give to offenders currently on licence to explain the new standard conditions.

12. Impact

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

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Policy frameworks, including the Licence Conditions policy framework, are subject to regular review. The licence conditions working group meets monthly and will also consider the use and effectiveness of the conditions once they have had time to embed. Monitoring will take place using feedback from key stakeholders.

15. Contact

15.1 Brian Chapman at the Ministry of Justice. Telephone: 07817 122733 or email: brian.chapman1@justice.gov.uk with any queries regarding the instrument.

15.2 Gordon Davison, Head of Public Protection Group at the Ministry of Justice. can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Kit Malthouse, at the Ministry of Justice. can confirm that this Explanatory Memorandum meets the required standard.